



DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

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| Applicant: | Willowridge Developments Limited |
| RM reference: | RM140226 |
| Location: | Kelliher Drive, Wanaka |
| Proposal: | To subdivide land into 20 residential lots plus road and reserve lots and provide for residential use of each residential lot |
| Type of Consent: | Subdivision and land use consents |
| Legal Description: | Lot 49 DP 346120 held in Computer Freehold Register 189588 |
| Zoning: | Rural Lifestyle |
| Activity Status: | Non-complying |
| Notification: | Limited notification |
| Commissioners: | Commissioner Nugent and Commissioner Overton |
| Date Issued: | 18 November 2014 |
| Decision: | Granted subject to conditions |

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| IN THE MATTER | of the Resource Management Act 1991 |
| AND | the Queenstown Lakes District Plan |
| AND | an application for resource consent |
| BY | WILLOWRIDGE DEVELOPMENTS LIMITED RM140226 |

DECISION OF COMMISSIONERS DENIS NUGENT & LEIGH OVERTON

Introduction

1. This application relates to a triangle of land bounded on two and a half sides by residential development. It, and the residential development adjacent on two sides, is zoned Rural Lifestyle. The applicant suggests the precedent of the Council granting consents for the existing residential development in the Rural Lifestyle Zone supports the grant of consent on similar terms for this land.

Hearing and Site Visit

2. We undertook a site visit on Friday 10 October 2014. We were unaccompanied but were able to understand the layout proposed and the relation of the proposed subdivision to the surrounding properties by consulting the plans provided with the application.
3. A hearing was held in Wanaka on Tuesday 14 October 2014.

Appearances

Applicant

- Ms Alison Devlin, General Manager for Planning and Development
- Mr Allan Dippie, Director
- Mr Stephen Dickey, Consultant Surveyor

- Mr Graeme Todd, Counsel (Reply only)

Submitters

- Mr Rod Romeril for himself and Ms Claire Romeril
- Mr Michael Venz for himself and Ms Janine Venz

Council Officers

- Ms Hanna Afifi, Reporting Planner
- Ms Lyn Overton, Engineer
- Ms Rachel Beer, Committee Secretary

The Application

4. Willowridge Developments Ltd (“Willowridge” or “the applicant”) has applied for resource consent to subdivide a 1.911 ha piece of land into 20 lots ranging in size from 705m² to 1,125m² for residential development along with a 550m² lot to become reserve and a 2,114m² lot to vest as road, and associated earthworks. The applicant has also sought a land use consent to enable the construction and occupation of one residential dwelling on each of the residential allotments proposed on the basis that such proposed dwellings comply with the Site and Zone Standards of the Low Density Residential Zone of the Operative District Plan rather than those of the Rural Lifestyle Zone which apply to the land.
5. There were existing encumbrances along the eastern boundary which were to remain in place. These provided for a 3m wide landscaping area along the length of the boundary and a no-build strip and a strip with a building height restriction along that section of the boundary adjoining the residential properties in Meadowbrook Place. In addition, during the course of the hearing the applicant offered additional restrictions which it suggested could be included as consent notices on the residential lots:
 - (a) Restrict development to one dwelling per site;
 - (b) limit buildings to 5.5m in height and a single storey; and

(c) preclude further subdivision.

Reasons for Application

6. Ms Afifi set out in detail in the s.42A Report the provisions in the District Plan that are transgressed by this proposal. We do not propose to repeat that detail. In summary, the site is zoned Rural Lifestyle. The size of the proposed residential lots is significantly smaller than the minimum site size in that zone. The applicant does not propose identifying individual building platforms on each lot as the provisions of the Rural Lifestyle Zone expect.
7. The applicant also seeks consent for the owner of each residential lot to erect a dwelling and associated buildings in a manner consistent with and in accordance with the Site and Zone Standards of the Low Density Residential Zone. As all buildings in the Rural Lifestyle Zone are at a minimum a controlled activity and non-complying where a building platform has not been identified, consent is required for the buildings. In addition, the Site and Zone Standards in respect of setbacks and building coverage in the Rural Lifestyle Zone are designed to accommodate buildings on much larger sites. It would not be realistic to expect property owners to comply with those on lots of the size proposed. Hence the application to apply the Site and Zone Standards of the Low Density Residential Zone.
8. Ms Afifi concludes that the application is to be assessed as a non-complying activity and we concur.

Relevant Statutory Provisions

9. The relevant provisions of section 104 are:
 - (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:*

(ii) *other regulations:*

(iii) *a national policy statement:*

...

(v) *a regional policy statement or proposed regional policy statement:*

(vi) *a plan or proposed plan; and*

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

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

...

(3) *A consent authority must not,—*

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

...

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

...

(5) *A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.*

(6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*

(7) *In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.*

10. Section 106 provides that we may refuse a subdivision consent or grant a subdivision consent with conditions in certain situations relating to natural hazards and adequacy of access.
11. As noted above, this application is for a non-complying activity. Under s.104D we may grant consent to a non-complying activity only if we are satisfied that –
- (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
 - (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; ...*
12. If we are so satisfied, then under s.104B we may grant or refuse consent. If we grant consent we may impose conditions under s.108, and in respect of the subdivision component, under s.220.

National Environmental Standard – Land Contamination

13. The Assessment of Effects on the Environment lodged with the application included consideration of the requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. This assessment concluded that the site was not affected by any Hazardous Activities and Industries List activity.

Relevant Plan Provisions

14. We were not referred to any provision in the Otago Regional Policy Statement, or to any relevant regional plan provisions.
15. In terms of the operative District Plan, we were referred to the provisions in Part 4 District Wide Issues, Part 8 Rural Living Areas and Part 15 Subdivision, Development and Financial Contributions.
16. Ms Devlin also referred us to the Wanaka Structure Plan 2007. We note that while this has been produced by some form of community consultation under the Local Government Act 2002, it is not a plan under

the Resource Management Act and its status, at best, is as another matter we may have regard to under s.104(1)(c).

The Existing Environment

The Site

17. The site is essentially flat and in grass. Along the eastern side where the site adjoins the properties in Meadowstone Drive and Meadowbrook Place there is a strip of landscaping comprising flaxes and other native species. Where the site is adjacent to Middle Creek along the southern part of the eastern boundary there is a low bund to provide some protection against flooding.
18. Kelliher Drive, where it adjoins the site, is curbed and channelled with a concrete footpath. There is a scattering of street trees along Kelliher Drive adjacent to the site.

Surrounding Environment

19. Other than the 116m long strip where the site adjoins Middle Creek, the site is surrounded by properties developed for residential purposes at an urban density. The land adjacent to the southeast is farmed and in pasture. A small grassed reserve adjoins the site to the northeast.
20. The overall sense one has on visiting the site is that it is within an urban area.

Section 42A Report

21. Ms Afifi provided a comprehensive s.42A Report which we took as read. It contained an engineer's report by Ms Overton and a peer review of the applicant's flood hazard assessment. In this report Ms Afifi recommended consent be refused, but provided a draft set of conditions that she considered would be appropriate if we were minded to grant consent.
22. After hearing the applicant's case and the submitters, Ms Afifi changed her recommendation to approval based on the concessions made by the applicant at the hearing.

Summary of Evidence

Mr A Dippie

23. Mr Dippie is a Director of the applicant company. He outlined Willowridge's development of the surrounding residential area, including the 95 lots in the Rural Lifestyle Zone granted consent in 2001 and 2003 to be developed consistent with the Low Density Residential Zone. He went on to describe the design process for this subdivision and that the design lodged for consent was arrived at following consultation with adjacent landowners.
24. Mr Dippie explained that there was no intention to remove the existing consent notice conditions requiring landscaping and setback of buildings from the residential properties adjoining along the eastern boundary. He considered those conditions mitigated adverse effects on the submitters, whose land was within the residential area protected by these conditions. He additionally offered conditions as follows:
 - (a) that a height limit of 5.5m be imposed over the entire subdivision;
 - (b) that buildings be limited to a single storey;
 - (c) that there be a limit of 1 dwelling per lot.
25. We asked Mr Dippie why he had not, in the previous 10 years, sought a private plan change to rezone this land and that consented in 2001 and 2003 as Low Density Residential. We understood him to suggest that the Council should have rezoned the land.
26. At that point we asked Ms Afifi if she was able to advise on the likely zoning for this land in the forthcoming district plan review, and the likely timing. It was Ms Afifi's understanding that it was proposed to set the urban growth boundary for Wanaka generally along the line of the Inner Growth Boundary shown on the Wanaka Structure Plan, and that in this area the land within the urban growth boundary would be zoned low density residential subject to consideration of natural hazards. She advised that the council intended publicly notifying the reviewed district plan in May 2015.

27. We asked Mr Dippie whether, given the relatively short timeframe before the land was rezoned, it may not be better to leave consideration of this application until the new zoning was in place. He considered May to be too far away, but more importantly suggested that as the neighbours do not want the more intensive development that the Low Density Residential Zone would enable, a consent now subject to the conditions offered would provide a better outcome for the neighbours.

Ms A Devlin

28. Ms Devlin is a planner with some 15 years' experience, now employed as General Manager for Planning and Development by the applicant company. Ms Devlin's evidence described the site and the application before discussing the effects of the proposal.
29. Ms Devlin considered we should take into account the provision allowing farming activities, other than factory farming, on the site in assessing the permitted baseline. She only disagreed with Ms Afifi's assessment in two areas: character and amenity effects; and the subdivision design.
30. In terms of character and amenity effects, Ms Devlin considered that, with the imposition of the additional conditions Mr Dippie offered, character and amenity effects on adjoining properties would be minor. Turning to the subdivision design, Ms Devlin advised that the applicant was prepared to accept a condition restricting solid fencing within 4.5m of the Kelliher Drive road boundary on lots 1, 11, 12 and 13 and the boundary of the reserve on lots 12 and 13. She also offered on behalf of the applicant a no further subdivision condition. She concluded that with these conditions in place the adverse effects of the proposal would be minor.
31. Ms Devlin suggested that notwithstanding the zoning in the District Plan, the location of this land within the Inner Growth Boundary defined in the Wanaka Structure Plan means it should be developed to its best potential to meet the growth needs of the town.
32. Ms Devlin referred us to Objective 3 and its related policies of section 4.9 of the District Plan and suggested this proposal gave effect to these by enabling urban consolidation.

33. While Ms Devlin accepted the proposal was contrary to the objectives and policies of the Rural Living section of the Plan, she considered this proposal a better outcome for the land. She considered the Rural Lifestyle Zoning out-of-date and that the development of the land in accordance with the rules of that zone would be contrary to the principles of sustainable development.
34. Ms Devlin discussed the larger minimum lot sizes sought by the submitters but considered the lot sizes proposed in the application combined with conditions restricting development to one dwelling and no further subdivision would ensure the effects on neighbouring properties would be no more than minor.
35. In answering questions from us, Ms Devlin advised that even if the land were zoned Low Density Residential she would support the imposition of the same or similar restrictions as offered by the applicant.

Mr S Dickey

36. Mr Dickey provided an analysis of the shading effects of development on the proposed lots on the neighbouring residential properties. It was his conclusion that the combination of a height limit of 5.5m and the set back and landscaping requirements of the existing consent notices meant that no additional shading on the neighbouring properties would occur.

Mr R Romeril

37. Mr Romeril owns 10A Meadowbrook Place. He considered a 2,000m² minimum lot size should be applied along with a maximum building height of 4.5m. He suggested the 4.5m height limit was necessary to ensure single storey development. He considered these limitations were necessary to enable existing residents to continue to enjoy views from their properties.
38. Mr Romeril also wanted the provision of a 1.5m walkway alongside the established landscaping strip on the eastern side of the site, noting that existing owners have gates opening onto that area.
39. Our questioning of Mr Romeril revealed that he would be satisfied with a 5m height limit and that he accepted that development in accordance

with this proposal would be better than what could occur under the rules for the Low Density Residential Zone. He did not concede that lot sizes could be less than 2,000m².

Mr M Venz

40. Mr Venz had prepared shading diagrams which he provided to us. However, he agreed that the shading issue may be mitigated by the conditions proposed. He then set out the conditions which he said had been agreed to by other neighbours (although they were not submitters). The two that differed from those proposed were:

- (a) The provision of a common green space along the eastern boundary which would enable the existing planting to remain and provide some offset of additional noise;
- (b) A minimum site size of 2,000m².

Ms Afifi

41. As noted above, having heard the evidence, Ms Afifi concluded that the applicant had adequately addressed her concerns and she supported the proposal with the imposition of the conditions offered by the applicant. She did bring to our attention that the matter of landscaping along the eastern boundary had not been completely addressed and that the applicant had provided no information that would suggest this consent was necessary to fulfil a demand for higher density development than the District Plan provided for.

Request for Further Information

42. Prior to receiving the applicant's reply we raised with Ms Devlin concerns we had in respect of a recommended condition to be imposed in a consent notice on each lot which read:

Any future development on any allotment shall be in accordance with the Low Density Residential Zone Rules, Sites [sic] Standards and Zone Standards of the Operative District Plan.

43. We asked that a legal opinion be provided as to the vires of such a condition. To better explain our reasoning we circulated a Memorandum

on 29 October 2014 clarifying our concerns and suggesting an alternative way of dealing with the conditions on the land use consent sought. A copy is attached as Appendix 1.

44. In response to this we received submissions from the submitters supporting in principle consent being granted subject to the extra conditions offered by the applicant at the hearing.
45. We also received comments from Ms Afifi. She raised the following points:
- (a) Whether the granting of a blanket land use consent for use of the allotments means the consent is given effect to when the first dwelling is erected, or each site is considered as having its own consent and each of those consents lapse after five years if not given effect to;
 - (b) There is administrative value in the conditions controlling future development being attached to the title and that this can be by a land covenant under s.108(d) of the Act rather than a consent notice;
 - (c) The applicant sought that future development occur in accordance with all the Site and Zone Standards of the Low Density Residential Zone and these go beyond bulk and location requirements.

Mr Todd in Reply

46. Mr Todd provided a written reply on 6 November 2014. Mr Todd confirmed that the applicant had amended its application at the hearing by volunteering conditions that:
- (a) Prohibited further subdivision of the proposed allotments;
 - (b) Restricted development to one residential dwelling house per allotment plus accessory buildings e.g.: garages and garden sheds; and
 - (c) Restricted the height of dwelling houses erected on the allotments to 5.5 metres in height and single storey.

47. The applicant accepted the suggestion made in our Memorandum relating to how conditions could be applied subject to clarification that the height limit of 5.5 m be measured from the ground level at the date a certificate pursuant to s.224(c) of the Act is issued. Mr Todd suggested it would be appropriate that the subdivision consent conditions also include a condition requiring the applicant to submit to the Council a contour plan showing the contours of each proposed allotment, prior to requesting a s.224(c) certificate.

Major Issues in Contention

48. Given Ms Afifi's and the submitters' support for the proposal on the basis of the amendments made at the hearing, and the applicant's response to our Memorandum, no major issues remained in contention.

Actual and Potential Adverse Effects on the Environment

Character and Amenity

49. Although this piece of land is undeveloped, because it is surrounded almost entirely with residential development to urban standards, the character of the area is that of a residential area on the urban fringe. There is no semblance of rural character on the site. In its vacant state it is more akin to parkland than rural land. Indeed, at the time of our site visit it was being used by a local child riding his motorbike.
50. In our view the development of this land with residential allotments, each containing a single dwelling served by urban roading and other services would be consistent with the existing character of the area. Thus we conclude that the proposal creates no adverse effects on the character of the area.
51. The elements of amenity values enjoyed by adjacent residents relevant to this application are noise, views, access to sunlight and daylight, open space and outlook. Whether developed in accordance with the Rural Lifestyle rules or as proposed, the neighbours would experience some noise from use of this land. As noted above, present use for activities such as motorbike riding may create more noise than smaller lot residential and would not be unexpected on a Rural Lifestyle site.

52. Despite there being no right to views, the applicant has offered conditions controlling the ultimate heights of buildings which should enable of retention of some views from neighbouring sites. There will be a change in outlook for those looking from the properties adjoining to the east as residential development will move closer into the foreground. We consider effects on views from existing properties, to the extent that those effects are relevant, will be no more than minor.
53. The submitters raised issues of shading. The easements requiring building setbacks from the eastern boundary combined with the height limits offered by the applicant will mean any shading effects will be no worse than presently exist, as demonstrated by Mr Dickey. We understood Mr Venz to agree with this at the hearing. Consequently, we are satisfied that the effects of the proposal on the sunlight and daylight reaching existing residential properties to be negligible.
54. The site is presently unfenced and gives the appearance of being open space. We understand from Mr Romeril that the landowners adjoining on the eastern side of this land have gates opening on to the site and they would like a walkway along the boundary for them to recreate on. However, it is private land and we accept that under the Rural Lifestyle rules the site could be occupied for residential purposes and the adjoining landowners have no right of access. While development under the Rural Lifestyle rules would limit the number of dwellings, it could still lead to one or more very large buildings being erected on the site which would significantly reduce the openness presently enjoyed by the neighbours.
55. We accept that this proposal would reduce the openness of the site and impact on the overall outlook enjoyed by adjacent properties, but in the context of what could occur in Rural Lifestyle zone we consider such effects to be minor.
56. Ms Afifi identified the potential for fences to be erected on several sites to adversely affect the streetscape of Kelliher Drive or the visual amenity values of the reserve to the west of the site. These lots, numbers 1, 11, 12 and 13, are each designed to be accessed from the internal road, Lot 98. However, Lots 1, 12 and 13 also each have frontage to Kelliher Drive and Lots 13 and 12 adjoin the reserve. Ms Afifi considered these adverse effects could be avoided by the imposition of a condition restricting solid wall fencing within 4.5m of the road or reserve along the affected

boundaries. Ms Devlin noted that Willowridge would accept such a condition, although we took from her evidence that she did not fully support such a condition.

57. We agree with Ms Afifi's conclusion that solid 2m high fences along these boundaries would reduce the streetscape and reserve amenity values. However, we consider this matter would be better dealt with by a condition limiting any wall within that 4.5m area to a height not exceeding 1m. Such a condition would enable property delineation but not have the adverse effects a higher fence or wall would have.
58. When looked at in the round, we consider that adverse effects on amenity values, when the offered conditions are taken into account, would be less than minor.

Earthworks

59. Earthworks can be a source of adverse effects, particularly from machinery noise, silt run-off and the potential for dust nuisance. Ms Overton and Ms Afifi have between them recommended conditions which should mitigate such effects to a minor level. In particular the recommended conditions limit the hours of earthmoving operations and require progressive regrassing of areas as earthworks are completed.

Infrastructure and Transport

60. Ms Overton was satisfied that with the imposition of appropriate engineering conditions the adverse effects on transport and infrastructure would be minor or non-existent. We accept that advice.

Natural Hazards

61. Two natural hazard issues have been identified on this land: liquefaction and flooding.
62. A geotechnical report prepared by Tonkin & Taylor Ltd for the applicants disclosed a variation in soil types across the site. The risk of liquefaction differs between these soil types but the report concluded that much of the site is likely to be subject to moderate liquefaction if the groundwater remains at current levels. The report suggested a range of options to deal

with this potential hazard. It went on to recommend site specific investigations prior to building so as to determine the most appropriate means of mitigating the risk.

63. Ms Overton was satisfied that the imposition of conditions requiring implementation of the report's recommendations would mitigate the risk.
64. The flooding risk was assessed by Fluent Solutions Ltd for the applicant and the Council had GeoSolve Ltd peer review that assessment. The conclusions are that this proposal will not exacerbate any flooding, however there remains a risk that flooding of Middle Creek could affect this land. To minimise that risk Fluent Solutions recommend that the minimum ground level on the boundary of the proposed subdivision with Kelliher Drive be set at 0.5m above the adjacent road centreline. This would serve to direct flood flows down Kelliher Drive which Ms Overton advised had been constructed as a secondary flow path.
65. In addition, an earth bund exists along the eastern boundary of proposed Lots 8 and 20. The Fluent Solutions report suggested this bund would offer some protection from flooding if the banks of the creek/water race north of Kelliher Drive were breached. Ms Overton recommended a condition to ensure that bund is not removed or altered.
66. We accept this evidence and conclude that the natural hazard effects of this proposal are minor.

Overall Conclusion in Respect of Adverse Effects on the Environment

67. We are satisfied that the adverse effects of the proposal on the environment would be minor or less than minor. The proposal therefore passes the threshold test of s.104D(1)(a).

Objectives and Policies of the District Plan

68. We were directed to a number of objectives and policies by Ms Devlin and Ms Afifi. Having considered the relevant objectives and policies our views are:
- (a) The proposal is consistent with Objective 4.4.3.1 and its policies relating to the provision of reserves;

- (b) Although the proposal represents more intense development than that provided for by the Rural Lifestyle Zone, the proposal is neutral in respect of Objective 4.5.3.1 and its policies;
- (c) The proposal is on balance consistent with Objectives 4.9.3.1, 4.9.3.2 and 4.9.3.3 and their respective policies;
- (d) The proposal is contrary to Objective 8.1.2.1 and the relevant policies which relate to providing for rural residential development;
- (e) The proposal is inconsistent with Objective 8.1.2.2 and associated policies relating to rural amenity;
- (f) The proposal is neutral in relation to Objective 8.1.2.3 and the relevant policy relating to water use;
- (g) The proposal is consistent with Objectives 15.1.3.1, 15.1.3.2 and 15.1.3.5 and associated policies.

69. We note that in reaching these conclusions we have considered the proposal in the context of the nature of development surrounding it rather than assessing it against the zoning applied in the District Plan. We are of the view that this is the appropriate approach to the consideration of objectives and policies required by s.104D as it avoids the analysis being biased by zoning provisions which may no longer reflect what is on the ground.

70. We do not consider, given the location of this site and the fact that it is almost surrounded by residential development, that it is contrary to the objectives and policies of the Plan when considered in the round. Thus, the application passes the second threshold in s.104D.

Positive Effects

71. There will be beneficial effects for the applicant and positive effects deriving from enabling the creation of a further 20 residential lots within the urban area of Wanaka. We do not consider these to be significant.

Integrity of the District Plan

72. Ordinarily, when considering a proposal which effectively seeks to apply residential zone provisions to rural land without going through a plan change, one would be concerned that to grant consent would undermine the integrity of the District Plan to such an extent that granting consent would be untenable. However, in this instance consents RM000736 and RM030041 granted over 10 years ago resulted in the creation of a residential suburb on land zoned Rural Lifestyle. We note that in the 2001 decision (RM000736) the Hearing Committee concluded the Rural Lifestyle Zone was inappropriate for the land subject to that application and that it was more suited to urban fringe residential development. On the basis of that assessment the Committee determined that proposal was unlikely to set any significant precedent for other applications along similar lines.
73. During the ensuing period neither the applicant nor the Council have sought to change the District Plan to apply a zoning consistent with the form of development allowed by those consents. Ms Afifi advised us that such a change is finally likely to occur next year.
74. This site was created by those earlier consents and the easements created along the eastern boundary were the result of conditions imposed by consent RM030041.
75. We conclude that this site is an anomaly. Under the Rural Lifestyle Zone provisions it is only able to be subdivided further as a non-complying activity, yet it forms part of an area which is subdivided and developed for urban residential purposes. All its road frontages are of urban standard and it has ready access to all urban service infrastructure. In our view it is the zoning that is incongruous rather than the proposed development, and that incongruity is the result of the Council taking so long to change the zoning.
76. We are satisfied that in all the circumstances this proposal does not affect the integrity of the District Plan. This is particularly so given the likely change to the zoning of the land outlined by Ms Afifi. It is not this application which is causing that change, but rather the earlier consents and the consultation undertaken outside the Resource Management Plan to derive urban growth boundaries for Wanaka.

Conclusions and Decision

77. Having determined that the threshold tests of s.104D have been met, we are now required to consider the application in terms of s.104. There are no matters of national importance under s.6 which need be considered. In terms of s.7 matters, we are satisfied that the amenity values of the area and the quality of the environment would be maintained or enhanced by this proposal. We also consider it to be an efficient use of the natural and physical resources represented by the land and adjoining infrastructure assets.
78. Ms Devlin referred us to the Wanaka Structure Plan. This is a document we can have regard to under s.104(1)(d). In our view its value lies in the delineation of Inner and Outer Growth Boundaries for Wanaka. It is our understanding that these demonstrate a community acceptance of urban development within the Inner Growth Boundary. This proposal lies well within the Inner Growth Boundary on the western side of Wanaka. It forms a natural part of the urban fabric of Wanaka and is, therefore, consistent with the Wanaka Structure Plan.
79. Overall, we are satisfied that, subject to the imposition of appropriate conditions, the proposal represents sustainable management of the natural and physical resources of the site and should be granted consent.
80. In our Memorandum of 29 October referred to above, we raised concerns regarding the recommendation that the following condition be imposed and reinforced by consent notice under s.221 of the Act:
- Any future development on any allotment shall be in accordance with the Low Density Residential Zone Rules, Site Standards and Zone Standards of the Operative District Plan.*
81. We will not repeat our reasons for raising this issue. They are adequately covered in the Memorandum.
82. We have considered Ms Afifi's suggestion that the conditions on the land use consent be included in a land covenant imposed under s.108(d). We consider three factors count against this approach. First, the grant of a land use consent to erect a dwelling and associated accessory buildings on each lot is permissive. No landowner is obliged to utilise such a

consent and may choose to seek a different consent. A covenant on the title which imposed certain conditions would need to be removed if a different consent applied different conditions. Second, if the zoning is changed as outlined by Ms Afifi, the contents of any covenant may be irrelevant and potentially an impediment to development. Third, the land use will lapse after five years if not given effect to whereas generally a covenant remains on the title indefinitely. We accept that it is likely a covenant could be worded to provide for it to be extinguished if the consent was not given effect within a fixed period of time.

83. We are satisfied that the application of the relevant site and zone standards from the Low Density Residential Zone combined with the conditions offered by the applicant would create an appropriate planning framework for development of this land. We consider the way to give effect to this is to:

- (a) Grant the subdivision consent including the following conditions that are to be included in a consent notice under s.221:
 - (i) there shall be no further subdivision of each allotment;
 - (ii) there shall be no more than one (1) residential unit per allotment;
 - (iii) no residential flats are allowed;¹
 - (iv) the height of buildings erected on the allotments is limited to a single storey not exceeding 5.5 metres in height above the finished ground levels as of the date the s.224 certificate is issued;
 - (v) no solid fence or wall exceeding 1m in height may be erected within 4.5m of the boundary with Kelliher Drive on Lot 1, Lot 12 or Lot 13;
 - (vi) no solid fence or wall exceeding 1m in height may be erected within 4.5m of the boundary with Lot 99, being the proposed reserve, on Lot 12 or Lot 13.

¹ We understood from the applicant's evidence and its reply submissions that only a single residential unit was to be allowed on each lot.

- (b) Grant a land use consent for each new allotment (Lots 1-20 inclusive) which provides for the construction and use of a single dwelling which need not comply with any of the Site or Zone Standards of the Rural Lifestyle Zone subject to the following conditions:
- (i) Any non-residential use of the site shall comply with Rule 7.5.5.2ii of the Operative District Plan as at XX November 2014;
 - (ii) Building setbacks shall comply with Rules 7.5.5.2iii(a) and 7.5.5.2iv of the Operative District Plan as at XX November 2014;
 - (iii) Use of each lot shall comply with Rules 7.5.5.2v, 7.5.5.2vi, 7.5.5.2viii, 7.5.5.2ix, 7.5.5.2xiii, 7.5.5.2xvi, 7.5.5.3vii, 7.5.5.3ix and 7.5.5.3x of the Operative District Plan as at XX November 2014;
 - (iv) The maximum building coverage for all activities on site shall be 40%.

84. We note that any non-compliance with these conditions would require consent for a change of conditions under s.127 of the Act and effectively be a discretionary activity. It would not require a non-complying activity consent if an applicant sought to exceed a rule that is listed in the Operative District Plan as a Zone Standard (Rules 7.5.5.3vii, 7.5.5.3ix, 7.5.5.3x and item (iv)).

85. Accordingly, for the reasons set out above, pursuant to s.104B of the Resource Management Act 1991, consent is granted to Willowridge Developments Limited as follows:

- (a) Subdivision consent to subdivide Lot 49 DP 346120 into 20 residential lots, one reserve lot and one lot being road to vest as shown on Paterson Pitts Group Plan W4155 sheet 100 Revision C dated 26/05/2014 titled *Scheme Plan Lots 1 to 20 & 98 & 99 being Subdivision of Lot 49 DP 346210* subject to the conditions set out in Appendix 2 Schedule A.
- (b) Land use consent in respect of each of Lots 1 to 20 of the subdivision of Lot 49 DP 346210 for the construction on each allotment of a single residential unit and the use of each allotment for residential purposes in a manner that does not comply with any of the

provisions of the Rural Lifestyle Zone subject to the conditions set out in in Appendix 2 Schedule B.

- (c) Land use consent for the earthworks associated with the subdivision of Lot 49 DP 346120 subject to the conditions set out in Appendix 2 Schedule C.

A handwritten signature in blue ink, appearing to read "Nugent".

T Denis Nugent

for the Panel

13 November 2014

**Appendix 1: Memorandum Concerning Question Regarding Legality of
Consent Notice Approach dated 29 October 2014**

| | |
|---------------|---|
| IN THE MATTER | of the Resource Management Act 1991 |
| AND | the Queenstown Lakes District Plan |
| AND | an application for resource consent |
| BY | WILLOWRIDGE DEVELOPMENTS LIMITED RM140226 |

**MEMORANDUM CONCERNING QUESTION REGARDING
LEGALITY OF CONSENT NOTICE APPROACH**

Introduction

1. At the hearing of this matter on Tuesday 14 October last we raised concerns regarding the approach recommended by both the applicant's planner, Ms Devlin, and the Council planner, Ms Afifi. We note that while Ms Afifi's s.42A Report recommended refusing consent, after hearing the parties and concessions made by the applicant, she advised that subject to those concessions being incorporated into the conditions she was satisfied that consent could be granted.

2. The approach recommended by the two planners was that a consent notice should be imposed on the new lots which among other things provided for future development on the lots to comply with the Low Density Residential Zone of the Operative District Plan. In the draft conditions set out in Appendix 4 of the s.42A report this was expressed in 13(d)² as

Any future development on any allotment shall be in accordance with the Low Density Residential Zone Rules, Sites [sic] Standards and Zone Standards of the Operative District Plan.

3. Apart from the obvious concern that a resource consent cannot apply a change of zoning, this approach raised a number of questions in our minds which we consider need to be resolved. It is apparent that our questioning of Ms Devlin at the hearing did not provide her with a

²

complete understanding of our concerns. We trust that this memorandum will enable the parties to understand our concerns and enable them to address how these concerns might be resolved.

Outline of Issue

4. The land in question is zoned Rural Lifestyle in the Operative District Plan. Ms Afifi advised us at the hearing that the Council proposes rezoning this land in the forthcoming district plan review to Low Density Residential or similar, and that it is expected this plan will be notified in May 2015.
5. The applicant has applied for two consents:
 - (d) A subdivision consent to create 20 new residential lots of a size more akin to that found in the Low Density Residential Zone rather than the size required in the Rural Lifestyle Zone;
 - (e) A land use consent to enable the establishment of residential activities on each of the proposed residential lots in a manner that would breach the Site and Zone Standards in relation to height, setbacks and building coverage of the Rural Lifestyle Zone but would not breach the Site and Zone Standards for the Low Density Residential Zone. The explanation of the application in paragraph 3.2.7 suggests that this consent should also make buildings a permitted rather than a controlled activity on the sites provided they comply with the Site and Zone Standards of the Low Density Residential zone.
6. In the course of the hearing the applicant offered a number of limitations it was prepared to impose on the proposed lots in terms of building height limit and limitations on future development and subdivision. We expect to receive the details of those in the reply.
7. We note that in the Rural Lifestyle Zone all buildings are a controlled activity provided they are located within residential building platforms approved pursuant to a subdivision consent. Any building not located within a residential building platform is a non-complying activity.

8. The application has not identified residential building platforms on each proposed residential lot, but has implied they exist by suggesting the setback rules of the Low Density Residential Zone should apply.
9. The power to impose a consent notice is found in s.221 of the Act and is specifically limited to subdivision consents. In other words, a condition contained in a consent notice can only be a condition that could be imposed on subdivision consent. We accept that we are able to apply a condition limiting the height of future buildings on the lots as that mitigates an effect deriving from the subdivision. Equally, if the applicant offers a condition limiting further subdivision, we are able to include that in a consent notice.
10. The proposal in this application to apply the Low Density Residential rules does not derive from the subdivision application; it is contained within the land use application. That application seeks a blanket approval to breach land use rules in the Rural Lifestyle Zone. Thus, unless we can be persuaded that the Act provides otherwise, we consider there is an impediment to including what is effectively an exemption of the Rural Lifestyle land use rules within a consent notice.
11. Even if we were able to include such provisions within a consent notice, we expressed our concern that the imposition of rules in a consent notice, which are supposed to be enabling for future owners, may actually become an impediment to future use when the zoning changes to a residential zone. Even if the new zone rules are the same as those in the operative Low Density Residential Zone, any deviation from them would require a full discretionary activity consent under s.221(3), rather than a likely restricted discretionary activity consent. In addition, with a change of zoning the consent notices could become redundant but remain in place until and if the landowner or council sought to cancel them under s.221(3). In either case the potential exists for unnecessary future costs to be imposed on future land owners.
12. Finally, a land use consent must be given effect to within 5 years or it lapses. No application was made to extend the lapse period in this case. Consent notices, which apply indefinitely, would imply an on-going consent when none actually existed.

Possible Solution

13. At the hearing we asked the applicant to provide a legal opinion as to whether we were able to impose a consent notice condition in the form proposed given the matters raised as above. We have now had the opportunity to crystallise our thoughts a little more on the matter. We outline below how, if we were minded to grant consent, we think the issue could be resolved. As the applicant has yet to provide its reply we consider it appropriate for the Council and the submitters to comment on this if they wish prior to the applicant providing its reply in writing and will set a timetable for this to occur.

14. Before setting out how we consider this could be dealt with we re-iterate that we have come to no conclusions as whether consent should be granted or refused, or if granted, the conditions that should be applied.

15. Our suggested solution is:
 - (f) Subdivision consent: - apply a consent notice including the matters in draft condition 13(a), (b), (c) and (e) plus any overall height limitation.

 - (g) Land use consent: - grant consent for a dwelling and garage on each residential site in breach of the Site and Zone Standards of the Rural Lifestyle Zone, subject to conditions that the buildings may not be located closer to boundaries than provided for in the standards in the Low density Residential Zone, and subject to other relevant standards of that zone such as continuous building length and coverage.

16. As a land use consent is permissive, if the zoning changes before a land owner decides to build on a site then that land owner has the choice of utilising this consent or complying with the new zone rules, rather than being locked into rules which exist today.

Timetable for Submissions

17. The submitters and Council have five (5) working days to lodge any submissions they wish to make on this Memorandum with the Committee Secretary and the applicant.

18. The applicant may lodge its reply, incorporating submissions on this Memorandum and any submissions received, once the five working days has passed. The applicant is to also serve a copy of its reply on those submitters who appeared at the hearing.

A handwritten signature in blue ink, appearing to read 'Nugent', written in a cursive style.

T Denis Nugent
for the Panel
29 October 2014

Appendix 2 – Conditions

Schedule A: Subdivision Consent Conditions

General Conditions

1. That the development must be undertaken/carried out in accordance with the plans:

- “Scheme Plan Lots 1 to 20 & 98 & 99 Being subdivision of Lot 49 DP 346120” Paterson Pitts Group Drawing W4155 Sheet 100 Dated 26/5/2014

stamped as approved on 13 November 2014.

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

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

Engineering

General

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 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 engineering works and construction works required in association with this subdivision and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.4 & 1.5 of NZS4404:2004 “Land Development and Subdivision Engineering”, in relation to this development.
5. At least 5 working days prior to commencing work on site the consent holder shall advise the Principal Resource Management Engineer at Council of the scheduled start date of physical works. Compliance with the prior to commencement of works conditions detailed in Condition (10) below shall be demonstrated.

6. At least 7 days prior to commencing excavations, the consent holder shall provide the Principal Resource Management Engineer at Council with the name of a suitably qualified professional as defined in Section 1.4 of NZS 4404:2004 and who shall supervise the fill procedure and ensure compliance with NZS 4431:1989. This engineer shall continually assess the condition of the fill procedure.
7. Prior to commencing works on site, the consent holder shall submit a traffic management plan to the Road Corridor Engineer at Council for approval. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor. All contractors obligated to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan. A copy of the approved plan shall be submitted to the Principal Resource Management Engineer at Council prior to works commencing.
8. Prior to commencing any work on the site the consent holder shall install a construction vehicle crossing, which all construction traffic shall use to enter and exit the site. The minimum standard for this crossing shall be a minimum compacted depth of 150mm AP40 metal that extends 10m into the site.
9. 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 4404:2004 and 'A Guide to Earthworks in the Queenstown Lakes District' brochure, prepared by the Queenstown Lakes District Council. 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.
10. 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 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 1 to 20 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 1 to 20 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. The costs of the connections shall be borne by the consent holder.
 - c) The provision of a stormwater collection and disposal system which shall provide both primary and secondary protection for future development within Lots 1 to 20, in accordance with Council's standards and connection policy. This shall include:
 - i) A reticulated primary system to collect and dispose of stormwater from all potential impervious areas within each lot to the [Council] reticulated stormwater disposal system. The individual lateral connections shall be

designed to provide gravity drainage for the entire area within each lot;
and

- ii) A secondary protection system consisting of secondary flow paths to cater for the 1% AEP storm event and/or setting of appropriate building floor levels to ensure that there is no inundation of any buildable areas within the lots, and no increase in run-off onto land beyond the site from the pre-development situation.
- d) The provision of fire hydrants with adequate pressure and flow to service the development with a minimum Class FW2 fire fighting water supply in accordance with the NZ Fire Service Code of Practice for Firefighting Water Supplies SNZ PAS 4509:2008(or superseding standard). Any alternative solution must be approved in writing by the Area Manager for the Central North Otago branch of the New Zealand Fire Service.
- e) The provision of a sealed vehicle crossing that shall be constructed to Lots 1, 3 to 6, 11 and 20 to Council's standards.
- f) The provision of road lighting in accordance with Council's road lighting policies and standards, including the *Southern Light* lighting strategy. Any road lighting installed on private roads/rights of way/access lots shall be privately maintained and all operating costs shall be the responsibility of the lots serviced by such access roads. Any lights installed on private roads/rights of way/access lots shall be isolated from the Council's lighting network circuits.
- g) The formation of road one (Lot 98), in accordance with The Paterson Pitts Group '*vehicle Sweep Paths Lots 1 to 20 & 98 & 99 Being Subdivision of Lot 49 DP 346120*' (dated 26/05/2014, job No. W4155, sheet 101, rev C) to Council's standards.
- h) The formation of the intersection with Kelliher Drive, in accordance with the latest Austroads intersection design guides. These designs shall be subject to review and approval by Council with any associated costs met by the consent holder.
- i) The minimum ground level on the boundary of Lots 11, 12, 14 to 19 and 99 with Kelliher Drive south east of Galloway Terrace be formed to a minimum of 0.5m above the adjacent road centreline. The minimum ground level above the Kelliher Drive road centreline also applies to the access way to Lot 20. The minimum ground level adjoining Kelliher Drive on the lots referred to above would direct any secondary overland flow that enters Kelliher Drive – Old Station Avenue intersection from where it would flow down gradient via Old Station Avenue as recommended on the Fluent Solutions '*Flood Hazard Assessment*' report.
- j) 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, Water, Wastewater and Stormwater reticulation). The certificates shall be in the format of the NZS4404 Schedule 1A Certificate.

To be completed before Council approval of the Survey Plan

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

[Note: the road naming application should be submitted to the Technical Officer: Infrastructure and Assets and should be lodged prior to the application for the section 223 certificate]

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

12. 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, Wastewater and Stormwater reticulation (including private laterals and toby positions).
 - b) The submission of a contour plan showing the finished ground levels of each allotment;
 - c) The completion and implementation of all works detailed in Condition (10) above.
 - 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 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) 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.
 - f) The submission of Completion Certificates from the Contractor and the Engineer advised in Condition (4) for all engineering works completed in relation to or in association with this subdivision/development (for clarification this shall include all Roads, Water, Wastewater and Stormwater reticulation). The certificates shall be in the format of a Producer Statement, or the NZS4404 Schedule 1B and 1C Certificate.
 - g) The submission of Practical Completion Certificates from the Contractor for all assets to be vested in the Council.

- h) All signage shall be installed in accordance with Council's signage specifications and all necessary road markings completed on all public or private roads (if any), created by this subdivision.
- i) Road naming shall be carried out, and signs installed, in accordance with Council's road naming policy.
- j) The consent holder shall provide certification in accordance with NZS 4431:1989, for all areas of fill within the lots. Note this will require supervision of the fill compaction by a chartered professional engineer.
- k) All earthworked/exposed areas shall be top-soiled and grassed/revegetated or otherwise permanently stabilised.
- l) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

Ongoing Conditions/Consent Notices

13. The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Computer Freehold Register of all residential lots by way of Consent Notice pursuant to s.221 of the Act.
 - a) At the time a dwelling is to be constructed the owner for the time being shall ensure that the foundations are designed by a suitably qualified engineer in accordance with the recommendations made in the Tonkin & Taylor Ltd '*Geotechnical Investigation, Kelliher Drive Subdivision*' (dated May 2013, T & T ref: 892948).
 - b) At the time a dwelling is constructed the owner for the time being shall construct a sealed vehicle crossing to the site to Council's standards. This shall include retaining existing ground levels to ensure that the overland flow path is contained within the roads are not diverted onto the lots. The design of the vehicle crossing shall be subject to approval by Council under a 'Connection to Council Service Application'. The approval should be obtained and construction of the crossing approved by a Council Inspector prior to occupation of the dwelling.
 - c) The flood mitigation earth bund contained within areas D20 on Lot 20 and D8 on Lot 8 on the Paterson Pitts Group '*Scheme Plan - Lots 1 to 20 & 98 & 99 Being Subdivision of Lot 49 DP 346120*' (dated 26/05/2014, job No. W4155, sheet 100, rev C) shall not be removed or altered without the permission of Council's Principal Resource Management Engineer.
 - d) No further subdivision of any of the allotments is permitted.
 - e) There shall be no more than one (1) residential unit per allotment;
N.B. The definition of a residential unit is a residential activity which consists of a single self-contained household unit, whether of one or more persons, and includes accessory buildings. Where more than one kitchen and/or laundry facility is provided on the site, other than a kitchen and/or laundry facility in a residential flat, there shall be deemed to be more than one residential unit;
 - f) No residential flat is permitted on any allotment;
 - g) The height of buildings erected on the allotments is limited to a single storey not exceeding 5.5 metres in height above the finished ground levels as of

the date a certificate pursuant to s.224 of the Resource Management Act 1991 is issued;

- h) No solid fence or wall exceeding 1m in height may be erected within 4.5m of the boundary with Kelliher Drive on Lot 1, Lot 12 or Lot 13;
- i) No solid fence or wall exceeding 1m in height may be erected within 4.5m of the boundary with Lot 99, being the proposed reserve, on Lot 12 or Lot 13.

Hours of Operation – Earthworks

14. Hours of operation for earthworks, shall be:

- Monday to Saturday (inclusive): 8.00am to 6.00pm.
- Sundays and Public Holidays: No Activity

In addition, no heavy vehicles are to enter or exit the site, and no machinery shall start up or operate earlier than 8.00am. All activity on the site is to cease by 6.00pm.

Accidental Discovery Protocol

15. If the consent holder:

- a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder shall without delay:
 - (i) notify Council, Tangata whenua and Heritage New Zealand Pouhere Taonga and in the case of skeletal remains, the New Zealand Police.
 - (ii) stop work within the immediate vicinity of the discovery to allow a site inspection by the Heritage New Zealand Pouhere Taonga and the appropriate runanga and their advisors, who shall determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Any koiwi tangata discovered shall be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation. Site work shall recommence following consultation with Council, the New Zealand Pouhere Taonga, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

- b) discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder shall without delay:
 - (i) stop work within the immediate vicinity of the discovery or disturbance and;

- (ii) advise Council, the Heritage New Zealand Pouhere Taonga and in the case of Maori features or materials, the Tangata whenua and if required, shall make an application for an Archaeological Authority pursuant to the New Zealand Pouhere Taonga Act 2014 and;
- (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work may only recommence following consultation with Council.

Advice Notes:

1. This consent triggers a requirement for Development Contributions, please see the attached information sheet for more details on when a development contribution is triggered and when it is payable. For further information please contact the DCN Officer at QLDC.
2. Prior approval from Council's Engineers and use of a backflow prevention device will be required to prevent contamination of Council's potable water supply if this water supply is to be utilised for dust suppression during earthworks.

Schedule B – Land Use Consent for Residential Use Conditions

General Conditions

1. That the development must be undertaken/carried out in accordance with the plans:
 - “Scheme Plan Lots 1 to 20 & 98 & 99 Being subdivision of Lot 49 DP 346120” Paterson Pitts Group Drawing W4155 Sheet 100 Dated 26/5/2014

stamped as approved on 13 November 2014.

and the application as submitted and amended during the hearing, 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. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991 and shall pay to Council an initial fee of \$240. This initial fee has been set under section 36(1) of the Act.

Conditions Relating to Development and Use for Residential Purposes

4. Development on Lots 1 to 20 shall be in accordance with the following provisions:
 - (i) The maximum building coverage for all activities on each allotment shall be 40%;
 - (ii) The minimum setback from road boundaries of any buildings shall be 4.5m;
 - (iii) Building setbacks from internal boundaries shall comply with Rule 7.5.5.2iv of the Operative District Plan as at 13 November 2014;
 - (iv) Use of each allotment shall comply with Rules 7.5.5.2v, 7.5.5.2vi, 7.5.5.2viii, 7.5.5.2ix, 7.5.5.2xiii, 7.5.5.2xvi, 7.5.5.3vii, 7.5.5.3ix and 7.5.5.3x of the Operative District Plan as at 13 November 2014.
5. Other than physical works associated with the subdivision of the land, and undertaken in accordance with Subdivision Conditions of Consent, no development shall commence on any of Lots 1 to 20 until Computer Freehold Registers have issued for those lots.

Advice Notes:

1. This consent will lapse 5 years after its commencement unless given effect to. As each of Lots 1 to 20 has its own consent, if the consent for a particular lot is not give effect to within 5 years, the consent for that lot will lapse.
2. The rules referred to in Condition 4 are attached in the form they were on 13 November 2014.
3. This land use consent approves the establishment of buildings for residential activity being the use of land and buildings by people for the purpose of permanent residential accommodation, including all associated accessory buildings, recreational activities and the keeping of domestic livestock. For the purposes of this definition, residential activity shall include Community Housing, emergency, refuge accommodation and the non-commercial use of holiday homes. For the avoidance of doubt, the land use consent approved excludes the use of any lot for non-residential activities, including visitor accommodation.

Attachment to Schedule B - Land Use Consent for Residential Use Condition

Rule 7.5.5.2iv - **Setback from Internal Boundaries/Neighbours**

- (a) **Except** as provided for below, the minimum setback from internal boundaries/neighbours for any building shall be:

Front Site

One setback of 4.5m and all other setbacks 2m.

Rear Sites

Two setbacks of 4.5m and all remaining setbacks to be 2m.

- (b) Exceptions to (a) minimum setbacks:

(i) Accessory buildings for residential activities other than those used for the housing of animals may be located within the setback distances from internal boundaries, where the total length of the walls of accessory buildings within the setback does not exceed 7.5m in length and there are no windows or openings, other than for carports, along any walls within 2m of an internal boundary.

(ii) Eaves, porches, balconies, bay or box windows, steps, chimneys and similar parts of buildings may be located within the minimum building setback as follows:

- a. eaves up to 0.6m into the setback; and
- b. balconies and bay or box windows of less than 3m in length may project into the setback by up to 0.6m. Only one such balcony or bay or box window, intrusion is permitted on each setback of each building; and
- c. porches and steps up to 0.6m into a setback; provided they measure no more than 2m parallel to the nearest internal boundary and provided that the floor level of any such porch or the top of any steps shall be no higher than 1m above ground level. Only one such porch or set of steps is permitted on each setback of each building; and
- d. chimneys may project into the setback by up to 0.6m provided that the chimney measures no more than 1.2m parallel to the nearest internal boundary. Only one chimney is permitted on each setback of each building; and
- e. no part of any balcony or window which is located within a setback shall be higher than 3m above ground level.

- (c) In the Low Density Residential Zone no setback is required from an internal boundary where buildings share a common wall on that internal boundary.

Rules 7.5.5.2v - **Access**

Each residential and/or visitor accommodation unit shall have legal access to a formed road.

Rule 7.5.5.2vi - **Continuous Building Length in the Low Density Residential Zone**

Where the aggregate length along one elevation of buildings measured parallel to any internal boundary or internal boundaries exceeds 16m; either:

- (a) The entire building(s) shall be set back an additional 0.5m for every 6m of additional length or part thereof from the minimum yard setback (continuous façades) at the same distances from the boundary;
or

- (b) That part of the building(s) which exceeds the maximum building length shall be progressively set back 0.5m for every 6m of additional length or part thereof from the minimum yard setback (varied façade(s) with stepped setbacks from the boundary).

Rule 7.5.5.2viii - **Outdoor Living Space**

- (a) The minimum provision of outdoor living space for each residential unit and residential flat contained within the net area of the site within the Low Density Residential Zone shall be:

36m² contained in one area with a minimum dimension of 4.5m at the ground floor level and 8m² contained in one area with a minimum dimension of 2m at any above ground floor level.

- (b) N/a
- (c) The outdoor living space shall be readily accessible from a living area.
- (d) No outdoor living space shall be occupied by any building, other than an outdoor swimming pool, or accessory building of less than 8m² gross floor area, driveway or parking space.

Rule 7.5.5.2ix - **Non-Reflective Buildings**

All metal cladding, roofing or fences shall be painted or otherwise coated with a non-reflective finish.

Rule 7.5.5.2xiii - **Boundary Planting (Wanaka)**

- (a) No tree or hedgerow boundary planting shall exceed 1.9 metres in height within 2 metres of the boundary, at any point of its length.

Rule 7.5.5.2xvi - **Earthworks**

The following limitations apply to all earthworks (as defined in this Plan), except for earthworks associated with a subdivision that has both resource consent and engineering approval.

- (a) Earthworks
- (i) The total volume of earthworks does not exceed **100m³** per site (within a 12 month period). For clarification of "volume", see interpretative diagram 5.
 - (ii) The maximum area of bare soil exposed from any earthworks where the average depth is greater than 0.5m shall not exceed **200m²** in area within that site (within a 12 month period).
 - (iii) Where any earthworks are undertaken within 7m of a Water body the total volume shall not exceed **20m³** (notwithstanding provision 17.2.2).
 - (iv) No earthworks shall:
 - a. expose any groundwater aquifer;
 - b. cause artificial drainage of any groundwater aquifer;
 - c. cause temporary ponding of any surface water.
- (b) Height of cut and fill and slope
- (i) The vertical height of any cut or fill shall not be greater than the distance of the top of the cut or the toe of the fill from the site boundary (see interpretative diagram 6). Except where the cut or fill is retained, in which case it may be located up to the boundary, if less or equal to 0.5m in height.
 - (ii) The maximum height of any cut shall not exceed 2.4 metres.

- (iii) The maximum height of any fill shall not exceed 2 metres.
- (c) Environmental Protection Measures
 - (i) Where vegetation clearance associated with earthworks results in areas of exposed soil, these areas shall be revegetated within 12 months of the completion of the operations.
 - (ii) Any person carrying out earthworks shall:
 - a. Implement erosion and sediment control measures to avoid soil erosion or any sediment entering any water body. Refer to the Queenstown Lakes District earthworks guideline to assist in the achievement of this standard.
 - b. Ensure that any material associated with the earthworks activity is not positioned on a site within 7m of a water body or where it may dam or divert or contaminate water.
 - c. Implement appropriate dust control measures to avoid nuisance effects of dust beyond the boundary of the site. Refer to the Queenstown Lakes District earthworks guideline to assist in the achievement of this standard.
- (d) Protection of archaeological sites and sites of cultural heritage
 - (i) The activity shall not modify, damage or destroy any Waahi Tapu, Waahi Taoka or archaeological sites that are identified in Appendix 3 of the Plan, or in the Kai Tahu ki Otago Natural Resource Management Plan.
 - (ii) The activity shall not affect Ngai Tahu's cultural, spiritual and traditional association with land adjacent to or within Statutory Acknowledgment Areas.

Rule 7.5.5.3vii - **Glare**

- (a) All fixed exterior lighting shall be directed away from the adjacent sites and roads; and
- (b) No activity on any site shall result in greater than a 3.0 lux spill (horizontal and vertical) of light onto any other site measured at any point inside the boundary of the other site.

Rule 7.5.5.3ix - **Heavy Vehicle Storage**

Except for visitor accommodation, no more than one heavy vehicle shall be stored or parked overnight on any site for any activity. This standard applies to residential and non-residential activities cumulatively and only one heavy vehicle in total shall be stored or parked overnight on any site.

Rule 7.5.5.3x - **Keeping of Animals**

There shall be no keeping of pigs.

Schedule C – Land Use Consent for Earthworks Conditions

General Conditions

1. That the development must be undertaken/carried out in accordance with the plans:

- “Scheme Plan Lots 1 to 20 & 98 & 99 Being subdivision of Lot 49 DP 346120” Paterson Pitts Group Drawing W4155 Sheet 100 Dated 26/5/2014

stamped as approved on 13 November 2014.

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

- 2a. 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.
- 2b. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991 and shall pay to Council an initial fee of \$240. This initial fee has been set under section 36(1) of the Act.

Earthworks

3. 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 4404:2004 and ‘A Guide to Earthworks in the Queenstown Lakes District’ brochure, prepared by the Queenstown Lakes District Council. 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.

4. Hours of operation for earthworks, shall be:

- Monday to Saturday (inclusive): 8.00am to 6.00pm.
- Sundays and Public Holidays: No Activity

In addition, no heavy vehicles are to enter or exit the site, and no machinery shall start up or operate earlier than 8.00am. All activity on the site is to cease by 6.00pm.

5. All earthworked/exposed areas shall be top-soiled and grassed/revegetated or otherwise permanently stabilised in a progressive manner as earthworks are undertaken.

Accidental Discovery Protocol

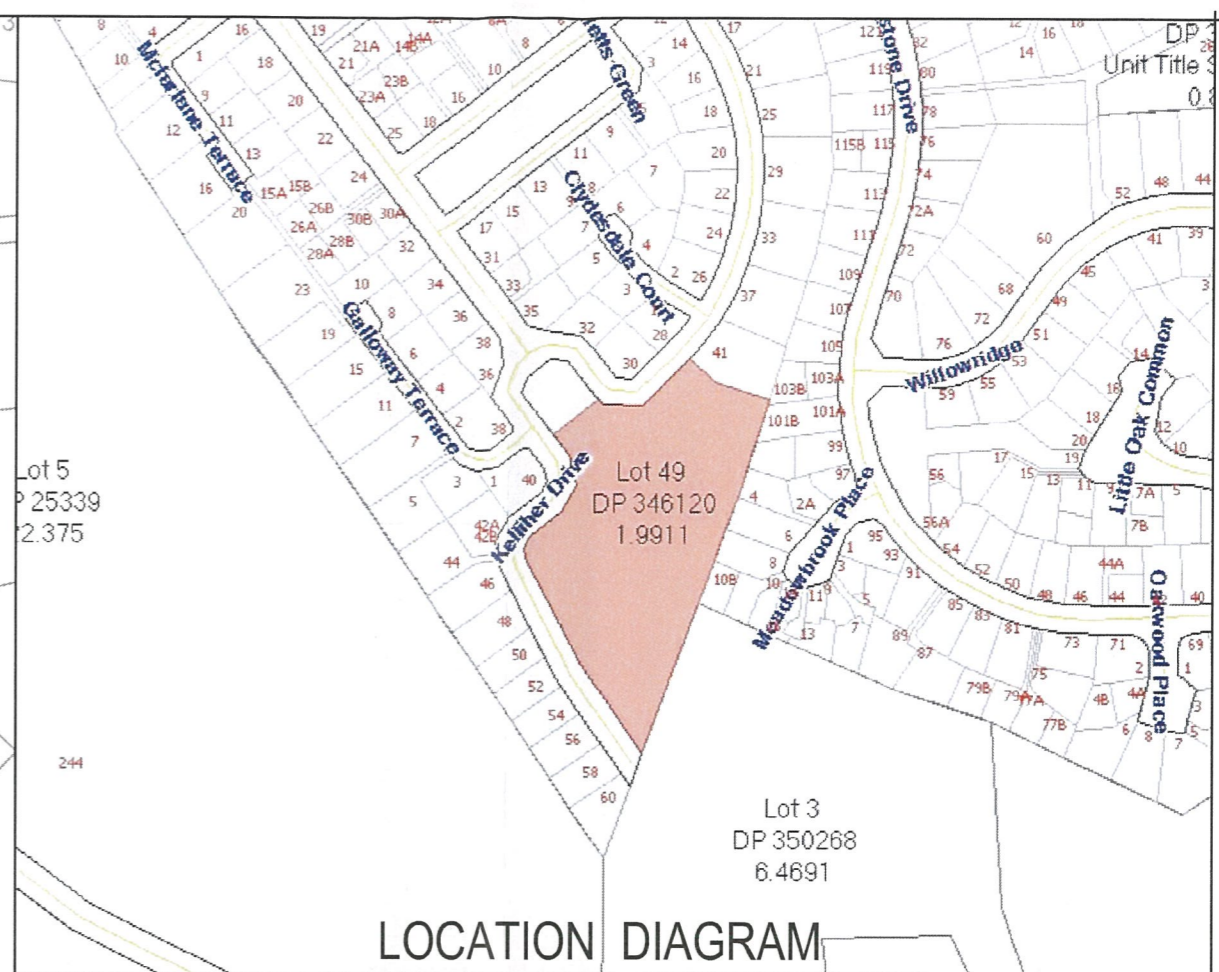
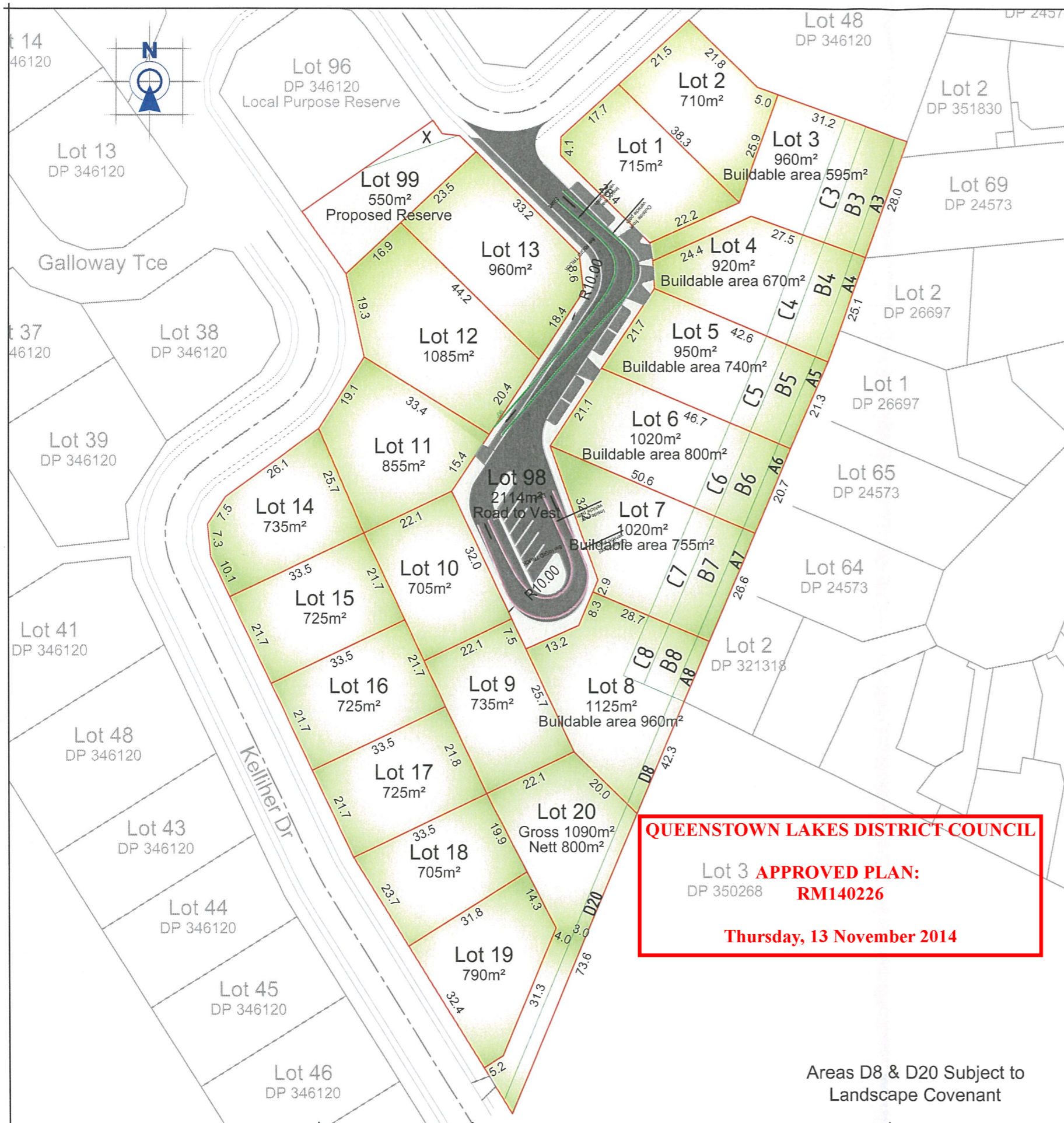
6. If the consent holder:

- a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder shall without delay:
- (iii) notify Council, Tangata whenua and Heritage New Zealand Pouhere Taonga and in the case of skeletal remains, the New Zealand Police.
 - (iv) stop work within the immediate vicinity of the discovery to allow a site inspection by the Heritage New Zealand Pouhere Taonga and the appropriate runanga and their advisors, who shall determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Any koiwi tangata discovered shall be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation. Site work shall recommence following consultation with Council, the New Zealand Pouhere Taonga, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

- b) discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder shall without delay:
- (i) stop work within the immediate vicinity of the discovery or disturbance and;
 - (ii) advise Council, the Heritage New Zealand Pouhere Taonga and in the case of Maori features or materials, the Tangata whenua and if required, shall make an application for an Archaeological Authority pursuant to the New Zealand Pouhere Taonga Act 2014 and;
 - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work may only recommence following consultation with Council.



Schedule of Existing Encumbrances

| Shown | Servient Tenement | Purpose | Document |
|-------|-------------------|---------------------------------|----------------|
| C3 | Lot 3 | Building Height Restriction | CONO6542711.19 |
| B3 | Lot 3 | No-Build Area | CONO6542711.19 |
| A3 | Lot 3 | Landscape Restriction | CONO6542711.19 |
| C4 | Lot 4 | Building Height Restriction | CONO6542711.19 |
| B4 | Lot 4 | No-Build Area | CONO6542711.19 |
| A4 | Lot 4 | Landscape Restriction | CONO6542711.19 |
| C5 | Lot 5 | Building Height Restriction | CONO6542711.19 |
| B5 | Lot 5 | No-Build Area | CONO6542711.19 |
| A5 | Lot 5 | Landscape Restriction | CONO6542711.19 |
| C6 | Lot 6 | Building Height Restriction | CONO6542711.19 |
| B6 | Lot 6 | No-Build Area | CONO6542711.19 |
| A6 | Lot 6 | Landscape Restriction | CONO6542711.19 |
| C7 | Lot 7 | Building Height Restriction | CONO6542711.19 |
| B7 | Lot 7 | No-Build Area | CONO6542711.19 |
| A7 | Lot 7 | Landscape Restriction | CONO6542711.19 |
| C8 | Lot 8 | Building Height Restriction | CONO6542711.19 |
| B8 | Lot 8 | No-Build Area | CONO6542711.19 |
| A8 | Lot 8 | Landscape Restriction | CONO6542711.19 |
| X | Lot 99 | Right to drain sewage and water | EI6542711.21 |

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Client & Location:
Willowridge Developments Ltd
Kelliher Drive
WANAKA

Purpose & Drawing Title:
Scheme Plan
Lots 1 to 20 & 98 & 99 Being Subdivision
of Lot 49 DP 346120

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|---------------|------------|----------------|-------------|
| Surveyed by: | xxx | Original Size: | Scale: |
| Designed by: | SJD | A3 | 1:1000 @ A3 |
| Drawn by: | SJD | DO NOT SCALE | |
| Checked by: | xxx | | |
| Approved by: | xxx | Job No: | W4155 |
| Sheet No: | 100 | Revision No: | C |
| Date Created: | 26/05/2014 | | |