



<b>Applicant:</b>	GD & JM McNee
<b>RM reference:</b>	RM130059
<b>Location:</b>	Off Healecote Lane / Tuckers Beach Road.
<b>Proposal:</b>	Consent is sought to subdivide Lot 3 DP342130 to create two fee simple allotments, Lots 3 and 4, and to identify an 800m <sup>2</sup> residential building platform on proposed Lot 4. Consent is also sought to undertake associated earthworks and to vary a consent notice relating to development outside of the approved building platform on the site.
<b>Type of Consent:</b>	Land use and subdivision consent
<b>Legal Description:</b>	Lot 3 Deposited Plan 342130 held in Computer Freehold Register 173234
<b>Valuation Number:</b>	2907147071
<b>Zoning:</b>	Rural General
<b>Activity Status:</b>	<b>Discretionary</b>
<b>Public Notification:</b>	27 February 2013
<b>Commissioner:</b>	Commissioners Clarke and Cocks
<b>Date:</b>	19 July 2013
<b>Decision:</b>	<b>GRANTED with conditions</b>

## **UNDER THE RESOURCE MANAGEMENT ACT 1991**

**IN THE MATTER OF** an application by GD & JM NcNee to the Queenstown Lakes District Council for resource consent to subdivide (Lot 3 DP342130) into two fee simple allotments and identify a new residential platform on one of the proposed Lots, undertake earthworks and vary Consent Notice 7408679.4

**Council File:** RM130059

### **DECISION OF DAVID CLARKE & LYAL COCKS, HEARING COMMISSIONERS APPOINTED PURSUANT TO SECTION 34A OF THE RESOURCE MANAGEMENT ACT.**

#### **Site Description and Proposal**

1. Both the planner's report and the application as notified gave detailed descriptions of the site and the proposal.
2. The subject site is located off a right of way that extends from Healecote Lane, Tucker Beach Road, Wakatipu Basin. The site is legally described as Lot 3 DP342130, held in Computer Freehold Register 173234. The site is 11.8300 ha in area.
3. The site is located within the Rural General Zone, partly adjoining the Quail Rise Zone and the Rural Lifestyle Zone. The site consists of a large steeply sloping portion of the east face of Ferry Hill, with natural terraces on the lower slopes above the Quail Rise and Manata Green subdivisions. The approved residential building platform on Lot 3 is on the lowest terrace at approximately

the 407m contour, above Lots 1 and 2 DP342130. The approved building platforms on Lot 1 and 2 are currently undeveloped and are located to the east of the subject site, below a steep bank that contains a number of trees. A dwelling in the Quail Rise Zone (Lot 44 DP27480) adjoins the southern boundary of proposed Lot 4 at a similar elevation. The subject site is undeveloped. Some trees have been planted as required by decision RMA120/03.

4. A pedestrian walkway easement exists along the southern boundary of the site and extends up Ferry Hill. The walkway is unformed and the applicant does not propose any changes to this walkway.
5. Lot 3 as it exists, is 11.2486 ha in area and contains an 800 m<sup>2</sup> residential building platform. It is proposed to subdivide 6012m<sup>2</sup> from this Lot, to create Lot 4, which will also have a 800m<sup>2</sup> residential building platform. Lot 3 has legal access from a right of way (ROW) that extends from Healecote Lane. At present the ROW is partially formed and is single lane. It is proposed that it will be formed to council standards and extended to service proposed Lot 4. This will require some earthworks, estimated to be 150-200m<sup>3</sup>.
6. The applicant has offered a set of design controls for any future dwelling that might be constructed on Lot 4.
  - All buildings will be contained within the building platform;
  - All buildings will have a maximum height of 5.5 m above the datum level of 405.33m;
  - Exterior cladding materials and colours will be natural and recessive;
  - The dwelling will have a pitched roof;
  - All fencing shall be in a typical rural style;
  - Any exterior lighting shall be limited to within 10m of the dwelling and directed away from adjoining properties.
7. The applicant provided a Landscaping Concept Plan as part of the application. This proposed to relocate two poplar trees planted as part of the conditions attached to RMA120/03 and to plant additional trees and shrubs, both deciduous and evergreen, around the building platform on the south, south eastern and eastern boundaries.

8. The applicant offered a Consent Notice on Lot 3 ensuring there will be no further subdivision of the balance lot and that this balance Lot would be maintained for pastoral purposes.
9. The applicant seeks to delete Consent notice 7408679.4, which is registered on Lot 3 DP342130 under RMA120/03, in its entirety as it relates to proposed Lot 4. This is because the creation of Lot 4 would breach a number of conditions of the Consent Order and new consent conditions proposed for Lot 4 (if subdivision consent is granted), would be specific to this new lot. Consent Notice 7408679.4 would still apply to Lot 3.

### **Landscape Classification**

10. It is accepted by all parties that the subject site (Lot 3) is part of both a Visual Amenity Landscape (VAL) (lower portions) and an Outstanding Natural Landscape (ONL) (upper portions). The proposed new Lot 4 is located on the part of the site that is a VAL.

### **Assessment Framework**

11. As stated, the applicant site is zoned Rural General under the District Plan.
12. The purpose of the zone is outlined in the District Plan is to manage activities in such a way that:
  - Protects and enhances nature 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 in the zone
13. We concur with the reporting planners report, that the application (as notified) requires a resource consent for the following reasons;

### **Subdivision**

- A **discretionary** subdivision activity consent pursuant to Rule 15.2.3.3(vi) for subdivision and location of a residential building platform.

#### Variation to a Consent notice

- A **discretionary** activity consent pursuant to 87B in accordance with Section 221 of the Resource Management Act 1991, which specifies a variation to the consent notice shall be processed in accordance with Sections 88 to 121 and 127(4) to 32. Consent is sought to vary Consent Notice 7408679.4 such that the conditions will only apply to Lot 3.

14. Overall, the proposal is considered a **discretionary** activity.

#### Notification and submissions

15. The application was publically notified on 27 February 2013. The closing date for submissions was 27 March 2013. Four opposing submissions were received from:

1. D. Hay 163 Tucker Beach Road.
2. JA Unwin and I Ross 10 Enstone Lane, Quail Rise.
3. P and K Buckham 8 Enstone Lane Quail Rise.
4. P and B Amos 27 Portree Drive, Quail Rise.

16. The Commissioners, with the agreement of the applicant, received a late submission from R. Young. This submission also opposed the application for similar reasons to the other submitters.

17. A submission was received from the Queenstown Trails Trust. The Trust neither supported nor opposed the application, but sought to retain a current walking easement that exists on Lot 3.

### **Issues Raised in Submissions**

18. Issues and concerns raised by the five submitters in opposition can be summarised as:

- Dominance of any building on proposed Lot 4.
- The proposal creates urban creep.
- The proposal creates sprawl.
- The proposal will increase traffic along the accessway running off Healecote Lane
- Precedent effects.
- Impact on rural character
- Affects views of Ferry Hill (ONL)

19. These concerns are responded to as part of this decision.

### **Consultation and Approvals**

20. The application stated that there had been no dialogue or correspondence between the applicant and submitters/neighbours. It would appear that this relates to the original applicant, Mr K Lukaszewicz and that the present applicants, the McNee's have been more amenable to dialogue and to mitigate potential adverse effects. Irrespective of that, no written approvals were provided.

### **Recommendation of the Reporting Planner**

21. The recommendation of the reporting planner, Mr Keenan was that the application should be refused pursuant to Section 104 of the Resource Management Act 1991 for the following reasons:

- *Adverse effects on the environment and persons are not adequately avoided, remedied or mitigated as the proposed development would detract significantly on amenity, views and outlook and compromise the open character of the existing environment. The existing environment has little ability to absorb the proposed development in its current form*

- *The proposal is overall inconsistent with the relevant objectives and policies of the District Plan which seek to avoid, remedy and mitigate the adverse effects of inappropriate land use within the District*
- *The proposal does not promote the overall purpose of the Act as the proposal adverse effects amenity values and the quality of the existing environment and of neighbouring properties in the vicinity.*

### **The Hearing**

22. The application, planners, landscape architects and engineer's reports and other relevant papers were pre-circulated to the Commissioners prior to the hearing. The hearing was convened in Queenstown on Monday 12 June 2013. The applicant was represented by planner, Mr Scott Freeman of Southern Planning Group and landscape architect, Rebecca Lucas of LAND Landscape Architects.
23. An oral submission in opposition was presented by Mrs Kathy Buckham.
24. In attendance from Lakes Environmental was the reporting planner, Ms Nathan Keenan, senior planner Ms Hanna Afifi, landscape architect, Dr Marion Read, and engineer, Mr Alan Hopkins. Ms Louise Ryan was the committee secretary.
25. Prior to the hearing, the Commissioners received the application as lodged, the section 42A report from Ms Keenan, a landscape report from Dr Read, and an engineering report from Mr Alan Hopkins.
26. The Commissioners undertook a comprehensive site visit immediately prior to the hearing. This included going onto the applicant's land and assessing the locations of the building platforms on Lots 3 and 4. It is noted, that in response to Dr Read's comments, the platform on Lot 4 was re-orientated and new building platform identification poles erected. The original poles remained, so the changes between the two locations could be identified on the site visit. In addition to the relocation of the profile poles, at the hearing, the applicant via their planner and landscape architect, proposed further changes to the

application in response to the concerns raised by the submitters, Mr Keenan and Dr Read. This is discussed in this decision.

27. The site visit also included observing the site from the Quail Rise Zone and further afield on State Highway 6, Domain Road and Lower Shotover Road. The Commissioners also accessed Healecote Lane and the ROW to Lot 3. This was to assess possible effects on users of and neighbours to this ROW and Healecote Lane.
28. The formal hearing was adjourned at its conclusion in order for the Commission to seek additional information. In an e-mail sent to all the parties, the Commissioners sought the following from the applicant:
  - *A plan showing additional landscaping on the eastern boundaries (behind the protected trees) of Lot 3 and proposed Lot 4. The purpose of this landscaping is to 'beef up' the visual barrier provided by the trees in the event that as these trees die and/or are removed (because they are wilding or unsuitable species).*
  - *A précis of the planning history relating to the subject sites Lots 1,2,3 and the wider planning history if relevant to the application*

*It is noted that at the hearing, a 2006 agreement between the Council and landowners was discussed. This agreement plans to remove and replant some of the presently protected trees and this has the potential to override the in place Environment Court consent order. None of this work has been carried out. The Commissioners agree that this was not an appropriate course of action, given the regulatory arm of council should have been involved in such an agreement. It is noted then that for the purpose of assessing this application, the status quo remains in place for accessing the role of the protected trees in screening the proposed application.*

*Further it is noted that irrespective of any decision, the Commissioners will seek that the status of the protected trees is clarified and that a management plan is established through dialogue between the applicant, Council (Regulatory) and the owners of Lot 1 and 2. The outcome should be to maintain an ongoing planted screening barrier that continues to maintain the intentions of the original consent order.*



29. This information was supplied to the Commissioners on Thursday 27 June 2013. After further deliberations between the Commissioners, the hearing was closed on Friday June 28 2013.

### **Planning History**

30. The planning history of the subject site and the adjacent land is important in the assessment of this application.

As stated above, Mr Freeman was asked to provide a précis of the consent history of the subject site. The Commission was interested in ascertaining the sequence of consents that has permitted development on the lower slopes of Ferry Hill to the 400m (approx) contour. This has occurred both through development in the Quail Rise Zone which was established in 1998, and through Lots being created and dwellings being built in the adjacent Rural General and Rural Lifestyle zones. The sequence is outlined below. While some of this history is relevant to the application as it stands today, the application must also be assessed within the present legally consented environment, both in terms of existing built form and buildings yet to be constructed. It must also be assessed on its own merits with any adverse effects taken into consideration.

### **Indigo Group Limited – RM000768**

31. Indigo Group Limited ("Indigo") applied for resource consent in late 2000 that sought to subdivide Lot 1 DP 26777 to create five allotments for rural-residential purposes (with associated building platforms). Three of the five allotments/building platforms were to be located below the band of trees where Lots 1 and 2 DP 342130 are now located, while two allotments/building platforms were to be located above the band of trees, where Lot 3 DP 342130 is now located. In a resource consent decision dated the 23rd of March 2001, the Council partially approved this application. The three allotments below the band of trees (being Lots 1 to 3) were given approval, while the two allotments above the band of trees were declined (being Lots 4 and 5).

In summary, the Council cited the following reasons for declining proposed Lots 4 and 5:

*“In making their decision the Committee cited concerns about the effect of allowing residential subdivision to ‘creep’ up the hill. The Committee was of the opinion that based on the rules for the zone and the objectives and policies as they currently stand, the lots approved should represent the maximum elevation of development on the hillside”.*

*“The Committee noted that the adverse effects associated with the creation of Lots 4 and 5 would contribute to adverse visual effects on the immediate and wider environment. Furthermore the Committee indicated that they found that Lots 4 and 5 would contribute to adverse visual effects as a result of the cumulative degradation of visual amenity as a result of too many dwellings being located within an area of landscape that does not have the capacity to absorb such effects”.*

#### **Indigo Group Limited – RM010386**

32. Indigo Group applied for land use consent in mid-2001. This sought to establish three dwellings within the designated building platforms that were previously approved through the resource consent RM000768. Such dwellings were subject to specific design controls. The Council issued resource consent for this application on the 26th of July 2001.

#### **Indigo Group Limited – RM020529**

33. Indigo Group applied for resource consent in 2002 to subdivide Lot 1 DP 26777 to create three rural-residential allotments (with associated building platforms).

This application sought to reconfigure the three allotments that were created via the resource consent RM000768. Instead of all three allotments being located below the band of trees as per the approval given under RM000768, this application sought to place two allotments/building platforms below the band of trees, while the third allotment/building platform would be above the band of trees.

34. In summary, the Council declined this application for the following reasons.

*“The Hearings Panel agreed with the Planner’s report that the changed layout of the approved subdivision (i.e. the new location of proposed Lot 3) could degrade views of Ferry Hill as seen from a distance and would appear to be sprawl of residential development up the slopes of Ferry Hill...”*

*“They agreed that the prominence of the site and the nature of the proposed subdivision in respect of proposed Lot 3 meant that little could be done to ensure that the potential visibility of a future development on the lot is reduced”.*

*“In declining the layout of the proposed building platforms the Hearings Panel were not satisfied that the adverse visual effects associated with a dwelling above the existing tree belt could be avoided or that the visual coherence of the landscape could be maintained without loss of character. They considered that the location of the building platform on proposed Lot 3 to be within an area that does not have the potential to absorb such change”. Indigo appealed the Council decision to refuse consent to the Environment Court on the 5th of February 2003. It is understood the Council initially decided to defend its decision via a full Environment Court hearing on the 6th of May 2003. However, after the Council decided to uphold the decision to decline the Indigo decision, the Council decided to mediate an agreed outcome with Indigo whereby the proposed allotment configuration (including a building platform above the band of trees) was approved via an Environment Court Consent Order (RMA 0120/03). The reasons for the change of stance by Council in relation to the Indigo appeal are summarised in an email from Jane Titchener (then Principal: Resource Management at CivicCorp) dated the 12th of September 2003. The applicable matters in this email state:*

*“Since the refusal of Indigo the following has occurred:*

- Appeal lodged by Indigo on 5 February 2003.*
- On the 27 February 2003 the Hearing Panel approved the Broomfield application (RM020846). This allowed a development at a higher elevation on Ferry Hill. A greater level of mitigation in the form of existing vegetation is provided on the Indigo site than the Broomfield site.*
- Broomfield was approved for the following reasons:*

- *The covenant against further development was seen as a positive aspect for sustainable management.*
- *Adverse effects were considered to be no more than minor.*
- *A Land Management Plan was submitted for the land covenanted from further development.*
- *Curtilage area restrictions were proposed.*
- *The development was perceived as being contained within the existing development and referred to as 'infill' within the context of the area and not 'creep'.*
- *The CivicCorp planner originally recommended decline of the application, however, after presentation of additional material and hearing the applicant's case, the Planner changed his recommendation to approve the application subject to conditions”.*

*'Since Council declined the Indigo Application the following matters have changed:*

- *Council has signalled that by allowing development, which provides for the covenanting of the remaining Broomfield land that the objective of sustainable management can be achieved.*
- *Council acknowledged in the Broomfield decision that the proposed development would be contained within existing development. Arguably, the same argument can be applied to Indigo (contained within 50 metres of existing development).*
- *Indigo have provided further information on the restrictions applying to curtilage areas, additional planting, additional elevation drawings and photo simulations. Thereby, giving more certainty about the visual effects of a dwelling on the proposed Lot 3 platform.*
- *From parts of Domain Road there will be a definite cumulative effect on the upper slopes of Ferry Hill because it is only from this elevation that it is viewed in the context of what has already been approved on the slopes of Ferry hill. However, based on the Broomfield decision, as noted above, the cumulative effects can arguably be able to be mitigated through the covenanting of the remaining Indigo land (as proposed by the applicant), which will connect up with the covenanted Broomfield land. This now achieves a certain outcome across this side of*

*Ferry hill in that no further development will be permitted.*

- *The evidence for Indigo is due to be circulated on the 26 September with hearing before the Court likely sometime after October. The planner and landscape architect preparing evidence for Council have advised that as a result of the Broomfield decision and as a result of the further mitigation offered by Indigo (after the hearing) that the case for Council is not as strong as it was when Indigo was heard and determined". As a result of the factors listed above, the Council decided to mediate an outcome, subject to a range of mitigating conditions. Such conditions are encapsulated in the Consent Order.*

35. Indigo subsequently obtained new Certificates of Titles for the approved allotments.

#### **D Broomfield – RM020846**

36. Whilst this decision does not concern the subject site, it is highly relevant in terms of the planning synopsis and for the current application. As outlined above, the primary reason why the Council mediated an agreed outcome for the application RM020529 related to the approval of the Broomfield decision. The Broomfield decision involved a boundary adjustment and the identification of a new building platform on located situated on the northern side of Ferry Hill. (It is noted that the Commissioners identified where this Lot is in relation to the subject site).

#### **Summary**

37. Mr Freeman submitted that:

*'While it is noted that two building platforms above the band of trees have been previously declined by the Council via RM000768, this decision was over twelve years ago. Further, RM000768 was decided prior to the approvals given by the Council in relation to the Broomfield/Indigo decisions. The background factors that led to the Broomfield/Indigo decisions are still relevant to the current McNee application'.*

38. We agree with Mr Freeman in this respect. The built environment has changed considerably in the past 12 years. The Quail Rise Zone has largely been built

on. The Broomfield decision was clearly pivotal in terms of determining the contour level that development could occur on the lower slopes of Ferry Hill. It can be seen as creating a precedent in terms of elevation, but did not dictate that every application at that elevation would be appropriate. Because of that decision, Lot 3 was granted consent and in light of that the Commission must decide what additional effects the granting of proposed Lot 4 will create in the present environment.

### **Statutory Considerations**

39. The application must be considered under Section 104 of the Resource Management Act 1991 (“the Act”). Section 104B provides that:

*“After considering an application for a resource consent for a discretionary or non-complying activity, a Consent Authority:*

*(a) May grant or refuse the application; and*

*(b) If it grants the application, it may impose conditions under s.108.”*

40. Subject to Part 2 of the Act, Section 104 sets out the matters to be considered by the Consent Authority when considering a resource consent application. Considerations of relevance to this application are:

*“(a) Actual and potential effects on the environment of allowing the activity;*

*...*

*(d) Relevant objectives, policies, rules, or other provisions of a plan or proposed plan; and*

*...*

*(i) Any other matters the Consent Authority considers relevant and reasonably necessary to determine the application. Following assessment under s.104, this application must be considered under s.104B of the Act.”*

41. Section 108 and 220 allow Commissioners to impose conditions of consent if the consent is granted.

### **Assessment**

42. The proposal requires assessment in terms of the following issues:

- (i) Effects on the environment;
- (ii) Objectives, Policies and Rules
- (iii) Other matters, and
- (iv) Part 2 of the Act.

### **Effects on the Environment**

#### **Permitted Baseline**

43. Pursuant to Section 104(2) of the Act, when considering the actual and potential effects of an application for resource consent, a consent authority may disregard an adverse effect of an activity on the environment if the District Plan permits an activity with that effect. This is known as the permitted baseline. The permitted baseline has on the surface, little bearing to this application as we are dealing with the Rural General Zone. All buildings or alterations to buildings in the Rural General Zone require consent under the District Plan as the Plan does not provide for permitted activity status. Farming activities, some planting, small structures (less than 5m<sup>2</sup> in area) some fencing and a limited amount of earthworks is permitted.

### **Actual and Potential Effects**

44. We concur with Mr Keenan and Mr Freeman that the application needs assessment in terms of the following matters;

- Land, Flora and Fauna.
- Visibility of the Development.
- Effects on Natural and Pastoral Character.
- Form and Density of the Development
- Cumulative Effects of Development on the Landscape

- Infrastructure.
- Access and Traffic Generation effects.
- Natural Hazards and Nuisance effects

### **Land, Flora and Fauna**

45. In the advertised application, 200 m<sup>3</sup> of earthworks were proposed to form the access into Lot 4 off the existing ROW. This was to contain cuts of 1.5 m high and would be largely hidden by the band of trees to the east of the Lot and any cuts would be re-grassed. Mr Keenan, Mr Hopkins and Dr Read did not raise concerns regarding these earthworks. The altered proposal containing the revised building platform changed the earthwork calculations. The volume of the cut is now 150m<sup>3</sup> with a maximum cut depth of 2 m. Excess cut material will be used for the mounding below the platform and that will aid screening. Additional planting is also proposed (Plan LC1D Land Landscape Architects) to screen the accessway from existing Lot 2 below and to reinforce screening already provided by the band of trees on Lot 1 and 2. We find that there will be no adverse effects in terms of Land, Flora and Fauna that cannot be mitigated.

### **Visibility of Development**

46. Perhaps the greatest level of concern from submitters opposing, was the potential visibility of any dwelling that will subsequently be built on proposed Lot 4. We agree with the observation made by Ms Lucas, that the proposed platform will not be visible from three of the submitter's properties due to topography and another two because of the existing band of trees. In a general sense, it will certainly be visible from parts, but not all parts of the Quail Rise Zone. Mr Keenan relies on Dr Read's evidence on this assessment when she states Lot 4 will be;

*'highly visible from within Quail Rise and from distant locations such as Spence Road, Lower Shotover Road and Domain Road. The proposed platform is highly visible from these locations as the development is generally not confined by any element of topography but is rather located on a prominent slope'*



Mr Keenan furthermore states:

*'The proposed building platform would result in a future dwelling being the most prominent house seen from within Quail Rise and at a distance given the height on which the platform is proposed.'*

We disagree that a future dwelling would be this prominent from outlying areas. Other dwellings existing and yet to be built are at a similar or higher elevation and planting will in time mitigate this visibility.

Mr Keenan further stated when assessing effects on people:

*'any future dwelling would be seen from a considerable distance such as Lower Shotover Road, Spence Road and possibly Domain Road. From a distance the dwelling will appear as a part of the Quail Rise development so will not result in significant effects on amenity or views and outlook.'*

We accept that if you know where the proposed dwelling is and have it pointed out it may appear prominent but in general terms it will not be prominent and will appear as part of the Quail Rise Zone rather than a dwelling sitting in isolation on a rural paddock.

In our view Dr Read's assessment of the application in terms of visibility, is compatible with the assessment of the applicant's landscape architect Ms Lucas. Dr Read finds that the visibility of any proposed dwelling when viewed from a distance would be;

*'visible in glimpses from locations further afield such as Lower Shotover Road but would not be visually prominent from these locations being partially obscured from the north east by existing, protected vegetation. She further states: 'the proposed development would extend visible development up the hillside, but not significantly higher than is already visible or consented'*

Ms Lucas finds that the site is not located on a prominent slope; *'as only the higher portion of the site is located on a prominent slope and the platform is not.'*

From our own observations, proposed Lot 4 will be able to be viewed from a distance from Domain, Lower Shotover and Spence Roads, but will not dominate or be highly visible over any other dwelling built on the 400 contour

line and below. This includes dwellings already constructed, ie Lot 44 DP27480 and other dwellings on the upper limit of the Quail Rise subdivision and also dwellings consented via RM020499, RM020846 ( Broomfield), RM020964 (Waterston) and dwellings yet to be built on consented platforms. Any future dwelling on proposed Lot 4, would in our view be difficult to see in isolation especially when travelling on State Highway 6. From surrounding roads and public places, the eye will be drawn to the Quail Rise dwellings, rather than any individual dwelling. We agree with Mr Freeman when he states:

*From a distance, a dwelling will be seen as a logical continuation of the existing settlement pattern that exists within Quail Rise and nearby, and such development will easily blend into this setting...to the casual observer, a future dwelling when viewed from distance will appear as part of Quail Rise.*

47. There is a general acceptance amongst all parties that any future dwelling will be visible from parts of Quail Rise, both private and public and from the public walkway. The question is, will this visibility create adverse effects that are more than minor? It is important to note that buildings in a VAL landscape do not have to be invisible.

*Ms Lucas states 'the residential development of Quail Rise has a strong influence on the character of the site and the surrounding environment due to its proximity and visibility in all views of the site and proposed building platform. The character of the site and the lower slopes of Ferry Hill have a more modified character than the higher steeper slopes of Ferry Hill above*

48. Dr Read states: *'A dwelling on the proposed platform would not break the line of the slope as it would appear located between two others at a similar elevation'.*
49. We concur with the landscape architects. If the proposed development was to be created at an elevation significantly above the 400m contour line, removed from the existing Quail Rise Zone and other consented development in the rural zones, then it certainly would have adverse effects in terms of visibility. It would also move the development into the much more sensitive ONL. Ms Lucas further submitted that the existing dwelling on Lot 44 Quail Rise has two

levels and a height restriction of 7 metres and has the potential to be more visible over what is proposed. We agree.

50. Dr Read considered that the visual effects of a potential dwelling on proposed Lot 4 could be better mitigated by rotating the platform, undertaking earthworks on the down slope and considering a mono pitch roof design to reduce the building height.
51. The applicant agreed to make such recommended changes in response. The changes include:
  - The building platform has been moved to ensure there is less change in height across the building platform, which in turn will reduce the height of the height of the building envelope in the south-eastern corner of the building platform.
  - The original design controls promoted a roof pitch between 22.5 and 45 degree. This requirement has been deleted.
  - The original design controls promoted a maximum building height limit of 5.5 metres above a RL of 405.33 metres. The RL has now been lowered to 404.5 metres (a reduction of .83 metres). A height restriction for all buildings within the platform has also been revised from 5.5 metres to 5 metres.
  - Earth mounding is proposed to the south east of the building to provide some screening of any future dwelling from Quail Rise. This is to be an area 40 metres long by 10 metres wide.
  - Additional landscape screening is proposed
52. It is noted that changes in the location of the building platform created an internal setback breach pursuant to Rule 5.3.5.1(vi) (15 metres reduced to 7 metres) We find the changes were within the scope of the original application. Rather than creating adverse effects, the changes serve to mitigate them.
53. We also find that the changes will better integrate any new dwelling into the landscape and reduce visibility.
54. Due to topography and trees, perhaps only the Amos property will have partial views of the subject site from their own. Any future dwelling will certainly not

dominate the views of the other submitters especially when the dominant views and living areas of the submitters are to the north and east facing away from proposed Lot 4.

### **The Band of Trees**

55. During the hearing, there was considerable discussion as to the role the band of trees on Lot 1 and 2 DP 342130 play in mitigating any visual effects of future dwellings on Lot 3 and proposed Lot 4. The trees are protected by Environment Court Consent Notice RMA0120/03 and by Consent Notice 7408679.4. (RMA0120/13 created Lots1-3) It was established at the hearing that in 2006 the then landowner of these Lots 1-3 (Indigo Group Ltd.) obtained an agreement from the Council (Parks and Reserves) to implement a timed management plan to gradually remove the trees and suitably replant new vegetation. This was clearly in breach of the Consent Order and in the Commissioners view would have been illegal, as any changes to the Consent Order would have had to occur via a regulatory process. This removal and planting plan was not implemented and so the status quo has remained. The Commissioners recognise that the band of trees provide screening between many of the submitters, other Quail Rise residents and the public at large, from Lot 3 (and in some cases proposed Lot 4) The Commissioners are also realistic enough to recognise after witnessing the trees during their site visit, that the owner of Lot 3 will want to see the topping or removal of these trees over time, as will the owners of Lot 1 and 2 below. Many of the trees are wilding species, are getting large, have a limited lifespan or restrict views and sunlight. Their potential to mitigate future dwellings however remains and to that end the Commissioners sought at the hearing that the applicant undertake dialogue with the owners of Lots1 and 2 DP342130, to formulate an ongoing management plan for the trees. Any management plan would need to be approved by the regulatory arm of council in light of the requirements of Consent Notice 7408679.4 and ongoing planting would need to take place.
56. The Commissioners also felt the additional planting needed to be undertaken on the eastern boundary of Lots 3 and 4 behind the trees, to strengthen screening potential should the band of trees be trimmed, thinned or removed.

Ms Lucas consequently produced a revised Landscape Concept Plan LC1D., which outlines additional planting of more suitable plant varieties.

57. The additional planting will also serve to help screen the proposed ROW to both Lots 3 and 4 and to help screen a future dwelling on Lot 4 when viewed from below. This revised plan is accepted by the Commissioners as a way of ensuring ongoing planted mitigation is implemented by the applicant and gives greater long term certainty.
58. In conclusion with regards to visibility, we find that;
- The granting of Lot 4 and any resulting dwelling, will not have adverse effects in terms of visibility that are more than minor, when viewed from outside of Quail Rise.
  - With the further mitigation measures and design controls offered by the applicant (platform orientation, earthworks, planting and height controls), we find that while visible, any future dwelling on Lot 4, when viewed from within Quail Rise will not create adverse effects.
  - The applicant has offered that there will be no further subdivision of Lot 3. This ensures that development cannot occur on the more elevated part of Lot 3 on Ferry Hill.
  - Only one submission in opposition was received from a resident who had a direct view of the proposed Lot. We do not consider residents in Quail Rise will be adversely affected by being able to view a future dwelling on Lot 4.
  - While a future dwelling will be visible from the public walkway ( land locked and not presently usable) on the southern boundary, this visibility will not generate adverse effects. Anyone using this walkway in the future will not view a dwelling on Lot 4 in isolation but will read it as part of the Quail Rise zone.

### **Effects on Natural and Pastoral Character**

59. A number of submissions raised concerns about proposed Lot 4 being in the Rural General zone, adjacent to an Outstanding Natural Landscape. It is already established that the landscape where a future dwelling will be contained is a VAL, with an ONL above. Dr Read submitted in her evidence;

*the area of the proposed development is reasonably considered to be within the Visual Amenity Landscape. In some distant view, and for less informed observer, the distinction is not obvious. Consequently I consider that the proposed development would compromise the open character of the adjacent ONL to a small degree.....The dwelling is located within the Quail Rise Special Zone. It would domesticate the landscape, but I do not consider that it would cause over-domestication.*

Ms Lucas submitted; *'The addition of a house upon the proposed building platform will not compromise the open and natural character of the ONL above, as the building platform is located within the existing development pattern of the lower VAL slope. In addition, the proposed building platform is located in a gap between the existing building platform on Lot3 and an existing house within Quail Rise (Lot44) so the proposed development is not encroaching higher up the slope than the existing consented development. Consequently*

Ms Lucas did not agree that there was any compromise on the open development of the adjacent ONL even to a small degree.

We agree. The proposed Lot 4 is at the top of the 'toe' of Ferry Hill where it starts to terrace out and will not compromise the Outstanding Natural Landscape that is Ferry Hill.

60. Both Dr Read and Ms Lucas consider that the proposal will not compromise the Arcadian pastoral character of the surrounding VAL. Nor do they consider the proposal is 'sprawl', as suggested by some opposing submitters, but consider it 'infilling' between two consented Lots at similar elevations.
61. We find that the proposal will not have adverse effects that are more than minor on the natural and pastoral character of the immediate landscape. With the proposed landscaping mitigation, along with design controls, any future dwelling will appear as an infilling of the Quail Rise zone i.e 'intensification' as opposed to 'sprawl'. The development will be contained on a VAL landscape that is already surrounded by a modified landscape.

### **Form and Density of the Development**

62. As already discussed, it is the general consensus from the expert witnesses that whilst visible from Quail Rise, any dwelling on Lot 4 would appear as a continuation of the Quail Rise Zone and the form and density would only have minimal affects. Dr Read submitted;
- While it would introduce densities characteristic of urban areas in a literal sense, development on the proposed building platform would appear as development within Quail Rise. This would extend the urban type development up the face of Ferry Hill and would constitute an adverse effect of small to moderate extent.*
63. The changes to the proposal in line with Dr Read's suggestions have helped to integrate the platform into the topography and reduce the visual effect. Ms Lucas submitted; *The proposed building platform has been located in an area of the site that is able to absorb development due to its lower elevation and the surrounding existing pattern of development. The more sensitive, open pastoral land at higher elevations will be retained and not developed*
64. It is noted that Lot 4 is to be accessed by a shared ROW, negating the need to create a dedicated ROW, which in itself could potentially have adverse effects.
65. We find that the adverse effects created by the form and density of the proposal will be no more than minor.

### **Cumulative Effects of Development on the Landscape**

66. Submitters raised concerns about the cumulative effects of the proposal. In assessing cumulative effects, consideration must be made as to what effects the addition of Lot 4 will make to the effects that already exist in the receiving environment. An assessment should also be made of what cumulative effects may result in combination with other permitted activities that could occur in the immediate vicinity, or from activities that already are consented but not enacted.
67. If we consider the receiving environment, Dr Read submitted; *that the site is located above the western extent of Quail Rise in the immediate vicinity of*

*urban development.... Thus the site can be said to be on the margin of an area of intensive residential development wrapping around the base of Ferry Hill.*

68. Ms Lucas submitted; *'Existing development in the vicinity of the site is located within the distinctive lower and less steep topography at the base of Ferry Hill.... Development is contained within this distinctive landscape and the steeper slopes above will retain their more natural character.'*
69. As already established, we find the proposal to be 'infilling'. This will have little effect when combined with the effects that already exist in the immediate vicinity, especially in consideration of the elevated lots of the Quail Rise Zone. We do not consider the proposal could be considered 'incremental creep'.
70. Other permitted activities in the immediate vicinity that should be considered alongside the proposal that may add to cumulative effects, are future dwellings on Lot 1 and 2 .These are large Lots. Lot 1 is 9080m<sup>2</sup> and Lot is 1.006ha in size. Future dwellings can be absorbed on these lots without creating adverse effects in combination with the proposal. Other consented lots further to the north on the lower flanks of Ferry Hill will not combine to create adverse cumulative effects with the proposed Lot.

Overall we find that the proposal will not create adverse cumulative effects

### **Infrastructure**

71. No adverse effects will be created through the provision of infrastructure which includes potable water, waste water, storm water and energy and telecommunications supply. Conditions of consent will ensure the infrastructure to proposed Lot 4 is implemented in such a way to avoid adverse effects on immediate neighbours. Such infrastructure can be supplied to Council standards. The applicant has confirmed there is an agreement with Council to supply the water, wastewater and stormwater to Council reticulated services.

### **Access and Traffic Generation Effects**

72. Concern was expressed by submitters living on Enstone Lane, that there would be increased traffic on Healecote Lane and the Right of Way (ROW) that



extends from this lane to service the proposed Lots. This ROW also services Lot 1 and 2 DP342130 (below the trees but unbuilt on). These existing consented Lots would generate 24 traffic movements a day (based on 8 traffic movements per dwelling per day over 24 hours). The addition of Lot 4 would potentially generate another 8 traffic movement a day. Mr Hopkins informed the Commissioners that an upgraded ROW to Council standards will cater for this increase in traffic from an infrastructural perspective. As there is no development there at present, we accept that when it does take place, traffic will be a consequence for neighbours. It is also accepted that traffic does have an effect, but we find that 8 additional traffic movements on the ROW and Healecote Lane will not generate adverse effects on other users of Healecote Lane or residents living on Enstone Lane.

### **Positive effects**

73. The granting of a consent for a new dwelling invariably creates positive effect. This comes in the form of economic benefit for the owner and the provision of another housing unit in the district.

### **Summary of Effects**

74. After careful consideration, we find that the proposal will have adverse effects that are no more than minor. If the proposal was assessed in isolation, without taking the receiving environment into consideration, then the decision may well be different. To the east of the proposed Lot is the Quail Rise Zone, which extends development up to the same contour on the toe of Ferry Hill. To the north are consented Lots both at the same elevation and also lower down. The granting of this Lot is infilling and once a dwelling is built on Lot 4 it will be difficult to differentiate it from surrounding development. In response to the concerns of Dr Read and submitters in opposition, the applicant has made alterations to the original proposal. Changes in platform orientation, height controls and increased landscaping will mitigate any effects. The additional Lot can be serviced by infrastructure and the access Right of Way can cater for any additional traffic movements. The further landscaping and earth mounding will help a future dwelling bed into the landscape and be partially screened from view.

## **The District Plan**

75. Mr Keenan in his s42A report, has made his analysis of the proposal in relation to the Objectives and Policies in Part 4 – District Wide Issues, Part 5 (Rural Areas) and Part 15 (Subdivision, Development and Financial Contributions) The issues raised in his analysis of the relevant assessment matters, objectives and policies, have been canvassed in the decision thus far. Rather than being repetitive and detailing all the assessment matters, objectives and policies, we note the following:

### **Relevant Assessment Matters, Objectives and Policies of the District Plan**

#### **Section 4.2 relates to Landscape and Visual amenity**

##### **4.2.5 Objective:**

***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.***

The above objective is supported by a number of policies. Of relevance is;

##### ***Policy 1-Future Development***

- (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.*
- (c) To ensure subdivision and/or development harmonises with local topography and ecological systems and other nature conservation values as far as possible.*

76. We find that for the reasons already discussed, the proposal is not contrary to the above objective and policies. The proposal is to be carried out in an area that has the ability to absorb change. We have established that the creation of Lot 4 is infilling between two already established lots at a similar elevation on the lower slopes of Ferry Hill. Any change to the landscape that will occur, can be mitigated satisfactorily by mounding and planting. The area that is

vulnerable to degradation is the upper section of Lot 3, which is ONL. This land will be covenanted and protected against any further development.

#### **4. 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; and*
- *Visible from public roads*

*(b) to mitigate loss of or enhance character by appropriate planting and landscaping*

77. While it is accepted that the building platform and any future dwelling on Lot 4 will be visible, it has to be considered in the environment that it is being placed and that is on the fringes of the Quail Rise Zone. Changes made by the applicant in terms of planting, earthworks and design controls will serve to mitigate the proposal.

78. The proposed development will not be highly visible when viewed from a distance. It will appear as part of a modified landscape and the eye will not be drawn to any future dwelling in isolation, but to a number of dwellings and bands of landscaping that now forms the environment in the immediate vicinity. The proposal will not be contrary to policy (a) above.

79. Proposed planting and earth mounding around Lot 4, plus additional planting behind the existing band of trees on Lot 1 and 2 will ensure the proposal is not contrary to policy (b) above.

#### **6. Urban Development**

*(d) To avoid, remedy and mitigate the adverse effects of urban subdivision and development in visual amenity landscapes by avoiding sprawling subdivision along road.*

80. What is proposed, does not constitute sprawling subdivision along a road and is consequently not contrary to the above policy.

#### **8. 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 buildings are outweighed by the adverse effects on landscape values of over domestication of the landscape.*

(b) *to encourage comprehensive and sympathetic development of rural areas.*

81. We do not consider the proposal constitutes over domestication. The result will be one additional Lot created between existing consented Lots at a similar elevation. For all intents and purposes the new Lot will appear as part of the Quail Rise Zone and thus will not appear out of context with that zone. Although the site is in the Rural General Zone, it abuts against and is surrounded by the Quail Rise Zone and consequently will result in a sympathetic development. We find that the proposal is not contrary to the above policies.

## **9. 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.*

82. Any structure built on proposed Lot 4 will be subject to a suite of design controls. This includes relocating the platform, new height controls, the use of recessive colours and the use of natural materials. Any future dwelling will not break the skyline or ridges of prominent slopes and hilltops. Planting will assist in screening development from roads and public places. We find the proposal is not contrary to the above policies.

#### **4.10.3 Earthworks**

##### **Objectives**

**To avoid, remedy or mitigate the adverse effects from earthworks on:**

- (a) *Water bodies***
- (b) *The nature and form of existing landscapes and landforms, particularly in areas of Outstanding Natural Landscapes and Outstanding Natural Features***
- (c) *Land stability and flood potential of the site and neighbouring properties***
- (d) *The amenity values of neighbourhoods***
- (e) *Cultural heritage sites.***
- (f) *The water quality of aquifers***

83. The proposed earthworks are minor in scale and will be mitigated by re-grassing or screened by planting. The earthworks will not be contrary to the above objectives.

#### **Part 5 Rural Areas**

##### **5.6 Objectives and Policies**

###### **Objective 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 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 or mitigate adverse effects of development on the landscape values of the Valley.*
- 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 the location of structures and water tanks on skylines, ridges, hills and prominent slopes.*

**Objective 2 - Life Supporting Capacity of Soils**

***Retention of the life supporting capacity of soils and/or vegetation in the rural area so that they are safeguarded to meet the reasonably foreseeable needs of future generations.***

*Policies:*

- 2.1 *Avoid, remedy or mitigate adverse effects of subdivision and development on the life-supporting capacity of the soils.*
- 2.2 *Enable a range of activities to utilise the range of soil types and microclimates.*

**Objective 3 -Rural Amenity**

***Avoiding, remedying or mitigating adverse effects of activities on rural amenity.***

- 3.3 *To avoid, remedy or mitigate adverse effects of activities located in rural areas.*
- 3.5 *Ensure residential dwellings are setback from property boundaries, so as to avoid or mitigate adverse effects of activities on neighbouring properties.*

84. The proposal protects landscape values by avoiding and mitigating adverse effects. This piece of Rural General land has the ability to absorb the change outlined. The immediate surroundings are characterised by the residential and rural residential development. The land where the activity is to be undertaken is not productive in a farming sense. The applicant has offered a covenant that there will be no further development of Lot 3, thus protecting the more visually sensitive land and retaining it in pastoral use. A future dwelling will not break ridgelines or be on a prominent part of the slope that is Ferry Hill. Given the applicant has stated a dwelling will be built for elderly parents, it will not provide for rural productive activity or worker accommodation. In this location, this is not deemed to be a consideration. The fact that the lower portion of the Lot 3 land is zoned Rural General appears as an anomaly, given its location between the Quail Rise Zone and a rural Residential Zone.
85. The proposal is setback from property boundaries and will not have adverse effects on neighbouring properties. The proposal is not contrary to the above objectives and policies.

### **Part 15- Subdivision**

86. There are a number of Objectives and Policies relating to subdivision. In this proposal they relate to;

#### **Objective 1- Servicing**

*The provision of necessary services to subdivided lots and developments in anticipation of the likely effects of land use activities on those lots and within the developments.*

#### **Objective 4 –Natural Features, Landscapes and Nature Conservation Values**

*The recognition and protection of outstanding natural features, landscapes and nature conservation values.*

#### **Objective 5- Amenity Protection**

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

87. It has been established that proposed Lot 4 can, with further work, be safely accessed and serviced in terms of infrastructure. The subdivision will create a

land pattern that is appropriate and in character with land uses in the immediate area. Whilst it is accepted that the proposal will result in an increase in domestication, this domestication will not have adverse effects on the ONL of Ferry Hill or of the VAL landscape in which it sits.

Overall, for all the reasons stated, we find that the proposal is consistent with the relevant objectives and policies of the Queenstown Lakes District Plan.

## **Other Matters**

### **Precedent Effects**

A number of the submitters were concerned that the granting of Lot 4 will create a precedent, especially in relation to Lot 1 and 2 DP342130. The applicant is not required to make an assessment of other potential applications in the immediate vicinity. The Environment Court has made it clear that each case must be judged on its own merits. Any subsequent applications would also have to be assessed against the existing environment. The question that has to be asked in relation to this application must be- is the creation of Lot 4 going to create a true exception? The answer in our view is no. The granting of Lot 4 would provide no guarantee that an application to subdivide Lot 1 and 2 would be successful. As Mr Freeman pointed out in his evidence, Lot 1 and 2 are in the Rural General Zone, so like this application, there is no automatic further subdivision/development right. Any application would have to be publically notified and would be open for submissions either for or against. We accept that future development in addition to what is already consented on Lots 1 and 2, may well have adverse effects on the submitters and wider public, but we do not consider that granting this application would facilitate any such development happening.

## **PART 2 of the Resource Management Act 1991**

88. Section 5(2) of the Resource Management Act 1991 details the purpose of the Act in promoting the sustainable management of the natural and physical resources. Sustainable management is defined as:

*Managing the use, development and protection of natural and physical resources in a way or at a rate which enables people and communities to*



*provide for their social, economic and cultural wellbeing and for their health and safety while:*

- a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations: and*
- b) safeguarding the life-supporting capacity of air, water, soil and ecosystems: and*
- c) Avoiding, remedying, or mitigating any adverse effect of activities on the environment.*

89. The proposal promotes sustainable management of natural and physical resources.

The proposal safeguards and has the potential to enhance in relation to soil, the life supporting capacity of air, water, soil and ecosystems and avoids, remedies and mitigates any adverse effects.

Section 6 of the Act is also relevant;

- (c) The protection of outstanding natural features and landscapes from in appropriate subdivision, use and development.*
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers*

90. We find that the outstanding natural landscape of Ferry Hill, adjacent to the site, is protected and that the wider landscape is not compromised by the proposed development. Although the public access is landlocked at present, the public easement that sometime in the future may allow access to Ferry Hill will remain in place.

91. Regard must also be given to Section 7 of the Act-Other Matters

- (b) The efficient use and development of natural and physical resources*
- (c) The maintenance and enhancement of amenity values*
- (f) Maintenance and enhancement of the quality of the environment.*

92. We find, that the proposal is not contrary to the above. It is an efficient use of the applicants land and at the same time, amenity values and the quality of the environment are to be maintained.
93. We find that the proposal is not contrary to the purposes and principles of the Act.

### **Consent Order**

94. As outlined, the applicant seeks to vary Consent Notice 7408679.4 (as it relates to Lot 3 DP342130) and to delete Consent Notice 7408679.4 (as it relates to Lot 4 only) Lot 3 will continue to be developed under Consent Order 7408679.4, with some amendments made by additional landscaping, as per LAND Landscape Architects revised plan.
95. We find that the proposed variance of the Consent Order will still maintain its original intentions with regards to Lot 3 and the new landscaping provisions will give better certainty in terms of landscape management into the future.

### **Conditions of Consent**

96. The granting of Lot 4 requires that its future development be determined by a set of conditions attached to this decision. These conditions are site specific. The conditions attached, provide a set of workable conditions that are transparent, will provide certainty, will manage the proposed development and are enforceable.

### **Conclusion**

97. Prior to the conclusion of the hearing Mr Keenan was asked by the Commissioners if, having heard all the evidence, and based on amendments proposed by the applicant, would he change his recommendation. He replied in the affirmative and that he would recommend granting consent. For all the reasons outlined above, we find that the granting of the consent will not generate adverse effects, will align with the objectives and policies of the District Plan and is in accordance with Part 2 of the Resource Management Act 1991.

**Decision**

98. Land use consent and consent to vary Consent Notice 7408679.4 for GD and JM McNee is **GRANTED**. This is in accordance with s.104 and Part 2 of the Act, subject to conditions under s.108. Such conditions are attached in Appendix 1 attached to this decision.

Dated in Queenstown this 19<sup>th</sup> day of July 2013



David Clarke and Lyal Cocks  
**Independent Hearings Commissioners**

## **Appendix 1 - Conditions of Consent**

### **Decision A - Subdivision**

1. That the development must be undertaken/carried out in accordance with the plans, 'Lots 3 and 4 Being a Proposed Subdivision of Lot 3 DP342130 Lower Shotover', prepared by Bonich Consultants dated 3 July 2012, and 'McNee Landscape Concept Plan', Plan No. LC1D, REV D prepared by LAND Landscape Architects, dated 25 June 2013' (**stamped as approved on 19 July 2013**) 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.
3. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.

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

4. Prior to the commencement of any works on the site the consent holder shall provide to the Principal Engineer at Council for review and certification, copies of specifications, calculations and design plans as are considered by Council to be both necessary and adequate, in accordance with Condition (3), to detail the following engineering works required:
  - a) The provision of a water supply to Lots 3 & 4 in terms of Council's standards and connection policy. This shall include an Acuflo CM2000 as the toby valve. The costs of the connections shall be borne by the consent holder.
  - b) The provision of a foul sewer connection from Lots 3 & 4 to Council's reticulated sewerage system in accordance with Council's standards and connection policy, which shall be able to drain the buildable area within each lot. This shall include an inspection Chamber/rodding eye at the junction of the laterals for the two lots. The costs of the connections shall be borne by the consent holder.
  - c) The formation of right of way access to Lots 3 & 4 from Council's road network, in accordance with Council's standards. This shall include the formation of an access way to the building platform on Lot 4. The right of way shall include provision of a safety barrier as required under section 3.3.4 of QLDC amendments to NZS 4404:2004.
  - d) A detailed report from a geotechnical engineer to confirm that the earthworks proposed will not adversely affect the surrounding area.

***To be completed before Council approval of the Title Plan***

5. Prior to the Council signing the Title 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 Title Plan and shall be duly granted or reserved.

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

6. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall complete the following:
  - a) The submission of 'as-built' plans and information required to detail all engineering works completed in relation to or in association with this subdivision/development at the consent holder's cost. 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), Water and Wastewater reticulation (including private laterals and toby positions).
  - b) The completion and implementation of all works detailed in Condition (4) above.
  - c) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an underground electricity supply has been made available (minimum supply of single phase 15kva capacity) to the net area of all saleable lots created and that all the network supplier's requirements for making such means of supply available have been met.
  - d) Written confirmation shall be provided from the telecommunications network supplier responsible for the area, that provision of underground telephone services has been made available to the net area of all saleable lots created and that all the network supplier's requirements for making such means of supply available have been met.
  - e) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.
  - f) The structural landscaping detailed on the landscape plan approved under Condition 1 above; 'McNee Landscape Concept Plan', Plan No. LC1D, REV D prepared by LAND Landscape Architects dated 25 June 2013 shall be implemented to the satisfaction of Council's Landscape Architect. The landscaping detailed on the plan shall provide partial screening for future built form that the existing band of trees on Lot 1 and 2 currently provide.

***On-going Conditions/Consent Notices***

7. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall registered on the title of Lot 4 a Consent Notice to be complied with in perpetuity for the performance of the following conditions;

- a) Any future earthworks undertaken for the creation of building platforms shall be designed by a geotechnical engineer to confirm they will not adversely affect the surrounding area.
- b) At the time a dwelling is erected, the owner for the time being shall engage a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 to design a stormwater disposal system that is to provide stormwater disposal from all impervious areas within the site. The proposed stormwater system shall be subject to the review of the Principal Engineer at Council prior to implementation and shall be installed prior to occupation of the dwelling.
- c) At the time a dwelling is erected, domestic water and fire fighting storage is to be provided. A minimum of 20,000 litres shall be maintained at all times as a static fire fighting reserve within a 30,000 litre tank. Alternatively, a 7,000 litre fire fighting reserve is to be provided for each dwelling in association with a domestic sprinkler system installed to an approved standard. A fire fighting connection in accordance with Appendix B - SNZ PAS 4509:2008 is to be located no further than 90 metres, but no closer than 6 metres, from any proposed building on the site. Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2008 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2008 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single family dwellings. In the event that the proposed dwellings provide for more than single family occupation then the consent holder should consult with the NZFS as larger capacities and flow rates may be required.

The Fire Service 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 QLDC's standards for rural roads (as per NZS 4404:2004 with amendments adopted by QLDC in 2005). 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 Fire Service 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.

Fire fighting water supply may be provided by means other than the above if the written approval of the New Zealand Fire Service Central North Otago Area Manager is obtained for the proposed method.

The fire fighting water supply tank and/or the sprinkler system shall be installed prior to the occupation of the building.

- d) The residential unit and accessory buildings shall be contained within the building platform as marked on the Computer Freehold Register.
- e) The maximum height of all buildings within the building platform shall be 5 metres above RL 404.5 metres.
- f) Roof claddings shall be steel (corrugated or tray), cedar shingles, slate or a 'green roof' system.
- g) All steel roofing shall be painted or otherwise colour treated in a dark recessive hue. All finished roof material shall comply with a reflective value of less than 36%.
- h) Exterior wall materials for all buildings shall consist of one or more of the following; local stone (schist); timber cladding which are left to weather or finished in clear stain; 'Linea' weatherboard cladding system or similar; or smooth plaster finish.
- i) Exterior colours for all structures shall be earthy and recessive (in materials stated above) and have a reflectively values of less than 36%.
- j) All fencing shall be in post and wire or other typical rural fencing only.
- k) There shall be no driveway lighting; landscape lighting is permitted within 10 metres of the residential unit only.
- l) Any exterior lighting shall be directed downwards and away from any adjoining residential properties.
- m) The landscaping detailed on the approved Landscape Concept Plan entitled, 'McNee Landscape Concept Plan', Plan No. LC1D, REV D, shall be maintained in perpetuity. If any plant or tree should die or become diseased it shall be replaced within the next available planting season.

## Decision B - Variation to Consent Notice

That the application by G & J McNee to vary Condition (i) of Consent Notice 7408679.4 (as it relates to Lot 3 DP342130) and to delete Consent Notice 7408679.4 (as it relates to Lot 4 only), be granted pursuant to Section 221 of the Resource Management Act 1991, such that:

1. Condition (i) of Consent Notice 7408679.4 is amended to read as follows (deleted text struck-through, added text underlined):
  - (i) Lot 3 shall be developed and maintained by the owner of that lot in accordance with the landscape management plan approved by Queenstown Lakes District Council under conditions 6 (j) of the consent order and as amended by McNee Landscape Concept Plan REV D dated 25 June 2013 by LAND Landscape Architects stamped as approved xxxx
2. Consent Notice 7408679.4 is cancelled as it relates to Lot 4.
3. Currently with 224 (c) certification of Decision A – Subdivision , the consent holder and Council shall vary the consent notice and shall execute all documentation and attend to the registration of a new or varied consent notice. All costs shall be borne by the consent holder. The consent notice shall not be varied unless the subdivision approved under Decision A – subdivision is given effect to.



## **Decision C Land use**

Consent is GRANTED pursuant to Section 104 of the Act, subject to the following conditions imposed pursuant to Section 108 of the Act:

1. That the development must be undertaken/carried out in accordance with the plans, 'McNee Landscape Concept Plan', LC1D, REV D dated 25 June 2013 by LAND Landscape architects (**stamped as approved on 19 July 2013**) and the application as submitted, with the exception of the amendments required by the following conditions of consent.
2. The consent holder shall provide evidence to the Manager – Planning and Development at Queenstown Lakes District Council in the form of a title plan, that the residential building platform approved under Decision A – Subdivision, has been registered on the pertinent Computer Freehold Register. For the avoidance of doubt, it shall then be considered that consent for the internal setback breach has been given effect to.

### **Advice Note:**

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 Queenstown Lakes District Council.



**KEY**

Proposed screening mix:	Proportion of total plant numbers / plant spacing:
	Cornus species 10% / 1.5m crs
	Hebe species 15% / 1.0m crs
	Pittosporum tenuifolium 25% / 2.0m crs
	Prunus lusitanica 20% / 2.0m crs
	Sophora microphylla 10% / 3.0m crs
	Viburnum species 20% / 2.0m crs

	Proposed trees to include Cedrus deodara, alder & poplar species
	Existing poplars as per RM 000768
	Existing alders as per RM 000768

**QUEENSTOWN LAKES DISTRICT COUNCIL**  
**APPROVED PLAN: RM130059**  
**19 July 2013**

ATTACHMENT 2



Project: **McNee**

Title: **LANDSCAPE CONCEPT PLAN**

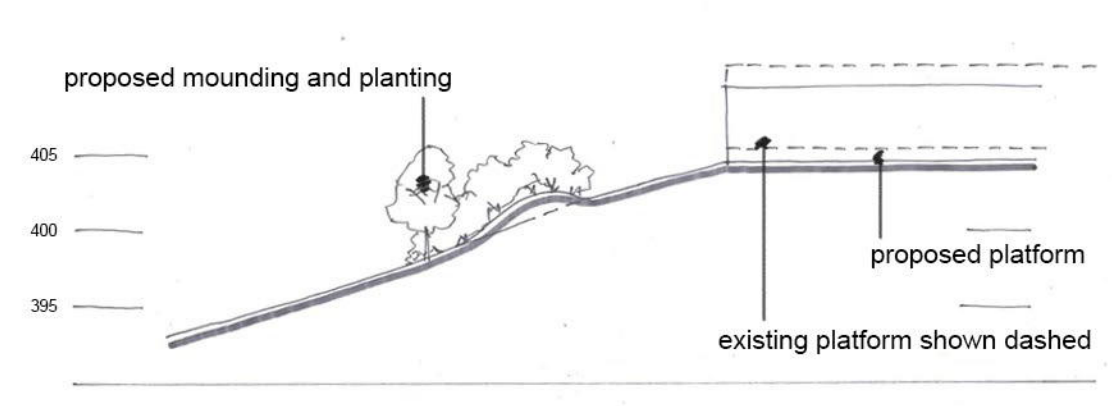
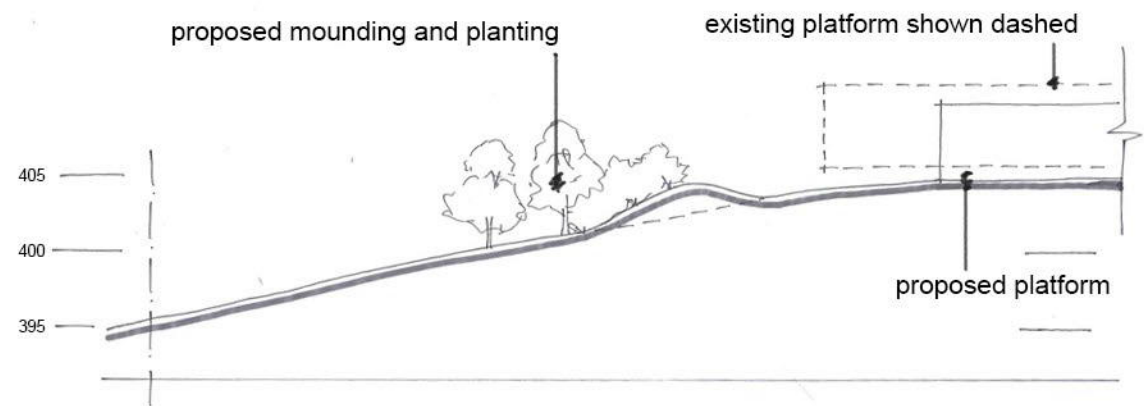
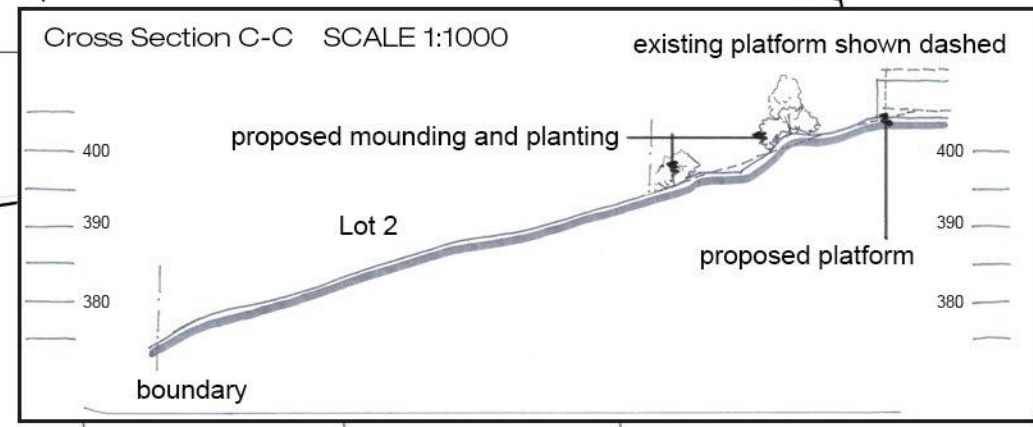
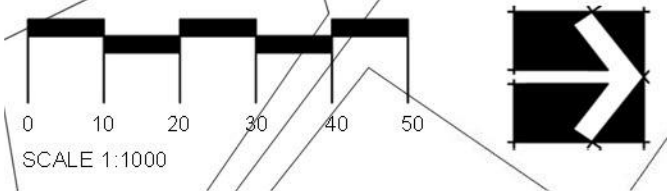
Location: **QUAIL RISE, QUEENSTOWN**

Rev#	Description	By	Date
A	Building Platform	JD	20.05.13
B	Contours added	JD	10.06.13
C	planting revisions	JD	20.06.13
D	planting densities	JD	25.06.13

**NOT FOR CONSTRUCTION**

Scale: 1:1000 @ A3 Job No: 2460  
 Drawn / Checked: RB / RL Date: 22.11.12

This drawing is supplied on the understanding that the information herein will not be passed to any other party without written permission first being obtained from LAND Ltd. Drawing No: **LC1D**







**QUEENSTOWN LAKES DISTRICT COUNCIL**

**APPROVED PLAN:  
RM130059**

**19 July 2013**

See sheet 2



Telephone 03 218 2546 Facsimile 03 214 4285  
 Freephone 0800 802 546  
 19 The Crescent, P.O. Box 1262  
 Invercargill 9840, New Zealand  
 Email admin@bonischconsultants.co.nz  
 Web www.bonischconsultants.co.nz

LAND DISTRICT: OTAGO  
 Comprised In: CFR 173234  
 Total CFR Area: 11.8300ha (more or less)  
 Local Authority: Queenstown Lakes District Council

NOTES:  
 All areas and dimensions are subject to final survey.  
 Contours are in terms of Datum Point ITXI  
 RL: 383.12m above Mean Sea Level.

**EXISTING EASEMENTS**

Purpose	Shown	Servient Tenement	Created By:
Right of Way (Pedestrian)	(B) (N)	Lot 4	EI 7408679.5
	(P)	Lot 3	
Right to convey Water & Electricity	(S)	Lot 3	EC 789319.4
Right to convey Water	t-u-v-w	Lot 3	EC 790722.3

**MEMORANDUM OF EASEMENTS**

Purpose	Shown	Servient Tenement	Dominant Tenement
Right of Way	(A) (B)	Lot 4	Lot 3
Right to drain Sewage & Stormwater Right to convey Water, Electricity, Telecommunications & Computer Media	(C)	Lot 3	Lot 4

**LOTS 3 AND 4 BEING A PROPOSED SUBDIVISION OF LOT 3 DP 342130 LOWER SHOTOVER**

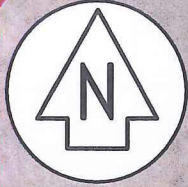
CLIENT: K.J. Lukaszewicz  
 DATE: 3 July 2012  
 SURVEYED: M. Blayney  
 DRAWN: B. Sayer  
 JOB NUMBER: 4295-SP1  
 REVISION NUMBER:

DATE PRINTED: 18/12/2012 11:53:43 a.m. BY: Brad  
 SCALE: 1:2,500 @ A3

J:\Bonisch Surveyors\4200 - 4295\4295 - Kris Lukaszewicz, Healecote Lane, Lower Shotover - Subd\Autocad\4295-SP1.dwg







Telephone 03 218 2546 Facsimile 03 214 4285  
 Freephone 0800 802 546  
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CLIENT :	K.J. Lukaszewicz
DATE :	3 July 2012
SURVEYED :	M. Blayney
DRAWN :	B. Sayer
JOB NUMBER :	4295-SP1
REVISION NUMBER :	

DATE PRINTED :	18/12/2012 11:53:48 a.m.	BY :	Brad
SCALE :	1:1,000 @ A3		

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**QUEENSTOWN LAKES DISTRICT COUNCIL**  
**APPROVED PLAN:**  
**RMI30059**  
**19 July 2013**

