



**DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL**

**RESOURCE MANAGEMENT ACT 1991**

<b>Applicants:</b>	<b>Coronet Estates Ltd and Wakatipu Retreat Ltd</b>
<b>RM reference:</b>	RM140034
<b>Location:</b>	629 Malaghans Road, Wakatipu Basin, Queenstown
<b>Proposal:</b>	Subdivision consent to rearrange five existing allotments and land use consent to establish three new residential building platforms
<b>Type of Consent:</b>	Subdivision and Land Use
<b>Legal Description:</b>	Lot 1, 3, 4, 5 and 6 Deposited Plan 24501 as contained in Computer Freehold Registers OT16B/1189, OT16B/1191, OT16B/1192, OT16B/1193 and OT16B1194
<b>Valuation Number:</b>	2907109601 - 2907109604
<b>Zoning:</b>	Rural General
<b>Activity Status:</b>	Discretionary
<b>Notification:</b>	5 February 2014
<b>Commissioner:</b>	Trevor J Shiels QC
<b>Hearing:</b>	Wednesday 23 April 2014
<b>Decision:</b>	<b>17 June 2014</b>




## **A      DECISION**

For reasons set out below, the Applicants are granted a subdivision consent to subdivide Lots 1, 3, 4, 5, and 6, Deposited Plan 24501; and land use consent to establish building platforms on Lots 3, 5 and 6, subject to the conditions set out at the end of this decision.

## **B      INTRODUCTION**

1. I have been appointed as an Independent Commissioner to hear and determine the above resource consent application on behalf of the Queenstown Lakes District Council.
2. The subject site is located on the northern side of Malaghans Road, approximately 5 kilometres west of Arrowtown. The site is 85.02 ha in area, extending from Alan Reids Road on the eastern boundary to the unformed legal road that stretches the length of the western boundary. It has a frontage of approximately 1.1 km to Malaghans Road with a line of conifers along the entire frontage.
3. The site consists of five separate titles, as follows:
  - Lot 1 DP24501 in CT OT16B/1189 (Otago) comprising 0.8958 ha. The lot contains an existing dwelling and associated curtilage area. Vehicle access is obtained via a metalled driveway from Malaghans Road.
  - Lot 3 DP24501 in CT OT16B/1191 (Otago) comprising 29.4722 ha. This is currently in pasture, and is utilised as a deer farm. It contains deer yards and a shed located on the road boundary.
  - Lot 4 DP24501 in CT OT16B/1192 (Otago) comprising 27.3462 ha. This title contains an approved residential building platform, which is accessed by a formed driveway that runs in a northerly direction along the boundary between Lots 3 and 4. The site is currently in pasture and utilised as a deer farm. A line of liquidambar styraciflua has been planted along both sides of the driveway.
  - Lot 5 DP24501 in CT OT16B/1193 Otago comprising 13.4373 ha. The land is currently in pasture, and is utilised as a deer farm.
  - Lot 6 DP24501 in CT OT16B/1194 Otago comprising 13.8713 ha. The land is currently in pasture, and is utilised as a deer farm.
4. For further detail of the site and its surrounds, refer to the landscape report of Paul Smith filed with the application.
5. The application seeks subdivision consent to rearrange the five existing rural lots and land use consent to establish three new platforms of 1000m<sup>2</sup> each.



6. Rule 15.2.3.3 of the Operative District Plan makes subdivision and location of residential building platforms in this part of the Rural General Zone a discretionary activity. This is provided it meets zone subdivision standards. In this case, there is no suggestion that there is any zone subdivision standard that is not complied with. I then need to consider assessment matters under Rule 15.2.6.4, although those matters are not intended to be exclusive of other considerations. Normally, I take the view that a consent under section 15 of the Plan (Subdivision, Development and Financial Contributions) is sufficient to establish a residential building platform as part of a subdivision. See, Rule 15.2.3.3(vi). However, I note that in this case, proposed Lot 3 has identical boundaries to existing Lot 6 (although a small area of existing Lot 6 has been taken for road). As a matter of caution, I will therefore deal with this application under both Section 15 and Section 5 (Rural Areas) of the Plan.
7. Rule 5.3.3.3 makes the identification of a building platform in the Rural General Zone a discretionary activity, if:
  - it is not a prohibited or a non-complying activity;
  - it complies with all relevant zone standards;
  - it has been evaluated under the assessment criteria in Rule 5.4;
  - the building platform is not less than 70m<sup>2</sup> in area and not greater than 1000m<sup>2</sup> in area.
8. It is common ground that these criteria for qualifying as a discretionary activity are met, subject of course to assessment under Rule 5.4.
9. It is also common ground that some of the land on the overall site, where it starts to rise and as it gets further away from Malaghans Road, is properly categorised as an Outstanding Natural Landscape. However, none of the proposed building platforms are partially or wholly within that area. For the purposes of assessing this application, the landscape is a Visual Amenity Landscape.

## **C THE RELEVANT STATUTORY PROVISIONS**

10. The application is considered under section 104 Resource Management Act. I am required to consider actual and potential effects on the environment of allowing the activity. In this case it is appropriate to stress the underlined words.
11. There are no relevant national standards or statements or Regional Policy Statement on any contentious issue.
12. The relevant District Plan is the QLDC Operative Plan.
13. The decision is made under section 104B, and I have power to impose conditions under section 108 and 220.



## D THE PRINCIPAL ISSUES

14. The following issues were identified in the officers' section 42A Report and submissions. In each case, I needed to consider both the factual issues and their legal relevance:
- Reverse sensitivity in respect of Flight Park (Rold), Lot 2 DP 24277 (Fairfax), and Part Section 16 Blk XVI Shotover S.D. (Nelson).
  - Amenity effects in terms of the spread of domestication through the site caused by existing and proposing landscaping.
  - Concerns about future uses of the site.
  - View shafts to Coronet Peak from Malaghans Road.
  - Effect of existing roadside planting on frontage of Malaghans Road.
  - Potential alluvial fan and liquefaction issues.
  - Wastewater.

## E THE HEARING

15. The Application was publicly notified on 5 February 2014. Five submissions were received in the statutory time period. Three of those were in opposition to the Application, one in support, and one neutral. These submissions were as follows:

- Mr Brian R Bayley 53 Hunter Road, RD1, Queenstown 9371
- Otago Regional Council Private Bag 1954, Dunedin  
(Att: Mr Warren Hanley)
- Mr Glenn Bartlett email: [bartgk@hotmail.com](mailto:bartgk@hotmail.com)
- Mr Thomas Rold Flightpark, 793 Malaghans Road,  
Queenstown 9371
- Mr John Nelson 31 Saunders Whitby, Porirua 5024

16. The hearing was held in Queenstown on 23 April 2014. I was assisted at the hearing by the following Queenstown Lakes District Council staff:

- Ms Rachel Beer Planning Support Co-ordinator
- Mr Nathan Keenan Planner
- Dr Marion Read Landscape Architect
- Mr Michael Wardill Engineer

17. I visited the site with Mr Keenan prior to the hearing. The purpose of a site visit is to assist me in the assessment of the material presented at and for the hearing, and I have been careful to use the site visit only for that purpose.

18. Prior to the hearing, I read and considered the application, the submissions, and the various reports prepared under section 42A by Mr Keenan, Dr Read, and Mr Wardill.

19. At the hearing, appearances were entered by:

- Applicant Mr Graeme Todd, solicitor



- Mr Nelson self

20. Mr Andrew Fairfax is a neighbour and was served with the application, but for various reasons it did not come to his attention in time to submit within the statutory time period. There was no written late submission. At Mr Todd's invitation, I heard from Mr Fairfax to consider whether I should allow him to be a late submitter. Having heard what he had to say, I came to the view that his concerns, although genuine, were either adequately addressed or not legally relevant to the application before me.

## **Submissions and Evidence for Applicants**

### Submissions of Mr Graeme Todd

21. Mr Todd made oral submissions for the Applicants. He primarily addressed the areas of concern raised by the reporting officers.
22. Dr Read's report had suggested relocating the access to proposed Lots 1 and 2 onto the unformed legal road corridor to the west of the site so as to avoid unnecessarily fragmenting the landscape. The Applicants had indicated in a Memorandum filed before the hearing that they accepted this approach but wanted the opportunity to consider the legal mechanism for this with Council officers. Mr Todd repeated this in his submissions and added there were some concerns about the proximity of the existing access and the unformed roadway being side by side and more or less directly opposite Hunter Road. What he proposed was to use the existing driveway initially where the access met Malaghans Road and then the legal road, in accordance with the map produced by Mr Espie (the Applicants' landscape expert).
23. Dr Read was also concerned about aspects of the amenity planting. Those concerns were reflected in Mr Keenan's report. First, she was concerned that the liquidambar styraciflua planted down the sides of the driveway constructed to provide access to the existing Lot 4 building platform did not comply with conditions imposed by an earlier subdivision consent (RM090233). The view I took, and make clear to the parties before the hearing, was that I did not consider this resource consent hearing was the appropriate forum to deal with an issue of compliance with conditions of an earlier resource consent. It is far from obvious to me that the planting did breach Condition 8 of the earlier consent. Mr Todd's approach was that the driveway planting was amenity planting and was a permitted activity and therefore part of the permitted baseline. He noted the neighbouring properties have considerable amenity planting. He accepted that whether that planting was consistent with conditions of the earlier consent remained an open issue that could be addressed by enforcement proceedings if anybody so chose. I accepted that as the correct approach.
24. Dr Read was also concerned that the conifer planting along the southern boundary, i.e. Malaghans Road frontage obscures views into and across the site. Mr Todd's approach, which I accept is correct, is that this is also amenity planting which does not require consent under the District Plan. He stressed



that the Applicants did not rely on the conifers as having a beneficial effect, or mitigating otherwise adverse effects. The significance of this is that Assessment Matter 5.4.2.2(3), which applies to Visual Amenity Landscapes precludes existing vegetation planted after 28 September 2002 from being considered as beneficial or as part of the permitted baseline for the purpose of an assessment of effects on natural character where the site is adjacent to an Outstanding Natural Landscape. I conclude that their presence is part of the existing environment and not an effect of the proposed subdivision. I would be beyond the powers of the Consent Authority to require their removal as a condition of the subdivision or land use consent now applied for.

25. Mr Bayley also raised the possibility of the conifers causing a shading effect on Malaghans Road, possibly increasing risk of icing on the road. Because of the potential cost of doing so, the hedge being 1.1 km long, the Applicants were not prepared to volunteer a height condition for the hedge. Mr Todd told the hearing that the Applicants had used an application on an iPhone that appeared to indicate that the conifers would not have that effect. I am unable to put any weight on that statement coming through Counsel's submissions rather than by evidence. However, my conclusion is that the Council, in its capacity as roading authority, might or might not have powers to control planting that potentially had that result, but that the effect was not one of granting this application, and was therefore irrelevant.
26. Mr Todd also confirmed that the Applicants were volunteering a "no complaint" covenant in relation to Mr Rold's Flight Park operation under RM940585 and RM070749, and also in respect to the existing consent for helicopter landings on Lot 2 DP24277 (RM050588) (Mr Fairfax's property). I am satisfied that the property addresses the concerns of those neighbours.
27. Mr Todd also pointed out that the Applicants were not volunteering a covenant against further subdivision. While such volunteered covenants can be relevant in some cases, the Applicants were entitled to rely on the position that any further application would be assessed on its merits at the time. Similarly, they were not prepared to volunteer that any such future application should be notified, relying on the position that whether notification is appropriate will be assessed at the time, taking into account the then Plan provisions and the then environment. In my judgment, they are entitled to take that approach. Mr Todd did also note that, despite his wide experience in resource consents, he could not recall in the last 10 years any subdivision or building platform on rural land in the district that had not been notified. I further note that such volunteered conditions are not infrequently the subject of later applications to vary conditions and therefore have little effect.

#### Evidence of Mr Ben Espie

28. Mr Espie is a well-known Landscape Architect with extensive experience in the district, both in private practice and as Principal Landscape Architect for CivicCorp Ltd, the Council's former resource management consultancy company.

29. Mr Espie adopted the findings of the Landscape Assessment Report, prepared by Mr Paul Smith of Vivian + Espie Ltd. He then commented on issues raised by Dr Read in her report and also issues by submissions.
30. I have already commented, in my account of Mr Todd's submissions, on the four points of relevance that Mr Espie specifically addressed. It will not lengthen in this decision by recounting Mr Espie's evidence on topic.
31. Mr Espie did agree with Dr Read that the site currently had the largely utilitarian character and openness of a grazing operation, and that in general terms, plantings of European deciduous trees throughout a utilitarian agricultural site would alter its character somewhat. However, it was his opinion that this type of alteration was provided for and anticipated in Visual Amenity Landscapes by the District Plan. In particular, he referred to Environment Court decision C180/99 at para [154]. This was the principal Environment Court decision on Outstanding Natural Landscapes in the Plan, in which the Court held the open character of Outstanding Natural Landscapes could justifiably be maintained, but it did not see it as appropriate to maintain the open character of all other landscapes. It considered that other landscapes could be improved in an aesthetic sense by the addition of trees and vegetation. Mr Espie noted this finding ultimately found its way into the District Plan and can be seen through the difference in the Assessment Matters relating to Outstanding Natural Landscapes and those relating to Visual Amenity Landscapes and other landscapes.
32. The introduced tree planting now proposed is relatively small following the deletion of some proposed avenue planting. Further, it is clustered around the building platforms and the periphery of the site and the vast majority of the site will remain as open, grazed pasture.
33. Mr Espie further noted that Dr Read's report had concluded that the proposed building platforms had been appropriately located so as to minimise the adverse effects on the landscape character of the vicinity of further residential activity.
34. Mr Espie accepted that the earlier 2009 consent (RM090233), which authorised a building platform on Lot 4, had a condition requiring an amended landscape plan, which had not yet been attended to. The Applicants will now attend to this in conjunction with the current application and also supply an amended landscape plan for the current application to ensure they are consistent. He also acknowledged that Dr Read wanted protection for the trees along the unformed road line, but his view was that they were on the road and therefore not within the Applicants' control. Dr Read also wanted protection for trees along Alan Reids Road. Mr Espie accepted that they were on the Applicants' property, and Mr Todd later volunteered that the landscape plan would be amended to provide for this.

## Evidence of Ms Amanda Treharne

35. Ms Treharne is an experienced resource management consultant with experience in Australia, the United Kingdom, and New Zealand. In New Zealand, she has experience with the QLDC District Plan through being an Associate Planner at Brown & Pemberton Planning Group, Queenstown. She has now returned to Sydney and continues consultancy work in relation to Queenstown Lakes District.
36. Ms Treharne gave extensive evidence about all aspects of the application. I propose only to refer to those parts of it that relate to the issues in dispute.
37. She presented revised Subdivision Plans, taking into account the alternative access arrangements now accepted for proposed Lots 1 and 2.
38. She also drew attention to the volunteered design controls for the building platforms, and noted that there was no issue as to these, subject to revision of the Landscape Plan as discussed.
39. With her evidence, she tabled a report by Malcolm Hunt & Associates reviewing the proposal in relation to the neighbouring helicopter operation (on Mr Fairfax's land) and specific consent conditions. She also noted that Malcolm Hunt & Associates had been the noise experts engaged by Mr Fairfax for his earlier consent. It was acknowledged that Malcolm Hunt & Associates had not made a further inspection of the site and it relied on data from their earlier report prepared in support of Mr Fairfax's consent application. Malcolm Hunt & Associates' analysis found that granting this application would not interfere with Mr Fairfax's authorised helicopter landings and take-offs. I am satisfied that, even if Mr Fairfax had made a submission, he cannot be entitled to more than that.
40. Ms Treharne also tabled a schedule of proposed conditions. However, this was replaced by a further updated schedule filed after the hearing.

## **Submissions and Evidence for Submitters**

### Submission of Mr Brian Bayley

41. Mr Bayley's submission was neither for nor against the boundary relocation. He was unenthusiastic about the three new building platforms applied for. He was concerned about reduction of view shafts to Coronet Peak from Malaghans Road due to increased domestication and inappropriate roadside plantings. I have already addressed the issue of roadside planting. I am satisfied on the expert evidence I heard that the proposed building platforms or subsequent buildings on them would not adversely affect the view to Coronet Peak. Mr Bayley was also concerned about potential icing on Malaghans Road from the roadside plantings, but I have also dealt above with that point. Overall, he expressed his submission as being neutral to the application.





42. He expressed a further concern about future development of the larger allotments but, as I have noted above, I consider that any future development on any of the sites needs to be considered on its merits at such time as an application is made.
43. While Mr Bayley was not present at the hearing, he did supply through Ms Beer a letter in support of his submission. In the letter, he expanded on his concerns and made various references to the reporting officers' reports.

#### Submission of Mr John Nelson

44. Mr Nelson submitted in opposition to the application. He owns neighbouring land and intends at some stage to provide a place for outdoor adventure activities. His concern was that allowing this proposal could lead to more objectors to the current and future outdoor activities of the area, specifically flying overhead. To some extent, this was a reverse sensitivity issue as he felt that privacy issues with overhead flying were a potential cause of complaint by owners of the new lots. He spoke to this submission and it became apparent that the flight activities he referred to was the training of paraglider flyers on his land and that free paraglider flyers use his land. Mr Todd in response noted that anyone trying to land at the Flight Park (Rold property) would be covered by the proposed no complaint covenant. I note also that Mr Nelson stated that he was "not receiving any formal payment". This has significance because there is no resource consent for commercial activities on Mr Nelson's land. In my judgment, it is not appropriate that the Applicants' discretionary activity application be influenced by the possibility that Mr Nelson (or his successors) might at some future time seek a further consent for activities on his land, and it is unlikely that there will be reverse sensitivity issues from currently permitted activities.

#### Submission of Otago Regional Council

45. The Otago Regional Council was concerned about potential natural hazards and sought a condition that technical recommendations in the Tonkin + Taylor alluvial fan assessment and the RDAgritech geotechnical assessment be incorporated into any consent. The Applicants were happy to do this and its proposed suite of conditions will have that effect. The Otago Regional Council also noted that a proposed defence against water suggested in the Tonkin + Taylor report would require Regional Council resource consent. The Applicants accepted that this was correct. In my view, there was no need for that consent to be dealt with at the same time as the consent application before me. I am therefore satisfied that Otago Regional Council's concerns are appropriately met.

#### Submission of Mr Glenn Bartlett (Bart Family Trust No. 2)

46. Mr Bartlett opposed the application. While his submission indicated that he did wish to be heard, he was not in fact present at the hearing. One of his particular concerns was about disposal of wastewater to ground from the proposed future building platforms. He believed the water drawn from current

individual and communal bores within the catchment below and close to the proposed developments already supplied non-potable water due to high bacteria counts. In the absence of anything further from Mr Bartlett, I can only be guided by the expert evidence and I do not accept that there is any issue about wastewater arising in this application.

47. His other concern was that he did not agree with further land development along Malaghans Road and considered the proposed mitigation measures would be minimal and would still negatively affect the natural and pastoral character for users of Malaghans Road. While his submission stated that when he purchased his property there was a strict QLDC Plan in place to protect this environment from any further pressure of land development, that is not strictly correct. Further subdivision and development has never been a prohibited activity under the District Plan, and the Plan contemplates consent being given in appropriate cases.

#### Submission of Mr Thomas Rold (Flight Park)

48. Mr Rold's concern is to have a no-complaints covenant and he referred to "reverse sensitivity". As noted above, the Applicants have volunteered such a condition.

#### **Closing Comments from Staff**

49. Dr Read stood by her report. She did however note that the access now proposed by the Applicants were a significant improvement. She was still concerned regarding the structural landscape. In the end however, she indicated that her concerns would be generally satisfied if any consent granted did not require the avenue planting, leaving it to the Applicants to do amenity planting as it thought fit and subject to whatever controls the District Plan or previous consent conditions provided. I note that by this stage of the hearing, the Applicants had also volunteered to maintain trees along the Alan Reids Road frontage.
50. Dr Read also had some minor concerns about wording of conditions that the Applicants agreed to address with revised proposed conditions to be filed following the hearing.
51. Mr Keenan returned to the four outstanding issues he had identified in his s42A Report and considered each of those matters had been adequately addressed at the hearing or would be adequately addressed in the revised conditions that the Applicants agreed to file.

#### **Conclusion of Hearing**

52. At the end of the hearing on 23 April 2014, I formally adjourned the hearing to enable the Applicants to file the promised revised conditions and Landscape Plan. No submitter particularly sought the opportunity to see and comment on those, as the purpose of the amendments was fully canvassed at the hearing. Amended conditions, in a form approved by Council staff, were duly filed.

Finalisation of details on the western access and use of Council's unformed road became quite protracted. In the end, I accepted a further revised proposal even after formal closing of the hearing. This was not opposed by reporting officers. Details of that access were not a concern of any submitter and I am satisfied that there was no breach of natural justice in this procedure.

## **F STATUTORY CONSIDERATIONS**

53. Section 104 RMA sets out the matters that I am to consider. The parts that are relevant to my decision are as follows:

### **“104 Consideration of Applications**

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to —
- (a) any actual and potential effects on the environment of allowing the activity; and
  - (b) any relevant provisions of —
    - (i) a national environmental standard;
    - (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.”

54. Section 104B must be considered, as follows:

### **“104B Determination of Applications for Discretionary or Non-Complying Activities**

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.”

55. I am empowered to impose conditions by section 108 and 220.

## **Actual and Potential Effects on the Environment**

56. I now comment on the effects under the headings used at paragraph 9.3 of the s42A Report.

57. Having regard to the assessment of environmental effects lodged with the application, the reporting officers' reports, the submissions, the evidence given and submissions made at the hearing and the amended plan and proposed conditions, I am satisfied that there will be no significant adverse effects (actual or potential) under the following headings used in the section 42A Report.

- ✦ Land, Flora and Fauna
- ✦ Access and Traffic Generation
- ✦ Natural Hazards

- ✦ Form and Density of Development
- ✦ Rural Amenities
- ✦ Infrastructure

58. In considering effects, I have been guided by the Assessment Matters set out in the Plan, and also the Objectives and Policies. I now briefly comment on the remaining categories of possible effects.

#### ✦ **Visibility of Development**

59. There is some visibility, particularly from Alan Reids Road and the unformed road on the western boundary. Given my conclusion that there is no power to require the removal of the conifers along the Malaghans Road frontage, there is very little visibility from Malaghans Road. It was plain that the Applicants intend to retain those trees. To the extent that three of the building platforms will be visible from Malaghans Road, they will be seen against existing built form, given the proposed clustering. Proposed landscaping, being of a type that is not out of place in this location, will to an extent obscure visibility of the building platforms. I accept that, with the removal of one avenue of planting, the proposed landscaping will not itself create an adverse effect. In regard to this, I particularly note the permitted baseline as pointed out by Mr Todd.

#### ✦ **Effects of Natural and Pastoral Character**

60. Given the intent of the Visual Amenity Landscape classification, I do not consider that there will be an adverse effect on natural and pastoral character. In particular, I do not consider there will be any adverse effect of views on the background Outstanding Natural Landscapes of Coronet Peak. The proposed lots are themselves large enough to not compromise the character of the landscape in the vicinity and it will clearly remain a predominantly rural area.

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

61. There will be a small cumulative effect, but significant adverse effects are avoided. I note in particular that this proposal does not create any additional lot(s), and only three additional building platforms, despite it technically being a five-lot subdivision.

#### ✦ **Infrastructure**

62. The officers are satisfied with issues relating to water supply, fire-fighting supply, stormwater disposal, and power and telecommunication. Mr Bartlett raised concerns about effluent disposal but in the absence of any expert evidence to support that, I accept the evidence filed by the Applicants and incorporated in the officers' report.

#### ✦ **Effects on Persons**

63. This is not a specified section 104 matter but I am entitled to take into account such other matters as I consider irrelevant. Effects on persons are commonly regarded as an aspect of effects on the environment. In any event, for the

reasons set out above, I am satisfied that there are no significant adverse effects on Mr Rold, Mr Bartlett, Mr Bayley, or Mr Fairfax. The officers' report identifies potential minor adverse effects on others living in the vicinity who did not submit. I accept the assessment that those effects will, at most, be minor and, in the absence of any submission or evidence from those people, I will not take that further.

✦ **Positive Effects**

64. The Applicants plainly derive a positive effect of an economic benefit.

Conclusion on Actual and Potential Effects

65. Overall, neither individually nor collectively, are there significant adverse effects in allowing this activity. There are marginal, if private, positive economic effects. I see no reason why the assessment of effects would lead me to decline this application.

Relevant Provisions of Planning Documents

66. As set out above, it was agreed that at least a relevant part of the land was classified as Visual Amenity Landscape.
67. There is a District-wide Objective for subdivision use and development being undertaken in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values and there are a number of identified relevant policies under this. (Refer Objective 4.2.5.1) Policy 1(b) to that Objective encourages the occurrence of 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. I consider that this policy favours this application. I consider that this application as now before avoids, remedies or mitigates the adverse effects of the subdivision and development on the Visual Amenity Landscape to the extent that it is highly visible from public places or highly visible from public roads. This development could in no sense be described as urban development referred to in Policy 6. It also avoids cumulative degradation as required by Policy 8. I conclude that the visual coherence of the Visual Amenity Landscape has been preserved and the amenity planting proposed is expressly contemplated with this policy and in fact to an extent favoured. Nothing in the proposal makes Policy 12 relevant.
68. The proposal also fully meets the objectives for earthworks and objectives and policies for natural hazards.
69. As noted above, an assessment under section 5.4 of the Plan is expressly required. This requires firstly the determination of the landscape assessment criteria, which has been dealt with above. There are then various assessment matters within section 5.4 which the reporting officers and the Applicants' Planner appropriately addressed. In brief, I note Objectives 1 (Character and Landscape Value), and 3 (Rural Amenity) have all been considered. Nothing

in them or their associated policies suggests that this application should be refused.

70. There are also Objectives and Policies in the Subdivision part of the Plan but again nothing in them suggests in any way that this application should be refused.

### **Other Matters**

71. There is a National Environmental Standard for assessing and managing contaminants in the soil but the preliminary site investigation supplied by the Applicants with the plan meets the requirements of this.

### **Part 2**

72. The law is currently unsettled as to exactly how Part 2 should be dealt with in deciding a resource consent application. On whatever view is taken of it, I am satisfied that nothing in Part 2 suggests in any way that I should refuse this application.

### **G OVERALL DECISION**

73. For the reasons set out above, the application for subdivision consent and land use consent is granted on the basis of the subdivision plan identified in the formal decision below and the conditions attached.

Dated 17 June 2014



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**Trevor J Shiels QC**  
**Commissioner**



**CONSENT IS HEREBY GRANTED** pursuant to sections 104 and 104B of the Resource Management Act 1991 to reconfigure Lots 1 and 3-6 DP 24501 located at Malaghans Road near Arrowtown into the same number of Lots and to establish building platforms on new Lots 1,2,3, and 5 (Lot 5 currently having an existing dwelling on the new building platform) **SUBJECT TO** the following conditions imposed pursuant to sections 109 and 220 of the Act:

**Conditions**

1. That the development must be undertaken/carried out in accordance with the plans:
  - 'Proposed Subdivision of Lot 1, 3, 4, 5 & 6 DP 24501 2620-01 V3 by Apex Surveying Limited'

**stamped as approved on 17 June 2014** 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.

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

3. Within six months of the consent being granted the plan 'Structural Landscape Plan dated 30 April 2014' shall be resubmitted to Council for certification. This plan shall fulfill the following requirements in order to maintain the character of the landscape in the vicinity:
  - the amenity trees shall be referred to as structural planting.
  - the species list shall be amended to utilise species common to and characteristic of this landscape, including poplar, willow and alder, and shall identify the number of each species, their location and the grade at planting (all trees are to be in excess of 1.5m in height at time of planting);
4. 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.
5. Prior to the commencement of any works on site, the consent holder shall provide a letter to the Principal Resource Management Engineer at Council advising who their representative is for the design and execution of the infrastructure engineering works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under NZS4404: 2004 "Land Development and Subdivision Engineering".
6. Prior to commencing works on site, the consent holder shall obtain and implement an approved traffic management plan from Council if any parking or traffic will be disrupted, inconvenienced or delayed, and/or if temporary safety barriers are to be installed.
7. Prior to the commencement of any works on the site the consent holder shall provide to the Principal Resource Management Engineer at Council for review and certification, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition (4), to detail the following engineering works required:
  - a) Provision of a minimum supply of 2,100 litres per day of potable water to the building platforms on Lots 1-3 that complies with/can be treated to consistently comply with the requirements of the Drinking Water Standard for New Zealand 2005 (Revised 2008).
  - b) The provision of a sealed vehicle crossing to Lot 4 and Lot 5 from Malaghans Road to be in

terms of Diagram 2, Appendix 7 and Rule 14.2.4.2 of the District Plan.

- c) The provision of an unsealed vehicle crossing to Lot 3 from Alan Reid's Road to be in terms of Diagram 2, Appendix 7 and Rule 14.2.4.2 of the District Plan. Provision shall be made to continue any roadside drainage. See also Condition (6) above.
  - d) The provision of 600mm high protection bund to the north and west of the building platform to Lot 3, in accordance with the cross section shown on Figure 4, Appendix A of Tonkin & Taylor Report, dated November 2013 and in the location shown on the Structural Landscape Plan prepared by Vivian + Espie, dated 30/04/14.
  - e) The provision of Design Certificates for all engineering works associated with this subdivision/development submitted by a suitably qualified design professional (for clarification this shall include all Roads and Water reticulation). The certificates shall be in the format of the NZS4404 Schedule 1A Certificate.
  - f) The provision of an access way to the building platforms of Lots 1-3 that complies with the guidelines provided for in Council's development standard NZS 4404:2004 with amendments as adopted by the Council in October 2005. The access ways shall meet the following requirements:
    - (i) The carriageway shall have a minimum cross-fall of 4% to prevent stormwater ponding on the carriageway surface.
    - (ii) 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 sub-grade.
    - (iii) The minimum standard for carriageway formation shall be a minimum compacted depth of 150mm AP40 metal and a formed metal carriageway width of no less than 3.5 metres.
8. Prior to commencing any earthworks the consent holder shall install measures to control and/or mitigate any dust, silt run-off and sedimentation that may occur, in accordance with NZS 4404:2010 Section 2.3.7 and A Guide to Earthworks in the Queenstown Lakes District' brochure, prepared by the Queenstown Lakes District Council. Measures shall also include hay bales within Lot 3 to prevent stormwater from entering the existing water channels. These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project, until all exposed areas of earth are permanently stabilised.

#### **To be monitored throughout earthworks**

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

#### **To be completed before Council approval of the Survey Plan**

10. Prior to the Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, the consent holder shall complete the following:
- a) All necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved. This shall include right-to-convey-water over Lot 1 in favour of Lot 2.
  - b) Right of way easements are granted over Lot 5 in favour of Lot 1 and 2.

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

11. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall complete the following:
- a) A digital plan showing the location of all building platforms as shown on the survey plan / Land Transfer Plan shall be submitted to the Principal Resource Management Engineer at Council. This plan shall be in terms of New Zealand Transverse Mercator 2000 coordinate system (NZTM2000), NZGDM 2000 datum.
  - b) The completion of all works detailed in Condition (7) above.
  - c) The consent holder shall provide evidence to the satisfaction of the Principal Resource Management Engineer at Council as to how the water supply will be monitored and maintained on an ongoing basis.
  - d) 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 building platform on Lots 1-3 and that all the network supplier's requirements for making such means of supply available have been met.
  - e) Written confirmation shall be provided from the telecommunications network supplier responsible for the area, that provision of underground telephone services has been made available to the building platform on Lots 1-3 and that all the network supplier's requirements for making such means of supply available have been met.
  - f) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.
  - g) All earthworked/exposed areas shall be top-soiled and grassed/revegetated or otherwise permanently stabilised
  - h) On the completion of the earthworks, a suitably qualified engineer experienced in soils investigations shall provide certification, in accordance with NZS 4431:1989, for all areas of fill within the building platform (if any).
  - i) The existing fire fighting provision to Lot 5 shall be upgraded to comply with fire fighting requirements as recommended by the New Zealand Fire Service Area Manager. This shall include either; the provision of a suitable fire fighting connection located 10m from the existing tank and a minimum 60 minute fire rating to the rear interior wall of the existing garage, or the tank to be relocated in accordance with Councils standards. Fire fighting water supply may be provided by means other than the above if the written approval of the New Zealand Fire Service is obtained for the proposed method.
  - j) The submission of Completion Certificates from the Contractor and the Engineer advised in Condition (5) for all engineering works completed in relation to or in association with this subdivision/development, including all Roads, Water reticulation, and Bund construction (certified under (7d). The certificates shall be in the format of a Producer Statement, or the NZS4404 Schedule 1B and 1C Certificate.
  - k) The landscape plan approved under condition 3 shall be implemented to the satisfaction of Council. All trees shall be protected from stock and rabbit browsing.
  - l) A consent notice shall be registered to the Computer Freehold Registers of Lots 1, 2, 3 and 4 detailing those matters listed in condition 12, to be complied with in perpetuity.
  - m) Registration of the building platform under RM090233 with respect to Lot 4.
12. 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) The finished floor level of any building/dwelling on Lots 1-3 shall be a minimum of 250mm above the finished ground level at time of subdivision.
- b) 0.6m high x 5m wide flood protection bunds installed to the immediate north and west sides of Lot 3 building platform shall be maintained by the lot owner, as per the cross section shown on Figure 4, Appendix A of Tonkin and Taylor Report, project 880428.00, dated November 2013 and in the location shown on the Structural Landscape Plan prepared by Vivian + Espie, dated 30/04/14.
- c) The building platforms on Lots 1-3 are located on 'Shallow soil' in accordance with NZS1170.5.2004. Investigations have revealed that these soils do not meet the requirements to be defined as 'good ground' in terms of NZS3604 (New Zealand Building Code) due to the ultimate bearing pressure being less than 300 kPa. The foundations of all buildings on each building platform, shall be designed, supervised during construction and certified by a suitably qualified and experienced engineer.
- d) 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.
- e) At the time a dwelling is erected on Lots 1-3 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 (or superseding standard) is to be located no further than 90 metres, but no closer than 6 metres, from any proposed building on the site. Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2008 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2008 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single-family dwellings. In the event that the proposed dwellings provide for more than single-family occupation then the consent holder should consult with the 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.

- f) The approved structural landscape plan shall be maintained in perpetuity. Should any tree become diseased or die it shall be replaced within the next available planting season. All planting shall be protected from stock and rabbit browsing.
  - g) Any future building shall be contained within the residential building platform.
  - h) Any future building shall not exceed a maximum height of 5.5 metres above the existing ground level at the date of this consent.
  - i) All ancillary structures shall be located within the proposed building platforms (for example, garden sheds and garages) and shall be clad and coloured to match the principal dwelling.
  - j) The exterior cladding of any future building shall have a light reflectance of 23% or less and shall be unpainted timber, stacked stone or solid plaster. All colours are to be dark and recessive only in accordance with Council guidelines.
  - k) Roofing of any future building shall comprise shingles, slate or Coloursteel. Coloursteel shall be in dark, recessive colours only and with a reflectance of 23% or less in accordance with Council guidelines.
  - l) All land that is outside the area marked as curtilage area on the Structural Landscape Plan is to be managed for agricultural or horticultural land uses. All domestic elements (such as, car-parking area, gardens, lawns, outdoor living areas and furniture etc.) shall be contained within the defined curtilage area. This condition does not apply to Lot 5.
  - m) Any new fencing shall be undertaken using traditional post-and-wire or deer fencing only.
  - n) The existing road entrances shall continue to consist of traditional rural elements only. Monumental gates, lighting, signage, entrance features (including stone walls and post- and-rail fencing) are prohibited.
  - o) The formed access to Lots 1 and 2 within the road reserve shall in no way obstruct the right of public passage on the unformed legal Road
  - p) The owners of Lots 1 and 2 shall not inhibit, obstruct, delay or prevent in any way the formation of a road within the road reserve by the Queenstown Lakes District Council at any time in the future.
  - q) The owners of Lots 1 & 2 shall be responsible for the ongoing maintenance of the private access formed to Lots 1 & 2 within the paper road legal road reserve, directly adjacent to the boundary of Lots 1, 2 & 5. This access has been formed to the standard of a private Right of Way. Council shall not be responsible for any ongoing maintenance associated with this access until such time as the access is upgraded to the standard of a public road or until an alternative agreement is obtained with Council for the maintenance of this access.
13. A no-complaints covenant shall be registered on each of proposed Lots 1 to 5 with respect to the existing approved land use activities under RM940585, RM070749 and RM980452 on land known as the Flight Park situated at 793 Malaghans Road.
14. A no-complaints covenant shall be registered on each of proposed Lots 1 to 5 with respect to the existing approved land use activities under RM050588 on land known as 743 Malaghans Road.

Advice note

- i. 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.
- ii. The consent holder shall be responsible for obtaining any necessary consent from the Otago Regional Council for flood protection works and/or discharge of wastewater to land.
- iii. The consent holder may register a consent notice on each new title requiring regional consent from the Otago Regional Council with respect to discharge of treated wastewater to ground.





APPROVED PLAN:  
RM140034

Tuesday, 17 June 2014



SCHEME PLAN

Title:  
**Proposed Subdivision of  
Lots 1, 3, 4, 5 & 6 DP 24501**

Malaghans Road & Alan Reids Road  
ARROWTOWN

MEMORANDUM OF EASEMENTS

Purpose	Shown	Servient Ten.	Dominant Ten.
Right of Way, Right to transmit Electricity, Tele- communications & Computer Media	(AA) (F)	Lot 5	Lots 1 & 2

EXISTING EASEMENTS

Purpose	Shown	Servient Ten.	Created by
Right to Convey Water	(AA)	Lot 5	EC 880658.8
	(AB)	Lot 1	
	(AC)	Lot 4	
	(B)	Lot 4	
	(E)	Lot 4	
Right to Take Water	(C)	Lot 4	

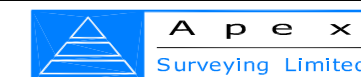
- Note:
- (1) Cadastral boundaries have been obtained from Land on Line.
  - (2) Areas and measurements are subject to a full LINZ Approved Cadastral Survey.
  - (3) Easements will be created to coincide with services upon engineering design
  - (4) Levels are in terms of Dunedin Vertical Datum 1958. Origin of Levels O (Shotover SD) A3KC RL 452.23 Site Benchmark OIT XIII DP 24501 RL 425.26
  - (5) Contour interval = 0.5m
  - (6) Contours shown are for the purposes of this scheme plan only. For site development work, specific levels should be taken on site.

Comprised in : CFR's OT16B/1189, OT16B/1191, OT16B/1192, OT16B/1193 & OT16B/1194.

Total Area : 85.0228 ha

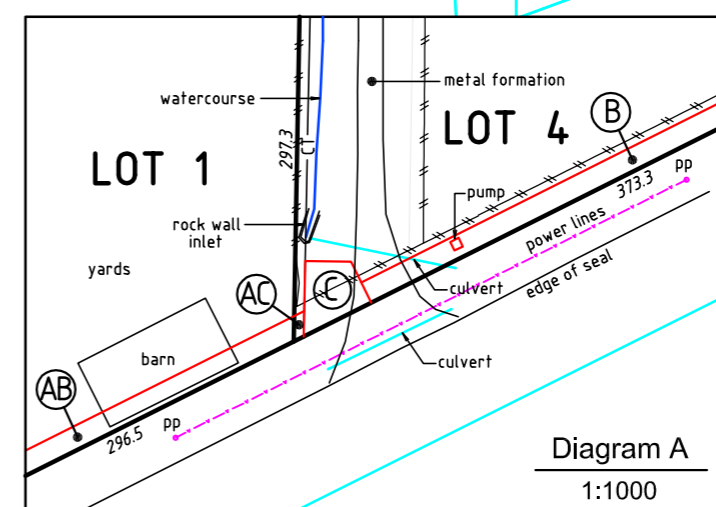
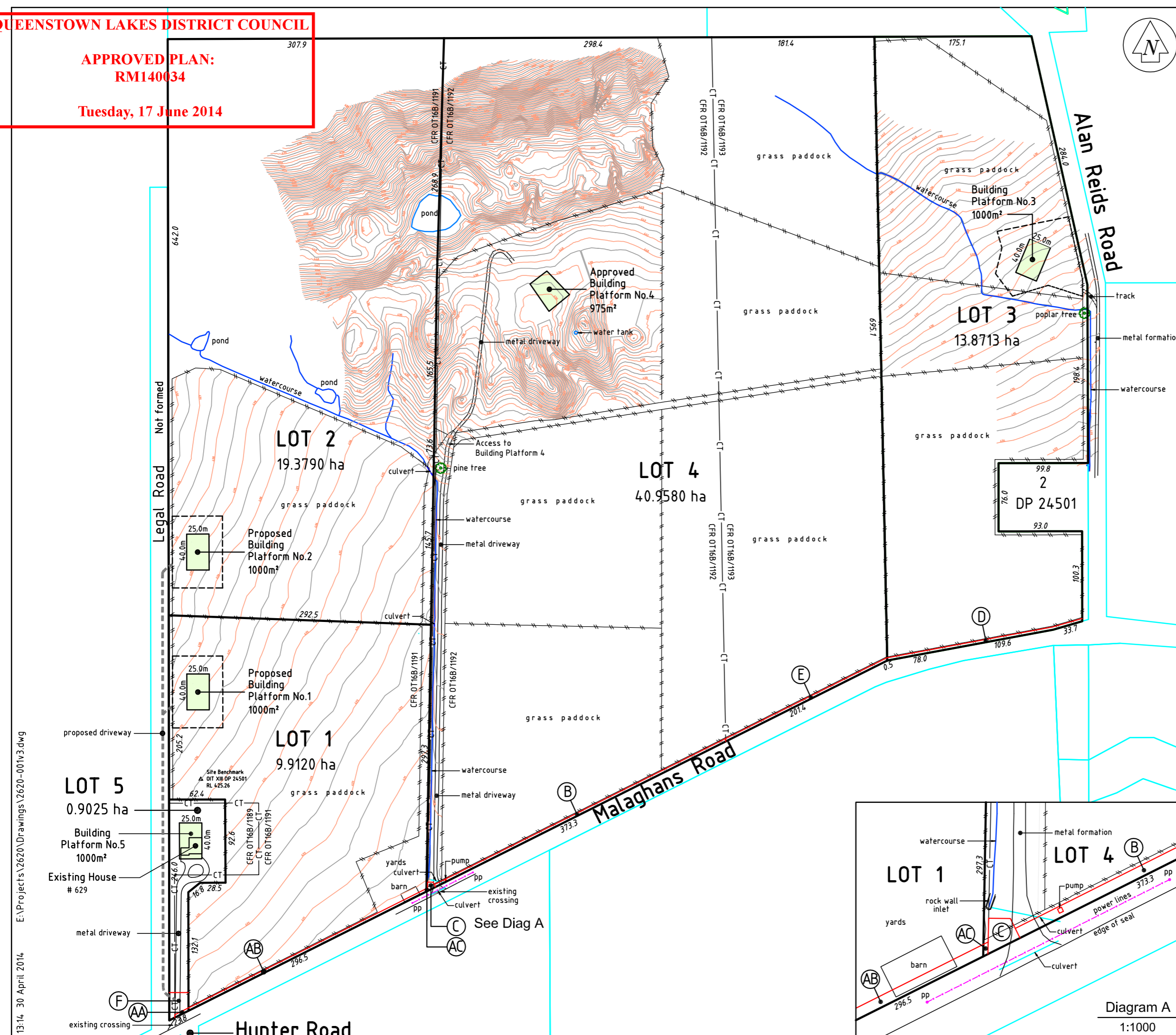
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Date : November 2013



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Our Ref : 2620 - 01 v3



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