



DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL
RESOURCE MANAGEMENT ACT 1991

Applicant:	M Ayre
RM reference:	RM161286
Location:	68 Kennels Lane, Wanaka
Proposal:	Consent is sought for the subdivision of one lot into five lots and to identify three residential building platforms.
Type of Consent:	Subdivision and land use
Legal Description:	Lot 4 Deposited Plan 336464 held in Computer Freehold Register 149485
Zoning:	Rural General (Operative District Plan) Rural (Proposed District Plan)
Activity Status:	Non-Complying
Notification:	1 June 2017
Commissioners:	Commissioners Jan Caunter and Wendy Baker
Date:	20 October 2017
Decision:	GRANTED SUBJECT TO CONDITIONS

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by M Ayre to subdivide one lot into 5 lots and to identify three residential building platforms.

Council File: RM161286

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

THE PROPOSAL

1. We have been given delegated authority by the Queenstown Lakes District Council (“the Council”) under section 34A of the Resource Management Act 1991 (“the Act”) to hear and determine the application by M Ayre (“the Applicant”) and, if granted, to impose conditions of consent.
2. The Applicant seeks resource consent to subdivide land at 68 Kennels Lane, Wanaka into 5 lots and to identify residential building platforms on 3 of those lots.
3. A summary of the proposal follows:
 - Lot 1 – 7.2ha, retain existing dwelling
 - Lot 2 – 3.0ha, retain existing dwelling
 - Lot 3 – 8.4ha, identify new residential building platform of 750m²
 - Lot 4 – 3.1ha, identify new residential building platform of 750m²
 - Lot 5 – 10.2ha, identify new residential building platform of 750m²
 - Residential dwellings on Lots 3-5 are to be subject to a height limit of 5.5m
 - Design controls relating to colours and materials of buildings and related structures will apply to Lots 3-5
 - A domestic curtilage area is identified around each proposed building platform and the two existing dwellings within proposed Lots 1 and 2. As noted below, the unlawful location of the dwelling on Lot 1 has resulted in the Applicant agreeing that there is no dwelling on this proposed lot although in closing submissions it is maintained that the garage has been legally established
 - Clusters and belts of trees are to be retained for mitigation purposes. Additional supporting mitigation planting is proposed
 - Improvements will be made to the existing rights of way, including the use of formed metal (gravel) carriageways, passing bays and road widening and the provisions of drainage swales for stormwater disposal.
4. The Applicant’s evidence noted the size of Lots 1 and 2 had changed from the notified application due to the alteration of the legal access into Lot 2 by separating the 24m wide access to proposed Lot 1 into two separate access strips, to serve each of Lots 1 and 2. The amendments were minor. Lot 1 was originally 7.6 ha and Lot 2 was

originally 2.6ha. For completeness we record that we consider the modified application is within the same scope as the notified application.

SITE DESCRIPTION

5. A description of the site and receiving environment within which the application sits can be found in the Applicant's AEE. No parties disputed the description of the site or of the receiving environment, and we are therefore content to rely upon them, noting that the descriptions accord with our impressions from our visits to the site and surrounding area. As we note below, the exception to this is the issue of the unlawful dwelling on Lot 1, which affects our assessment.

NOTIFICATION AND SUBMISSIONS

6. The application was publicly notified on 1 June 2017 with submissions closing on 30 June 2017. Ms Gathercole provided us with a summary of the submissions, as follows:

Name	Location of Submitters' Property	Summary of Submission	Relief Sought
1. Upper Clutha Environmental Society (Inc.)	245 Hawea Back Road, Wanaka	<ul style="list-style-type: none"> • does not represent sustainable management (Part 2 of RMA) • adverse effects are not avoided remedied or mitigated: • visual effects • amenity effects • effects on natural landscape values • cumulative effects • domestication effects • traffic and lighting effects • contrary to or inconsistent with District Plan provisions - objectives, policies, assessment matters and rules 	Decline consent for the application in its entirety
2. Graeme Findlay	598 Horseshoe Bend, Albert Town-Hawea Highway, Wanaka	<ul style="list-style-type: none"> • Happy for the subdivision to take place on the contra agreement that M Ayre allows the submitter the same benefit of being able to subdivide in the future. • Wishes to ensure that any future buyers of the lots are aware that this contra agreement is in place. 	None
3. Joss Mercer and Samantha Carey	68c Kennels Lane, RD2, Albert Town	<ul style="list-style-type: none"> • One lane access road from Kennels Lane to potentially seven properties • No conciliation from Mark Ayre regarding the development • Increased traffic on the one lane gravel/rock road that runs from Kennels Lane to four properties • Increased dust nuisance due to increased traffic volumes. • Written approval not provided 	The road that runs from Kennels lane to be sealed with culverts to collect water runoff and of a sufficient width to carry traffic both ways.
4. Peter and Vicki Byrne	Lot 1 DP 336464	<ul style="list-style-type: none"> • In general, support the application subject to the upgrade of all public and private sections of Kennels Lane Road access • Gradual decline in the Council maintained 	<ul style="list-style-type: none"> • QLDC to seal the public portion of Kennels Lane • Applicant to form and seal the private section

		<p>access road and deterioration of the private section of Kennels Lane with increase in traffic flows</p> <ul style="list-style-type: none"> • Additional lots will create additional traffic movements and potential for further deterioration if businesses such as the boarding kennels and cattery resurrected 	<p>of Kennels Lane</p> <ul style="list-style-type: none"> • That a formal Body Corp or similar be established for Lot owners and maintenance of the private section of Kennels Lane • Alternatively that the applicant vests ownership in the private access road to QLDC who fund maintenance via rates
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7. Correspondence was also received from the Department of Conservation and the Otago Regional Council. This correspondence was included within the section 42A report as Appendices 2 and 3.

8. The Department of Conservation's correspondence stated the following:

"The Department has now had the opportunity to review the Application by M Ayre (RM161286) for consent to subdivide Lot 4 DP33646 into 5 lots and identification of three building platforms. From a resource consent point of view the department has no real concerns except that it appears that parts of the access to two of the lots may involve marginal strip subject to the Conservation Act. If this is correct and the applicant wishes to use this land he will need to apply for a concession. The department cannot prejudge the outcome of such an application.

Of more concern to the department is the existence of the existing dwelling, septic system, solar panels and some outbuildings being largely located on marginal strip without authority. There is brief mention of this occupation in the application which suggests that discussions between the applicant and DOC will readily resolve the issue. This is certainly not the case as advised to you in my email of 22 May as follows

The Department of Conservation wishes to formally advise QLDC that we have received notification from the landowner (Mark Ayre) that his dwelling and existing access encroach onto the Hawea River Marginal Strip.

The legislation that applied to marginal strips (Conservation Act 1987) had no provision for the Crown to either sell or lease the land. Mr Ayre has been advised that there had been an offence committed and that was building on and occupying a marginal strip.

This is a complex matter and we acknowledge the difficult situation that they found themselves in. The department will continue to work with Mr Ayre on this matter however at this stage we could not see an easy solution.

The department will not be submitting on the resource consent but we would expect council to be made aware of the situation with regard to the unlawful occupation which involves one of the Lots being created under this proposal. Irrespective of the success or otherwise of the application for resource consent the department will be continuing to find a legal solution to the unlawful occupation of marginal strip."

9. The correspondence from Otago Regional Council stated:

"I've had a look at this application and based on the information in it, I can't identify a

need for ORC to make a formal submission.

I did have a couple of thoughts if I can offer.

Flooding risk

I understand the applicant's view is that the likelihood of risk from flooding due to a dam break is 'very low risk' base on the reports cited.

I'd note that while a dam break itself may not be considered a 'natural hazard', it could be triggered by natural seismic activity (as well as other factors such as design failure, flooding etc etc). It is relevant to note the current acceptance in New Zealand that a large alpine fault earthquake has a probability of happening which is higher than the 1:10,000 year likelihood the cited reports suggest for a Hawea Control Dam break scenario.

The applicant notes the AECOM report does not discuss probability and relies on the 1:10,000 year guideline.

The decisions version of the proposed RPS promotes a suite of Natural Hazard risk related policies (Objective 4.1) including discouraging activities that increase risk.

In recent years, New Zealand's view on the management of risk from natural hazards has shifted to put more importance on risk avoidance and/ or reduction. The argument the applicant raises that its proposal should be restricted due to Albert Town and Wanaka already being subject to this risk goes against this logic.

ORC would expect that QLDC will not dismiss the risk for the reasons argued by the applicant (i.e. the existing risk to Albert Town/ Wanaka). The risk to the proposed development should be considered as it is increasing risk (exposure of people from flooding). The decision should take into account how it might be appropriate to either avoid or mitigate the flooding risk. Should consent be granted I imagine this might be through where buildings are sited and/ or floor heights."

Subdivision of Rural Land

The proposed RPS also contains policy (5.3.1) with provisions to minimise loss of significant soils and subdivision of productive rural land. I understand the applicant addresses these issues somewhat. I just wanted to flag this proposed policy for your information.

I accept that the decisions version of the proposed RPS is not currently operative and therefore does not have full weight.

I hope my comments are of some assistance. If you have any questions please feel free to contact me at the office."

10. Four neighbours provided written approval, as follows:

- Daniel Pinckney, Pt Lot 2 DP 22419
- Deane Weastell and Julie Nicholson Pt Lot 2 DP20399
- KA and SH Dickson Trust, Lot 2 DP 360339
- P and M Robinson, Lot 2 DP 336464.

11. We were advised by the Applicant's planning consultant, Ms Fyfe, that the Weastell and Nicholson property has since been sold to Wang Lei. The new owner has not made a submission on the application. Nevertheless, we have taken account of the effects on this property.
12. The Robinson property was purchased by Joss Mercer and Samantha Carey, submitters in opposition. As we note below, Mr Mercer confirmed there had been no formal consultation with them about the application until very recently. In our assessment, we have taken into account the effects on the Mercer and Carey property.
13. Mr Peter Byrne had originally provided written approval but later withdrew it. Mr Byrne has made a submission on the application and we confirm that we have taken account of the effects of the proposal on the Byrne property.
14. The Council received an email from Mr Haworth on behalf of Upper Clutha Environmental Society dated 1 September 2017 advising that the Society would not attend the hearing. This email was made available to us at the hearing.

THE HEARING

15. A hearing to consider the application was convened on 25 September 2017 in Wanaka. In attendance were:
 - (a) The Applicant, represented by Mr Mark Ayre in person, Mr Grant Fyfe (counsel and Trustee), Ms Anne Steven (landscape architect) and Ms Jo Fyfe (planner);
 - (b) Mr Joss Mercer, Ms Samantha Carey and Mr Peter Byrne (submitters);
 - (c) Council's reporting staff and administrative support - Ms Lynn Overton (engineering), Mr Richard Denney (landscape architect), Ms Sarah Gathercole (planner) and Ms Charlotte Evans (hearing secretary).
16. We had the benefit of a section 42A report prepared by Council's reporting planner, Ms Gathercole. Based upon her assessment of the application, Ms Gathercole recommended that the application be granted on the basis that:

"It is considered that the adverse effects of the activity can be suitably avoided remedied or mitigated. Whilst the proposal will result in further fragmentation of the landscape and future development on the lots, given the scale and nature of the proposal within the context of the existing rural character and landscape, the location of the proposed building platforms and the presence of existing vegetation, adverse effects will be acceptable. The proposed lots can be suitably accessed and serviced and are not likely to be subject to or exacerbate any natural hazards. Given the nature and location of the proposed lots, no adverse cumulative or reverse sensitivity effects are anticipated.

The proposal is consistent with the relevant objectives and policies of the Operative District Plan and Proposed District Plan as adverse effects are appropriately avoided or mitigated and the area has the potential to absorb the extent of change that would occur from the development. The proposed lots can be suitably accessed and serviced."

SITE VISIT

17. We undertook site visits on 25 and 26 September 2017.

THE DISTRICT PLAN AND RESOURCE CONSENTS REQUIRED

18. The AEE and the s42A report identified that resource consent was required for two reasons:
- (i) Subdivision consent: A discretionary activity resource consent pursuant to Rule 15.2.3.3(vi) of the Queenstown Lakes Operative District Plan (“ODP”) for any subdivision and identification of building platforms;
 - (ii) Subdivision consent: A building platform is not proposed in accordance with Rule 15.2.6.3(iii)(b) for Lots 1 and 2 and therefore defaults to a non-complying activity under Rule 15.2.3.4(i);
19. In paragraph 18 of her evidence, Ms Fyfe also identified Rule 5.3.3.3(i)(b) which is triggered where residential building platforms are identified as a land use activity as opposed to a subdivision activity. On questioning, Ms Fyfe confirmed that only the subdivision component was sought.
20. Ms Fyfe and Ms Gathercole agreed that Rule 15.2.3.4(iii) of the ODP states that the subdivision of a residential flat from a residential unit is a non-complying activity. The ‘granny flat’ on Lot 2 could not be considered a ‘residential flat’ under the ODP as it does not meet the relevant definition. The end result is that the ‘granny flat’ is regarded as a residential unit and does not trigger any additional consent requirements through this subdivision application.
21. In response to a concern raised by submitters that the lots could be used for a lodge or visitor accommodation, we note that no consent has been sought for that activity.
22. Overall, the application is assessed as a non-complying activity under the ODP.
23. The Applicant made enquiries with both the Council and Otago Regional Council regarding the classification of the site. The site is not identified on either database as a HAIL site and Ms Bond of Opus Consulting confirmed the same. Therefore, no consent is required under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES).

RELEVANT STATUTORY PROVISIONS

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

- a) *any actual and potential effects on the environment of allowing the activity; and*
- (b) *any relevant provisions of:*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (iv) *a New Zealand coastal policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*

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

26. As a non-complying activity, the proposal must satisfy one of the two thresholds set out in section 104D of the Act, namely:

(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

both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

27. If consent is able to be granted pursuant to Section 104 and 104D, the application must be considered under Section 104B of the Act. Section 104B states:

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

(a) may grant or refuse the application; and

(b) if it grants the application, may impose conditions under section 108.

28. Section 104(3)(b) requires that we have no regard to effects on people who have given written approvals to the application.

29. Section 106 of the Act provides that a consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that the land is or is likely to be subject to, or is likely to accelerate material damage from natural hazards, or where sufficient provision for legal and physical access to each allotment has not been made.

30. Sections 108 and 220 empower us to impose conditions on subdivision consents.

SUMMARY OF EVIDENCE HEARD

31. Evidence from Ms Steven and Ms Fyfe for the Applicant was pre-circulated. We have read all of the application, the evidence and the section 42A report. The following is a brief outline of the evidence and reports presented. This summary does not detail everything that was advanced at the hearing, but captures the key elements of what we were told.

Applicant

- **Mr Ayre** did not present evidence but answered questions from us on the application. He confirmed that the 1994 resource consent granted for the temporary 'granny flat' had been overtaken by a later resource consent granted in 2000 which authorised the building to be used as a dwelling in perpetuity. Mr Ayre confirmed that the dog kennels were no longer operating but it was possible that activity would recommence in the future. Dog training was currently undertaken on the Applicant's site. The Applicant proposed to put in

place reverse sensitivity covenants with all new lot owners to protect against any conflict between the new lots and the dog activity.

- **Ms Steven** took us through her written evidence, noting she had now prepared a further revision of the landscape plan in response to concerns raised by Mr Denney. Ms Steven noted the planting relied on to mitigate the subdivision was shown on the landscape plan and that she did not rely on the pine trees on the main access way as mitigation. Ms Steven explained some further amendments to the landscape conditions which addressed planting types and sizes.
- **Ms Fyfe** summarised her written evidence and produced a revised set of proposed consent conditions which endeavoured to respond to points raised by Council officers in the section 42A report and which also followed the exchange of evidence.

Submitters

- **Mr Mercer** spoke for both himself and Ms Carey. They purchased their property in late 2016 from Mr and Mrs Robinson. They did not object to the subdivision per se; their main concerns were traffic and dust. Mr Mercer considered the kennels to still be active and noted the traffic increased along the access way during holidays. In his view, the road required upgrading to a two way standard and should be sealed and include culverts to collect stormwater. He noted it was not clear from the application whether the lots could be used for a lodge or if the road would be lit at night. Mr Mercer noted that dust from the road blew towards his property from the prevailing wind. There was no planting on the boundary to the west to mitigate against this or the visual effect of a dwelling on Lot 5. He was happy to discuss with the Applicant any mitigation measures to address this.
- **Mr Byrne** confirmed that he had originally supported the application but withdrew his written approval. Mr Byrne has lived on his property for two years. He was also concerned about the deterioration of the main right of way and increased traffic from the additional lots. He requested sealing to reduce the dust and provide a better road surface. Mr Byrne noted he would be happy to contribute a share to the cost of the sealing if this was undertaken privately by lot owners, but would want to see a body corporate put in place to address ongoing maintenance. He was also happy to discuss with the Applicant options to address his concerns.

Council Officers

- **Ms Overton** confirmed the content of her engineering report and commented on the updated set of conditions tabled by the Applicant at the hearing. She did not agree the five lot subdivision and resulting 24 vehicles per day required the sealing of Kennels Lane and noted any such measure would first have to be approved through the Council's Long Term Plan. We understood Ms Overton to also say she did not agree the right of way needed to be sealed. Ms Overton suggested a speed limit of 40kph may be an additional measure for consideration. Ms Overton confirmed she did not consider the building platforms proposed would be exposed to flooding.
- **Mr Denney** confirmed the content of his landscape report and drew our attention to the matters agreed and disagreed between himself and Ms Steven,

which were minimal. He confirmed the revised landscape plan produced by Ms Steven addressed all of his concerns. Mr Denney noted the site is not highly visible from the Hawea River. He otherwise provided feedback on the Applicant's updated proposed consent conditions, noting in particular his preference to see water tanks contained within the curtilage areas, at least on the new lots, and to be in dark colours only. Mr Denney also noted his preference to see "wing structures" avoided in the entrance to the development.

- **Ms Gathercole** also confirmed the content of her section 42A report and her recommendation that the application be approved. She agreed with us that the dwelling on Lot 1 was not lawfully established and could not be considered as part of the existing environment or permitted baseline. She considered the lot could still be created without the dwelling but noted there was no evidence before us to assess any possible alternative building platform. Any other building platform would have to be considered at the time resource consent was sought. Ms Gathercole supported the comments on conditions made by Mr Denney.

APPLICANT'S RIGHT OF REPLY

32. We received the Applicant's right of reply on 2 October 2017. Having reviewed that information, we were satisfied that we required no further information and closed the hearing on 16 October 2017.
33. In its Reply, the Applicant addressed the legal question of the unlawful existing dwelling on Lot 1 and how that might affect our statutory assessment. The Applicant acknowledged that this dwelling is "substantially on marginal strip" rather than within the legal boundaries of proposed Lot 1. We were referred to case law addressing the ownership of land vs. resource management effects, which confirmed that the legality of a structure such as this cannot be resolved through the RMA process if other legislation can address the issue. This is a private property right matter. The Applicant proposed that, if consent is to be granted, we insert Advice Notes addressing the unlawful dwelling so that others are alerted to the illegality and it is clear that a further resource consent would be required to establish a building platform on Lot 1. No specific wording for the suggested Advice Notes was included in the Applicant's final proposed conditions.
34. Ms Fyfe expressed the opinion that consent could still be granted, despite this unlawful structure, as there were no objectives or policies that apply to our consideration of this point. Relying on additional comments from Ms Steven, Ms Fyfe noted that a building or building platform could be accommodated on Lot 1, even if in a different location, with minimal effects on landscape character and visual amenity. Ms Fyfe confirmed that the Applicant withdrew the existing building platform on Lot 1 from the application, given the legal difficulty with the dwelling's location.
35. The Applicant confirmed roading had been discussed with neighbours Mercer, Carey and Byrne following the hearing. The Applicant did not agree that sealing of Kennels Lane and the north-south leg of the right of way was required but did agree to plant the eastern boundary of Lot 5, alongside Mr Mercer and Ms Carey's dwelling, to mitigate against dust from the right of way. A low speed limit of 30kph on the right of way was also agreed, to reduce dust from vehicles. The Applicant suggested this mechanism sit outside the consent conditions so as to avoid the Council having any monitoring obligation. The Applicant also confirmed that there would be no lighting on the right of way.

36. An updated Landscape Plan was provided with the Applicant's Reply, which included the planting now proposed for the Lot 5 boundary. Ms Steven confirmed that the building platform on Lot 1, and associated curtilage and mitigation planting, no longer formed part of the application.¹ It was her opinion that the removal of this platform would improve the pastoral and natural character in the environment. The three proposed dwellings would be well back from the river and would be well screened. The existing dwelling on Lot 2 would remain visible.
37. The Applicant did not agree that the south-western corner of Lot 1 should be included in the Lot 1 curtilage, but did agree that this part of the site should be tidied up. The Applicant agreed that all new water tanks should be within the curtilage areas for each lot, but submitted all existing tanks should remain in their current location.
38. The Applicant confirmed that reverse sensitivity covenants would be registered on the title of each proposed lot to address any effects from the dog operations.
39. Finally, the Applicant confirmed that no entrance structures were proposed for this subdivision. Further changes to the consent conditions were proposed.

RELEVANT PLAN PROVISIONS

The Operative District Plan

40. The subject site is zoned Rural General under the ODP.
41. The purpose of the Rural General Zone as described on Page 5-9 of the ODP is as follows:
- The purpose of the Rural General Zone is to manage activities so they can be carried out in a way that:*
- *protects and enhances natural conservation and landscape values;*
 - *sustains the life supporting capacity of the soil and vegetation;*
 - *maintains acceptable living and working conditions and amenity for residents of and visitors to the Zone; and*
 - *ensures a wide range of outdoor recreational opportunities remain viable within the Zone.*
42. The relevant provisions of the ODP that require consideration can be found in Chapter 4 (District Wide), Chapter 5 (Rural Areas) and Chapter 15 (Subdivision, Development and Financial Contributions).

The Proposed District Plan ("PDP")

43. The relevant provisions of the Proposed District Plan ("PDP") that require consideration are Chapters 6 (Landscapes), 21 (Rural zone) and 27 (Subdivision and Development). The site is zoned Rural under the PDP.
44. Section 86[b](1) of the RMA states a rule in a proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified. An exemption to this is section 86[b](3) in which case a rule has immediate legal effect in certain circumstances including if the rule protects or relates to water, air or soil.

¹ There was some confusion in the application about this. Ms Fyfe advised us that the building platform for Lot 1 had originally formed part of the application but we did not consider the Applicant to have applied for a building platform for Lot 1.

45. The PDP was notified on 26 August 2015. Pursuant to Section 86[b](3) of the RMA, a number of rules that protect or relate to water have immediate legal effect. None of these rules are relevant to this application, and by extension we therefore conclude that there are no rules in the PDP that are relevant to our consideration of this application.

Operative Regional Policy Statement

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

Proposed Regional Policy Statement

47. The Proposed Regional Policy Statement was notified on 23 May 2015 and decisions were notified on 1 October 2016. Appeals have been lodged with the Environment Court, covering a wide range of topics.
48. The relevant objectives and policies are found in Chapters 1, 3 and 5. These generally align with the Operative Regional Policy Statement.

Summary – relevant plan provisions

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

DESCRIPTION OF APPLICANT'S PROPERTY AND BACKGROUND

50. As Ms Steven outlined in her landscape report, the property was previously subdivided in 2003, moving from a 50.3ha property into three separate lots. The site forming this application is Lot 4 of that earlier subdivision and is almost 32ha in area.
51. The previous subdivision consent did not require tree planting for screening purposes but a condition was imposed requiring future planting prior to the construction of a dwelling on the new lots. That condition did not apply to Lot 4, as there was already a dwelling on the property.
52. The subject site is a roughly rectangular block aligned north-south and lying between the Hawea River and Kennels Lane. It lies some 0.72 – 1.15km to the east of State Highway 6 and is separated from the highway by several other properties and their tree planting. The site is flat and has been modified through the construction of gravity-fed border-dyke irrigation. The dominant vegetation is pasture with some belts of mature exotic trees, which are linear in nature.

PERMITTED BASELINE, EXISTING ENVIRONMENT AND RECEIVING ENVIRONMENT

53. All subdivision and new buildings require resource consent in the Rural General Zone. Permitted activities in the Rural General zone are restricted to matters such as farming and viticulture activities, fencing and earthworks up to 1000m³ within one consecutive 12 month period. Unlimited planting is also permitted, although there is a restriction in the ODP as to the date from which that may be considered as part of the permitted baseline.² There is limited value from the permitted baseline for this application.

² Rule 5.4.2.2(3) page 5-26 ODP

54. The existing environment includes all development and activity currently on site and in the surrounding environment which has been lawfully established.
55. The subject site includes two dwellings, a dog kennel/ dog training operation and a number of structures in the corner of Lot 1. We raised with the Applicant the unlawfulness of the existing dwelling on Lot 1, given the matters raised by the Department of Conservation and the Applicant's own assertion that the existing dwellings formed part of the permitted baseline. We briefly outlined the submissions forming part of the Applicant's Reply earlier in this decision.
56. There is no debate that the Lot 1 dwelling is unlawfully established. We agree that this is not a matter we can resolve through this consenting process. The Applicant acknowledged in its Reply that a resolution between the Applicant and the Department of Conservation could involve a concession being granted by the Department, or the demolition/ relocation of the dwelling. In the latter circumstance, a new dwelling would need to be approved through a separate resource consent process and there is no certainty that this would be granted.
57. At the hearing, the Applicant and the Council did not appear to have considered the impact of this illegality on the decision we must make, or where any alternative building platform should be located, should that be required in resolving legal matters with the Department of Conservation. In questioning on this latter point, both Mr Denney and Ms Steven confirmed that any alternative building platform should be set back further from the river. Mr Denney noted that any new location would require a thorough assessment as the river was the most sensitive part of the site.
58. In our view, it is inappropriate to include an unlawful structure within either the permitted baseline or the existing environment assessment. Our assessment has been undertaken on the basis that it is excluded. This decision does not, and cannot, authorise any dwelling or building platform for Lot 1.
59. The receiving environment comprises a number of rural dwellings and farm properties. The section 42A report confirmed there are no known existing unimplemented resource consents relating to relevant surrounding sites, or to the Applicant's land.

ASSESSMENT OF ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

Landscape effects

60. Both landscape architects, Mr Denney for the Council and Ms Steven for the Applicant, agreed that the site was part of a Visual Amenity Landscape (VAL) and that the immediately adjacent Hawea River area is within an Outstanding Natural Landscape (ONL). We accept these assessments. Ms Steven stated at paragraph 7.2 of her evidence that the margin of the Hawea River extends into the site to around 50m from the edge of the river scarp. We note that, on this basis, the existing (unlawful) dwelling on proposed Lot 1 is located at least partially within the ONL.
61. Paragraphs 9-24 of Mr Denney's report and paragraphs 8-13 of Ms Steven's original landscape assessment submitted with the application assessed the proposal against the relevant assessment matters for VALs set out in clause 5.4.2.2 of the ODP. These relate to effects on natural and pastoral character, visibility of development, form and density of development, cumulative effects on landscape and rural amenity. Both also provided assessment against the assessment matters for development and subdivision in the Rural General zone.

62. Generally, the landscape architects were in agreement on all landscape matters which was confirmed by the very helpful joint statement titled 'Statement of Issues – Landscape and Visual Assessment' setting out the matters on which they agreed and the matters on which they were not agreed. Of relevance, there is only one matter on which they were not agreed:

"Aesthetic Quality of the Site – AS [*Anne Steven*] has low aesthetic quality; RD [*Richard Denney*] has higher aesthetic quality due to association with the Hawea River and river terraces and typical 'big sky' Upper Clutha landscape, expansive open quality and broad scale landscapes."

This disagreement is not pertinent to our decision and we are not required therefore to express a view either way.

63. In summary and of relevance the landscape experts concluded that:

- The open character of the ONL of the Hawea River and adjacent conservation area will not be compromised
- There will be an effect on the pastoral and open character and the level of domestication will increase. With existing mitigation and standard rural design controls these effects will be minor.
- The proposed development will not be visually prominent as effects are largely contained to the site due to the extent of tree planting.
- There is unlikely to be any significant adverse effect on private amenity, providing tree screening is maintained along the western boundary.
- The proposal including locations of building platforms, lot boundaries, roading and tree planting patterns, does not compromise landscape/visual coherence.
- The landscape has the ability to absorb this development and the existing development does not represent a threshold to absorb further change.
- Visual access to open space and views across pastoral landscape is maintained.

64. This is the only expert landscape advice before us and we therefore adopt it. However, we must turn our minds to:

- The submissions on landscape made by Mr Howarth for the Upper Clutha Environmental Society (UCES); and
- Any landscape issues which arise as a result of the unlawful dwelling on proposed Lot 1.

65. The submission by UCES raised concerns with the effects on landscape. In particular in terms of visibility, UCES contended that a future dwelling on the proposed platform on Lot 3 may be clearly visible from the public reserve and the track on the other side of the Hawea River opposite the subject site. Mr Denney (paragraph 14 of his report) and Ms Steven (paragraph 6 of her original assessment) agreed that the dwelling will be visible, but considered this is adequately mitigated by the distance of views, being some 600m, and the proposed plantings. We prefer the opinions of Mr Denney and Ms Steven and consider that any adverse effects will be minor at most and, depending on the design of the dwelling, may be insignificant.

66. At paragraph 8.6 of its submission, UCES stated that the proposal will result in degradation and over-domestication of the landscape of the site and surrounding area. Our attention was drawn to the additional ‘clutter’ that comes with a dwelling:

“outbuildings, garages, fences, greenhouses, water-tanks, linear boundary planting, washing lines, swimming-pools, tennis-courts, driveways, parking areas, access roads, BBQ areas, sleepouts, several vehicles, caravans, boats, children’s toys, wood smoke, lighting at dusk and at night and so on”.

The Applicant proposes curtilage areas around each building platform and around the existing dwelling on Lot 2. We have considered the issue raised by UCES and are of the view that the curtilages are of an appropriate size for rural dwellings and will adequately contain these domestic features. Mr Denney and Ms Steven are both in agreement that the curtilages proposed are appropriate. There was discussion with the Applicant and the Applicant’s advisors during the hearing about the elements that should be contained within the curtilage and those that could be located outside it. We are of the opinion that this is a matter that can be managed through conditions and we are confident that the domestic effects are able to be contained and have been adequately considered.

67. All of the evidence presented to us considered the existing dwelling on Lot 1 to form part of the existing environment. As discussed above, all parties now agree that this is not correct. As a result we are left to draw our own conclusions with regards to any landscape (and other) effects resulting from this. We questioned both Mr Denney and Ms Steven about the appropriateness of the location of the dwelling. Both landscape architects considered that if a building platform or dwelling location were being identified under the current planning regime then a preferred location would be substantially further north, away from the edge of the scarp. They advised that there were suitable locations within proposed Lot 1 to locate a dwelling without affecting the character or visual amenity of the landscape.
68. On this basis it is our view that the creation of proposed Lot 1 without a dwelling or a building platform will have only minor landscape effects.

Assessment Matters General

Nature Conservation Values

69. No significant nature conservation values have been identified as being associated with the subject site. At paragraph 26 of his report, Mr Denney advised that the elevated and close proximity of the site to the ONL of the Hawea River and terraces means there is potential for any wilding species to spread into this ONL. For this reason he recommended that planting of wilding species is avoided and replacement of wildings species should be with alternative less problematic species. The Applicant has accepted this recommendation and included a condition to this effect in its list of proposed conditions.
70. The proposed planting on the site includes indigenous species. Both landscape architects conclude that this would be a small but positive contribution to the indigenous ecology of the site and surrounding landscape.
71. We accept these opinions and conclude that there is a limited positive effect on nature conservation values.

Assessment Matters Subdivision

72. There are no known areas of significant indigenous vegetation, heritage items and archaeological items on the site.
73. We are satisfied the proposal will meet relevant subdivision assessment matters.

Traffic Generation and Vehicle Movements, Parking and Access

74. Ms Overton's report noted that access to the site is via a series of gravel rights of way. The right of way from Kennels Lane currently has a legal width of 5m and gravel formation of approximately 4m. It currently serves 4 dwellings and at the completion of this subdivision, will serve 7 dwellings.
75. The access within the existing rights of way to the proposed lots is formed to 4m wide within a 5m legal width. Ms Overton recommended that the right of way be widened and this has been accepted by the Applicant. The conditions otherwise addressed upgrading the rights of way to a formed metal (gravel) carriageway surface to also include passing bays and stormwater drainage. We noted earlier in our decision Ms Overton's recommendation that sealing of Kennels Lane and the right of way was not required. The Applicant holds the same position. We agree that sealing is not required.
76. The Applicant has offered two measures to address dust effects from the unsealed right of way – planting alongside the dwelling owned by Mr Mercer and Ms Casey, and a 30kph speed limit.³ The proposed additional planting is included on the Landscape Plan approved with this resource consent. We agree with the Applicant that the speed limit should not form part of the consent conditions. This will avoid the need for the Council to monitor the speed limit. This control can be implemented between the Applicant and its neighbours.
77. Otherwise, we are satisfied that the traffic and adverse effects are minor and can be addressed through appropriate consent conditions.

Infrastructure

78. Ms Overton noted that existing dwellings and buildings on Lots 1 and 2 are serviced by a private water scheme, on-site wastewater and stormwater disposal. It is proposed to install three independent water bores within proposed Lots 3-5. Otago Regional Council has granted consent for the three bores through RM16.295. Ms Overton was satisfied that water supply could be provided to each new lot and noted that no changes are proposed to the water supply for Lots 1 and 2.
79. Wastewater will be disposed of on-site. A site and soil assessment provided by the Applicant required the disposal fields to be set back at least 50m from the Hawea River and this was accepted by Ms Overton. No changes are proposed to the existing on-site wastewater disposal fields within Lots 1 and 2.
80. Ms Overton confirmed there were no issues on site that would preclude stormwater disposal to ground.
81. Telecommunications and electricity services can be provided to the subdivision.

³ Paragraph 21 of Applicant "Closing Submission" dated 2 October 2017

82. On the basis of this advice, we are satisfied that appropriate services can be provided to the subdivision in accordance with the Council's standards. Conditions of consent address these matters.

Earthworks

83. Earthworks will be required for the upgrade of the rights of way and for the trenching of services. Ms Overton was satisfied this fell within the permitted level of earthworks in this zone.
84. We are satisfied that there are no significant effects arising from earthworks and that the consent conditions proposed by the Applicant adequately address the effects that will arise.

Natural Hazards

85. Council's hazard maps indicate that the southern end of the site (Lots 1-3) is subject to flooding from a rainfall and dam burst. A report prepared by AECOM⁴ concluded that a dam burst would have a significant negative impact on this site but that it would also adversely affect large areas of Albert Town and Wanaka townships. The likelihood of a dam burst is considered to be 1 in 10,000 years.
86. Ms Overton noted that the AECOM report included a map showing the areas subject to inundation and that these did not include the proposed lots, but rather the lower river terraces. It was her opinion that the flood hazard from rainfall identified on the Council's Floodplain Report dated November 1999 was based on an earlier dam burst assessment dated September 1994 which had been overtaken by the 2011 AECOM report. It was Ms Overton's recommendation that we should be satisfied that the site is not subject to flood risk either from dam burst or rainfall scenarios.
87. The Applicant confirmed in questioning that its response to the points raised by the ORC in its correspondence was that the location of the building platforms addressed any risk. Given the level of the site in relation to the river, and the AECOM report, there would be no benefit to raising the building platforms to avoid any flooding risk.
88. On the basis of Ms Overton's report and the AECOM report to which we were referred, we are satisfied there is no natural hazard risk.

Cumulative effects

89. As a result of the high degree of containment of the site and the proposal, the degree of visual change would be low. In our view the landscape has the ability to absorb the additional lots and future dwellings. We do not consider this proposal to raise adverse cumulative effects.

Reverse sensitivity effects

90. A submitter in opposition, Mr Findlay, stated that he is happy for the subdivision to proceed on the contra agreement that the Applicant allows Mr Findlay the same benefit of being able to subdivide in the future and that all future buyers into this subdivision be made aware of this contra agreement. This is a matter outside our jurisdiction and we make no decision on it.

⁴ AECOM, 'Hawea Lake Control Dam, Dam Break Analysis Update Report' dated 20 September 2011

91. The size of the proposed lots are unlikely to be able to be used for large scale farming activities. Noise, spraying and other rural activities could occur on surrounding lots. Written approval has been obtained from most of these neighbours and the submitters who appeared before us expressed no concern about reverse sensitivity effects.
92. Given the dog operations on-site, we raised reverse sensitivity covenants with the Applicant. Mr Ayre confirmed private covenants would be put in place to address any conflict between the future lots and the dog operations on site and this was confirmed again in the Applicant's Reply.⁵

Positive Effects

93. As well as the identified positive effects on nature conservation, three additional allotments with dwellings is a positive benefit to the Applicant. There is a minor benefit in the provision of further housing to the District.

Summary of effects

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

OBJECTIVES AND POLICIES OF THE RELEVANT DISTRICT PLANS

95. We have considered the assessments of the objectives and policies of the relevant district plans as set out in the Application, the section 42A report and the evidence. This section will make reference to those provisions of direct relevance.
96. The ODP and PDP apply. Little weight can be placed on the PDP given its stage in the process. It has been the subject of some submissions and some hearings. We understand that one decision has been made by the Council relating to the Millbrook site. This has no bearing on this application.
97. The relevant provisions of the ODP are Part 4 (District Wide), Part 5 (Rural Areas) and Part 15 (Subdivision, Development and Financial Contributions). Ms Gathercole's assessment of the ODP identifies the relevant provisions in Parts 4, 5 and 15.
98. Ms Fyfe confirmed that she had not produced the original AEE. She stated in her evidence that she agreed with the assessment undertaken by Ms Gathercole on the relevant objectives and policies.
99. Relying on the assessments of Mr Denney and Ms Overton, Ms Gathercole was of the opinion that the proposal was consistent with all of the relevant policies in the ODP.
100. The relevant parts of the PDP are Chapter 3 (Strategic Direction), Chapter 6 (Landscapes), Chapter 21 (Rural Zone) and Chapter 27 (Subdivision and Development). There was no dispute between the experts that the proposal was generally consistent with the relevant objectives and policies, Ms Gathercole noting that while the proposal provided sufficient right of way access to the proposed lots, this would require upgrading.

⁵ Paragraph 26 of Applicant "Closing Submission" dated 2 October 2017

101. We find that the proposal is consistent with and not contrary to the relevant objectives and policies of the ODP and PDP. The proposal can be absorbed into this landscape, subject to conditions of consent to remedy or mitigate the adverse effects raised.

OBJECTIVES AND POLICIES OF THE RELEVANT REGIONAL PLANS

102. We are required to take account of the Otago Regional Policy Statement (“ORPS”) in our assessment. As noted earlier in this decision, there is both an operative and proposed ORPS. Less weight may be accorded to the proposed ORPS given the breadth of appeals.
103. We outlined the relevant provisions of both plans earlier in this decision. Broadly, they seek to protect the landscape from inappropriate subdivision and to protect water quality. Objective 4.1 and its supporting policy 5.3.1 are particularly relevant here. Objective 4.1 requires the risk of natural hazards to be minimised. The location of the building platforms, being some distance from the river and being sufficiently raised on the upper river terrace, will minimise any risk from the effects of a dam break. Policy 5.3.1 requires management of activities in rural areas to support the region’s economy and communities. This proposal will not result in the loss of significant soils or result in reverse sensitivity effects as the rural land is not currently productive.
104. Ms Fyfe and Ms Gathercole were of the opinion that the proposal meets the relevant objectives and policies of the regional policy statements. We agree. It is not contrary to those objectives and policies.

OTHER MATTERS

Precedent

105. The proposal is a non-complying activity. As Ms Gathercole noted in her report, there is a potential for a precedent to be set if this consent is granted. The proposal in itself is not particularly unusual, and does not hold any distinguishing factors that would set this proposal apart from others. However, the site contains extensive vegetation and is reasonably well screened from views from public places.
106. Mr Denney noted in his report that this development would not be out of place with the surrounding environment, particularly to the west of the subject site. The proposal would not represent over domestication of the landscape. In questioning, he confirmed the landscape could absorb this level of development, up to a point.
107. Any applications to follow that would seek to rely on this application being granted consent would have to be assessed on their merits. However we are of the opinion that any precedent set by the granting of this consent would not undermine confidence in District Plan administration.

Subdivision (s.106)

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

SECTION 104, 104B AND 104D ASSESSMENT

109. We are satisfied that the application meets both thresholds of section 104D of the Act.
110. Under sections 104 and 104B, we are satisfied that the actual and potential effects of the activity on the environment are not significant and can be addressed through consent conditions. The proposal is consistent with the relevant provisions of the district and regional planning instruments. We do not consider that there are any other relevant matters.

CONDITIONS

111. The Applicant produced a set of amended conditions at the hearing. These were commented on by Council officers. A final set of conditions was tabled with the Applicant's Reply.
112. We have made some minor changes to those conditions.

PART 2 MATTERS

113. There is currently a conflict in the case law as to whether it is necessary to consider a proposal against Part 2 of the Act. In RJ Davidson v Marlborough District Council⁶ the High Court decided that a Part 2 assessment is not required unless the governing plan contains some invalidity, incompleteness or ambiguity. We understand this decision has been appealed to the Court of Appeal and a hearing is scheduled later this year.
114. A different approach has been taken in Turners & Growers Horticulture v Far North District Council,⁷ where a separate division of the High Court has decided that Part 2 continues to apply, at least in plan change hearings.
115. In Envirofume Limited v Bay of Plenty Regional Council⁸, the Environment Court has confirmed that Part 2 is still relevant to resource consents for three reasons:
- (i) As an overview or check that the purpose of the Act and Part 2 issues are properly covered and clear;
 - (ii) To focus decision makers on the overall purpose of the consent in question; and
 - (iii) To act as a check that the planning documents have recognised, provided for, or given effect to the Act and other documents in the planning hierarchy.
116. Following the Davidson approach, we find the ODP and the operative ORPS are not subject to the three caveats of invalidity, incompleteness or ambiguity. The relevant provisions of those plans have already given substance to the principles in Part 2 of the Act.
117. Decisions on the PDP, other than the decision on Millbrook to which we referred earlier in this decision, are not yet available. The notified version of the PDP on which we must rely has not yet been tested as to whether it gives effect to Part 2 of the Act. The proposed ORPS has been the subject of decisions, but these have been subject to challenge through the appeal process.

⁶ R J Davidson Family Trust v Marlborough District Council [2017] NZHC 52

⁷ Turners & Growers Horticulture v Far North District Council [2017] NZHC 764

⁸ Envirofume Limited v Bay of Plenty Regional Council [2017] NZEnvC 12 at paragraphs 142 and 143

118. For completeness, given the inconsistent approach of the High Court at the time of writing this decision, and in light of the Environment Court's approach in Envirofume, we have considered Part 2. Our assessment of the application is that the purpose of the Act is achieved through this proposal. It will provide economic benefit to the Applicant through additional housing and does not offend any of the matters outlined in section 5(2).
119. The site adjoins an Outstanding Natural Feature, the Hawea River. The evidence is that this feature will not be adversely affected by this development and will not be inappropriate. The proposal therefore meets section 6(b) of the Act.
120. Section 6(d) is met. The proposal will not restrict access along the Hawea River. No work is proposed within the vicinity of the river boundary. The Applicant confirmed in its closing submissions that this application does not seek to use or develop the river margin.⁹
121. Section 6(h) requires us to consider the management of significant risks from natural hazards. The evidence is that there are no significant natural hazard risks.
122. The proposal will enable the efficient use and development of natural and physical resources under section 7(b). It will maintain and enhance amenity values under section 7(c). It will maintain and enhance the quality of the environment under section 7(f).
123. There are no section 8 matters of relevance.
124. For the reasons set out in this decision, we consider the application to satisfy the relevant matters in Part 2 of the Act, and overall will achieve the purpose of the Act.

DETERMINATION

125. Consent is sought to subdivide one lot into five lots and to identify 3 building platforms.
126. Overall, the activity was assessed as a non-complying activity under sections 104, 104B and 104D of the Act.
127. The Act seeks to avoid, remedy and mitigate adverse effects associated with developments. We consider that the adverse effects of this application can be appropriately avoided, remedied or mitigated, and that the proposal is consistent with the relevant objectives and policies of the Operative and Proposed District and Regional Plans. It also meets Part 2 of the Act.

⁹ Paragraph 10.2 of Applicant's "Closing Submission" dated 2 October 2017

128. Accordingly, we determine that consent be granted subject to the attached conditions which are imposed under sections 108 and 220 of the Act. For clarity, we record that this decision does not authorise in any way a building or building platform for Lot 1. Nor does it authorise a lodge or visitor accommodation on any of the lots.
129. Dated at Queenstown this 20th day of October 2017.



Jan Caunter (Chair)

For the Hearings Commission



Wendy Baker

APPENDIX 1 – Consent Conditions

APPENDIX 1 - CONSENT CONDITIONS

General Conditions

1. That the development must be undertaken/carried out in accordance with the plans:
 - 'Lots 1 – 5 Being a Subdivision of Lot 4 DP 336464', Revision D, dated 25/8/17, by Southern Land
 - 'Landscape Proposals With Additional Planting Details Ayre Subdivision Maungawera', Figure 3E dated October 2017, by Anne Steven Landscape Architect

stamped as approved on 20 October 2017

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

2. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.

Engineering

3. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being QLDC's Land Development and Subdivision Code of Practice adopted on 3rd June 2015 and subsequent amendments to that document up to the date of issue of any resource consent.

*Advice Note: The current standards are available on Council's website via the following link:
<http://www.qldc.govt.nz>*

To be completed prior to the commencement of any works on-site

4. The owner of the land being developed shall provide a letter to the Manager of Resource Management Engineering at Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.7 & 1.8 of QLDC's Land Development and Subdivision Code of Practice, in relation to this development.
5. Prior to commencing works on site, the consent holder shall obtain and implement a traffic management plan approved by Council if any parking, traffic or safe movement of pedestrians will be disrupted, inconvenienced or delayed, and/or if temporary safety barriers are to be installed within or adjacent to Council's road reserve.
6. Prior to commencing any works on the site, the consent holder shall obtain 'Engineering Review and Acceptance' from the Queenstown Lakes District Council for all development works and information requirements specified below. An 'Engineering Review and Acceptance' application shall be submitted to the Manager of Resource Management Engineering at Council and shall include copies of all specifications, calculations, design plans and Schedule 1A design certificates as is considered by Council to be both necessary and adequate, in accordance with **Condition 3**, to detail the following requirements:
 - a) Provision of a minimum supply of 2,100 litres per day of potable water to Lot 1 to 5 that complies with/can be treated to consistently comply with the requirements of the Drinking Water Standard for New Zealand 2005 (Revised 2008).

Advice Note: The provision of water supply may include solar powered systems.

- b) The existing vehicle crossing from Kennels Lane shall be upgraded to 6m in width in terms of Diagram 2 Appendix 7 of the District Plan. This shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Provision shall be made to continue any roadside drainage.

- c) The existing rights of way shall be upgraded in accordance with Council's standards. This shall include, but not be limited to, the following:
- (i) The access within rights of way easements 'A to D and AH' shall have a formed metal (gravel) carriageway, and be formed in accordance with QLDC Land Development and Subdivision Code of Practice Table 3.2 Figure E2.
 - (ii) The access within rights of way easements 'E to H, X and Z', 'V', and 'AD' shall have a formed metal (gravel) carriageway, and be formed in accordance with QLDC Land Development and Subdivision Code of Practice Table 3.2 Figure E1.
 - (iii) The carriageway shall have a minimum cross-fall of 4% to prevent stormwater ponding on the carriageway surface.
 - (iv) The minimum standard for carriageway formation shall be either a single granular layer consisting of a minimum compacted depth of 150mm AP40 metal, or an alternative formation consisting of one or more layers where:
 - The depth of **any** granular layer shall be no less than 2.5 times the maximum particle size (i.e. if AP40 material is used the maximum particle size is 40mm the minimum layer thickness shall be 100mm); and
 - Minimum total granular carriageway shall not be less than 150mm.
 - (v) Passing bays/road widening shall be provided on any single lane sections of the access, and include widening on steep and/or curved sections of the access to avoid possible vehicle conflicts.
 - (vi) Drainage swales shall be provided for stormwater disposal from the carriageway. The invert of the water channel shall be at least 200mm below the lowest portion of the subgrade.

To be completed before Council approval of the Survey Plan

7. Prior to the Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, the consent holder shall complete the following:
- a) All necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved.
 - b) The names of all roads, private roads & private ways which require naming in accordance with Council's road naming policy shall be shown on the survey plan.
Advice Note: the road naming application should be submitted to Council prior to the application for the section 223 certificate

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

8. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall complete the following:
- a) The consent holder shall provide "as-built" plans and information required to detail all engineering works completed in relation to or in association with this subdivision to the Subdivision Planner at Council. This information shall be formatted in accordance with Council's 'as-built' standards and shall include all Roads (including right of ways and access lots) and Water reticulation (including private laterals and toby positions).
 - b) A digital plan showing the location of all building platforms as shown on the survey plan shall be submitted to the Subdivision Planner at Council. This plan shall be in terms of New Zealand Transverse Mercator 2000 coordinate system (NZTM2000), NZGDM 2000 datum.
 - c) The completion and implementation of all certified works detailed in **Condition 6** above.
 - d) The consent holder shall ensure that the intersection of rights of way 'E' and 'AH' is upgraded to comply with Diagram 2 Appendix 7 of the District plan. This shall include trimming vegetation to the north to ensure that sight distances to the north are maintained.

- e) The existing vehicle crossing from to right of way 'AD' shall be upgraded to 6m in width in terms of Diagram 2 Appendix 7 of the District Plan. This shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Provision shall be made to continue any roadside drainage. This shall include either:
- (i) Trimming/removal of the branches of the tree located to the east of the vehicle crossing to a height of 1.6m ;or
 - (ii) Removal of the tree.
- f) The consent holder shall submit to the Subdivision Planner at Council Chemical and bacterial tests of the water supplies to Lots 1 to 5 that clearly demonstrate compliance with the Drinking Water Standards for New Zealand 2005 (Revised 2008). The chemical test results shall be no more than 5 years old, and the bacterial test results no more than 3 months old, at the time of submitting the test results. The testing must be carried out by a Ministry of Health recognised laboratory (refer to <http://www.drinkingwater.co.nz/mohlabs/labmain.asp>).
- g) In the event that the test results required in **Condition 8(f)** above show the water supply does not conform to the Drinking Water Standards for New Zealand 2005 (Revised 2008) then a suitably qualified and experienced professional shall provide a water treatment report to the Subdivision Planner at Council for review and certification. The water treatment report shall contain full details of any treatment systems required to achieve potability, in accordance with the Standard. The consent holder shall then complete the following:
- (i) The consent holder shall install a treatment system that will treat the subdivision water supply to a potable standard on an ongoing basis, in accordance with Drinking Water Standards for New Zealand 2005 (Revised 2008). The design shall be subject to review and certification by Council prior to installation and shall be implemented prior to the issue of section 224(c) certification for the subdivision.

OR

- (ii) A consent notice shall be registered on the relevant Computer Freehold Registers for the lots, subject to the approval of Council. The consent notice shall require that, prior to occupation of the dwelling an individual water treatment system shall be installed in accordance with the findings and recommendations contained within the water treatment report submitted for the RM161286 subdivision consent. The final wording of the consent notice shall be reviewed and approved by Council's solicitors prior to registration.
- h) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an underground electricity supply has been made available (minimum supply of single phase 15kva capacity) to the boundary of all saleable lots created and that all the network supplier's requirements for making such means of supply available have been met.
- i) 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 boundary of all saleable lots created and that all the network supplier's requirements for making such means of supply available have been met.
- j) All signage shall be installed in accordance with Council's signage specifications and all necessary road markings completed on all public or private roads (if any), created by this subdivision.
- k) Road naming shall be carried out, and signs installed, in accordance with Council's road naming policy.
- l) All earthworked/exposed areas related to the subdivision shall be top-soiled and grassed/revegetated or otherwise permanently stabilised as soon as practicable and in a progressive manner.

- m) Domestic water and firefighting storage is to be provided to the existing dwellings located on Lots 1 and 2. A minimum of 20,000 litres shall be maintained at all times as a static firefighting reserve within a 30,000 litre tank (or equivalent). Alternatively, a 7,000 litre firefighting reserve is to be provided for each dwelling in association with a domestic sprinkler system installed to an approved standard. A firefighting connection in accordance with Appendix B - SNZ PAS 4509:2008 (or superseding standard) is to be located no further than 90 metres, but no closer than 6 metres, from any proposed building on the site. Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2008 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2008 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single family dwellings. In the event that the proposed dwellings provide for more than single family occupation then the consent holder should consult with Fire and Emergency New Zealand (FENZ) as larger capacities and flow rates may be required.

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

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

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

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

Firefighting water supply may be provided by means other than the above if the written approval of the Fire and Emergency New Zealand Fire Risk Management Officer is obtained for the proposed method. The firefighting water supply tank and/or the sprinkler system shall be installed prior to the occupation of the building.

- n) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.
- o) All planting as identified on the certified landscape plan shall be planted at no greater than 1.5m apart, and shall have pest protection sleeves or rabbit proof fencing, and mulch installed. The plants shall be irrigated for no less than the first two years after planting. All plants are to be planted at a grade no less than 0.4m in height. Species shall be evenly mixed throughout to achieve consistency in coverage, mature height and closed canopy.

Ongoing Conditions/Consent Notices

9. The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notice pursuant to s.221 of the Act.
- a) All future residential and accessory buildings shall be contained within the Building Platform as shown as Covenant Area X as shown on Land Transfer Plan XXXXX.
- b) Buildings shall be restricted to one storey or 5.5m above ground level.
- c) Roof pitch shall be between 0 to 25 degrees.

- d) Roof materials shall be colorsteel, natural stone, timber or turf.
- e) External colours for all buildings shall be within the natural tones of browns, greens and greys with a light reflectivity value (LRV) of 36% and below for the walls, and between 7% and 20% for the roof to blend into the surrounding landscape. Joinery, spouting and guttering shall be of similar colour and LRV to the walls.
- f) All mitigation planting shall be maintained as per the approved landscape plan Fig 3E. Landscape Proposals, Ayre Subdivision, Maungawera dated October 2017 to ensure healthy growth. Planting shall be managed to achieve and maintain a closed canopy, with the exception of the area along the eastern boundary of Lot 5, which should be maintained at a maximum of 2.5m for dust management. If any plant shall die, become damaged or no longer be in healthy condition, resulting in a gap in the canopy, or a gap in the area of planting along the eastern boundary of Lot 5, it shall be replaced within 12 months. All replacement plants shall be of the species identified on the certified landscape plan and planted at a grade no less than 0.4m in height.
- g) External lighting shall be located within the curtilage area, and shall be down lighting only and shall be located to not create light spill beyond the boundaries of the property. External lighting shall be sensor lighting only.
- h) Access drives shall be gravel of a local Upper Clutha stone and exclude the use of concrete kerb and channels beyond the curtilage area to be consistent with the rural character.
- i) Fencing, including fencing around curtilage areas shall be standard post and wire (including rabbit proof fencing), deer fencing, or timber post and rail, in keeping with traditional farm fencing.
- j) Entranceways are not to be visually obtrusive (monumental) and shall be consistent with traditional farm entranceways.
- k) All domestic landscaping and structures including, but not limited to, clotheslines, outdoor seating areas, swimming pools, tennis courts, pergolas, external lighting, amenity gardens and mown lawns shall be confined to the curtilage area as shown on the certified landscape plan. All water tanks shall be contained within the curtilage area, with the exception of water tanks existing prior to the subdivision RM161286.
- l) Water tanks shall be screened from view from outside the lot by earth mounding and/or evergreen planting and shall be in dark tones of brown or green.
- m) The visual screening provided by all trees identified to be retained as shown on the Fig 3E. Landscape Proposals, Ayre Subdivision, Maungawera dated October 2017 shall be managed to maintain the degree of visual screening as shown on the plan to a height no less than 6m, Should any existing tree die, become diseased or be removed, it is to be replaced within 12 months with an evergreen tree of a similar form and of a green colour with a mature height of no less than 6m and irrigated and maintained as necessary. All replacement planting shall be at a grade no less than .4m for conifer and eucalyptus species and no less than 1.5m for other species height at time of planting. Replacement species and any planting within the property shall exclude the use following wilding species (Lodgepole Pine - *Pinus contorta*; Black Pine - *P.nigra*; Scots Pine - *P.sylvestris*; Maritime Pine - *P. pinaster*; Monterey Pine - *P. radiata* (excluding sterile hybrids); European Larch - *Larix decidua*; Douglas Fir - *Psuedotsuga menziesii*; Sycamore - *Acer pseudoplatanus*; Common Hawthorn - *Crataegus monogyna*; Silver Birch – *Betula pendula*).
- n) In the event the existing mature conifer belt adjacent to the west boundary of Lots 4 and 5 is partially or fully removed, evergreen trees to at least 8m mature height shall be planted along the full western boundary of Lots 4 and 5 as replacement screening. There shall be a minimum of two rows with trees planted alternately at no more than 2m spacings. Plants shall be at least .4m high at time of planting and shall be mulched and irrigated until well established (minimum 3 years). All planting shall be protected from pest animals and domestic stock and kept free of weeds. The existing wilding pines shall not form part of this planting. Should any of these evergreen trees die or become diseased, they shall be replaced within 12 months.

- o) At the time a dwelling is erected on the lot, the owner for the time being shall engage a suitably experienced person as defined in sections 3.3 & 3.4 of AS/NZS 1547:2012 to design an onsite effluent disposal system in compliance with AS/NZS 1547:2012. The design shall incorporate discharge to ground via 'Discharge Control Trench' and take into account the site and soils investigation report and recommendations by Mark Ayre, dated 23 March 2017. The proposed wastewater system shall be subject to Council review and acceptance prior to implementation and shall be installed prior to occupation of the dwelling.
- p) The wastewater disposal field shall be blocked off to vehicular traffic and stock. This shall be achieved through use of a physical barrier, such as fencing or other suitable measures that will prevent vehicles and stock from passing over the disposal area.
- q) At the time that a dwelling is erected on Lots 3 to 5, the owner for the time being is to treat the domestic water supply by filtration and disinfection (if required) so that it complies with the Drinking Water Standards for New Zealand 2005 (revised 2008).
- r) At the time a dwelling is erected on Lots 3 to 5, domestic water and firefighting storage is to be provided. A minimum of 20,000 litres shall be maintained at all times as a static firefighting reserve within a 30,000 litre tank (or equivalent). Alternatively, a 7,000 litre firefighting reserve is to be provided for each dwelling in association with a domestic sprinkler system installed to an approved standard. A firefighting connection in accordance with Appendix B - SNZ PAS 4509:2008 (or superseding standard) is to be located no further than 90 metres, but no closer than 6 metres, from any proposed building on the site. Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2008 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2008 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single family dwellings. In the event that the proposed dwellings provide for more than single family occupation then the consent holder should consult with Fire and Emergency New Zealand (FENZ) as larger capacities and flow rates may be required.

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

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

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

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

Firefighting water supply may be provided by means other than the above if the written approval of the Fire and Emergency New Zealand Fire Risk Management Officer is obtained for the proposed method. The firefighting water supply tank and/or the sprinkler system shall be installed prior to the occupation of the building.

Advice Note: Fire and Emergency New Zealand considers that often the best method to achieve compliance with SNZ PAS 4509:2008 is through the installation of a home sprinkler system in accordance with Fire Systems for Houses SNZ 4517:2010, in each new dwelling. Given that the proposed dwelling is approximately 10km from the nearest FENZ Fire Station the response times of the New Zealand **Volunteer** Fire Brigade in an emergency situation may be constrained. It is strongly encouraged that a home sprinkler system be installed in the new dwelling.

Advice Notes

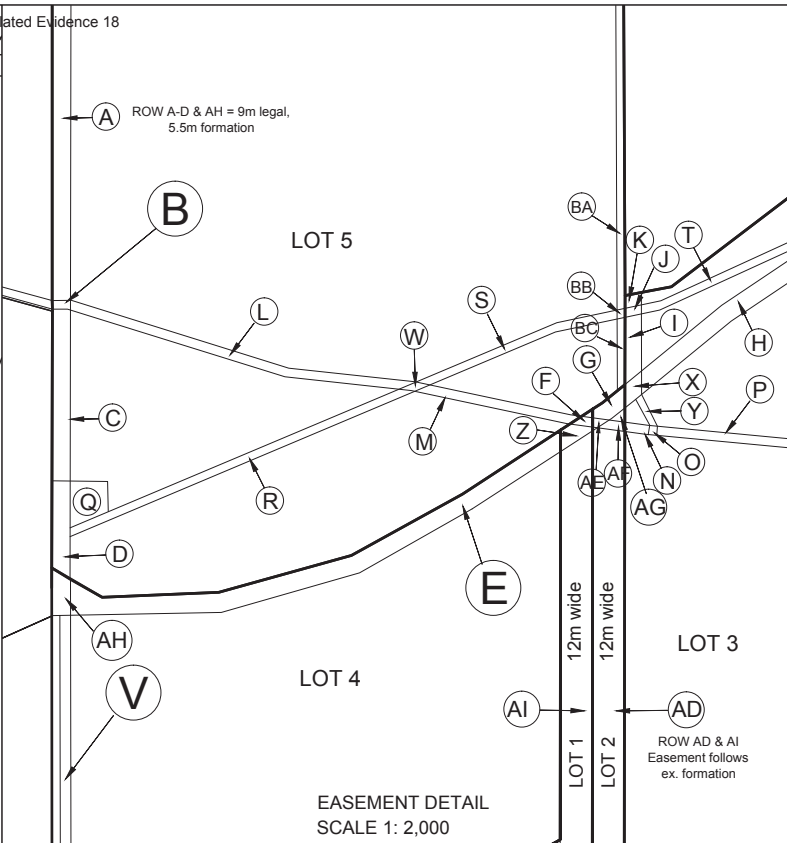
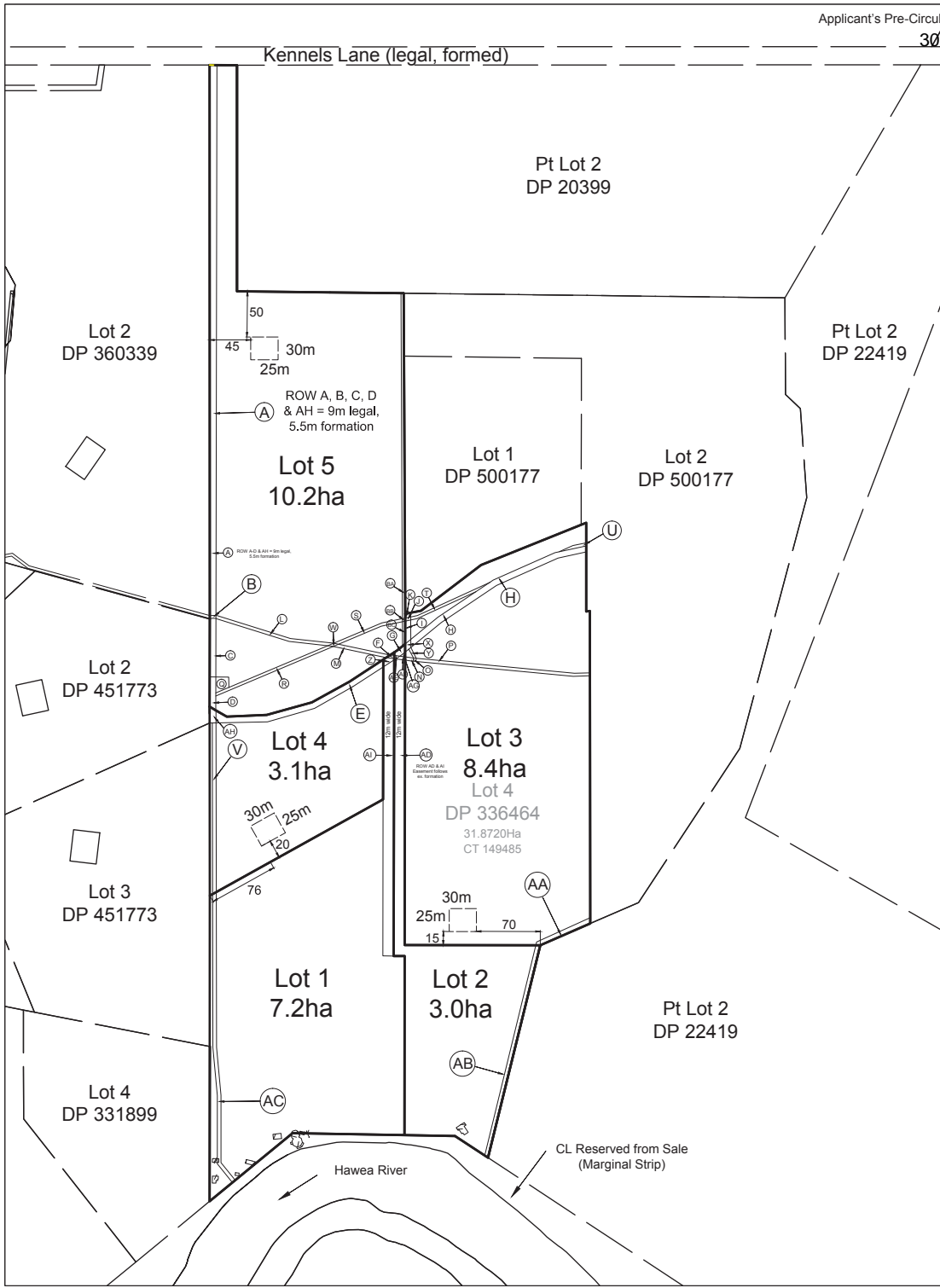
1. *This consent triggers a requirement for Development Contributions, please see the attached information sheet for more details on when a development contribution is triggered and when it is payable. For further information please contact the DCN Officer at Council.*
2. *At such a time that Council's wastewater reticulation is available to service the lot in accordance with the Local Government Act Section 459(7)(a)(b), the owner for the time being shall cease the use of the alternative disposal system, decommission it appropriately and connect to the Council system. The cost of making this connection shall be borne by the owner of the lot. At this time the owner for the time being shall pay to the Queenstown Lakes District Council the applicable development contribution.*
3. *The submitted landscape plan identifies the existing informal access to the granny flat at Lot 2 and the existing unlawful dwelling at Lot 1 partly within esplanade reserve. This decision does not authorise that access and has not assessed the effects of existing buildings and access roads identified within Crown land in terms of effects beyond that anticipated by the consented development at these locations.*
4. *The existing dwelling on Lot 1 is located on marginal strip administered by the Department of Conservation and is not lawfully established. This decision does not authorise or approve the location of the dwelling or a building platform for Lot 1.*

For Your Information

If your decision requires monitoring, we will be sending an invoice in due course for the deposit referred to in your consent condition. To assist with compliance of your resource consent and to avoid your monitoring deposit being used before your development starts, please complete the "[Notice of Works Starting Form](#)" and email to the Monitoring Planner at RCMonitoring@qldc.govt.nz prior to works commencing.

You may also have conditions that require you to apply for Engineering Acceptance. To apply for Engineering Acceptance, please complete the [Engineering Acceptance Application form](#) and submit this completed form and an electronic set of documents to engineeringacceptance@qldc.govt.nz with our monitoring planner added to the email at RCMonitoring@qldc.govt.nz.

If your decision requires a development contribution (DC) charge, we will be sending a notice in due course. To answer questions such as what is a DC charge, when a DC charge is triggered and timing of payments, please refer to this link: <http://www.qldc.govt.nz/planning/development-contributions/> If you wish to make a DC estimate calculation yourself, please use this link: <http://www.qldc.govt.nz/planning/development-contributions/development-contributions-estimate-calculator/> And for full details on current and past policies, please use this link: <http://www.qldc.govt.nz/council-online/council-documents/policies/policy-on-development-contributions-and-financial-contributions/>



QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:

RM161286

Friday, 20 October 2017

- Note:-**
- Boundary data has been sourced from DP 336464
 - Refer separate easement schedule

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APPLICANT M AYRE

COMPRISED IN 149485

TERRITORIAL AUTHORITY QUEENSTOWN LAKES DISTRICT

LAND DISTRICT OTAGO

TOTAL AREA 31.8720 ha **DATE** 25/8/2017

Drawing Title
LOTS 1 - 5 BEING A SUBDIVISION OF LOT 4 DP 336464

Prepared for
M AYRE
68 Kennels Lane
Wanaka

Plan Revisions

REV.	DESCRIPTION	DATE
A	ORIGINAL ISSUE	12/9/2016
B	ADD BA-BC, AMEND LOTS 1 & 4 BDY	2/12/16
C	AMEND LOTS 1 & 2	27/3/17
D	ADD ROW NOTES, REV B BODYS	25/8/17
E	ADD LEG IN LOT 1 & 2	31/8/17

SCALE
1: 5,000 @ A3

DATUM & LEVEL
Lindis Peak 2000

REVISION	DRAWING REFERENCE	SHEET
D	T4176_S1	1 OF 2

SKETCH	DATE	APPROVED	DATE
TD	12/9/2016	MA	27/3/17
		TD	31/8/17

AMENDMENTS

- A. 12/12/16: Boundary between Lots 1 and 4 altered so that the Dog Kennels are included in Lot 1. Lots areas changed as a consequence.
- B. 24/2/17 Planting area length, numbers and spacings added
- C. 22/9/17 Plant spacings and numbers amended and areas identified
- D. 27/9/17 Building Platform put on Lot 1 with curtilage and native tree/shrub screen planting
- E. 2/10/17 Removal of proposed RBP and curtilage on Lot 1 and associated mitigation planting; addition of planting belt and note on southeast boundary of Lot 5 for dust control for Lot 1 DP500177

13
31

5m wide belt of evergreen tree and shrub planting to block headlights at night and dust
Species: *Olearia odorata* (10%), *Olearia lineata* (20%), *Kanuka* (20%), *Kowhai* (5%), *Coprosma propinqua* (30%) and *Coprosma intertexta* (15%)
160m long, total 400 plants with 25 plants per 10m section at 1.5m spacings

LOT 1
DP500177

LOT 5
10.2ha

belt of native species 50x5m in area, set back from entrance to Lot 1 DP500177 by 20m. To include *Phormium tenax*, Cabbage tree, *Karika*, *Olearia odorata*, *Coprosma propinqua*, *Pittosporum tenuifolium* planted at 2m spacings. The purpose of the planting is to reduce effect of dust on Lot 1 DP 500177.

these trees are to be retained as consent notice condition for the dwelling here


existing ROW


QUEENSTOWN LAKES DISTRICT COUNCIL

**APPROVED PLAN:
RM161286**

Friday, 20 October 2017

LEGEND

 existing trees to be retained and replaced to maintain on-going screening and context for domestic development

 building platforms and curtilage areas

LOT 4
3.1ha

LOT 3
3.1ha

6m wide ROW

existing pines

existing pines and gums

5m wide belt of *Olearia odorata* (10%), *Olearia lineata* (20%), *Kanuka* (20%), *Kowhai* (5%), *Coprosma propinqua* (30%) and *Coprosma intertexta* (15%)
250m total length, 25 plants per 10m section at 1.5m spacings total 625 plants (375 in 150m section and 250 in 100m section)

LOT 1
7.6ha

various existing trees eg. pines, gums, oak, poplar, alder

LOT 2
2.6ha

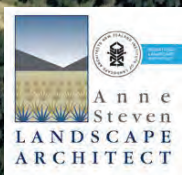
existing gums, cypress

existing dwelling

young planting of pines, gums, acacia

existing granny flat

HAWEA RIVER



prepared by
Anne Steven
Landscape Architect
Wanaka

October 2017

Fig. 3E LANDSCAPE PROPOSALS with Additional Planting Details Ayre Subdivision, Maungawera



scale 1: 3000 @ A3

