QUEENSTOWN LAKES DISTRICT COUNCIL

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DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

AS PER ENVIRONMENT COURT CONSENT ORDER REFERENCE ENV-2014-CHC-21, DATED 24 JUNE 2014

Applicant:	Cross Roads Properties Limited
RM reference:	RM130521
Location:	Frankton, Queenstown
Proposal:	Consent to construct and operate a Mitre10 Mega store, with associated earthworks, landscaping, signage and car parking.
Type of Consent:	Land Use
Legal Description:	Lots 2 to 3 DP 452925 and Lots 14 to 15 DP 304325 held in Computer Freehold Register OT/579531
Valuation Number:	2910210901
Zoning:	Split-zoned Rural General and Industrial
Notification:	Publicly notified
Commissioners:	Commissioners D J Taylor and D Clarke
Decision Dates: - QLDC Decision - Environment Court ENV-2014-CHC-21	 11 April 2014 24 June 2014
Decision:	**GRANTED subject to conditions**

BEFORE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an application by **Cross Roads Properties Limited** for resource consent for the construction and operation of a Mitre 10 Mega store, with associated earthworks, landscaping, signage and car-parking at Frankton, Queenstown
Council file:	RM130521

DECISION OF COMMISSIONERS APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL

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11 April 2014

Commissioners:

D Jane Taylor (Queenstown)
David Clarke (Queenstown)

The Hearing and Appearances

Hearing Dates	Wednesday 5 February 2014, Monday 10 – Tuesday 11 February 2014, at Queenstown
Appearances for Cross Roads Properties Limited:	Mr G M Todd, Legal Counsel Mr C Vivian, a Resource Management Planner and Director of Vivian & Espie Limited Mr B Espie, a Landscape Architect and Director of Vivian & Espie Limited Mr F J Colegrave, an Economist and Managing Director of Insight Economics Limited (joint evidence with Foodstuffs (South Island) Limited) Mr T Heath, a Property Consultant, Retail Analyst and Urban Demographer with Property Economics Limited (by telephone)
Submitters Appearing in Person:	Mr JDK Gardner-Hopkins and Ms E L Matheson, Legal Counsel for Queenstown Central Limited Mr V N Lala, a Resource Management Planner appearing for Queenstown Central Limited Mr R Taylor, representing Glentarn Group Ms J J Carter and Mr A F Porter, representing Shotover Park Limited
In Attendance:	Mr A Cubitt, Consultant Reporting Officer, Queenstown Lakes District Council Ms H Mellsop, Consultant Landscape Architect, Queenstown Lakes District Council Ms R Beer and Ms L Ryan, Committee Secretaries

Introduction

1. Cross Roads Properties Limited ("the Applicant") has applied for resource consent to construct and operate a Mitre 10 Mega ("Mitre10 Mega") store, with associated earthworks, landscaping, signage and car parking at Frankton, Queenstown.

2. The legal description of the property is Lots 2 to 3, Deposited Plan 452925 and Lots 14 to 15, Deposited Plan 304325 held in Computer Freehold register OT/579531. The application site

comprises 1.8677 hectares of the property and is located approximately 330 metres south east of the intersection of Glenda Drive and State Highway 6, Frankton.

3. The subject site is currently has a split zoning of Rural General and Industrial under the Queenstown Lakes Operative District Plan ("the Operative District Plan"), the majority of which falls within the Rural General zone. The proposal is located in an area that is subject to Plan Change 19 ("PC19"), which seeks to create the Frankton Flats "B" Special Zone, and specifically sits within proposed Activity Area E1. An overlay plan indicating the location of the proposed development (together with the proposed neighbouring Pak "N Save development) is **attached** as Appendix 1.

4. Presently the Frankton Flats forms part of a gateway entrance/exit point to the urban development of Frankton and Queenstown. It was accepted by all parties that as this land is subject to PC19, it is unlikely to remain in its current state for much longer. We agree with Mr Espie, the Applicant's landscape architect when he stated that the proposal's location:

> *"Will be in a part of the Rural General Zone with greater potential to absorb change of this sort than most parts of the zone due to the character of the Frankton Flats in general and the immediate context of the existing Industrial Zone in particular".*

5. However, this does not diminish the importance that the Frankton Flats will continue to play in this area from a landscape perspective, not only as a result of the expansive mountain views afforded but also its location at the base of an Outstanding Natural Feature (the Remarkables mountain range). It is important that any development on this land, especially of the scale of the present proposal, incorporates good building and urban design, suitable materials, colour schemes, branding and signage and that the development works within the environment rather than clashing with it.

6. The proposed Mitre10 Mega building is a very large format trade retail store comprising 7,877 m², with outdoor trade yard, garden centre and café. The building is generally 10.4 metres high, however, two air conditioning units extend to 11.2 metres. A large outdoor car park is proposed to cater for 178 cars and the entire site is proposed to be comprehensively landscaped.

7. The purpose of PC19 is to provide for a comprehensive rezoning of the Frankton Flats land to enable a mix of activities including education, residential, visitor accommodation, commercial, industrial, business and recreational activities. The Council Commission's decision on PC19 ("PC19 (DV)") was issued in late 2009 and was appealed to the Environment Court by a number of the parties. The Environment Court subsequently split its decision-making on PC19 into "higher order" and "lower order" matters. An interim decision on the higher order matters with respect to the objectives, policies and a revised structure plan was issued on 12 February 2013

("PC19 (Interim Decision)").[1] The Court requested that the parties work together to provide the wording of the objectives and policies subject to the Court's overall direction. The "lower order" matters (rules and assessment matters) have yet to be considered and will require the normal evidence exchange, witness conferencing and hearing process. As a consequence, the date on which PC19 will become operative, and the form this will take, will depend on whether there are any appeals against the final decisions of the Environment Court to the High Court or higher courts.

8. This particular application has a long and complex planning history of development proposals and Environment Court proceedings, which are comprehensively set out in the Assessment of Effects on the Environment ("AEE") prepared by Vivian & Espie at pages 16 to 18.

9. The current application is substantially similar to a previous application (RM110759) heard and decided by the Environment Court in 2012.[2] The earlier proposal was granted consent subject to conditions requiring amendments to the landscaping of the site and alterations to the exterior appearance of the building. We understand that all of the measures required by the Environment Court's conditions have been incorporated into the present application. The Environment Court's decision was subsequently appealed to the High Court by Queenstown Central Limited ("QCL") and Queenstown Lakes District Council. For various reasons which are set out in the AEE, the High Court concluded that there were errors of law in the Environment Court's decision and remitted the matter back to the Environment Court to be re-evaluated in light of the current status of PC19. The High Court decision is currently under appeal to the Court of Appeal by the Applicant following the granting of leave.

10. The Reporting Officer's Section 42A report sets out a description of the subject site, the planning history, and a full description of the proposed activity at pages 3 to 7 of his report. Further details, including the amendments made to the current application as a result of the Environment Court's determination of the previous application, RM110759, are set out at pages 5 to 9 of the AEE. The Reporting Planner noted, *"This application essentially replicates the application made in 2011, with some amendments"*. The amendments are set out in full at pages 6 to 7 of his report and are also recorded in the Joint Planning Statement agreed between the Reporting Planner and Mr Vivian (representing the Applicant), to which we have had due regard.

11. The application must be assessed against both the Operative District Plan and the provisions of the District Plan as proposed to be modified by PC19 (DV). It is accepted that the application must be assessed under each plan and that weighting only becomes an issue if the outcomes under the two frameworks differ.[3] We also accept that as the Environment Court has made a

[1] *Queenstown Airport Corporation Limited v Queenstown Lakes District Council* [2013] NZEnvC 14. (PC19 (Interim Decision)).
[2] *Cross Roads Properties Limited v Queenstown Lakes District Council* [2012] NZEnvC 177 ("the *Cross Roads* decision").
[3] See *O'Connell v Christchurch City Council* [2003] NZRMA 216.

number of final findings, but not yet a final decision on PC19, the version of PC19 against which the application must be assessed is the Council's decision version of Plan Change 19 (PC19 (DV)) as amended by any final findings, which includes the addition of Objective 1A and related policies, together with the revised Structure Plan.

12. The status of the proposal has been agreed between Mr Vivian and the Reporting Officer as set out in the Joint Planning Statement attached to the Section 42A Report. A full assessment in relation to both the Operative District Plan and PC19 (DV) is set out at pages 9 to 42 of the AEE, and is summarised by the Reporting Officer at pages 7 to 9 of the Section 42A report. Both Mr Vivian and Mr Cubitt found that the application is to be assessed overall as a **non-complying activity** under both the Operative District Plan and PC19 (DV) as amended by the Structure Plan resulting from PC19 (Interim Decision). We do not understand Queenstown Central Limited ("QCL") to have raised any objection to the non-complying activity status under the relevant planning frameworks.[4]

13. Accordingly, overall the application falls to be considered as a **non-complying activity** against both the Operative District Plan and PC19 (DV) as amended by any final findings of PC19 (Interim Decision), including the new Structure Plan.

Statutory Assessment Framework

14. The provisions of the Resource Management Act 1991 ("the RMA") relevant to the assessment of the application as a non-complying activity are sections 104D, 104, 104B, 108 and Part 2 of the Act.

15. Both Mr Vivian (at pages 42 to 43 of the AEE) and Mr Cubitt (at pages 10 to 11 of the Section 42A report) described the relationship between the various relevant statutory provisions in detail.

16. Consent for the Mitre10 Mega application is required under the provisions of the Operative District Plan and under PC19 (DV) as modified by any final findings of the Environment Court in the PC19 (Interim Decision). Weighting only becomes an issue if the outcomes under the two frameworks differ.[5]

17. As a non-complying activity, the application must pass through <u>one</u> of the gateway tests in section 104D(1)(a) or (b). Section 104D reads:

> (1) Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

[4] Paragraph 3.9 of Mr Gardner-Hopkins' legal submissions on behalf of Queenstown Central Limited.
[5] *Stokes v Christchurch City Council* [1999] NZRMA 409 (EnvC); *Bayley v Manukau City Council* (1998) 4 ELRNZ 461 (CA); *O'Connell Construction Limited v Christchurch City Council* [2003] NZRMA 216 (HC at [80][81]).

(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or

(b) the application is for an activity that will not be contrary to the objectives and policies of—

(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or

(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

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

(2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.

18. We note that in respect of the section 104D(1)(b) test, Fogarty J in the High Court decision in relation to the previous application[6] found that if an application is contrary to <u>any</u> of the objectives or policies, it will fail to pass through this gateway: *"It is not an overall judgment of some degree of the adverse effects of the proposal. The test is tougher. The activity must not be contrary to any of the objectives or policies"*.

19. Although we note that Fogarty J's decision is currently subject to an appeal to the Court of Appeal, we accept, for the purposes of determining this application, that we are bound by the above finding as to the interpretation of section 104D(1)(b). Both Mr Todd and Mr Gardner-Hopkins submitted that the Commission is required by law to follow the findings of the High Court on legal questions, notwithstanding the existence of the appeal to the Court of Appeal, which we understand has been set down for hearing on 29 and 30 July 2014.

20. If the application fails both gateway tests, that is the end of the matter. However, if an application passes through either gateway, an assessment must then be made under section 104. Section 104(1) reads:

(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:

(iv) a New Zealand coastal policy statement:

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

[6] *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 817 at paragraph [37].

(vi) a plan or proposed plan; and

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

21. Various decisions of both the Environment Court and the High Court have discussed the order in which the two assessments, that is the section 104D and the section 104(1) assessment, should be undertaken. The approach of the Commission is based on the recent decision of the Environment Court in A23/2009 *Foster v Rodney District Council*. In that case, the Court examined whether the threshold test in section 104D, which established jurisdiction for the grant of consent under section 104(1), should be employed as an "entry" or "exit" test. The Court recognised that the threshold test in section 104D is a high level filter and a "pass" under each of the two limbs does not necessarily mean that an application will be granted under section 104(1). Rather, the consent authority must consider the application under section 104(1) and Part 2 of the Act before reaching a final decision irrespective of whether the section 104D test is used as an entry or exit threshold test. The correct approach to section 104D will depend on the circumstances in each individual case.

22. In relation to the current application, we have adopted the following approach which is to examine:

(i) All of the effects on the environment;

(ii) The provisions of the relevant planning instruments;

(iii) Consideration of the threshold test under section 104D; and

(iv) Consideration of our decision under section 104(1)(a) and (b) after having regard to any other matters under section 104(1)(c) and subject to consideration of Part 2 of the Act.

23. In respect of the High Court appeal, Fogarty J made it plain that the section 104D tests must be undertaken before an application can be considered under section 104.[7] However, he made it clear that a proposal that fails one of the section 104D gateway tests may still be granted. Addressing this point, Fogarty J stated: *"for even if there is a conflict [in relation to the objectives and policies under Section 104] a proposal may be granted"*.[8] This is not inconsistent with the approach set out above.

24. Mr Gardner-Hopkins submitted that section 87B is also relevant to our overall determination. While section 87B causes elements of each proposal (significantly the "other retail" component of the activity) to be treated as discretionary as opposed to prohibited, section 87B does so "in a

[7] *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZRMA 239 (HC) at [54]; and *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 817 at [21].
[8] *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZRMA 239 (HC) at [54].

purely activity classification sense". He submitted that this technicality does not override the clear policy intent of PC19 and accordingly the objectives and policies relating to the inappropriateness of "other retail" within E1 must still be considered. To the extent that section 87B is relevant in this respect, we concur with this submission.

25. As noted by the Reporting Officer, the application essentially replicates the application made in 2011 as determined by the Environment Court, and incorporates the changes proposed by that Court and which were secured by conditions. Accordingly, to the extent that they are relevant, the factual findings of the Environment Court have been relied on. We agree with Mr Cubitt that it would be inappropriate to disregard the relevant and unchallenged findings of fact by the Environment Court, as the issues had been canvassed in depth by various experts and considered and determined by the Court.

26. In relation to the relevant planning framework under section 104(1)(b), we concur with Mr Vivian and the Reporting Officer that the following plans are relevant to our assessment:

    (i) The Rural General and Industrial Zoning of the Operative District Plan; and

    (ii) PC19 (DV) as amended by any final findings of the Environment Court under PC19 (Interim Decision).

Application Information

27. The following information has been received and considered by the Commission in reaching its decision:

    (a) A report dated November 2013 prepared under Section 42A of the Act by Mr Allan Cubitt, the contract Reporting Planner for Council ("the Section 42A report");

    (b) The appendices to the Section 42A report, which include a Joint Planning Statement prepared by Mr Cubitt and Mr Carey Vivian (Consultant Planner to the Applicant);

    (c) A landscape assessment report prepared by Ms Helen Mellsop, a registered NZILA Landscape Architect, dated 25 November 2013;

    (d) An engineering assessment prepared by Mr Alan Hopkins, an Engineer employed by Queenstown Lakes District Council dated 16 February 2012; and

    (e) A summary of the submissions received with respect to the application.

28. The following documentary evidence found in the agenda accompanying the Section 42A report has been taken into account in considering this application:

- The application and assessment of environmental effects prepared by Vivian & Espie and dated 9 August 2013 titled Resource Consent Application Cross Roads Properties Limited Mitre 10 Mega at Frankton Queenstown, including attachments [B] to [O].

29. At the request of the Applicant, the Commission made orders for the prior circulation of expert evidence in accordance with section 41B of the Act.

30. Evidence was received and considered from the following experts:

- Evidence of Jason Charles Acton Smith in relation to the background to the application, the benefits of the site and the availability of other locations;
- Evidence of Francis Whittaker in relation to the architectural aspects of the proposal;
- Evidence of Chris Rossiter in relation to the traffic and transportation issues;
- Evidence of Murray Gordon Wilton Smith in relation to engineering issues;
- Evidence of Kevin John Brewer in relation to urban design issues dated 20 January 2014;
- Evidence of Timothy James Heath in relation to retail economic evidence;
- Evidence of Mr Fraser Colegrave, which focused on the methodology and results of the 2006 Commercial Land Needs Study ("CLNA");
- Evidence of Mr Ben Espie in relation to the landscape and amenity issues associated with the application;
- Evidence of Mr Carey Vivian in relation to the planning issues associated with the application; and
- Evidence of Mr Vijay Nagen Lala on behalf of the submitter in opposition, Queenstown Central Limited, in relation to planning issues.

31. The Section 42A report recommended that consent be refused on the basis that the proposal did not pass through either of the gateway tests set out in section 104D(1). In reaching this conclusion, Mr Cubitt found that all effects apart from the loss of industrial land supply are minor subject to the imposition of conditions. Overall, the proposal was considered to be consistent with the "effects based" policies of the EI Activity Area and the other relevant objectives and policies of the Plan Change (PC19). However, he was of the view that the application was contrary to the "use enabling" part of the policy framework of PC19 (DV) and PC19 (Interim Decision); accordingly the second gateway threshold was not passed.

32. Mr Cubitt noted in his report that if the issue around industrial land supply was resolved to the Commission's satisfaction, the application would pass through the effects gateway of section 104D(1)(a) and could therefore be considered for consent. He advised that the key provision for the Commission to consider in finally determining the application under section 104, if the gateway threshold is passed, is the RMA's single purpose set out in section 5, which is to promote the sustainable management of natural and physical resources. A draft set of conditions was attached to the Section 42A report for the Commission's consideration should it subsequently be minded to grant consent in light of the further evidence to be presented at the hearing.

Notification and Submissions

33. The application was notified on 23 October 2013. The closing date for receipt of submissions was 21 November 2013.

34. A total of seven submissions were received prior to the closing date. One of the submissions in respect of the Queenstown Lakes Community Housing Trust was subsequently withdrawn prior to the hearing. Of the six remaining submissions, three were in support, two were in opposition and one (the New Zealand Transport Agency) was neutral but sought conditions in relation to the effects of construction traffic on the existing roading infrastructure should the Mitre10 Mega store to be open before the new roading network is developed.

35. The Section 42A report sets out a comprehensive summary of the submissions received and the issues raised. We will refer to submissions in our analysis that follows where relevant.

36. Two written approvals were received with the application from Trojan Holdings Limited and Shotover Park Limited (which was also a submitter in support of the application).

Hearing

37. The hearing was held on Wednesday the 5th, Monday the 10th and Tuesday the 11th February 2014 at the Crowne Plaza Hotel, Queenstown. The hearing was conducted as a joint hearing in relation to an application by Foodstuffs (South Island) Limited (RM130524) for consent to locate a Pak'N'Save bulk food warehouse on an adjoining site ("the Pak'N'Save application"). Notwithstanding the convening of a joint hearing, the applications are to be treated and decided as separate applications.

38. In attendance in relation to this application were:

(a) The Applicant, represented by Mr Graeme Todd, Legal Counsel. Mr Todd called expert evidence from Mr Ben Espie, Mr Carey Vivian, Mr Tim Heath and Mr Fraser Colegrave. Mr Jason Acton Smith, a representative of the Applicant was in attendance;

(b) Council Officers, Mr Allan Cubitt (Reporting Planner) and Ms Helen Mellsop (Landscape Architect); and

(c) The submitter in opposition, Queenstown Central Limited, represented by Mr James Gardner-Hopkins and Ms Emma Mathieson, Legal Counsel. Mr Gardner-Hopkins called expert evidence from Mr Vijay Lala, a Resource Management Planner.

39. As the evidence had been pre-circulated in accordance with the Commission's directions, only those expert witnesses in relation to whom the Commission wished to cross-examine were required to attend the hearing (either in person or by telephone). Accordingly, the written evidence circulated prior to the hearing, and which was taken as read at the hearing, forms part of the hearing record.

Summary of the Evidence Heard

Applicant

40. Mr Graeme Todd presented legal submissions in writing, describing the background to the application, the proposal, the subject site and immediate surrounds, the relationship between a resource consent application and a plan change, the zoning and activity status and statutory considerations. Mr Todd then addressed in detail the industrial land use issue, noting that the "*main issue to be determined is the actual effect that the proposal will have on the availability of industrial land in the Queenstown area*". He then briefly addressed the PC19 policies and objectives, the Section 42A report and the evidence of Mr Lala (the expert witness who appeared on behalf of QCL). Finally, Mr Todd concluded by addressing Part 2, submitting: *"if ever there was a case which ticked all the boxes as far as Part 2 matters were concerned then it would be* [*this application*]*"*.

41. Mr Todd then called evidence from the following witnesses, whom the Commission had previously indicated that it wished to hear from:

(i) Mr Ben Espie, a Landscape Architect and Director of Vivian & Espie Limited. Mr Espie answered questions from the Commission directed at the external appearance of the proposed building under both the Operative District Plan and PC19, in particular the orange colour of parts of the building, which Mr Espie had previously found was not complementary to the surrounding landscape;

(ii) Mr Carey Vivian, a Resource Management Planner and Director of Vivian & Espie Limited. Mr Vivian summarised the main points of his evidence in relation to the section 104D(1)(a) and (b) gateway tests, concluding that the effect of the proposal on the quantity and quality of industrial land resource will be minor and that the proposal therefore passes the Effects section of section 104D(1)(a). As the proposal passed the first gateway test section there was, in his opinion, no need to consider the proposal under section 104D(1)(b). Mr Vivian then addressed the Part 2 matters concluding that the proposal is consistent with the relevant matters contained in section 7, and meets the requirements of sustainability under section 5. In response to questions from the Commission, Mr Vivian expanded on the industrial land issue, drawing on the evidence of Mr Colegrave in respect of the CLNA;

(iii) Mr Tim Heath, a Property Consultant and Proprietor and Founding Director of Property Economics Limited. Mr Heath answered questions from the Commission in relation to the supply of land for "*large-scale retail, the strong trade component of the Mitre10 Mega application, the effect on existing retail centres and the desirability of locating large-scale trade activities in these locations; the efficiencies of large-scale trade facilities and their ability to drive growth; the shortage of large-scale trade activity in Queenstown and its implications for growth and competition and the suitability of the current site for the proposed activity*"; and

(iv) Mr Fraser Colegrave, an Economist with Insight Economics. Mr Colegrave appeared on Monday the 10th February under the auspices of the Foodstuffs section of the hearing; however, his evidence was identical for both applications. Mr Colegrave answered questions from the Commission in relation to the defects in the CLNA; the rationale for protecting the yard-based and transport activities in the Queenstown Lakes District; the assumed growth and the need for industrial land projected by the CLNA as compared to his own calculations; the qualitative aspects of the CLNA and the risk that the CLNA assumptions may prevent other uses from utilising land zoned "Industrial" to the detriment of the economic growth of the region. In his opinion, the precluding of other important activities that could potentially be taking place (as compared to land reserved for low value yard and transport based activities) could impact detrimentally on the economic growth trajectory for the region.

Submitters

42. As well as considering all of the written submissions, we heard from three submitters in person:

(i) Queenstown Central Limited, represented by Mr James Gardner-Hopkins, legal counsel. Mr Gardner-Hopkins summarised the reasons for QCL's opposition to the application, gave an overview of QCL's submission, the planning framework, the Environment Court's interim decision on PC19 and the relevant provisions of the RMA. He then discussed the

Mitre10 Mega proposal in relation to the environmental effects (section 104D(1)(a)); the objectives and policies of the Operative District Plan and the relevant Plan Change (section 104D(1)(b)); section 104 and other relevant matters under section 104(1)(c), which included the Environment Court's Interim Decision and an assessment of alternative sites. Mr Gardner-Hopkins also considered the cumulative effects of the Mitre10 Mega and Pak 'N Save applications and their combined impact on the industrial land supply, the integrity of the relevant planning instruments and the precedent effect created. He then turned to Part 2, submitting overall that the application should be declined.

Mr Gardner-Hopkins called evidence from Mr Vijay Lala, who discussed the character and amenity relating to urban structure and Outline Development Plans, streetscape, and loss of industrial land. Mr Lala answered questions from the Commission in relation to his written evidence.

(ii) We also heard from Mr Roger Taylor representing Glentarn Group, a submitter in support of the application. Mr Taylor elaborated on his written submission in relation to the deficiencies in the CLNA and the role that this report had played in the development of Council's plan for land allocation in 2006. Mr Taylor concluded that the CLNA report was significantly flawed and that the conclusions that it reached in relation to the future need for industrial land for transport and yard-based activities were unsound. He concluded that there would not be any adverse effect on the supply of industrial land in Queenstown if the two applications were to be granted; and

(iii) Shotover Park Limited, represented by Ms Jennifer Carter, a Resource Management Planner employed by the submitter and Mr Alastair Porter, a Principal and Co-Managing Director of Porter Group Limited. The submitter, Shotover Park Limited, is a wholly owned subsidiary of Porter Group Limited and owns the sites on which the Mitre10 Mega and the Foodstuffs (South Island) Limited application are proposed. Ms Carter discussed the suitability of the applications to the sites and the wider receiving environment, drawing our attention to an application recently granted on a non-notified basis for a "Carters" trade and retail activity within the Rural General Zone. Both Mr Porter and Ms Carter discussed the positive effects of the proposal and the absence of a feasible alternative location for the two proposed activities.

Council Officers

43. At the commencement of the hearing, the Reporting Officer, Mr Cubitt, advised that having reviewed the evidence of Mr Colegrave (which had not been available when he had prepared his Section 42A report) together with the written evidence of the Applicant and the submitters, he was satisfied that the previous forecast demand for industrial land (as predicted by the

CLNA) was exaggerated. He noted that Mr Vivian had highlighted land within (and outside the urban growth boundary) that could also accommodate industrial activities. Accordingly, Mr Cubitt accepted that the loss of industrial land to the proposed activity is, at worst, minor, and on that basis was satisfied that the proposal passes through the effects gateway of the section 104D test and can be considered for consent. Taking into account the evidence of Mr Colegrave, Mr Heath and Mr Vivian, he was now of the view that "*the balance tips in favour of the application being granted when assessed on its merits under section 104 of the Act"*, citing the following factors:

- Adverse effects, including the loss of industrial land, will be no more than minor;
- There will be significant positive economic and social effects;
- The community is underserved with this type of business;
- While the activity is not an industrial activity, it has a number of activity components that are industrial in nature and its effects are similar (that is, a large building with outdoor/yard areas serviced by heavy vehicles);
- It is conveniently located and easily accessed by its trade and general public customers without conflict (particularly in terms of traffic) and avoids reverse sensitivity issues;
- No suitable alternative sites appear to exist in the area for this type of store;
- The Environment Court granted the previous application and the loss of industrial land dealt with by the High Court has been satisfactorily addressed;
- An undesirable precedent is unlikely to be created given that it is the type of activity that typically locates in industrial or similar zones.

44. Mr Cubitt's revised recommendation was that the application meets the sustainable management purpose of the RMA and should be granted, subject to the conditions previously agreed between himself and Mr Vivian that were attached to the Section 42A report.

<u>The Applicant's Reply</u>

45. Mr Todd presented a written reply, which was received on Friday 14 February 2014. He referred to the written addendum to Mr Cubitt's Section 42A report in which he confirmed his amended position on the application. Mr Todd then addressed the legal submissions and evidence presented on behalf of QCL and referred to Ms Crawford's closing submissions in relation to the Pak'N'Save application, which he fully adopted.

46. Mr Todd primarily addressed the legal submissions presented by Mr Gardner-Hopkins, together with the evidence of Mr Lala. He submitted that Mr Lala's evidence was confusing, contradictory and, it could be argued, misleading, and that the evidence of Mr Vivian, Mr Colegrave, Mr Heath and Mr Cubitt, supported by the evidence of Ms Carter, should be preferred – particularly as Mr Lala's evidence and conclusions were not supported by any experts in the disciplines of urban design, architecture, economics, landscape or traffic.

The Principal Issues in Contention

47. It was common ground that on an overall basis, the application falls to be considered as a non-complying activity. A wide range of matters was traversed in the application, submissions, the Section 42A report and supporting material during the hearing. It was common ground that the matters in contention for both the Pak 'N Save and Mitre10 Mega applications are almost identical.

48. The principal issues in contention arising from the application, the Section 42A report and the contents of submissions, including matters raised during the hearing are:

(i) Whether there are adverse effects on the environment that are more than minor, in particular:

- The extent to which the loss of industrial land as a result of the application will be more than minor, noting that this is an effect that both the Environment Court and the High Court considered a relevant effect on the environment;
- The effect of the proposal on landscape character and amenity; and
- The effect of the proposal on urban design.

(ii) Whether the proposal is contrary to the relevant objectives and policies of the Operative District Plan and PC19 (DV) as amended by the Interim Decision of the Environment Court;

(iii) Whether there are any other matters of relevance to our decision under section 104, which include:

- The Environment Court's interim decision on PC19, in particular the extent to which the application is inconsistent with or contrary to the policy direction of the proposed planning framework;
- The extent to which alternative sites are available for the proposed activity within the Queenstown area;

- The effect of the proposal on the integrity of PC19;
- Whether granting consent to the application will create a precedent effect; and
- The extent to which the application, in conjunction with the Pak 'N Save proposal, will result in adverse cumulative effects that are material and significant, such that consent to one or both applications should be refused.

(iv) Whether, overall, the proposal meets the purpose of the RMA, which is to promote the sustainable management of natural and physical resources.

Background Assessment

The Permitted Baseline, Existing Environment and Receiving Environment

49. An agreed position in relation to the permitted baseline reached by Mr Vivian and Mr Cubitt was set out in the Joint Planning Statement and also at page 15 of the Section 42A report. We accept the overall conclusion that the permitted baseline is not considered to be particularly useful to our assessment of this proposal.

50. We do, however, note with respect to PC19 (DV) that the E1 Activity Area permits:

- Industrial activities, service activities (including ancillary retail activities);
- Yard-based industrial activities; and
- Offices ancillary to any permitted or controlled activity (except buildings).

51. The built form and associated landscaping that comprises an integral component of such activities is, however, not permitted. As a consequence, we accept that it is unlikely that there will be any permitted activities within the zone until its built form is developed.

52. Importantly, as acknowledged in the Joint Planning Statement, the E1 Activity Area provides for industrial activities that may result in adverse effects on the environment, particularly on amenity values. Normal industrial sites can often be dusty, noisy and generate heavy vehicle movements. We accept that these kinds of permitted effects should be considered when assessing the amenity related effects of the proposal. Industrial buildings are generally purpose built, bulky and not particularly attractive. However in the E1 Zone, built form will be strictly controlled and this aspect of industrial development does not form part of the permitted or anticipated baseline.

Landscape Classification

53. In respect of the Operative District Plan, we accept that the proposed activity falls within the area of the Frankton Flats that is zoned Rural General and which is not subject to designations that provide for specific activities. Mr Espie concluded that this area of the Rural General Zone is correctly categorised as an Other Rural Landscape. His assessment was supported by Ms Mellsop and reflected the conclusion reached by the Environment Court in respect of the previous application.[9] The relevant assessment criteria when considering the application for resource consent under the Operative District Plan are set out at chapter 5, paragraph 5.4.2.2(4).

Actual and Potential Effects on the Environment

54. As noted in the Section 42A report, the AEE submitted with the proposal deals with a range of environmental effects, all of which need to be considered in our decision. Mr Cubitt noted that the application is very similar to the previous application referred directly to the Environment Court. The Environment Court considered the environmental effects in the context of the earlier application and found that, subject to some modifications, the effects of the proposal on these matters would be minor. The changes directed by the Environment Court to avoid remedy or mitigate any significant adverse effects have been adopted in this proposal.

55. Having reviewed the relevant Environment Court decisions, the evidence before us and the position set out in the Joint Planning Statement, we concur that:

    (i) The primary issue is the effect of the proposed activity on the supply of industrial land under both the Operative District Plan and PC19 (DV) as amended by any final findings of the Environment Court in terms of its Interim Decision on the higher order matters; and

    (ii) Secondary issues arising include landscape, amenity, urban structure, transportation and infrastructure. As QCL has raised issues in respect of landscape and urban design, we comment further on these effects in this decision; however, we accept the evidence of the Applicant, its experts and the Reporting Planner that the effects on transportation and infrastructure will be no more than minor.

Industrial Land Supply

56. The Reporting Planner carried out a comprehensive analysis of the effect of the proposal on industrial land supply at pages 15-19 of his report, as assessed against both the Operative District Plan and PC19 (DV). Mr Cubitt also comprehensively discussed the approach of the

[9] *Cross Roads Properties Limited v Queenstown Lakes District Council* [2012] NZEnvC 177 at paragraph [40].

Environment Court, the dissenting decision of Commissioner Fletcher and the errors of law found by the High Court on appeal.

57. Importantly, the High Court found that the future environment of the Frankton Flats is urban and will accommodate industrial activities.

58. However, the High Court held that the Environment Court erred in its application of a numeric analysis in relation to the interpretation of "minor" when assessing the effects on the supply of industrial land. The High Court highlighted that *"the analysis of adverse effects is both a qualitative and quantitative exercise"* and noted, *"it is impossible to use an arithmetical measure of quality"*. Adopting a percentage of loss as the demarcation point between minor and not minor did not, in the High Court's view, take into account the quality of the resource in question, in this case the quality of land for industrial uses. Mr Cubitt explained that:

> *"Here, the location and topography of the land is clearly very suited to industrial use. However these characteristics are also sought after by other activities, including commercial activities. Given that commercial activities are economically higher returning, allowing for them in an industrial zone is likely to see much of the zone lost to industrial activities. This appears to have occurred to a degree in the Glenda Drive Industrial Zone. Following this logic, an appropriately zoned area of flat greenfields land close to transportation networks and an existing industrial zone would be considered high quality industrial land but this quality would be reduced if the non-industrial and higher value uses were allowed to compete for the land."*

59. Mr Cubitt initially found that from both a qualitative and quantitative perspective, the effect of losing 5% of the land strictly zoned for industrial purposes (when considering Activity Areas E1 and D) to a competing high return commercial activity was an adverse effect that is more than minor when assessed against PC19 (DV). The position would be worse were the loss is to be measured purely against the land in E1 (as determined by the High Court) where it would equate to a 10% loss.

60. In the Applicant's view, this issue was remedied by the Interim Decision of the Environment Court on higher order matters. Judge Borthwick accepted Council's fundamental proposition that there will be constraints over the next 20 years in terms of the ability to accommodate industrial and business activities under the current zoning. The future demand for land for traditional industrial activities was assessed by the Court to be approximately 68.750 hectares. In its Interim Decision, the Court directed Council to prepare a new Structure Plan incorporating its findings. Mr Cubitt compared the two Structure Plans and concluded that the Court has arrived at a similar position to PC19 (DV) although, in his view, there are some notable differences that are material to this application. The location of the eastern arterial road further west and the termination of the E2 sleeve at Road 5 has resulted in an increase in the area of Activity Area E1 from 17.65 hectares to 25.33 hectares, which represents a 30% increase. Activity Area D has also been increased from 13.97 hectares to 17.05 hectares. Accordingly, as the Applicant has noted, the proposal now only represents a 7% loss of E1 land (reducing to 4.2% if Activity Area D is included). Overall, even when the area required by the current

proposal is subtracted, there is a net gain of 5.88 hectares of E1 land as compared to the position under PC19 (DV).

61. Notwithstanding the overall net gain in the area of E1 land, Mr Cubitt was of the view that there remained the potential for an adverse effect on the supply of industrial land in the future. While the degree of this effect was not as significant as under PC19 (DV), in his opinion it could still be considered more than minor in view of the potential adverse consequences for the *quality* of industrial land available should commercial activities be in competition with industrial activities. He considered it relevant that the High Court noted that the Environment Court in the *Foodstuffs* decision had concluded that the Frankton Flats B Zone was not going to meet all of the need identified for industrial land, "irrespective of which numbers are used".[10] Mr Cubitt considered that *"this lends weight to the conclusion that losing industrial land will have a more than a minor adverse effect"*.

62. Mr Cubitt noted that the Applicant's planner, Mr Vivian, considered that the Frankton Flats land is not the last green field site remaining within the urban boundary. In Mr Vivian's analysis, large green field sites exist outside the urban growth boundary that could accommodate industrial activities, although he acknowledged that there would be uncertainty around the ability to develop such sites for industrial purposes in the short-term (given the need for either resource consent or a plan change). This suggested that in the long-term there is additional land in the District that could provide for industrial activities.

63. Following issue of the Section 42A report, further expert evidence was lodged on behalf of the Applicant by Mr Fraser Colegrave, an economist, and Mr Vivian.

64. Mr Colegrave's evidence focused on the methodology and results of the 2006 Commercial Land Needs Study (CLNA), which he described as a "key document that underpinned and informed Proposed Plan Change 19 to the Operative District Plan". Mr Colegrave considered the economic rationale for protecting and fostering yard based and transport industrial activities within the District, which was a key objective of the CLNA; the CLNA's projections of future commercial land requirements; estimates of future land needs using the same methodologies as the CLNA; and the implications of his analysis for the Mitre10 Mega and Foodstuffs applications.

65. Mr Colegrave identified that the key stated objective of the CLNA was to provide dedicated land to foster the growth of yard based and transport related industries. He stated:

> *"Apparently, this is because at the time the CLNA was prepared, such industries were identified as being 'essential to the continued growth of the Queenstown and Wanaka area".*[11]

66. Page 1 of the CLNA described the situation in 2006 as follows:

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[10] *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 815 at [40].
[11] Paragraph 3.3.1 on page 22 of the CLNA.

> *"It is apparent that the District does not have an industrial base, and that most activities seek a town centre or mixed business location … Within this overall picture, there are a range of transport and yard based activities that service the local economy and which are likely to be 'squeezed out' over time by rising land values should the current approach continue. While these activities could be located in Cromwell, their absence from the District is likely to harm the functioning of the local economy."*

67. Notwithstanding the report's emphasis on this key objective, Mr Colegrave could find no explanation in the CLNA as to the importance of these industries or the risk of their loss. Rather, he concluded that the issue was "*stated as fact without supporting explanation"*. Neither could he find any supporting strategy or report that could establish the importance of these sectors to the local economy (and hence the desire to protect them). Accordingly, Mr Colegrave carried out his own independent research and found:

    (i) The data showed that the transport and yard based industrial sectors had flourished between 2000 and 2006: the Queenstown Lakes District experienced 80% growth in this employment category over that period. The concerns of the CLNA about this sector being "squeezed out" were therefore not supported by official employment data;

    (ii) When the relevant data is analysed, it is tourism related industries that are critical to the local economy, not yard-based and transport industries. On the contrary, the latter sector is less important to Queenstown than the national average;

    (iii) Very few of the industries defined as "yard-based" and "transport" by the CLNA were important suppliers to the tourism industry. Accordingly there is no evidence to support the claim that yard-based and transport activities are important to the local economy and that there is a need to "protect" them; and

    (iv) There is no clear evidence that market failure was present in the District's commercial land market in 2006. Accordingly, there is no obvious rationale to protect yard based and transport industries via intervention (as the CLNA recommends).

68. Mr Colegrave concluded that:

> *"Not only does this recommendation lack economic rationale, but implementing it would also likely reduce economic efficiency, not improve it. The reason is that, in a freely operating land market, each land parcel is generally allocated to the entity that values it the most. Since resources are scarce relative to demands, this is the most efficient outcome, and anything that distorts this natural mechanism will erode economic efficiency. … Further, it is important to realise that markets are self-correcting. For example, if a shortage of land causes prices to rise sharply over time, they will eventually reach the point where further rezoning is commercially attractive. As further land is rezoned, supply will increase and prices will (eventually) fall."*

69. Mr Colegrave also concluded that:

> *"The loss of some yard based and transport businesses to Cromwell would not have any real impact on the functioning of the local economy and hence the CLNA's desire to insulate them from natural competitive pressures (in the land market) cannot be*

justified. On the contrary, doing so may cause economic efficiency to fall by preventing higher value uses from occupying 'protected' land."

70. Mr Colegrave reviewed the CLNA demand projection methodologies and concluded *"these contained fundamental flaws"*. As a result, the CLNA wrongly overstated demand and understated capacity, resulting in future land requirements being grossly exaggerated. Although the CLNA's methodology is widely accepted and commonly used, Mr Colegrave found that the specific inputs and assumptions used in the CLNA were extremely unrealistic. As a result, the CLNA grossly over-estimated future land requirements for industrial land in this District.

71. In response to questioning from the Commission, Mr Colegrave stated that if the total industrial land area under the Structure Plan that has emerged from the Court's interim decision was to be set aside (Activity Areas D and E1), it is unlikely that this land could be utilised for its prescribed use in 100 years.

72. Mr Colegrave carried out his own independent projections of future land requirements by populating the same methodologies used in the CLNA analysis with more realistic inputs and assumptions. He concluded that industrial land requirements are in fact roughly half of those stated in the CLNA. His medium estimates of industrial land requirements over a 20 year period to 2026 are between 22 hectares and 24 hectares, compared to at least 54 hectares under the CLNA. In other words, the District's actual future requirements for industrial land are likely to be at least 30 hectares less than previously thought. As a result, Mr Colegrave concluded that the loss of industrial land in the E1 Activity Area to accommodate the Mitre10 Mega and Pak'N'Save applications was an "insignificant loss". He stated:

> *"Indeed, continuing to debate the specific percentages of industrial land that would be foregone seems a futile and unnecessary exercise given the significant head room that exists when more realistic demand projections are used. In my opinion any potential adverse effects associated with the loss of industrial land would be negligible and is certainly not a valid reason to deny resource consent."*

73. Mr Vivian also examined the CLNA from a planning perspective and concluded that the CLNA made some material assumptions in order to justify its finding's recommendation. Mr Vivian noted that the findings and recommendations of the CLNA were not tested in the Environment Court or the High Court, yet they formed an integral part of the Section 32 evaluation for the PC19 land. In particular, he identified an assumption made by Council that the existing Glenda Drive Industrial Zone would be rezoned a Business Zone (rather than Industrial) once the new yard based and transport related industrial area had been identified. He found that *"there has been no move by Council to rezone the Glenda Drive Industrial Zone*" and that *"there remains approximately 30 hectares available for industrial use in this Zone"*. Mr Vivian also considered that the CLNA failed to recognise the potential level of industrial activity that is permitted to occur within the Queenstown Airport Mixed Use Zone and within the Queenstown Airport Designation. In effect, significant industrial activity related to transportation and airport operations currently occurs, and will in future be located within the QAMUZ and the QAD.

74. Accordingly, Mr Vivian reached the conclusion that the effect of the proposal on the quantity of the industrial land resource in the District will be minor.

75. We have examined in detail the decision of the Environment Court in PC19 (Interim Decision). Judge Borthwick makes a thorough assessment of land use demand at Part 4 of her decision.[12] The Judge commenced this part by recording her concern with the inconsistent use of terms (including terms that are poorly defined or undefined) and key documents including the 2006 Commercial Land Needs Analysis, the Operative District Plan and also the evidence of some of the witnesses.

76. In respect of the CLNA, Judge Borthwick noted at paragraph [135]:

> *"The 2006 report prepared on behalf of the District Council identified a diverse range of land use requirements. The provision of land activities that cannot be located in Town Centre environments were seen as important for the District's ongoing development. The 2006 report forecast that by 2026 there would be demand for 60 hectares of future Urban land, of which 28-30 hectares was required for mixed business areas and 30 hectares for yard based and transportation activities."*

77. The Court noted at paragraph [136] that the 2006 CLNA highlighted the shortage of land for commercial uses (business and industrial), describing the need in the following way:

> *"… the district is now facing imminent constraints on the supply of land zoned for commercial uses, particularly for non-town centre based employment activities (business and industrial activities). The current stock of vacant commercial zoned land in the district is likely to be fully developed soon. While new commercial areas are being planned, and there are opportunities for redevelopment of some existing employment areas for more intensive use, it will be necessary to identify additional land for town centre, mixed use, business and industrial activities".*

78. At paragraph [137] Judge Borthwick noted that:

> *"As a consequence, the District Council sought advice on the amount of commercial land needed to sustain the growth of the local economy to 2026."*

79. The Court quoted the evidence of Mr D Mead, the author of the 2006 CLNA report and also QLDC's Policy, Planning and Retail Analyst in the Environment Court proceedings, as follows:[13]

> *"It is apparent that the District does not have an industrial base and that most activities seek a Town Centre or Mixed Business location. The District Plan reflects this, with the Business and Industrial Zones being very similar in nature. Within this overall picture, there is a range of transport and yard based activities that service the local economy and which are likely to be squeezed out over time by rising land values, should the current approach continue. While these activities could be located in Cromwell, their absence from the District is likely to harm the functioning of the local economy."*

80. Having considered the full recommendations in the report, the purpose of PC19 at the time of notification and the decision of the Commissioners appointed by the Council to hear and decide the submissions on PC19, the Court accepted Council's fundamental proposition that

[12] Paragraphs [133] to [221] of the Interim Decision.
[13] Interim Decision at paragraph [137].

Queenstown/Wakatipu will face significant constraints over the next 20 years in its ability to accommodate industrial and business activities. At paragraph [145], the Court noted that:

> *"Save to the extent that there may be a demand for retail floor space that is unmet by existing and planned zones, we understand overall that the 2006 Commercial Land Use Needs Analysis is not seriously challenged by the parties' witnesses."*

81. It is plain from the ensuing discussion that the Court relied heavily on the 2006 CLNA, the evidence of its author, Mr Mead, and, indeed, the evidence of the other expert witnesses, none of whom seriously challenged the findings of the CLNA or the projected requirement for industrial land over the next 20 years. We will return to the significance of this issue in our discussion on the objectives and policies that have resulted from the Court's interim decision.

Qualitative factors

82. In the *Foodstuffs* Decision[14], Fogarty J addressed the importance of the assessment of the qualitative factors in relation to the analysis of adverse effects. He stated:[15]

> *"As the Environment Court recognised, analysis of adverse effects is both a qualitative and quantitative exercise. It is impossible to use an arithmetic measure of quality."*

83. At paragraph [112]:

> *"Reducing the adverse effects of the Pak'N'Save proposal to 5% or less does not give one the answer as to whether that will be a 'minor' non-complying activity … Second, the percentage does not really tell the consent authority anything about the quality of the land for industrial uses. It might be not only land that is intended to be zoned Industrial, but land which the marketplace will find is highly desirable as industrial land, rather than land for some other activity. It may also have other desirable qualities, namely for commercial use. That will pose a difficulty for the decision-makers who will have to decide how tightly to define the range of activities on that piece of land, depending on what goal they are trying to achieve."*

84. We accept the High Court's reasoning that while a simple arithmetical measure of the percentage of land lost may be of relevance to quantity (although not in an absolute sense), it does not assist in determining how the quality of industrial land is affected. For example, granting consent to non-industrial activities that compromise the functionality of an important transport link, or which create significant reverse sensitivity issues would affect the quality of the Industrial Zone irrespective of the area of industrial land utilised by that activity.

85. Mr Vivian comprehensively addressed the quality of the potential loss of industrial land in Activity Area E1, particularly the quality of the industrial land available should trade retail activities be in competition with industrial activities (and hence result in upwards price pressure on land). He accepted the evidence of Mr Heath, who discussed the nature of trade-based retail activities, and concluded that:

> *"Such activities have a heavy reliance on the trade market to purchase their products and less on the general public as a proportion of trade sales. Trade based activities*

[14] [2013] NZHC 815 at paragraphs [111]-[115]
[15] At paragraph [111]

> *typically locate on non-centre business/industrial zoned land due to the lower cost structures and the ability to secure larger sites than typically available in town centre environment."*

86. Accordingly, Mr Vivian concluded that trade-based retail is complementary to "pure" industrial activity. He considered the issue of the quality of the industrial land available should trade-based retail activities be in competition with industrial activities will be minor as a result of the proposal given:

    (i) The nature of the trade-based retail activity and the findings of Mr Heath;

    (ii) The amount of industrial land provided for by PC19 with reference to the findings of Mr Colegrave; and

    (iii) The highly regulated nature of the PC19 provisions and unlikelihood of a precedent being set.

87. At the hearing there was considerable discussion regarding the qualitative assessment of adverse effects on industrial land and what factors may be relevant. Mr Cubitt commented that, in his experience, industrial activities seek land that provides a relatively flat topography, is of a size that enables the creation of relatively large sites, has good access to important transportation routes, is in close proximity to services, enables the establishment of activities that have a lower level of amenity and which can generate adverse effects without impacting on more sensitive activities (reverse sensitivity), and is affordable, given that industrial activities do not usually generate the returns that other commercial activities (such as retail) do per square metre. Provided the factors outlined above are not compromised, any effect on the quality of the remaining industrial land is, in his opinion, likely to be minor.

88. The evidence of Mr Heath in particular was that large-scale trade retail facilities such as the Mitre10 Mega proposal are inherently suited to industrial sites. Such activities (which have become more common in the past 10 years) seek to locate in industrial zones as their effects are similar; that is, large buildings with outdoor yard areas serviced by heavy vehicles, which are not desirable in a Town Centre area. Mr Heath stated at paragraph 31 of his evidence:

> *"These activities are an important part of the market and typically located on non-Centre Business/Industrial Zoned land due to lower cost structures and the ability to secure larger sites than is typically available in Town Centre environment. They can also generate additional truck movements, four-wheel-drive vehicles with trailers, etc., i.e. larger trade vehicles that can carry building and home improvement materials away from the site."*

89. In response to questions at the hearing, Mr Heath explained that large-scale trade facilities, such as Mitre10 Mega, traditionally locate in industrial zones where they are close to the market that they service and comfortable with traffic generation. In this respect the subject site was ideal, as there was good accessibility to the wider market without the complications of being located in the suburban area or a town centre environment. The facility would be easily

accessible by its trade and general public customers without creating any conflict (particularly in terms of traffic and reverse sensitivity effects on any other industrial use that might be located nearby).

90. Accordingly, the only remaining issue in relation to the adverse effects on the quality of industrial land supply would appear to be the valuation or "price" factor; that is, higher-returning commercial activities might raise the price of the remaining industrial land to a point where traditional industrial activities can no longer afford to be located there. This seemed to be the primary concern of the High Court.

91. Mr Cubitt, in his reply, considered that there was no evidence to suggest that locating large format retail stores such as the Mitre10 Mega in industrial zones had caused a problem in relation to the value or price of the remaining industrial land in other districts within New Zealand. This was confirmed by Mr Heath during questioning.

92. Given the quantity of industrial land reserved in Activity Areas E1 and D, and the proximity of relatively large areas of this land to the airport, we consider it highly unlikely that this proposal could have the effect of increasing overall land prices required to sustain industrial activity in this District (on the basis of Mr Colegrave's analysis) by any significant amount for the foreseeable future.

93. Accordingly, based on our analysis above, we have formed the view that any adverse effects of the loss of industrial land on a qualitative basis are likely to be insignificant.

Summary

94. In the addendum to his Section 42A report, Mr Cubitt canvassed the new evidence produced by Mr Colegrave, Mr Heath and Mr Vivian, and considered the serious apparent shortfalls in the CLNA's various planning assumptions and the resulting calculation of the amount of industrial land required. He noted that no other contrary or rebuttal evidence has been produced on this issue. Having carefully considered the evidence of Mr Colegrave, together with Mr Vivian's examination of the CLNA from a planning perspective, Mr Cubitt accepted that the loss of industrial land to the proposed activity is at worst minor. On that basis, he was satisfied that the proposal passes through the effects gateway of the section 104D test and, accordingly, can be considered under section 104.

95. Having reviewed the evidence thoroughly and having had the opportunity to question Mr Colegrave, Mr Heath and Mr Vivian, we have reached the inescapable conclusion that:

    (i) The CLNA's estimates of future land requirements for yard-based and transport industries were grossly exaggerated. When more realistic inputs and assumptions are used, future

industrial land requirements fall to approximately half of those projected by the CLNA and provided for in Activity Areas E1 and D under PC19 (DV) and PC19 (Interim Decision).

(ii) The CLNA's conclusion that there is a need to foster and protect yard-based and transport industries is unsubstantiated. There is no explanation as to why yard based and transport industries should be protected, nor was there any evidence of their importance to the local economy. Claims that they are being "squeezed out" of the District are not substantiated by an analysis of the growth in these activities. Accordingly, the projections contained in the CLNA, which have formed the basis for both the Environment Court's and the High Court's concerns in relation to the loss of industrial land, are grossly exaggerated and unreliable.

96. Finally, we observe that the submitter in opposition, QCL, accepted that the CLNA may have some deficiencies.[16] In its submission (as lodged) QCL stated that the shortage of industrial land was the underlying driver for the rezoning of land for this purpose within the PC19 area. If this is the case, the lack of any robust peer review of the CLNA, together with Mr Colegrave's evidence suggests that, inter alia, the protection of more than double the required area for industrial purposes raises serious questions about the suitability of the Structure Plan in PC19 and its implications for the District's economic future. We need not make any finding in this regard other than to be satisfied that the loss of land to this application, in conjunction with the Mitre10 Mega application, will not impact on the availability of industrial land in this District – in both qualitative and quantitative terms - for the foreseeable future.

Landscape Character and Amenity

97. Mr Cubitt discussed the evidence in relation to landscape effects in considerable detail at pages 19-22 of his Section 42A report under the assessment criteria contained in the Operative District Plan and also against the relevant assessment matters for "landscaping and/or building" under PC19 (DV).

98. With respect to the ODP, both Mr Cubitt and the Environment Court[17] found the proposal consistent with most of the assessment criteria but acknowledged that introducing densities that reflect those "characteristic of urban areas" was potentially an issue. This concern was, however, dismissed on the basis that the Operative District Plan had identified areas for urban development within the Frankton Flats area. In a similar vein, the effect on the rural amenity of the neighbourhood was considered minor.

99. Although strictly speaking there may be an adverse effect on landscape matters when assessed against the criteria contained in the Operative District Plan, it is also clear that the current rural

[16] QCL Legal Submissions at para 8.7.
[17] *Cross Roads* decision at paragraph [56].

environment is not intended to stay rural but will eventually be urbanised in some form. The Environment Court concluded that under both the Operative District Plan and PC19 (DV), adverse landscape effects would be minor, subject to some minor modifications to the proposal.

100. The modifications recommended by the Environment Court have been made to the current proposal. However, we acknowledge the concern of the Court in respect of the bright orange banner, which may not be screened by other development for some years. The Court dealt with this by a review condition similar to the condition imposed in the *Foodstuffs* application.

101. In relation to this application, Ms Mellsop considered that the building would be relatively consistent with PC19 (DV) objectives, policies and assessment matters, and have fewer adverse visual effects if the Mitre10 Mega corporate orange is initially limited to a band at the base of the mezzanine level on the north-west façade and the size of the MEGA sign was reduced. She suggested that a second stage of branding and signage could be implemented once the relevant parts of the building were effectively screened from State Highway 6 by landscaping or intervening development. Since the Environment Court decisions in the *Cross Roads* and *Foodstuffs* applications were decided, the decision on the Higher Order matters (the Interim Decision) has been issued. Objective 1 of the Interim Decision (although this is not yet settled) does appear to strengthen the landscape provisions. In Ms Mellsop's opinion, her revised approach would also be necessary to achieve Objective 1 of the Interim Decision, which places more emphasis on the amenity views from the State Highway.

102. Having reviewed the Environment Court decision and the evidence before us, we remain concerned about the impact of the branding and signage proposed in the current application. Ms Mellsop stated:

> *"The conspicuous orange colour of the upper north-west façade would detract from the background vista of the outstanding natural landscape to a moderate extent. The bright colour could not be considered in any way complementary to the surrounding landscape character".*

103. In his evidence, Mr Espie commented in relation to the proposed building: "*Its upper half is to be mostly finished in a dark and recessive colour, although the orange colour of parts of the building is not complementary to the surrounding landscape".*

104. Mr Vivian, the planner representing the Applicant, explained that: "*The proposal reflects nationwide branding and signage has been reduced 25% from that approved by the Environment Court in Decision NZEnvC 177 (146.58 m² to 110.65 m²)*". He continued: "*The orange colour is the corporate branding of Mitre 10 Mega and has been kept to a minimum … this limited use of corporate colours is considered appropriate and duly recessive given the*

scale of the building. It is also considered to enhance the overall appearance of the building rather than to detract from it".

105. Mr Whittaker, the architect of the building, considered the orange branding colour acceptable and in submitted in Environment Court evidence that: *"The orange accent colour incorporated in the design is contained within the architectural form and patterning of the structure. I note that despite the fact that the orange colour is the corporate colour of Mitre 10 Mega, it enlivens the building, and complements the natural earthy tones of the metal, stone and timber surfaces".* Mr Whittaker was of the opinion that the Environment Court did not consider the orange branding to be a significant issue.

106. With respect to Mr Whittaker and Mr Vivian, we have a contrary view and share the concerns of Ms Mellsop and Mr Espie regarding the orange branding. While we accept that it is the national branding colour for Mitre10 Mega developments, we are not persuaded that its proposed use is appropriate in this particular landscape. In our view, the excessively bright orange colour will be visible in the foreground of a sensitive landscape for the foreseeable future, from both SH6 and from other public places. The colour is not in our view an architectural component; rather, like any branding, it is a way of attracting the attention of passing customers and is deliberately designed to make a bold statement. While this may be usual business practice, there is an onus on the Applicant to find an acceptable balance given the sensitivity of the receiving environment.

107. Mr Heath was of the view that the M10M store will be a destination store for regional residents: "*In my view the proposed M10M store can be considered a regional store servicing a more extensive catchment geospatially compared to its more urban counterparts in main cities of NZ".* We accept this evidence and consider that if 'passing trade' is less of a focus, the Applicant does not need the degree of signage and bright branding proposed to attract potential customers. As a destination store, in our view it is not necessary to have an exaggerated presence in terms of signage and branding.

108. As discussed above, Ms Mellsop suggested that a two-tier signage and branding strategy, similar to that proposed for the neighbouring Pak 'N Save application, would be more appropriate. However, having considered all of the evidence, we have rejected the two-phase proposal as an interim solution. It is our conclusion that signage and branding needs to be permanently reduced in scale and impact, for the reasons expressed above, to avoid the adverse effects on landscape and amenity being more than minor. We are cognisant that these two applications are the "first off the block" for this area of Frankton Flats, and are likely to set the scene for future development. Support for our approach is also found in the policy direction and Objectives 1 and 4 of PC19 (DV), which recognise, inter alia, that further development on the Frankton Flats must maintain and enhance the amenity of the approach to Frankton.

109. Accordingly, a condition of consent has been imposed that restricts signage and branding to the following (with reference to the Elevation plans):

- One band of orange only is permitted below the mezzanine on all four facades (as shown on Mason and Wales Drawings A101 C and A102 C dated 25 July 2013).
- The orange cladding on the north west façade (Drawing A100 C) is to be removed and replaced with a cladding either of the same colour ('Ironsand') as the rest of the cladding on the other façades (for example, Drawing A102 C), or a similarly recessive colour.
- While we accept the building has large facades that can absorb some oversize signage, the MEGA sign on Drawing A100 C at 46.1 m² is still excessive and needs to be reduced by 25% to 35 m^2. If reduced in size, it may remain the corporate orange colour.
- The proposed black 'Low Price 15% Guarantee' sign on the north west façade (Drawing A100 C) may be changed to white or a similar colour so that it will contrast with the new dark cladding colour.

110. In summary, we are satisfied that with the addition of the signage and branding condition outlined above, the adverse effects on the landscape and amenity values will be no more than minor.

Urban Design Effects

111. In his Section 42A report, Mr Cubitt sets out the issues in relation to the assessment of the urban design effects and comments in detail on the findings of the Environment Court. The Court noted that the site is zoned for Industrial Activities under PC19 and, accordingly, buildings on an industrial scale are expected. On the basis of the mitigation offered and the proposal being amended as recommended in its decision, the Court was satisfied that the adverse effects of the building on urban design and form of this eastern part of the Frankton Flats B Zone will be minor. Mr Cubitt has advised that these changes have been made and that the Applicant's Architect, Mr Brewer, has reviewed the amended plans.

112. In his evidence before this hearing Mr Brewer at paragraph 4.2 confirmed that the proposed amendments to the zone that were referred to by the Court were incorporated into the new design submitted in the current RM130521 application. The refined design can be described as amending some details of the original design, but does not significantly alter the bulk, location or broad scale external appearance of that previously proposed. Mr Brewer advised that he has checked the new drawings against section 4 of his original Environment Court evidence, which

addressed the building design against the Plan Change 19 provisions.[18] He confirmed that the conclusions in his addendum report are correct.

113. In his evidence Mr Brewer drew the following conclusions:

- Placemakers and other trade retail businesses (for example, the new Carters currently under construction) are already well established in Glenda Drive;
- Road 2 is a logical location for trade retail due to its easy access from the Eastern Access Road and SH6;
- The proposed site would be visually screened from SH6 and is appropriate for light industrial context;
- The location and design of the café/outdoor centre mitigates the large size of the main store;
- The large car park has been partially screened by landscaping;
- The building has been "split" into five components that mitigate the visual effects of a large format building;
- The main store gable roof has been exposed on the north-east, south-west and south-east elevations as compared to the parapet in the original design. This has reduced the height and visual impact of the store and is a positive urban design enhancement.

114. Mr Cubitt agreed with the Applicant's position that as the business has very significant building, trade and garden components (representing over 50% of the business conducted) it is ideally located to serve the occupiers and customers of the light industrial and trade activities currently located in Glenda Drive, along with similar development that will eventually be established in the remainder of the E1 subzone. The location of the activity (which is accessed by the EAR) is therefore convenient and promotes efficiency. Mr Cubitt also noted that the proposal:

> *"…is not unlike many of the trade retail activities that have established in the existing Glenda Drive and I expect that if it had applied for consent in the existing zone it may well have been successful (given the consenting history in the zone). This however is not unusual as, in my experience, these types of activities have generally established in industrial zones in most other parts of the country (as an example, Mitre10 MEGA, Bunnings and Placemakers are all located in the Industrial Zone of Dunedin)."*

115. In his opening submissions, Mr Todd drew our attention to a recent grant of consent for a Carters trade retail facility in the Rural General zoned land at the southern end of Glenda Drive. This consent was processed on a non-notified basis and supports Mr Cubitt's observation. Mr Brewer noted that a number of other trade retail stores are located in close proximity to the site, including Placemakers and the new Carters.

116. QCL, through Mr Gardner-Hopkins, cautioned us against relying on Judge Jackson's decision in relation to urban design effects on the basis that the High Court found that the Environment

[18] Per Mr Brewer's Addendum report dated 13 August 2013, which was attached to the RM 130521 application as Appendix K.

Court did not construe the frame of the environment, or the objectives and policies, correctly. Accordingly, in his submission any finding of the Environment Court as to minor effects or otherwise in that context has to be suspect and open to reconsideration.

117. In his evidence, Mr Lala concluded that the large format trade retail building proposed has the potential to erode the urban character of the locality; however, he noted that the building is wholly located within the Industrial Zone, E1. He accepted that the building's proposed location away from the EAR, its set-back from the road and its proximity to the Glenda Drive industrial area lends support to the application, as these elements will appropriately screen the development from the roading environment (by way of future potential buildings combined with landscaping) and will enable linkages to the Glenda Drive industrial area. He also agreed with the AEE and the Section 42A report conclusions that the Mitre10 Mega store, which primarily includes building, trade and garden components, was suitably located to serve the occupiers and customers of the Glenda Drive industrial area. Although Mr Lala recognised that the Mitre10 Mega proposal is not unlike many of the trade retail activities that have established in Glenda Drive, in his view the key point of difference is the scale of the development when compared to the existing Glenda Drive area. At approximately 1.8 hectares in land area, the Mitre10 Mega development is significantly larger than the existing predominant activities in Glenda Drive, and therefore has the potential to create adverse urban design effects. However, Mr Lala concluded overall that the adverse effects relating to character and amenity in terms of urban structure would be minor.

118. Having carefully considered the fresh evidence of Mr Brewer, Mr Whittaker (the Applicant's Architect), Mr Vivian and Mr Cubitt, together with the evidence of Mr Lala, we are satisfied that any effects on urban design will be less than minor. In reaching this conclusion we have had regard to the findings of the Environment Court, as modified by the changes to the application.

<u>Conclusion on actual and potential effects on the environment – Section 104D(1)(a)</u>

119. Having reviewed all of the evidence in front of us, including the response to questions put to witnesses at the hearing, we are satisfied that any actual and potential adverse effects on the environment will be no more than minor subject to the conditions which form part of this consent. In reaching this conclusion, we have had due regard to the findings of fact reached by Judge Jackson's division of the Environment Court and the review of the amended proposal by the Applicant's witnesses, Mr Cubitt and Mr Lala.

120. We are satisfied that based on the evidence of Mr Colegrave, Mr Heath and Mr Vivian, that the major issue, the potential loss of industrial land, will be no more than minor when the adverse effects are assessed in both quantitative and qualitative terms.

121. Accordingly, the proposal passes through the effects limb of the section 104D test.

Objectives and Polices of the Operative District Plan and the Proposed Plan (PC19 (DV)) – Section 104D(1)(b)

122. In formulating our approach to the assessment of the objectives and policies in accordance with the requirements of section 104D(1)(b), we have had regard to Mr Todd's submission where he made the Applicant's position clear that "it would have some difficulty in seeking to establish that we can pass through the second gateway" based on Justice Fogarty's decision in the High Court.[19] Accordingly, although we have had regard to Ms Crawford's well reasoned legal submissions in the Pak'N'Save application, for the purposes of this decision we have accepted that we are bound by the decision of Justice Fogarty that if an application is found to be contrary to even one single objective or policy, it will fail to pass this threshold test.[20] We note that this approach to the interpretation of the legal test was also advanced by Mr Gardner-Hopkins.

123. The Reporting Officer has carried out a very comprehensive assessment of the objectives and policies of the Operative District Plan and PC19. Mr Cubitt concluded that the proposal is not contrary to the policy framework of the Operative District Plan and, on the contrary, implements many of its policies. Accordingly, the Operative District Plan is not an impediment to the proposal passing through the section 104D objective and policy gateway test. In reaching this conclusion, Mr Cubitt has had regard to the evidence of Mr Vivian, in particular. Having reviewed the evidence of Mr Vivian and Mr Cubitt, we concur with Mr Cubitt's conclusion.

124. Both the Reporting Officer and Mr Vivian carried out a thorough analysis of the relevant objectives and policies under PC19 (DV).[21] Mr Cubitt and Mr Vivian both considered that the proposal is not contrary to any of the policies under landscape, interfaces, integration and improving connections, infrastructure and the high quality urban environment. However, it is plain from the evidence that the key policy suite is that associated with Objective 10, which is: *"To create additional zoning for light industry and related business activity within the Frankton flats Special Zone (B) (Activity Areas E1 and E2)"*. Objective 10 was modified by in the Interim Decision of the Environment Court and the objective restated as: *"To provide an area for industrial and related service activities which have a standard of amenity, pleasant to visit and work within, while recognising the function of the activity area"*.

125. In carrying out our assessment under the Proposed Plan, we have considered PC19 (DV) as modified by any final findings of the Environment Court in its Interim Decision. In this respect, the changes made to PC19 (Interim Decision) in relation to Objective 10 are not final but are subject to a further decision of the Court. Notwithstanding this, we have had regard to the interim changes and any impact that this might have on our assessment.

[19] Submissions of Applicant in Reply at paragraph 18.
[20] *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 817 at [37].
[21] Pages 75-105 of the AEE and pages 29-34 of the Section 42A report.

126. Although Objective 10 in PC19 (DV) applies to activity areas E1 and E2, Objective 10 in the Interim Decision applies only to area E1. Mr Cubitt noted that the effects-based policies (10.3, 10.6, 10.7, 10.8, 10.9, 10.10, 10.11, 10.12 and 10.13) in PC19 (DV) and the corresponding policies in the Environment Court's interim decision are, where relevant, generally given effect to or are not compromised by the proposal. However, it is the "use" or "enabling" policies that present some difficulty. In particular, Policy 10.1 in PC19 (Interim Decision) seeks to reserve the E1 area for industrial and related service activities, which differs from the reference to "predominantly industrial and trade service activities" in PC19 (DV).

127. We concur with Mr Cubitt that the proposal is not predominantly "industrial" or "related service activity" or "trade service activity" but contains elements of all three. The definition of both activities includes the qualifier "for the primary purposes of". It is plain that the industrial activity component is not the primary purpose of the Mitre10 Mega proposal, and while the building, trade and garden components represent over 50 percent of the business conducted, the primary purpose is in fact trade retail. As a result, these aspects, along with the other retail activities proposed, are not enabled by the Objective 10 "use" policies.

128. The policy that presents the most difficulty for the proposal is Policy 10.11 which states: *"To ensure that sites are used for the intended function of the activity area, any office space and retail activities must be directly ancillary to, and minimal in comparison with the principal use of the site"*. This corresponds to Policy 10.4 in PC19 (Interim Decision). It is plain that the primary use of the site is retail and that the construction of the policy does not provide for this scenario.

129. Accordingly, the proposal is at best inconsistent with Policy 10.1 and contrary to the "use enabling" Policy 10.11 of PC19 (DV), and contrary to Policies 10.1 and 10.4 of PC19 (Interim Decision). There was no disagreement amongst either the witnesses or legal counsel in respect of this conclusion. Mr Todd, in his opening submissions for the Applicant, acknowledged that some specific objectives and policies are aimed against retail in the E1 Activity Area, and at page 109 of the application Mr Vivian concluded that the application is contrary to the objectives and policies of PC19. Similarly, Mr Cubitt concluded that with respect to the E1 Activity Area of the proposed Plan Change (PC19), the proposal is contrary to the enabling part of the policy framework of that subzone under both PC19 (DV) and PC19 (Interim Decision). As a consequence, he concluded that the proposal does not pass through the gateway test set out in section 104D(1)(b).

130. As Mr Gardner-Hopkins submitted, this position is supported by Fogarty J's findings in the High Court. At paragraph [35] of the decision, Fogarty J found:

> *"No consent authority informed by the purpose of section 104D and applying section (1)(b) as intended could have been satisfied that allowing two big box retail operations to locate in the E1 and E2 zones would not be contrary to at least 10.1, 10.2, 10.5 and 10.11".*

131. Having considered the evidence before us and the submissions made by the various parties, we have concluded that the application fails to pass through the section 104D(1)(b) objectives and policies gateway test as it is at best inconsistent with Policy 10.5 and contrary to policies 10.1 and 10.11 of PC19 (DV). We note for completeness that our conclusion in respect of this application would have been the same if we had applied the more holistic legal test consistent with the practice (including higher authorities) that was generally accepted prior to Justice Fogarty's decision.

Section 104 Assessment

132. As the proposal has passed the first limb of the section 104D(1)(a) gateway test, we are required to assess the application under section 104.

133. Section 104 requires us to have regard to the following, subject to Part 2, when assessing this application for resource consent:

(a) The actual and potential environmental effects of allowing the activity;

(b) The relevant planning framework, which in this case is the Operative District Plan together with the proposed Plan Change; and

(c) Any other matters.

134. We are cognisant that the application must be assessed under both the Operative District Plan and Plan Change 19. As previously stated, the version of Plan Change 19 that is required to be followed is PC19 (DV) as modified by any final findings of the Environment Court in its interim decision. The question of the weight to be attributed in forming an overall decision will only become a relevant issue if the outcomes under the two planning frameworks differ.[22]

<u>The actual and potential environmental effects of allowing the activity: section 104(1)(a)</u>

135. As set out above, we are satisfied any adverse actual and potential effects on the environment are less than minor and, in many cases, are insignificant. In reaching this conclusion, we have had regard to the evidence contained in the AEE and supporting appendices, and the evidence of both the Applicant's witnesses and the Reporting Officer. We emphasise that our conclusion is reached in respect of both plans, and we refer to our previous discussion in relation to the supply of industrial land (in particular) under Plan Change 19.

[22] *Stokes v Christchurch City Council* [1999] NZRMA 409 (EnvC); *Bayley v Manukau City Council* (1998) 4 ELRNZ 461 (CA); *O'Connell Construction Limited v Christchurch City Council* [2003] NZRMA 216 (HC).

136. In carrying out an assessment under section 104, we must also have regard to any positive effects of the application. Mr Cubitt has identified a number of positive effects of the proposal, which include:

(i) The community benefit resulting from the national pricing policy associated with Mitre10 Mega;

(ii) The activity will be a major employer in the District both during construction and when fully operational;

(iii) The proposed Mitre 10 Mega Store is a $20 million investment which will employ approximately 67 to 72 full-time employees[23];

(iv) The proposal accords with the stated desire of the Council to lower the cost of living in this community to ensure the continued growth of the region;

(v) The attractive building design and abundance of landscape will contribute positively to the amenity values of what is essentially an industrial zone; and

(vi) The nature of the proposal and its proximity to the existing industrial area is a positive effect, as it is convenient and therefore efficient with respect to the market that it is proposed to serve.

137. Taking into account our conclusion that any adverse effects are minor or less than minor, together with the positive effects of the application, we have formed the view that there is substantial support for the proposal in terms of the actual and potential environmental effects of allowing the activity to establish in the location proposed under both the Operative District Plan and Plan Change 19. This is a material consideration in our overall assessment, subject to Part 2 of the Act.

<u>The relevant planning framework: section 104(1)(b)</u>

138. As previously discussed, we are required to assess the proposal against the Regional Policy Statement, the Operative District Plan and against proposed Plan Change PC19 (DV) as modified by any final findings of the Environment Court in its interim decision.

Regional Policy Statement

139. The Regional Policy Statement ("RPS") contains broad provisions relating to the built environment, including Objective 4.9.1, which seeks "to promote" and "meet the present and reasonably foreseeable needs of Otago's people and communities, provide for amenity values,

[23] *Per the evidence of Mr Jason Acton-Smith at paragraph 24 of his evidence*

conserve or enhance … landscape quality". Both Mr Cubitt and Mr Vivian concluded that the application is not inconsistent with the relevant provisions of the RPS.

Operative District Plan

140. Having reviewed the Section 42A Report and the evidence before us, we have concluded that the proposal is not contrary to the policy framework of the Operative District Plan and, in fact, implements many of its policies. We accept Mr Cubitt's advice that in terms of the merits of the proposal, the Operative District Plan is largely irrelevant as Objective 4.9.3(6) envisages the urbanisation of the Frankton Flats but does not provide any guidance on how this should occur. In his opinion, as PC19 does give specific guidance, he considered this to be the most appropriate plan to assess the merits of the proposal, particularly given its progression through the Plan Change process.

141. Notwithstanding this, the support that the application derives from the objectives and policies of the Operative District Plan, which remains operative, is an important aspect of our overall evaluation, as we are required to form an overall conclusion under section 104 in respect of each plan.

Plan Change 19

142. In his evidence, Mr Lala set out an analysis of the PC19 objectives and policies, noting that there are a number of clear themes running through the Plan Change which apply to the current application. The relevant themes (adopted from Mr Lala's evidence) are considered to be:

(a) Provision for a wide variety of activities in appropriate locations (Objective 1A, Policy 1A.1 and Policy 10.1);

(b) An appropriate quality of urban design in consideration of the activities and buildings anticipated, particularly in relation to the amenity expectations of industrial activities (Policy 1A.6, Policy 4.1, Policy 4.4, Policy 4.5, Policy 10.2 and Policy 10.8);

(c) Streetscape expectations, particularly the EAR (Policy 4.4, Policy 10.4); and

(d) Appropriate activities expected for Area E1 (Policy 10.1, Policy 10.2, Policy 10.5, Policy 10.6 and Policy 10.11).[24]

143. Mr Lala stated:

> *"The more generic objectives and policies provide for a wide range of activities through the overarching higher level provisions. These set out the desire to enable a full mixed use precinct with certain activities constrained to particular locations,*

[24] These policies refer to the PC19 (DV) version.

> *combined with suitable interface controls. The provisions also set out an appropriate quality of urban design and development, particularly in relation to individual buildings and amenity expectations for industrial activities. On these matters, it is my opinion that both the PNS application and the Mitre10 Mega application can satisfy these objectives and policies of PC19".*

144. Mr Lala's view is also fully supported by the evidence of Mr Vivian and Mr Cubitt. We highlight the matters that we consider the most relevant as follows.

145. Objective 1A, titled "*Urban growth and the sustainable management of resources*", together with its corresponding suite of policies, was included by the Environment Court in final form in its Interim Decision, and accordingly forms part of our consideration. In explaining the reasons for the inclusion of the new objective, the Court noted at paragraph [249] that:

> *"There is a lacuna in the QLDC's revision as its Objectives and policies do not address the fundamental issues of accommodating future urban growth and its form, which underpin PC19 as identified in the urban growth and sustainability issue".*

146. Objective 1A seeks to ensure that the zone develops in a manner that provides for appropriate levels of environmental quality and amenity while avoiding or mitigating any adverse effects on the environment. In the explanation and principal reasons for the adoption of Objective 1A and the corresponding suite of policies, the Court noted that the zone "*provides the opportunity for a range of activities, including residential and employment growth in many sectors, and related activities such as recreation*. *The land can therefore contribute to the ongoing social and economic well-being of the District's people and communities"*.

147. Further, the Court stated that development in the zone must recognise certain constraints, including the potential adverse effects of development on the views of Outstanding Natural Landscapes, the proximity of and ongoing operational viability of the airport, and the potential for activities to be incompatible with each other. The zone provides for the integration of enabled activities with adjoining land uses including the Frankton Flats (A) zone such that a town centre will develop; the Glenda Drive industrial area; the Events Centre; and the Remarkables Park Zone accessed by the eastern access road. The Court noted that development will take place at a higher intensity and with a more diverse mix of uses than has generally occurred in Queenstown to date.

148. The specific policies associated with Objective 1A discuss environmental quality and seek to ensure that development provides for an appropriate quality of urban design, including in the public realm, the built environment and amenity values. The overall approach, as noted by Mr Lala, seeks to provide a wide range of activities whilst managing the effects that may result from them. There is a focus on integrated and comprehensively designed planning outcomes.

149. Having assessed the proposal against the specific policies associated with Objective 1A and the explanation and principal reasons for the adoption of those policies, we are satisfied that the application is consistent with and supports the relevant policies, particularly those associated

with contributing to the ongoing social and economic well-being of the District's people and communities, the appropriate quality of urban design, built environment and amenity values, and the avoidance of reverse sensitivity issues through the co-locating of compatible activities. Further, the proposal provides for the integration of enabled activities with adjoining land uses, particularly the Glenda Drive industrial area.

150. Objectives 1 and 2 of PC19 (DV) are not particularly relevant to the present application, other to note that the development will be of a high standard in terms of visual appearance from the State Highway and will not adversely affect background views or view shafts to the Remarkables. The proposal is consistent with Policy 1.7, which seeks to complement the appearance of buildings through the judicious placement of mature trees so building bulk and height is less apparent. Whilst we had reservations about the commercial signage (Policy 1.8), as previously discussed we have concluded that this is capable of being remedied by an additional condition.

151. Objective 4 seeks to achieve a high quality urban environment. In particular, Policy 4.1 is aimed at ensuring a high standard of building design, urban planning and landscape treatment including amenity planting. Policy 4.4 seeks to ensure that subdivision design and the location of buildings on sites is undertaken to maximise views, solar aspect and to enhance street frontage, street presence and amenity. Policy 4.5 seeks to encourage the use of colours and materials that are complementary to the surrounding landscape character. Mr Vivian dealt with this policy framework at pages 86 to 88 of the AEE and concluded that the proposal was not contrary to these policies.

152. We note that the Environment Court in the *Cross Roads* decision considered the PC19 (DV) Objective 4 policy framework in detail and concluded at paragraph [131] that the proposal reached a *"sufficiently high standard of building design for an industrial/business area if amended in the ways we have suggested"*. Mr Cubitt advised that for the most part, these amendments have been made. However, we note that the Court expressed concern about the colour of the corporate branding in the short to medium term (Policy 4.8) and required a review condition to address the issue. As previously discussed, we have formed a more conservative view and have imposed an additional condition to mitigate the adverse affects associated with signage and branding on landscape and amenity values.

153. Arguably, the most directly applicable objective in the suite of objectives and policies contained in PC19 (DV) is Objective 10, which seeks to create additional zoning for light industry and related business activities within the Frankton Flats Special Zone (B) Activity Areas E1 and E2. We have previously commented on the relevant policies in our discussion under section 104D(1)(b), which can be loosely categorised into "effects-based" policies and "use-enabling"

policies. Mr Cubitt concluded that the proposal is not contrary to the effects based policies under Objective 10.[25]

154. It is plain that the nub of the issue is the consistency of the application with the specific policy direction prescribed by the "use-enabling" policies associated with Objective 10 – in particular Policies 10.1, 10.5, and 10.11. As set out previously, we have confined our consideration to the PC19 (DV) version of the objectives and policies as compared to the modifications contained in the Interim Decision, although our conclusion would be the same in respect of the most relevant policies.

155. When the Objective 10 policies are examined in detail, and having had regard to the expert evidence on this issue, we have formed the view that the proposal is, at best, inconsistent with Policy 10.1 of PC19 (DV), which is to enable *predominantly* industrial and trade service activities within Activity Area E1, and, on balance, contrary to the Interim Decision version of Policy 10.1 which provides that only industrial and related service activities are to be established within Activity Area E1. Although the Court has requested further evidence in relation to the range of activities that could be established and the subject matter and function of E1, Mr Cubitt noted that the proposed activity would service industrial activities and that the Mitre10 Mega store would carry out activities on site that would fall within the definition of industrial activities. However, in our view this is perhaps generous and would not necessarily remedy the mischief that this policy was aimed at.

156. Policy 10.5 in both PC19 (DV) and PC 19 (Interim Decision) is also relevant. This policy seeks to exclude activities (such as residential activities, retail and visitor accommodation) that conflict with the intended function of Activity Area E1. Both Mr Vivian and Mr Cubitt have noted that the proposed activity, although part retail, does not necessarily conflict with the intended function of the zone. Rather, it seeks to co-locate with and service certain types of industrial activities and could therefore be seen as complementary to the function of the zone. We note that the proposed activity will not create reverse sensitivity issues with any other kinds of industrial activities that might locate within this zone, which could be an intended purpose of this policy. Accordingly, we are satisfied that the proposal is not contrary to this policy, albeit that on its face it is not entirely consistent.

157. The proposal is, however, plainly contrary to Policy 10.11 of PC19 (DV),[26] which is a prescriptive policy designed to ensure that activities are used to support the intended function of the activity area. The policy provides that any office space and retail activities must be directly ancillary to, and minimal in comparison with, the principal use of the site, which is reserved for "true" industrial uses.

[25] The Environment Court's interim Decision has proposed substantial modifications to Objective 10, which is intended to only apply to Area E1 (Industrial area) and which will be discussed under section 104(1)(c) – Other Matters.
[26] Which is reflected in Policy 10.4 of the Interim Decision.

158. There is no disagreement amongst the expert witnesses that the proposal is contrary to Policy 10.11. The question for the Commission is what weight is to be given to this policy in the broad scheme of PC19 (DV) as modified by any final findings of the Interim Decision, given that nearly all of the other relevant objectives and policies are either consistent with the relevant objectives and policies or, at worst, equivocal. In other words, is Policy 10.11 (supported by Policy 10.1 and to a lesser extent Policy 10.5) the equivalent of a trump card?

159. In forming a broad judgment as we are required to do, we have had regard to the decisions of the Council Commission in Plan Change 19(DV) and the Environment Court to establish the reasons for the very directive use enabling policies that are associated with Objective 10. It is plain that the Court considered the protection of land for "true" industrial activities to be an important resource management issue and a key objective for the E1 zone.[27] From a reading of the decision, the Court was plainly influenced by the CLNA study and the expert evidence of its author, Mr Mead, in reaching this conclusion. However, the evidence before us was that the CLNA is fundamentally flawed and grossly overprovisions the amount of land required for industrial and yard-based activities as defined in the Operative District Plan. It is our view that while policies restricting use are valid and sometimes necessary as planning tools, in making our decision under section 104 we are required to take a broader view of whether granting the application will negatively impact on the intent of PC19 to the extent that it undermines its integrity and the policy direction that it promulgates.

160. In this case, although the proposal is clearly contrary to Policy 10.11 of PC19 (DV), we are of the opinion that it is unlikely in the longer term to materially detract from the overall policy direction of PC19, which is yet to be finally determined by the Court. In forming this view, we recognise that there will be significant positive economic and social effects as a result of the development (which is consistent with Objective 1A), and that the community is underserved with this type of business:

- While the activity is not an industrial activity, it does contain a multitude of industrial elements and has a number of activity components that traditionally locate in industrial zones;

- The effects of the proposal are very similar to those of industrial activities (and hence it is entirely consistent with the effects based policies set out in Objective 10);

- It is conveniently located and easily accessed by its trade and general public customers without conflict (particularly in terms of traffic flows);

- It will not create reverse sensitivity issues with adjoining industrial land uses; and

[27] Paragraph [656] of the decision.

- There are, based on the evidence of Mr Heath and Mr Porter, no suitable alternative sites in the area for large format trade retail activities of this nature and that an undesirable precedent is unlikely to be created given that this kind of activity typically locates in industrial or similar mixed use zones throughout New Zealand.

161. In summary, we recognise that there has been a shift in policy and approach in relation to the protection of land for true industrial uses in PC19 (DV) by the provision of Activity Areas E1 and D, primarily as a result of the conclusions of the CLNA, which were not challenged in the Environment Court. The PC19 (DV) rules, which in their current form proscribe elements of the proposal to be "prohibited" activities (notably the "other retail" component in E1), are strongly indicative of this intention.[28] However, on the basis of the evidence before us it is difficult to reconcile the policy direction of PC19 with the promotion of the economic interests and wellbeing of the community. Such blanket protection of large areas of land for industrial uses that are unlikely to be required even in the medium term is, on the contrary, inefficient and could potentially lead to adverse consequences for economic growth. Accordingly, we are not persuaded that the use enabling policies associated with Activity Area E1, which aim to protect land for more traditional industrial uses, should act as an effective prohibition to a grant of consent to this application. In coming to this conclusion we are mindful that the policy framework has yet to be determined in terms of the specific Activity Areas; however, we note that this is unlikely to change materially in focus.[29]

Other Matters – Section 104(1)(c)

The Environment Court's Interim Decision on PC19 (Higher Order) Matters

162. Both Mr Cubitt and Mr Gardner-Hopkins considered that the Environment Court's Interim Decision on PC19 (Higher Order) Matters was a relevant consideration under section 104(1)(c). At pages 35 to 37 of his Section 42A report, Mr Cubitt discussed the findings of the Environment Court in relation to Activity Area E1. He concluded that the specific objectives and policies set out in Objective 10 reinforce the High Court's finding that E1 was not intended for "big box retail" or any other type of retail activity not directly related to a predominant industrial use on the site. He noted that this finding confirmed the view of the High Court as to the purpose of Activity Area E1.

163. Mr Cubitt also noted that the Environment Court rejected the proposed E3 "trade retail" overlay on the basis that there was land available that in the Remarkables Park zone that would be sufficient to accommodate large format retail activities. On the evidence before us, this appears

[28] For the purposes of our assessment all of the activities must to be considered as discretionary activities under section 87B(1)(c). We record Ms Crawford's submission that it is unlikely that the "prohibited" status will survive in the final form of PC19 after the Environment Court's hearing on the lower order matters.

[29] In forming this view we have had regard to the Planning Expert Conferencing Statement dated 23 January 2014, prepared for the pending Environment Court hearing.

to be a fundamental misconception, and we will address this issue further in our discussion of alternative sites.

164. We have considered the Environment Court's discussion in relation to Activity Area E1 generally as follows.

165. The Court's discussion of Activity Area E1, which is set out on pages 225 to 230 of the judgment, is relevant to our consideration of the overall policy direction for Activity Area E1. At paragraph [646], the Court examines the issue: "*what is the intended function of Activity Area E1?*" and questions whether it is an "industrial area" or more than that. At paragraph [650], the Court noted that the Zone Activity Table contemplated five specific activities for this activity area (some of which may require resource consent) as follows:

- Industrial activities, service activities (including ancillary retail activities);
- Industrial and service activities (including retail service activities) within 50 metres of State Highway 6);
- Yard-based industrial activities;
- Offices ancillary to any permitted or controlled activity (except buildings); and
- A range of activities including panel beating, spray-painting motor vehicle etc.

166. At paragraph [651], the Court noted that this list is expanded in the Ferguson/Hutton version of the Draft Plan Change by adding:

- Yard-based retail located wholly within 50 metres of the EAR, otherwise this activity is non-complying;
- Trade and home improvement retail, within the trade retail overlay; and
- Industrial activities, service activities (including ancillary retail activities) within 50 metres of State Highway 6.

167. The Court noted at [653] the distinction between Activity Areas D and E1:

> *"… is not entirely clear as the range of activities that could establish is similar. A quick review of the rules, standards and methods reveals many of these apply to both activity areas; although there are differences in frontage controls as AA-D has additional provisions that address the amenity of the adjoining activity areas. That said, the principal difference appears to be the maximum building coverage and minimum lot size restrictions that apply as follows".*

168. In its discussions in findings, the Court records at paragraph [656] that:

> *"The provision of land for industrial activities addresses an important resource management issue and a key objective (Objective 1A) for this zone. While we have revised the objective and policies further work is needed. It is important that the parties:*
>
> *(a) Identify the subject matter and function of Activity Area E1 (for example is it to include yard-based activities?); and*
>
> *(b) Either confirm or suggest further editorial changes."*

169. The Court then discussed Policy 10.1 and the use of the word "predominantly" (which was included in the PC19 (DV) version); Policy 10.5, which is concerned to ensure that the use of industrial land is minimised by ensuring adequate minimum lot sizes, and Policy 10.7 by deleting reference to "the principles of comprehensive development". The outcome at paragraph [662] was that *"leave is granted the parties led by the District Council to review and propose a revised version of the objective and policies subject to their overall direction being maintained"*. Under the Court's revision, PC19 (DV) Policy 10.11 was restated as Policy 10.4 (as previously discussed).

170. The Environment Court Interim Decision makes it clear that significant further work is required in relation to the objectives and policies for the E1 zone. In particular, it noted that Council's amended objective substitutes "light industry and related business activity" for "industry" without making consequential changes to the policies. The Court noted that the Council appeared to have overlooked the fact that PC19 (DV) Objective 10 applied to two sub zones, E1 and E2. As a result of the Interim Decision, E2 now sits under its own objectives and policies. The Court stated: *"if approved this may (indeed very likely will) have the unintended consequence of enabling general business to establish in this activity area"*.

171. Having reviewed the Court's evaluation, it is relatively plain that the objectives and policies that relate to Activity Area E1 are likely to undergo some revision. In particular, the distinction between Activity Areas D and E1 is not clear, as the range of activities that could potentially establish is similar. Further, the move by Council to substitute "light industry and related business activity" for "industry", if eventually approved, would enable general business to establish in E1 although, as the Court noted, this may be "an unintended consequence". This suggests to us that although Objective 10 and its associated policies are intended to be specific and directive, the entire purpose of the E1 zone may be subject to further consideration, particularly in view of the separation of E2 and the similarity with Activity Area D.

172. Mr Gardner-Hopkins drew our attention to the Environment Court's rejection of the E3 Activity Area that was pursued by Shotover Park Limited (the underlying land owner for the application site) at the Environment Court hearing. In examining the Court's decision at paragraphs [547] to [560], we note that the Court rejected the establishment of an E3 Activity Area as this would *"most likely develop as a fourth commercial centre and that [the proposed] policies are strongly enabling of this result"*. Overall, the Court concluded that the AAE3 objective was not the most

appropriate way to achieve the purpose of the Act. However, at paragraph [558] the Court stated:

> *"We may have reached a different view on whether there should be provision for a trade retail overlay had Remarkables Park Limited (supported by SPL) not successfully applied for a private plan change enabling up to 30,000 m2 additional retail floor space at the Remarkables Park Zone located near the periphery of its existing centre. PC34 (now operative) is to enable future expansion of the commercial centre, including large format retail activities. In making our determination on all activity areas, we have taken into consideration that there is zoned land to accommodate large format retail activities in the Remarkables Park Zone."*

173. For the reasons which will be further discussed below, on the evidence before us there would appear to be no such provision for large format retail activities either in the Remarkables Park zone or anywhere else in the District. Accordingly, while the Court plainly did not consider large format trade retail to be appropriate in the E1 Activity Area, it came to this conclusion on the basis of quite different and contradictory evidence in relation to both the need to preserve land for "yard based and transport related" industrial activities and the availability of alternative sites for large format trade retail activities. Importantly, there is no suggestion that the Court rejected the desirability of accommodating large format trade retail activities within the District. On the contrary, the Court seemed to be at pains to recognise and provide for all commercial uses (business and industrial) in PC19, as is evident from its discussion at Part 4 of the Interim Decision.[30]

174. We are obliged to take account of the Court's direction and findings; however these must be applied in the context of the unchallenged evidence before us. To that end, we are not persuaded by Mr Gardner-Hopkins' submission that granting this proposal would undermine the Interim Decision. Indeed, from the evidence presented to us in relation to the supply of industrial land, the rationale and basis for the Court's "protection" of the whole of the E1 area exclusively for yard based and transport related activities is perhaps seriously open to question. In any event, it is accepted that large format retail such as the Mitre10 Mega proposal would normally be located within an industrial or a light industrial/business zone for the reasons previously discussed, and accordingly in our view the proposal would not be inappropriate in the E1 area to the extent that it would adversely impact on the integrity of the PC19 in all of the circumstances.

Assessment of Alternative Locations

175. The Reporting Officer, Mr Vivian and Mr Smith (the Managing Director of the applicant company) gave extensive evidence in relation to alternative locations for the proposal. Mr Cubitt noted:

[30] Refer to Part 4 of the Interim Decision, in particular paragraphs [133] to [145].

> *"In assessing an application, the existence of potential alternatives does generally not carry much weight, if any, unless there are section 6 matters in play. An application must be assessed on its merits. In this case, we are dealing with a supposed shortage of industrial land and a non-industrial activity that wants to use industrial land because it cannot find an appropriately zoned site that meets its needs. Because the RMA is enabling (i.e. people should be able to provide for their needs unless the matters in 5(a) to (c) cannot be appropriately provided for), I think this is a matter relevant in the Commissioners' consideration."*

176. Mr Gardner-Hopkins submitted that there is "ample evidence that other locations exist",[31] relying primarily on a previous application for consent at another location. In his opinion, the Applicant is required to "tick the planning boxes" and may therefore need to compromise (for example, by reducing the size of the proposal) if a suitable site cannot be found.

177. The Applicant has assessed the suitability of the land within the large format retail area in the Remarkables Park Town Centre developed as part of Plan Change 34. However, it has been determined that this location is inappropriate for the Mitre10 Mega store for the following reasons:

- The land does not provide an at grade site due to the topography of the designated large format retail area and the size of the site required to develop a Mitre10 Mega store. This was supported by the evidence of Mr Porter, the owner of Remarkables Park Limited, who considered that *"even a cursory review of that land area [Remarkables Park] would reveal the site has significant constraints"*.

- The zoning of RPL is for a mixed use precinct within the District's largest high density mixed use zone. As such, while it is suited to a variety of multi-level buildings including retail offices, visitor accommodation, commercial recreation and residential, it does not lend itself to the 4 hectares of flat development land required for two large format retail stores, nor would these uses integrate well with the proposed surrounding uses.

- The requirements of a large trade customer base and bulky product deliveries to and from the Mitre10 Mega store would be complicated by the pedestrian-focused Remarkables Park Town Centre design, adding to the incompatibility of the proposal in this location.

178. Mr Cubitt noted that while the large format retail area in the Remarkables Park Town Centre does appear relatively flat at the northern extent, it might not be wide enough to accommodate the current proposal. The southern extent, as well as having difficult topography, also appears to adjoin areas set aside for a Seniors' village and for accommodation (which would be an incompatible land use). A school site also adjoins the zone. As Mr Cubitt has noted, the character of activities that possess a large trade customer base and bulky product delivery requirements is not entirely compatible with this environment or a Town Centre environment.

[31] Paragraph 12.10 of Mr Gardner-Hopkins' Submissions.

179. Mr Cubitt drew our attention to a recent non-notified Council decision (RM120817) that permitted a trade retail business to relocate from the Remarkables Park Town Centre to the Glenda Drive Industrial Zone because of the limitations of the Remarkables Park Town Centre for such activities. The decision noted that *"the proposed retail activity will take away 1,532 m^2 of land zoned for industrial purposes"* and that trade retail activities *"are somewhat industrial in nature and are more suited to the industrial environment than a shopping centre or business district"*.

180. Mr Gardner-Hopkins submitted that the Applicant's evidence that the subject site is the only suitable location for a Mitre10 Mega that meets its commercial needs *"must be taken with a (large) grain of salt"*, because it is the Applicant that dictates its commercial requirements. In his view, adopting a model that requires a very large site cannot mean that the proposal becomes more appropriate because the site is large enough to accommodate it. He considered that argument to be circular and would *"allow an Applicant to undermine a plan because of its self-defined commercial requirements"*. While Mr Gardner-Hopkins does have a point, the evidence before us is that the present Mitre 10 store at Remarkables Park Town Centre is inadequate for the kind of activity envisaged by the Applicant including, in particular, the more industrial and yard-based components of it. There is ample evidence to support the Applicant's need for a building and related activities that support its commercial requirements and it is only by obtaining the efficiencies that go with this model that one of the positive effects, competitive pricing, will be enabled.

181. In conclusion, we accept that there are no potential alternative sites at Remarkables Park that would meet the requirements for the proposed Mitre10 Mega store nor, on the evidence of both Mr Smith and Mr Porter, would such a site be available to the Applicant. It cannot therefore be considered a viable alternative location for large format trade retail stores.

182. Having considered the evidence and submissions before us, we are persuaded that there are unlikely to be realistic alternative sites that would accommodate the proposed activity within the Wakatipu area and that declining consent would serve to restrict the development of any large format trade retail activities (which, based on the evidence of Mr Heath, are both warranted and efficient) within this District. This will be further discussed in our analysis under Part 2.

Plan Integrity

183. The Reporting Officer has discussed plan integrity in part 11 of his Section 42A report. He noted that:

> *"In this case we are dealing with a new zone for which one of the drivers has been the accepted shortfall of industrial land. As I noted earlier, the EC Interim Decision on PC19 highlighted the issue with the administration of the current District Plan where the trend in some parts of Queenstown (such as the Glenda Drive Industrial Zone) is for consent to be readily obtained for non-complying activities in the absence of a strong*

policy direction. Hence compromising the quality of the zone for industrial activities is a significant issue".

184. Under the current rule structure of PC19 (DV) "other retail activities" are prohibited activities in Activity Area E1 (but are treated as discretionary activities for the purposes of this application because of the provisions of section 87B of the Act), while showroom and convenience retail are non-complying. Accordingly, in Mr Cubitt's view, if consent is granted for this application, no "other retail" activity could apply for resource consent in Activity Area E1 under PC19 if the prohibited status becomes final and, as a consequence, no other activity similar to this proposal could be established as of right within the zone. He noted that the Interim Decision's approach to retail in the zone could see rules that are "even more prohibitive". On this basis, he concluded that plan integrity might not be an issue.

185. Mr Gardner-Hopkins considered that this case is essentially a case about planning: *"whilst there are environmental effects of the activities, the focus (other than on the loss of industrial land) has never been the effects, it has been the plan"*. We concur with this submission to some extent. Mr Gardner-Hopkins drew our attention to the Environment Court's decision in *Sterling v Christchurch City Council*[32] where the Court found that even if the potential effects of a proposal did not warrant refusal of consent, if the proposal did not achieve the approach embodied in the plan, the interests of sustainable management would be better served by refusing the application than granting it. Mr Gardner-Hopkins also referred us to *Oliver v Marlborough District Council*[33] and *McKenna v Hastings District Council*,[34] where a decline of consent was upheld even though there were no, or minor adverse effects on the environment but where the proposal was contrary to or inconsistent with the objectives and policies of the relevant plan.

186. Mr Gardner-Hopkins urged us to decline consent on the basis that *"consent must be declined based on the fact that each proposal is so contrary to fundamental objectives and policies of PC19 and contrary to the clear direction that the Environment Court has indicated that the final decision on PC19 will take"* and that granting resource consent would likely undermine the integrity of PC19 and the process it has been through to date.

187. While prima facie this argument is not without merit, as set out in our previous discussion we have formed the view that while the proposal is plainly contrary to two of the highly relevant policies in respect of the use of land in Area E1, it is not so contrary to the fundamental objectives and policies of PC19 that, in our view, it is likely to impact on the integrity of PC19. We have formed this view following a thorough review of the Interim Decision and the reasoning for the prescriptive "use enabling" policies associated with Objective 10 in the context of the proposal and the evidence that is before us.

[32] [2010] NZEnvC 401
[33] HC Blenheim CIV 2004-485-1671, 8 July 2005
[34] (2009) ELRNZ 41 (HC)

188. We are cognisant that PC19 is only partway through the process and that there could, as Mr Cubitt has predicted, be further strengthening of the policy direction, rules and assessment matters when the lower order matters are considered and determined. However, we are obliged to consider PC19 at the stage that it is currently in, and have formed the view that there is unlikely to be any impact on plan integrity. In forming this view we are mindful that PC19 seeks to urbanise this area of Frankton Flats primarily to promote the economic growth of the District.

Precedent Effect

189. Mr Gardner-Hopkins has submitted that granting resource consent to the proposal will also result in adverse precedent effects. The Applicant has contended that precedent is unlikely to be created, as further large format retail activities in Activity Area E1 may effectively be prohibited (once the Plan Change becomes operative). Accordingly, in the Applicant's submission, there is no certainty of the current status remaining following consideration of the lower order matters. Mr Cubitt has considered this issue and concluded that a precedent is unlikely to be set if the application is granted for the reasons previously explored under plan integrity. We concur with this evidence.

Cumulative Effects

190. Both Ms Crawford and Mr Gardner-Hopkins addressed the issue of cumulative effects should we be minded to grant consent to this application and also the Foodstuffs (South Island) Limited application for a Pak 'N Save development on adjoining land (RM130524). It was agreed by the Applicants that the two applications would be heard jointly, although separate decisions are to be issued for each.

191. Mr Gardner-Hopkins submitted that the proposal, combined, will "create a significant retail node" and will have a combined impact on industrial land supply. In his view, granting the two applications will create what he termed "real world pressure" for other large format retail activities to seek to co-locate in this area. Mr Gardner-Hopkins' submission was supported by the evidence of Mr Lala, who considered that the two proposals would significantly erode the character and amenity of the E1 and E2 activity areas to the detriment of the comprehensively integrated outcomes established by the Structure Plan.

192. We accept that the two buildings will represent a large block of built form in what is currently a rural area. It is plain that the two proposals represent a significant departure from what is there now. It is, however, accepted that this area will be urbanised and that more buildings of various sizes will be constructed in proximity to the proposed developments. The future screening potential of the landscaping and built form along SH6 will provide some degree of mitigation in views from SH6.

193. In forming our conclusion we are cognisant that the proposed buildings have been designed to a high standard and include features, materials and landscaping that will promote their integration into the landscape. The conditioning of branding, colours and signage will also significantly reduce any adverse cumulative effects. As Mr Espie noted, "some particular instance of development has to be first" in an area where there will be new zoning that allows for a mixture of uses, as a result of which the landscape will invariably change. Mr Espie's further comment is apposite: "*If a particular area is considered appropriate for mixed use commercial/industrial activities, then we need not be embarrassed when the first instance of these activities appear*".

194. Having reviewed the evidence of Mr Colegrave in relation to the supply of industrial land, together with the evidence of Mr Heath and Mr Vivian, and Mr Burns, Mr Ray, Mr Milne and Mr McCoy (for *Foodstuffs*), we are of the view that there is no evidence to support the assertion that the two applications would result in adverse effects on either the quantity or quality of industrial land available to meet the needs for which it has been reserved, or in relation to the urban aesthetics that will result from these developments.

195. Further, there is simply no evidence that granting consent to both of these applications will result in the creation of a "second commercial node", particularly when the nature of the existing adjoining developments is considered.

Overall Conclusion on Section 104 subject to consideration of Part 2 of the RMA

196. We have concluded that the adverse effects of the proposal on the environment, in particular the effect on the loss of industrial land are insignificant. There are considerable and material positive effects of the application as set out above. Accordingly we have formed the view that there is substantial support for the proposal in terms of the actual and potential environmental effects of allowing the activity to establish in the location proposed under both the Operative District Plan and Plan Change 19. This is a material consideration in our overall assessment, subject to Part 2 of the RMA.

197. There are no other matters that would, on our analysis, militate against a grant of consent under either the Operative District Plan or PC19. Although we are cognisant that valid arguments have been advanced in relation to the integrity of PC19 should consent be granted, it is our view that these are not sufficient, when the reasons for the policy direction in Objective 10 are examined in the context of the evidence before us, to warrant refusal purely on the basis of plan integrity. We are satisfied that presently there are no alternative locations that could accommodate the proposed activity within the District.

198. We are satisfied that the proposal is largely consistent with the objectives and policies of the Operative District Plan.

199. With respect to the relevant objectives and policies of PC10 (DV) as amended by any final findings of the PC 10 (Interim Decision), it is plain that the proposal is both inconsistent with and/or contrary to a number of the key "use enabling" policies associated with Objective 10. It has been necessary to consider the extent to which this finding influences our overall broad judgement in this matter. It is plain that there is an inherent tension in PC19 (DV) between the effects based policies and the policies designed to protect certain uses, which must also be factored in to our overall assessment.

200. For the reasons set out above, we concluded that although the proposed activity is contrary to several of the key use-enabling policies, this particular proposal will not materially detract from the overall policy direction of PC19, which, we note, is yet to be finally determined by the Court. In forming this view, we recognise that there will be significant positive economic and social effects as a result of the development (which is consistent with Objective 1A), and that the community is presently underserved with this type of business. We have placed reliance on the opinion of all of the planning witnesses that the application is either consistent with or promotes both the effects based policies and the more generic objectives and policies for the zone, including those related to urban design and development, particularly in relation to individual buildings and the amenity expectations for industrial activities.

201. However, our conclusion is necessarily finely balanced having regard to the specificity of the policy direction in PC19 (DV) in relation to Activity Area E1, which is arguably strengthened in focus by the Court's Interim Decision.

202. We have reviewed Mr Gardner-Hopkins' legal submissions, in which he urged us to decline consent *"based on the fact that each proposal is so contrary to fundamental objectives and policies of PC19 and contrary to the clear direction that the Environment Court has indicated that the final decision on PC19 will take"*. However, for the reasons set out above, although the proposal is clearly either inconsistent with or contrary to several of the policies contained in Objective 10, it is largely consistent with many of the others, including all of the effects based and some of the use-enabling policies within Objective 10. We do not accept that the proposal is so contrary to the fundamental objectives and policies of PC19 when read as a whole that consent should be refused on this basis. It is arguable that had the Environment Court had in front of it the present evidence in relation to the CLNA and the lack of availability of suitable alternative locations, it is possible that the area zoned E1 would have catered for these kinds of activities, which are not provided for anywhere in the District and for which there is an obvious demand.

203. In reaching our overall decision, we are not prepared to give Policies 10.1, 10.5 or 10.11 an effective right of veto in reaching our overall conclusion in the absence of any compelling evidence or other sound reasons under PC19 (DV).

204. Accordingly having considered the matters provided for in section 104(1), we have formed the view that the application should prima facie be granted (with conditions) subject to our consideration of Part 2 under both the Operative District Plan and PC19 (DV) as amended by any final findings of the PC19 (Interim Decision). As consent is granted under both plans, there is no need to address the question of weight.

Part 2 of the RMA

205. It is well established that Part 2 is the engine room of the RMA and that, when considering an application for resource consent, a decision-maker must exercise his or her broad judgment with respect to the provisions of Part 2. It was put to us by counsel for both the Applicant and QCL that consideration of the purpose and principles set out in Part 2 is fundamentally important to our determination of this application.

206. The purpose of the RMA in section 5 is to promote the sustainable management of natural and physical resources. In assessing an application, a broad judgement as to whether or not a proposal promotes the sustainable management of natural and physical resources is required. Such a judgement allows for a comparison of conflicting considerations and the scale or degree of those conflicting considerations and their relative significance in the final outcome. As will be apparent from our decision, there are a number of conflicting considerations that we must weigh in carrying out the required balancing exercise.

207. Overall, the purpose of the RMA is *enabling* and we accept that people should be able to provide for their needs unless the matters in 5(a) to (c) cannot be appropriately remedied, mitigated or avoided.

208. Of fundamental importance in our analysis has been consideration of the adverse effect of the loss of industrial land. We have concluded, based on the evidence before us, that in both quantitative and qualitative terms this loss is insignificant. The amount of industrial land that has been set aside under PC19 for industrial and yard-based activities is, on the basis of Mr Colegrave's unchallenged evidence (supported by Mr Taylor), excessive and if "set in concrete" is likely to impact negatively on the economic growth of the region. In forming this view we are cognisant that the kinds of uses mandated by PC19 for the E1 and D Activity Areas are not only in lesser demand in this particular community, but also of considerably lower potential economic value in terms of their contribution to the local economy and its growth.

209. Notwithstanding our analysis, we are obliged to apply the law and, accordingly, to give proper consideration and weight and to the decisions of the Environment Court and the High Court in forming our broad judgement. However, we must do so in the context of the additional evidence before us that was not before those authorities. Although the objectives and policies relating to Activity Area E1 in Plan Change 19 were plainly predicated on the need to "protect" areas for

traditional forms of industrial activity, the fundamental basis for this assertion has been seriously challenged by the evidence of Mr Colegrave and, to a lesser extent, Mr Heath - to the extent that the very rigid policy direction and associated restrictive use policies contained in Objective 10 of PC19 (DV) are, in our assessment, at serious risk of curtailing economic development in this District. Such an impact would, prima facie, be contrary to the principles of sustainable management.

210. Taking an overall balanced approach, it is plain that the application will greatly assist the community to achieve its social and economic needs. The considerable positive effects of the proposal have been discussed previously in this decision. As previously discussed, we are satisfied that there are no adverse effects on the environment, including the potential to impact upon or to compromise the use of industrial land, that are significant in this respect. On the evidence before us, alternative sites for this particular activity are no longer available; accordingly, if this application fails, the community will in all probability be denied the obvious benefits.

211. That then leaves the issue of the policy direction established in PC19 and the prescriptive methods that PC19 has adopted to require the preservation of land for very narrow industrial uses in Activity Areas E1 and D. As a general proposition, land use is subject to technology, innovation and change, and prescriptive planning rules that are anchored in past assessments of future demand (whether flawed or not) may result in land that has been reserved for activities for which there is a limited prospect of growth remaining underutilised for the foreseeable future.

212. From the evidence before us, it is plain that since the 2006 CLNA was conducted (which was prior to the 2008 Global Financial Crisis), there have been a number of important new influences in land use as a response to the changing economic environment, particularly in respect of commercial and industrial land.

213. Large format retail activities, which are largely a product of globalisation, have, in nearly all other parts of the country, become well established in industrial or light industrial/commercial zones. Many items previously made or assembled in New Zealand are now manufactured in specialised hubs internationally and sold out of large format retail stores such as Mitre10 Mega at lower prices. As a result, land for traditional manufacturing and industrial uses (which, on the evidence before us, has not been and is highly unlikely to be a major occupier of industrial land in Queenstown) have become less important. There is no evidence that the influence of large format retail on industrial areas has been adverse; on the contrary, their establishment is contributing positively to the social and economic needs of the communities that they serve.

214. Areas of land are, in other districts, also being set aside or rezoned to accommodate commercial activities that have high economic value, such as technology parks and innovation hubs (for which we can see no specific provision in the current Operative District Plan or in

PC19). Accordingly, it would appear to us that the policy direction strongly encapsulated by PC19 in relation to Activity Areas E1 and D, and which was largely driven by the conclusions of the CLNA, is potentially out of date. Perhaps this is not surprising given that the policies appear to have been premised on fundamentally flawed assumptions in terms of the forecast demand for land for the reserved uses and the importance of those activities to the local economy. Notwithstanding the divergent views on the importance of traditional industrial activities to this District, the unchallenged evidence is that the area set aside under activity areas E1 and D is materially in excess of the forecast need for these activities for the next 100 years.

215. For us to decline consent on the basis of the proposed PC19 Objective 10 "use-enabling" policies, in the face of the substantial body of evidence in support of large format retail activities and, indeed, their overall consistency with the majority of the objectives and policies relating to the E1 Activity Area (which cannot be ignored) would be inappropriate. As Mr Cubitt stated in his evidence, planning is often "backwards looking" and care needs to be taken when determining applications in the face of a very rigid planning direction fixed at a point in time that may not be fully commensurate with evolving future needs. It is well recognised that restrictive measures that seek to protect certain activities can lead to inefficiencies in resource allocation in the face of changing economic and community needs. To fail to take this into account would be tantamount to ignoring the purpose of the RMA.

216. In summary, we find that the proposal will promote economic growth in the Queenstown District and will allow the community to provide for its social and economic needs. We are satisfied that the matters set out in section 5(a) to (c) are adequately provided for. The activity is ideally suited to industrial land and, given the surplus of such land that has been zoned (including the Glenda Drive Industrial Zone, the Queenstown Airport designation and the Queenstown Airport Mixed Use Zone), the land set aside in Activity Areas E1 and D under the Structure Plan will not be impacted in any significant way by granting consent to this proposal.

Decision

217. The application is **granted** subject to the following conditions of consent pursuant to sections 104 and 104B of the Resource Management Act 1991.

218. Pursuant to section 113 of the Act, the reasons for this decision are:

(a) In terms of section 104(1)(a) of the Act, the actual and potential effects of the proposal on the environment will, on balance, be acceptable. Any potential adverse effects, particularly in relation to the loss of industrial land, are insignificant. There are significant positive effects arising from the application that add weight to our assessment;

(b) In terms of section 104(1)(b) of the Act, although the proposal is contrary to several of the use-enabling policies contained in PC19 (DV), we find that, on balance, it is acceptable for the reasons set out above. In particular, the proposal is consistent with Objective 1A of the Environment Court's Interim Decision, which has legal force. Although the proposal is contrary to two policies which set a strong policy direction for Activity Area E1, we are not persuaded that the application should be declined purely on this basis, although this is a finely balanced decision; and

(c) In terms of section 104(1)(c) of the Act, other relevant matters have been considered in our determination of the application.

219. Overall, we find the proposal to be consistent with Part 2 of the Act in that it represents sustainable management of the natural and physical resources. The proposed development will provide for the economic and social benefit of not only the Applicant but also of the District without impacting in any significant way on the remaining land that is available for industrial use. The activity is highly suited to location in an Industrial zone and we are satisfied that there are currently no other locations within the District that could accommodate the proposed development.

220. We have concluded that the development will promote economic growth and, notwithstanding that it is prima facie inconsistent with the policy direction of PC19 (Interim Decision) in relation to Activity Area E1, which we note is not yet settled, this is not, in our opinion, a sufficient reason to decline consent in the context of the evidence before us.

Conditions

221. Pursuant to section 108 of the Act, this consent is subject to the following conditions that had been agreed between the Reporting Officer and the Applicant, with the exception of the addition of Condition 19, which reads as follows:

> 19. Prior to any application for building consent, a revised version of Mason and Wales Architects Drawing No: A100 North West Elevation, Revision C dated 25 July 2013 shall be submitted to the Resource Consent Manager, Planning and Development at Queenstown Lakes District Council for approval. This drawing shall be amended as follows:
>
> - One band of orange only is permitted below the mezzanine on the facade (identical to that shown on Mason and Wales Drawings No. A101 C and A102 C dated 25 July 2013).
> - The orange cladding on the north west façade is to be removed and replaced with a cladding either of the same colour ('Ironsand') as the rest of the cladding on the other façades (for example, Drawing No. A102 C), or a similarly recessive colour.
> - The orange MEGA sign (currently estimated to be 46.1 m^2) shall be reduced to a maximum size of 35 m^2.
> - The proposed black 'Low Price 15% Guarantee' sign on the north west façade may be changed to white or a similar colour so that it will contrast with the new cladding colour.

222. The full suite of approved conditions is set out as follows:

General Conditions

UPDATED PURSUANT TO ENVIRONMENT COURT'S CONSENT ORDER DATED 24 JUNE 2014

1. The development must be undertaken/carried out in accordance with the following plans **(stamped as approved)** and the application as submitted, with the exception of the amendments required by the following conditions of consent. The approved plans are as follows:

   (a) Mason and Wales Drawing No: A001 Site Plan, Revision B dated 15/05/2013.

   (b) Mason and Wales Drawing No: A002 Overall Ground Floor Plan, Revision B dated 15/05/2013.

   (c) Mason and Wales Drawing No: A003 Overall Mezzanine Floor Plan, Revision B dated 15/05/2013.

   (d) Mason and Wales Drawing No: A004 Overall Roof Plan, Revision B dated 15/05/2013.

   ~~(e) Mason and Wales Drawing No: A100 North West Elevation, Revision C dated 25/07/2013 (**to be amended in accordance with condition 19**).~~

   (e) Mason and Wales Drawing No: A100 North West Elevation, Revision C dated 3 June 2014 (Option G).

   (f) Mason and Wales Drawing No: A101 South-East Elevation, Revision C dated 25/07/2013.

   (g) Mason and Wales Drawing No: A102 North-East and South-west Elevation, Revision C dated 25/07/2013.

   (h) Mason and Wales Drawing No: A200 Typical Cross Sections, Revision B dated 15/05/2013.

   (i) Rough and Milne Landscape Architects, Landscape Detail Plan L 1.0 Revision A dated 30/10/12.

   (j) Rough and Milne Landscape Architects, Landscape Detail Plan L 2.0 Revision A dated 30/10/12.

   (k) Airey Consultants Limited, File No. 11537-01, Drawing No 1.0 and 2.0 dated Oct 2011.

2. 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.

Earthworks

General

3. No earthworks shall commence on site until:

(a) engineering approval has been granted from the consent authority for all infrastructure associated with the greater subdivision: OR

(b) subject to the approval of the Principal Engineer at the Council, earthworks may start earlier than (a) above if the underlying subdivision works have advanced to the stage where completion dates (given the proposed 12 month build timeframe) can been coordinated.

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.

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

5. 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 6m into the site. Where Council roading network has been extended to the boundary of the site the developer shall install wooden planks or similar shall to provide protect the footpath and kerb from damage caused by construction traffic movements, in accordance with "*A Guide to Earthworks in the Queenstown Lakes District*" brochure, prepared by the Queenstown Lakes District Council.

6. Prior to the commencement of any works on the land being developed the consent holder shall provide to the Principal Engineer at Council for review, design plans and details as are considered by Council to be both necessary and adequate to address the following:

(a) Provision of a site management plan including as a minimum:

- Temporary water supply details and measures proposed to control and/or mitigate any dust.
- Measures to control any silt run-off and sedimentation that may occur.
- Mitigation and monitoring of any vibration effects from fill compaction.

(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).

(b) Provision of a temporary traffic management plan including as a minimum:

- Details relating to construction crossings and impact of construction traffic on surround road network.
- Disposal areas for waste soil/rock material and any associated haul routes.
- Location of contractor parking for duration of the development (within site or as approved in writing with others)

7. A Temporary Traffic Management Plan with details on construction crossings and the impact of the construction traffic on the surrounding roading network including the State Highway 6 shall be completed and submitted to the NZ Transport Agency's network management consultant, Opus International Consultants of Alexandra, at least seven working days prior to any work commencing on the land being developed.

To be monitored throughout earthworks

8. 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 his/her expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.

9. No earthworks, temporary or permanent, are to breach the boundaries of the site.

On completion of earthworks

10. 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 site on which buildings are to be founded (if any).

11. Site management measures shall remain in place until all earthworked/exposed areas have been top-soiled and grassed/revegetated or otherwise permanently stabilised following completion of earthworks.

12. On completion of the earthworks, the consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

Infrastructure

General

13. No works shall commence on site until:

    (a) Engineering approval has been granted from the consent authority for all infrastructure associated with the greater subdivision; OR

    (b) Subject to the approval of the Principal Engineer of the Council, works may start earlier than (a) above if the underlying subdivision works have advanced to the stage where completion dates (given the proposed 12 month build timeframe) can be coordinated.

14. 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

15. The owner of the land being developed shall provide a letter to the Principal Engineer at the Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.4 & 1.5 of NZS4404:2004 "Land Development and Subdivision Engineering", in relation to this development.

16. Prior to the commencement of any works on the land being developed the consent holder shall provide to the Principal Engineer at Lakes Environmental 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 (2), to detail the following engineering works required:

    (a) The provision of a water supply connection to the development in accordance with Council standards. This shall include a bulk flow meter with backflow prevention. The costs of the connection shall be borne by the consent holder.

(b) The provision of a foul sewer connection to the development in accordance with Council standards. The costs of the connection shall be borne by the consent holder.

(c) Either the provision of a connection from all impervious areas in the development to primary soakage to ground designed in accordance with NZS4404:2010 and NZBC E1/VM1. Soakage design shall include site specific confirmation of soil permeability and the provision of contaminant interceptors on all parking and loading area catchpits. The design may include provision for onsite roof water storage for reuse as irrigation supply. Where soakage to ground is utilised the consent holder shall provide an operation and maintenance manual for approval by Council to ensure the on-going performance of the soakage system.

or

The connection from all impervious areas in the development to the Council reticulated stormwater disposal system. The costs of the connection shall be borne by the consent holder. This shall include the provision of contaminant interceptors on all parking and loading area catchpits.

(d) The provision of secondary flow paths to contain overland flows in a 1 in 100 year event so that there is no inundation of any buildable areas with the development.

(e) The provision of an alternative fire fighting solution for the building in accordance with NZS PAS 4509:2008

(f) The provision of sealed commercial vehicle crossings that shall be constructed to the development to Council's standards.

(g) The provision of road marking and signage in accordance with the Manual of Traffic Signs and Markings (MOTSAM). This shall include appropriately located pedestrian crossing points.

(h) The construction and sealing of all vehicle manoeuvring and car parking areas to Council's standards. Parking and loading spaces shall be clearly and permanently marked out. This shall include a Safety Audit prepared by an independent professional Traffic Engineer and, within the design, resolution of all concerns raised by the audit to an extent accepted by the QLDC.

(i) The provision of a minimum 10 formal public cycle parks in the vicinity of the entrance to the building and a further 10 staff cycle parks at the rear of the building.

(j) The provision of access/parking 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 development/or lots serviced by the access road. Any private lights installed on private roads/rights of way/access lots shall be isolated from Council's lighting network circuits.

To be completed when works finish and before occupation of building

17. On completion of all manoeuvring and parking areas associated with the development, a post construction safety audit shall be carried out by an independent traffic engineer and submitted to Council. Should the review recommend any further works required to

achieve a safe traffic environment the consent holder shall have these works approved by Council and implemented prior to opening the area to public use.

18. Prior to the occupation of the building, 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 development at the consent holder's cost. This information shall be formatted in accordance with Council's 'as-built' standards.

(b) The completion and implementation of all works detailed in Condition (4) above.

(c) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

(d) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an adequate underground electricity supply has been made available to the development.

(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 development.

(f) Where on-site stormwater soakage is utilised (if any) the consent holder shall provide evidence that the operations and maintenance manual approved under Condition 4c has been made available to any future tenant and/or site maintenance contractor.

~~**Design Conditions**~~

~~19. Prior to any application for building consent, a revised version of Mason and Wales Architects Drawing No: A100 North West Elevation, Revision C dated 25 July 2013 shall be submitted to the Resource Consent Manager, Planning and Development at Queenstown Lakes District Council for approval. This drawing shall be amended as follows:~~

- ~~One band of orange only is permitted below the mezzanine on the facade (identical to that shown on Mason and Wales Drawings No. A101 C and A102 C dated 25 July 2013).~~
- ~~The orange cladding on the north west façade is to be removed and replaced with a cladding either of the same colour ('Ironsand') as the rest of the cladding on the other façades (for example, Drawing No. A102 C), or a similarly recessive colour.~~
- ~~The orange MEGA sign (currently estimated to be 46.1 m^2) shall be reduced to a maximum size of 35 m^2.~~
- ~~The proposed black 'Low Price 15% Guarantee' sign on the north west façade may be changed to white or a similar colour so that it will contrast with the new cladding colour.~~

Hours of Operation and Nature of Activity

20. The store shall not be open to the public until the roads providing access to the site have been established, including the following roading improvements:

(a) The Glenda Drive / SH 6 intersection shall be reconfigured to a left hand turn-in only intersection; and

(b) A roundabout shall be installed at the Eastern Access Road/SH 6 intersection.

21. Store opening hours shall be limited to:

0700 to 2200 hours, 7 days per week, November to January
0700 to 1900 hours, 7 days per week, February to October

22. No less than 95% of the retail floor space shall be dedicated to "Showroom Activities" as defined in Plan Change 19(DV). The remaining 5% of retail floor space may be dedicated to retail activities other than "Showroom Retail" as defined in Plan Change 19(DV).

Review Condition

23. Within 10 working days of each anniversary of the date of this consent or upon the receipt of information identifying non-compliance with the conditions of this consent, the Council may, in accordance with sections 128 & 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:

(a) There is or is likely to be an adverse environmental noise effect as a result of the exercise of this consent, which was unforeseen when the consent was granted.

(b) Monitoring of the exercise of the consent has revealed that there is or is likely to be an adverse effect on the environment.

(c) There has been a change in circumstances such that the conditions of the consent are no longer appropriate in terms of the purpose of the Act.

(d) Whether the size and colour of all signs (including on the building's elevations) should be toned down (or changed completely) so long as any sign is visible from State Highway 6 and other public places.

Advice Notes

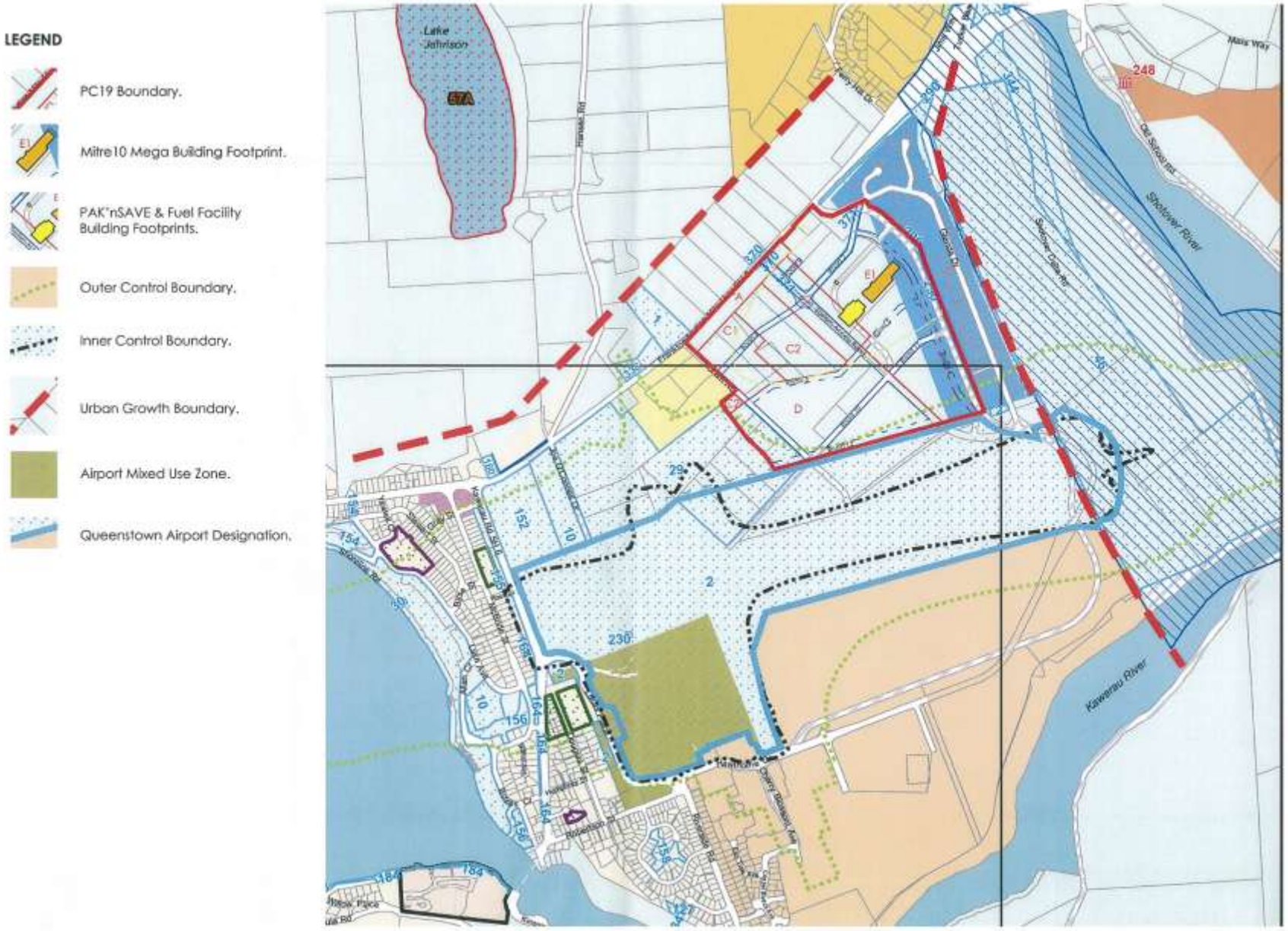
- *Prior approval from Council's Three Waters Manager and use of a backflow prevention device will be required to prevent contamination of Council's potable water supply if this water supply is to be utilised for dust suppression during earthworks.*

- *An existing 11kV underground power cable crosses the proposed development area and should be relocated by the service provider prior to commencement of works.*

- *Prior to any new connection to Council's services the consent holder shall obtain utility service connection approval.*

Jane Taylor
for the Commission
Date: 11 April 2014

APPENDIX 1 - Overlay Plan



ADDENDUM TO DECISION RM130521

BEFORE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an application by **Cross Roads Properties Limited** for resource consent for the construction and operation of a Mitre 10 Mega store, with associated earthworks, landscaping, signage and car-parking at Frankton, Queenstown
Council file:	RM 130521

ADDENDUM TO DECISION OF COMMISSIONERS APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL

---

11 April 2014

Commissioners:
D Jane Taylor (Queenstown)
David Clarke (Queenstown)

Significance of the Second Interim Decision of the Environment Court in relation to the decision of the Commission in RM130521

1. Cross Roads Properties Limited ("the Applicant") has applied for resource consent to construct and operate a Mitre 10 Mega ("Mitre10 Mega") store, with associated earthworks, landscaping, signage and car parking at Frankton, Queenstown.

2. The hearing for RM130521 was formally closed on 28 February 2014. On 14 March 2014 the Environment Court issued its Second Interim Decision in *Queenstown Airport Corporation Limited v Queenstown Lakes District Council*[1] in relation to Plan Change 19. This decision approved the resource management issues and objectives and policies for PC19, except for Activity Area A, Activity Area E2 and the Outline Development Plans, which are to follow in a later decision.[2]

3. As the Second Interim Decision was issued after the hearing in RM130521 was closed, we were unable to seek further expert planning evidence with regard to the implications of this judgment in relation to Plan Change 19 (DV), as modified by any final findings of the first Interim Decision of the Court. Accordingly, we did not take the final findings of Second Interim Decision formally into account in our determination of RM130521.

4. However, although we do not consider that it was necessary for us to do so, we have had regard to the judgment of the Court in the Second Interim Decision, in particular the objectives and policies that relate to Activity Area E1, and considered whether the final findings would materially affect our decision in RM130521.

5. Objective 10 and its associated policies appear to strengthen the policy direction of PC19 in relation to the protecting of this area for "industrial and service activities" by, inter alia excluding retailing except where ancillary to and minimal in comparison with the use of the site for industrial or service activities (Policy 10.3) and excluding activities that conflict with the intended purpose of the Activity Area through the generation of reverse sensitivity effects or will result in the reduction of land available for industrial and service activities as defined in the Operative District Plan (Policy 10.4).

6. Notwithstanding the strengthening of the policy direction of PC19 in Policies 10.3 and 10.4, we have formed the view that, based on the compelling evidence before us in relation to the grossly exaggerated demand for industrial land in this District and the absence of any viable alternative sites for the proposal, it is more likely than not that our analysis and overall conclusions would

[1] [2014] NZEnvC 54 (the "Second Interim Decision").
[2] Ibid, Preamble A.

remain unchanged. We note, however, that this is a very finely balanced decision that is largely grounded in our consideration of Part 2 of the RMA and the positive contribution that the proposal will make to the economic development of the District.

Jane Taylor
for the Commission

Date: 11 April 2014

BEFORE THE ENVIRONMENT COURT

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under section 120 of the Act
BETWEEN	CROSS ROAD PROPERTIES LIMITED
	(ENV-2014-CHC-21)
	Appellant
AND	QUEENSTOWN LAKES DISTRICT COUNCIL
	Respondent

Environment Judge J R Jackson sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

CONSENT ORDER

[A] Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

(1) the appeal is allowed and RM130521 is granted subject to the following amended conditions:

(a) Condition 19 is deleted; and
(b) Condition 1(e) is amended to read:
"Mason and Wales Drawing No: A100 North-West Elevation Revision C dated 3 June 2014 (Option G)";

(2) "Mason and Wales Drawing No: A100 North-West Elevation Revision C dated 3 June 2014 (Option G)" attaches to and forms part of this order;

(3) for subsequent ease of understanding the resource consent, the respondent reprints the land use consent with all the changes directed under (1) included, so that any reader not familiar with the proceeding can read the resource consent and understand it as a whole, without having to read, interpolate and consider separately changes made by this consent order;

(4) the appeal is otherwise dismissed.

[B] Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] On 6 May 2014 Cross Roads Properties Limited lodged an appeal against a decision of the Queenstown Lakes District Council granting resource consent (RM 130521) to construct and use a "Mitre 10 Mega" store at Frankton Flats in Queenstown.

[2] The court has now read and considered the consent memorandum of the parties dated 11 June 2014 which proposes to resolve the appeal.

Other relevant matters

[3] No person has given notice of an intention to become a party under section 274 of the Resource Management Act 1991 ("the RMA").

Orders

[4] The court is making this order under section 279(1)(b) of the RMA, that is the order is made by consent and is not a decision or determination on the merits pursuant to section 290. The court understands for present purposes that:

(a) all parties to the proceedings have executed the memorandum requesting this order;

(b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and achieves the relevant requirements and the purpose of the RMA including, in particular, Part 2.

DATED at Christchurch 23 June 2014

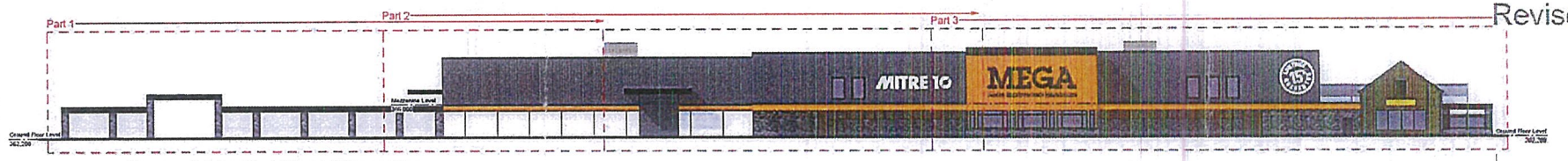
THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

J R Jackson
Environment Judge

Issued: 23 JUN 2014

2014-chc-21 cross roads properties v qldc consent order

OPTION G
Revised 03/06/14



Overall North-West Elevation
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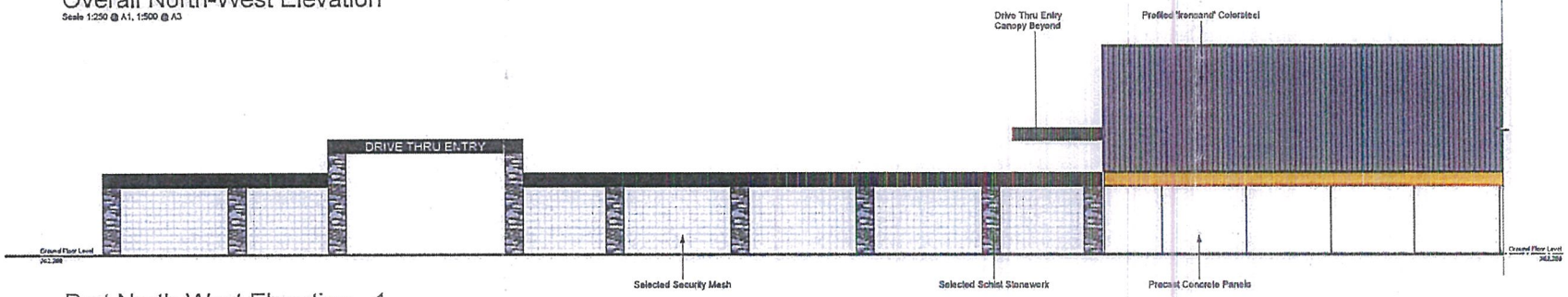
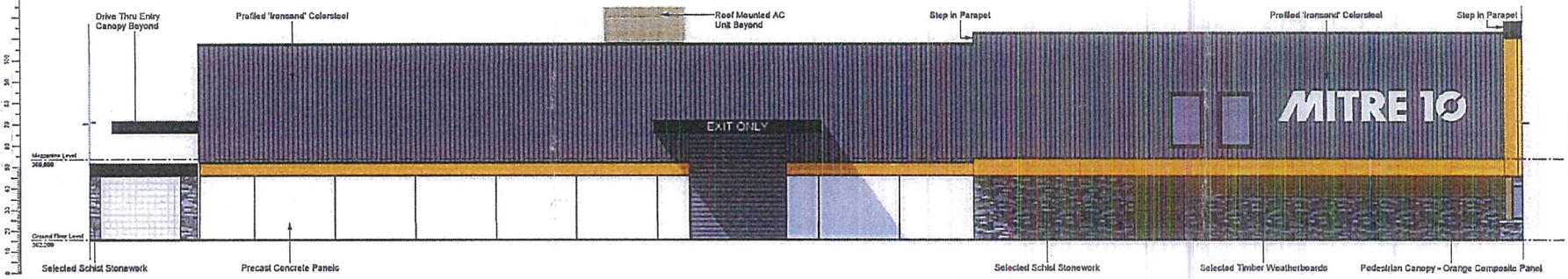
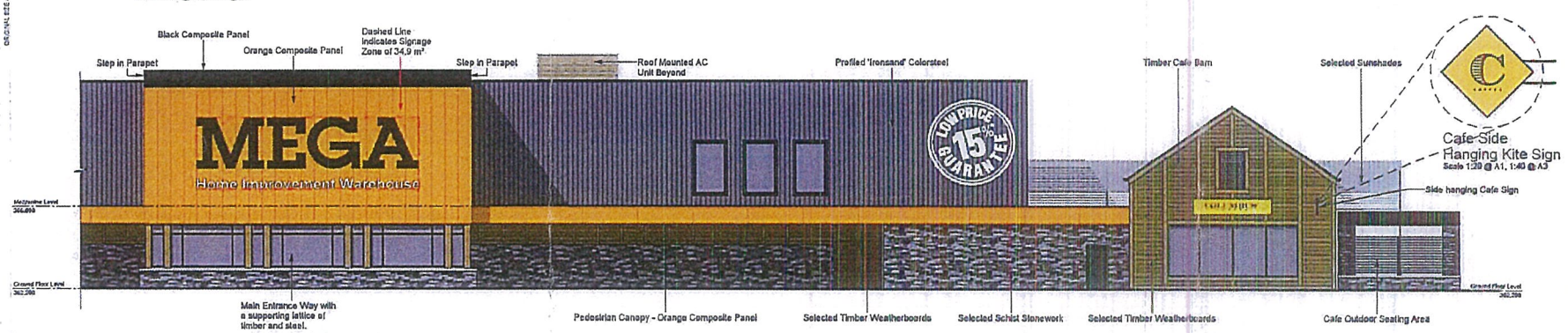


Part North-West Elevation - 1
Scale 1:100 @ A1, 1:200 @ A3



Part North-West Elevation - 2
Scale 1:100 @ A1, 1:200 @ A3



Part North-West Elevation - 3
Scale 1:100 @ A1, 1:200 @ A3

Rev	Description	Date
C	Resource Consent	25/07/2013
B	Resource Consent	15/05/2013
A	Resource Consent	23/04/2013

REVISION SCHEDULE

ARCHITECT
MASON&WALES ARCHITECTS

STRUCTURAL/CIVIL ENGINEER
THORBURN Consultants (NZ) Limited

FIRE ENGINEER
Enlightened Solutions LTD
Fire Engineering Design

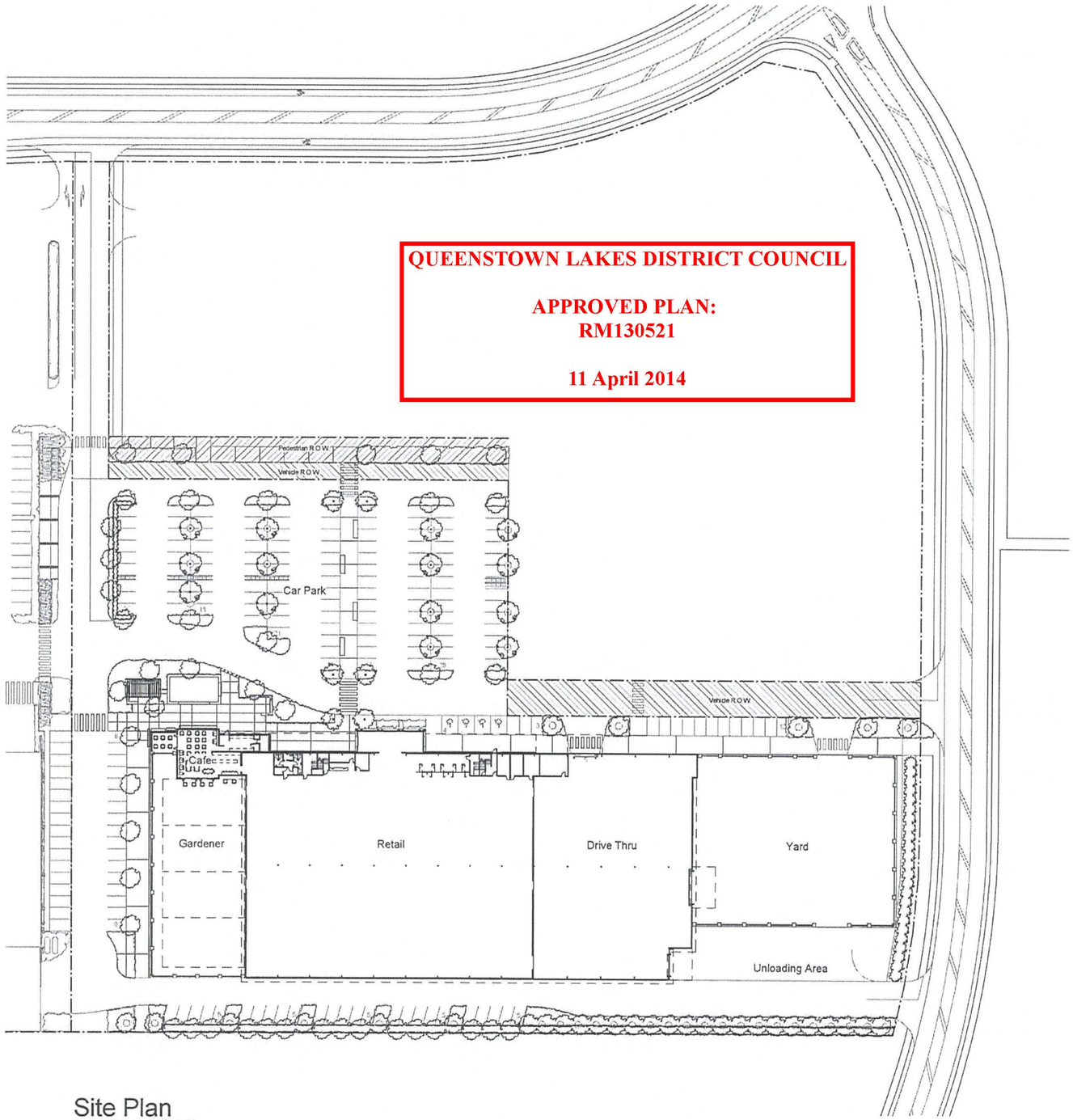
PROJECT
MITRE 10 MEGA
SHOTOVER PARK
QUEENSTOWN

CLIENT

DRAWING TITLE
North-West Elevation

PROJECT STATUS
RESOURCE CONSENT

DESIGN: Johnston	DRAWN: PWT
SCALE: As indicated @A1	PROJECT NO: 5351
DRAWING NO: A100	REVISION: C
DATE: 3 June 2014	



Site Plan
Scale 1:500 @ A1, 1:1000 @ A3

DO NOT SCALE - IF IN DOUBT, ASK

ORIGINAL SIZE A1

Ref.	Description	Date
B	Resource Consent	15/05/2013
A	Resource Consent	22/04/2013

REVISION SCHEDULE

ARCHITECT
MASON&WALES ARCHITECTS

STRUCTURAL / CIVIL ENGINEER
THORBURN Consultants (NZ) Limited

FIRE ENGINEER
Enlightened Solutions LTD
Fire Engineering Design

PROJECT
MITRE 10 MEGA
SHOTOVER PARK
QUEENSTOWN

CLIENT

DRAWING TITLE
Site Plan

PROJECT STATUS
RESOURCE CONSENT

DESIGN	DRAWN
Johnston	PWT

SCALE		PROJECT NO
1 : 500	@A1	5351

DRAWING NO	REVISION	DATE
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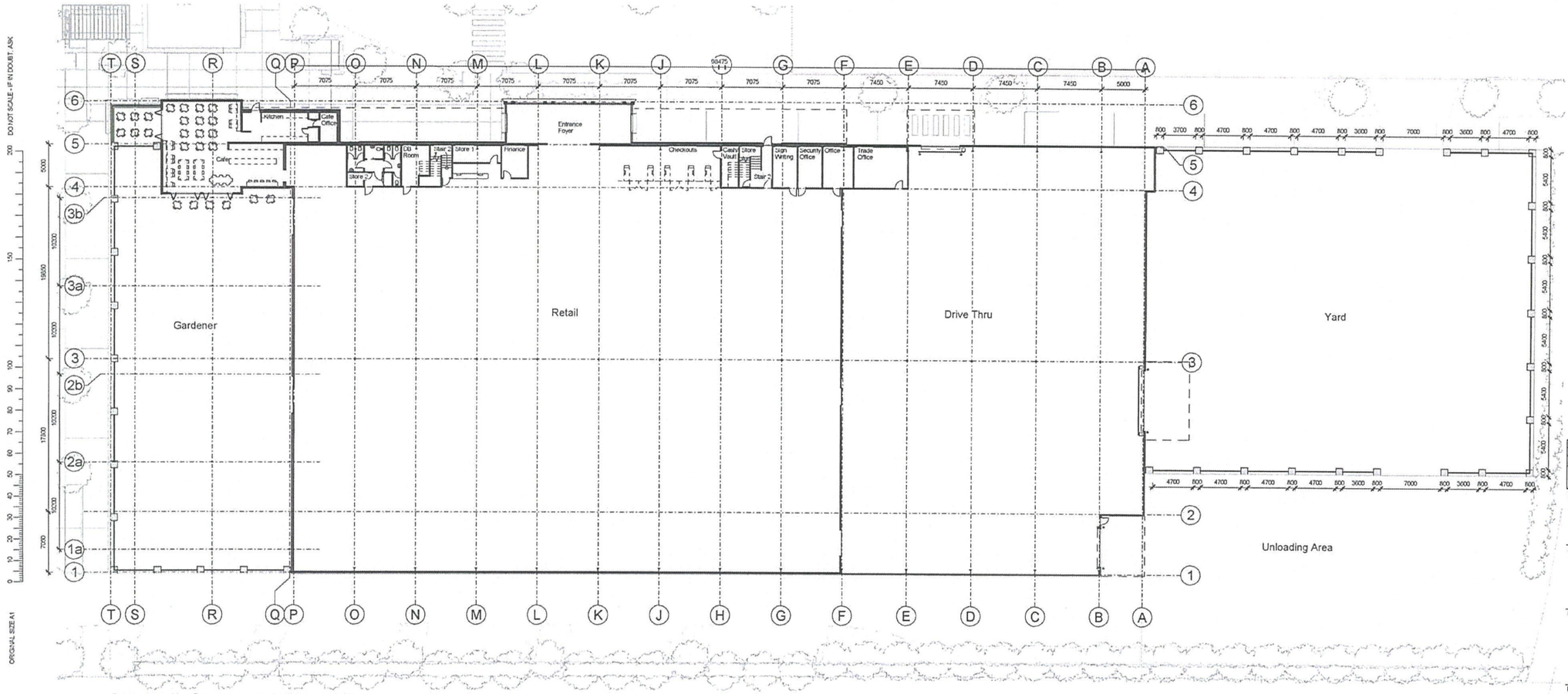


Overall Ground Floor Plan

Scale 1:250 @ A1, 1:500 @ A3

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130521

11 April 2014

Ref	Description	Date
B	Resource Consent	15/05/2013
A	Resource Consent	22/04/2013

REVISION SCHEDULE

ARCHITECT
MASON&WALES ARCHITECTS

STRUCTURAL / CIVIL ENGINEER
THORBURN Consultants (NZ) Limited

FIRE ENGINEER
Enlightened Solutions LTD
Fire Engineering Design

PROJECT
MITRE 10 MEGA
SHOTOVER PARK
QUEENSTOWN

CLIENT

DRAWING TITLE
Overall Ground Floor Plan

PROJECT STATUS
RESOURCE CONSENT

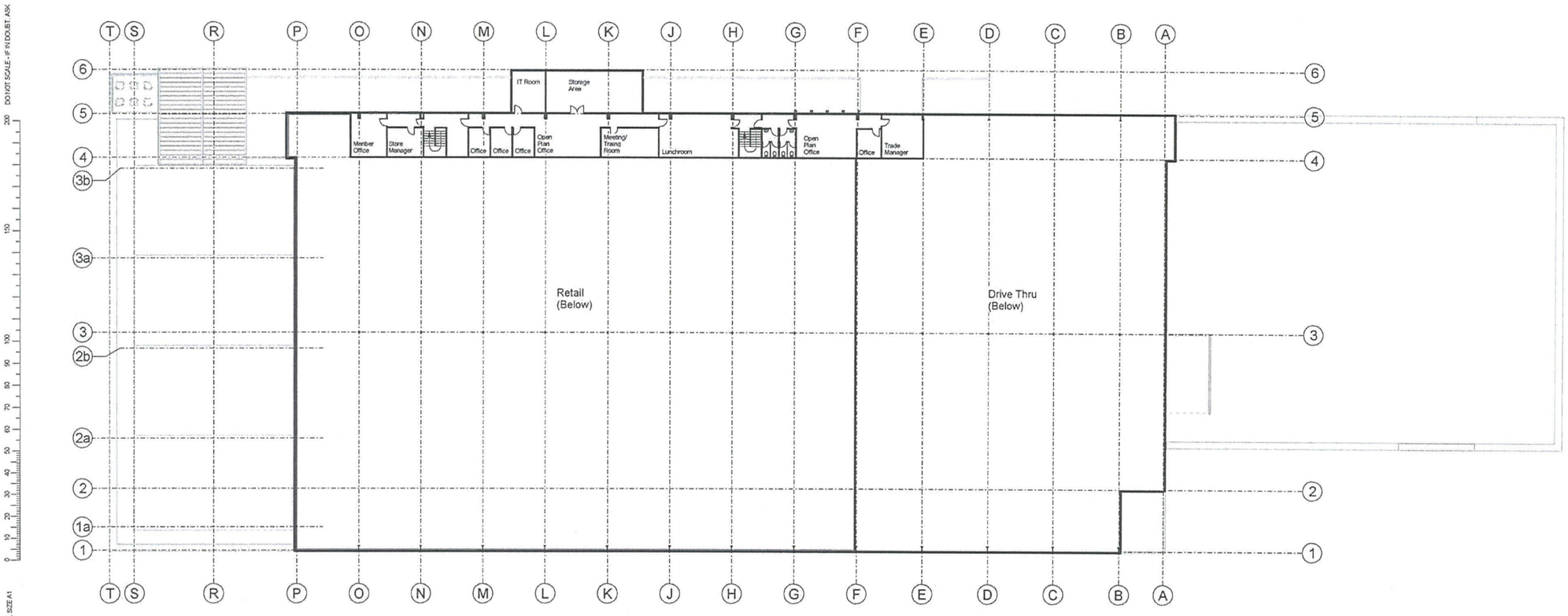
DESIGN	DRAWN
Whitaker/Johnston	PWT

SCALE		PROJECT NO
1 : 250	@A1	5351

DRAWING NO	REVISION	DATE
A002	B	15 May 2013

DO NOT SCALE - IF IN DOUBT, ASK

ORIGINAL SIZE A1



DO NOT SCALE - IF IN DOUBT, ASK

ORIGINAL SIZE A1

Overall Mezzanine Floor Plan

Scale 1:250 @ A1, 1:500 @ A3

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130521

11 April 2014

Ref	Description	Date
B	Resource Consent	15/05/2013
A	Resource Consent	22/04/2013

REVISION SCHEDULE

ARCHITECT
MASON&WALES ARCHITECTS

STRUCTURAL / CIVIL ENGINEER
THORBURN Consultants (NZ) Limited

FIRE ENGINEER
Enlightened Solutions LTD
Fire Engineering Design

PROJECT
MITRE 10 MEGA
SHOTOVER PARK
QUEENSTOWN

CLIENT

DRAWING TITLE
Overall Mezzanine Floor Plan

PROJECT STATUS
RESOURCE CONSENT

DESIGN	DRAWN
Designer	Author

SCALE		PROJECT NO
1 : 250	@A1	5351

DRAWING NO	REVISION	DATE
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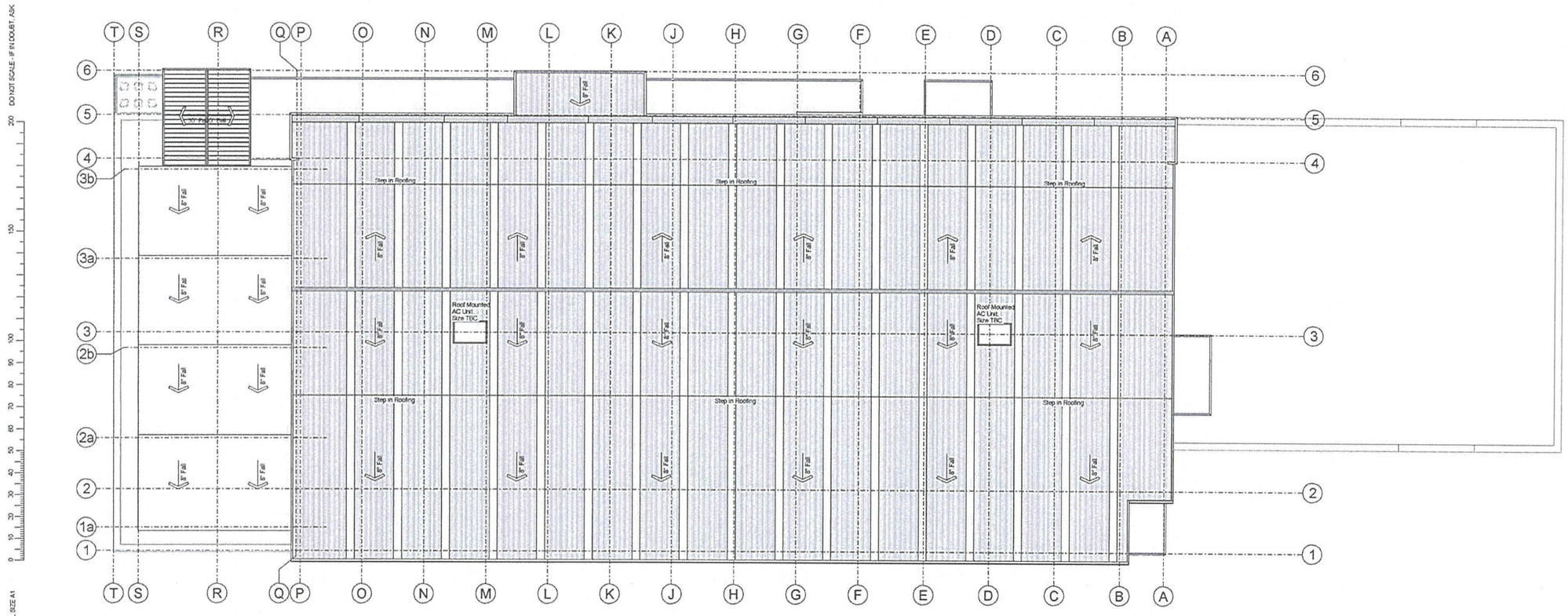

DO NOT SCALE - IF IN DOUBT, ASK

ORIGINAL SIZE A1

Overall Roof Plan

Scale 1:50 @ A1, 1:100 @ A3

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130521

11 April 2014

Legend

- Roof Falls
- Selected membrane roofing laid to falls as shown. Gutters shall have 1:100min fall
- Selected colorsteel profiled roofing laid to falls as shown.
- Selected clearlite profiled roofing laid to falls as shown.
- Selected clearlite profiled roofing laid to falls as shown.

Ref.	Description	Date
B	Resource Consent	15/05/2013
A	Resource Consent	22/04/2013

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Fire Engineering Design

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SHOTOVER PARK
QUEENSTOWN

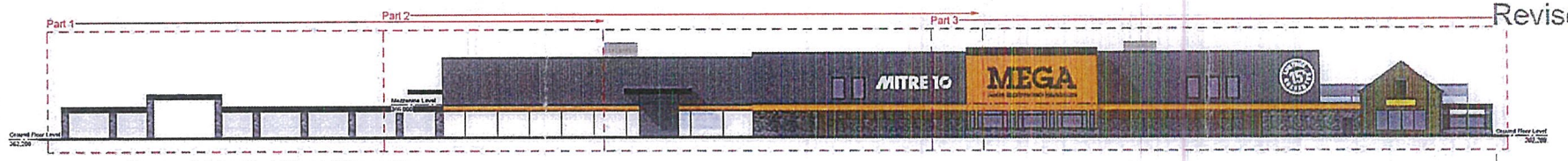
CLIENT

DRAWING TITLE
Overall Roof Plan

PROJECT STATUS
RESOURCE CONSENT

DESIGN	DRAWN
Whitaker/Johnston	PWT
SCALE	PROJECT NO
1 : 250 @A1	5351
DRAWING NO.	REVISION / DATE
A004	B 15 May 2013

OPTION G
Revised 03/06/14



Overall North-West Elevation
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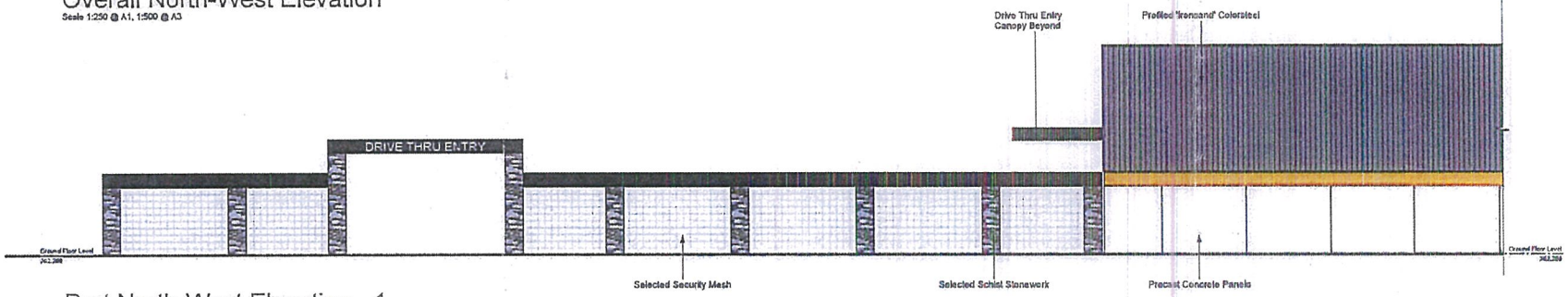

Part North-West Elevation - 1
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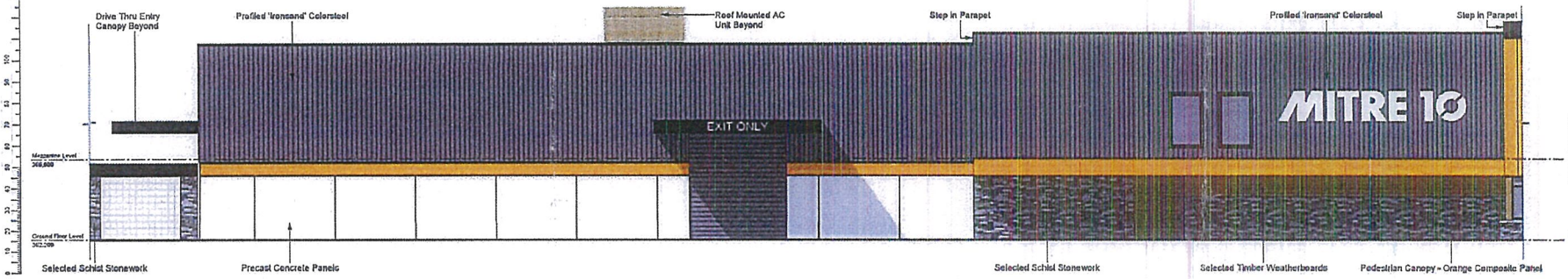

Part North-West Elevation - 2
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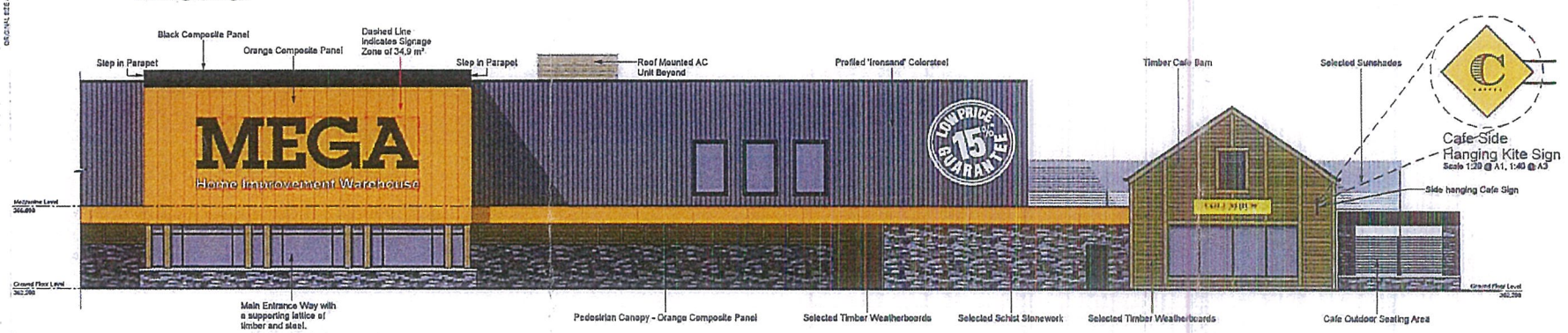

Part North-West Elevation - 3
Scale 1:100 @ A1, 1:200 @ A3

Rev	Description	Date
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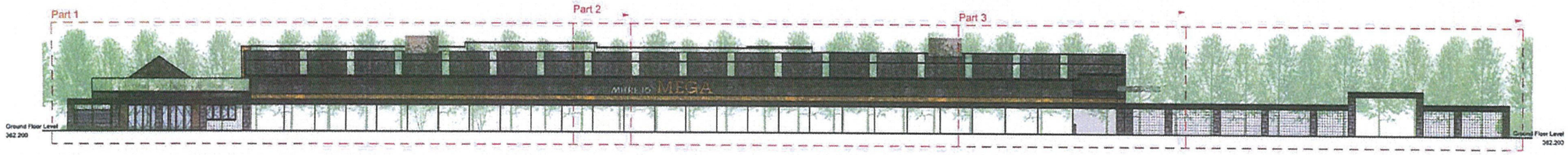
SHOTOVER PARK
QUEENSTOWN

CLIENT

DRAWING TITLE
North-West Elevation

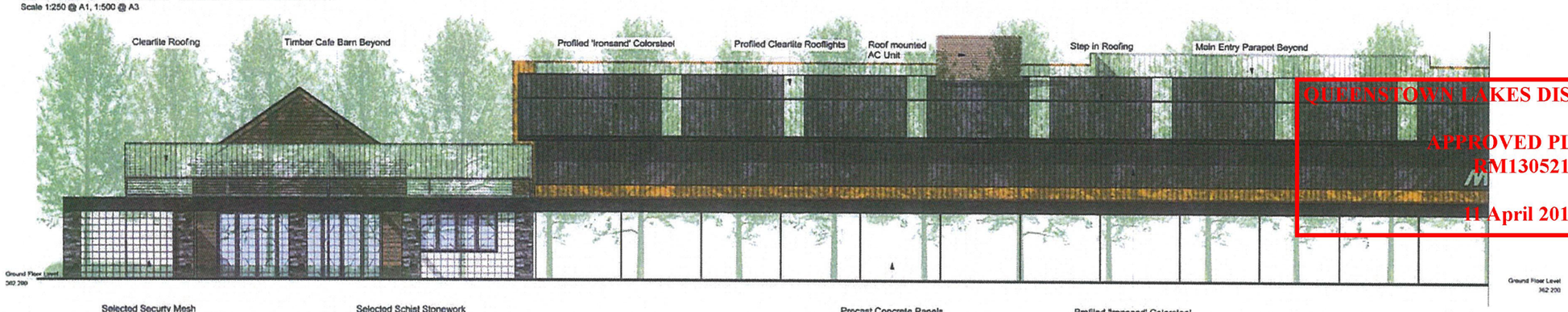
PROJECT STATUS
RESOURCE CONSENT

DESIGN: Johnston	DRAWN: PWT
SCALE: As indicated @A1	PROJECT NO: 5351
DRAWING NO: A100	REVISION: C
DATE: 3 June 2014	



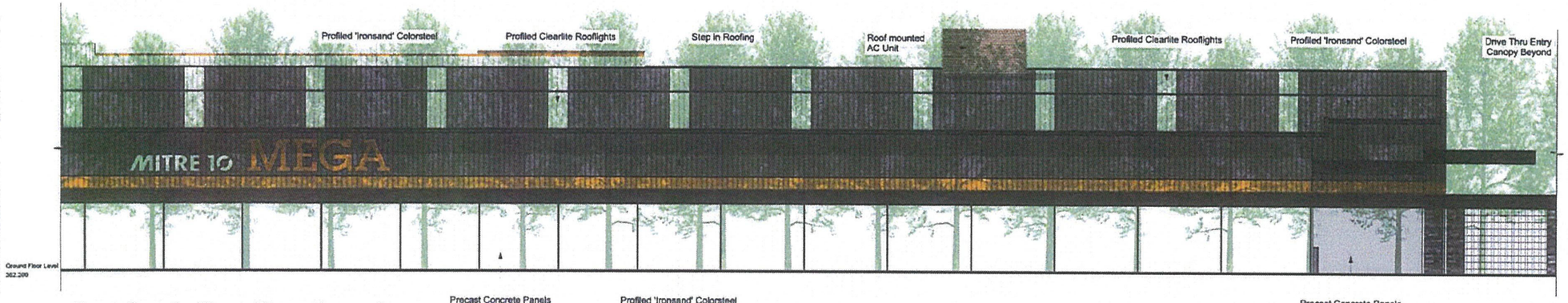
Overall South-East Elevation

Scale 1:250 @ A1, 1:500 @ A3



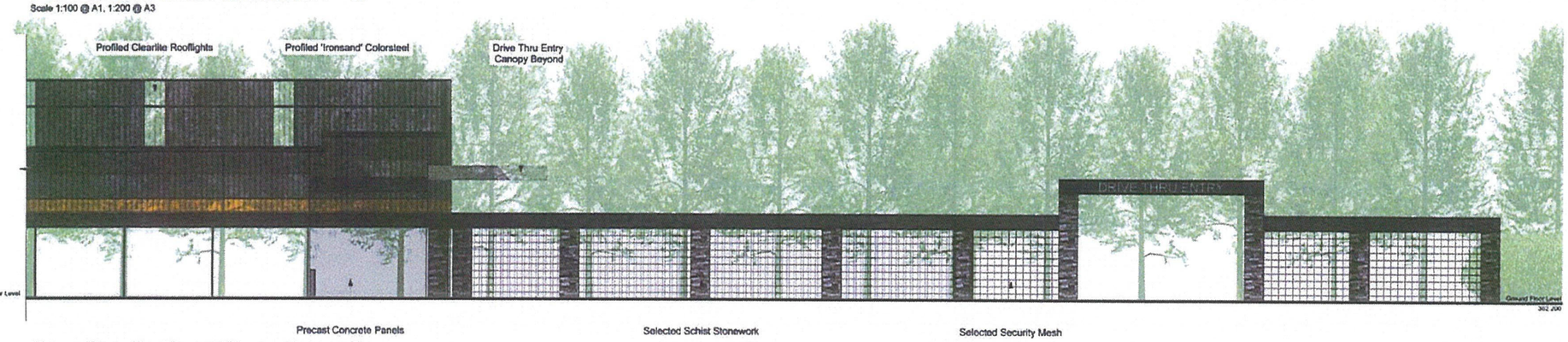
Part South-East Elevation - 1

Scale 1:100 @ A1, 1:200 @ A3



Part South-East Elevation - 2

Scale 1:100 @ A1, 1:200 @ A3



Part South-East Elevation - 3

Scale 1:100 @ A1, 1:200 @ A3

Ref.	Description	Date
C	Resource Consent	29/07/2013
B	Resource Consent	19/06/2013
A	Resource Consent	22/04/2013

REVISION SCHEDULE

ARCHITECT
MASON&WALES ARCHITECTS

STRUCTURAL / CIVIL ENGINEER
THORBURN Consultants (NZ) Limited

FIRE ENGINEER
Enlightened Solutions LTD
Fire Engineering Design

PROJECT
MITRE 10 MEGA
SHOTOVER PARK
QUEENSTOWN

CLIENT

DRAWING TITLE
South-East Elevation

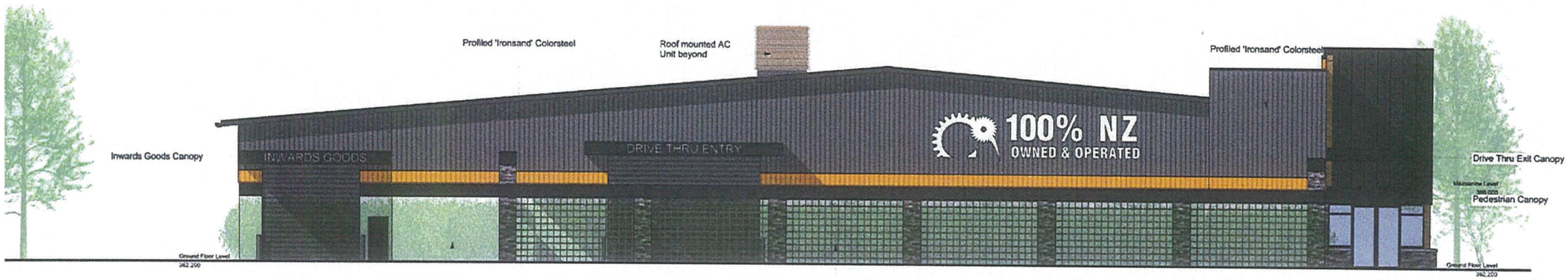
PROJECT STATUS
RESOURCE CONSENT

DESIGN	DRAWN
Whitaker/Johnston	PWT
SCALE	PROJECT NO
As indicated@A1	5351
DRAWING NO.	REVISION
A101	C

DATE
25 July 2013

DO NOT SCALE - IF IN DOUBT, ASK

ORIGINAL SIZE A1



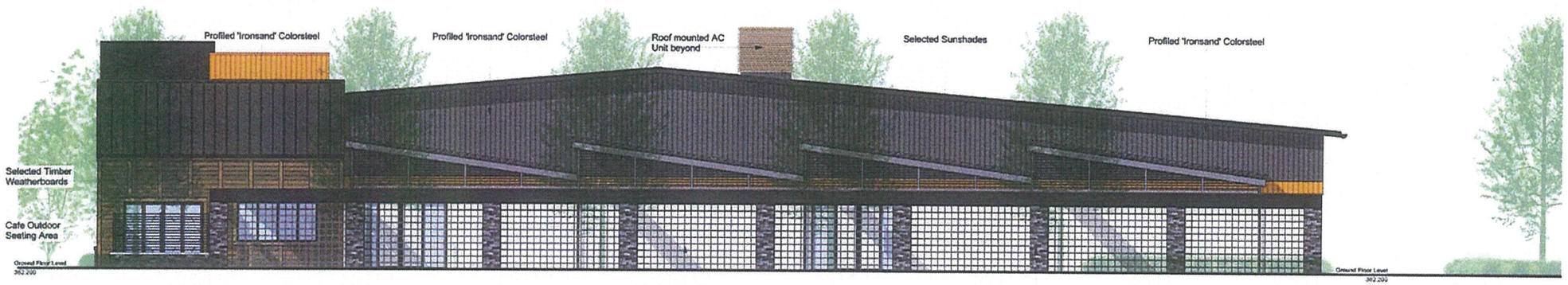
North-East Elevation

Scale 1:100 @ A1, 1:200 @ A3

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130521

11 April 2014



South-West Elevation

Scale 1:100 @ A1, 1:200 @ A3

Ref.	Description	Date
C	Resource Consent	26/07/2013
B	Resource Consent	15/06/2013
A	Resource Consent	22/04/2013

REVISION SCHEDULE

ARCHITECT
MASON&WALES ARCHITECTS

STRUCTURAL / CIVIL ENGINEER
THORBURN Consultants (NZ) Limited

FIRE ENGINEER
Enlightened Solutions LTD
Fire Engineering Design

PROJECT
MITRE 10 MEGA
SHOTOVER PARK
QUEENSTOWN

CLIENT

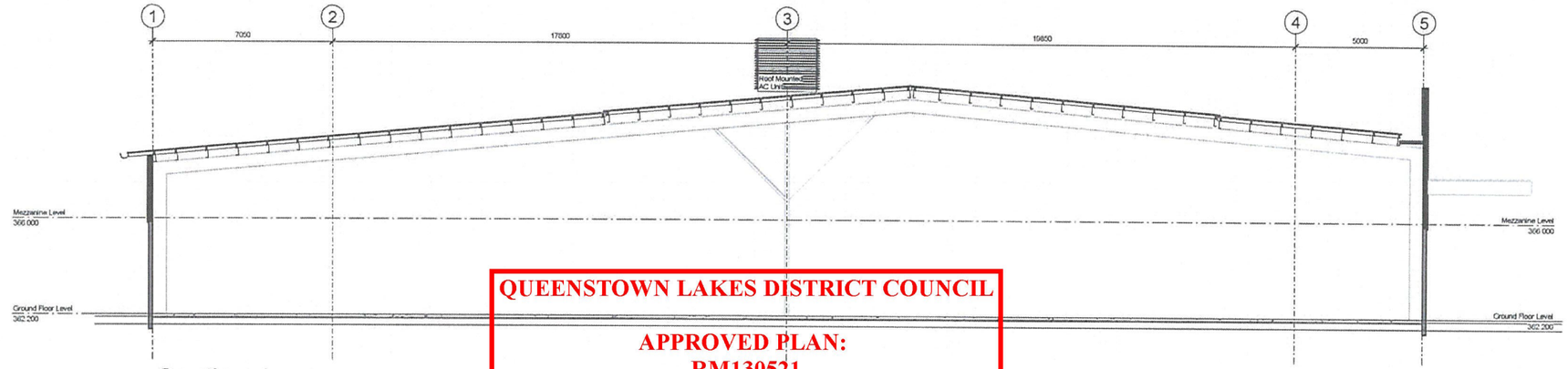
DRAWING TITLE
North-East and South-West Elevations

PROJECT STATUS
RESOURCE CONSENT

DESIGN	DRAWN
Whitaker/Johnston	PWT
SCALE	PROJECT NO.
1 : 100 @A1	5351
DRAWING NO.	REVISION / DATE
A102	C / 25 July 2013

DO NOT SCALE - IF IN DOUBT, ASK

ORIGINAL SIZE A1

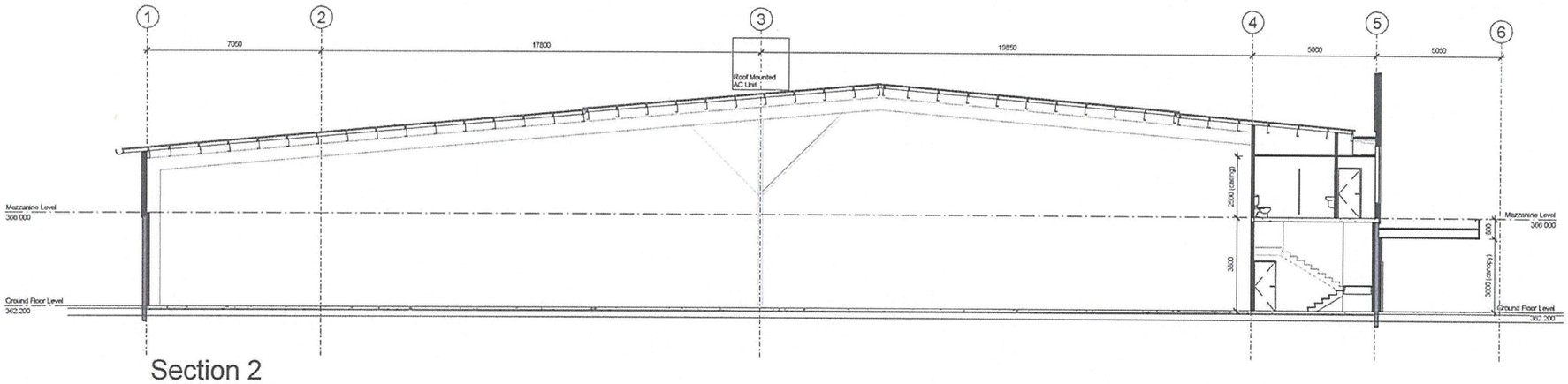


Section 1
Scale 1:50 @ A1, 1:100 @ A3

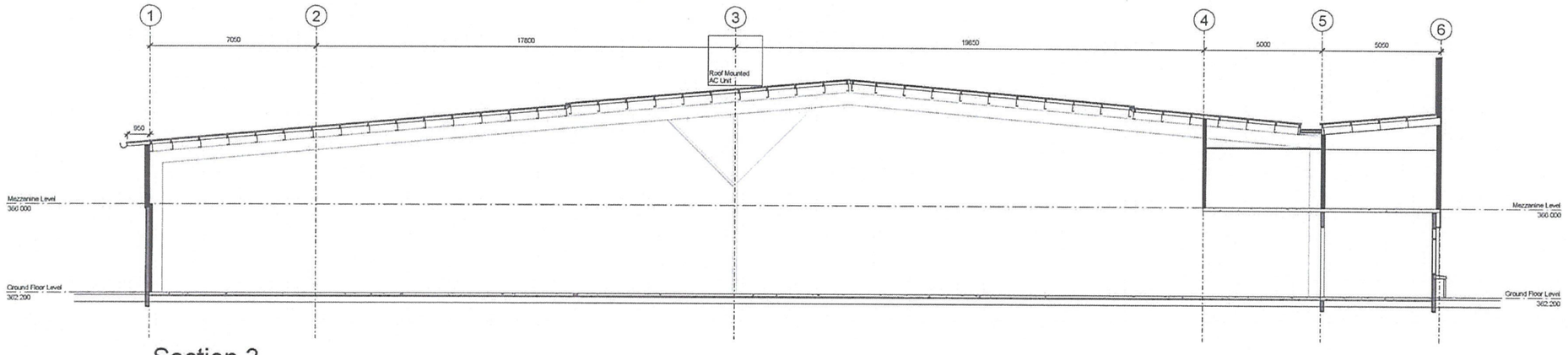
QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130521

11 April 2014



Section 2
Scale 1:50 @ A1, 1:100 @ A3



Section 3
Scale 1:50 @ A1, 1:100 @ A3

Ref.	Description	Date
B	Resource Consent	15/05/2013
A	Resource Consent	22/04/2013

REVISION SCHEDULE

ARCHITECT
MASON&WALES ARCHITECTS

STRUCTURAL / CIVIL ENGINEER
THORBURN Consultants (NZ) Limited

FIRE ENGINEER
Enlightened Solutions LTD
Fire Engineering Design

PROJECT
MITRE 10 MEGA
SHOTOVER PARK
QUEENSTOWN

CLIENT

DRAWING TITLE
Typical Cross Sections

PROJECT STATUS
RESOURCE CONSENT

DESIGN	DRAWN
Whitaker/Johnston	PWT

SCALE		PROJECT NO
1 : 100	@A1	5351

DRAWING NO	REVISION	DATE
A200	B	15 May 2013

ISSUE	DATE	AMENDMENT
0	30/10/12	FOR CLIENT REVIEW
A	07/08/13	FOR CLIENT REVIEW

Trees in paved car park areas to be planted in structural soil pit with local river stone gravel on surface, see detail 1/L 1.0

Deciduous exotic car park interior tree - *Liquidambar styraciflua* 'Worplesdon' (liquidambar)

Rain garden - *Carex virgata* and *Carex sinclairii* (sedge)

Evergreen native tree - *Nothofagus solandri var. cliffortioides* (mountain beech)

400mm high raised lawn retained with Otago schist wall

Car park aisle tree - *Sophora microphylla* (kowhai)

Steel and timber pergola over seating area

800mm high weathered timber bollards

Otago schist wall to 400mm high

Free standing Otago schist wall to 600mm high

Timber slat seat wrapped over stone wall with ground lighting, see detail 4

Free standing Otago schist wall to 600mm high

Trees in pedestrian areas to be planted in structural soil pit with stainless steel tree grate and Otago schist surround, see detail 3

Cafe outdoor seating area

Otago schist wall to 600mm high with horizontal timber slat screen fixed above

Timber slat seat

MITRE 10 MEGA BUILDING

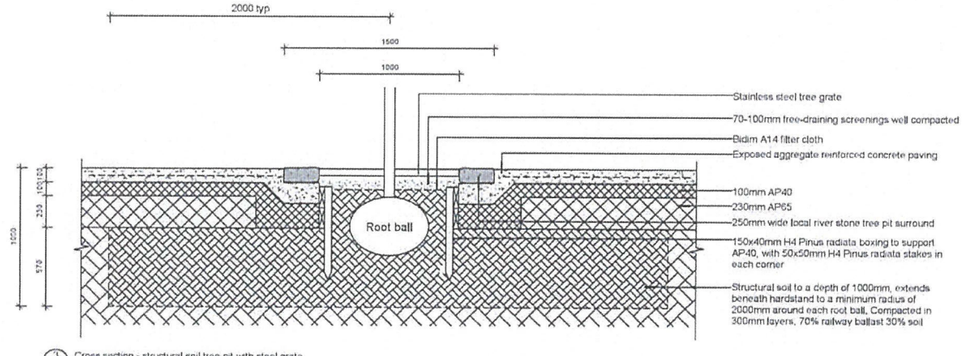
Otago schist inlay contrast paving strips

Exposed aggregate concrete paving with sawcut grid as shown

Evergreen native hedge to front of wall - *Muehlenbeckia astonii* (mingiming)

Mixed native shrub and groundcover planting species to include

Astelia fragrans	(kakaha)
Chionochloa flavicans	(snow tussock)
Chionochloa rubra	(red tussock)
Coprosma acerosa	(sand coprosma)
Coprosma 'Dark Cloud'	(coprosma)
Dianella nigra	(turuturu)
Hebe albicans	(hebe)
Hebe 'Mrs Winder'	(hebe)
Liberta ixoides	(NZ iris)
Melicytus alpinus	(porcupine shrub)
Phormium 'Jack Spratt'	(dwarf flax)



3/2 Cross section - structural soil tree pit with steel grate
Scale: 1:20

4/2 Perspective - timber slat seat

NORTH

draft

rough & milne landscape architects
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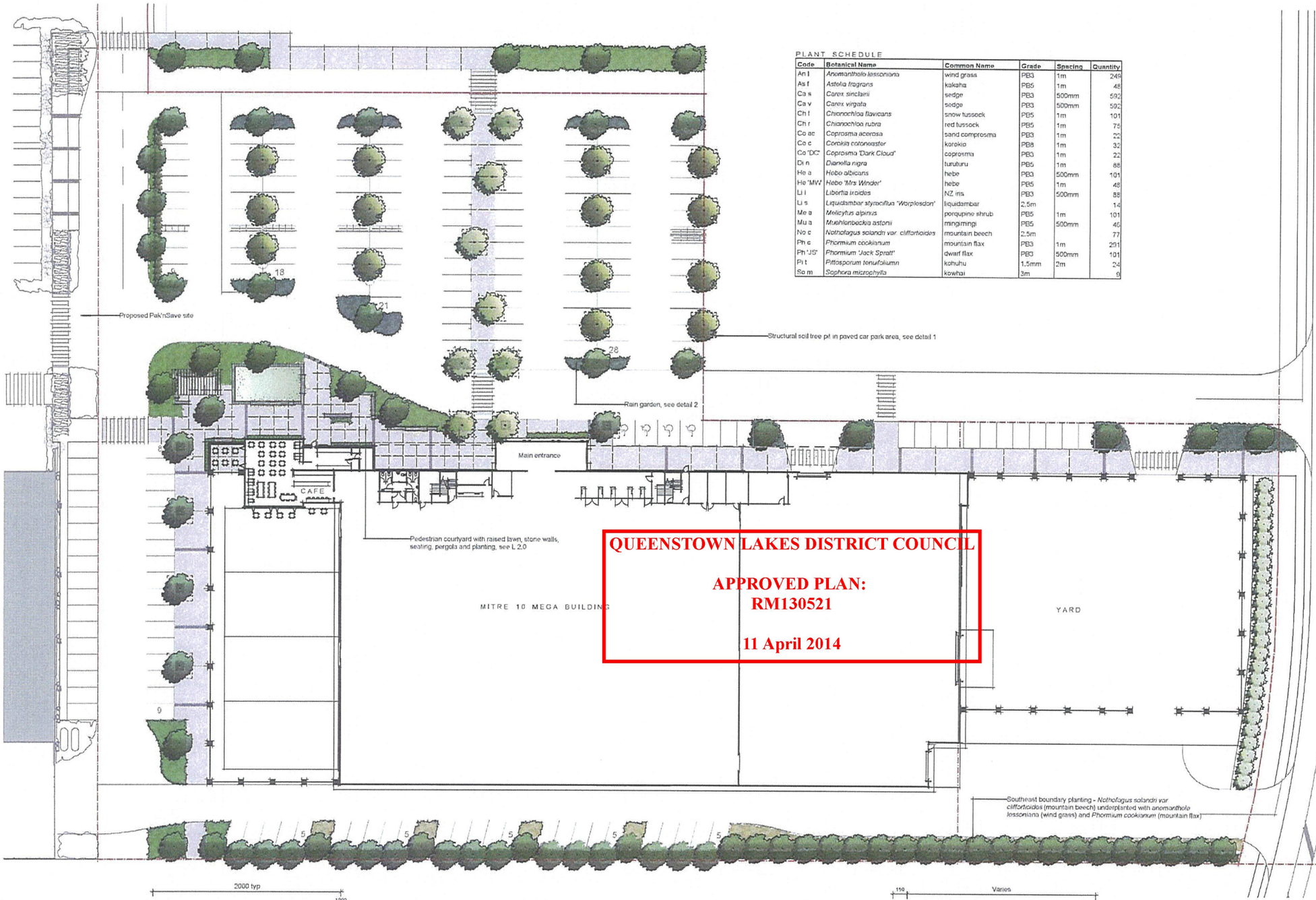
New Zealand
Tel +64 3 366 5268
Fax +64 3 377 8247
info@roughandmilne.co.nz

LANDSCAPE DETAIL PLAN
MITRE 10 MEGA
SHOTOVER PARK
QUEENSTOWN

SCALE	1:100 / 1:20 @ A1
DATE	30/10/12
DESIGNED	TONY MILNE / JEREMY LONDON
DRAWN	JEREMY LONDON
STATUS	CLIENT REVIEW
DRAWING No.	REVISION
L 2.0	A



PLANT SCHEDULE

Code	Botanical Name	Common Name	Grade	Spacing	Quantity
An l	*Anemanthole lessoniana*	wind grass	PB3	1m	249
As f	*Astelia fragrans*	kakaha	PB5	1m	48
Ca s	*Carex sinclairii*	sedge	PB3	500mm	592
Ca v	*Carex virgata*	sedge	PB3	500mm	592
Ch f	*Chionochloa flavicans*	snow tussock	PB5	1m	101
Ch r	*Chionochloa rubra*	red tussock	PB5	1m	75
Co ac	*Coprosma acerosa*	sand coprosma	PB3	1m	22
Co c	*Corokia cotoneaster*	korokio	PB8	1m	32
Co 'DC'	*Coprosma 'Dark Cloud'*	coprosma	PB3	1m	22
Di n	*Dianella nigra*	turuturu	PB5	1m	88
He a	*Hebe albicans*	hebe	PB3	500mm	101
He 'MW'	*Hebe 'Mrs Winder'*	hebe	PB5	1m	48
Li l	*Libertia ixoides*	NZ iris	PB3	500mm	88
Li s	*Liquidambar styraciflua 'Worplesdon'*	liquidambar	2.5m		14
Me a	*Melicytus alpinus*	porqupine shrub	PB5	1m	101
Mu a	*Muehlenbeckia astonii*	mingimingi	PB5	500mm	46
No c	*Nothofagus solandri var. cliffortioides*	mountain beech	2.5m		77
Ph c	*Phormium cookianum*	mountain flax	PB3	1m	201
Ph 'JS'	*Phormium 'Jack Spratt'*	dwarf flax	PB3	500mm	101
Pi t	*Pittosporum tenuifolium*	kohuhu	1.5mm	2m	24
So m	*Sophora microphylla*	kowhai	3m		6

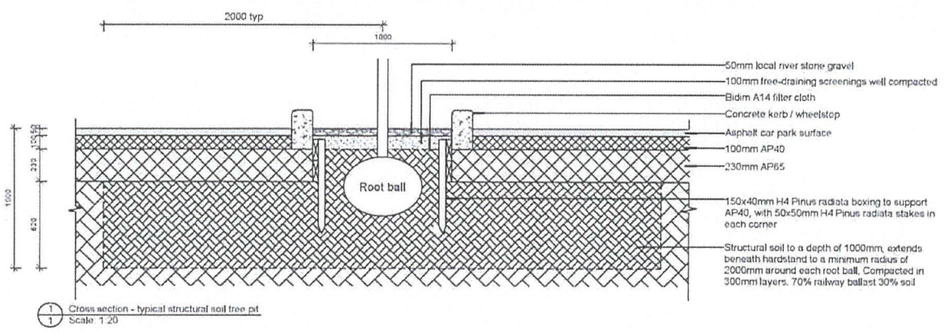
ISSUE	DATE	AMENDMENT
D	30/10/12	FOR CLIENT REVIEW
A	07/08/13	FOR CLIENT REVIEW

LEGEND

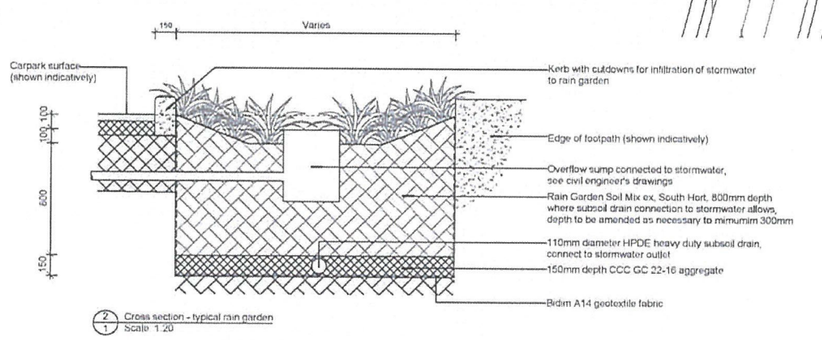
- Evergreen native car park perimeter and southern boundary tree - *Nothofagus solandri var. cliffortioides* (mountain beech)
- Deciduous exotic car park interior tree - *Liquidambar styraciflua* 'Worplesdon' (liquidambar)
- *Sophora microphylla* (kowhai)
- Evergreen native hedge to 3m high - *Pittosporum tenuifolium* (kohuhu)
- Evergreen native hedge to 1200mm high - *Corokia cotoneaster* (korokio)
- Evergreen native hedge to 600mm high - *Muehlenbeckia astonii* (mingimingi)
- Rain garden - *Carex virgata* and *Carex sinclairii* (sedge)
- *Anemanthole lessoniana* (wind grass) - south east boundary
- *Phormium cookianum* (mountain flax) - south east boundary
- Mixed native shrub and groundcover planting species to include

Astelia fragrans	(kakaha)
Chionochloa flavicans	(snow tussock)
Chionochloa rubra	(red tussock)
Coprosma acerosa	(sand coprosma)
Coprosma 'Dark Cloud'	(coprosma)
Dianella nigra	(turuturu)
Hebe albicans	(hebe)
Hebe 'Mrs Winder'	(hebe)
Libertia ixoides	(NZ iris)
Melicytus alpinus	(porqupine shrub)
Phormium 'Jack Spratt'	(dwarf flax)

- Lawn
- Exposed aggregate concrete paving with sawcuts
- Otago schist wall / contrast inlay paving strip
- Timber slat seat
- Structural soil tree pit in paved areas, see detail 1



1/1 Cross section - typical structural soil tree pit
Scale 1:20



2/1 Cross section - typical rain garden
Scale 1:20

NORTH

draft

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Tel +64 3 366 3266
Fax +64 3 377 8267
info@roughandmilne.co.nz

LANDSCAPE PROPOSAL PLAN
MITRE 10 MEGA
SHOTOVER PARK
QUEENSTOWN

SCALE	1:500 / 1:20 @ A1
DATE	30/10/12
DESIGNED	TONY MILNE / JEREMY LONDON
DRAWN	JEREMY LONDON
STATUS	CLIENT REVIEW
DRAWING No.	REVISION
L 1.0	A

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130521

11 April 2014

Fuel Site
mountable kerb & island
Landscaping
Bus Stop
Proposed Finished
Floor Level
RL 362.2
150mm Slab
100mm of Basecourse
BULK STORE
roof over
roof over shown dashed
gate
Utilities
P106 RL362.30 Bus Shelter with Glass Roof over louvres
P103 RL362.65
P109 RL362.31
P107 RL362.13
P15 RL361.91
P84 RL361.73
P16 RL361.50
RL362.05 P82
P81 RL361.99
P55 RL362.10
P88 RL361.67
P89 RL361.87
P91 RL361.94
P92 RL361.99
P71 RL362.10
P104 RL361.99
P21 RL362.42
RL362.55 P101
RL362.26 P96
RL362.30 P18
RL362.10 P59
P20 RL362.21
RL362.38 P99
RL362.30 P100
RL362.45 P98
P14 RL361.76
P64 RL362.10
P62 RL362.10
P63 RL362.10
P61 RL362.10
P72 RL361.86
RL362.10 P60

Earthworks Volumes

Total Area	= 20532m2
Topsoil Cut Area (13327m2)	= 2665m³
Topsoil Fill Area (7205m2)	= 1441m³
Topsoil Total (at 0.20m deep)	= 4106m³
CUT	
Bulk Cut Volume	= 3600 m3
FILL	
Bulk Fill Volume	= 1024 m³
Allow 20% compaction loss	= 205 m³
NET VOLUME	
Cut to Waste	= 2371m³

Note:
1. The volumes above are from existing ground level to proposed finished ground levels with additional cut volumes from excavating 0.35m to carpark and landscaping subgrade levels and 0.25m to the building platform subgrade (allowing for 150mm concrete slab and 100mm of basecourse)
2. Bulk Cut/Fill Volumes are volumes required from the stripped site surface to subgrade carpark , landscaping and building levels
3. Final floor level will depend on the final design of adjacent Road 4

Original Scale

No.	Revision Details	Date
—	—	—

Key:
Existing Stormwater
Existing Wastewater
Existing Watermain
Existing Irrigation
Existing Gas
Existing Telecom
Existing Power Cable
Proposed Stormwater
Proposed Wastewater
Proposed Watermain
Proposed Irrigation
Proposed Gas
Proposed Telecom
Proposed Power Cable (HV)
Proposed Power Cable (LV)
Ex MH
Proposed SWMH
Proposed SSMH

Design	J G RALSTON (QTOWN 03 442 3101)
Survey	APEX
Drawn	JR
Checked	MS
Date	OCT 2011
Scale	SCALE 1:400 A1 1:800 A3
CAD Filename	11537-10.dwg

Job Title.
CROSSROAD PROPERTIES LIMITED
PROPOSED MITRE 10 MEGA STORE
SHOTOVER PARK
QUEENSTOWN

AIREY CONSULTANTS LTD.
CONSULTING CIVIL & STRUCTURAL ENGINEERS
Takapuna, Pukekohe, Howick, Waiuku, Orewa

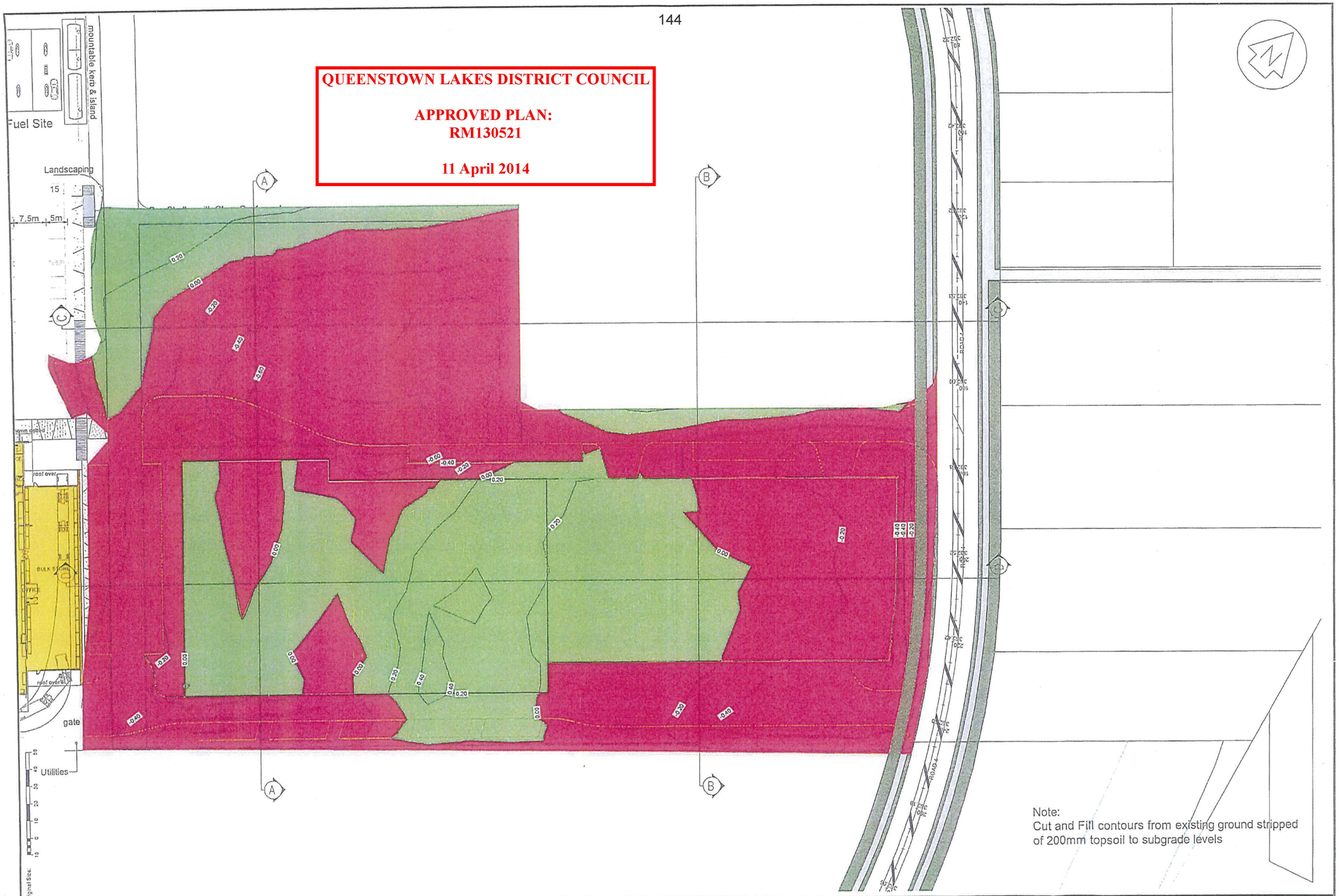
Drawing Title.
PROPOSED FINISHED LEVELS

File No. 11537-01 | Rev. | Dwg. No. 1.0

QUEENSTOWN LAKES DISTRICT COUNCIL

APPROVED PLAN:
RM130521

11 April 2014



Note:
Cut and Fill contours from existing ground stripped of 200mm topsoil to subgrade levels

No.	Revision Details	Date
—	—	—
—	—	—
—	—	—
—	—	—
—	—	—

Key:
Cut Fill Contour
Cut
Fill

Design	J G RALSTON (QTOWN 03 442 3101)
Survey	APEX
Drawn	JR
Checked	MS
Date	OCT 2011
Scale	SCALE 1:400 A1 1:800 A3
CAD Filename	

Job Title.
CROSSROAD PROPERTIES LIMITED
PROPOSED MITRE 10 MEGA STORE
SHOTOVER PARK
QUEENSTOWN

AIREY CONSULTANTS LTD.
CONSULTING CIVIL & STRUCTURAL ENGINEERS
Takapuna, Pukekohe, Howick, Waiuku, Orewa

Drawing Title.
PROPOSED CUT FILL LEVELS

File No.	Rev.	Dwg. No.
11537-01		2.0