



**DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL**

**RESOURCE MANAGEMENT ACT 1991**

<b>Applicant:</b>	GLENCOE LAND (JOINT VENTURE) LTD
<b>RM reference:</b>	RM160137
<b>Location:</b>	Glencoe Road, Crown Terrace, Queenstown Rural.
<b>Proposal:</b>	Subdivide Lot 18 DP 370651 and Section 3 Block X Shotover Survey District to create two new saleable allotments, identify residential building platforms within each of those allotments, and undertake associated earthworks and landscaping.
<b>Type of Consent:</b>	Land Use and Subdivision
<b>Legal Description:</b>	Lot 18 DP 370651 and Section 3 Block X Shotover Survey District, held in Computer Freehold Register 757968.
<b>Zoning:</b>	Rural General
<b>Activity Status:</b>	Discretionary
<b>Notification:</b>	Public
<b>Commissioner:</b>	Robert Nixon
<b>Date Issued:</b>	21 April 2017
<b>Decision:</b>	<b>Declined</b>

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

Of an Application to **QUEENSTOWN  
LAKES DISTRICT COUNCIL** by **GLENCOE  
LAND (JOINT VENTURE) LTD (RM  
160137)**

**DECISION OF COMMISSIONER ROBERT CHARLES NIXON APPOINTED BY  
QUEENSTOWN LAKES DISTRICT COUNCIL**

## The Hearing and Appearances

### Hearing Date:

Tuesday 11 March 2017 at  
Queenstown

### Appearances for the Applicant:

Ms Jayne MacDonald, Legal Counsel

Ms Annemarie Robertson, Planning  
Consultant

Mr Stephen Skelton, Landscape  
Architect

### Appearances for the Queenstown Lakes District Council

Ms Sarah Gathercole, Senior  
Planner

Ms Lynn Overton, Resource  
Management Engineer

Mr Richard Denney, Consultant  
Landscape Architect

## Abbreviations

The following abbreviations are used in this decision:

Glencoe Land (Joint Venture) Ltd	"the Applicant"
Queenstown Lakes District Council	"the Council"
The Operative Queenstown Lakes District Plan	"the ODP"
The Proposed Queenstown Lakes District Plan	"the PDP"
Proposed Building Platform 1	"BP1"
Proposed Building Platform 2	"BP2"

The land subject to this application is referred to as "the site".

I undertook a site visit, including to the site of BP1, and surrounding viewpoints to the north and in the Arrowtown area, on the morning of the hearing, 10 March 2017.

## INTRODUCTION AND BACKGROUND

1. The site is located on Glencoe Road, on what is known as the “Crown Terrace”, an elevated plateau to the east of Arrowtown. The application site as notified comprised three parcels of land within CFR 286281, being Lot 18 DP 370651, Section 3 Blk X, Shotover Survey District, and Section 10 Blk X, Shotover Survey District. The land comprises undulating pastoral farmland dissected by a deep gully system.
2. The background to the land subject to this application, and its current subdivision status, is somewhat complicated, and requires initial clarification.
3. At the hearing, I was advised that Section 10 was withdrawn from the application, and that post-notification a boundary adjustment has since been completed, whereby Section 10 has been removed from CFR 286281. This parcel of land is located to the north of the application site and on the opposite side of Glencoe Road. It is not physically contiguous with remaining part of the site which is subject to this application. No development is contemplated on Section 10 as part of this proposal, and I accept Ms Macdonald’s submissions<sup>1</sup> that the withdrawal of this parcel of land from the overall application is within scope and would not prejudice any other party. This view was also accepted by the Council.
4. The remaining area of land subject to this application now comprises two contiguous lots held in a single title CFR 757968, including a southern Lot 18 DP 370651 (46.6359 ha), and a northern lot being Section 3 Blk X, Shotover Survey District (18.0490 ha). The boundary between these two parcels of land is a simple ‘straight line’, disregarding the intervening terrain, with a north-east/south-west orientation. The current application is to subdivide these two parcels to create two separate titles with a proposed new northern ‘Lot 2’ of approximately 37 ha, and a proposed new southern ‘Lot 1’ of approximately 27 ha, each with proposed building platforms ‘1’ (BP1) and ‘2’ (BP2) respectively. The new boundary between these two lots follows an irregular alignment with an apparently greater regard to the intervening terrain.
5. The total site area subject to the application is now 64.6849 ha.

### The Proposal

6. As noted in paragraph 4 above, the application seeks to subdivide Lot 18 and Section 3 into two lots and establish residential building platforms on each new lot of approximately 1000m<sup>2</sup> in size. The accessways to both building platforms would be from a single access point off Glencoe Road. This accessway would diverge a short distance from Glencoe Road, with the access to proposed BP1 mostly following an existing farm track. A newly formed accessway would require construction into BP2. A total of 4850m<sup>3</sup> of earthworks are proposed. The application includes a landscape plan and proposed design controls.
7. The building platform on proposed Lot 1 (containing “BP1”) is located just to the west of a small rocky knoll. The building platform on proposed Lot 2 (containing “BP2”) is located within an area of open pasture, and considerably closer to Glencoe Road. BP1 would be located

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<sup>1</sup> Ms Macdonald’s legal submissions, paragraph 1 (h)

approximately 630m from Glencoe Road, and BP2 approximately 300m from Glencoe Road<sup>2</sup>. Adjacent to the southern boundary of the property is the dwelling of Antony and Nikki McQuilkin.

8. At this early point in this decision, it is appropriate to note that there was relatively little contention with respect to the subdivision itself, and to a large extent, proposed BP2 on Lot 2. This was not however the case with the proposed BP1 on Lot 1. This was an important distinction. Mr Skelton stated:

*"I agree with Mr Denny when he says that the proposed building platform on Lot 1 has the potential to be visible from distant locations (in excess of 2.1 km) on the valley floor and visibility will compromise the open character of the ONL to a moderate to high degree"(sic)*<sup>3</sup>

9. However Mr Skelton insisted that with a combination of an appropriate and detailed planting regime, which at the hearing he stated would now comprise 80% Mountain Beech, combined with design controls and a reduced building height from 7m to 6m, would result in a dwelling on the building platform having a negligible level of visibility from distant locations on the valley floor (e.g., part of the Wakatipu Basin in the Arrowtown area).
10. It was quite apparent that Mr Skelton had given considerable thought to the potential placement of both building platforms on the application site prior to the lodgement of the application itself. In his evidence, he noted that having been engaged by the applicant, six potential building platforms were identified which were eventually 'whittled down' to three, and ultimately two. Following discussions with the neighbours to the south (McQuilkin), the building platform on proposed Lot 1 (BP1) was relocated to reduce potential earthworks and present less of a visible building elevation to this neighbour.<sup>4</sup>
11. Based on this, the Development Plan which accompanied the application, and showing the two building platforms, is attached to this decision<sup>5</sup>.
12. In his evidence Mr Denney opined that there was scope for an alternative location for a building platform on Lot 1<sup>6</sup>, although he made no specific suggestions in this regard. He did not comment in his evidence on that part of Mr Skelton's evidence cited above, however I acknowledge that it is not his obligation to identify alternative sites. However my interest in this matter was instigated by the fact that the original siting of the proposed building platforms on Lot 1 (and Lot 2) were not in the original positions selected by Mr Skelton, but were influenced by concerns expressed by the neighbour to the south.

### **Commissioners Minute**

13. In response to questioning on this matter at the hearing, Ms Macdonald suggested it would be helpful for Mr Denney and Mr Skelton to confer further with respect to potential siting of the building platform on Lot 1, taking into account earlier siting proposals prior to discussions

<sup>2</sup> Evidence of Annemarie Robertson, paragraph 8.20

<sup>3</sup> Evidence of Steve Skelton, paragraph 18

<sup>4</sup> Evidence of Steve Skelton, paragraphs 10 and 11

<sup>5</sup> Attachment E to the Evidence of Steve Skelton (Baxter Design, Ref 2444, 10 February 2017).

<sup>6</sup> Evidence of Richard Denney, paragraph 44

being undertaken between the applicant and the McQuilkins. I agreed that this would be potentially useful as part of my consideration of this application.

14. On 14 March 2017 I issued a Minute requesting that Messrs Denney and Skelton confer on some possible alternative siting arrangements for Building Platform 1, including two siting options (considered and described in paragraph 11 of Mr Skelton's evidence of 24 February), and that they report back by 31 March with respect to any such options, whether or not in agreement.
15. The two experts subsequently met on site and a written response was forwarded to me setting out their respective comments. A range of options were assessed, however a number of these were sufficiently distant from BP1 as notified that they would have been beyond the scope of the original application. The two experts were unable to agree. This exercise was however useful in identifying a number of issues relating to landscape effects and geotechnical issues associated with this large parcel of land.
16. The hearing was closed following the receipt of the joint response, on 3 April 2017.

### **The Receiving Environment**

17. To the north-west of the site is a pronounced physical feature, being the escarpment rising from the eastern side of the Arrow River to the Crown Terrace. This escarpment defines much of the eastern extremity of the Wakatipu Basin and forms an important part of the backdrop to Arrowtown and is classified as an ONL. Mount Beetham (929m) rises from the northern end of the Crown Terrace and Glencoe Road rises along the flanks of this feature providing views over much of the Crown Terrace to the south, and the Wakatipu Basin to the west.
18. At the northern end of Glencoe Road, there is a rough parking area which is the start of Tobins Track, a public walking, cycling and four-wheel-drive route extending diagonally down the escarpment to Arrowtown. From my enquiries there are no existing dwellings north of the application site, or certainly none that are visible from the Arrowtown area. I consider this matter is of some importance, because in the absence of a dwelling being erected on BP1, there would be no evidence of any other existing dwellings along beyond the top of the escarpment which would be visible from part of the Wakatipu Basin.
19. To the immediate south of the application site is the McQuilkin property and residence, and beyond that a large residence and private golf course owned by the Coutts family. East of the site on the opposite side of Glencoe Road there are no less than six approved but unimplemented building platforms, with another six further to the south-east. These dwelling sites are visible from other parts of the Crown Terrace, but not from any parts of the wider Wakatipu Basin.
20. Higher mountain ranges rise beyond the Crown Terrace to the east. Mount Beetham, the higher mountains are, like the escarpment, all located within an Outstanding Natural Landscape (ONL) under the ODP. This classification also applies to the gully system running through the site. The greater balance of the site, including the two proposed building platforms, are located within the VAL (Visual Amenity Landscape). Both landscape witnesses

were in agreement as to the proper landscape classification of the proposed building platforms<sup>7</sup>.

## NOTIFICATION AND SUBMISSIONS

21. The application was publicly notified on 12 October 2016 with submissions closing on 10 November 2016.
22. The applicant has not obtained the written consent of any of the adjoining owners of the neighbouring properties. However a submission in support of the application was lodged by Antony and Nicola McQuilkin.

## STATUTORY MATTERS

23. The site as a whole is zoned Rural General, and the two proposed building sites (BP1 and BP2) are identified as being within the Visual Amenity Landscape (VAL). Various non-compliances were identified in the application and AEE, as set out below.
24. Land Use and Subdivision consent is required in terms of Rule 15.2.3.3 (vi) for the subdivision and location of a residential building platform in the zone. Consent is required as a **discretionary activity**.
25. In addition, **discretionary activity** consent has been sought through the application, as no Preliminary Site Investigation has been undertaken in accordance with section 11(2) of the 'National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health' ("the NES").
26. Further to this point, because of the wide ambit of how a *HAIL* site may be identified, QLDC take a (cautious) view that a *HAIL* site may include any site which has been subject – for example – to weed spraying or fertiliser application. The application goes on to state:

*"Virtually all lowland farming land in the District will have had some broadacre agrichemical application. Therefore a site such as this may be considered as a HAIL site unless a detailed site investigation (DSI) is undertaken. Because a DSI has not been carried out a discretionary activity consent is applied for"*<sup>8</sup>.

## LEGAL SUBMISSIONS AND EVIDENCE

### For the Applicant

27. **Ms Macdonald** began by focusing on issues relating to the clarification of the proposed tenure and subdivision arrangements. She stated that subsequent to notification, a boundary adjustment had been completed removing Section 10, and it was now necessary to amend the

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<sup>7</sup> Evidence of Richard Denney, paragraph 14

<sup>8</sup> Refer application, page 8

application by excluding it. She outlined the tests with respect to scope in terms of the ambit of the original application. On this basis she concluded that the amendments did not increase the scale or intensity of the activity, that development was to be wholly contained within Lot 18, and the removal of Section 10 from the application would not have resulted in any party either making a submission, or having any basis for doing so.

28. She noted that an amalgamation condition holds Lot 18 and Section 3 in one CFR, and that a cancellation of the amalgamation condition under section 241 of the Act would necessarily follow on from any approval to subdivide the site.
29. She submitted that Mr Skelton's landscape evidence established that BP1 was not located on the crest of the Crown Terrace, was 290 m from the nearest ONL line, and that the assessment of Mr Denney had failed to take account of proposed native plantings and a further height limitation for a dwelling on BP1. She noted that the proposed siting reflected a mutually agreeable and acceptable location through discussion with the neighbouring McQuilkins.
30. **Mr Skelton** was of the view that as the site was in a transitional landform between the Crown Terrace ONL to the west, and the Mount Beetham ONL to the north, it should be considered part of both an ONL and of VAL<sup>9</sup>.
31. He described the background to identifying suitable building sites on the application site. He insisted that Mr Denney was in error in concluding that BP1 would be located on the 'crest' of the Crown Terrace. While he agreed it had the potential to be visible from distant locations, he said this observation failed to take into account the proposed mitigation planting, and other measures such as reducing the size of the curtilage and the height of the building from 7m to 6m. He stated it was approximately 290m from the ONL line, and part of the hummocky landscape typical of the area. He said the mitigation measures proposed would mean that the visual impact of BP1 from the sites identified by Mr Denney (Advance Terrace, Reed Park, Memorial Hill (Arrowtown), and Malaghans Road) would be negligible.
32. He noted that while Mr Denney had expressed criticism of the proposed use of exotic maple plantings as one part of the notified planting regime, the positive benefits of the indigenous and amenity planting had been overlooked. He proposed that ornamental maples originally proposed be replaced with mountain beech plantings instead. He also contested concerns that screen planting would take a long time to reach sufficient height and bulk, and was of the view that it would provide a high degree of mitigation within five years.<sup>10</sup>
33. In his opinion, views of the building platforms from Glencoe Road would be fleeting as a result of the undulating landscape traversed by the road. While he agreed the site would be visible from the top of Tobin's Track, it would be seen within the context of the arcadian pastoral lands and rural development further beyond to the south, and was consistent with the existing and proposed residential density in this area.
34. In the event that consent was granted, he commented on the conditions proposed by Mr Denney. He indicated his agreement with the proposed conditions except recommendation

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<sup>9</sup> Evidence of Steve Skelton, paragraph 7

<sup>10</sup> Ibid paragraph 24

5(e), which required glazing to be recessed, or for a future dwelling to have an eave of 0.8m. He proposed that with respect to BP1, that any potential glare issues could be addressed by requiring glazing to have an LRV of less than 8%, combined with the screening effect of planting.

35. In conclusion he stated:

*"I consider that while the proposal has some adverse effects on the visual amenity and openness of the landscape, that those effects will be very low. I also consider the proposal will provide significant contributions to nature conservation values and will positively affect the ecological biodiversity of the landscape"*<sup>11</sup>.

36. **Ms Robertson** presented planning evidence. With respect to the issue of soil contamination, she noted that while the current provisions with respect to *HAIL* sites are under review by the Ministry for the Environment, the most practical approach would be to impose a condition of consent requiring site testing in association with the building platforms, and if necessary remediation, prior to the issue of new titles. In her opinion the overarching issue was landscape effects and the worst case scenario with respect to potential soil contamination would be additional measures for earthworks associated with the building platform and curtilage areas.
37. She questioned the matter of earthworks associated with the construction of a culvert on the accessway to proposed BP2 being raised within the Section 42A report, asserting that this was a Regional Council matter.
38. With respect to the objectives and policies in the ODP, she accepted Mr Skelton's conclusions that with mitigation the proposed building platform on Lot 1 would be difficult to see from any locations in the Wakatipu Basin, and the building platforms and dwellings would not be unduly visible from public places including Glencoe Road. She added that the extent of surrounding pastoral land meant there would not be any significant domestication of the landscape. On that basis, she concluded that there was no conflict with the objectives and policies for either the ONL or VAL landscapes in the ODP. She considered that very little weight can be placed on the provisions of the PDP, as no decisions on it have yet been released, and that it was subject to a large number of submissions.

#### **For the Council**

39. **Mr Denney** presented a landscape assessment of the proposal. He maintained that the proposed building platform on Lot 1 *".....would be situated on the crest of the Crown Terrace as viewed from Glencoe Road and the broader Wakatipu Basin including the Arrowtown residential area"*<sup>12</sup>. However he also considered that as the proposed building platform on Lot 2 was set back *".....further from the terrace face and encompassed in a more cultivated pastoral landscape rather than the context of the adjacent ONL"*<sup>13</sup>. Although he considered that a building on the platform would be somewhat stark in such an exposed location, he was

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<sup>11</sup> Evidence of Steve Skelton, paragraph 42

<sup>12</sup> Evidence of Richard Denney, paragraph 16

<sup>13</sup> Ibid paragraph 17

satisfied that with improved planting the siting of this building platform would be acceptable, coupled with the substitution of the proposed maple plantings originally proposed (and subsequently accepted by Mr Skelton).

40. He was satisfied that the spatial distribution of the building platforms would be appropriate in terms of density and would not reflect over domestication, were it not for the sensitive site of BP1. With respect to the latter, he concluded that a dwelling on the platform would be visible intermittently from a 1.8 km stretch of Glencoe Road, from a Miners Trail just east of the unformed public road to the north from Glencoe Road around Mount Beetham, and from the lookout and summit area of Tobin's Track, 820m to the north.
41. A primary concern was that a dwelling on BP1 would be visible from public locations in part of the Wakatipu Basin, including Advance Terrace, Reid Park, Memorial Hill, Malaghans Road, and the Hogan's Gully/Lake Hayes Road intersection. In response to a question he stated that the poles identifying the site were visible to ground level from some of these locations.
42. He was concerned that from the Wakatipu Basin BP1 would be *"..... viewed predominantly in the context of the ONL with only a small sliver of the VAL visible. Whilst other buildings can be viewed further south these do not occupy a skyline ridge as would proposed platform 1"*<sup>14</sup>.
43. Again in response to a question, he was of the opinion that at present there were no other dwellings visible along the eastern skyline as seen from the Arrowtown area.
44. He recommended a range of conditions should consent be granted. These included limiting the maximum building footprint to 60% of the area of the building platform (600 m<sup>2</sup>); limiting roof pitch and height; the materials and colours used for roofing and external cladding of the proposed buildings; avoiding mixtures of claddings; extending the eaves to reduce the reflectivity of glazing; control over exterior lighting; containment of activities to within the curtilage area; and a resubmitted landscape plan, and other detailed conditions.
45. **Ms Gathercole** presented planning evidence for the Council, and based on the findings of Mr Denney with respect to BP1, concluded that the proposed application conflicted with many of the objectives and policies in the ODP, and more broadly, with those in the operative and proposed Regional Policy Statements. This was based primarily on the prominent position of both proposed building platforms, but particularly BP1. She did not hold any significant concerns about the proposed subdivision layout.
46. She did not consider that the limited scope for application of the permitted baseline for activities in this zone had any relevance. She did express some concern about the culvert required to provide vehicle access to the proposed building platform on Lot 2, as there was insufficient evidence to assess its effects. On the issue of potential site contamination, she accepted that it was unlikely that the proposed lots were likely to be contaminated, but there was no information available to prove otherwise.

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<sup>14</sup> Ibid paragraph 25

47. She did not consider that there would be significant reverse sensitivity effects given the relatively large size of the proposed two lots, and the ongoing ability to undertake small scale farming activities.
48. **Ms Overton** briefly touched on matters relating to engineering and servicing in concert with the planning report of Ms Gathercole. The Council was satisfied that the required earthworks, the provision of water supply, effluent disposal and stormwater disposal could be addressed through appropriate conditions.
49. However Ms Overton did raise concerns with the applicant's proposal that no wired telecommunications connections be provided at the subdivision stage and that instead this be registered as a consent notice on the title. She explained that this was contrary to Council requirements and that the applicant needed to provide a stronger basis for dispensing with wired telecommunications to the site.
50. Following the hearing, as part of the response to the Minute, an alternative siting option for BP1 was identified (following Mr Skelton's initial investigations) as being a site approximately 25m further east of BP1 as identified in the application. However, Mr Denney concluded that this site would not address his concerns about the potential visibility of the building as viewed from the Arrowtown Basin to the west. Mr Skelton considered that this location:  
  
*"would have a slight change in effect in that it would shift a roof line farther away from the edge of the terrace and reduce the potential visibility of the lower part of a BP as viewed from the basement floor"*<sup>15</sup>.
51. Mr Denney suggested an alternative location approximately 50m east of BP1 on the northern slopes of the knoll and a gully on a steep slope above the site's southernmost watercourse. Mr Skelton considered that this site was unsuitable as it would be poor in terms of outlook and sun exposure, would raise prohibitive earthworks costs, and potentially other geotechnical and landscape issues. Another site investigated by the two witnesses further away to the south-east was another location initially considered by Mr Skelton where there was a *"subtle ridge landform between this alternative location and the Arrowtown view catchment"*<sup>16</sup>. However Mr Denney still had concerns that this would be visible from the sites near Arrowtown to the west.
52. Other alternative sites for BP1 were some distance further away, but the two witnesses disagreed over the extent to which these might affect neighbours to the south, the extent to which they could be screened by planting, or geotechnical issues. Mr Skelton correctly pointed out that these would almost certainly be beyond the scope of the current application. It also reminded me that a potential issue that would arise would be the validity of the neighbour's consent with respect to alternative sites.
53. Nevertheless I express my appreciation to the Mr Denney and Mr Skelton in their efforts to reach common ground with respect to what is a difficult issue.

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<sup>15</sup> Response to Commissioner Minute, paragraph 4

<sup>16</sup> Response to Commissioner Minute, paragraph 5

## ASSESSMENT OF EFFECTS

54. The relevant provisions of section 104 of the Act to this application are as follows:

### ***104 Consideration of applications***

*(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to -*

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

*.....*

*(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.*

*(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*

*(3) A consent authority must not, -*

*(a) when considering an application, have regard to –*

*(i) trade competition or the effects of trade competition; or*

*(ii) any effect on a person who has given written approval to the application.*

### Landscape and visual effects

55. I was presented with evidence from two very experienced landscape architects familiar with this district, Mr Denney for the Council and Mr Skelton for the applicant. Given the location of the site within a VAL, but in close proximity to an adjoining ONL, potential landscape effects were the overwhelming determinant of the merits or otherwise of this proposal.
56. The two building platforms are located within two large proposed rural allotments with areas of 37 ha and 27 ha respectively. The density of development would be appropriate in terms of the local environment of the area.
57. Starting with the proposed building platform on Lot 2 (BP2), the evidence from both landscape architects was that the siting of a dwelling in this location, subject to appropriate screen planting, would be acceptable. It was agreed that screen planting would be particularly important for this building platform, as without it a dwelling would appear rather stark within an otherwise largely open pastoral setting. A dwelling on BP2 would form part of a group of established dwellings and associated planting along the southern side of Glencoe Road. It can also be noted that there are a significant number of unimplemented building platforms in the vicinity, particularly on the eastern side of Glencoe Road.

58. In most respects, a dwelling and its curtilage on BP2, subject to mitigation would form part of a rural landscape which would be typical of a VAL, and that already existing in the immediate vicinity.
59. The proposed location of BP1 on the other hand, raises much more difficult issues. Mr Skelton was strongly of the opinion that this proposed building platform was not on a ridge, being set back nearly 300m from the edge of the escarpment. From my site visit however, it was quite noticeable that walking west just beyond the small rocky knoll had the effect of opening up an expansive panorama of the Wakatipu Basin. This panorama was not readily apparent further to the east of the rocky knoll.
60. This may be an issue of semantics – while the site is not on a ‘ridge’ as such, it is on a ‘rise’ which forms part of a strip of land extending a short distance to the edge of the escarpment, which is visible, albeit at a distance, from parts of the Wakatipu Basin in the vicinity of Arrowtown. From that part of the Wakatipu Basin, BP1 gives the impression of being on or very close to the skyline, a characteristic which is not shared by BP2 or other properties in that vicinity on Glencoe Road.
61. I have some sympathy with the dilemma faced by Mr Skelton, because it appears to be the case that the choice of sites that he has been able to consider is at least partly constrained by the concerns expressed by neighbours to the south. Certainly, BP1 must be assessed on its own merits, but I would be reluctant to conclude that it was a ‘suitable’ site on the basis of a ‘balancing exercise’ between landscape impacts on one hand and the acquiescence of a neighbour on the other. The fact that a site may be visible to the neighbours does not necessarily mean it is unsuitable.
62. The potential of BP1 being visible from parts of the Wakatipu Basin is evidenced by the fact that Mr Skelton considers an extensive planting regime would be necessary, including the planting of indigenous beech trees between the dwelling and the edge of the escarpment. The object of this exercise is to screen any dwelling on BP1.
63. While an applicant does not have to prove that a house site would be ‘invisible’, this is a very sensitive site, which although within a VAL, occupies a position at the top of a prominent escarpment forming part of an ONL and visible from a wide area. In that respect I note Mr Denney’s comment that:  
*“From the base it is viewed predominantly in context of the ONL with only a small sliver of the VAL visible”<sup>17</sup>.*
64. I acknowledge that planting can be a legitimate and effective method of providing full or partial screening of a future dwelling within of VAL or even an ONL. This application itself illustrates this point with respect to BP2 – in which a future dwelling and its curtilage may still be visible from a number of viewpoints, particularly parts of Glencoe Road, even once the proposed landscaping matures. However a proposed dwelling on this building platform, and its associated curtilage and planting regime will result in a development which I am satisfied on the evidence can be adequately absorbed into the local environment.

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<sup>17</sup> Evidence of Richard Denney, paragraph 26

65. A subsequent controlled activity application will need to be made for any dwellings on these building platforms, and at this point I only have limited knowledge of what a dwelling on either site might look like, and this of course does not take into account the preferences of future owners.
66. In considering the visual impacts of a dwelling and its curtilage on BP1, there are greater challenges, taking into account not simply the site itself, but the wider landscape within which it would be located.
67. Firstly, consideration must be given not only to the visibility of a dwelling on the building platform, but the curtilage area associated with it. The curtilage can include vehicles, various personal belongings, small sheds and other buildings, and planting. These are things to be expected, and are entirely reasonable, as part of living on a rural property. I am wary of granting consent to a proposal accompanied by unreasonably onerous or unrealistic conditions in order for a project to 'get across the line'. I have noted the applicant's proposal to reduce the height of a future dwelling from 7m to 6m, but I am not convinced that this will make a significant difference. Reference is also made to a proposed reduction in the size of the building platforms<sup>18</sup>, but this does not appear to be specified in the evidence or on the plans.
68. The proposal is to use recessive colours for the roof and cladding of the dwelling and non-reflective glass, although I note there appears to be mixed views as to the effectiveness of the latter. On a site such as this, I am also concerned about the visibility of the site during different seasons. I remain especially concerned about reliance on screen planting to reduce visual impacts as seen from the Wakatipu Basin, because to do so would negate the magnificent panoramic views that BP1 would offer a future owner. It would be entirely reasonable to expect such a future owner to enjoy the views to the west that the site would offer.
69. I am mindful of Mr Skelton's comments that the views of any dwelling and its curtilage on BP1 from parts of the Wakatipu Basin around Arrowtown will be relatively distant, and that screen planting may disguise the presence of a dwelling, and if dense enough, even the surrounding curtilage. However this can start to draw attention to the 'mitigation' itself.
70. Having regard to this factor, the potential adverse visual impacts of a dwelling and its curtilage on BP1 as seen from relatively distant locations on one hand, and the ability to mitigate those impacts on the other, are finely balanced. However this is a sensitive site which I consider justifies erring on the side of caution. Added to this is the fact that the site is clearly visible from more elevated parts of Glencoe Road further west. BP1 is an outlier, and does not form part of a continuum of typical VAL rural properties characteristic of other parts of Glencoe Road. By contrast, a dwelling and its curtilage on BP2 can be readily absorbed into that environment.
71. Having regard to these factors, I have reached the conclusion that a dwelling and its curtilage on BP1 would have an adverse effect on the landscape in the vicinity of the site, but particularly from the Wakatipu Basin.

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<sup>18</sup> Evidence of Steve Skelton, paragraph 20

72. As a final point, I also wish to acknowledge that the positive aspects of this application should not be overlooked, and include an extensive indigenous planting programme. While positive, that is to a large extent a form of environmental compensation, or even good management practice, which I conclude should not be used as a balancing factor against adverse effects.

#### Access and Servicing issues

73. The proposed roading access to both building platforms did not raise any significant issues in terms of landscape effects or engineering issues. Ms Gathercole's report expressed some concern with respect to the environmental impacts of a culvert across the small watercourse needed to provide access to BP2. However this is primarily an issue for the Otago Regional Council. The District Council may have some role in terms of potential visual or ecological effects, but I consider that these are unlikely to be of a magnitude which would cause concern. No significant issues were raised at the hearing with respect to geotechnical, stormwater or water supply issues, but the applicant's proposals with respect to those matters were acceptable to from an engineering perspective, as confirmed by Ms Overton for the Council.
74. One exception with respect to servicing arrangements was a concern raised by Ms Overton with respect to telecommunications, with the applicant's proposed no wired telecommunications connections be provided at the subdivision stage. Apparently this situation can arise elsewhere in remote parts of the District. Ultimately this issue was not resolved, but I consider a condition on any consent granted, as suggested by Ms Robertson<sup>19</sup> would be sufficient to address this matter.

#### Other effects

75. The Section 42A report raised the issue of potential soil contamination, noting that in the Council's assessment, discretionary activity consent was required pursuant to Section 11(2) of the NES. No 'Preliminary Site Investigation' had been undertaken. I agree with Ms Robertson's evidence for the applicant that the matter could be addressed by way of a condition on the consent requiring soil testing in the immediate facility of the proposed building platforms (and remediation), if necessary.
76. The Council noted that the provisions of the NES are under review, as in their current form their intended application is somewhat uncertain and in some circumstances onerous. The Council conceded that it was unlikely that the site would contain soil contaminants, its position being driven by a want of caution.

#### Positive effects

77. As noted above, the planting regime associated with the proposed application, which extended beyond the areas associated with the building platforms, was a significant positive effect and amounted to a total area of 40757m<sup>2</sup>. A grant of consent would also provide the opportunity for two additional homes in the rural environment of the Crown Terrace area.

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<sup>19</sup> Evidence of Annemarie Robertson, paragraph 8.35

### Conclusions on effects

78. I have concluded that a dwelling and its curtilage on BP1 would result in adverse visual impacts on a prominent position as seen from part of the Wakatipu Basin near and within Arrowtown, and to a lesser extent, from Glencoe Road. I have also concluded that the proposed mitigation measures including planting, are unlikely to be sufficient and/or would need to be unduly restrictive or unrealistic.
79. With mitigation in the form of planting, I am satisfied that a dwelling and its curtilage on BP2 would not have a more than minor adverse effect on the landscape, and would be consistent with the environment within this area and that expected within a VAL. There are no other aspects of the development which I consider would have any significant adverse effects.

### **OBJECTIVES AND POLICIES**

80. The relevant plan provisions include the Operative District Plan, the Proposed District Plan, and any relevant provisions of the Operative Otago Regional Policy Statement, and the Proposed Otago Regional Policy Statement. The PDP is currently proceeding through the hearings process and no decisions have been issued. For this reason only very limited weight can be placed upon its provisions. Decisions have been issued on submissions to the Proposed Otago Regional Policy Statement, although the document is now subject to appeals. Chapters 4 and Chapter 5 of the ODP address landscape and rural issues respectively.
81. As noted previously, landscape issues often assume primary significance for resource consents for development in the rural area of the District. As this application involves both subdivision and land use, and is in a transition area between the Visual Amenity Landscape (VAL) and the adjoining areas of Outstanding Natural Landscape (ONL), the landscape issues in this case are brought into particular relief to an even greater degree than normal.
82. I also consider it is important to point out that this stage that it has been agreed by both the expert landscape witnesses for both the applicant<sup>20</sup> and the Council – and confirmed by questioning – that the provisions in the objectives and policies for both the VAL and ONL have application to this proposal, and should be given weight, even though the proposed building platforms themselves are on land classified as VAL.

#### **The Objectives and Policies in the Operative District Plan**

83. Part 4 of the Operative District Plan addresses district wide issues, and Objective 4.2 and its related policies make direct reference to landscape and visual amenity. There is a significant degree of duplication between some of the policies relevant to development in the rural area and particularly with respect to landscape matters. However overall framework is established by Objective 4.2.5:

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<sup>20</sup> Evidence of Steve Skelton, paragraph 7

*“Objective 4.2.5*

*Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values”.*

84. This is an overarching objective and is expressed in very general terms, paraphrasing the provisions of section 5(2)(c) of the Act, but which is given more specific focus in its accompanying policies. Policy 1 reads as follows:

*“Future Developments*

- (a) *To avoid, remedy or mitigate the adverse effects of development and/or subdivision in those areas of the District where the landscape and visual amenity values are vulnerable to degradation.*
- (b) *To encourage development and/or subdivision to occur in those areas of the District with greater potential to absorb change without detracting from landscape and visual amenity values”.*
85. While I am satisfied that a future dwelling on BP2 would be consistent with this objective and policies, I am not confident the same is the case for a dwelling on BP1, especially in regard to subclause (b) and the limited ability of that landscape immediately around that building platform to absorb change.
86. Policies 2 and 3 concern Outstanding Natural Landscapes District wide, and with respect to the Wakatipu Basin respectively. Although both could be seen to apply to this application with respect to BP1, for reasons of caution I have confined my assessment to Policy 2 and its four constituent clauses. These policies are especially relevant to BP1, as it is viewed from the west as being a narrow strip of land above the substantial escarpment (ONL) between the Arrow River and the Crown Terrace above, and from some perspectives, the ONL of the mountain landscape behind to the north and east.
87. Policy 2(a) calls for the maintenance of open character where this currently exists. To my knowledge there are no existing or proposed dwellings or building platforms which would be in a position visible from the Wakatipu Basin. The strip of VAL above the escarpment has very limited capacity to absorb change and is framed by an ONL landscape.
88. Policy 4 is specific to VAL's.

*“Visual Amenity Landscapes*

- (a) *To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:*
- *Highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); and*
  - *Visible from public roads.*
- (b) *To mitigate loss of or enhance natural character by appropriate planting and landscaping”.*
89. As discussed earlier, in terms of subclause (a), the site of BP1 is visible from a number of perspectives, albeit more distant, in part of the Wakatipu Basin around Arrowtown, and from Glencoe Road. I consider the proposal is contrary to this policy. In terms of subclause (b) the primary benefit arising from this proposal would not in fact be the screening of the BP1, but the overall planting regime associated with the development. Despite the undoubted benefits of

this planting regime, I do not believe its benefits can be exchanged for any adverse visual impacts associated with BP1.

90. Although the reestablishment of indigenous species is beneficial, I note that landscape architects (Mr Denney in this case) appear critical of the use of exotic species, albeit that these appear to overwhelmingly dominate the 'arcadian character' of the VAL, and which confers upon it a positive environmental quality.

91. Policy 8 is concerned with cumulative effects.

*"Avoiding Cumulative Degradation*

*In applying the policies above the Council's policy is:*

- (a) To ensure that the density of subdivision and development does not increase to a point where the benefits of further planting and building are outweighed by the adverse effect on landscape values of over domestication of the landscape.*
- (b) To encourage comprehensive and sympathetic development of rural areas".*

92. The density of subdivision and development that would result from the proposed development is not inconsistent with the pattern already established in the area. Both proposed lots are relatively large. I consider the issue with BP1 is primarily one of visual impact within a prominent landscape, rather than domestication of the landscape.

93. Policy 9 addresses the effect of structures in the landscape. The relevant provisions of that policy state as follows:

*"Structures*

*To preserve the visual coherence of:*

- (a) Outstanding natural landscapes and features and visual amenity landscapes by:*
  - *Encouraging structures which are in harmony with the line and form of the landscape;*
  - *Avoiding, remedying or mitigating any adverse effects of structures on the skyline, ridges and prominent slopes and hilltops;*
  - *Encouraging the colour of buildings and structures to complement the dominant colours in the landscape;*
  - *Encouraging placement of structures in locations where they are in harmony with the landscape;*
  - *Promoting the use of local, natural materials in construction.*
- (b) Visual amenity landscapes*
  - *By screening structures from roads and other public places by vegetation whenever possible to maintain and enhance the naturalness of the environment; and*
- (c) All rural landscapes by*
  - *Providing for greater development setbacks from public roads to maintain and enhance amenity values associated with the views from public roads".*

94. I consider the proposed location of BP1 is in conflict with the first and fourth (rather repetitive) bullet points. It occupies a site which is on or close to the skyline as seen from parts of the Wakatipu Basin to the west, which I consider is contrary to the second bullet point. The

proposed colour scheme for a dwelling on the site is designed to be recessive, although this may not be the case with elements that might be within the curtilage. The site is one which would need to involve substantial screening from Glencoe Road and particularly from the west. There is no issue with the setback of BP1 from Glencoe Road.

95. Returning to subclause (b), extensive screening would be required to reduce the obvious presence of a dwelling on BP1 as seen from Glencoe Road, and the screening could itself provide evidence of the presence of a dwelling. The visibility of the site derives primarily from its relatively elevated position which makes it visible from a significant part of the northern end of Glencoe Road and from vantage points in the vicinity of Arrowtown.
96. Objective 4.11.13 relates to the adverse effects of earthworks. I am satisfied on the evidence that there would be no significant adverse effects arising from earthworks associated with access to and the establishment of the two building platforms.
97. In that respect I note that there is the immediate neighbours to the south who would be significantly affected, and have given their written consent based on an agreed siting for the two building platforms. Apart from that, there are unlikely to be any significant adverse effects on other neighbours and Glencoe Road.
98. The discovery of any archaeological items can be addressed through an accidental discovery protocol. With such a condition I would be satisfied that the application is not contrary to the objectives under 4.11.3.
99. Part 5 contains the objectives and policies applicable to 'Rural Areas'. Objective 5.2.1 and its related policies state as follows:

***"Objective 5.2.1 – Character and Landscape Value***

*To protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.*

***Policies:***

- 1.1 *Consider fully the district wide landscape objectives and policies when considering subdivision use and development in the Rural General Zone.*
- 1.2 *Allow for the establishment of a range of activities, which utilise the soil resource of the rural area in a sustainable manner.*
- 1.3 *Ensure land with potential value for rural productive activities is not compromised by the inappropriate location of other developments and buildings.*
- 1.4 *Ensure activities not based on the rural resources of the area occur only where the character of the rural area will not be adversely impacted.*
- 1.5 *Provide for a range of buildings allied to rural productive activity and worker accommodation.*
- 1.6 *Avoid, remedy or mitigate adverse effects of development on the landscape values of the District.*
- 1.7 *Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.*

1.8 *Avoid, remedy or mitigate the adverse effects of the location of structures and water tanks on skylines, ridges, hills and prominent slopes”.*

100. The objective, and the matters raised by Policies 1.1, 1.6, 1.7 and 1.8 have been discussed above, where I have concluded that the siting of BP1 is not within the ability of the landscape to absorb the development proposed, which is sited in a prominent location. The proposed siting of BP2 is consistent with these four policies. The proposal as a whole is unlikely to have a significant impact on rural production and Policy 1.5 is not relevant to this proposal.

101. As noted previously, BP1 is effectively an ‘outlier’ which in terms of its siting has limited connection to the existing and approved dwelling sites further east along Glencoe Road. Otherwise, the proposal is unlikely to have any significant adverse effect on the rural character of the Glencoe Road area in the vicinity.

102. Objective 15.1.3.5 concerns the effects of subdivision on amenity values. Subdivision can in isolation have adverse effects on landscape values through the process of fragmented ownership. This may manifest itself in the landscape in the form of boundary fencing/planting and on-site land use activities, particularly where these have a linear quality in an otherwise undulating landscape. The objective and its associated policies read as follows:

***“Objective 15.1.3.5 – Amenity Protection***

*The maintenance or enhancement of the amenities of the built environment through the subdivision and development process.*

**Policies:**

5.1 *To ensure lot sizes and dimensions to provide for the efficient and pleasant functioning of their anticipated land uses, and reflect the levels of open space and density of built development anticipated in each area.*

5.2 *To ensure subdivision patterns and the location, size and dimensions of lots in rural areas will not lead to a pattern of land uses, which will adversely affect landscape, visual, cultural and other amenity values.*

5.3 *To encourage innovative subdivision design, consistent with the maintenance of amenity values, safe, efficient operation of the subdivision and its services”.*

103. This proposal improves on the existing subdivisional pattern of a linear boundary which takes no account of landscape and terrain. As noted previously, the size and dimensions of the proposed lots are of sufficient size and dimensions such that there should be no adverse effects on landscape and visual or other amenity values.

104. I consider that no significant issues arise in terms of transport and servicing, and that the proposal would not be inconsistent with the relevant objectives and policies in the ODP.

**The Proposed District Plan**

105. The PDP was publicly notified on 26 August 2015, and its provisions are currently subject to ongoing hearings. Because no decisions have been issued on the PDP, and its provisions are

still open to challenge by way of appeal, only limited weight can be placed on it relative to the ODP.

106. Chapter 6 deals with landscape matters, with Objective 6.3.5 and its associated policies being relevant to Rural Landscapes (RLC). With respect to RLC's, Objective 6.3.5 seeks to:

*"Ensure subdivision and development does not degrade landscape character and diminish the visual amenity values of the Rural Landscapes".*

107. Policy 6.3.5.6 seeks to avoid adverse effects from subdivision and development that is highly visible from public places and public roads, and to avoid planting and screening, particularly along roads and boundaries. It also seeks to avoid planting where this would degrade openness where this is an important part of landscape quality and character.
108. To the extent that it carries weight, I consider the proposed subdivision and development is inconsistent with the landscape provisions contained in the PDP, insofar as BP1 is concerned.
109. I am satisfied on the evidence that access, on-site parking, and the management of noise through appropriate conditions would ensure that there is no conflict with these policy provisions.

**The Operative Otago Regional Policy Statement (ORPS) and the Proposed Otago Regional Policy Statement (PRPS)**

110. The ORPS, Objective 5.4.3 largely paraphrases the provisions of the Act and simply seeks to protect the landscape from inappropriate subdivision use and development.
111. The PRPS has now reached an advanced stage with decisions having been issued on 1 October 2016, but is still subject to appeals. As the site is within a landscape identified as an ONL under both the ODP and the PDP, issues of *regional significance* are raised with respect to landscape matters. The 'decision version' of Policy 3.2.6 states:

*"Managing highly valued natural features, landscapes and seascapes by all of the following".*

*"a) Avoiding significant adverse effects on those values which contribute to the high-value of the natural feature, landscape or seascape:*

*b) Avoiding, remedying or mitigating other adverse effects;*

*c).....*

*d).....*

*e) Encouraging enhancement of those values which contribute to the high-value of the natural feature, landscape or seascape".*

112. With respect to those clauses above which are relevant to the current application, in my view the provisions of the ODP remain relevant and consistent with the directions sought through the PRPS. However both the ODP and the PDP expand on these provisions in much greater detail at a *district* level.

113. I am of the view that the part of the application relating to proposed BP1 is inconsistent with Policy 3.2.6 of the PRPS.

## **PART 2 RESOURCE MANAGEMENT ACT**

114. Part 2 of the Act sets out the purpose and principles of the Act, being “to promote the sustainable management of natural and physical resources”.
115. This application was lodged (but not decided) prior to the recent High Court Decision of *RJ Davidson Family Trust versus Marlborough District Council [2017] NZHC 52*.
116. A finding of the Court in this decision was that unless there is an invalidity, incomplete coverage, or uncertainty of meaning in the statutory planning documents, the consent application and consent authority should not refer back to Part 2 in determining an application. More weight has to be placed on the objectives and policies and an ‘overall broad judgement approach’ was not appropriate.
117. Given the timing of this decision, and for want of caution, I have undertaken a brief assessment of the application in terms of Part 2. Section 6 of the Act requires that decision-makers recognise and provide for the matters contained therein. Section 6 (b) contains a requirement to protect outstanding natural features and landscapes from inappropriate subdivision, use and development. The land subject to the proposed development is within an area identified as an Outstanding Natural Landscape under the District Plan. My conclusion is that the landscape cannot adequately absorb the development proposed through this application, particularly BP1. Accordingly I conclude that a grant of consent to the application is contrary to the matters contained in Section 6.
118. Section 7 contains two subclauses which are relevant to this application. These are:
- (c) the maintenance and enhancement of amenity values:*
- (f) the maintenance and enhancement of the quality of the environment.*
119. The proposed location of BP1 and a dwelling and curtilage thereon would be inconsistent with maintaining visual amenity and the quality of the environment.
120. No matters were drawn to my attention that suggested the proposal was inconsistent with the provisions of section 8 of the Act.
121. Turning to the purpose of the Act under section 5, I consider that while the establishment of a dwelling on BP2 would enable the applicant, and the district as a whole, to provide for its social, economic and cultural welfare, I do not consider this would be the case with BP1. To that extent I consider a grant of consent would not best achieve the purpose of the Act and would be inconsistent with the established objective and policy framework in the ODP and that proposed in the PDP.

**Sections 104/104B RMA**

122. I have concluded that the proposed activity, with respect to BP1, will have adverse effects on the landscape of the VAL and the ONL. Although not a noncomplying activity, I have reached the conclusion that the activity is contrary to the objectives and policies of the ODP, and also contrary to the objectives and policies of the PDP as notified. However at this stage only limited weight can be placed on the PDP.
123. In cases involving subdivision and building platforms, and where nearly all land use applications require consent, there is only a limited basis for applying the permitted baseline. The range of activities which are provided for as permitted in the Rural General Zone are quite limited, and as is the case generally with applications of this nature, I am not of the view that the application can draw any significant support from such activities.
124. Care has to be exercised in arriving at any assumptions relating to potential precedent effects, unless successive applications have very similar context and scale, which is frequently not the case. However as this proposal includes a proposed building platform in a sensitive location, I consider that a grant of consent may contribute to a loss of confidence in the integrity of the District Plan.

**DECISION**

The application has been advanced on the basis of seeking consent to the subdivision and two building platforms. Although I consider that direction of a dwelling on proposed BP2 would be consistent with the provisions of the ODP, that is not the case for a dwelling on BP1. Given that both proposed building platforms form an integral part of the application as a whole, I consider that the application as a whole has to be either approved or declined.

Pursuant to Sections 104, and 104B of the Resource Management Act 1991, consent for application RM160137 is **declined**.

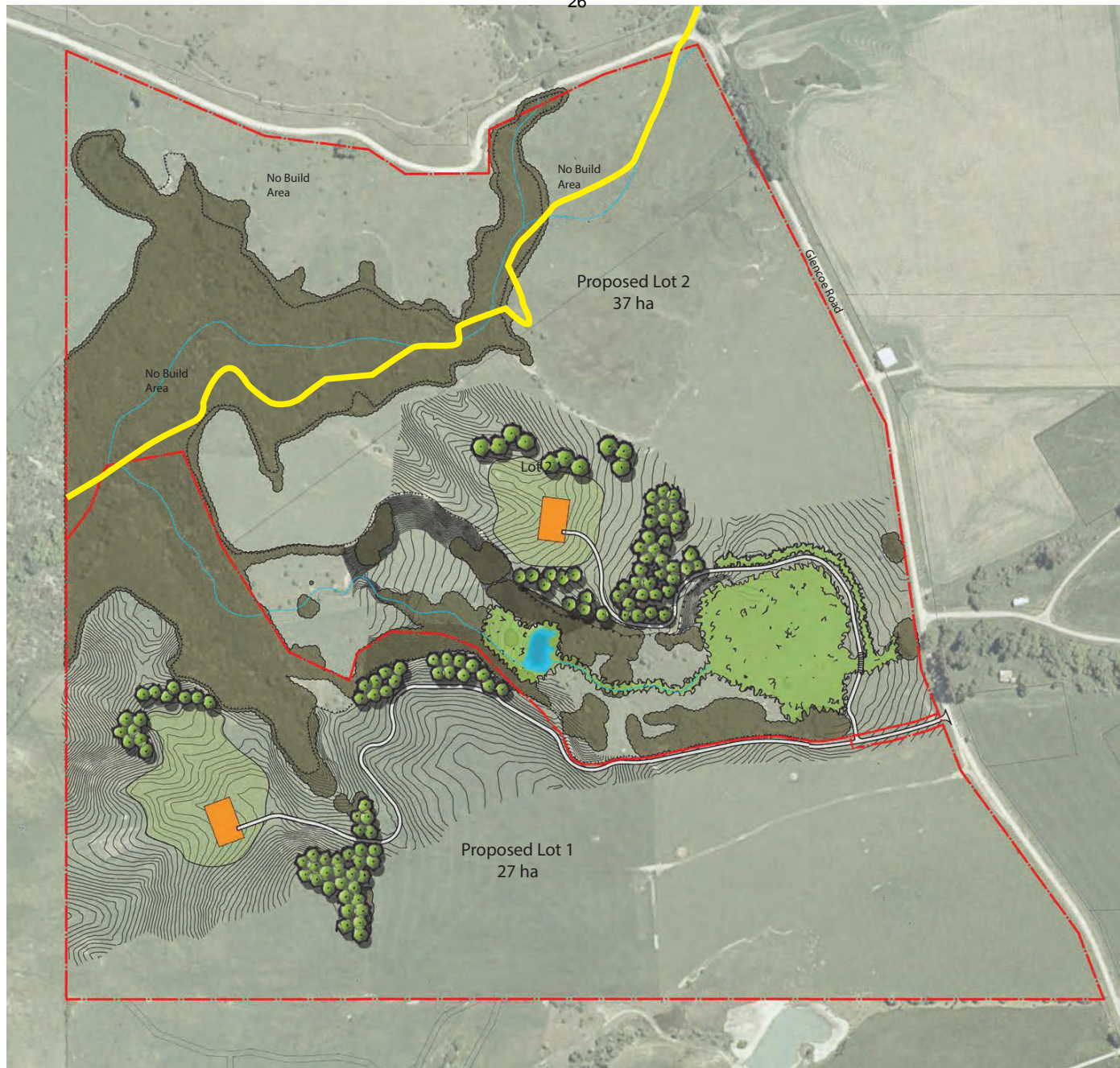
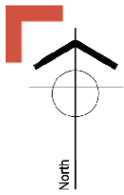
Robert Charles Nixon

A handwritten signature in black ink, appearing to read 'R. Nixon', with a stylized, flowing script.







Hearings Commissioner  
20 April 2017

**APPENDIX 1** - Site Plan Showing Proposed Subdivision And Building Platforms

APPENDIX 1 - SITE PLAN SHOWING PROPOSED SUBDIVISION AND BUILDING PLATFORMS



### Legend

-  Proposed trees
-  Existing wetland and area of proposed native re-vegetation
-  Existing vegetation consisting mainly of willows, briar, hawthorn, matagouri and sedges.
-  Proposed 1000m<sup>2</sup> residential building platform
-  Proposed residential curtilage
-  Proposed 3.5m driveway
-  Proposed no build line