QUEENSTOWN LAKES DISTRICT COUNCIL

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DECISION OF THE QUEENSTOWN-LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	Foodstuffs (South Island) Limited
RM reference:	RM130524
Location:	Frankton, Queenstown
Proposal:	Consent to construct and operate a Pak "N Save bulk food warehouse and associated fuel facility, with associated earthworks, landscaping, signage and car parking.
Type of Consent:	Land Use
Legal Description:	Lots 2 to 3 DP 452925 and Lots 14 to 15 DP 304345 held in Certificate of Title OT/579531.
Valuation Number:	2910210901
Zoning:	Rural General
Notification:	Publicly notified
Commissioners:	Commissioners D J Taylor and D Clarke
Date:	11 April 2014
Decision:	**GRANTED subject to conditions**

BEFORE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an application by **Foodstuffs (South Island) Limited** for resource consent for the construction and operation of a Pak 'N Save Supermarket and associated fuel facility at Frankton, Queenstown
Council file:	RM 130524

DECISION OF COMMISSIONERS APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL

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11 April 2014

Commissioners:

D Jane Taylor (Queenstown)
David Clarke (Queenstown)

The Hearing and Appearances

Hearing Dates	Wednesday 5 February 2014, Monday 10 – Tuesday 11 February 2014, at Queenstown
Appearances for Foodstuffs (South Island) Limited:	Ms J M Crawford and Ms A S Roberts, Legal Counsel
	Mr R Davidson, General Manager, Foodstuffs (South Island) Limited
	Mr J McCoy, an Architect and Director of McCoy & Wixon Architects Limited, Dunedin
	Mr F J Colegrave, an Economist and Managing Director of Insight Economics Limited (joint evidence with Cross Roads Properties Limited)
	Mr A D Burns, an Urban Designer and Director at McIndoe URBAN Limited
	Mr T D Milne, a Landscape Architect and Director of Rough & Milne Landscape Architects Limited, Christchurch
	Mr G J Dewe, a Resource Management Planner and former Principal of Aurecon (now with Fulton Hogan)
Submitters Appearing in Person:	Mr JDK Gardner-Hopkins, Counsel for Queenstown Central Limited
	Mr V N Lala, a Resource Management Planner appearing for Queenstown Central Limited
	Mr R Taylor, representing Glentarn Group
	Ms J J Carter and Mr A F Porter, representing Shotover Park Limited
In Attendance:	Mr A Cubitt, Consultant Reporting Planner, Queenstown Lakes District Council
	Ms H Mellsop, Consultant Landscape Architect, Queenstown Lakes District Council
	Ms R Beer and Ms L Ryan, Committee Secretaries

Introduction

1. Foodstuffs (South Island) Limited ("the Applicant") has applied for resource consent for the construction and operation of a Pak 'N Save bulk food warehouse and associated fuel facility at Frankton, Queenstown. The legal description of the property is Lots 2 to 3 Deposited Plan 452925 and Lots 14 to 15 Deposited Plan 304345 Certificate of Title OT/579531. The proposed development comprises approximately 2.2360 hectares within existing Lot 14 DP 304345.

2. The underlying title is split-zoned Rural General and Industrial under the Queenstown Lakes Operative District Plan; however the subject site is located wholly within the Rural General zoned portion of the site. The proposed development is also within the area subject to Plan Change 19, which seeks to create the Frankton Flats "B" Special Zone. The subject site is split almost evenly between the E1 and E2 Activity Areas on the revised Structure Plan prepared by Council in response to the Environment Court's interim decision on the plan change.[1] The closest residential zone is Activity Area C2 to the south-west, which is separated from the subject site by the eastern access road ("EAR") and a 50 metre area of Activity Area E2 on the opposite side of the EAR. An overlay plan indicating the location of the proposed development (together with the proposed neighbouring Mitre 10 Mega development) is **attached** as Appendix 1.

3. Presently the Frankton Flats forms part of a gateway entrance/exit point to the urban development of Frankton and Queenstown. It was accepted by all parties that as this land is subject to PC19, it is unlikely to remain in its current state for much longer. The location of the proposed development is in an area that has greater potential to absorb change of this nature than most parts of the Rural General zone due to the character of the Frankton Flats in general and the immediate context of the existing Industrial Zone in particular.

4. However, this does not diminish the importance that the Frankton Flats will continue to play in this area from a landscape perspective, not only as a result of the expansive mountain views afforded but also its location at the base of an Outstanding Natural Feature (the Remarkables mountain range). It is important that any development on this land, especially of the scale of the present proposal, incorporates good building and urban design, suitable materials, colour schemes, branding and signage and that the development works within the environment rather than clashing with it.

5. The proposed Pak 'N Save building is a large format retail and bulk storage facility. It has a total floor area of 6,603 m^2 and a height of 10.2 m. Although the scale of the development is large, a number of design features have been incorporated to mitigate this bulk; including setback from the arterial road, a high degree of articulation and modulation in the building design, careful

[1] *Queenstown Airport Corporation Limited v Queenstown Lakes District Council* [2013] NZEnvC 14. (PC19 (Interim Decision)).

choice of colours and materials to complement the landscape, integration of the building with the car park and significant landscaping.

6. The purpose of the Frankton Flats "B" Special Zone is to allow for a mix of land uses with an overarching structure plan to guide development. The Council Commission's decision on PC19 ("PC19 (DV)") was issued in late 2009 and was appealed to the Environment Court by a number of the parties. The Environment Court subsequently split its decision-making on PC19 into "higher order" and "lower order" matters. An interim decision on the higher order matters with respect to the objectives, policies and a revised structure plan was issued on 12 February 2013 ("PC19 (Interim Decision)").[2] The PC 19 (Interim Decision) provides a set of objectives and policies for some but not all activity areas, which are subject to further refinement by the parties and the Court. The Court requested that the parties work together to provide the wording of the objectives and policies subject to the Court's overall direction. The "lower order" matters (rules and assessment matters) have yet to be considered and will require the normal evidence exchange, witness conferencing and hearing process. As a consequence, the date on which PC19 will become operative, and the form this will take, will depend on whether there are any appeals against the final decisions of the Environment Court to the High Court or higher courts.

7. This particular application has a long and complex planning history of development proposals and Environment Court proceedings, which are comprehensively described in the Section 42A report in section 3.2. The current application is substantially similar to a previous application heard and decided by the Environment Court in 2012.[3] The earlier proposal was granted consent subject to conditions that required a number of amendments relating to landscaping, signage, light spill and redesign of fencing along the boundary. Further details were also required in relation to plans for the location of rainwater collection tanks. The current proposal is similar to that for which consent was previously granted by the Environment Court; however, it has been amended to include the changes required by the Environment Court in relation to the matters set out above.

8. The Reporting Officer's Section 42A report sets out a description of the subject site, the planning history and a full description of the proposed activity at sections 2 and 3 of his report. The Assessment of Environmental Effects prepared by the Applicant ("AEE") contains a full site description at chapter 2, together with a comprehensive description of the proposal in chapter 3 (pages 26 to 41).

9. The application must be assessed against both the Operative District Plan and the provisions of the District Plan as proposed to be modified by PC19 (DV). It is accepted that the application must be assessed under each plan and that weighting only becomes an issue if the outcomes

[2] *Queenstown Airport Corporation Limited v Queenstown Lakes District Council* [2013] NZEnvC 14. (PC19 (Interim Decision)).
[3] *Foodstuffs (South Island) Limited v Queenstown Lakes District Council* [2012] NZEnvC 135 ("the *Foodstuffs* decision").

under the two frameworks differ.[4] We also accept that as the Environment Court has made a number of final findings, but not yet a final decision on PC19, the version of PC19 against which the application must be assessed is the Council's decision version of Plan Change 19 (PC19 (DV)) as amended by any final findings, which includes the addition of Objective 1A and related policies, the 50 m E2 "sleeve" on both sides of the EAR and the revised Structure Plan.

10. Under PC19 (DV) the application site was almost entirely within Activity Area E2, with only the right of way and some car parking and landscaping located in Activity Area E1. However, under the PC19 (Interim Decision) Structure Plan, approximately 45% of the site is located within Activity Area E2, with the remaining area of the site in Activity Area E1.

11. The status of the proposal has been agreed between the Reporting Officer and Mr Dewe (for the Applicant) as set out in the Joint Planning Statement attached to the Section 42A report. A full assessment in relation to both the Operative District Plan and PC19 (DV) is set out on pages 42 to 57 of the AEE and is summarised by the Reporting Officer at part 4 of the Section 42A report. Both Mr Dewe and Mr Cubitt found that the application is to be assessed overall as a **non-complying activity** under both the Operative District Plan and PC19 (DV), as amended by the Structure Plan resulting from PC19 (Interim Decision). Mr Cubitt noted that the application contains a full assessment of the proposal against all of the relevant rules and accepted that the AEE accurately records the various aspects of non-compliance and the status of the activity under the various planning documents. We do not understand QCL to have raised any objection to the non-complying activity status under the relevant planning frameworks.[5]

12. Accordingly, overall the application falls to be considered as a **non-complying activity** against both the Operative District Plan and PC19 (DV) as amended by any final findings of PC19 (Interim Decision), including the new Structure Plan.

Statutory Assessment Framework

13. The provisions of the Resource Management Act 1991 ("the RMA") relevant to the assessment of the application as a non-complying activity are sections 104D, 104, 104B, 108 and Part 2 of the Act.

14. The Applicant at (pages 84 to 87 of the AEE) and Mr Cubitt (at part 5 of the Section 42A report) described the relationship between the various relevant statutory provisions in detail.

15. Consent for the Pak 'N Save application is required under the provisions of the Operative District Plan and under PC19 (DV) as modified by any final findings of the Environment Court in the

[4] See *O'Connell v Christchurch City Council* [2003] NZRMA 216.
[5] Paragraph 3.9 of Mr Gardner-Hopkins' legal submissions on behalf of Queenstown Central Limited.

PC19 (Interim Decision). Weighting only becomes an issue if the outcomes under the two frameworks differ.[6]

16. As a non-complying activity, the application must pass through <u>one</u> of the gateway tests in section 104D(1)(a) or (b). Section 104D reads:

> (1) Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—
>
> (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or
>
> (b) the application is for an activity that will not be contrary to the objectives and policies of—
>
> (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
>
> (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
>
> (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.
>
> (2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.

17. We note that in respect of the section 104D(1)(b) test, Fogarty J in the High Court decision in relation to the previous *Cross Roads* application[7] found that if an application is contrary to <u>any</u> of the objectives or policies, it will fail to pass through this gateway: *"It is not an overall judgment of some degree of the adverse effects of the proposal. The test is tougher. The activity must not be contrary to any of the objectives or policies"*.

18. Although we note that Fogarty J's decision is currently subject to appeal to the Court of Appeal, we accept, for the purposes of determining this application, that we are bound by the above finding as to the interpretation of section 104D(1)(b). Mr Gardner-Hopkins submitted that the Commission is required by law to follow the findings of the High Court on legal questions, notwithstanding the existence of the appeal to the Court of Appeal, which we understand has been set down for hearing on 29 and 30 July 2014. We are cognisant that Ms Crawford adopted a different legal interpretation of the status of Fogarty J's decision; however, for reasons that will become apparent it is not necessary for us to express a firm view on this issue. We will comment further on the two approaches to the interpretation of section 104D(1)(b) below.

[6] *Stokes v Christchurch City Council* [1999] NZRMA 409 (EnvC); *Bayley v Manukau City Council* (1998) 4 ELRNZ 461 (CA); *O'Connell Construction Limited v Christchurch City Council* [2003] NZRMA 216 (HC at [80][81]).
[7] *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 817 at paragraph [37].

19. If the application fails both gateway tests, that is the end of the matter. However, if an application passes through either gateway, an assessment must then be made under section 104. Section 104(1) reads:

> (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to–
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> (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:
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> (iv) a New Zealand coastal policy statement:
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> (v) a regional policy statement or proposed regional policy statement:
>
> (vi) a plan or proposed plan; and
>
> (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

20. Various decisions of both the Environment Court and the High Court have discussed the order in which the two assessments, that is the section 104D and the section 104(1) assessment, should be undertaken. The approach of the Commission is based on the recent decision of the Environment Court in A23/2009 *Foster v Rodney District Council*. In that case, the Court examined whether the threshold test in section 104D, which established jurisdiction for the grant of consent under section 104(1), should be employed as an "entry" or "exit" test. The Court recognised that the threshold test in section 104D is a high level filter and a "pass" under each of the two limbs does not necessarily mean that an application will be granted under section 104(1). Rather, the consent authority must consider the application under section 104(1) and Part 2 of the Act before reaching a final decision irrespective of whether the section 104D test is used as an entry or exit threshold test. The correct approach to section 104D will depend on the circumstances in each individual case.

21. In relation to the current application, we have adopted the following approach which is to examine:

(i) All of the effects on the environment;

(ii) The provisions of the relevant planning instruments;

(iii) Consideration of the threshold test under section 104D; and

(iv) Consideration of our decision under section 104(1)(a) and (b) after having regard to any other matters under section 104(1)(c) and subject to consideration of Part 2 of the Act.

22. In respect of the High Court appeal, Fogarty J made it plain that the section 104D tests must be undertaken before an application can be considered under section 104.[8] However, he noted that even if the proposal fails one of the section 104D gateway tests, it may still be granted. Addressing this point, Fogarty J stated: *"for even if there is a conflict [in relation to the objectives and policies under Section 104] a proposal may be granted"*.[9] This is not inconsistent with the approach set out above.

23. Mr Gardner-Hopkins submitted that section 87B is also relevant to our overall determination. While section 87B causes elements of each proposal (significantly the "other retail" component of the activity) to be treated as discretionary as opposed to prohibited, section 87B does so "in a purely activity classification sense". He submitted that this technicality does not override the clear policy intent of PC19 and accordingly the objectives and policies relating to the inappropriateness of "other retail" within E1 must still be considered. To the extent that section 87B is relevant in this respect, we concur with this submission.

24. As noted by the Reporting Officer, the application essentially replicates the application made in 2011 as determined by the Environment Court, and incorporates the changes proposed by that Court and which were secured by conditions. Accordingly, to the extent that they are relevant, the factual findings of the Environment Court have been relied on. We agree with Mr Cubitt that it would be inappropriate to disregard the relevant and unchallenged findings of fact by the Environment Court, as the issues have been canvassed in depth by various experts and considered and determined by the Court.

25. In relation to the relevant planning framework under section 104(1)(b), we concur with Mr Dewe and the Reporting Officer that the following plans are relevant to our assessment:

(i) The Rural General and Industrial Zoning of the Operative District Plan; and

(ii) PC19 (DV) as amended by any final findings of the Environment Court under PC19 (Interim Decision).

Application Information

26. The following information has been received and considered by the Commission in reaching its decision:

[8] *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZRMA 239 (HC) at [54]; and *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 817 at [21].
[9] *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZRMA 239 (HC) at [54].

(a) A report dated November 2013 prepared under Section 42A of the Act by Mr Allan Cubitt, the Contract Reporting Planner for Council (the Section 42A report);

(b) The appendices to the Section 42A report, which include a Joint Planning Statement prepared by Mr Cubitt and Mr Greg Dewe (Consultant Planner to the Applicant);

(c) A landscape assessment report prepared by Ms Helen Mellsop, a Registered ILA Landscape Architect dated 25 November 2013;

(d) An engineering assessment prepared by Mr Alan Hopkins, an Engineer employed by Queenstown Lakes District Council dated 19 November 2013;

(e) An urban design peer review prepared by Mr Alistair Ray, Associate Principal, Head of Design and Master Planning with Jasmax Limited on behalf of Queenstown Lakes District Council; and

(f) The submissions received with respect to the application.

27. The following documentary evidence contained in the agenda accompanying the Section 42A report has been taken into account in considering this application:

- The application and assessment of environmental effects prepared by the Applicant, dated 6 August 2013, including Appendices A-M.

28. At the request of the Applicant, the Commission issued directions for the prior circulation of the expert evidence in accordance with section 41B of the Act. Evidence was received and considered from the following experts:

- Evidence of Mr Roger Davidson in relation to the proposal;

- Evidence of John Edmund Antony McCoy in relation to the design and architectural aspects of the proposal;

- Evidence of Mr Fraser Colegrave, which focused on the methodology and results of the 2006 Commercial Land Needs Study ("CLNA") and independent estimates of future land needs; together with evidence relating to the potential trade impact effects and economic effects of establishing a Pak 'N Save at Frankton Flats;

- Evidence of Mr Antony Thomas Penny in relation to the traffic and transport effects associated with the proposal;

- Evidence of Mr Andrew Davies Burns in relation to the urban design effects of the proposal;

- Evidence of Tony Douglas Milne in relation to an assessment of the landscape and visual effects associated with the proposed development;

- Evidence of Mr Gregory Dewe in relation to the planning issues associated with the application; and

- The evidence of Mr Vijay Nagen Lala on behalf of the Submitter in Opposition, Queenstown Central Limited, in relation to planning issues.

29. The Section 42A report recommended that consent be refused on the basis that the proposal does not pass through the gateway tests set out in section 104D(1)(a) and (b). In reaching this conclusion, Mr Cubitt found that all effects apart from the loss of industrial land are minor, subject to the imposition of conditions. Although Mr Cubitt found that the application was not contrary to the policy framework of the Operative District Plan (and in fact implements many of its policies), the proposal was considered to be contrary to the "enabling" part of the policy framework of the E1 and E2 Activity Areas under both PC19 (DV) and PC19 (Interim Decision) versions.

30. Mr Cubitt noted in his report that should further evidence in relation to the effects on the quality and quantity of industrial land satisfactorily resolve the industrial land supply issue, the Commission may decide that the factors relevant to the section 5 balancing exercise *"tip the balance in favour of the application being granted*". In his opinion, while the outcome in these circumstances would be finely balanced, the key consideration would be whether the integrity of the E1 and E2 Subzones would be adequately protected in the final form of PC19. A draft set of conditions was attached to the Section 42A report should the Commission form a different view on the gateway tests following the evidence to be presented at the hearing, and is subsequently minded to grant consent.

Notification and Submissions

31. The application was notified on 23 October 2013. The closing date for receipt of submissions was 21 November 2013.

32. A total of 72 submissions were received prior to the closing date. A full copy of the submissions was attached to the Section 42A report at Appendix 6. Of the 72 submissions received, 69 were in support, 2 were in opposition and 1 (the New Zealand Transport Agency) was neutral but sought conditions in relation to the effects of construction traffic on the existing roading infrastructure should the Pak 'N Save store to be opened before the new roading network is developed.

33. The vast majority of submissions in support were from members of the general public, who considered that the proposal has significant positive effects for the community. These included cheaper groceries and petrol, increased competition and choice, job opportunities and an aesthetically pleasing building design.

34. The Section 42A report sets out a comprehensive summary of the submissions received and the issues raised in relation to the seven substantive submissions at part 6. We will refer to submissions in our analysis that follows where relevant.

35. Two written approvals were received with the application from Trojan Holdings Limited and Shotover Park Limited (which was also a submitter in support of the application).

Hearing

36. The hearing was held on Wednesday the 5th, Monday the 10th and Tuesday the 11th February 2014 at the Crowne Plaza Hotel, Queenstown. The hearing was conducted as a joint hearing in relation to an application by Cross Roads Properties Limited (RM130521) for consent to locate a Mitre 10 MEGA store on an adjoining site ("the Mitre10 Mega proposal"). Notwithstanding the joint hearing, the applications are to be treated and decided as separate applications.

37. In attendance in relation to this application were:

    (a) The Applicant, represented by Ms Jen Crawford and Ms A Roberts, Legal Counsel. Ms Crawford called expert evidence from Mr Fraser Colegrave, Mr John McCoy, Mr Andrew Burns, Mr Tony Milne and Mr Greg Dewe. Mr Roger Davidson, a representative of the Applicant, was in attendance to answer questions from the Commission;

    (b) Council Officers, Mr Allan Cubitt (Reporting Planner) and Ms Helen Mellsop (Landscape Architect); and

    (c) The submitter in opposition, Queenstown Central Limited, represented by Mr James Gardner-Hopkins, Legal Counsel. Mr Gardner-Hopkins called expert evidence from Mr Vijay Lala, a Resource Management Planner.

38. As the evidence had been pre-circulated in accordance with the Commission's directions, only those expert witnesses in relation to whom the Commission wished to cross-examine were required to attend the hearing (either in person or by telephone). Accordingly, the written evidence circulated prior to the hearing, and which was taken as read at the hearing, forms part of the hearing record.

Summary of the Evidence Heard

Applicant

39. Ms **Jen Crawford** presented legal submissions in writing, describing the background to the application, the proposal, the activity status, the legal tests relevant to our assessment, the effects (in particular the supply of industrial land, landscape and visual amenity, urban design, traffic, infrastructure and servicing, positive effects and cumulative effects), plan provisions, other matters (which included the PC19 Interim Decision and conferencing statements, alternative sites, precedent and plan integrity) and Part 2 of the Act.

40. Ms Crawford submitted that Part 2 is a pivotal consideration in this case, stating:

> *"In exercising your overall judgement, it is necessary to allow for conflicting considerations and determine the significance or proportion in the final outcome. It is not a matter of isolating one effect or one particular plan provision and then elevating that above all other matters. At the end of the day, it all comes back to Part 2."*

41. Ms Crawford then called evidence from the following witnesses whom the Commission had previously indicated that it wished to hear from:

(i) Mr **Fraser Colegrave**, an Economist with Insight Economics. Mr Colegrave's evidence was identical for both the Mitre10 Mega and the Pak 'N Save applications. Mr Colegrave answered questions from the Commission in relation to the defects in the CLNA; the rationale for protecting the yard based and transport activities in the Queenstown Lakes District; the assumed growth and the need for "true" industrial land projected by the CLNA as compared to his own calculations; the qualitative aspects of the CLNA and its likely impact on the economic growth of the region. In his opinion, the precluding of other important activities that could potentially be established on land zoned for low value traditional industrial purposes could impact detrimentally on the economic growth of the region.

Mr Colegrave also gave evidence in relation to the potential trade impact effects and other economic effects of the proposed development of a Pak 'N Save in this location. He concluded that any retail distribution effects would be no more than minor and that the proposed Pak 'N Save development would deliver significant sustained benefits to the local community, in particular, lower grocery prices. The proposed development would, in his opinion, also benefit the District in a number of ways by providing a major boost to local GDP and employment during design and construction, generate ongoing employment (some 250 jobs), reduce lengthy car trips to other districts where Pak 'N Save currently operates and provide a "signal of confidence" to the wider development community that the District remains a worthwhile place to invest. He noted that these conclusions, which were the same as those in evidence before the Environment Court proceedings in relation to the

earlier Pak 'N Save proposal, were not contested by the parties involved in that proceeding. Overall, Mr Colegrave concluded that the benefits of the proposed development far outweigh any potential detriment. In his opinion, this view was reinforced by the large number of submissions from the general public in support of the current proposal.

(ii) Mr **Roger Davidson**, the General Manager of Property and Retail Development for Foodstuffs (South Island) Limited. Mr Davidson answered questions from the Commission in relation to the rationale for a Pak 'N Save in this District, the job opportunities that would be created and the pricing policies of Pak 'N Save that would guarantee low prices and hence benefit to the community. Mr Davidson explained that as bulk food warehouses, Pak 'N Save developments were located mainly in commercial and industrial areas as the model is incompatible with central business districts and town centres. In response to questions from the Commission, Mr Davidson explained that there were no alternative appropriately zoned sites within the District that could accommodate the present proposal.

(iii) Mr **Andrew Burns**, an Urban Designer and Director at McIndoe URBAN Limited. Mr Burns addressed the Commission in relation to the context of the entire Frankton Flats area, which included what he referred to as the "neighbouring nodes movement ring". He explained that the role of his assessment was to establish a framework of issues for understanding how the future Frankton Flats "B" environment was likely to emerge from an urban design perspective, and how the Pak 'N Save development, within that environment, was likely to perform. He concluded that the future character of the wider Frankton Flats context has not been well established. Although individual plans exist for discrete parts of the area, no comprehensive picture has been drawn of how the whole area will tie together in the future. The wider context includes a number of discrete neighbourhood nodes organised along and connected by a movement ring all contained within clear landscape boundaries on all sides. In his opinion, this suggests that Frankton Flats will establish as "a place in its own right", therefore integration across the whole is key.

Mr Burns was of the view that the role of the EAR as part of the movement ring is critical. In his view local character areas are encouraged by the Structure Plan and will need to be supported by compatible movement routes. Activity Areas E2, E1 and D are larger scale industrial, trade and yard-based areas served by the EAR, a busy arterial road. In his opinion, E2 will fulfil an intermediary use or "transitionary" function between Areas D, E1 and C2. The E2 area along the eastern edge of the EAR is less critical than along the western edge where it borders C2 residential land. Mr Burns identified eight characteristics against which he assessed the proposed development, which we will refer to in our subsequent analysis. Overall, he considered the proposal to be acceptable from

both a “best practice” urban design perspective and from the urban design intent of the PC19 planning policies.

(iv) Mr **John McCoy**, an Architect and Director of McCoy & Wixon Architects Limited. Mr McCoy explained the design philosophy of the development, which involved consideration of the specific site, the larger Frankton Flats area and beyond to the wider environment, in the context of the objectives and policies of the Operative District Plan and PC19. In his opinion, the design of the building is subservient to the existing landscape and will comfortably fit within the future environment envisaged by PC19. Mr McCoy was passionate about the design concept and took some time to take the Commission through the various architectural drawings. His evidence contained a very full analysis of the relevant objectives and associated policies of PC19 (DV), and he concluded that the proposed design gives effect to the relevant policies. In his opinion, the Wakatipu Pak ‘N Save is “*not a typical urban supermarket like the Wakatipu New World due to its role as a bulk food warehouse, the building’s size and required site area, generating traffic volumes, servicing issues and the inclusion of a fuel facility*”.

Mr McCoy concluded that the building type (a “very large volume structure”) is visually more appropriate in an industrial setting that is close to the state highway, so that it can be serviced and accessed by customers directly via the EAR. The architectural form, detailing, choice of materials and colours, the building’s integration with the proposed car park and the EAR will, in his opinion, create a high amenity outcome that contributes to its setting and at the same time functions efficiently.

(v) Mr **Greg Dewe**, a Resource Management Planner (formerly with Aurecon). Mr Dewe gave a précis of his written evidence, which explained the background to the proposal, and his assessment of the actual and potential effects on the environment. He concurred with Mr Cubitt that industrial land needs is the central issue to be determined in the present case and that, overall, the proposal will not result in any adverse effects that are more than minor. Mr Dewe then considered the objectives and policies of both the District Plan and PC19 (DV), referring to the Joint Planning Statement agreed with Mr Cubitt. Overall, he found that the proposal supports many of the provisions of PC19 (DV), with the exception of the policy provisions concerning the establishment of an activity within Activity Area E1 for a use that is neither industrial nor trade service based. However, having considered the outcomes sought to be achieved by the relevant policies (Policies 10.1, 10.5 and 10.11) and the assessed potential effects of the proposal, he concluded that while the proposal may not be consistent with these matters he did not believe it went so far as to be contrary, overall. Mr Dewe then addressed Part 2 of the Act, concluding that the proposal satisfies the sustainable management purpose of the Act and the other relevant matters set out in sections 5 to 7.

Submitters

42. As well as considering all of the written submissions, we heard from three submitters in person:

(i) **Queenstown Central Limited**, represented by Mr James Gardner-Hopkins, Legal Counsel. Mr Gardner-Hopkins summarised the reasons for QCL's opposition to the application, gave an overview of QCL's submission, the planning framework, the Environment Court's interim decision on PC19 and the relevant provisions of the RMA. He then discussed the Pak 'N Save proposal in relation to the environmental effects (section 104D(1)(a)); the objectives and policies of the Operative District Plan and PC19 (DV) (section 104D(1)(b)); section 104 and other relevant matters under section 104(1)(c), which included the Environment Court's Interim Decision and an assessment of alternative sites. Mr Gardner-Hopkins also considered the cumulative effects of the Mitre10 Mega and Pak 'N Save applications and their combined impact on the supply of industrial land, the integrity of the relevant planning instruments and the precedent effect created. He then turned to Part 2, submitting overall that the application should be declined.

Mr Gardner-Hopkins called evidence from Mr Vijay Lala, who discussed the character and amenity relating to urban structure and Outline Development Plans, streetscape, and loss of industrial land. Mr Lala answered questions from the Commission in relation to his written evidence.

(ii) We also heard from Mr Roger Taylor representing **Glentarn Group**, a submitter in support of the application. Mr Taylor elaborated on his written submission in relation to the deficiencies in the CLNA and the role that this report had played in the development of Council's plan for land allocation in 2006. Mr Taylor concluded that the CLNA report was significantly flawed and that the conclusions that it reached in relation to the future need for industrial land for transport and yard based activities were unsound. He concluded that there is unlikely to be any adverse effect on the supply of industrial land in Queenstown if the two applications were to be granted; and

(iii) **Shotover Park Limited**, represented by Ms Jennifer Carter, a Resource Management Planner employed by the submitter and Mr Alastair Porter, a Principal and Co-Managing Director of Porter Group Limited. The submitter, Shotover Park Limited, is a wholly-owned subsidiary of Porter Group Limited and owns the sites on which the Mitre10 Mega and the Pak 'N Save application are proposed. Ms Carter discussed the suitability of the applications to the sites and the wider receiving environment, drawing our attention to an application recently granted on a non-notified basis for a "Carters" trade and retail activity within the Rural General Zone. Both Mr Porter and Ms Carter discussed the positive

effects of the proposal and the absence of a feasible alternative location for the two proposed activities.

Council Officers

43. At the commencement of the hearing, the Reporting Officer, Mr Cubitt, advised that having reviewed the evidence of Mr Colegrave (which had not been available when he had prepared his Section 42A report) together with the written evidence of the Applicant and the submitters, he was satisfied that the previous forecast demand for industrial land (as predicted by the CLNA) was exaggerated. Accordingly, Mr Cubitt accepted that the loss of industrial land to the proposed activity is, at worst, minor, and on that basis was satisfied that the proposal passes through the effects gateway of the section 104D test and can be considered for consent. Taking into account the evidence of Mr Colegrave, Mr Burns, Mr Davidson and backed up by the planning evidence of Mr Dewe, he was now of the view that "*the balance tips in favour of the application being granted when assessed on its merits under section 104 of the Act"*, citing the following factors:

- Adverse effects, including the loss of industrial land and any retail distribution effects, will be no more than minor;
- The proposal has significant positive benefits to the community. In particular, the provision of discount groceries will result in more competition in the market and considerable employment opportunities;
- The location and attributes of the site are ideally suited to the proposal;
- There are limited alternative sites (if any) that are zoned appropriately for a store of this type;
- The Environment Court granted the previous application and the loss of industrial land issue dealt with by the High Court has been satisfactorily addressed;
- An undesirable precedent is unlikely to be created given this is not the type of activity that would locate in a town centre environment but is compatible with trade and industrial park/urban fringe locations.

44. Mr Cubitt's revised recommendation was that the application meets the sustainable management purpose of the RMA and should be granted, subject to the conditions agreed with Mr Dewe and appended to his Section 42A report.

The Applicant's Reply

45. Ms Crawford presented a written reply, which was received on Friday 14 February 2014. She commenced by posing the question, *"Will this application promote sustainable management?"*, submitting that the evidence in the affirmative is "compelling". Ms Crawford then addressed the legal submissions and evidence presented on behalf of QCL, outlining what she referred to as the "correct approach to section 104D and the application of section 104".

46. Ms Crawford then set out a very comprehensive submission in relation to the approach that the Commission should adopt in relation to the section 104 consideration, together with detailed submissions on the principal issues in contention. She also addressed cumulative effects, plan integrity, precedent and alternative sites.

47. Ms Crawford concluded by making some pertinent observations in relation to Part 2 of the RMA and its relevance to this application.

The Principal Issues in Contention

48. It was common ground that on an overall basis, the application falls to be considered as a non-complying activity. A wide range of matters was traversed in the application, submissions, the Section 42A report and supporting material during the hearing. It was common ground that the matters in contention for both the Pak 'N Save and Mitre10 Mega applications are almost identical.

49. The principal issues in contention arising from the application, the Section 42A report and the contents of submissions, including matters raised during the hearing are:

(i) Whether there are adverse effects on the environment that are more than minor, in particular:

- The extent to which the loss of industrial land as a result of the application will be more than minor, noting that this is an effect that both the Environment Court and the High Court considered a relevant effect on the environment;
- The effect of the proposal on landscape character and amenity; and
- The effect of the proposal on urban design.

(iii) Whether the proposal is contrary to the relevant objectives and policies of the Operative District Plan and PC19 (DV) as amended by the Interim Decision of the Environment Court;

(iv) Whether there are any other matters of relevance to our decision under section 104, which include:

- The Environment Court's interim decision on PC19, in particular the extent to which the application is inconsistent with or contrary to the policy direction of the proposed planning framework;
- The extent to which alternative sites are available for the proposed activity within the Queenstown area;
- The effect of the proposal on the integrity of PC19;
- Whether granting consent to the application will create a precedent effect; and
- The extent to which the application, in conjunction with the Pak 'N Save proposal, will result in adverse cumulative effects that are material and significant, such that consent to one or both applications should be refused.

(v) Whether, overall, the proposal meets the purpose of the RMA, which is to promote the sustainable management of natural and physical resources.

Background Assessment

<u>The permitted baseline, existing environment and receiving environment</u>

50. An agreed position in relation to the permitted baseline reached by Mr Dewe and Mr Cubitt was set out in the Joint Planning Statement and also at part 7.2 of the Section 42A report. We accept the overall conclusion that the permitted baseline is not considered to be particularly useful to our assessment of this proposal.

51. In particular, the built form and associated landscaping that comprises an integral component of this activity is not permitted under PC19 (DV). As a consequence we accept that it is unlikely that there will be any permitted activities within the zone until its built form is developed.

52. We note that Activity Area E2 permits the following activities:

- Community activities;
- Industrial and service activities (including ancillary retail activities);
- Offices ancillary to any permitted or controlled activity (except buildings);
- Offices.

53. Importantly, as acknowledged in the Joint Planning Statement, the E1 and E2 Activity Areas provide for industrial activities that may result in adverse effects on the environment (in particular, on amenity values). Traditional industrial sites can often be dusty, noisy and generate heavy vehicle movements. We accept that these kinds of permitted effects should be considered when assessing the amenity related effects for the proposal. Industrial buildings are generally purpose built, bulky and not particularly attractive. However in the E1 Zone, the built form will be strictly controlled and this aspect of industrial development is not part of the permitted or anticipated baseline.

54. It is acknowledged that in addition to industrial and service activities, the E2 Activity Area provides for offices and that, accordingly, office activities will not result in adverse effects on the environment (in particular on amenity values). However, any development within Activity Area E2 requires the approval of an Outline Development Plan; accordingly, there is no permitted baseline for any activity prior to an Outline Development Plan being approved.

Landscape Classification

55. In respect of the Operative District Plan, we accept that the proposed activity falls within the area of the Frankton Flats that is zoned Rural General and which is not subject to designations that provide for specific activities. Mr Milne concluded that this area of the Rural General Zone is correctly categorised as an Other Rural Landscape. His assessment was supported by Ms Mellsop and reflected the conclusion reached by the Environment Court in respect of the previous application.[10] The relevant assessment criteria when considering the application for resource consent under the Operative District Plan are set out at chapter 5, paragraph 5.4.2.2(4).

56. At paragraph 3.1 of his evidence, Mr Milne describes the receiving environment in considerable detail. We have relied on this analysis in forming our views in relation to the effects of the proposal on landscape character and amenity, which are discussed more fully below.

Actual and Potential Effects on the Environment

Introduction

57. As noted in the Section 42A report, the AEE submitted with the proposal deals with a range of environmental effects, all of which need to be considered in our decision. Mr Cubitt noted that the application is very similar to the previous application referred directly to the Environment Court. The Environment Court considered the environmental effects in the context of the earlier application and found that, subject to some modifications, the effects of the proposal on these

[10] *Foodstuffs (South Island) Limited v Queenstown Lakes District Council* [2012] NZEnvC 135 at paragraph [40].

matters would be minor. The changes directed by the Environment Court to avoid remedy or mitigate any significant adverse effects have been adopted in this proposal.

58. Having reviewed the relevant Environment Court decisions, the evidence before us and the position set out in the Joint Planning Statement, we concur that:

(i) The primary issue is the effect of the proposed activity on the supply of industrial land under both the Operative District Plan and PC19 (DV) as amended by any final findings of the Environment Court in terms of its Interim Decision on the higher order matters; and

(ii) Secondary issues arising include landscape, amenity, urban structure, transportation and infrastructure. As QCL has raised issues in respect of landscape and urban design, we comment further on these effects in this decision; however, we accept the evidence of the Applicant, its experts and the Reporting Planner that the effects on transportation and infrastructure will be no more than minor.

Industrial Land Supply

59. The Reporting Planner carried out a comprehensive analysis of the effect of the proposal on industrial land supply at part 7.3 of his report, as assessed against both the Operative District Plan and PC19 (DV). Mr Cubitt also comprehensively discussed the approach of the Environment Court, the dissenting opinion of Commissioner Fletcher and the errors of law found by the High Court on appeal.

60. Importantly, the High Court found that the future environment of the Frankton Flats is urban and will accommodate industrial activities.

61. However, the High Court held that the Environment Court erred in its application of a numeric analysis in relation to the interpretation of "minor" when assessing the effects on the supply of industrial land. The High Court highlighted that *"the analysis of adverse effects is both a qualitative and quantitative exercise"* and noted, *"it is impossible to use an arithmetical measure of quality"*. Adopting a percentage of loss as the demarcation point between minor and not minor did not, in the High Court's view, take into account the quality of the resource in question, in this case the quality of land for industrial uses. Mr Cubitt explained that:

> *"Here, the location and topography of the land is clearly very suited to industrial use. However these characteristics are also sought after by other activities, including commercial activities. Given that commercial activities are economically higher returning, allowing for them in an industrial zone is likely to see much of the zone lost to industrial activities. This appears to have occurred to a degree in the Glenda Drive Industrial Zone. Following this logic, an appropriately zoned area of flat greenfields land close to transportation networks and an existing industrial zone would be considered high quality industrial land but this quality would be reduced if the non-industrial and higher value uses were allowed to compete for the land."*

62. Mr Cubitt initially found that from both a qualitative and quantitative perspective, the effect of losing 4.5% to 5.2% of the land zoned strictly for industrial purposes to a competing high return commercial activity was an adverse effect that is more than minor when assessed against PC19 (DV). The position would be worse if the loss were measured purely against the land in E2, where it would equate to a 19.77% loss.

63. In the Applicant's view, this issue was remedied by the Interim Decision of the Environment Court on higher order matters. Judge Borthwick accepted Council's fundamental proposition that there will be constraints over the next 20 years in terms of the ability to accommodate industrial and business activities under the current zoning. The future demand for land for traditional industrial activities was assessed by the Court to be approximately 68.750 hectares. In its Interim Decision, the Court directed Council to prepare a new Structure Plan incorporating its findings. Mr Cubitt compared the two Structure Plans and concluded that the Court has arrived at a similar position to PC19 (DV) although, in his view, there are some notable differences that are material to this application. The location of the eastern arterial road further west and the termination of the E2 sleeve at Road 5 have resulted in an increase in the area of Activity Area E1 from 17.65 hectares to 25.33 hectares, which represents a 30% increase. Activity Area D has also been increased from 13.97 hectares to 17.05 hectares. Overall, there has been a net gain of 6.53 hectares of E1 land compared to PC19 (DV).

64. As Mr Cubitt has noted in his report, the proposal now represents a 4.5% loss of E1 land (reducing to 3.3% if Activity Area D is included) and a 19.5% loss of E2 land to retail, which is similar to the quantum of loss under PC19 (DV). While the degree of this effect is marginally less significant than under PC19 (DV), in his opinion it is still considered to be more than minor in view of the potential adverse consequences on the *quality* of industrial land available should commercial activities be in competition with industrial activities. He considered it relevant that the High Court noted that the Environment Court in the *Foodstuffs* decision had concluded that the Frankton Flats B Zone was not going to meet all of the need identified for industrial land, "irrespective of which numbers are used".[11] Mr Cubitt considered that *"this lends weight to the conclusion that losing industrial land will have a more than a minor adverse effect"*.

65. Following issue of the Section 42A report, further expert evidence was lodged on behalf of the Applicant by Mr Fraser Colegrave, an economist, and by the Applicant's planner, Mr Dewe.

66. A detailed discussion of Mr Colegrave's evidence is contained in the *Cross Roads Properties Limited* decision (RM130521) that was heard contemporaneously with this application.

67. In summary, Mr Colegrave concluded that the Commercial Land Needs Assessment ("the CLNA"), which was the "key document that underpinned and informed PC19", contained a

[11] *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 815 at [40].

number of fundamental flaws. As a result, the CLNA wrongly overstated demand and understated capacity, resulting in future land requirements being grossly exaggerated. In particular:

(a) The CLNA failed to identify why yard-based and transport industries should be protected in the Queenstown Lakes District;

(b) There was no evidence of the importance of these activities to the local economy;

(c) There was no evidence that the yard-based and transport related activities were being "squeezed out" of the District; and

(d) The CLNA estimates of future land requirements were based on highly unrealistic assumptions that resulted in grossly exaggerated future demands for industrial land. More realistic demand projections (based on floor space and employment projection approaches) are approximately half those arrived at by the CLNA.

68. Mr Colegrave carried out his own independent projections of future land requirements by populating the same methodologies used in the CLNA analysis with more realistic inputs and assumptions. He concluded that industrial land requirements are in fact roughly half those stated in the CLNA. His medium estimates of industrial land requirements over a 20 year period to 2026 are between 22 hectares and 24 hectares, compared to at least 54 hectares under the CLNA. In other words, the District's actual future requirements for industrial land are likely to be at least 30 hectares less than previously thought. As a result, Mr Colegrave concluded that the loss of industrial land in the E1 Activity Area to accommodate the Mitre10 Mega and Pak'N'Save applications was an "insignificant loss". He stated:

> *"Indeed, continuing to debate the specific percentages of industrial land that would be foregone seems a futile and unnecessary exercise given the significant head room that exists when more realistic demand projections are used. In my opinion any potential adverse effects associated with the loss of industrial land would be negligible and is certainly not a valid reason to deny resource consent."*

69. The evidence of Mr Carey Vivian in the *Cross Roads Properties Limited* decision (RM130521) is also relevant to the industrial land supply issue.

70. We have examined in detail the decision of the Environment Court in PC19 (Interim Decision). Judge Borthwick makes a thorough assessment of land use demand at Part 4 of her decision.[12] The Judge commenced this part by recording her concern with the inconsistent use of terms (including terms that are poorly defined or undefined) and key documents including the 2006 Commercial Land Needs Analysis, the Operative District Plan and also the evidence of some of the witnesses.

[12] Paragraphs [133] to [221] of the Interim Decision.

71. In respect of the CLNA, Judge Borthwick noted at paragraph [135]:

> *"The 2006 report prepared on behalf of the District Council identified a diverse range of land use requirements. The provision of land activities that cannot be located in Town Centre environments were seen as important for the District's ongoing development. The 2006 report forecast that by 2026 there would be demand for 60 hectares of future Urban land, of which 28-30 hectares was required for mixed business areas and 30 hectares for yard based and transportation activities."*

72. The Court noted at paragraph [136] that the 2006 CLNA highlighted the shortage of land for commercial uses (business and industrial), describing the need in the following way:

> *"… the district is now facing imminent constraints on the supply of land zoned for commercial uses, particularly for non-town centre based employment activities (business and industrial activities). The current stock of vacant commercial zoned land in the district is likely to be fully developed soon. While new commercial areas are being planned, and there are opportunities for redevelopment of some existing employment areas for more intensive use, it will be necessary to identify additional land for town centre, mixed use, business and industrial activities".*

73. At paragraph [137] Judge Borthwick noted that:

> *"As a consequence, the District Council sought advice on the amount of commercial land needed to sustain the growth of the local economy to 2026."*

74. The Court quoted the evidence of Mr D Mead, the author of the 2006 CLNA report and also QLDC's Policy, Planning and Retail Analyst in the Environment Court proceedings, as follows:[13]

> *"It is apparent that the District does not have an industrial base and that most activities seek a Town Centre or Mixed Business location. The District Plan reflects this, with the Business and Industrial Zones being very similar in nature. Within this overall picture, there is a range of transport and yard based activities that service the local economy and which are likely to be squeezed out over time by rising land values, should the current approach continue. While these activities could be located in Cromwell, their absence from the District is likely to harm the functioning of the local economy."*

75. Having considered the full recommendations in the report, the purpose of PC19 at the time of notification and the decision of the Commissioners appointed by the Council to hear and decide the submissions on PC19, the Court accepted the Council's fundamental proposition that Queenstown/Wakatipu will face significant constraints over the next 20 years in its ability to accommodate industrial and business activities. At paragraph [145], the Court noted that:

> *"Save to the extent that there may be a demand for retail floor space that is unmet by existing and planned zones, we understand overall that the 2006 Commercial Land Use Needs Analysis is not seriously challenged by the parties' witnesses."*

76. It is plain from the ensuing discussion that the Court relied heavily on the 2006 CLNA, the evidence of its author, Mr Mead, and, indeed, the evidence of the other expert witnesses, none of whom seriously challenged the findings of the CLNA or the projected requirement for industrial land over the next 20 years. We will return to the significance of this issue in our discussion on the objectives and policies that have resulted from the Court's interim decision.

[13] Interim Decision at paragraph [137].

77. Mr Dewe considered industrial land requirements to be the central issue to be determined in this case. In his evidence, he commented that having been involved with PC19 and the consent applications for Pak 'N Save "for some time now" he could not recall any previous robust assessment of the CLNA having been undertaken. He observed that the conclusions reached in the CLNA have been given considerable weight at the various hearings, which have in turn influenced all of the decisions made to date, including the Environment Court and High Court judgments.[14]

78. According to Mr Dewe, industrial activities are provided for as a permitted activity within Activity Areas D, E1 and E2, which cover approximately 42.2 hectares of PC19. This area has been increased to 47.7 hectares under PC19 (Interim Decision). Mr Colegrave's high projections for industrial land estimate that only 20 to 31 hectares will be required. In this respect, Mr Dewe also observed that throughout the PC19 proceedings it has been recognised that not all of the predicted demand for industrial activities needs to be catered for by PC19.[15]

79. Having reviewed Mr Colegrave's evidence, Mr Dewe was of the opinion that the present proposal would not displace any predicted demand for land for industrial activities. Assuming that 80% of the industrial land needs were to be catered for by PC19, then only 24 hectares out of the 47 hectares provided for in the Structure Plan would be required. He concluded that there are no adverse effects arising from the present proposal in terms of ensuring that there is sufficient land available within the PC19 area for industrial activities. Mr Roger Taylor (of Glentarn Group) corroborated the expert opinion of Mr Colegrave and we note that no contrary expert evidence has been produced on this particular issue.

Qualitative Factors

80. In the *Foodstuffs* Decision[16], Fogarty J addressed the importance of the assessment of the qualitative factors in relation to the analysis of adverse effects. He stated:[17]

> *"… as the Environment Court recognised, analysis of adverse effects is both a qualitative and quantitative exercise. It is impossible to use an arithmetic measure of quality."*

81. At paragraph [112]:

> *"Reducing the adverse effects of the Pak'N'Save proposal to 5% or less does not give one the answer as to whether that will be a 'minor' non-complying activity … Second, the percentage does not really tell the consent authority anything about the <u>quality</u> of the land for industrial uses. It might be not only land that is intended to be zoned Industrial, but land which the marketplace will find is highly desirable as industrial land, rather than land for some other activity. It may also have other desirable qualities,*

[14] At paragraphs X to X of the *Cross Roads Properties Limited* decision (RM130521) we have set out our own analysis of the Environment Court's findings in the Interim Decision, which lends support to Mr Dewe's conclusions.
[15] As recorded in the Planner's Conferencing Report of December 2012 at page 13 (prepared in relation to the PC19 Environment Court hearings).
[16] [2013] NZHC 815 at paragraphs [111]-[115]
[17] At paragraph [111]

namely for commercial use. That will pose a difficulty for the decision-makers who will have to decide how tightly to define the range of activities on that piece of land, depending on what goal they are trying to achieve."

82. We accept the High Court's reasoning that while a simple arithmetical measure of the percentage of land lost may be of relevance to quantity (although not in an absolute sense), it does not assist in determining how the quality of industrial land is affected. For example, granting consent to non-industrial activities that compromise the functionality of an important transport link, or which create significant reverse sensitivity issues would affect the quality of the Industrial Zone irrespective of the area of industrial land utilised by that activity.

83. At the hearing there was considerable discussion regarding the qualitative assessment of adverse effects on industrial land and what factors may be relevant. Mr Cubitt commented that, in his experience, industrial activities seek land that provides a relatively flat topography, is of a size that enables the creation of relatively large sites, has good access to important transportation routes, is in close proximity to services, enables the establishment of activities that have a lower level of amenity and which can generate adverse effects without impacting on more sensitive activities (reverse sensitivity), and is affordable, given that industrial activities do not usually generate the returns that other commercial activities (such as retail) do per square metre. Provided the factors outlined above are not compromised, any effect on the quality of the remaining industrial land is, in his opinion, likely to be minor.

84. It is useful to refer to the evidence of Mr Davidson in relation to the suitability of industrial locations for Pak 'N Save developments. Mr Davidson explained that as a large scale, bulk food warehouse, the proposal is inherently suited to industrial sites where parking, traffic and appropriate access for bulk deliveries will not cause problems. The Applicant's preference was to co-locate with other large format trade stores within mixed-use industrial business zones. He assured us that potential reverse sensitivity issues, such as noise, vibration or smells generated by neighbouring industrial activities, traffic volumes (including heavy traffic) and dust are not an issue for Pak 'N Save operations.

85. Accordingly, the only remaining issue in relation to the adverse effects on the quality of industrial land supply would appear to be the valuation or "price" factor; that is, higher-returning commercial activities might raise the price of the remaining industrial land to a point where traditional industrial activities can no longer afford to be located there. This seemed to be the primary concern of the High Court.

86. Mr Cubitt, in his reply, considered there was no evidence to suggest that locating large format retail stores such as the Pak 'N Save proposal in industrial zones had caused a problem in relation to the value or "price" of the remaining industrial land in other districts within New Zealand.

87. Given the quantity of industrial land reserved in Activity Areas E1, E2 and D, and the proximity of relatively large areas of this land to the airport, we consider it highly unlikely that this proposal could have the effect of increasing overall land prices required to sustain industrial activity in this District (on the basis of Mr Colegrave's analysis) by any significant amount for the foreseeable future.

88. Accordingly, based on our analysis above, we have formed the view that any adverse effects of the loss of industrial land on a qualitative basis are likely to be insignificant.

Summary

89. In the addendum to his Section 42A report, Mr Cubitt canvassed the new evidence produced by Mr Colegrave and Mr Dewe, and considered the serious apparent shortfalls in the CLNA's various planning assumptions and the resulting calculation of the amount of industrial land required. He noted that no other contrary or rebuttal evidence has been produced on this issue. Having carefully considered the evidence of Mr Colegrave, and Mr Dewe's examination of the CLNA from a planning perspective, Mr Cubitt accepted that the loss of industrial land to the proposed activity is, at worst, minor. On that basis, he was satisfied that the proposal passes through the effects gateway of the section 104D test and, accordingly, can be considered under section 104.

90. Having reviewed the evidence thoroughly and having had the opportunity to question Mr Colegrave and Mr Dewe, we have reached the inescapable conclusion that:

    (i) The CLNA's estimates of future land requirements for yard-based and transport industries were grossly exaggerated. When more realistic inputs and assumptions are used, future industrial land requirements fall to approximately half of those projected by the CLNA and provided for in Activity Areas E1 and D under PC19 (DV) and PC19 (Interim Decision).

    (ii) The CLNA's conclusion that there is a need to foster and protect yard-based and transport industries is unsubstantiated. There is no explanation as to why yard based and transport industries should be protected, nor is there any evidence of their importance to the local economy. Claims that they are being "squeezed out" of the District are not substantiated by an analysis of the growth in these activities. Accordingly, the projections contained in the CLNA, which have formed the basis for both the Environment Court's and the High Court's concerns in relation to the loss of industrial land, are grossly exaggerated and unreliable.

91. Finally, we observe that the submitter in opposition, QCL accepted that the CLNA may have some deficiencies.[18] In its submission (as lodged) QCL stated that the shortage of industrial land is the underlying driver for the rezoning of land for this purpose within the PC19 area. If this is the case, the lack of any robust peer review of the CLNA, together with Mr Colegrave's evidence suggests that, inter alia, the protection of more than double the required area of land for industrial purposes raises serious questions about the suitability of the Structure Plan in PC19 and its implications for the District's economic future. We need not make any finding in this regard other than to be satisfied that the loss of land to this application, in conjunction with the Mitre10 Mega application, will not impact on the availability of industrial land in this District – in both qualitative and quantitative terms - for the foreseeable future.

Landscape Character and Amenity

92. The application site and wider landscape have been described and assessed in the Rough & Milne Landscape Architect's assessment attached to the AEE at Appendix G. Ms Helen Mellsop has reviewed the proposal and provided a peer review of the AEE assessment.

93. Mr Cubitt set out a comprehensive description of Ms Mellsop's conclusions at part 7.4 of the Section 42A report. Mr Cubitt also reviewed the Environment Court's decision, noting that the Court considered the effects of the proposal under the "Other Rural Landscapes" assessment criteria of the Operative District Plan and against the relevant assessment matters for "landscaping and/or building" under PC19 (DV). The Environment Court concluded that under the Operative District Plan, the adverse effects of the proposal on the landscape would be minor *"provided that the colour and height of the signs is ameliorated and light spill towards the State Highway is avoided"*. In relation to the future environment, the Court found that the proposal is *"complementary and sympathetic to Road 2 to the north, the EAR to the west and the proposed Mega Mitre10 to the east*".[19]

94. Under both planning documents, the Court found that adverse landscape effects would be minor provided that two issues were addressed and changes made to the building materials of the southern face. The recommended changes have been incorporated into this application. Mr Cubitt concluded that while Ms Mellsop raised some concerns with respect to the proposal, he considered the key effects had been addressed at the Environment Court level to the point where, overall, adverse effects on landscape values will be no more than minor.

95. Mr Milne has produced a comprehensive assessment of the proposal and its effects on landscape and visual amenity. He concluded:

[18] QCL Legal Submissions at para 8.7.
[19] *Cross Roads* EC decision at paragraphs [40] to [46].

(a) The existing landscape character of the site is properly described as a "mixed-use urban fringe landscape".

(b) Under the Operative District Plan the site is located within an Other Rural Landscape.

(c) The proposal will be located within a mixed-use urban setting that has already been modified to some degree and will, in time, be viewed against a predominantly built form environment. In this regard the proposal will be compatible with the anticipated character of the surrounding environment. The context of the setting contributes to the avoidance and mitigation of potential adverse effects.

(d) The proposal will naturally result in a change from the existing rural amenity and character of the site and immediate surrounds; however within the context of the site the proposal is not inconsistent with the current mix of urban and rural activities and with the current trend to urbanisation in the Frankton Flats area.

(e) From a landscape perspective the proposed tree planting along road frontages and throughout the site will help to identify the site and be an effective means of providing a high quality "treed" corridor along the EAR. The location of the proposed building and landscape treatment will also ensure that key view shafts are preserved, while mitigating any potential adverse visual effects.

96. Ms Mellsop proposed an amendment to a condition in relation to the appropriate height at the time of planting for certain tree species, such as mountain beech. The Applicant has since amended condition 26(c) to reflect the advice of Ms Mellsop.[20]

Branding and Signage

97. Following the Environment Court decision in *Foodstuffs*, and as noted at the hearing, the Applicant is acutely aware that the proposed signage and branding colours have the potential to create adverse visual effects, especially when viewed from SH6. Accordingly, the Applicant proposed that signage and branding be introduced using a two tier approach to mitigate the potential effects of visibility of the proposed signage. A condition was volunteered that requires the Applicant to depart from its usual corporate Pak 'N Save branding until such time as the landscape planting has established to screen the signage, or buildings have been established between the site and SH6. A series of amended elevation plans were submitted to reflect this approach.[21]

[20] Refer paragraph 3.18 of the closing legal submissions.

[21] Refer McCoy and Wixon Elevations SK06a, SK07a, SK08a and SK09a dated August 2013.

98. We consider the more subtle signage and branding proposed in Elevation Plans SKO6a to SK09a is both adequate and appropriate for the purpose of identifying and marketing both the supermarket business and the fuel facility, when viewed from public places. It is our view that although branding and signage primarily needs to be mitigated due to potential adverse effects when viewed from SH6, it should also be moderated when viewed from all public places. The development may become screened from SH6 in time, but visibility may remain from other public roads and places indefinitely.

99. It is perfectly understandable that businesses wish to raise their profile using large signs and bright colours but in Queenstown, where the protection of landscape values is extremely important to the amenity of the District, a more subtle approach is required. We are not persuaded that we should accept the more usual corporate Pak 'N Save branding even when and if screening, landscaping or built form eventuates along SH6. This screening may take years to achieve, by which time the business would be well established and identified both locally and regionally. Mr Davidson submitted that the store would attract regional customers from both the Queenstown Lakes District and parts of Central Otago. When the building is eventually screened from SH6, it will remain clearly visible and identifiable from the EAR and Road 2, and be easily located by customers.

100. Accordingly, we have amended General Condition 1 to remove references to Elevation plans SK06 to SK09, substituting plans SK06a to SK09a, and also removed the condition dealing with the second stage of the signage originally proposed by the Applicant. Condition 22 now reflects our decision on signage for this application. This modified branding and signage requirement is consistent with our decision for the neighbouring Mitre10 Mega application.

101. In summary, the expert evidence supports a finding that the visual amenity and landscape effects are acceptable in the context of the environment as it currently exists and also when regard is had to the future environment envisaged by PC19. The proposal will preserve visual connections to the surrounding landscapes and protect important view shafts, which is the key over-arching policy imperative sought by PC19 (as reflected in Issue 1 and Objective 1). Accordingly, we are satisfied that any adverse effects on landscape and visual amenity will be less than minor.

<u>Urban design effects</u>

102. In his Section 42A report, Mr Cubitt comprehensively described the background to the urban design issues, the Environment Court's findings in the *Foodstuffs* decision and the expert evidence of the Applicant's urban designer at that hearing, Mr Teesdale.

103. Activity Areas E1 and E2 have been established to create additional zoning for light industry and related business activity. E1 is considered appropriate for predominantly industrial and trade services, as well as yard-based industrial activities and ancillary activities. Although E2 will also provide for industrial activities, development within this activity area is intended to contribute to a high quality streetscape along the EAR.

104. Retail is provided for in E2 where such activities are "single purpose destinations" offering goods and services associated with vehicles, construction and home building. Showrooms and premier light industrial premises are also anticipated, however it is not intended to be a general retail area.

105. Following the issue of the Section 95 Notification Determination, in which Mr Cubitt found that the effects of the application on the urban structure of the Frankton Flats would be adverse and that they are likely to be more than minor, Council commissioned a peer review of the proposal by an urban designer, Mr Alistair Ray, the head of Urban Design and Master Planning at Jasmax Limited, New Zealand's largest design practice. In considering the appropriateness of proposed built form within the E1 and E2 zones from an urban design perspective, Mr Ray (focusing on the key urban design elements) concluded that:[22]

- The use of the land for (very) large format retail appears to be within the objectives and policies of the plan change;

- The design of the building is good for its genre, utilising a range of architectural techniques and materials to provide a building design that is acceptable in this location. The relationship of the entrance of the building to the car park and the design of the car park with associated landscaping is also considered acceptable. This conclusion was reached by all urban designers involved in the *Foodstuffs* Environment Court proceeding;

- The proposed development helps to achieve a number of the objectives in PC19 (DV) and provides an attractive street edge. The effects of the proposal, when assessed against the provisions of PC19 (DV) are less than minor.

106. Mr Ray also considered the implications of the Court's decision in PC19 (Interim Decision). He commented that "*there is confusion over the intent of the desired urban form of Activity Area E2 … with questions over whether residential, industrial and retail uses (over a certain size) are appropriate. Furthermore, elements appear to be potentially conflicting and contradictory, especially around the function of the EAR*". Mr Ray could not find any clear articulation of the type of urban form that could be expected in the E2 zone – on the one hand it is described as

[22] Urban Design Peer Review, Jasmax Limited, 27 November 2013 at paragraphs 44 to 58, attached as Appendix 5 to the Section 42A report.

being a mixed use transitional zone (and having an "attractive" street frontage) and yet (light) industrial uses are not precluded with no controls requiring active frontage, maximum setbacks or minimum building heights. Although he was of the opinion that, "*a very large format convenience store is (probably) not what was intended by [Council] for this activity area",* the Plan Change fails to adequately articulate what is intended for the area and fails to provide clear controls or guidance as to what building form is required. As a result, in the absence of any new objectives or policies that would help to clarify the intent for E2, Mr Ray concluded that while the Pak 'N Save proposal may not be the ideal form for this location within the proposed new urban environment, "*it is acceptable from an urban design perspective when taking into account the relevant planning policies*".

107. Importantly, Mr Ray addressed one of the initial concerns in relation to an additional building of around 500 m^2 being constructed at the EAR/Road 2 intersection (as proposed by Mr Teesdale). Mr Ray considered that a further built element could help to define the corner of the site and anchor the eastern end of the main street running west to east from Activity Area C1. However, he qualified this by emphasising the need for the building to be designed in an appropriate manner, avoiding the dangers he described earlier in his assessment. Notwithstanding the desirability of such a building, he confirmed that as *"the effects of the proposal as it stands are no more than minor when assessed against PC19 (DV) I do not believe this addition [of a building at the intersection of the EAR and Road 2] is essential to make the proposal acceptable from an urban design perspective"*.

108. On the basis of Mr Ray's peer review, Mr Cubitt's initial concerns over the urban design aspects of the proposal were satisfactorily resolved. In his Section 42A report he concluded that the adverse effects of the proposal on urban form and structure would be no more than minor.

109. The Architect for the proposal, Mr McCoy, explained how the building design relates to the EAR:

- *The building is setback 16m from the EAR. Setback is important to stop dominance over the streetscape;*
- *The elevation facing the EAR is highly modelled. The high level glazing and architectural detailing to this elevation provides visual interest appropriate for 'an edge' to the EAR;*
- *A pedestrian link is included from the EAR through the proposed adjacent buildings;*
- *When viewed from the EAR the building design includes articulation and a variety of materials to ensure that it still sits comfortably in the micro-setting of the street scene;*
- *The architectural form, detailing, choice of materials and colours, the buildings integration with the car park and the EAR will, in my opinion, create a high amenity outcome which contributes to its setting and at the same time functions efficiently."*

110. Mr McCoy concluded:

> *"The architectural design and character of the building, including the use of the car park area, open spaces, building materials and form, will create an attractive building which is both functional and appropriate in this setting"*

111. We agree with Mr McCoy. The materials proposed are not what you would expect to find in a usual urban supermarket and appropriately reflect the Wakatipu vernacular of 'natural' materials. These include cedar weatherboards, local river stones in gabion panels, prefinished roof and wall cladding in 'Ironsand' and oxidised corten steel sheets, and contribute to the integration of this development into the environment that is envisaged by PC19.

112. We have also had the benefit of expert evidence from Mr Burns, who produced a comprehensive assessment of the proposal and its urban design implications. In forming his evidence, Mr Burns took into account Mr Teesdale's earlier evidence produced at the Environment Court and which was included with the application for this proposal as Appendix F. Mr Burns' independent review concluded:

(a) Activity Area E2 will fulfil a transitionary function between Activity Areas D, E1 and C2. The eastern edge (adjacent to E1) is less critical than the western edge where it will border residentially zoned C2.

(b) The proposal is suited to a car-based environment as exemplified by the EAR and Road 2 and optimises the strategic State Highway 6 access with a regional bulk purchase retail offer;

(c) The proposal is not suitable for Activity Area C1 as it would compromise the town centre retail environment, but is compatible with trade and industrial park/urban fringe locations such as those presently proposed for the E1 and E2 Activity Areas.

(d) The proposal has a commercial reason for locating along the EAR – it relies on strategic access, visibility and passing trade and can provide on-site parking to avoid conflicts with busy EAR traffic movement;

(e) The proposal sits comfortably between industrial and clean office and residential uses, thus fulfilling the "transitionary" function of E2. Given the wide range of different activities provided for along the EAR (including industrial and yard-based activities) achieving a consistent environmental quality along this route will be challenging;

(f) The proposal is of a high level of architectural quality for its type and is of a use that can (and does) deliver investment in quality landscape and interesting building façade design and massing. This view was also supported by the evidence of Mr McCoy.

Mr McCoy confirmed that the proposal has been designed to fit in contextually with PC19, particularly in terms of the relationship with the EAR. He described the building as "a transitional building";

(g) The proposal relates to the EAR and Road 2 with an attractive street edge and a setback appropriate for both the nature of the street and expectations for the E1 and E2 character areas.

(h) When assessed against the provisions of PC19 (DV) and with reference to the Environment Court's Interim Decision, on balance the proposal supports the majority of policies and achieves the plan change objectives of delivering an attractive EAR street edge, resolving incompatible "bad neighbour" uses, creating high quality architecture and preserving strong visual connections to the wider mountain landscape by opening up views from SH6 to the Remarkables.

113. Ms Crawford submitted in her closing legal submissions that the area is "*the perfect fit when the underlying zoning and future roading network are taken into account*". She submitted: *"it is about selecting a location that is suitable in terms of co-locating with appropriate activities within a wider urbanised environment."* All parties to the hearing agreed that the proposal would not be compatible with Activity Area C1; however, it is plain that the development would be a good fit with the activities envisaged in both the E1 and E2 Activity Areas, as it would not raise any reverse sensitivity issues.

114. Mr Lala, for QCL, was of the view that the proposal would have more than minor effects on the environment in respect of urban design and urban form, particularly in relation to the proposal's interface with the EAR and its streetscape. He considered that the building would be out of scale and character with any future adjacent buildings along the EAR, given the E2 sleeving.[23] Mr Lala considered that with the combination of the Pak 'N Save building's setback (16 metres), lack of "active" frontage and the car-park, there would effectively be a landscaped edge along the majority of the eastern frontage of the EAR within E2 (notwithstanding that the word "active" could have been a transposition of "attractive" as found in the wording of Objectives 9, 10 and Policies 9.2 and 10.4).

115. We are satisfied that Mr Lala's concerns have been appropriately addressed by the urban design experts and it is plain that they are not shared. We are inclined to prefer the evidence of Mr Burns and Mr Ray in this regard.

116. In summary, having had regard to all of the evidence before us, we are satisfied that any effects on urban design and streetscape will be less than minor.

[23] Mr Lala's evidence at 6.9-6.10.

Conclusion on actual and potential effects on the environment – Section 104D(1)(a)

117. Having reviewed all of the evidence in front of us, including the response to questions put to witnesses at the hearing, we are satisfied that any actual and potential adverse effects on the environment will be no more than minor, subject to the conditions which form part of this consent. In reaching this conclusion, we have had due regard to the findings of fact reached by Judge Jackson's division of the Environment Court and the review of the amended proposal by the Applicant's witnesses, Mr Cubitt and Mr Lala.

118. We are satisfied that based on the evidence of Mr Colegrave, Mr Dewe and Mr Vivian (for *Cross Roads*) that the major issue, the potential loss of industrial land, will be no more than minor when the adverse effects are assessed in both quantitative and qualitative terms.

119. Accordingly, the proposal passes through the effects limb of the section 104D(1)(a) test.

Objectives and Policies of the Operative District Plan and the Proposed Plan (PC19 (DV)) – Section 104D(1)(b)

120. At the hearing we had the benefit of comprehensive legal submissions in relation to the interpretation and application of the section 104D(1)(b) limb of the threshold test in relation to objectives and policies.

121. Mr Gardner-Hopkins, for QCL, submitted that we are bound by the decision of Justice Fogarty that if an application is found to be contrary to even one single objective or policy, it will fail to pass the threshold test.[24] Although this finding is under appeal to the Court of Appeal, he submitted that until that finding is overturned, it must be treated as the legal position.

122. In her closing submissions, Ms Crawford argued that Justice Fogarty's decision is contrary to accepted practice (including higher authorities). As a result, in her submission we are not required to apply the "single issue" approach relied on by Mr Gardner-Hopkins in relation to the question of "being contrary to objectives and policies". Ms Crawford traversed the relevant case law including the decisions in *Dye v Auckland Regional Council*[25] and *Arrigato Investments Limited v Auckland Regional Council*[26] that for a proposal to fail the second gateway it must be contrary to the objectives and policies as a whole. She submitted that based on these authorities, the wording of section 104D(1)(b) relates to all objectives and policies and is not confined to "any". In Ms Crawford's submission, had that been the intention of the legislation, "Parliament would have said so".

123. Ms Crawford also noted that the section 104D(1)(b) gateway test is often very difficult to apply because district plans have a plethora of objectives and policies. In this particular case we have

[24] *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 817 at [37].
[25] [2001] NZRMA 513 (CA).
[26] [2002] 1NZLR 323.

a set of proposed objectives and policies with a clear internal tension, which might create a potential difficulty in deciding whether an application was contrary as a whole.

124. We record that Mr Todd's views were more aligned with Mr Gardner-Hopkins in both his opening and closing submissions for Cross Roads Properties Limited application (RM130521).

125. Ms Crawford submitted that the proposal satisfies the second threshold test, although she urged that it was not necessary for us to reach any finding if we conclude that the proposal passes the first limb of the threshold test under section 104D(1)(a).

126. Having reviewed the legal submissions and the higher authorities cited, we are of the view that Ms Crawford's analysis is based on sound legal principles. However, we are conscious that this matter is currently under appeal and as the application has passed the gateway test in section 104D(1)(a) it is not necessary for us to express a firm view on the correct application of the law, as will be further explained below.

127. The Reporting Officer has carried out a very comprehensive assessment of the objectives and policies of the Operative District Plan, PC19 (DV) and PC19 (Interim Decision). The majority of his conclusions have been agreed with Mr Dewe and are set out in the Joint Planning Statement as follows:

(i) The **Operative District Plan** is not an impediment to the proposal passing through the section 104D gateway test.

(ii) **PC19 (DV)**: Appendix C of the Joint Planning Statement contains an assessment of the proposal against the relevant objectives and policies of PC19 (DV). Mr Cubitt and Mr Dewe found that the proposal was not contrary to the majority of these provisions. The key policy suite is Objective 10 and the associated implementation policies. Both planners agreed that there is conflict with Policy 10.11 as follows:

> "*Policy 10.11 seeks that any retail activity in AA E1 is minimal and ancillary to the principal use of the site. This policy is not particularly well written because it refers to the principal use of the site. In this case that is retail. The policy obviously intends for retail to be ancillary and minimal in relation to a permitted use of the site. That is not the case here as it is neither ancillary nor minimal. The proposal is in conflict with Policy 10.11".*

In conclusion, the Joint Planning Statement stated:

> *"Given the above, it can be seen that the present proposal finds support in some of the above provisions but is in conflict with Policy 10.11. We note this issue is at the forefront of this proposal but leaving that aside (given the relatively small amount of Activity Area E1 affected by the present proposal under the PC19 structure plan), overall we do not believe the present proposals will be contrary to Objectives 10 and associated policies".*

Mr Cubitt concluded that with reference E1 the proposal is contrary to Policies 10.1, 10.5 and 10.11 but not contrary to those polices in relation to E2, although he acknowledged that there is some inconsistency in this conclusion. Overall, given that E2 is the predominant activity area under the PC19 (DV) Structure Plan, he did not find the proposal contrary to the overall scheme of Objective 10 and the associated policies.

(iii) **PC19 (Interim Decision)**: It was accepted and agreed in the Joint Planning Statement that in relation to E1 under PC19 (Interim Decision):

> *"The present proposal does not give effect to all of the policies and in some cases is in conflict with some of them (Policies 10.1 and 10.4 as examples). At the same time the proposal will advance other outcomes sought which relate to the quality of design visible from the EAR (Policy 10.7). It is also consistent with a number of other policies (10.6, 10.8, 10.9, 10.10, 10.11, 10.12 and 10.13)".*

128. In our view the proposal is not contrary to the "effects based" policies outlined above, however it is, at best, in conflict with the "use enabling" policies, Policies 10.1 and 10.11.

129. Mr Cubitt noted that no new objectives and policies have been proposed for E1 although the Court did make findings on a number of matters, which he addressed in section 11 of his report. Accordingly, the provisions considered in relation to E2 under PC19 (DV) – particularly Policy 10.2 – are, in his opinion, the most relevant. He did not find the proposal to be contrary to Policy 10.2 of PC19 (DV) although some inconsistency was acknowledged.

130. Overall, Mr Cubitt concluded that the application was contrary to the policy framework for the E1 Activity Area under both versions of PC19. However he did not find the proposal contrary to the E2 policy framework. When the application is considered as a whole, Mr Cubitt concluded that it was contrary to PC19 and accordingly does not pass through the section 104(1)(b) gateway test.

131. In his evidence, Mr Dewe supported the findings of the Joint Planning Statement, which concluded that the proposal is consistent with (and certainly not contrary to) the vast majority of the objectives and policies of PC19 (DV). In his view, while Objective 10 focuses on light industry and related businesses, it also refers to both E1 and E2. In Activity Area E2 a much wider range of activities is provided for, including offices and community activities, while educational facilities and showroom retail with floor areas above 500 m² GFA are presently classed as limited discretionary activities. The activities provided for in E1 are much narrower and more consistent with the outcomes sought by Objective 10 and this is reflected in the policies that will implement the objective.

132. In relation to Policy 10.1, which is to enable predominantly industrial and trade services within Activity Area E1, Mr Dewe found that while the present proposal is not an industrial or trade

service activity, it is one that *"will be compatible with such activities and there is still sufficient land available to cater for such activities*". It was his opinion that the proposal would not preclude the outcome sought by Policy 10.1 over the activity area as a whole and, accordingly, the proposal is not contrary to this policy.

133. The focus of Policy 10.5 is to avoid incompatible activities being established within Activity Areas E1 and E2. Mr Dewe concluded that given the wide range of activities provided for in E2, including showroom retail over 500 m² GFA, it is highly unlikely that the present proposal would result in any conflict. In terms of E1, where activities are likely to be more of an industrial and services nature, the proposed activity also represents a "good fit" and will not, in his opinion, lead to any reverse sensitivity effects. He also noted Mr Burns' evidence that the location of the subject site is a transition area between industrial to the east and residential to the west and that the proposal is well suited to fulfil a transition role between these activity areas.

134. In relation to Policy 10.11 Mr Dewe concurred with Mr Cubitt that the proposal is prima facie in conflict with this policy.

135. Having considered the outcomes sought to be achieved by Objective 10 and in particular Policies 10.1, 10.5 and 10.11, Mr Dewe concluded that while the proposal may not be consistent with these matters, he does not believe it goes so far as to be contrary. In reaching this conclusion he considered the small area of E1 affected, the actual use of the land involved, the amount of E1 available for the intended activities and likely demand, as well as the proposal's compatibility with other intended land uses in the adjacent area. Overall, Mr Dewe was of the opinion that the proposal satisfies the second gateway of the threshold test.

136. As explained previously, and notwithstanding Ms Crawford's compelling legal analysis, for the purposes of this decision we have decided to err on the side of caution and adopt Justice Fogarty's interpretation of the section 104D(1)(b) test. As the proposal is, on balance, contrary to Policy 10.11 and at best inconsistent with Policies 10.1 and 10.5, the proposal fails the gateway test at this point. However, if we were to take the more holistic approach that Ms Crawford has described in her closing submissions, although we would find the proposal in conflict with the use enabling policies associated with Objective 10, we would not find it so contrary overall as to fail the gateway test. We are grateful for the very finely balanced evidence of Mr Cubitt in this regard and for the further evidence of Mr Dewe at the hearing.

Section 104 Assessment

137. As the proposal has conclusively passed the first limb of the section 104D(1)(a) gateway test, we are required to assess the application under section 104.

138. We have concluded that the application has failed the section 104D(1)(b) test; however, should we be wrong in our application of the law, this does not affect the outcome of the threshold test in section 104D.

139. Section 104 requires us to have regard to the following, subject to Part 2, when assessing this application for resource consent:

(i) The actual and potential environmental effects of allowing the activity;

(j) The relevant planning framework, which in this case is the Operative District Plan together with the proposed Plan Change; and

(k) Any other matters.

140. We are cognisant that the application must be assessed under both the Operative District Plan and Plan Change 19. As previously stated, the version of Plan Change 19 that is required to be followed is PC19 (DV) as modified by any final findings of the Environment Court in its interim decision. The question of the weight to be attributed in forming an overall decision will only become a relevant issue if the outcomes under the two planning frameworks differ.[27]

<u>The actual and potential environmental effects of allowing the activity: section 104(1)(a)</u>

141. As set out above, we are satisfied any adverse actual and potential effects on the environment are less than minor and, in many cases, are insignificant. In reaching this conclusion, we have had regard to the evidence contained in the AEE and supporting appendices, and the evidence of both the Applicant's witnesses and the Reporting Officer. We emphasise that our conclusion is reached in respect of both plans, and we refer to our previous discussion in relation to the supply of industrial land (in particular) under Plan Change 19.

142. In carrying out an assessment under section 104, we must also have regard to any positive effects of the application. Mr Cubitt identified a number of positive effects of the proposal, which he concluded were significant and which include:

(i) The proposed Pak 'N save will provide a choice of discount supermarket for local residents and visitors to the area. There is currently a high demand for this type of bulk food warehouse in the Wakatipu that is not being met by existing supermarkets;

(ii) The proposed bulk food warehouse will improve prices for the benefit of consumers;

[27] *Stokes v Christchurch City Council* [1999] NZRMA 409 (EnvC); *Bayley v Manukau City Council* (1998) 4 ELRNZ 461 (CA); *O'Connell Construction Limited v Christchurch City Council* [2003] NZRMA 216 (HC).

(iii) The activity will be a major employer in the district both during construction and when fully operational, by which time it will have created 250 jobs (of which two-thirds are full time);

(iv) The development will provide a signal of confidence to the wider development community that the District remains a worthwhile place to invest (and thus potentially drive future development);

(v) The proposal accords with the stated desire of the Council to lower the cost of living in this community to ensure the continued growth of the region;

(vi) The attractive building design and abundance of landscape will contribute positively to the amenity values of what is essentially an industrial zone; and

143. Mr Colegrave presented an analysis of the economic effects of the proposal, concluding that the new supermarket will have a very positive impact on food prices in the District, resulting in an increase in District wellbeing. In his opinion the impact on community wellbeing will extend beyond the direct benefits of Pak 'N Save's own low prices through the impact on competitors' pricing. He considered that the proposed development will also benefit the District by:

(i) Providing a major boost to local GDP and employment, drawing, design and construction. This initial stimulus will ripple through the economy and have far-reaching effects;

(ii) Generating ongoing employment. The evidence of Mr Davidson was that the development will employ about 180 full-time and a further 80 part-time staff. This represents a significant boost in local employment;

(iii) Providing a signal of confidence to the wider community that the district remains a worthwhile place to invest (and thus potentially drive further investment); and

(iv) Reducing lengthy car trips to other areas where Pak 'N Save currently operates (currently 3% of the Queenstown/Wakatipu grocery expenditure leaks out to Dunedin, Christchurch and Invercargill, together with 6% of Wanaka/Hawea expenditure).

144. Mr Cubitt noted that a discount grocery offering is an important step towards achieving affordable living conditions, which is a matter of some importance in the Wakatipu area.

145. Taking into account the positive effects of the application, we have formed the view that there is substantial and compelling support for the proposal in terms of the actual and potential environmental effects of allowing the activity to establish in the location proposed.

The relevant planning framework: section 104(1)(b)

146. As previously discussed, we are required to assess the proposal against the Regional Policy Statement, the Operative District Plan and against proposed Plan Change PC19 (DV) as modified by any final findings of the Environment Court in its interim decision.

Regional Policy Statement

147. The Regional Policy Statement ("RPS") contains broad provisions relating to the built environment, including Objective 4.9.1, which seeks "to promote" and "meet the present and reasonably foreseeable needs of Otago's people and communities, provide for amenity values, conserve or enhance … landscape quality". Both Mr Cubitt and Mr Dewe concluded that the application is not inconsistent with the relevant provisions of the RPS.

Operative District Plan

148. Having reviewed the Section 42A Report and the evidence before us, we have concluded that the proposal is not contrary to the policy framework of the Operative District Plan and, in fact, implements many of its policies. We accept Mr Cubitt's advice that in terms of the merits of the proposal, the Operative District Plan is largely irrelevant as Objective 4.9.3(6) envisages the urbanisation of the Frankton Flats but does not provide any guidance as to how this should occur. As PC19 does give specific guidance, he considered this to be the most appropriate plan to assess the merits of the proposal, particularly given its progression through the Plan Change process.

149. Notwithstanding this, the support that the application derives from the objectives and policies of the Operative District Plan, which remains operative, is an important aspect of our overall evaluation, as we are required to form an overall conclusion under section 104 in respect of each plan.

Plan Change 19

150. In his evidence, Mr Lala set out an analysis of the PC19 (DV) objectives and policies, noting that there are a number of clear themes running through the Plan Change that apply to the current application. The relevant themes (adopted from Mr Lala's evidence) are considered to be:

(a) Provision for a wide variety of activities in appropriate locations (Objective 1A, Policy 1A.1 and Policy 10.1);

(b) An appropriate quality of urban design in consideration of the activities and buildings anticipated, particularly in relation to the amenity expectations of industrial activities (Policy 1A.6, Policy 4.1, Policy 4.4, Policy 4.5, Policy 9.1, Policy 9.4, Policy 10.2 and Policy 10.8);

(c) A clear requirement for integration by use of a Structure Plan and an Outline Development Plan (Policy 1A.3, Policy 2.1, Policy 3.3, Policy 12.4)

(d) Streetscape expectations, particularly the EAR (Policy 3.1, Policy 4.4, Policy 9.1, Policy 9.2, Policy 10.4); and

(e) Appropriate activities expected for Area E1 and E2 (Policy 10.1, Policy 10.2, Policy 10.5, Policy 10.6 and Policy 10.11).[28]

151. Mr Lala stated:

> *"The more generic objectives and policies provide for a wide range of activities through the overarching higher level provisions. These set out the desire to enable a full mixed use precinct with certain activities constrained to particular locations, combined with suitable interface controls. The provisions also set out an appropriate quality of urban design and development, particularly in relation to individual buildings and amenity expectations for industrial activities. On these matters, it is my opinion that both the PNS application and the Mitre10 Mega application can satisfy these objectives and policies of PC19".*

152. Mr Lala's view is also supported by the evidence of Mr Cubitt. We highlight the matters that we consider the most relevant as follows.

153. Objective 1A, titled "*Urban growth and the sustainable management of resources*", together with its corresponding suite of policies, was included by the Environment Court in final form in its Interim Decision, and accordingly forms part of our consideration. In explaining the reasons for the inclusion of the new objective, the Court noted at paragraph [249] that:

> *"There is a lacuna in the QLDC's revision as its Objectives and policies do not address the fundamental issues of accommodating future urban growth and its form, which underpin PC19 as identified in the urban growth and sustainability issue".*

154. Objective 1A seeks to ensure that the zone develops in a manner that provides for appropriate levels of environmental quality and amenity while avoiding or mitigating any adverse effects on the environment. In the explanation and principal reasons for the adoption of Objective 1A and the corresponding suite of policies, the Court noted that the zone "*provides the opportunity for a range of activities, including residential and employment growth in many sectors, and related activities such as recreation*. *The land can therefore contribute to the ongoing social and economic well-being of the District's people and communities"*.

155. Further, the Court stated that development in the zone must recognise certain constraints, including the potential adverse effects of development on the views of Outstanding Natural Landscapes, the proximity of and ongoing operational viability of the airport, and the potential for activities to be incompatible with each other. The zone provides for the integration of enabled activities with adjoining land uses including the Frankton Flats (A) zone such that a town centre

[28] These policies refer to the PC19 (DV) version.

will develop; the Glenda Drive industrial area; the Events Centre; and the Remarkables Park Zone accessed by the eastern access road. The Court noted that development will take place at a higher intensity and with a more diverse mix of uses than has generally occurred in Queenstown to date.

156. The specific policies associated with Objective 1A discuss environmental quality and seek to ensure that development provides for an appropriate quality of urban design, including in the public realm, the built environment and amenity values. Policy 1A.4 seeks to ensure that development within the zone is integrated effectively into adjacent zones. The overall approach, as noted by Mr Lala, seeks to provide a wide range of activities whilst managing the effects that may result from them. There is a focus on integrated and comprehensively designed planning outcomes.

157. Having assessed the proposal against the specific policies associated with Objective 1A and the explanation and principal reasons for the adoption of those policies, we are satisfied that the application is consistent with and supports the relevant policies, particularly those associated with contributing to the ongoing social and economic well-being of the District's people and communities; the appropriate quality of urban design; built environment and amenity values; and the avoidance of reverse sensitivity issues through co-location with compatible activities. Further, the proposal provides for the integration of enabled activities with adjoining land uses, particularly those to be located in the E1 and E2 activity areas.

158. A very comprehensive analysis of the objectives and policies under both PC19 (DV) and PC19 (Interim Decision) prepared by Mr Cubitt, in conjunction with Mr Dewe, was set out in the Joint Planning Statement as they relate to this particular application. We have reviewed this evidence and concur with the findings reached. In particular, we accept that the proposal is not contrary to the objectives and policies that are applicable to Activity Area E2 and, indeed finds support in many of the relevant policies.

159. Mr Lala drew our attention to the requirement for an Outline Development Plan for developments in Activity Area E2. The relevant objective and polices are Objective 2 and associated Policies 2.1 and 2.3, which seek to create a sustainable zone and to ensure a high quality comprehensive development. There was considerable discussion in relation to the significance of this requirement at the hearing. As the purpose of the Outline Development Plan is essentially to show the transport network, storm water and water supply network, open space network and land use mix, all of which are apparent from and have been outlined in the proposal, the absence of a formal Outline Development Plan does not, in our view, create any inconsistency with the policy direction of PC19 (DV) in this respect. In forming this conclusion we have preferred the evidence of Mr Dewe, noting that the Outline Development Plan process is yet to be resolved in terms of PC19 by the Court.

160. Arguably, the most directly applicable objective in the suite of objectives and policies contained in PC19 (DV) is Objective 10, which seeks to create additional zoning for light industry and related business activities within the Frankton Flats Special Zone (B) Activity Areas E1 and E2. We have previously commented on the relevant policies in our discussion under section 104D(1)(b), which can be loosely categorised into "effects-based" policies and "use-enabling" policies. Mr Cubitt concluded that the proposal is not contrary to the effects based policies under Objective 10.[29]

161. It is plain that the nub of the issue is the consistency of the application with the specific policy direction prescribed by the "use-enabling" policies associated with Objective 10 – in particular, Policies 10.1, 10.5, and 10.11. As set out previously, we have confined our consideration to the PC19 (DV) version of the objective and policies as compared to the modifications contained in the Interim Decision, although our conclusion would be the same in respect of the most relevant policies.

162. When the Objective 10 policies are examined in detail, and having had regard to the expert evidence on this issue, we have formed the view that the proposal is, at best, inconsistent with Policy 10.1 of PC19 (DV), which is designed to enable *predominantly* industrial and trade service activities within Activity Area E1. The application is also, on balance, contrary to the Interim Decision version of Policy 10.1, which provides that only industrial and related service activities are to be established within Activity Area E1.

163. Policy 10.5 of PC19 (DV) is also relevant. This policy seeks to exclude activities (such as residential activities, retail and visitor accommodation) that conflict with the intended function of Activity Area E1 and E2. Both Mr Dewe and Mr Cubitt have noted that the proposed activity, although retail, does not necessarily conflict with the intended function of the zone. Mr Dewe stated that given the wide range of activities provided for in E2, including showroom retail over 500 m^2 GFA, "*in my opinion there is no doubt that the present proposal will not conflict with such uses*". Further, we note that the proposed activity will not create reverse sensitivity issues with any other forms of industrial activities that might locate within this zone and which could be an intended purpose of this policy. Accordingly, we are satisfied that the proposal is not contrary to this policy, albeit that, on its face, it is not entirely consistent.

164. The proposal is, however, plainly in conflict with Policy 10.11 of PC19 (DV),[30] which is a prescriptive policy designed to ensure that activities are used to support the intended function of Activity Area E1. The policy provides that any office space and retail activities must be directly ancillary to, and minimal in comparison with, the principal use of the site, which is reserved for "true" industrial uses.

[29] The Environment Court's interim Decision has proposed substantial modifications to Objective 10, which is intended to only apply to Area E1 (Industrial area) and which will be discussed under section 104(1)(c) – Other Matters.
[30] Which is reflected in Policy 10.4 of the Interim Decision.

165. There is no disagreement amongst the expert witnesses that the proposal is in conflict with Policy 10.11. The question for the Commission is what weight is to be given to this policy in the broad scheme of PC19 (DV) as modified by any final findings of the Interim Decision, given that nearly all of the other relevant objectives and policies are either consistent with the relevant objectives and policies or, at worst, equivocal. In other words, is Policy 10.11 (supported by Policy 10.1 and to a lesser extent Policy 10.5) the equivalent of a trump card?

166. In forming a broad judgment as we are required to do, we have had regard to the decisions of the Council Commission in Plan Change 19(DV) and the Environment Court to establish the reasons for the very directive use enabling policies that are associated with Objective 10. It is plain that the Court considered the protection of land for "true" industrial activities to be an important resource management issue and a key objective for the E1 zone.[31] From a reading of the decision, the Court was plainly influenced by the CLNA study and the expert evidence of its author, Mr Mead, in reaching this conclusion. However, the evidence before us was that the CLNA is fundamentally flawed and grossly overprovisions the amount of land required for industrial and yard-based activities as defined in the Operative District Plan. It is our view that while policies restricting use are valid and sometimes necessary as planning tools, in making our decision under section 104 we are required to take a broader view of whether granting the application will negatively impact on the intent of the Plan Change to the extent that it undermines its integrity and the policy direction that it promulgates.

167. In this case, although the proposal is clearly in conflict with Policy 10.11 of PC19 (DV), we have found that it is unlikely in the longer term to materially detract from the overall policy direction of PC19, which, we note, is yet to be finally determined by the Court. In forming this view, we recognise that there will be significant positive economic and social effects as a result of the development (which is consistent with Objective 1A), and that the community is underserved with this type of business:

- While the activity is not an industrial activity, it does contain a number of activity components that traditionally seek to locate in light industrial or commercial zones, such as bulk deliveries;

- It will not have a significant impact on the availability of industrial land in this District for transport and yard based activities for the foreseeable future;

- Although its use is primarily retail, the proposal has many characteristics in common with industrial activities (and hence it is entirely consistent with the effects based policies set out in Objective 10);

[31] Paragraph [656] of the decision.

- It is conveniently located, provides off street car parking and is easily accessed by its customers without conflict (particularly in terms of traffic flows);

- It will not create reverse sensitivity issues with adjoining industrial land uses; and

- There are, based on the evidence of Mr Davidson and Mr Porter, no suitable alternative sites in the area for large format retail activities of this nature and that an undesirable precedent is unlikely to be created given that this kind of activity typically locates in industrial or similar mixed use zones throughout New Zealand.

168. We accept Mr Dewe's evidence in relation to Objective 10 overall, which he expressed as follows:

> "*The present proposal is not defined as an industrial or service activity and as such is not expressly supported by the objective. It will on the other hand provide a high level of amenity for the activity area and will be compatible with future intended industrial and service activities occurring in the surrounding area".*

169. We are mindful that, unlike the *Cross Roads* application (RM130521), only a relatively small area of E1 land is affected by this proposal.

170. In summary, we recognise that there has been a shift in policy and approach in relation to the protection of land for true industrial uses in PC19 (DV) by the provision of Activity Areas E1, E2 and D primarily as a result of the conclusions of the CLNA, which were not challenged in the Environment Court. The PC19 (DV) rules, which in their current form proscribe elements of the proposal to be "prohibited" activities (notably the "other retail" component in E1), are strongly indicative of this intention.[32] However, on the basis of the evidence before us it is difficult to reconcile the prescriptive policy direction of PC19 with the promotion of the economic interests and wellbeing of the community. Such blanket protection of large areas of land for industrial uses that are unlikely to be required even in the medium term is, on the contrary, inefficient and could potentially lead to adverse consequences for economic growth. Accordingly, we are not persuaded that the "use enabling" policies associated with Activity Area E1 and E2, which aim to protect land for more traditional industrial uses, should act as an effective prohibition to a grant of consent to this application. In coming to this conclusion we are mindful that the policy framework has yet to be determined in terms of the specific Activity Areas; however, we note that this is unlikely to change materially in focus.[33]

[32] For the purposes of our assessment all of the activities must to be considered as discretionary activities under section 87B(1)(c). We record Ms Crawford's submission that it is unlikely that the "prohibited" status will survive in the final form of PC19 after the Environment Court's hearing on the lower order matters.

[33] In forming this view we have had regard to the Planning Expert Conferencing Statement dated 23 January 2014, prepared for the pending Environment Court hearing.

Other Relevant Matters – section 104(1)(c)

The Environment Court's Interim Decision on PC19 (Higher Order) Matters

171. Both Mr Cubitt and Mr Gardner-Hopkins considered that the Environment Court's Interim Decision on PC19 (Higher Order) Matters was a relevant consideration under section 104(1)(c). At part 11 of his Section 42A report, Mr Cubitt discussed the findings of the Environment Court in relation to Activity Areas E1 and E2. He concluded that the specific objectives and policies set out in Objective 10 reinforce the High Court's finding that E1 was not intended for "big box retail" or any other type of retail activity not directly related to a predominant industrial use on the site. He noted that this finding confirmed the view of the High Court as to the purpose of Activity Area E1.

172. In relation to E2, Mr Cubitt noted that although the Court has directed that Objective 10 and its related policies will no longer apply to E2, the Interim Decision does not contain a revised version of an objective or policies for this activity area. However, the Court made a number of comments in relation to the suitability of large format retail in E2, which we will discuss further below.

173. We have considered the Environment Court's discussion in relation to Activity Area E1 generally as follows.

174. The Court's discussion of Activity Area E1, which is set out on pages 225 to 230 of the judgment, is relevant to our consideration of the overall policy direction for Activity Area E1. At paragraph [646], the Court examines the issue: "*what is the intended function of Activity Area E1?*" and questions whether it is an "industrial area" or more than that. At paragraph [650], the Court noted that the Zone Activity Table contemplated five specific activities for this activity area (some of which may require resource consent) as follows:

- Industrial activities, service activities (including ancillary retail activities);
- Industrial activities and service activities (including retail service activities) within 50 metres of State Highway 6);
- Yard-based industrial activities;
- Offices ancillary to any permitted or controlled activity (except buildings); and
- A range of activities including panel beating, spray-painting motor vehicle etc.

175. At paragraph [651], the Court noted that this list is expanded in the Ferguson/Hutton version of the Draft Plan Change by adding:

- Yard-based retail located wholly within 50 metres of the EAR, otherwise this activity is non-complying;

- Trade and home improvement retail, within the trade retail overlay; and

- Industrial activities, service activities (including ancillary retail activities) within 50 metres of State Highway 6.

176. The Court noted at [653] that the distinction between Activity Areas D and E1:

> *"… is not entirely clear as the range of activities that could establish is similar. A quick review of the rules, standards and methods reveals many of these apply to both activity areas; although there are differences in frontage controls as AA-D has additional provisions that address the amenity of the adjoining activity areas. That said, the principal difference appears to be the maximum building coverage and minimum lot size restrictions that apply as follows".*

177. In its discussions on findings, the Court records at paragraph [656] that:

> *"The provision of land for industrial activities addresses an important resource management issue and a key objective (Objective 1A) for this zone. While we have revised the objective and policies further work is needed. It is important that the parties:*
>
> *(a) Identify the subject matter and function of Activity Area E1 (for example is it to include yard-based activities?); and*
>
> *(b) Either confirm or suggest further editorial changes."*

178. The Court then discussed Policy 10.1 and the use of the word "predominantly" (which was included in the PC19 (DV) version); Policy 10.5, which is concerned to ensure that the use of industrial land is minimised by ensuring adequate minimum lot sizes, and Policy 10.7 by deleting reference to "the principles of comprehensive development". The outcome at paragraph [662] was that *"leave is granted the parties led by the District Council to review and propose a revised version of the objective and policies subject to their overall direction being maintained"*. Under the Court's revision, PC19 (DV) Policy 10.11 was restated as Policy 10.4 (as previously discussed).

179. The Environment Court Interim Decision makes it clear that significant further work is required in relation to the objectives and policies for the E1 zone. In particular, it noted that the Council's amended objective substituted "light industry and related business activity" for "industry" without making consequential changes to the policies. The Court noted that Council appeared to have overlooked the fact that PC19 (DV) Objective 10 applied to two sub zones, E1 and E2. As a result of the Interim Decision, E2 will now sit under its own objectives and policies. The Court stated: *"if approved this may (indeed very likely will) have the unintended consequence of enabling general business to establish in this activity area"*.

180. Having reviewed the Court's evaluation, it is relatively plain that the objectives and policies that relate to Activity Area E1 are likely to undergo some revision. In particular, the distinction between Activity Areas D and E1 is not clear, as the range of activities that could potentially establish is similar. Further, the move by Council to substitute "light industry and related business activity" for "industry", if eventually approved, would enable general business to establish in E1 although, as the Court noted, this may be "an unintended consequence". This suggests to us that although Objective 10 and its associated policies are intended to be specific and directive, the entire purpose of the E1 zone may be subject to further consideration, particularly in view of the separation of E2 and the similarity with Activity Area D.

181. In relation to Activity Area E2, the Interim Decision does not include a revised version of an objective and related policies for this sub zone. As previously discussed, Objective 10 and its related policies previously applied to both E1 and E2. The Court has now directed that these be split and makes a number of comments that indicate its attitude to large format retail at paragraphs [498] to [501]. In particular, the Court agreed with the evidence of Mr Mead (the author of the CLNA) that equal depth of "sleeving" on both sides of the EAR would:

(a) Promote a consistent pattern or grain of development of both sides of the EAR;

(b) Discourage a scale of building and site layout associated with very large format retail activity;

(c) Enable built development close to the road frontage with car-parking to the side and rear;

(d) Enable the management of reverse sensitivity issues arising in relation to adjoining activity areas (AA-C2 in the west and AA-E1 in the east) including using techniques such as a laneway to separate activities, and landscaping to define activity areas; and

(e) Encourage the integration of activity areas across the zone.

182. At paragraph [501] the Court approved the equal dimensioning of 50 metres on both sides of the EAR (which is a final finding of the Interim Decision). Mr Cubitt noted that the Court was of the view that this would discourage large format retail activities within this activity area and hence promote more acceptable expected outcomes for PC19 (DV) and the relationship between E2 and the EAR.

183. In relation to what retail activities might be appropriate within E2, the Court at paragraphs [507] to [508] found that there are opportunities for retail elsewhere in PC19 and specific provision for large format retail outside of the Plan Change area. At paragraph [508] the Court shared Mr Mead's concern that, unless restricted, retail activities will likely predominate along the EAR. In

the Court's opinion, the policies need to articulate with greater specificity the range of activities to be provided in E2, and indicated that the following would be appropriate:

(a) Showrooms suitably defined;

(b) Light industry suitably defined along the lines QCL proposes but desirably with some showroom-type characteristics added;

(c) Residential above ground level (subject to jurisdiction);

(d) Offices;

(e) Convenience retail; and

(f) Mid-sized retail suitably defined in the range 500 to 1000 m^2 GFA.

184. Commenting on the Court's approach, Mr Cubitt noted that:

> *"It would seem that the Court does not envisage large format retail within E2. The Court's concern appeared to revolve around the effects of such activities in the context of achieving a high quality streetscape adjacent to the EAR."*

185. In that regard, Mr Cubitt noted that Mr Ray gave evidence that the proposal will create "an attractive street edge". Further, the Environment Court at paragraphs [202] and [203] of the decision on the original application were satisfied that *"a high standard of urban design has been achieved, with an integrated approach that has considered the EAR and Road 2, the car-parking … that relates appropriately to … the layout of the building along the south-eastern boundary … ."*

186. Mr Cubitt noted that on the basis of Mr Ray's evidence and the further evidence presented at the hearing, the Interim Decision's concerns may be unfounded. We concur with this view.

187. Mr Gardner-Hopkins drew our attention to the Environment Court's rejection of the E3 Activity Area that was pursued by Shotover Park Limited (the underlying land owner for the application site) at the Environment Court hearing. In examining the Court's decision at paragraphs [547] to [560], we note that the Court rejected the establishment of an E3 Activity Area as this would *"most likely develop as a fourth commercial centre and that [the proposed] policies are strongly enabling of this result"*. Overall, the Court concluded that the AAE3 objective was not the most appropriate way to achieve the purpose of the Act. However, at paragraph [558] the Court stated:

> *"We may have reached a different view on whether there should be provision for a trade retail overlay had Remarkables Park Limited (supported by SPL) not successfully applied for a private plan change enabling up to 30,000 m^2 additional retail floor space at the Remarkables Park Zone located near the periphery of its existing centre. PC34*

> *(now operative) is to enable future expansion of the commercial centre, including large format retail activities. In making our determination on all activity areas, we have taken into consideration that there is zoned land to accommodate large format retail activities in the Remarkables Park Zone."*

188. For the reasons that will be further discussed below, on the evidence before us there would appear to be no such provision for large format retail activities, either in the Remarkables Park zone or anywhere else in the District. Accordingly, while the Court plainly did not consider large format retail to be appropriate in the E1 or E2 Activity Areas, it came to this conclusion on the basis of quite different and contradictory evidence in relation to both the need to preserve land for "yard based and transport related" industrial activities and the availability of alternative sites for large format retail activities. Importantly, there is no suggestion that the Court rejected the desirability of accommodating large format retail activities within the District. On the contrary, the Court seemed to be at pains to recognise and provide for all commercial uses (business and industrial) in PC19, as is evident from its discussion at Part 4 of the Interim Decision.[34]

189. We are obliged to take account of the Court's direction and findings; however these must be applied in the context of the unchallenged evidence before us. To that end, we are not persuaded by Mr Gardner-Hopkins' submission that granting this proposal would undermine the Interim Decision. Indeed, from our analysis of the supply of industrial land, the rationale and basis for the Court's "protection" of the E1, D and to a lesser extent E2 areas exclusively for yard based and transport related activities is perhaps seriously open to question. In any event, it is accepted that large format retail such as the Pak 'N Save proposal would normally be located within an industrial or a light industrial/commercial zone for the reasons previously discussed, and accordingly in our view the proposal would not be inappropriate in the E1 and E2 area such that it would adversely impact on the integrity of PC19 in all of the circumstances.

Assessment of Alternative Locations

190. The Reporting Officer, Mr Dewe, Mr Davidson, Ms Carter and Mr Porter gave evidence in relation to the availability of alternative sites. It was accepted by all parties that the proposal could not be accommodated in the C1 Activity Area. From the evidence presented at the hearing, it is apparent that there are no other viable options available within the Wakatipu area.[35]

191. Mr Cubitt noted:

> *"Because the RMA is enabling (i.e. people should be able to provide for their needs unless the matters in 5(a) to (c) cannot be appropriately provided for), I think the matter of viable options for the proposal is more relevant in the Commissioners' consideration than it would be in most resource consent determinations."*

[34] Refer to Part 4 of the Interim Decision, in particular paragraphs [133] to [145].
[35] Refer to our detailed discussion in the *Cross Roads* decision (RM130521).

192. Mr Cubitt drew our attention to a recent non-notified Council decision (RM120817) that permitted a trade retail business to relocate from the Remarkables Park Town Centre to the Glenda Drive Industrial Zone because of the limitations of the Remarkables Park Town Centre for such activities. The decision noted that *"the proposed retail activity will take away 1,532 m^2 of land zoned for industrial purposes"* and that trade retail activities *"are somewhat industrial in nature and are more suited to the industrial environment than a shopping centre or business district"*.

193. Mr Gardner-Hopkins submitted that the Applicant's evidence that the subject site is the only suitable location for a Pak' N Save bulk food warehouse that meets its commercial needs *"must be taken with a (large) grain of salt"*, because it is the Applicant that dictates its commercial requirements. In his view, adopting a model that requires a very large site cannot mean that the proposal becomes more appropriate simply because the site is large enough to accommodate it. He considered that argument to be circular and would *"allow an Applicant to undermine a plan because of its self-defined commercial requirements"*. While Mr Gardner-Hopkins does have a point, there is ample evidence to support the Applicant's need for a building and related activities that support its commercial requirements. It is only by obtaining the efficiencies that go with this proposal that some of the positive effects, such as competitive pricing, will be enabled.

194. Having considered the evidence and submissions before us, we are persuaded that there are no realistic alternative sites that would accommodate the proposed activity within the Wakatipu area and that declining consent is likely to restrict the development of any large format retail activities within the District. This will be further discussed in our analysis of Part 2.

Plan Integrity

195. The Reporting Officer has discussed plan integrity at page 39 of his Section 42A report. He noted that:

> *"In this case we are dealing with a new zone for which one of the drivers has been the accepted shortfall of industrial land. As I noted earlier, the EC Interim Decision on PC19 highlighted the issue with the administration of the current District Plan where the trend in some parts of Queenstown (such as the Glenda Drive Industrial Zone) is for consent to be readily obtained for non-complying activities in the absence of a strong policy direction. Hence compromising the quality of the zone for industrial activities is a significant issue"*.

196. Under the current rule structure of PC19 (DV) "other retail activities" are prohibited activities in Activity Area E1 (but are currently treated as discretionary activities for the purposes of this application because of the provisions of section 87B of the Act), while showroom and convenience retail are non-complying. Accordingly, in Mr Cubitt's view, if consent is granted for this application, no "other retail" activity could apply for resource consent in Activity Area E1 under PC19 if the prohibited status becomes final and, as a consequence, no other activity similar to this proposal could be established as of right within the zone. He noted that the

Interim Decision's approach to retail in the zone could see rules that are "even more prohibitive". On this basis, he concluded that plan integrity might not be an issue.

197. Mr Gardner-Hopkins considered that this case is essentially a case about planning: *"whilst there are environmental effects of the activities, the focus (other than on the loss of industrial land) has never been the effects, it has been the plan"*. We concur with this submission to some extent. Mr Gardner-Hopkins drew our attention to the Environment Court's decision in *Sterling v Christchurch City Council,*[36] where the Court found that even if the potential effects of a proposal did not warrant refusal of consent, if the proposal did not achieve the approach embodied in the plan, the interests of sustainable management would be better served by refusing the application than granting it. Mr Gardner-Hopkins also referred us to *Oliver v Marlborough District Council*[37] and *McKenna v Hastings District Council*,[38] where a decline of consent was upheld even though there were no, or minor adverse effects on the environment but where the proposal was contrary to or inconsistent with the objectives and policies of the relevant plan.

198. Mr Gardner-Hopkins urged us to decline consent on the basis that *"consent must be declined based on the fact that each proposal is so contrary to fundamental objectives and policies of PC19 and contrary to the clear direction that the Environment Court has indicated that the final decision on PC19 will take"* and that granting resource consent would likely undermine the integrity of PC19 and the process it has been through to date.

199. While on its face this argument is not without merit, as set out in our previous discussion we have formed the view that while the proposal is plainly in conflict with two of the highly relevant policies in respect of the use of land in Area E1, it is not so contrary to the fundamental objectives and policies of PC19 as a whole that, in our view, it is likely to impact on the integrity of PC19. We have formed this view having had regard to:

- The consistency of the proposal with the majority of the objectives and policy framework applying to Activity Areas E1 and E2; and

- Following a thorough review of the Interim Decision and the reasoning for the prescriptive "use enabling" policies associated with Objective 10 in the context of the proposal and the evidence that is before us.

200. We are cognisant that the Plan Change is only partway through the process and that there could, as Mr Cubitt has predicted, be further strengthening of the policy direction, rules and assessment matters when the lower order matters are considered and determined. However, we are obliged to consider PC19 at the stage that it is currently in, and have formed the view

[36] [2010] NZEnvC 401
[37] HC Blenheim CIV 2004-485-1671, 8 July 2005
[38] (2009) ELRNZ 41 (HC)

that there is unlikely to be any impact on plan integrity. In forming this view we are mindful that PC19 seeks to urbanise this area of Frankton Flats primarily to promote the economic growth of the District.

Precedent Effect

201. Mr Gardner-Hopkins has submitted that granting resource consent to the proposal will also result in adverse precedent effects. The Applicant has contended that precedent is unlikely to be created, as further large format retail activities in Activity Areas E1 and E2 may effectively be prohibited (once the Plan Change becomes operative). Accordingly, in the Applicant's submission, there is no certainty of the current status remaining following consideration of the lower order matters.

202. Mr Cubitt has considered this issue and concluded that it is unlikely that a precedent would be created given the compatibility of the activity with trade and industrial park/urban fringe locations. We concur with this evidence.

Cumulative Effects

203. Both Ms Crawford and Mr Gardner-Hopkins addressed the issue of cumulative effects should we be minded to grant consent to this application and also the Cross Roads Properties Limited application for a Mitre10 Mega development on adjoining land (RM130521). It was agreed by the Applicants that the two applications would be heard jointly, although separate decisions are to be issued for each.

204. Mr Garner-Hopkins submitted that the proposal, combined, will "create a significant retail node" and will have a combined impact on industrial land supply. In his view, granting the two applications will create what he termed "real world pressure" for other large format retail activities to seek to co-locate in this area. Mr Gardner-Hopkins' submission was supported by the evidence of Mr Lala, who considered that the two proposals would significantly erode the character and amenity of the E1 and E2 activity areas to the detriment of the comprehensively integrated outcomes established by the Structure Plan.

205. We accept that the two buildings will represent a large block of built form in what is currently a rural area. It is plain that the two proposals represent a significant departure from what is there now. It is, however, accepted that this area will be urbanised and more buildings of various sizes will be constructed in proximity to the proposed developments. The future screening potential of the landscaping and built form along SH6 will provide some degree of mitigation in views from SH6.

206. In forming our conclusion we are cognisant that the proposed buildings have been designed to a high standard and include features, materials and landscaping that will promote their integration into the landscape. The conditioning of branding, colours and signage will also significantly reduce any adverse cumulative effects. As Mr Espie, a landscape expert in the *Cross Roads* application noted, "some particular instance of development has to be first" in a location where there will be new zoning that allows for a mixture of uses, as a result of which the landscape will invariably change. Mr Espie's further comment is apposite: "*If a particular area is considered appropriate for mixed use commercial/industrial activities, then we need not be embarrassed when the first instance of these activities appear*".

207. Having reviewed the evidence of Mr Colegrave in relation to the supply of industrial land, together with the evidence of Mr Burns, Mr Ray, Mr Milne, Mr McCoy and Mr Heath, Mr Espie and Mr Vivian (for *Cross Roads*), we are of the view that there is no evidence to support the assertion that the two applications would result in adverse effects on either the quantity or quality of industrial land available to meet the needs for which it has been reserved, or in relation to the urban aesthetics that will result from these developments.

208. Further, there is simply no evidence that granting consent to both of these applications will result in the creation of a "second commercial node", particularly when the nature of the existing adjoining developments is considered.

Overall Conclusion on Section 104 subject to consideration of Part 2 of the RMA

209. We have concluded that the adverse effects of the proposal on the environment, in particular the effect on the loss of industrial land are insignificant. There are considerable and material positive effects of the application as set out above. Accordingly we have formed the view that there is substantial support for the proposal in terms of the actual and potential environmental effects of allowing the activity to establish in the location proposed under both the Operative District Plan and Plan Change 19. This is a material consideration in our overall assessment, subject to Part 2 of the RMA.

210. There are no other matters that would, in our analysis, militate against a grant of consent under either the Operative District Plan or PC19. Although we are cognisant that valid arguments have been advanced in relation to the integrity of PC19 should consent be granted, it is our view that these are not sufficient, when the reasons for the policy direction in Objective 10 are examined in the context of the evidence before us, to warrant refusal purely on the basis of plan integrity. We are satisfied that presently there are no alternative locations that could accommodate the proposed activity within the District.

211. We are satisfied that the proposal is largely consistent with the objectives and policies of the Operative District Plan.

212. With respect to the relevant objectives and policies of PC10 (DV) as amended by any final findings of the PC 10 (Interim Decision), it is plain that the proposal is in conflict with two of the key "use enabling" policies associated with Objective 10. It has been necessary to consider the extent to which this finding influences our overall broad judgement in this matter. It is plain that there is an inherent tension in PC19 (DV) between the effects based policies and the policies designed to protect certain uses, which must also be factored in to our overall assessment.

213. For the reasons set out above, we concluded that although the proposed activity is contrary to several of the key use-enabling policies, this particular proposal will not materially detract from the overall policy direction of PC19, which, we note, is yet to be finally determined by the Court. In forming this view, we recognise that there will be significant positive economic and social effects as a result of the development (which is consistent with Objective 1A), and that the community is presently underserved with this type of business. We have placed reliance on the opinion of all of the planning witnesses that the application is either consistent with or promotes both the effects based policies and the more generic objectives and policies for the zone, including those related to urban design and development, particularly in relation to individual buildings and the amenity expectations for industrial activities.

214. However, we note that our conclusion is necessarily finely balanced having regard to the specificity of the policy direction in PC19 (DV) in relation to Activity Area E1, which is arguably strengthened in focus by the Court's Interim Decision.

215. We have reviewed Mr Gardner-Hopkins' legal submissions, in which he urged us to decline consent *"based on the fact that each proposal is so contrary to fundamental objectives and policies of PC19 and contrary to the clear direction that the Environment Court has indicated that the final decision on PC19 will take"*. However, for the reasons set out above, although the proposal is in conflict with several of the policies contained in Objective 10, it is largely consistent with many of the others, including all of the effects based and some of the use-enabling policies within Objective 10. Further, we are mindful that the proposal finds support in the relevant objectives and policies as they apply to Activity Area E2, and that only a relatively small area of E1 is proposed to be utilised. We do not accept that the proposal is so contrary to the fundamental objectives and policies of PC19 when read as a whole that consent should be refused on this basis. It is arguable that had the Environment Court had in front of it the present evidence in relation to the CLNA and the lack of availability of suitable alternative locations, it is possible that the area zoned E1 would have catered for these kinds of activities, which are not provided for anywhere in the District and for which there is an obvious demand.

216. In reaching our overall decision, we are not prepared to give Policies 10.5 and 10.11 an effective right of veto in reaching our overall conclusion in the absence of any compelling evidence or other sound reasons under PC19 (DV).

217. Accordingly having considered the matters provided for in section 104(1), we have formed the view that the application should prima facie be granted (with conditions) subject to our consideration of Part 2 under both the Operative District Plan and PC19 (DV) as amended by any final findings of the PC19 (Interim Decision). As consent is granted (subject to Part 2) under both plans, there is no need to address the question of weight.

Part 2 of the RMA

218. It is well established that Part 2 is the "engine room" of the RMA and that, when considering an application for resource consent, a decision-maker must exercise his or her broad judgment with respect to the provisions of Part 2. It was put to us by counsel for both the Applicant and QCL that consideration of the purpose and principles set out in Part 2 is fundamentally important to our determination of this application.

219. The purpose of the RMA in section 5 is to promote the sustainable management of natural and physical resources. In assessing an application, a broad judgement as to whether or not a proposal promotes the sustainable management of natural and physical resources is required. Such a judgement allows for a comparison of conflicting considerations and the scale or degree of those conflicting considerations and their relative significance in the final outcome. As will be apparent from our decision, there are a number of conflicting considerations that we must weigh in carrying out the required balancing exercise.

220. Overall, the purpose of the RMA is *enabling* and we accept that people should be able to provide for their needs unless the matters in 5(a) to (c) cannot be appropriately remedied, mitigated or avoided.

221. Of fundamental importance in our analysis has been consideration of the adverse effect of the loss of industrial land. We have concluded, based on the evidence before us, that in both quantitative and qualitative terms this loss is insignificant. The amount of industrial land that has been set aside under PC19 for industrial and yard-based activities is, on the basis of Mr Colegrave's unchallenged evidence (supported by Mr Taylor), excessive and if "set in concrete" is likely to impact negatively on the economic growth of the region. In forming this view we are cognisant that the kinds of uses mandated by PC19 for the E1 and D Activity Areas are not only in lesser demand in this particular community, but also of considerably lower potential economic value in terms of their contribution to the local economy and its growth.

222. Notwithstanding our analysis, we are obliged to apply the law and, accordingly, to give proper consideration and weight and to the decisions of the Environment Court and the High Court in forming our broad judgement. However, we must do so in the context of the additional evidence before us that was not before those authorities. Although the objectives and policies relating to Activity Area E1 in Plan Change 19 were plainly predicated on the need to "protect" areas for traditional forms of industrial activity, the fundamental basis for this assertion has been seriously challenged by the evidence of Mr Colegrave - to the extent that the very rigid policy direction and associated restrictive use policies contained in Objective 10 of PC19 (DV) are, in our assessment, at serious risk of curtailing economic development in this District. Such an impact would, prima facie, be contrary to the principles of sustainable management.

223. Taking an overall balanced approach, it is plain that the application will greatly assist the community to achieve its social and economic needs. The significant positive effects of the proposal have been discussed previously in this decision. The large number of submissions received from the general public in support of the application, which in the main attest to these positive effects, lend support to the thrust of the expert evidence.

224. As previously discussed, we are satisfied that there are no adverse effects on the environment, including the potential to impact upon or to compromise the use of industrial land, that are significant in this respect. The proposed development has, on the contrary, been conscientiously and thoughtfully designed to be respectful of the surrounding environment. We are satisfied, based on the evidence before us, that the development will deliver a high quality urban outcome and provide an attractive frontage to what will become a main arterial route in and out of Queenstown.

225. On the evidence before us, there are no viable alternative sites that could accommodate this particular activity; accordingly, if this application fails, the community will in all probability be denied the obvious benefits.

226. That then leaves the issue of the policy direction established in PC19 and the prescriptive methods that PC19 has adopted to require the preservation of land for very narrow industrial uses in Activity Areas E1 and D. As a general proposition, land use is subject to technology, innovation and change, and prescriptive planning rules that are anchored in past assessments of future demand (whether flawed or not) may result in land that has been reserved for activities for which there is a limited prospect of growth remaining underutilised for the foreseeable future.

227. From the evidence before us, it is plain that since the 2006 CLNA was conducted (which was prior to the 2008 Global Financial Crisis), there have been a number of important new influences in land use as a response to the changing economic environment, particularly in respect of commercial and industrial land.

228. Large format retail activities, which are largely a product of globalisation, have, in nearly all other parts of the country, become well established in industrial or light industrial/commercial zones. There is no evidence that the influence of large format retail on industrial areas has been adverse; on the contrary, their establishment is contributing positively to the social and economic needs of the communities that they serve.

229. Areas of land are, in other districts, also being set aside or rezoned to accommodate commercial activities that have high economic value, such as technology parks and innovation hubs (for which we can see no specific provision in the current Operative District Plan or in PC19). Accordingly, it would appear to us that the policy direction strongly encapsulated by PC19 in relation to Activity Areas E1 and D, and which was largely driven by the conclusions of the CLNA, is potentially out of date. Perhaps this is not surprising given that the policies appear to have been premised on fundamentally flawed assumptions in terms of the forecast demand for land for the reserved uses and the importance of those activities to the local economy. Notwithstanding the divergent views on the importance of traditional industrial activities to this District, the unchallenged evidence is that the area set aside under activity areas E1 and D is materially in excess of the forecast need for these activities for the next 100 years.

230. For us to decline consent on the basis of the proposed PC19 Objective 10 "use-enabling" policies, in the face of the substantial body of evidence in support of large format retail activities and, indeed, their overall consistency with the majority of the objectives and policies relating to the E1 and E2 Activity Areas (which cannot be ignored) would be inappropriate. As Mr Cubitt stated in his evidence, planning is often "backwards looking" and care needs to be taken when determining applications in the face of a very rigid planning direction fixed at a point in time that may not be fully commensurate with evolving future needs. It is well recognised that restrictive measures that seek to protect certain activities can lead to inefficiencies in resource allocation in the face of changing economic and community needs. To fail to take this into account would be tantamount to ignoring the purpose of the RMA.

231. In summary, we find that the proposal will promote economic growth in the Queenstown District and will allow the community to provide for its social and economic needs. We are satisfied that the matters set out in section 5(a) to (c) are adequately provided for. The activity is ideally suited to industrial or semi industrial business land near to arterial or collector roads and, given the surplus of such land that has been zoned (including the Glenda Drive Industrial Zone, the Queenstown Airport designation and the Queenstown Airport Mixed Use Zone), the land set aside in Activity Areas E1 and D under the Structure Plan will not be impacted in any significant way by granting consent to this proposal.

Decision

232. The application is **granted** subject to the following conditions of consent pursuant to sections 104 and 104B of the Resource Management Act 1991.

233. Pursuant to section 113 of the Act, the reasons for this decision are:

(a) In terms of section 104(1)(a) of the Act, the actual and potential effects of the proposal on the environment will, on balance, be acceptable. Any potential adverse effects, particularly in relation to the loss of industrial land, are insignificant. There are substantial positive effects arising from the application that add weight to our assessment;

(b) In terms of section 104(1)(b) of the Act, although the proposal is in conflict with several of the use-enabling policies contained in PC19 (DV), we find that, on balance, it is acceptable for the reasons set out above. In particular, the proposal is consistent with Objective 1A of the Environment Court's Interim Decision, which has legal force. Although the proposal is contrary to two policies which set a strong policy direction for Activity Area E1, we are not persuaded that the application should be declined purely on this basis; and

(c) In terms of section 104(1)(c) of the Act, other relevant matters have been considered in our determination of the application.

234. Overall, we find the proposal to be consistent with Part 2 of the Act in that it represents sustainable management of the natural and physical resources. The proposed development will provide for the economic and social benefit of not only the Applicant but also of the District without impacting in any significant way on the remaining land that is available for industrial use. The activity is highly suited to the proposed location within Activity Areas E1 and E2, and we are satisfied that there are currently no other locations within the District that could accommodate the proposed development.

235. We have concluded that the development will promote economic growth and, notwithstanding that it is prima facie inconsistent with the policy direction of PC19 (Interim Decision) in relation to Activity Areas E1 and E2, which we note is not yet settled, this is not, in our opinion, a sufficient reason to decline consent in the context of the evidence before us.

Conditions

236. Pursuant to section 108 of the Act, this consent is subject to the following conditions that had been agreed between the Reporting Officer and the Applicant, with the exception of the amendments to the branding and signage conditions required by the Commission. The full suite of conditions is set out as follows:

General Conditions

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

   (a) Location Plan, Sheet No. SK01, Revision A, dated August 2013, McCoy and Wixon Architects;

   a. Site Plan Sheet No. SK02, Revision B, dated August 2013, McCoy and Wixon Architects;

   b. Sun Shading Sheet No. SK03a, SK03b, SK03c, SK03d, SK03e, dated April 2012 McCoy and Wixon Architects;

   c. Ground Floor Plan Sheet No. SK04, Revision A, dated August 2013, McCoy and Wixon Architects;

   d. Roof Plan Sheet No. SK05 dated August 2013, McCoy and Wixon Architects;

   e. North West and North East Elevations Sheet No. SK06a, Revision A, dated August 2013, McCoy and Wixon Architects;

   f. South East and South West Elevations Sheet No. SK07a, Revision A, dated August 2013, McCoy and Wixon Architects;

   g. Elevations – Colours, Materials Sheet No. SK08a, Revision A, dated August 2013, McCoy and Wixon Architects;

   h. Fuel Station Pylon Sign Sheet No. SK09a, Revision A, dated August 2013, McCoy and Wixon Architects;

   i. Section Through Main Entry Sheet No. SK10 dated April 2012, McCoy and Wixon Architects;

   j. Proposed Site Cut Fill Levels Sheet No. SK2-0 April 2011, Airey Consultants Limited;

   k. Proposed Site Cross Sections Sheet No. SK3-0 April 2011, Airey Consultants Limited;

   l. Wakatipu Pak N Save - Landscape Plan, Sheet 7, Rough & Milne Landscape Architects.

   m. Wakatipu Pak N Save - Elevations, sheet 8, Rough & Milne Landscape Architects;

   n. Traffic Design Group – Wakatipu Pak n Save, Interim Layout & Right of Way, dated August 2013;

   o. Traffic Design Group – Wakatipu Pak n Save, Proposed Road Network, dated August 2013.

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

2. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991 and shall pay to Council an initial fee of $100.

Engineering Conditions

Earthworks

3. No earthworks shall commence on site until engineering approval has been granted from the consent authority for all infrastructure associated with the underlying subdivision.

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

<u>To be completed prior to the commencement of any works on-site</u>

5. Prior to commencing any work on the site the consent holder shall install a construction vehicle crossing, which all construction traffic shall use to enter and exit the site. The minimum standard for this crossing shall be a minimum compacted depth of 150mm AP40 metal that extends 6m into the site. Where Council roading network has been extended to the boundary of the site the developer shall install wooden planks or similar shall to provide protect the footpath and kerb from damage caused by construction traffic

movements, in accordance with "*A Guide to Earthworks in the Queenstown Lakes District*" brochure, prepared by the Council.

6. Prior to the commencement of any works on the land being developed the consent holder shall provide to the Principal Engineer at QLDC for review, design plans and details as are considered by Council to be both necessary and adequate to address the following:

    a. Provision of a site management plan including as a minimum:

        i. Temporary water supply details and measures proposed to control and/or mitigate any dust.

        ii. Measures to control any silt run-off and sedimentation that may occur.

        iii. Mitigation and monitoring of any vibration effects from fill compaction.

        (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).

    b. Provision of a temporary traffic management plan including as a minimum:

        i. Details relating to construction crossings and impact of construction traffic on surround roading network.

        ii. Disposal areas for waste soil/rock material and any associated haul routes.

        iii. Location of contractor parking for duration of the development (within site or as approved in writing with others).

7. A Temporary Traffic Management Plan with details on construction crossings and the impact of the construction traffic on the surrounding roading network including the State Highway 6 shall be completed and submitted to the NZ Transport Agency's network management consultants, Opus International Consultants of Alexandra, at least seven days prior to any work commencing on the land being developed.

<u>To be monitored throughout earthworks</u>

8. The consent holder shall implement 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 their expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.

9. No earthworks, temporary or permanent, are to breach the boundaries of the site.

<u>On completion of earthworks</u>

10. On the completion of the earthworks a suitably qualified engineer experienced in soils investigations shall provide certification, in accordance with NZS 4431:1989, for all areas of fill within the site on which buildings are to be founded (if any).

11. Site management measures shall remain in place until all earthworked/exposed areas have been top-soiled and grassed/revegetated or otherwise permanently stabilised following completion of earthworks.

12. On completion of the earthworks, the consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

Advice Note

Prior approval from Council's Three Waters Manager and use of a backflow prevention device will be required to prevent contamination of Council's potable water supply if this water supply is to be utilised for dust suppression during earthworks.

Infrastructure

13. No work shall commence on the site until the Resource Consent for the underlying subdivision has been issued by Council together with the approval by the Principal Engineer at QLDC of the Engineering Plans for the subdivision.

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

15. The building will not be issued with a Certificate of Public Use or a Code Compliance Certificate both in terms of the Building Act 2004 until the issue by Council of a 224c Certificate under the Resource Management Act 1991 for the underlying subdivision.

16. If the existing water race running through the site operated by Arrow Irrigation remains in place at the time construction commences then the water race is to be relocated to a position outside of the building footprint and piped by way of concrete low pressure or PVC high pressure piping.

<u>To be completed prior to the commencement of any works on-site</u>

17. The owner of the land being developed shall provide a letter to the Principal Engineer at QLDC 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 1.4 and 1.5 of NZS4404:2004 "Land Development and Subdivision Engineering", in relation to this development.

18. Prior to the commencement of any works on the land being developed the consent holder shall provide to the Principal Engineer at QLDC or other appointed person, for review and certification, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition (14), to detail the following engineering works required:

    a. The provision of a water supply to the development in accordance with the Airey Consultants Ltd infrastructure report dated February 2011. This shall include a bulk flow meter with backflow prevention. The costs of the connection shall be borne by the consent holder.

    b. The provision of a foul sewer connection to the development in accordance with Council standards. The costs of the connection shall be borne by the consent holder.

    c. *Either*

       The provision of a connection from all impervious areas in the development to primary soakage to ground designed in accordance with NZS4404:2010 and NZBC E1/VM1. Soakage design shall include site-specific confirmation of soil permeability and the provision of contaminant interceptors on all parking and loading area catchpits. The design may include provision for onsite roof water storage for reuse as irrigation supply. Where soakage to ground is utilised the consent holder shall provide an operation and maintenance manual for approval by Council to ensure the on-going performance of the soakage system.

       or

       The connection from all impervious areas in the development to the Council reticulated stormwater disposal system. The costs of the connection shall be borne by the consent holder. This shall include the provision of contaminant interceptors on all parking and loading area catchpits.

    d. The provision of a fire fighting sprinkler system for the building in accordance with the New Zealand standard for automatic sprinkler systems NZS 4541:2003.

    e. The provision of sealed commercial vehicle crossings that shall be constructed to the development to Council's standards.

    f. The provision of road marking and signage in accordance with the Manual of Traffic Signs and Markings (MOTSAM).

    g. The construction and sealing of all vehicle manoeuvring and car parking areas to Council's standards. Parking and loading spaces shall be clearly and permanently marked out. This shall include a Safety Audit prepared by an independent professional Traffic Engineer and, within the design, resolution of all concerns raised by the audit to an extent accepted by the QLDC.

    h. The provision of cycle access and facilities that have been certified by the Council's Urban Designer as being in accordance with QLDC Cycle Facilities Guidelines (May 2009)

i. The provision of a bus stop and associated shelter on the north-eastern right-of-way that have been certified by the Council's Urban Designer as being in accordance with Council policies and guidelines.

j. The provision of access/parking lighting that have been certified by the Principal Planner at QLDC as being in accordance with Council's road lighting policies and standards, including the Southern Light lighting strategy. The purpose of this condition is to achieve the minimisation of light spill in general and the avoidance of light spill towards the State Highway.

k. Any road lighting installed on private roads/rights of way/access lots shall be privately maintained and all operating costs shall be the responsibility of the development/or lots serviced by the access road. Any private lights installed on private roads/rights of way/access lots shall be isolated from Council's lighting network circuits.

l. The provision of any specific fire fighting requirements associated with the refuelling service station.

To be completed when works finish and before occupation of building

19. On completion of all manoeuvring and parking areas associated with the development, a post construction safety audit shall be carried out by an independent traffic engineer and submitted to Council. Should the review recommend any further works required to achieve a safe traffic environment the consent holder shall have these works approved by Council's traffic engineer and implemented prior to opening the area to public use.

20. Prior to the occupation of the building, the consent holder shall complete the following:

a. The submission of 'as-built' plans and information required to detail all engineering works completed in relation to or in association with this development at the consent holder's cost. This information shall be formatted in accordance with Council's 'as-built' standards.

b. The completion and implementation of all works detailed in Condition (18) above.

c. The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

d. Written confirmation shall be provided from the electricity network supplier responsible for the area that provision of an adequate underground electricity supply has been made available to the development.

e. 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 development.

f. Where on-site stormwater soakage is utilised (if any) the consent holder shall provide evidence that the operations and maintenance manual approved under Condition 18(c) has been made available to any future tenant and/or site maintenance contractor.

Design Conditions

21. Local (within the Queenstown Lakes Area) schist stone shall be used as external cladding for areas of stone as identified on building elevations within drawings Wakatipu Pak n Save, Elevations – Colours and Materials, Sheet No. Sk08 dated August 2013.

22. The Pak N Save brand signage on the North West and South West Elevations of the building, the pylon signs and Fuel Station shall be displayed in accordance with Sheet No. SK06a, SK07a, SK08a and SK09a dated August 2013, McCoy and Wixon Architects. Sheet Nos. SK06a, SK07a, SK08a and SK09a dated August 2013 are attached and form part of this consent.

23. Despite condition 22 the pylon signs shall not exceed the average on site height of the perimeter trees bordering the Eastern Access Road and Road 2 identified on the landscape plan referenced Wakatipu Pak N Save - Landscape Plan, dated August 2013, Sheet 7, Rough & Milne Landscape Architects, or 8m, whichever is greater. No pylon signs may be erected on the site until perimeter trees are planted on the site and certified by Council and at that point the average height of planted trees will determine the allowable height of the pylon signs.

24. A 2 metre high chain-link fence shall be provided along the south-eastern boundary of the site, as identified on the Wakatipu Pak N Save - Landscape Plan, dated August 2013, Sheet, Rough & Milne Landscape Architects.

Lighting Condition

25. The consent holder shall, prior to the opening of the supermarket, provide to the Principal Planner at QLDC a statement from a suitably qualified and experienced lighting consultant confirming that all external lighting approved under Condition 18(j) has been established on the site and tested to confirm that the specifications, design and location of lighting minimises light spill, and in particular avoids light spill from the eight metre high car park lights towards SH6.

Landscaping Conditions

26. A detailed landscape plan shall be submitted to the Principal, Landscape Architecture at QLDC, for approval prior to construction beginning on site. The detailed landscape plan shall be in general accordance with the approved Landscape Plan referenced Wakatipu Pak N Save - Landscape Plan, Sheet 7, Rough & Milne Landscape Architects. The plan and supporting documents shall include the following:

    a. Planting of native trees such as Mountain Beech *Nothofagus solandri* var. *cliffortioides*, along the full frontage of the site to the Eastern Access Road.

    b. Detailing of the grade and height of perimeter trees to be planted to ensure the two pylon signs shall be adequately mitigated by planting of these trees to visually break down the scale of signage within the context of the street and views of the surrounding mountains. The signs shall not exceed the average height of the trees to be planted along the Eastern Access Road and Road 2.

    c. A detailed planting schedule shall be attached to the landscape plan to identify the grade of trees by height and calliper, and all landscape plants that are to visually soften the building bulk by grade, botanical name, quantity and spacings.

    d. Details of tree pit design, landscape irrigation, and tree protection measures from vehicles, pedestrians, and shopping trolleys.

    e. A palate of materials for the outdoor furniture and footpath treatment as identified on the Wakatipu Pak N Save - Landscape Plan, dated August 2013, Sheet 7, Rough & Milne Landscape Architects. Materials shall support the design intentions of Plan Change 19.

    f. A pedestrian access network that meets the intentions of Plan Change 19 including:

        i. adequately integrated with a resolved and approved pedestrian path network on adjacent streets.

        ii. that has an appropriate level of pedestrian priority throughout the car park and at vehicle entry points.

        iii. that is complementary to the street pedestrian path network in materials, layout and network connections that is direct, well connected, attractive and desirable for pedestrians to use.

    g. Landscaping within the site that is consistent and compatible with a resolved streetscape design within the proposal and on bordering streets.

    h. Landscape design responsive to an amended site layout plan that demonstrates the intentions of Plan Change 19 including effective street frontages and building design that supports:

        i. street activity

        ii. street amenity

        iii. crime prevention through environmental design (CPTED) principles including passive surveillance of bus stops within or adjacent to the proposed site and of the pedestrian plaza, interaction with the street.

    i. A landscape management plan identifying:

        i. landscape maintenance plan for the first three years of establishment from date of planting to ensure landscape planting is well established after three years, provides adequate coverage, plant health and vigour. This will include details of required irrigation.

        ii. on-going landscape maintenance to ensure all trees are maintained to reach their full height and form.

27. All hard and soft landscape works shall be carried out in accordance with the details approved under Condition 26 of the consent and to best practice standard. The planting shall be implemented prior to the operation of the supermarket or in accordance with a timetable agreed in writing with the Principal Landscape Architecture at QLDC. If any tree or plants are removed, die or become in the opinion of the Principal Landscape Architecture at QLDC seriously damaged or defective since planting they shall be replaced within the next available planting season in accordance with the approved landscape plan. If any tree shall die after the first three years then replacement trees shall be as follows:

    a. A Italian Alder, *Alnus cordata* to be planted at 5.0m height

    b. Liquidamba*r, Liquidamber styraciflua* to be planted at 5.0m height

    c. Mountain Beech, *Nothofagus solandri* var. *cliffortioides* to be planted at least 3m height

    d. All other trees to be planted at no less than 4m height.

Traffic Conditions

28. Until such time as the full length and width of the Eastern Access Road is constructed, the consent holder shall install a sign:

    a. On the corner of Road 2 and the Eastern Access Road which advises that southbound traffic is for 'supermarket access only';

    b. On the Eastern Access Road adjacent to the entrance to the supermarket which advises that the remainder of the road is 'no exit' and for 'service vehicles only'.

29. The carparks located on the north eastern side of the building adjacent to the Right of Way shall be identified for 'staff carparking purposes only'.

30. The store shall not be open to the public until the roads providing access to the site have been established, including the following roading improvements:

    a. The Glenda Drive / SH 6 intersection shall be reconfigured to a left hand turn-in only intersection; and

    b. A roundabout shall be installed at the Eastern Access Road/SH 6 intersection.

Hours of Operation Conditions

31. The trading hours of the proposed supermarket and fuel facility operations are to be between 7:00am to 12.00am (midnight), seven days a week.

Noise Conditions

32. The consent holder shall ensure that the following noise limits are not exceeded:

    a. Noise levels measured at or within, the notional boundary of any residential unit in the Rural Zone, other than residential units on the same site as the activity when, measured in accordance with NZS 6801:2008 and assessed in accordance with NZS6802:2008 shall not exceed:

    Daytime (0800 to 2200 hrs) 50 dB $L_{Aeq\ 15\ minutes}$
    Night time (2200 to 0800 hrs) 40 dB $L_{Aeq\ 15\ minutes}$
    Night time (2200 to 0800 hrs) 70 dB L_{Amax}

    b. Noise levels measured within the Activity Areas on the western side of the Eastern Access Road when measured in accordance with NZS 6801:2008 and assessed in accordance with NZS6802:2008 shall not exceed:

    Daytime (0800 to 2200 hrs) 65 dB $L_{Aeq\ 15\ minutes}$
    Night time (2200 to 0800 hrs) 65 dB $L_{Aeq\ 15\ minutes}$
    Night time (2200 to 0800 hrs) 70 dB L_{Amax} .

33. The consent holder shall ensure that all temporary construction activities shall be designed and carried out to ensure that the noise from the work complies with the New Zealand Constriction Standard NZ6803:

1999 “Acoustics – Construction Noise” at all times at 1 metre from the most exposed faced of any existing occupied building.

Review

34. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:

    a. To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.

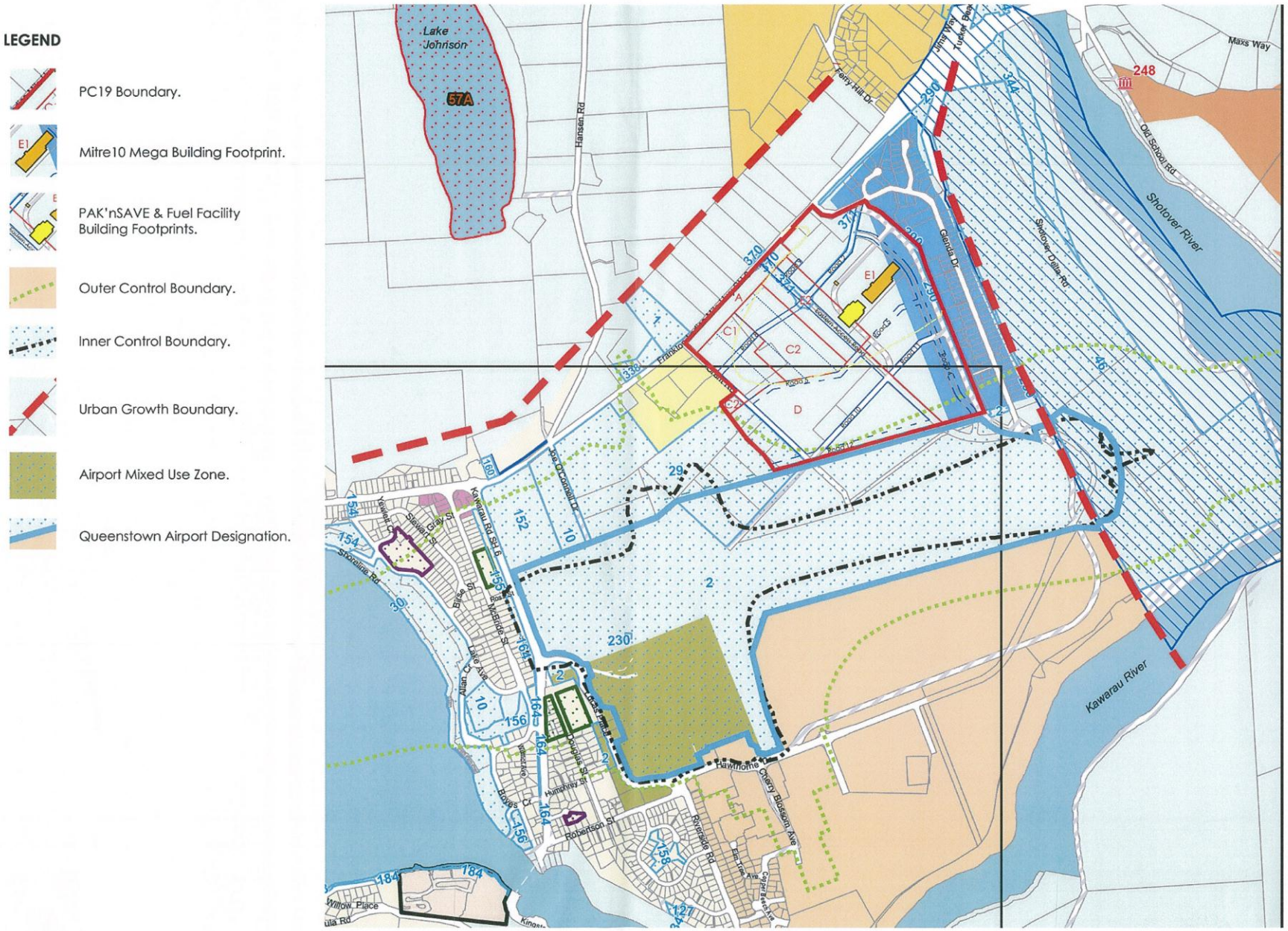
    b. To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.

    c. To avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

Jane Taylor
for the Commission

Date: 11 April 2013

APPENDIX 1 - Overlay Plan



ADDENDUM TO DECISION RM130524

BEFORE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an application by **Foodstuffs (South Island) Limited** for resource consent for the construction and operation of a Pak 'N Save bulk food warehouse and fuel facility, with associated earthworks, landscaping, signage and car-parking at Frankton, Queenstown
Council file:	RM130524

ADDENDUM TO DECISION OF COMMISSIONERS APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL

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11 April 2014

Commissioners:

D Jane Taylor (Queenstown)
David Clarke (Queenstown)

Significance of the Second Interim Decision of the Environment Court in relation to the decision of the Commission in RM130524

1. Foodstuffs (South Island) Limited ("the Applicant") has applied for resource consent to construct and operate a Pak "N Save bulk food warehouse and fuel facility, with associated earthworks, landscaping, signage and car parking at Frankton, Queenstown.

2. The hearing for RM130524 was formally closed on 28 February 2014. On 14 March 2014 the Environment Court issued its Second Interim Decision in *Queenstown Airport Corporation Limited v Queenstown Lakes District Council*[39] in relation to Plan Change 19. This decision approved the resource management issues and objectives and policies for PC19, except for Activity Area A, Activity Area E2 and the Outline Development Plans, which are to follow in a later decision.[40]

3. As the Second Interim Decision was issued after the hearing in RM130524 was closed, we were unable to seek further expert planning evidence with regard to the implications of this judgment in relation to Plan Change 19 (DV), as modified by any final findings of the first Interim Decision of the Court. Accordingly, we did not take the final findings of Second Interim Decision formally into account in our determination of RM130524.

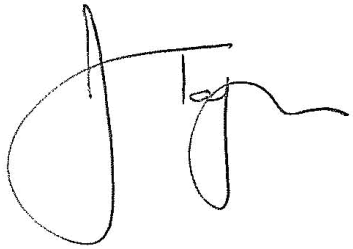
4. However, although we do not consider that it was necessary for us to do so, we have had regard to the judgment of the Court in the Second Interim Decision, in particular the objectives and policies that relate to Activity Area E1, and considered whether the final findings would materially affect our decision in RM130524.

5. Objective 10 and its associated policies appear to strengthen the policy direction of PC19 in relation to the protecting of this area for "industrial and service activities" by, inter alia excluding retailing except where ancillary to and minimal in comparison with the use of the site for industrial or service activities (Policy 10.3) and excluding activities that conflict with the intended purpose of the Activity Area through the generation of reverse sensitivity effects or will result in the reduction of land available for industrial and service activities as defined in the Operative District Plan (Policy 10.4).

6. We note that that proposed new Objective 9 and associated policies, which are intended to apply to the E2 Activity Area, are not yet final and therefore would only be relevant to our consideration of other matters in section 104(1)(c).

[39] [2014] NZEnvC 54 (the "Second Interim Decision").
[40] Ibid, Preamble A.

7. Notwithstanding the strengthening of the policy direction of PC19 in Policies 10.3 and 10.4, we have formed the view that, based on the compelling evidence before us in relation to the grossly exaggerated demand for industrial land in this District and the absence of any viable alternative sites for the proposal, it is more likely than not that our analysis and overall conclusions would remain unchanged. We note, however, that this is a very finely balanced decision that is largely grounded in our consideration of Part 2 of the RMA and the positive contribution that the proposal will make to the economic development of the District.



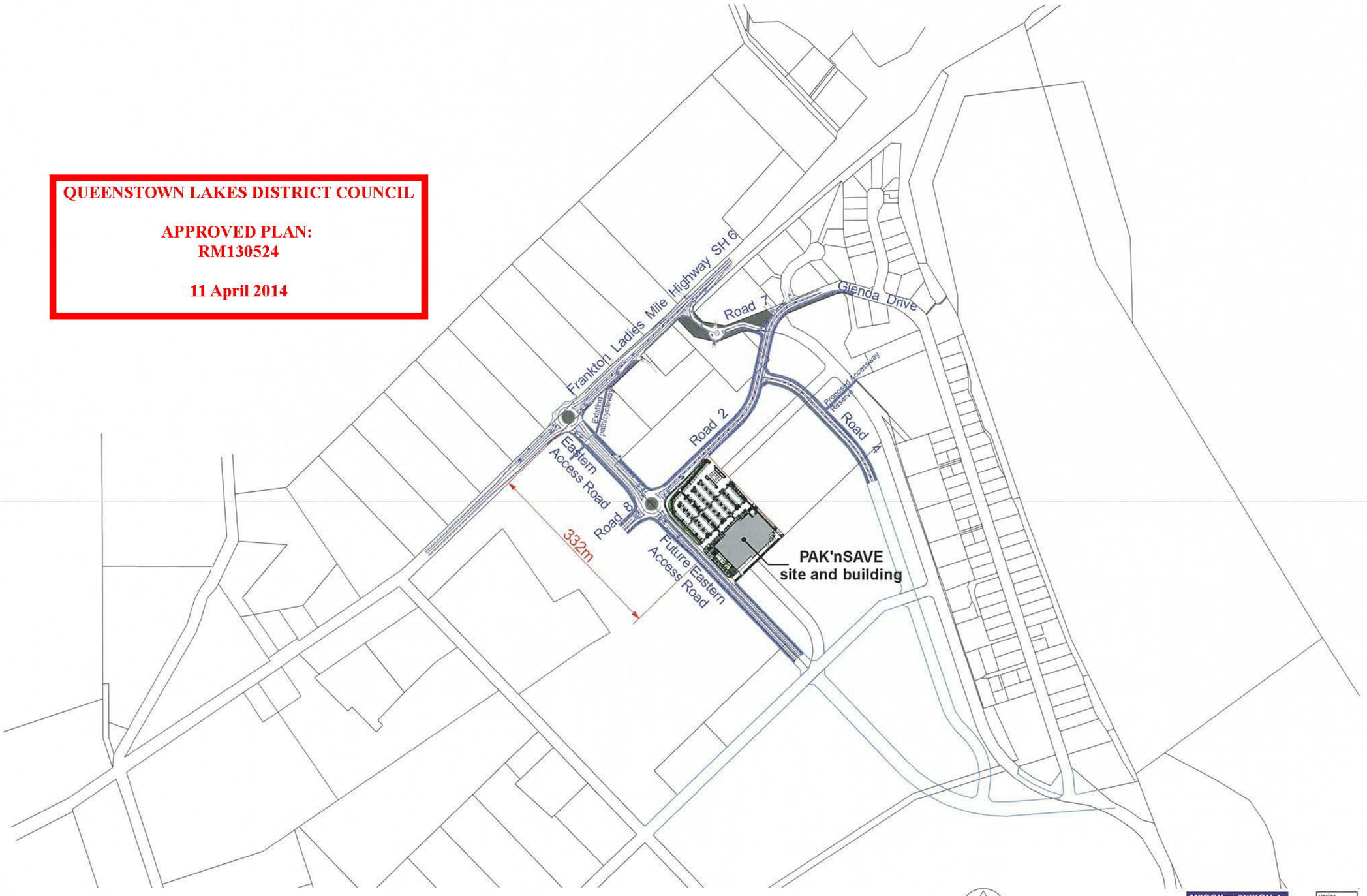
Jane Taylor
for the Commission

Date: 11 April 2014

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014



FOODSTUFFS South Island Limited

WAKATIPU PAK'nSAVE

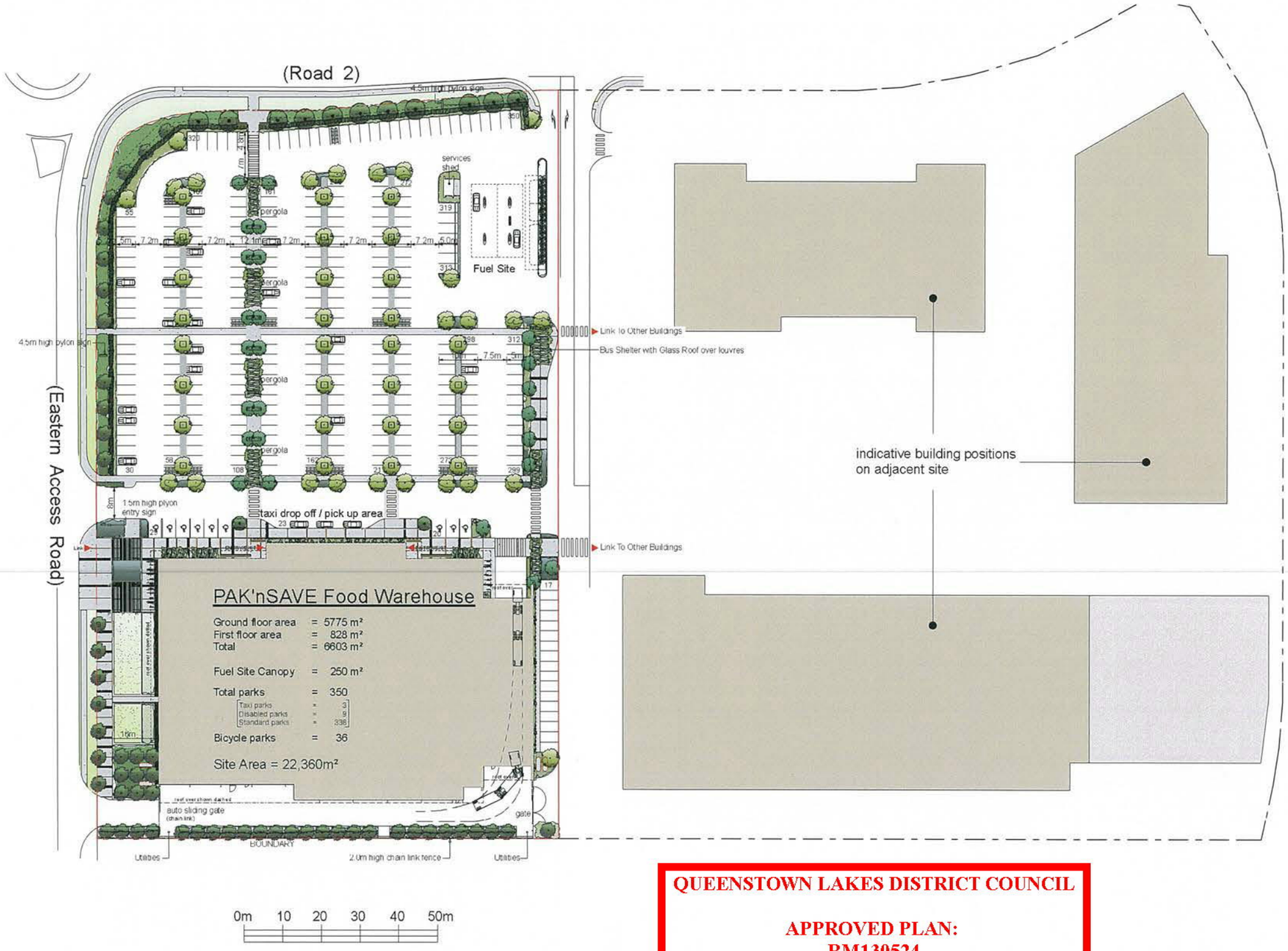
Location Plan - Relation to SH6

N

August 2013

McCOY and WIXON ARCHITECTS

Sk01



QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014

FOODSTUFFS South Island Limited

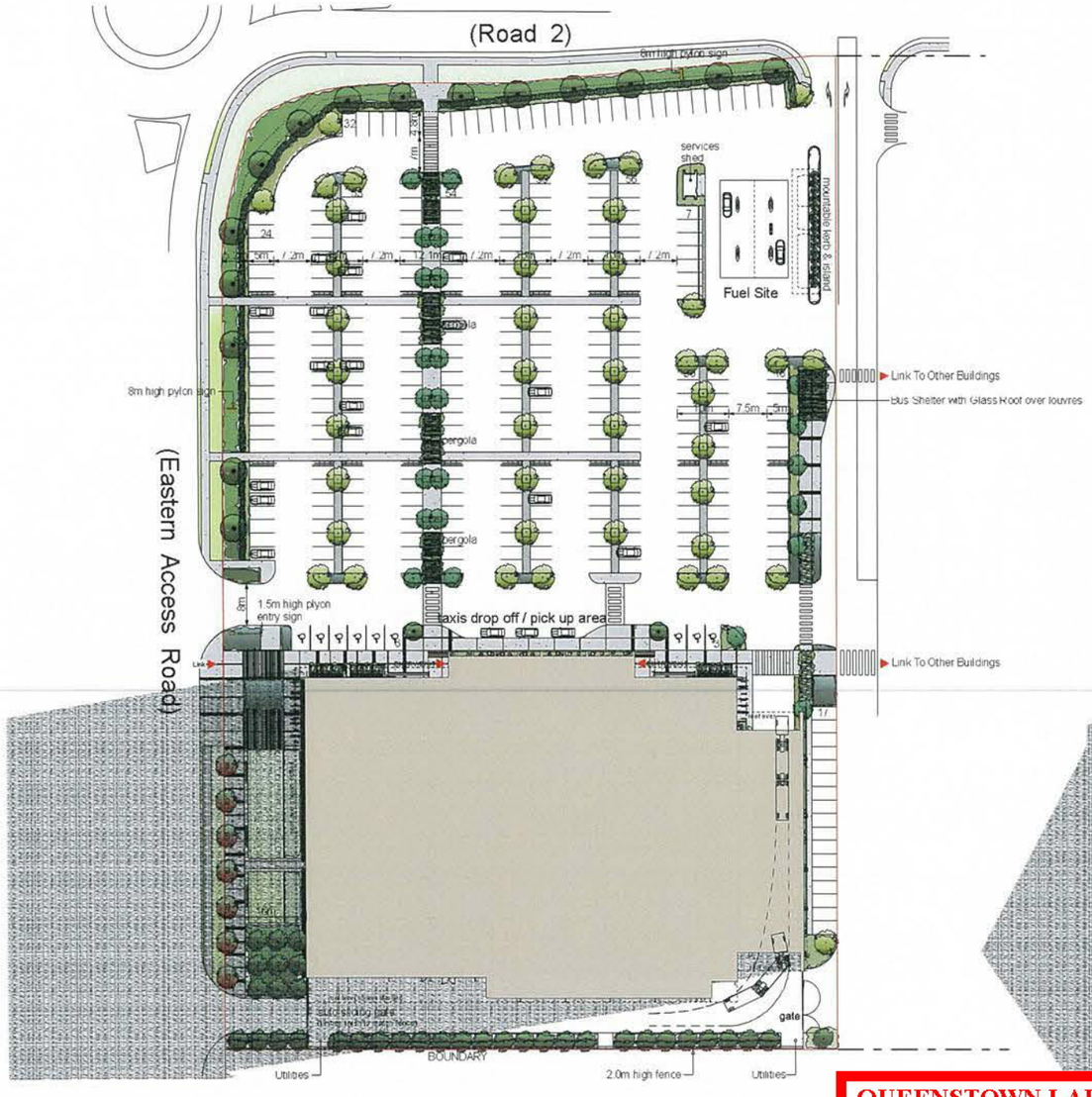
WAKATIPU PAK'nSAVE

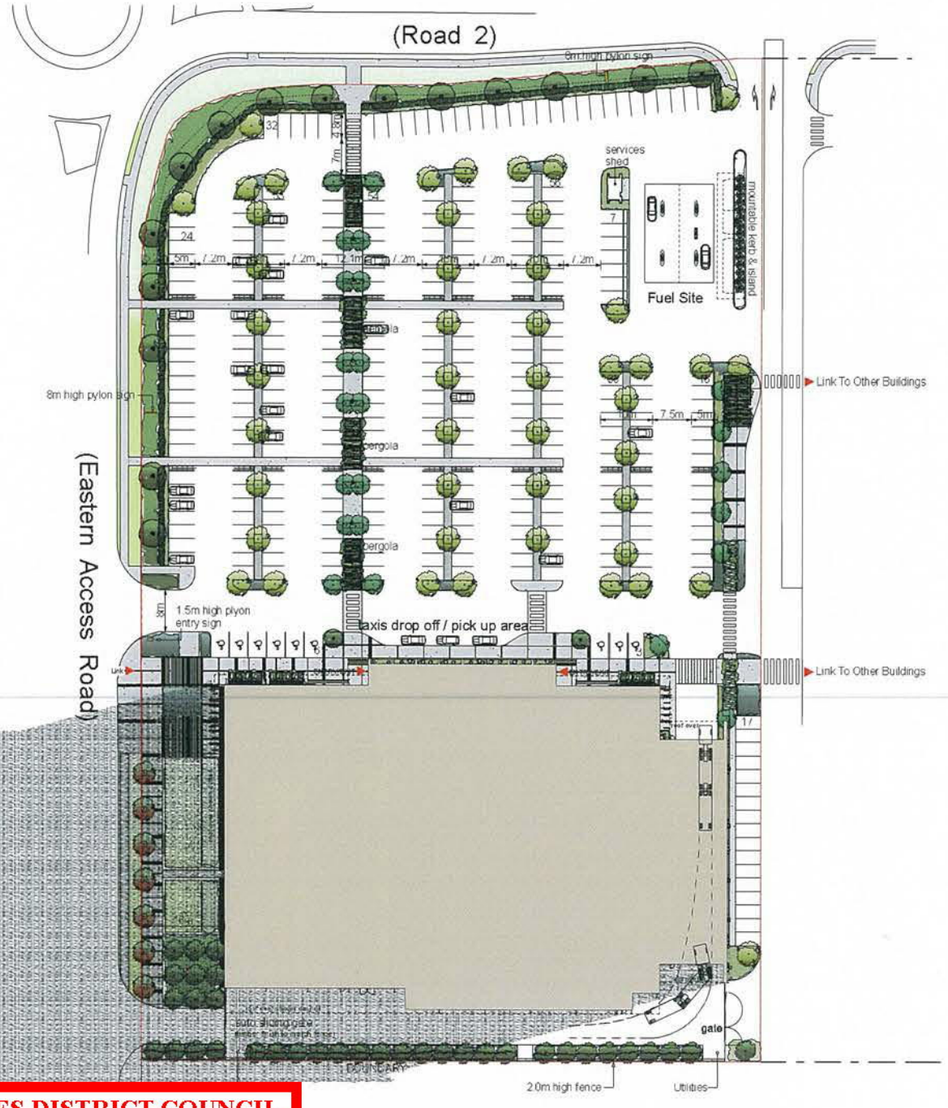
Site Plan
scale 1:1000 @ A3

August 2013

McCOY and WIXON ARCHITECTS

Sk02
revision b





QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014

FOODSTUFFS

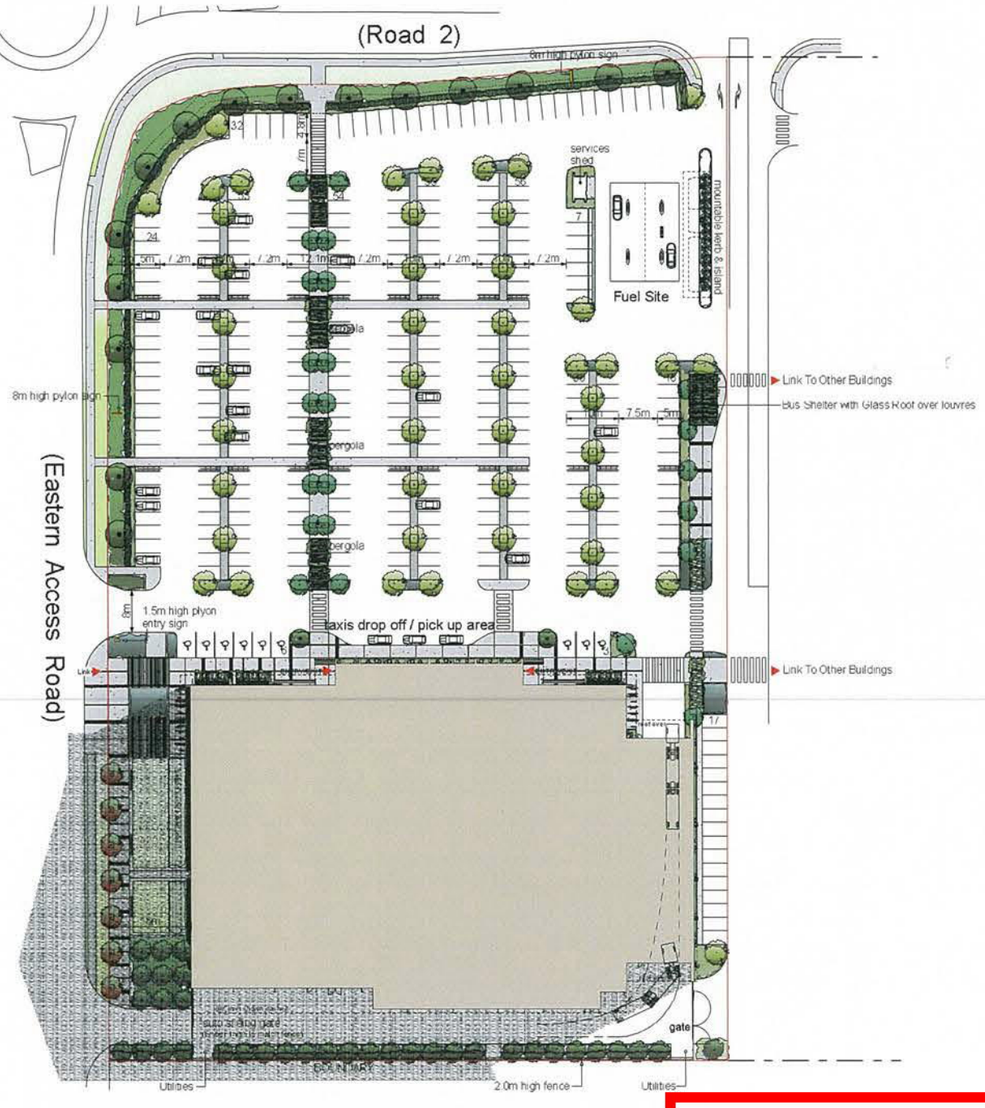
WAKATIPU PAK'nSAVE

Sun Shading
scale 1:1000 @ A3

April 2012

McCOY and WIXON ARCHITECTS

Sk03a



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0m 10 20 30 40 50m

shadow: June 21st 11:30am

0m 10 20 30 40 50m

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014

FOODSTUFFS

WAKATIPU PAK'nSAVE

Sun Shading

scale 1:1000 @ A3

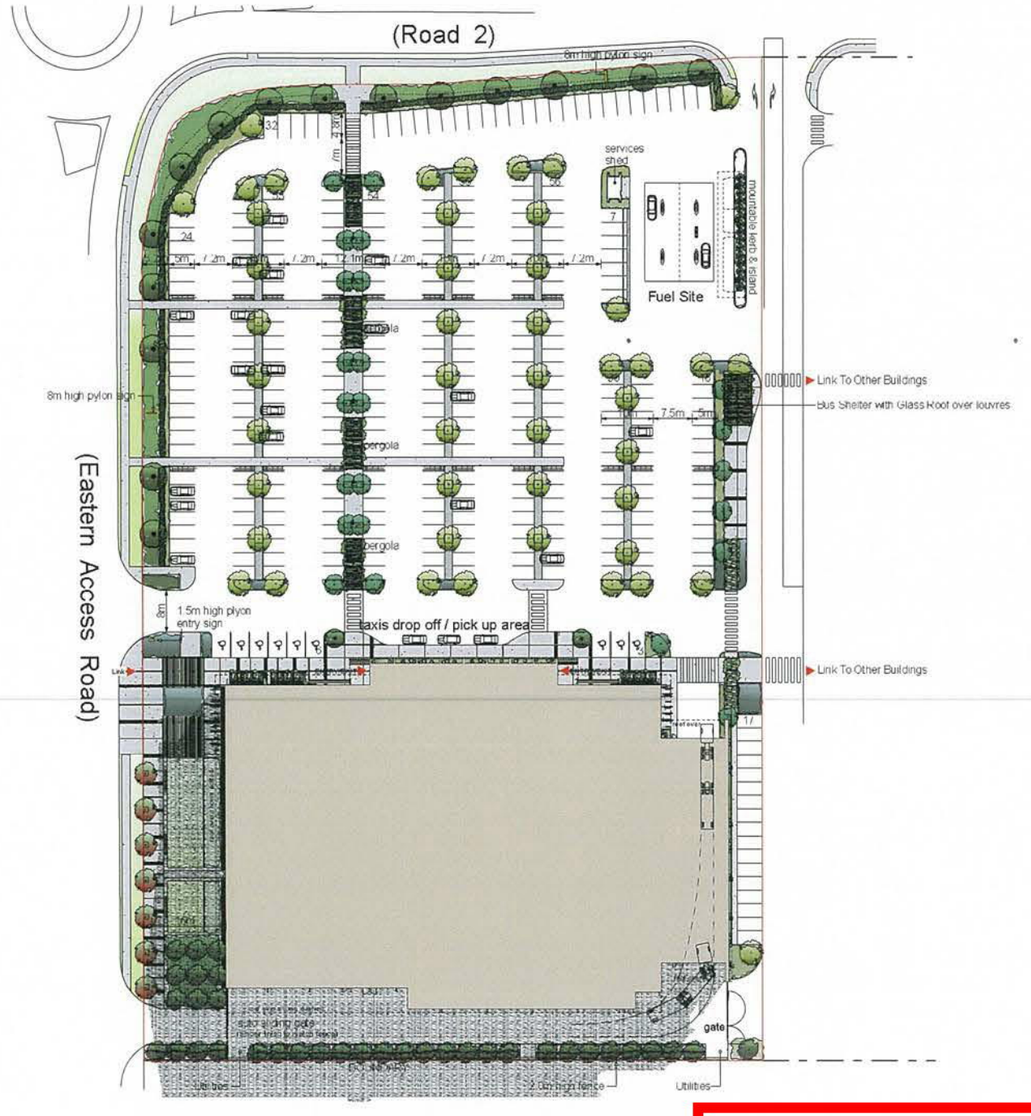
April 2012

McCOYandWIXON ARCHITECTS

sheet no Sk03b

revision

revised Wednesday, 4 April 2012
printed Wednesday, 4 April 2012 3:31 p.m.



QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014

FOODSTUFFS

WAKATIPU PAK'nSAVE

Sun Shading

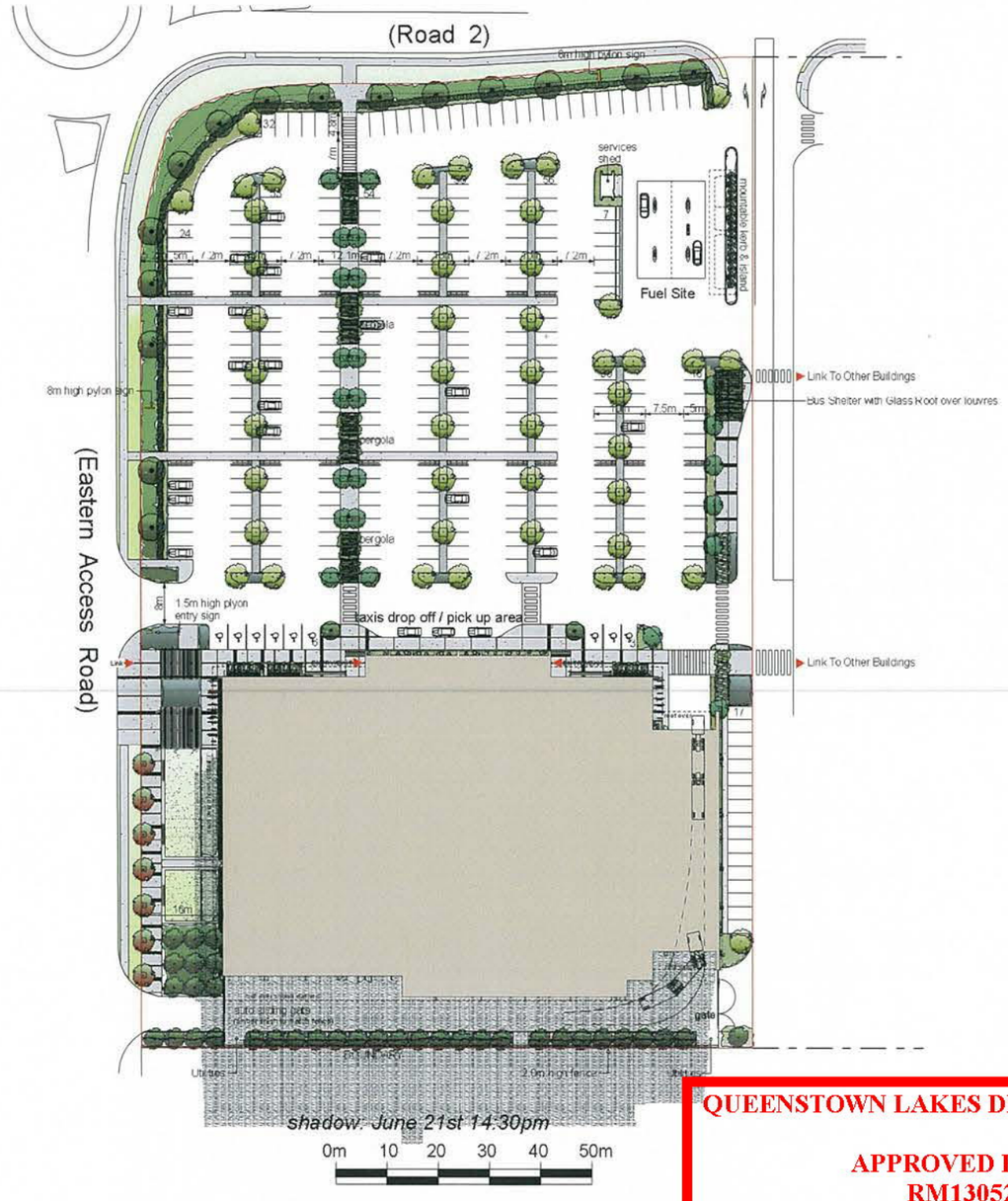
scale 1:1000 @ A3

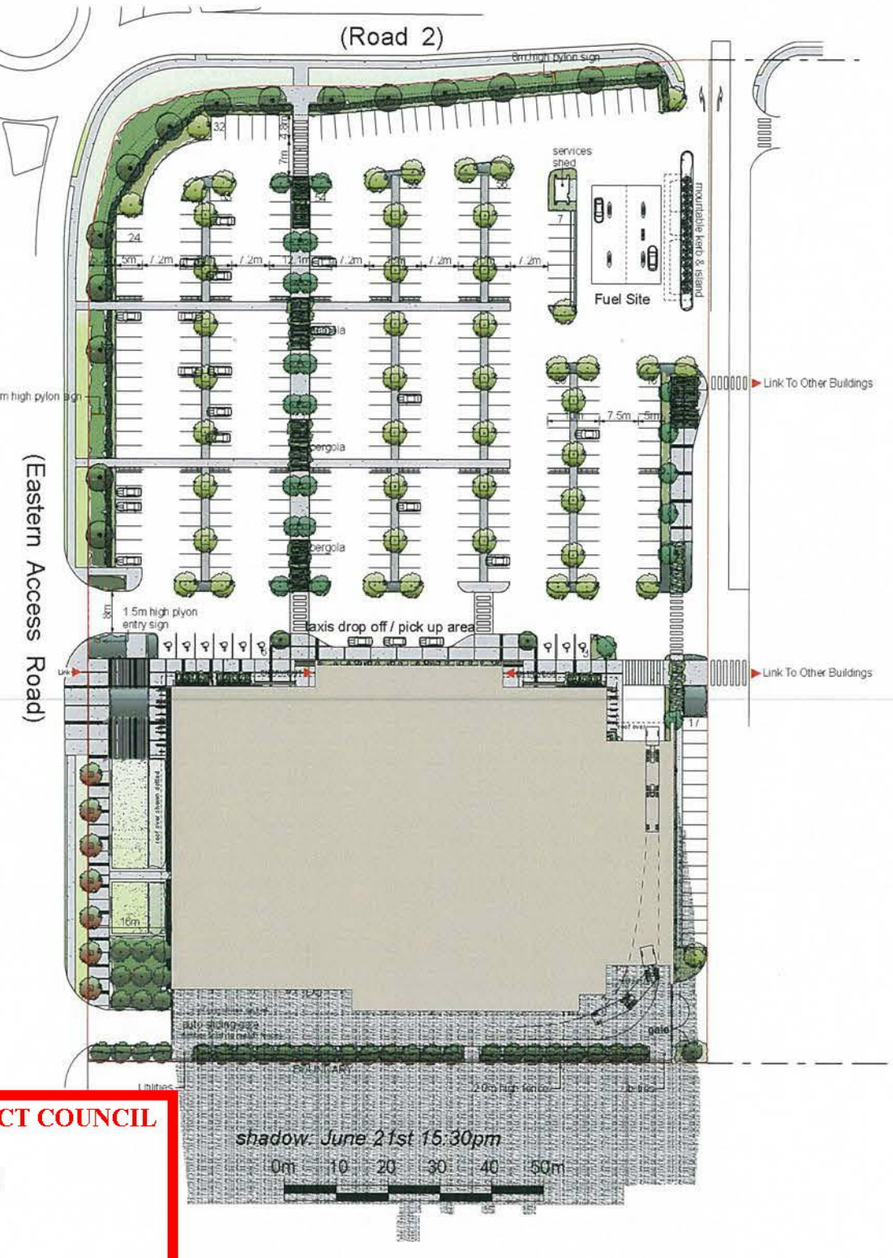
April 2012

McCOYandWIXON ARCHITECTS

Sk03c

revised Wednesday, 4 April 2012
printed Wednesday, 4 April 2012 3:31 p.m.





QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014

FOODSTUFFS

WAKATIPU PAK'nSAVE

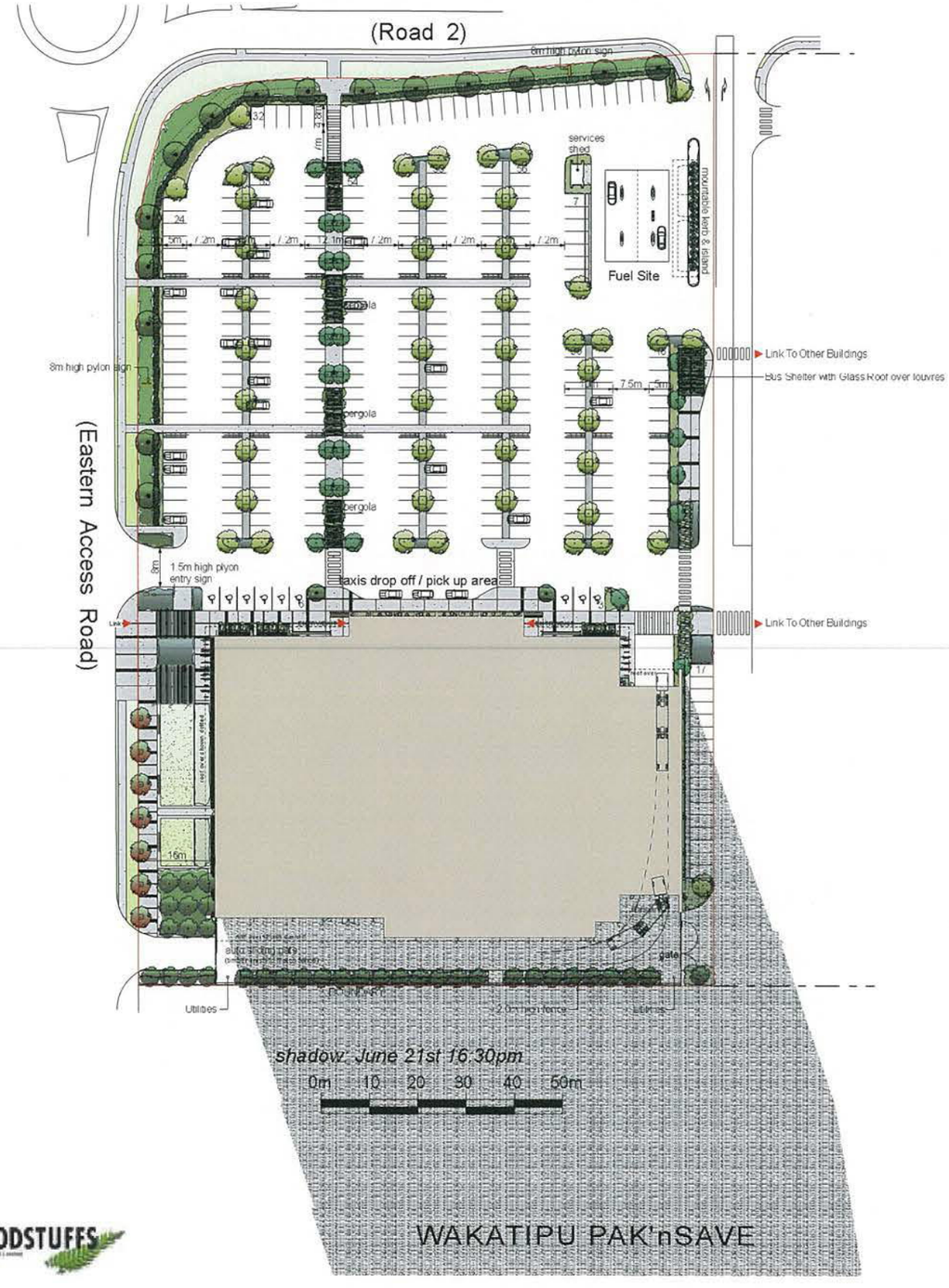
Sun Shading

scale 1:1000 @ A3

April 2012

McCOYandWIXON ARCHITECTS

Sk03d



QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014

FOODSTUFFS

Sun Shading
scale 1:1000 @ A3

April 2012

McCOYandWIXON ARCHITECTS

Sk03e
revision

revised Wednesday, 4 April 2012
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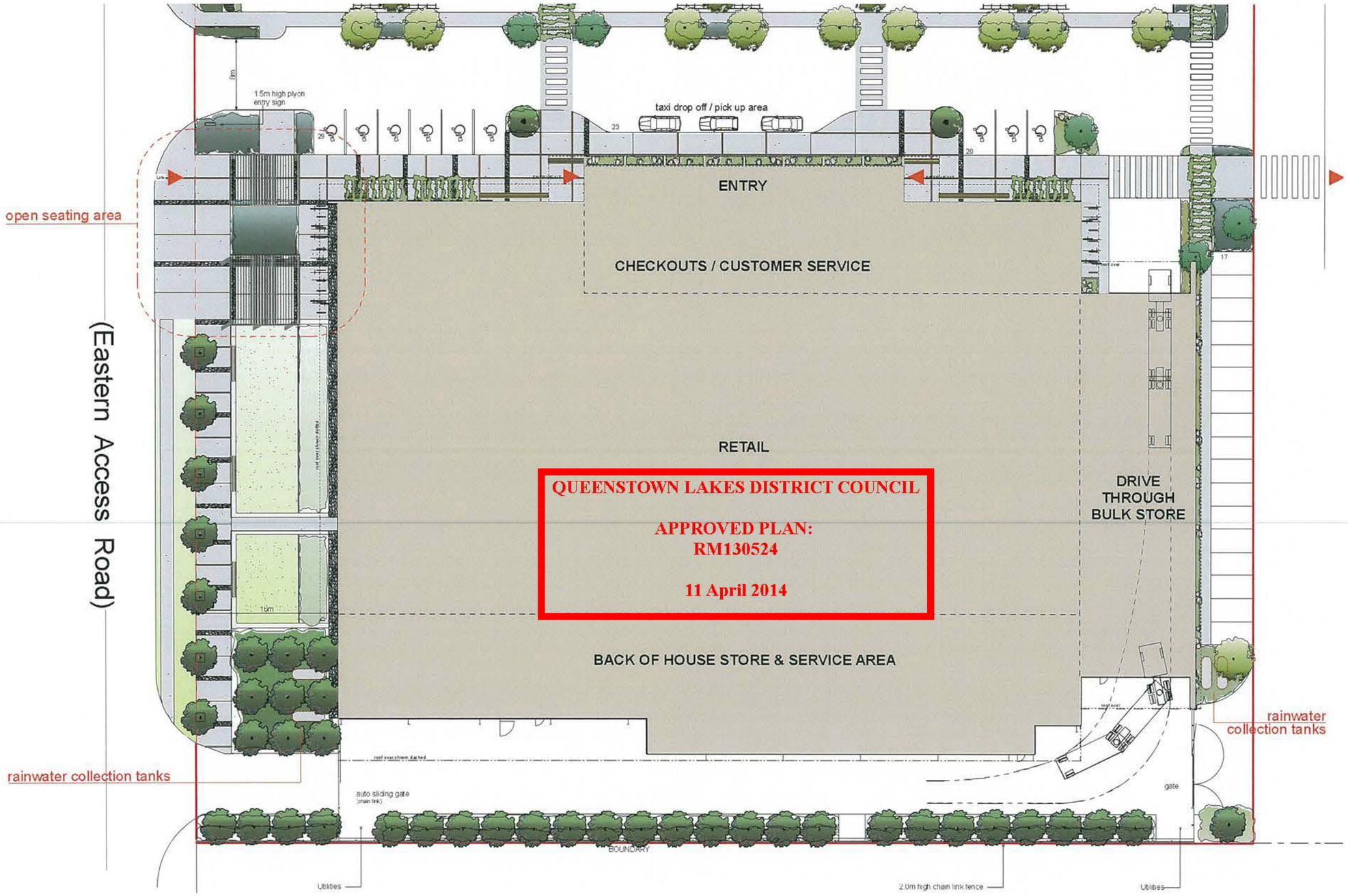


FOODSTUFFS South Island Limited

WAKATIPU PAK'nSAVE

Ground Floor Plan
scale 1:400 @ A3

August 2013

McCOY and WIXON ARCHITECTS

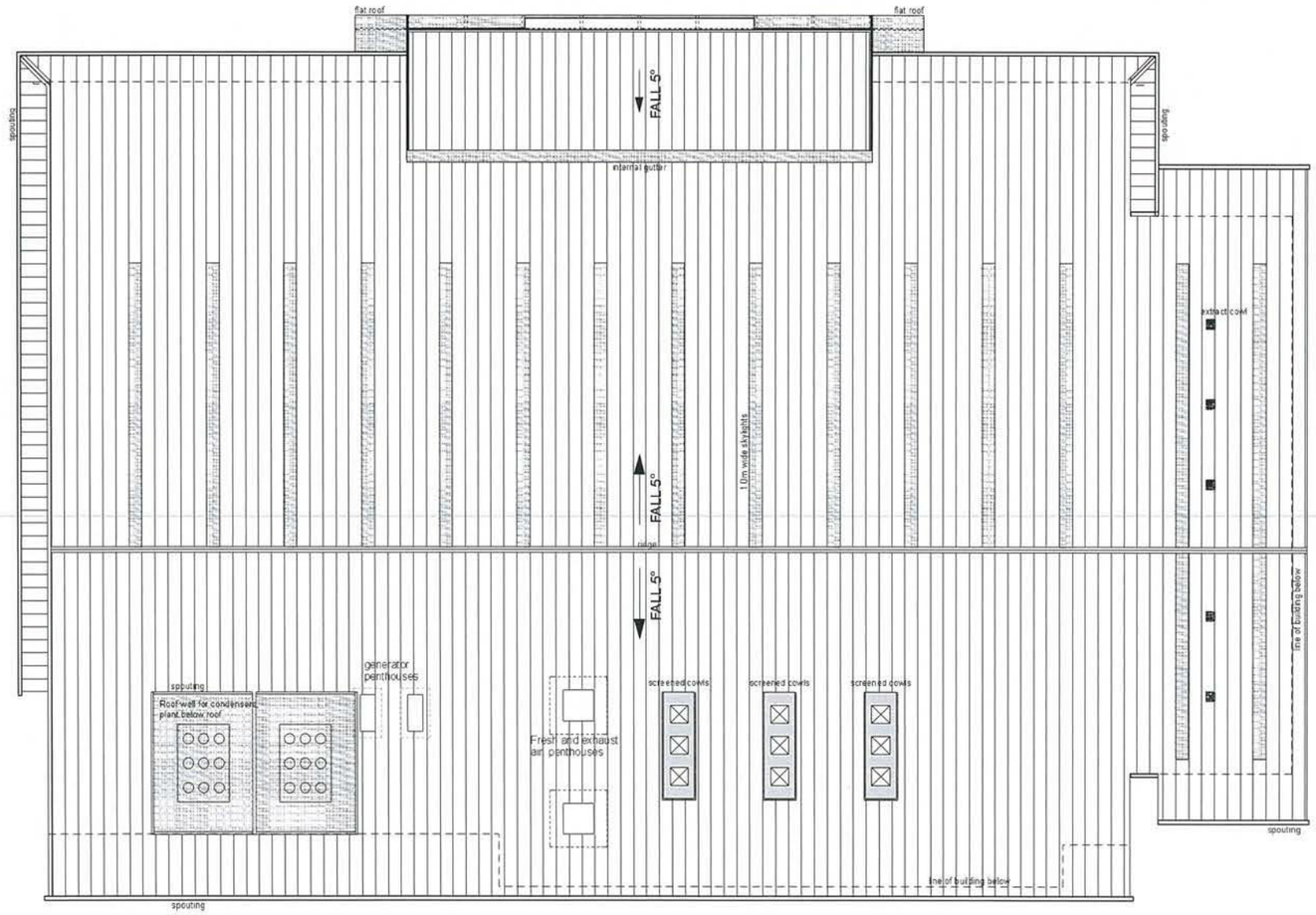
sheet no Sk04
revision b

revised: Wednesday, 7 August 2013
printed: Friday, 9 August 2013 9:48 a.m.

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014



FOODSTUFFS South Island Limited

WAKATIPU PAK'nSAVE

Roof Plan
scale 1:400 @ A3

August 2013

McCOYandWIXON ARCHITECTS

sheet no Sk05
revision

revised: Wednesday, 4 April 2012
printed: Friday, 9 August 2013 9:45 a.m.

NORTH WEST ELEVATION Note: all heights above F.F.L

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014

NORTH EAST ELEVATION Note: all heights above F.F.L

0 1 2 3 4 5 6 7 8 9 10m
scale

FOODSTUFFS South Island Limited

WAKATIPU PAK'nSAVE

North West & North East Elevations

August 2013

McCOYandWIXON ARCHITECTS

sheet no Sk06a

SOUTH EAST ELEVATION Note: all heights above F.F.L

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014

SOUTH WEST ELEVATION Note: all heights above F.F.L

0 1 2 3 4 5 6 7 8 9 10m
scale

FOODSTUFFS South Island Limited

WAKATIPU PAK'nSAVE

South East & South West Elevations

August 2013

McCOYandWIXON ARCHITECTS

sheet no Sk07a

revised: Thursday, 2 August 2012
printed: Friday, 9 August 2013 9:45 a.m.

FOODSTUFFS South Island Limited

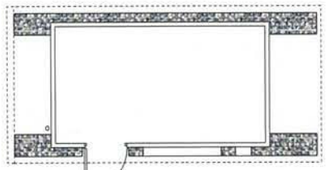
WAKATIPU PAK'nSAVE

Elevations - Colours/Materials
scale 1:400 @ A3

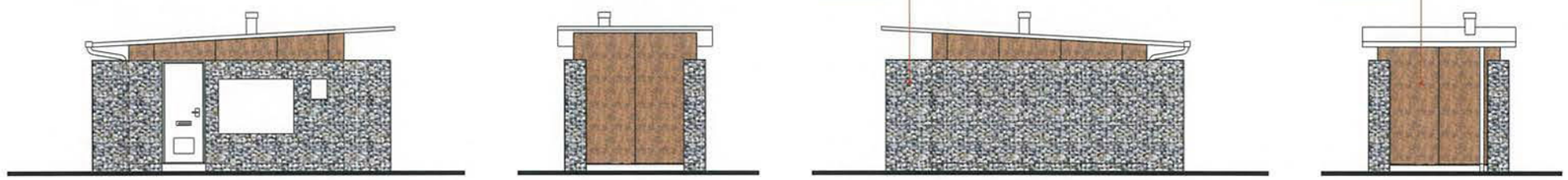
August 2013

McCOYandWIXON ARCHITECTS

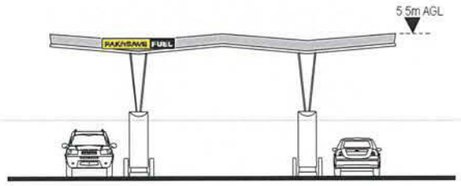
sheet no. Sk08a
revision 4
on4800
revised: Thursday, 2 August 2012
printed: Friday, 9 August 2013 9:48 a.m.



SERVICES SHED PLAN
Scale 1:100 @ A3

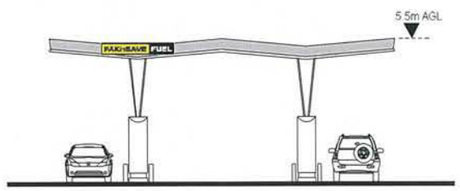


SERVICES SHED ELEVATIONS
Scale 1:100 @ A3

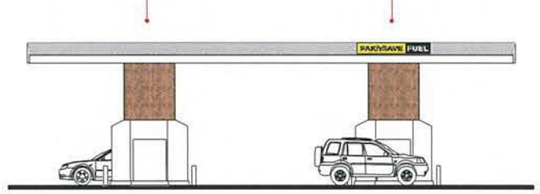


FUEL STATION - NORTH WEST ELEVATION
Scale 1:100 @ A1 or 1:200 @ A3

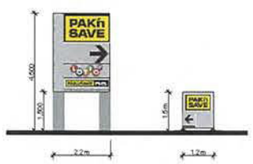
FUEL STATION - SOUTH WEST ELEVATION
Scale 1:100 @ A1 or 1:200 @ A3



FUEL STATION - SOUTH EAST ELEVATION
Scale 1:200 @ A3



FUEL STATION - NORTH EAST ELEVATION
Scale 1:200 @ A3



PLYON SIGN ELEVATIONS
Scale 1:200 @ A3

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014

FOODSTUFFS South Island Limited

WAKATIPU PAK'nSAVE

Fuel Station / Pylon Sign

August 2013

McCOYandWIXON ARCHITECTS

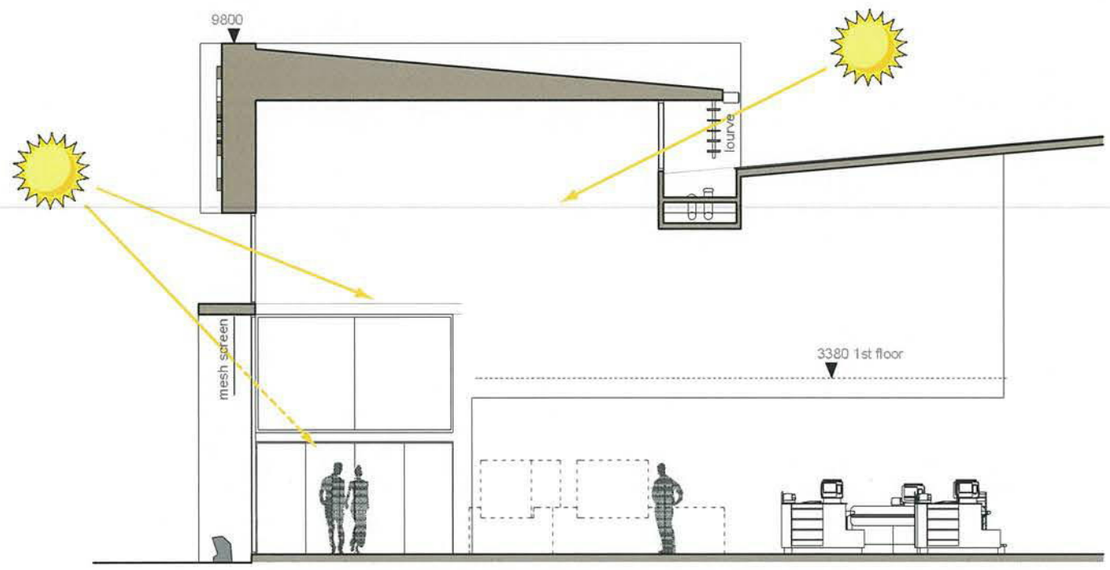
sheet no. Sk09a revision a

revised: Wednesday, 30 May 2012
printed: Friday, 9 August 2013 9:45 a.m.

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014



FOODSTUFFS South Island Limited

WAKATIPU PAK'nSAVE

Section Through Main Entry
scale 1:100 @ A3

August 2013

McCOY and WIXON ARCHITECTS

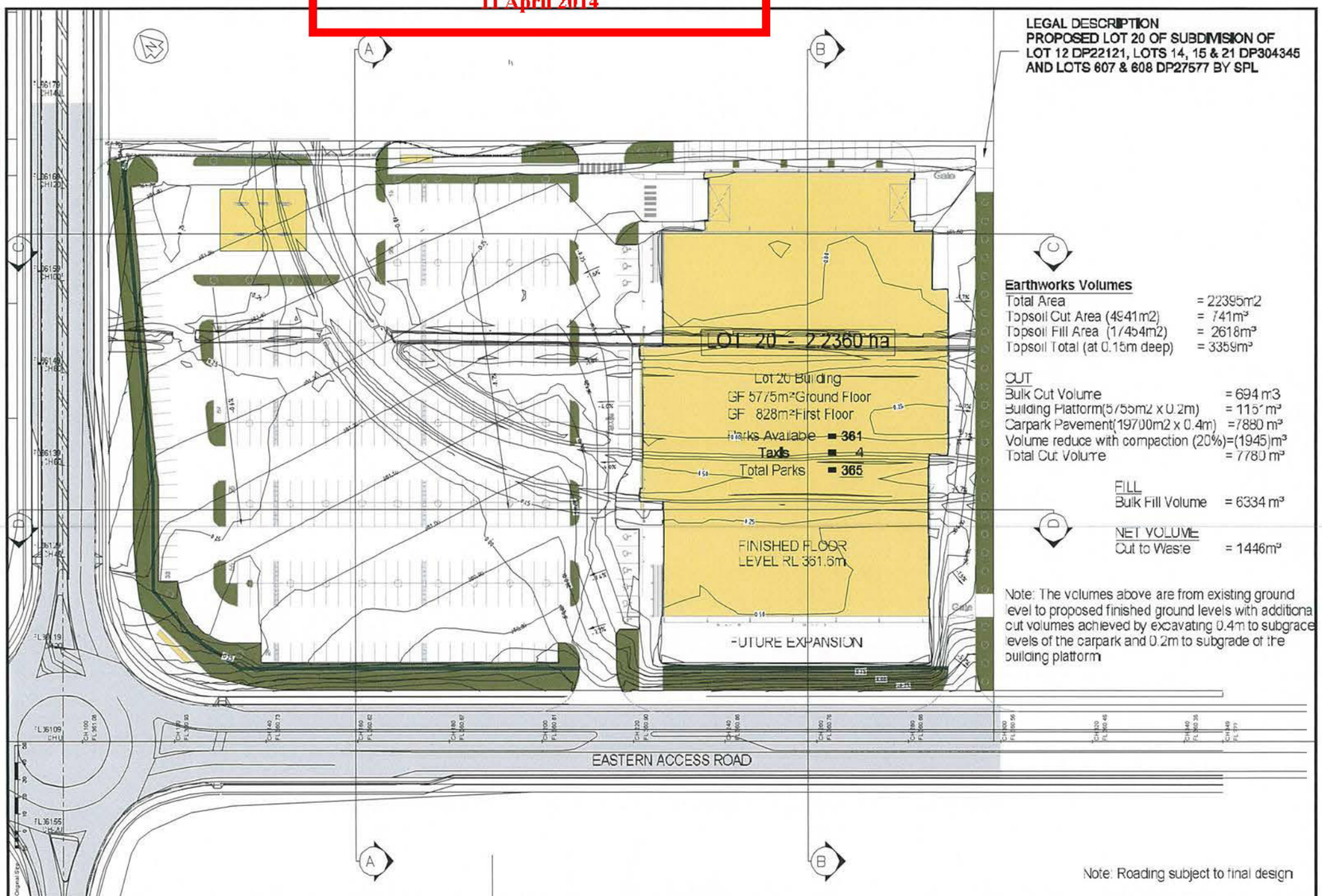
sheet no Sk10 revision

revised Wednesday, 4 April 2012
printed Friday, 9 August 2013 9:45 a.m.

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014



LEGAL DESCRIPTION
PROPOSED LOT 20 OF SUBDIVISION OF LOT 12 DP22121, LOTS 14, 15 & 21 DP304345 AND LOTS 607 & 608 DP27577 BY SPL

Earthworks Volumes

Total Area	= 22395m2
Topsoil Cut Area (4941m2)	= 741m³
Topsoil Fill Area (17454m2)	= 2618m³
Topsoil Total (at 0.15m deep)	= 3359m³

CUT

Bulk Cut Volume	= 694 m3
Building Platform(5755m2 x 0.2m)	= 1151 m³
Carpark Pavement(19700m2 x 0.4m)	= 7880 m³
Volume reduce with compaction (20%)	=(1945)m³
Total Cut Volume	= 7780 m³

FILL

Bulk Fill Volume	= 6334 m³

NET VOLUME

Cut to Waste	= 1446m³

Note: The volumes above are from existing ground level to proposed finished ground levels with additional cut volumes achieved by excavating 0.4m to subgrade levels of the carpark and 0.2m to subgrade of the building platform

Note: Roading subject to final design

No.	Revision Details	Date	No.	Revision Details	Date

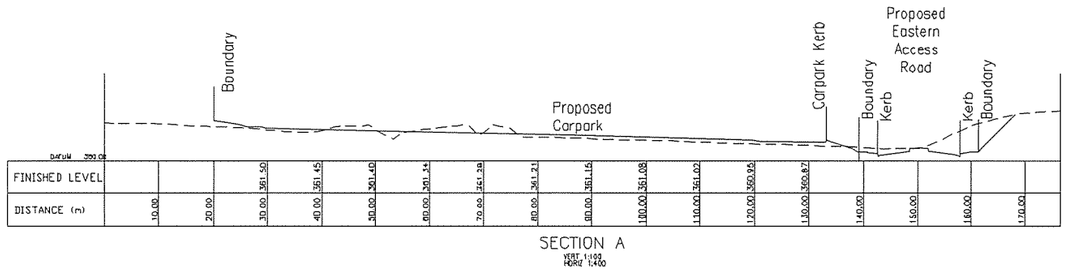
Design JH
Survey APEX
Drawn JR
Checked MGMS
Date APR 11
Scale 1:375 (A1) 1:750 (A3)
CAD Filename 1120703 - SK2-0.dwg

Job Title
FOODSTUFFS (SI) LIMITED
PROPOSED PAK N SAVE
SHOTOVER PARK
FRANKTON FLATS
QUEENSTOWN

AIREY CONSULTANTS LTD.

Drawing Title
PROPOSED SITE
CUT FILL LEVELS

File No. 11207/03 | Rev | Drawing No. SK2-0



SECTION A
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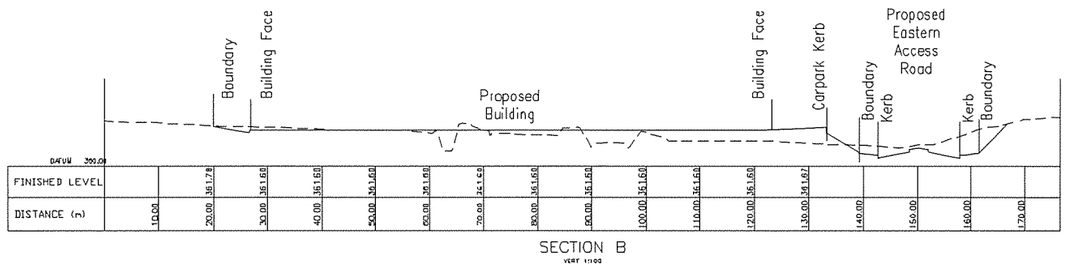
HORIZ 1:400



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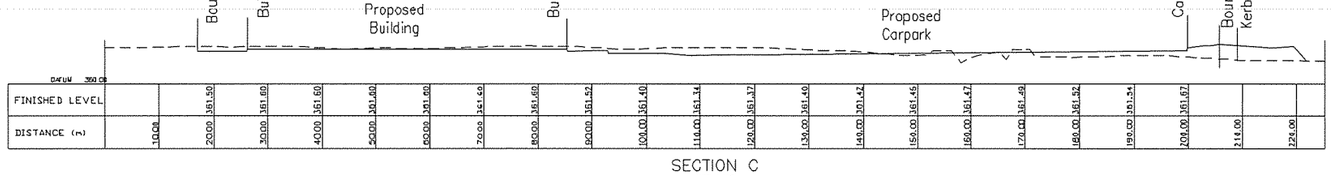

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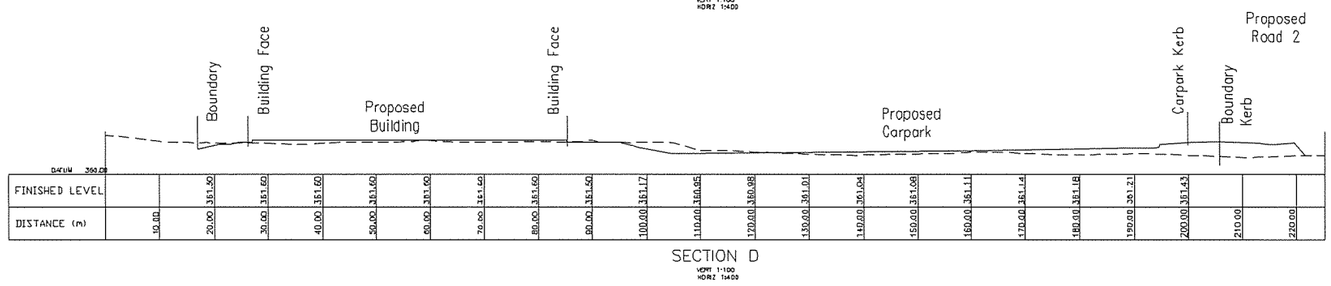


SECTION D
VERT 1:100
HORIZ 1:400

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014

Original Size

No.	Revision Details	Init.	Date

No.	Revision Details	Init.	Date

Design JK
Survey APEX
Drawn IR
Checked MORRIS
Job 2-1811
Scale 1:100 (A1) 1:150 (A3)
CAD Filename 1:2700 SHT DETAILS.dwg

Job Title
FOODSTUFFS (SI) LIMITED
PROPOSED PAK N SAVE
SHOTOVER PARK
FRANKTON FLATS
QUEENSTOWN

AIREY CONSULTANTS LTD.
CONSULTING CIVIL & STRUCTURAL ENGINEERS
Telephone, Rolleston, Rangiora, Wellington, Cromwell

Drawing title
PROPOSED SITE CROSS SECTIONS

Project No.	Rev	Drawing No.
112700		SK3-0

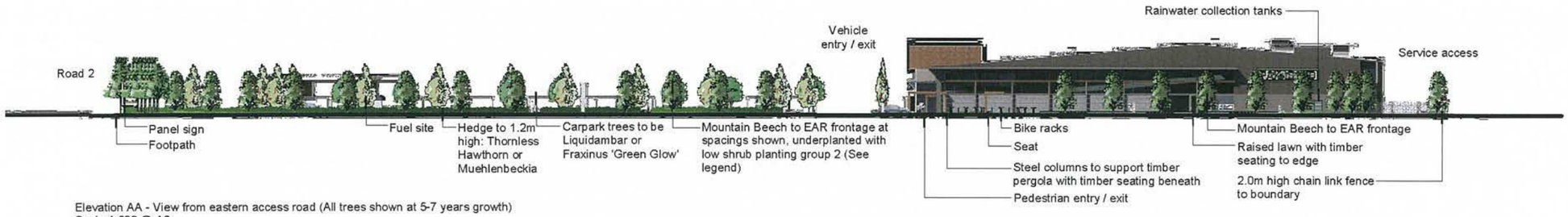
Wakatipu Pak n Save Landscape Plan - Scale 1:600 @ A3

rough & milne landscape architects

QUEENSTOWN LAKES DISTRICT COUNCIL

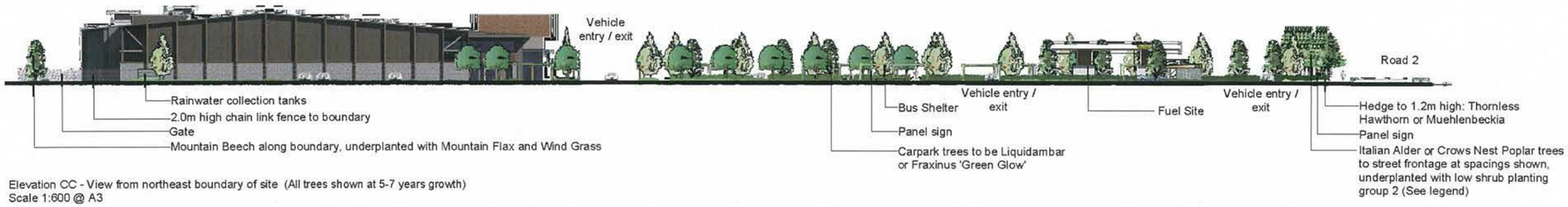
APPROVED PLAN:
RM130524

11 April 2014

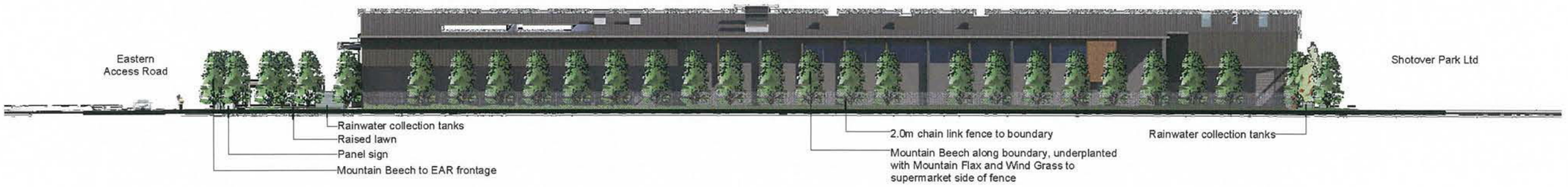


Elevation AA - View from eastern access road (All trees shown at 5-7 years growth)
Scale 1:600 @ A3

Elevation BB - View from Road 2 (All trees shown at 5-7 years growth)
Scale 1:400 @ A3



Elevation CC - View from northeast boundary of site (All trees shown at 5-7 years growth)
Scale 1:600 @ A3



Elevation DD - View from southeast boundary of site (All trees shown at 5-7 years growth)
Scale 1:400 @ A3

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014

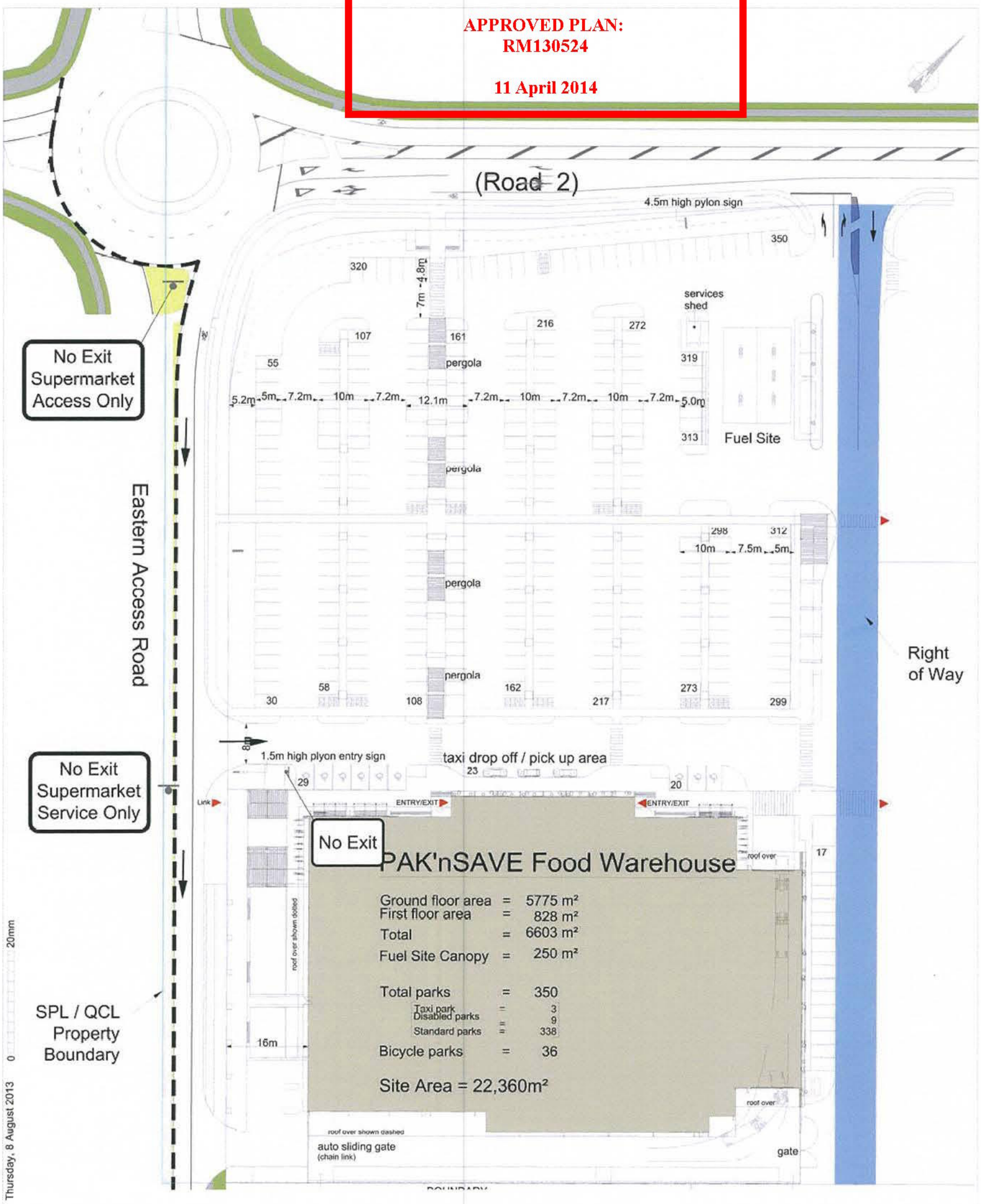
rough & milne landscape architects

WAKATIPU PAK N SAVE • ELEVATIONS • SHEET 8

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014



Wakatipu Pak n Save

Supermarket Interim Layout & Right of Way

TDG

13

SCALE: 1:1000

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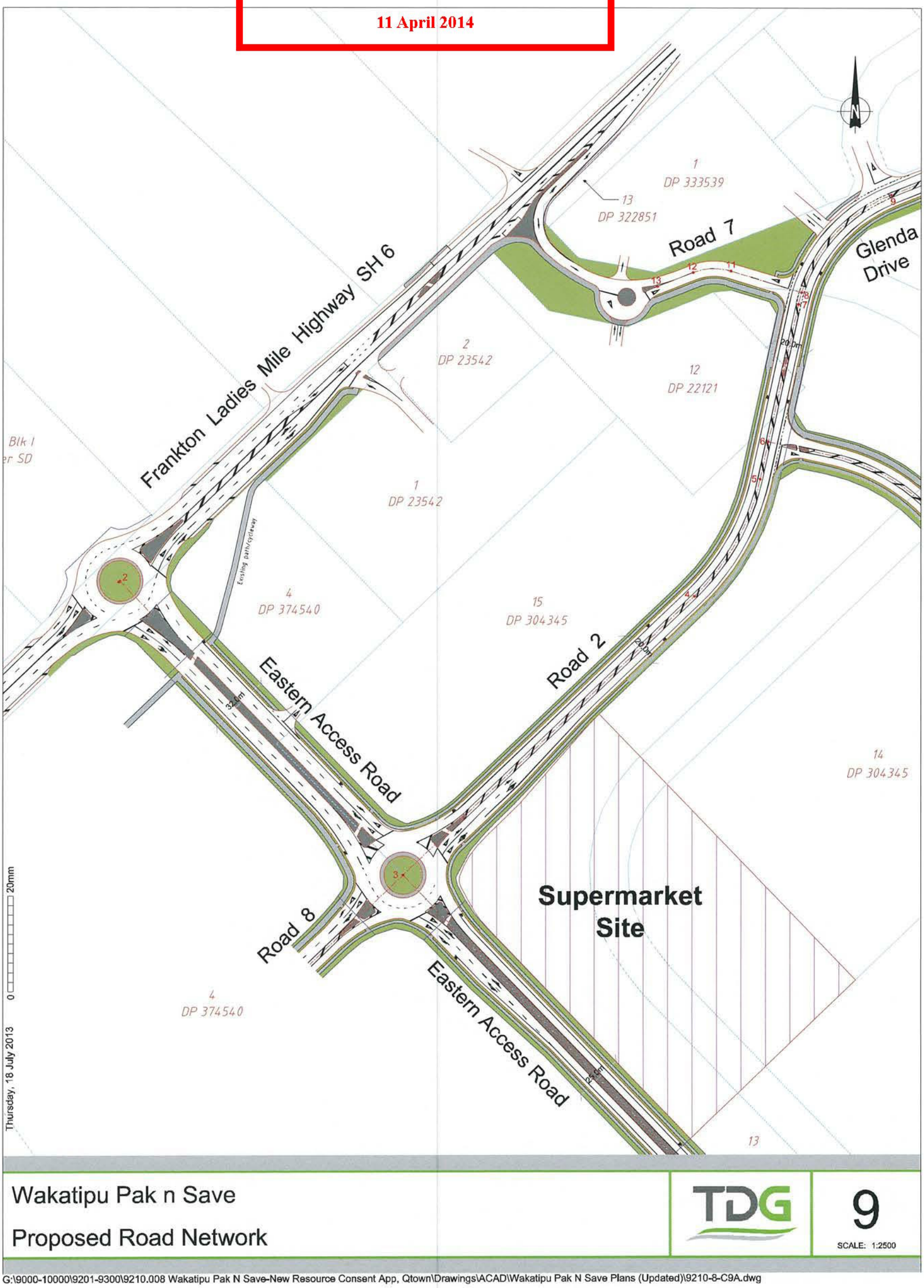
QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130524

11 April 2014



Wakatipu Pak n Save

Proposed Road Network

TDG

9

SCALE: 1:2500

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