



DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	Mr P Nolet
RM reference:	RM130884
Location:	Hawea Back Road, Hawea.
Proposal:	Identification of a residential building platform
Type of Consent:	Land Use
Legal Description:	Lot 1 Deposited Plan 26156 held in Computer Freehold Register OT 18A/1051
Zoning:	Rural General
Notification:	Publicly Notified
Commissioners:	Commissioner D Jane Taylor
Date:	14 October 2014
Decision:	The application is granted, subject to the imposition of conditions

BEFORE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of an application by Mr
Peter Nolet for consent to
identify a residential
building platform on a
property located on the
Hawea Back Road, Hawea
Flat

Council file: RM130884

**DECISION OF COMMISSIONER APPOINTED BY QUEENSTOWN LAKES
DISTRICT COUNCIL**

14 October 2014

Hearing Panel: D Jane Taylor (Queenstown)

The Hearing and Appearances

Hearing Date:

Thursday 11 September 2014 at Wanaka

Appearances for the Applicant:

Mr Scott Edgar, Resource Management Planner,
Southern Land Limited

Ms Anne Steven, Landscape Architect

In Attendance:

Mr I Greaves, Reporting Planner, Queenstown Lakes
District Council

Ms Helen Mellsop, Consultant Landscape Architect for
Queenstown Lakes District Council

Ms Lyn Overton, Engineer, Queenstown Lakes District
Council

Introduction

1. I have been given delegated authority to hear and determine this application and, if necessary, to impose conditions by the Queenstown Lakes District Council (“the Council”) under the Resource Management Act 1991 (“the Act”).
2. The application (Council reference RM130884) has been made by Mr Peter Nolet (“the Applicant”) for land use consent to identify a residential building platform at a property located on Hawea Back Road, Hawea Flat. The legal description of the property is Lot 1 Deposited Plan 26156 held in Computer Freehold Register OT18A/1051.
3. A full description of the proposal is described in Section 5 of the Assessment of Environmental Effects (“AEE”) submitted with the application, prepared by Mr Scott Edgar of Southern Land Limited. The AEE also contains a summary of the consenting history of the site, which is a relevant matter under s.104(1)(c) and will be discussed further in this decision.
4. The property comprises 20 hectares of land and is located on the Hawea Back Road, Hawea Flat. A description of the site and the receiving environment is contained in the Landscape Assessment Report prepared by Ms Anne Steven attached to the AEE in Section 2.
5. The proposed activity requires resource consent for the following reasons under the Operative Queenstown Lakes District Plan (“the District Plan”):
 - A **discretionary** activity resource consent pursuant to Rule 5.3.3.3(i)(b) for the identification of a residential building platform not less than 70m² in area and not greater than 1,000m² in area.
6. Overall, the application falls to be considered as a **discretionary** activity.

Relevant Statutory Provisions

7. The provisions of the Resource Management Act 1991 relevant to the assessment of this application as a discretionary activity are ss.104, 104B, 108 and Part 2 of the Act.

Relevant Plan Provisions

8. The relevant planning document considered was the Queenstown Lakes District Plan and, in particular, the following parts:
 - Part 4 – *District Wide Issues*
 - Part 5 - *Rural Areas*
9. The site is zoned Rural General under the District Plan.

Application Information

10. The following information was received and considered in reaching in my decision:

- (a) A report dated 2 September 2014 prepared under s.42A of the Act by Mr Ian Greaves, the Reporting Planner for the Council (“the Section 42A Report”);
 - (b) The appendices to the Section 42A Report, including a Landscape Assessment Report dated 29 January 2014 prepared by Ms Helen Mellsop, Consultant Landscape Architect;
 - (c) An Engineering Report prepared by Ms Lyn Overton, Council Engineer, dated 28 August 2014; and
 - (d) A set of draft conditions.
11. The following documents contained in the agenda accompanying the Section 42A Report have also been considered in determining this application:
- The application as notified (Form 9);
 - An Assessment of Environmental Effects (“AEE”) prepared by Southern Land Limited dated 19 December 2014;
 - The appendices to the AEE, including the Certificate of Title, a location map, a site plan and proposed conditions of consent;
 - A Landscape Assessment Report prepared by Ms Anne Steven dated November 2012;
 - Service confirmation letters;
 - A Hazard Assessment Report prepared by Tonkin & Taylor dated February 2013;
 - Affected party approvals received from McCarthy Bros Limited, Russell and Jean Speight & Anderson Lloyd Trustee Co Limited, and Grant and Janet Cochrane; and
 - Correspondence between Mr Edgar and Mr Greaves dated 23 January 2014 in relation to the building platform height limit and coverage.
12. The Section 42A report recommended that the application be granted pursuant to s.104 of the Act for the following reasons:
- (i) It is considered that the adverse effects of the activity will be minor;
 - (ii) The proposal is consistent with the relevant objectives and policies of the District Plan; and
 - (iii) The proposal will promote the overall purpose of the Act.

Notification and Submissions

13. The application was publicly notified on 6 March 2014, and the period for lodging submissions closed on 4 April 2014.

14. One submission was received in opposition to the application from the Upper Clutha Environmental Society (“UCES”), which indicated that it wished to be heard at the hearing. UCES opposed the application in full for the following reasons:
- The visual effects, amenity effects and effects on natural landscape values would be significant and adverse;
 - The site and surrounding area is an Outstanding Natural Landscape (“ONL”) and protecting these landscape values is of both national and regional importance;
 - The proposed development will set a precedent for residential development in visible locations within an ONL;
 - An 8 metre high dwelling will cause adverse visual effects from a number of public and private places;
 - The application conflicts with s.6 and 7 of the Act;
 - The development is inconsistent with the objectives and policies of the District Plan;
 - The development will result in adverse cumulative effects. Existing development within the vicinity has already caused a threshold of suitable development to be exceeded; and
 - The proposed development will add 3,000 annual traffic movements along unsealed roads in the vicinity.
 - However, UCES supported the parts of the application where it proposes to protect and enhance native vegetation.
15. Three parties provided written approval as set out at Section 4 of the Section 42A Report. Accordingly, any adverse effects on these parties have been disregarded in accordance with s.104.

The Hearing

16. A hearing was held on 11 September 2014 at the Council Meeting Room, 33 Reece Crescent, Wanaka. In attendance were:
- (a) Mr Peter Nolet, who was represented by Mr Scott Edgar, a Resource Management Planner of Wanaka; and
 - (b) Council Officers, including Mr Ian Greaves, Reporting Planner; Ms Helen Mellsop, Consultant Landscape Architect and Ms Lyn Overton, Engineer.
 - (c) Ms Rachel Beer, Committee Secretary.
17. Mr Edgar called landscape evidence from Ms Anne Steven before presenting his planning evidence on behalf of the Applicant.
18. UCES was not represented at the hearing.

19. Immediately prior to the hearing, I conducted a site visit to the property accompanied by Mr Greaves. I am satisfied that I gained a good appreciation of the site and the receiving environment.

Summary of the Evidence Heard

20. The following is a brief outline of the submissions and evidence presented on behalf of the Applicant. I have not attempted to cover everything that was advanced as, where relevant, detailed material is included in my discussion of the principal issues and effects in the assessment section of this decision.
21. Ms **Anne Steven** presented a brief statement of opinion in which she addressed the main issues raised by the Landscape Architect engaged by Council to provide a landscape assessment, together with those raised by UCES.
22. Ms Steven described the details of the application that have been changed in response to the comments of Ms Mellsop and UCES, and the proposed changes to the conditions. These were:
 - The removal of part of the hill from the curtilage area and inclusion of that area in the covenanted area.
 - A change to the future mitigation tree-planting requirements to the north and east of the building platform.
 - Inclusion of provision for earth bunding to the north and east of the dwelling as a flood protection option.
23. Ms Steven identified the most pertinent issue in this application as cumulative effect. In her view, the proposed development would not introduce elements that are inconsistent with the modified pastoral farm character of the fan. Occasional dwellings and associated development are, in her opinion, “typical elements” in this landscape. Although Ms Steven agreed with Ms Mellsop that the Lot 2 building platform on the neighbouring Cochrane property was of potential concern regarding cumulative effect, in her view neither dwelling would be so visually prominent that, individually or cumulatively, either would significantly detract from landscape amenity. This opinion was supported by the inability of a passer-by to see both dwellings together from any viewpoint on the Hawea Back Road because of tree planting (both existing and proposed) and the background hill. In Ms Steven’s opinion, the rocky hill effectively separates the two dwellings, especially when viewed from further up the Hawea Back Road and from Hospital Creek Road, notwithstanding that there would be sequential views of both dwelling areas travelling in both directions.
24. Ms Steven made a number of comments on the recommended conditions, which, in the main, were accepted by the Council Officers.
25. Mr **Scott Edgar** addressed the subject site and background to the application, the proposed development, public notification and submissions, the status of the activity under the Operative District Plan, the Section 42A report, the assessment of environmental effects, the assessment of the relevant provisions of the Operative District Plan and Part 2 of the Act.

26. In the main, Mr Edgar's evidence summarised that contained in the AEE supplied with the application. Full details of proposed changes in response to the concerns of Council officers were, however, discussed in detail.
27. In relation to landscape and visual amenity, Mr Edgar noted that while there was disagreement between Ms Steven and Ms Mellsop regarding the extent to which a future dwelling would be visible from the Hawea Back Road and Hospital Creek Road, there had since been agreement that the proposed reductions to the bulk and scale of the future dwelling would reduce its visual prominence. In this respect, it was agreed that:
- (i) The conditions would provide for a landscape plan to be submitted to Council for approval showing:
- The extent of the curtilage area;
 - The extent of the landscape covenant area identified on the proposed site development plan prepared by Ms Steven dated September 2014;
 - The location, species and size of planting north and east of the building platform that will partially screen and integrate development within the platform when viewed from Hawea Back Road and Hospital Creek Road over all seasons of the year;
 - A minimum number of trees which are required to achieve heights greater than 3 metres within five years of planting;
 - The identification of all existing trees to be retained as per the proposed site development plan;
 - Details of plant establishment and management, including irrigation and mulching; and
 - Details of any earth bunding to be provided.
- The landscape plan is to be implemented within six months of approval and all vegetation is to be maintained and irrigated in accordance with the plan.
- (ii) All future buildings are restricted to a maximum height of 6 metres above existing ground level with the exception of chimney flues or other minor structures that may exceed the height limit to a maximum additional height of 1.2 metres.
- (iii) Future buildings are to comply with a number of design controls, which include a provision that the building area should not exceed a total area of 600m².
28. Mr Edgar explained the details of a water supply to be provided via the existing bore that serves Lots 1 and 2 of the McCarthy subdivision. Confirmation had been obtained from The Old House Water Supply Company that, in principle, the proposed building platform could be provided with a domestic and fire-fighting water supply from the company's bore.
29. Mr Edgar discussed the geotechnical assessment carried out by Tonkin & Taylor, which found the risk of flood and debris flow hazards resulting from the position of the building platform on

the alluvial fan to be low. However, as a precaution, consent has been obtained from the Otago Regional Council (RM 14.019) for the formation of a defence against water and the diversion of floodwater from Hospital Creek via a bund. Details of the ORC consent were supplied at the hearing.

30. Overall, Mr Edgar concluded that, with the mitigating conditions proposed, the actual and potential adverse effects on the environment would be no more than minor and that the proposal is consistent with the objectives and policies of the District Plan. Overall, in his view, the proposed development meets the purpose of the Act.

Council Officers

31. Ms **Helen Mellsop** advised that she stood by her assessment in her report. She commented that the proposed changes to the conditions appeared appropriate and that she supported the inclusion of the earth bund required as a defence against water, in relation to which she expected the visual effects would be minimal.
32. Mr **Ian Greaves** was generally in agreement with the further evidence provided by Mr Edgar. He advised that he was confident that sufficient agreement had been reached that a series of conditions could be agreed between the parties following the hearing, which would mitigate any residual concerns in relation to the effects on the environment to an acceptable level. Accordingly, Mr Greaves stood by his recommendation that the proposal should be granted subject to the recommended conditions of consent.
33. I am grateful to Mr Edgar, Ms Steven, Mr Greaves, Ms Mellsop and Ms Overton for the exceptionally high quality of the evidence that was provided, both prior to and during the hearing.

The Principal Issues in Contention

34. It was common ground that the application falls to be considered as a discretionary activity. A wide range of matters were traversed in the application, submissions, Section 42A report and supporting material, and during the hearing.
35. The principal issues in contention arising from the application, the Section 42A report and the contents of the UCES submission, including matters raised during the hearing, are:
 - (a) Landscape and visual amenity effects: the extent to which the proposed development will have adverse effects on the openness of the landscape and the visibility of development from the Hawea Back Road and Hospital Creek Road.
 - (b) The extent to which the development introduces cumulative effects on landscape values which are inappropriate in this environment.
 - (c) The positive effects on the proposal, which include the protection of the prominent rocky hill slopes of the site by way of a protective covenant that prevents new tracking, earthworks, the erection of structures, mass exotic planting and the removal of existing native shrubs.
 - (d) The suitability of the site for onsite wastewater disposal and the availability of a suitable potable water supply to service the building platform.

- (e) The extent to which the site can be adequately protected from the alluvial fan hazard identified by the geotechnical assessment.
- (f) The extent to which the proposal is consistent with the relevant objectives and policies of the District Plan; in particular, those objectives and policies contained in Part 4.1 – *Natural Environment*, 4.2 – *Landscape and Visual Amenity*, 4.8 – *Natural Hazards* and Section 5 – *Rural Areas*.

Assessment

Landscape Classification

36. Both Ms Steven and Ms Mellsop classified the landscape containing the proposed building platform as part of an Outstanding Natural Landscape (“ONL”). Although both landscape architects differed in their opinion of the precise location that the surrounding landscape transitions between ONL and Visual Amenity Landscape (“VAL”), I concur with Mr Greaves that this difference in opinion does not have a significant bearing on the assessment of the application.

The Permitted Baseline and Receiving Environment

37. I concur with Mr Greaves that the permitted baseline for this rurally-zoned site offers little assistance in the assessment of this application.
38. The receiving environment comprises a mix of small lifestyle lots with dwellings and small scale farming activities on Hawea Back Road, together with larger holdings used for cropping or grazing stock.
39. Mr Greaves noted that the subject site is bordered on three sides by Lot 2 DP426982 (“the Cochrane property”), which comprises 102 hectares and is used for grazing stock. Resource consent RM120393 proposed adjusting the boundary of the subject site to create a 7.9 hectare allotment, with the remaining land to be incorporated into the Cochrane property. This consent has not been advanced pending the outcome of this application, as there is currently no building platform on the property.
40. A prior resource consent (RM070222) approved the subdivision of two small lifestyle blocks on the Cochrane property. Lot 2 of this subdivision adjoins the south-western boundary of the subject site and is yet to be created.

Actual and Potential Effects on the Environment

41. Having reviewed the evidence, I consider the proposal raises the following actual and potential effects on the environment:
- (i) Landscape and visual amenity effects;
 - (ii) Cumulative effects on the surrounding environment;
 - (iii) The ability to provide adequate services to the building platform; and

- (iv) The extent to which the building platform can be protected by flood and debris flow risk from the alluvial fan hazard.

Landscape and visual amenity

42. I have had the benefit of very comprehensive landscape assessment reports prepared by Ms Steven and Ms Mellsop, together with an analysis by Mr Greaves.
43. Mr Greaves concluded that the proposed development could be absorbed within its proposed location without resulting in any significant adverse effects on the landscape values of the area, provided that the height of future dwellings were restricted to 6 metres and the building coverage within the platform limited to 600 m². Ms Mellsop recommended that an additional restriction on the percentage of flat roofs (to less than 20 percent) be applied to ensure that only a single-storied building could be constructed.
44. At the hearing the Applicant advised that it accepted these proposed restrictions and, accordingly, I have concluded that any adverse effects on landscape and visual amenity, and the openness of the landscape are acceptable.

Cumulative effects on landscape values

45. The adverse cumulative effect on landscape values in this vicinity is the most challenging aspect of this application.
46. Mr Greaves has set out a very comprehensive summary of both Ms Steven and Ms Mellsop's analysis in relation to the cumulative effect on landscape values. Ms Steven formed the view that:
- The proposed development will not introduce elements which are inconsistent with the character of the site and the surrounding landscape;
 - The new landscape elements proposed as part of this application will not further compromise the natural character of the landscape either visually or ecologically;
 - The existing and unimplemented consented development in the vicinity of the site does not represent a threshold with respect to the site's and the surrounding landscape's ability to absorb change; and
 - The design controls and extent of visibility as a result of the proposed building platform will avoid over-domestication of the landscape. The overall landscape will retain a rural character and large open spaces with a dominance of landform and vegetation.
47. Ms Mellsop was of the view that *"the existing and consented development in the vicinity is close to or at the threshold of the landscape's ability to absorb change without over-domestication and significant adverse effects on naturalness and rural character"*. Taking into account the additional suggested design controls (a reduction in the height of the building to 6 metres and restriction of building coverage to 60 percent of the building platform area), Ms Mellsop considered the cumulative adverse effects would be small to moderate in extent.

48. Mr Greaves considered that in forming a view on the cumulative effects of the proposed development, it is important to consider the existing environment in addition to consented development that is yet to be implemented. He considered the density of residential development to be relatively high, with seven established residential dwellings and one approved but not yet developed building platform within a 1 km radius of the proposed building platform. He noted that Lot 4 of the McCarthy subdivision (which was situated approximately 500 metres north-east of the proposed building platform directly adjoining Hospital Creek Road) was declined because it was determined that the threshold of development in the vicinity had already been exceeded and that one further dwelling would compromise the landscape values of the area.
49. However, overall Mr Greaves was persuaded that a small single storey dwelling in the location of the proposed building platform could be absorbed without exceeding the threshold of acceptable landscape and visual amenity effects in this location. In forming this view, he was cognisant of the location of the building setback from the road, the proposed design controls (including the accepted amendments) and the existing and proposed landscaping that would ensure that the proposed development would not significantly degrade natural landscape values or represent inappropriate domestication.
50. Having considered the evidence before me, and taking into account the further evidence of Ms Steven presented at the hearing (which is summarised above), I have concluded that the effects of cumulative development on landscape values is acceptable, although this is a very finely balanced decision. In forming this view, I am cognisant that the building platform is located in a transition area between ONL and VAL landscape, with the entire fan to the north of the building platform assessed as VAL by Dr Marion Read, who carried out a District wide assessment this year on behalf of Council. The proposed dwelling is consistent with the pattern of existing settlement and is therefore within the reasonable expectation of development that may occur in this landscape.
51. The proposed platform is some 500 metres away from the Hospital Flat node and, accordingly, does not contribute to any over-development in this area, which was the concern in relation to proposed Lot 4 of the McCarthy application. Ms Steven made the point in her further evidence that the Lot 2 dwelling on the Cochrane property is now the farmstead for Lot 2: it is not a separate lot as originally proposed.
52. Finally, Ms Steven commented on the positive cumulative effect of the covenant protecting and providing for the enhancement of the natural and ecological values of the rocky hill. I will consider this aspect further in my s.104 analysis.

Positive effects

53. The Applicant has offered to protect the prominent rocky hill slopes of the site by way of a protective covenant that prevents new tracking, earthworks, the erection of structures, mass exotic plantings and the removal of existing native shrubs. The proposed covenant is to be registered on the title of the property and has been volunteered as a condition of consent. A similar covenant was volunteered in relation to the Cochrane subdivision, which, in conjunction with the present covenant, would cover a considerable area of the rocky hill, including almost all of the hill face visible from public roads. This is a significant positive effect of the proposal and will be further considered in my Section 104 analysis below.

Services

54. At the hearing, Mr Edgar presented details of the proposed solutions relating to effluent disposal and the provision of a potable water supply to the building platform (as set out previously).
55. At the time the application was lodged, the Applicant proposed to provide a domestic and fire-fighting water supply to the building platform from an existing water take (consented under Otago Regional Council water permit 96608) from Reservoir Creek. However, it had proved difficult to determine whether that water supply was available year-round and what treatment might be required to ensure that it was potable. Accordingly, an alternative water supply from a scheme administered by The Old House Water Supply Company had been negotiated. Details were provided at the hearing to demonstrate that this alternative water supply is of sufficient capacity and quality to provide both a domestic and fire-fighting water supply to the proposed building platform.
56. In relation to the onsite effluent and storm water disposal, the Applicant proposed that this be provided by way of a suitably designed treatment plant and disposal field. Mr Edgar explained that at the time of making the application, it was believed that a site and soil assessment had been undertaken as part of the underlying subdivision (RM960270), as it was a condition of that consent. However, it was subsequently discovered that when the underlying subdivision was implemented, the provision of a site and soil assessment was deferred until such time as a dwelling was constructed. Accordingly, the Applicant has obtained a site and soil assessment from Petherick Consultancy Limited, which was attached to Mr Edgar's evidence presented at the hearing.
57. The Council engineer, Ms Overton, subsequently advised that she was satisfied that the additional evidence had demonstrated that both a potable water supply and effluent and storm water can be adequately catered for at the proposed building platform. The conditions of consent reflect the appropriate requirements. Accordingly, I am satisfied that any adverse effects on services are appropriately mitigated.

Natural hazards

58. Mr Greaves noted that the site is located in an alluvial fan hazard (less recently active) on Council's hazard register. A geotechnical assessment was provided in support of the application carried out by Tonkin & Taylor, which was summarised in the AEE. Tonkin & Taylor made recommendations which have been adopted by the Applicant and incorporated into the conditions of consent as follows:
 - At the time a dwelling is constructed within the lot, the owner shall elevate the building platform to a minimum floor level at least 0.7 metres above adjacent natural ground; or
 - The owner shall establish a diversion bund at least 0.75 metres high to the north and east of the proposed development.
59. The Applicant sought consent from ORC for a defence against water (bund) to provide for the diversion of floodwater flows from Hospital Creek (RM14.019.01), and advised that this will be implemented as part of the application. Accordingly, I am satisfied that the risk of flooding from the alluvial fan hazard has been appropriately mitigated.

Summary of effects on the environment

60. Having reviewed all of the evidence before me, I am satisfied that any adverse effects on the environment generated by this proposal are acceptable, having regard to the conditions of consent that have been agreed. Further, the Applicant's offer to covenant the rocky hill from any future development, to carry out pest and weed control, and to retain and approve the naturalness of the site, is a significant positive effect of the proposal.

Objectives and Policies of the District Plan

61. Both Mr Greaves and Mr Edgar assessed the proposal against the relevant objectives and policies of the District Plan. I also note that both landscape architects have set out an analysis of the assessment criteria in relation to Outstanding Natural Landscapes (District wide), in relation to which there has been no opposing evidence.
62. Mr Greaves rightly noted that the site is an ONL and is vulnerable to inappropriate development. However, in his opinion, a single-storied dwelling with strict design controls can be located on the subject site without detracting from the landscape and visual amenity values of the surrounding area. He noted that the proposal would not have any effects on ecological systems or the nature conservation values of the area.
63. Of significant importance is Objective 4.2, Policy 8, which deals with the avoidance of cumulative degradation. This policy aims to ensure that the density of subdivision and development does not increase to a point where the benefits of further planting and building are outweighed by the adverse effect on landscape values of over-domestication of the landscape. Mr Greaves notes that the assessment of cumulative degradation is a critical aspect of this application. In his view, the proposed development would bring the vicinity close to its threshold for development. However, he was persuaded by Ms Mellsop and Ms Steven's evidence that the benefits of further planting and building will not outweigh any adverse effect on landscape values of over-domestication of the landscape. Further, the proposed vegetation covenant is sympathetic in the context of rural development. Mr Edgar reached similar conclusions.
64. Overall, I have concluded that the proposal is consistent with the relevant objectives and policies of the District Plan.

Other Matters

65. The 20 hectare subject site was created by a previous subdivision consent, RM960270. At the time of that subdivision, there was no requirement or provision in either the Transitional or the Proposed District Plan for the establishment of residential building platforms in the rural zones. The siting of any dwelling on the new lot simply required a Land Use Resource consent as a **controlled** activity under both plans. This was provided for as a consent notice condition of RM960270, together with a number of dwelling location and design controls. Other conditions of consent provided for demonstration of a potable water supply, the availability of telecommunications and electricity systems to "domestic levels of service", provision for the treatment or disposal of domestic sewerage effluent and the completion of "as-built" engineering plans. As Mr Edgar noted in the AEE, "*construction of a dwelling on the subject site was clearly anticipated as the consent included conditions relating to the provision of services for a future dwelling and consent notice conditions relating to the location and design of any future building*".

66. From the “Reasons for the Decision” section of RM960270, it is plain that the consent authority carefully considered the visual impacts of any dwelling on the site, part of which it considered to be “visually sensitive”, and found it appropriate to impose conditions in relation to the location, design and colour of structures on the site to satisfy the relevant assessment matters.
67. Since the original subdivision was implemented, the owners have carried out considerable planting in anticipation of a dwelling, including in the vicinity of the proposed entrance and driveway. As a result, the site has a partly domesticated effect and passers-by would reasonably expect a dwelling to be located near the end of the (very long) driveway.
68. Following the decision of the High Court in *JIT Hillend Investments Limited v Queenstown Lakes District Council*,¹ I consider the original subdivision consent RM960270 to be a relevant matter in my s.104(1)(c) analysis, as it clearly anticipated that a dwelling would be erected on the property at some time in the future. Although the *JIT Hillend* case was concerned with the status of volunteered building platforms, the general principles are, in my view, applicable to this application.
69. It is plain that both the applicant and the Council approached the RM960270 consent on the basis that the new Lot 1 would be used for both farming and lifestyle purposes and that a dwelling would be erected in due course.² Under the plan provisions applicable at the time, the construction of a dwelling was a controlled activity. Accordingly, although Council had reserved control over various matters, including the location of the dwelling on the site, the requisite land use consent could not be withheld. On the facts, many of the matters reserved by Council in relation to the anticipated dwelling (such as location and design controls) had been assessed and provided for as consent notice conditions in the subdivision consent. The owners therefore had a legitimate expectation that a subsequent dwelling had been “approved” by Council at the time the Lot was created.
70. Although it is still necessary for the proposal to meet the requirements of the current District Plan, it is relevant that the subdivision that gave rise to the subject site anticipated a future dwelling and that some progress (in the way of planting) has been made as a result. Accordingly, it is appropriate to recognise the background to the subdivision of this Lot, the expectation of the owners and of the Council in relation to a dwelling on the site and to give this matter some weight in my overall analysis.

Section 104 Assessment

71. Section 104 requires me to have regard to the following, subject to Part 2, when assessing this application:
 - (a) The actual and potential environmental effects of allowing the activity;
 - (b) The relevant planning framework (in this case, the Operative District Plan); and
 - (c) Any other relevant matters.

¹ High Court, Invercargill, Chisholm J, 15 December 2009, CIV 2009 425 479.

² Ibid, paragraph [34].

72. As set out above, I am satisfied that any adverse actual and potential effects on the environment are acceptable in the context of this proposal. To the extent that I have found the adverse cumulative effects of the development on landscape character to be very finely balanced, the volunteered covenant to protect the rocky hill outcrop from future development is a significant positive aspect of the application and, in my view, would offset any cumulative adverse effects to the extent that these might arise. In this sense, the covenanted area is a form of environmental compensation that carries significant positive weight.
73. I have found that the proposal is consistent with the relevant objectives and policies of the District Plan.
74. I have also had regard to the previous subdivision consent that gave effect to the subject site, which clearly anticipated a dwelling. Whilst it is necessary for this application to be granted consent on its merits, I consider the previous consent to be a relevant factor in my analysis and one that plainly distinguishes this application from others that might follow. In particular, this factor would, in my view, be highly relevant in considering whether the grant of consent to this proposal creates a precedent for future applications in this vicinity.

Part 2 of the Act

75. The purpose of the Act in s.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 judgment allows for a comparison of conflicting considerations and the scale or degree of those conflicting considerations and their relative significance in the final outcome. Overall, the purpose of the Act is *enabling* and I accept that people should be able to provide for their needs unless the matters in s.5(a) to (c) cannot be appropriately remedied, mitigated or avoided.
76. Mr Greaves expressed the opinion that the proposed development adequately avoids, remedies and mitigates any adverse effects on the environment. In his view, the proposal will enable the Applicant to meet his needs through social and economic benefits.
77. Of particular relevance is s.6(b) of the Act, which is concerned with the protection of Outstanding Natural Features and Landscapes from inappropriate subdivision use and development. I concur with Mr Greaves that this section is particularly relevant to the assessment of this application. Having considered the evidence before me, in particular the landscape assessments carried out by Ms Steven and Ms Mellsop, I am satisfied that the landscape and visual amenity values of the site and surrounding ONL would not be adversely affected by the proposed development to any significant degree. Indeed, the true ONL (the rocky hill escarpment) will positively benefit from the covenant that has been volunteered.
78. I have also had regard to s.7(c) - the maintenance and enhancement of amenity values and (f) – the maintenance and enhancement of the quality of the environment. On the basis of my analysis above, I have concluded that the application is consistent with s.7 of the Act.
79. Overall, I am satisfied that the proposal promotes the purpose of the Act set out in s.5.

Conclusion

80. Pursuant to ss.104 and 104B of the Act, this application is **granted** subject to the following conditions of consent.
81. Pursuant to s.113 of the Act, the reasons for this decision are:
- (a) In terms of s.104(1)(i) of the Act, the actual and potential effects of the proposal on the environment are, on balance, acceptable. Any potential adverse effects, particularly in relation to landscape and visual amenity, are adequately mitigated by the design measures proposed by the Applicant and the conditions that had been imposed. The volunteered covenant preventing future subdivision and development in relation to the rocky hill escarpment is a positive effect arising from the proposal that has considerable value and which provides adequate compensation for any cumulative effects of the development on the receiving environment.
 - (b) In terms of s.104(1)(b) of the Act, I consider the proposal to be consistent with the relevant objectives and policies of the District Plan and with the relevant assessment criteria relating to ONL.
 - (c) I am satisfied that potential natural hazards have been adequately addressed and appropriate measures have been provided to ensure that any adverse effects are adequately remedied, mitigated or avoided.
 - (d) In terms of s.104(1)(c) of the Act, I have considered the clear intention of the original consent that gave rise to the subject site, which is relevant insofar as expectations are concerned and also in relation to precedent effect.
 - (e) The proposal is consistent with Part 2 of the Act. The proposed dwelling will provide for the economic and social benefit of the Applicant while maintaining the matters set out in s.5(a) to (c). Overall, I have concluded that the application promotes the purpose of the Act, which is the sustainable management of natural and physical resources.

Conditions

82. At the conclusion of the hearing, I suggested that the Applicant's representatives and the Council Officers meet to discuss amendments to the conditions following the hearing, which resulted in a draft set of conditions agreed between Council and the Applicant. I am grateful for the effort that was put into this process.

83. Pursuant to s.108 of the Act, this consent is **granted** subject to the following conditions:

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

- 'Proposed Residential Building Platform on Lot 1 DP 26156' by Southern Land ref. P4070_S1 revision A dated 15/11/13.
- 'Proposed Site Development Plan' by Anne Steven Landscape Architect ref. 160LP.01B dated September 2014.

stamped as approved on 14 October 2014 and the application as submitted, with the exception of the amendments required by the following conditions of consent.

Note: To give effect to this consent the consent holder shall register the building platform approved on the Computer Freehold Register for the site.

- 2a. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.
- 2b. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991 and shall pay to Council an initial fee of \$100. This initial fee has been set under section 36(1) of the Act.
3. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.
4. To give effect to this consent, and prior to the commencement of any development within the approved building platform, the consent holder shall provide a "Land Transfer Covenant Plan" indicating the approved building platform shown on the plan entitled 'Proposed Residential Building Platform on Lot 1 DP 26156' by Southern Land dated 15/11/13 – stamped as approved under Condition 1. The consent holder shall register this "Land Transfer Covenant Plan" on Computer Freehold Register OT18A/1051 and shall execute all documentation required to register this plan. The costs of doing so are to be borne by the consent holder.
5. Within 12 months from the grant of consent or prior to the registration of the building platform on the site, a landscape plan shall be submitted to Queenstown Lakes District Council for approval. The landscape plan submitted for approval shall show:
 - The extent of the curtilage area.
 - The extent of the landscape covenant area identified on the 'Proposed Site Development Plan' ref. 160LP.01B prepared by Anne Steven dated September 2014.
 - The location, species and size of planting north and east of the building platform that will partially screen and integrate development within the platform when viewed from Hawea Back Road and Hospital Creek Road over all seasons of the year.
 - This shall include a minimum of 30 trees that will achieve heights greater than 3m in height within 5 years of planting. Species shall be consistent with the rural context including the existing species on site.
 - Identify all trees existing as of 1 November 2012 that are to be retained as per the Proposed Site Development Plan ref: 160LP.01B dated September 2014.

- Details of plant establishment and management including irrigation and mulching.
- Details of any earth bunding to be provided in accordance with Condition 6(o).

The landscape plan approved under this condition shall be implemented on site within 6 months of approval and this vegetation shall be thereafter maintained and irrigated in accordance with that plan. Should any plant die or become diseased, it shall be replaced in the next available planting season.

6. At the time the building platform is registered on the Computer Freehold Register, the consent holder shall prepare and have registered on Computer Freehold Register (OT18A/1051) a land covenant pursuant to section 108(2)(d) of the Act requiring compliance with the following conditions:
 - a) All future buildings shall be contained within the approved building platform registered on the Computer Freehold Register for the site.
 - b) All garden structures and elements (including but not restricted to tennis court and fencing, decks, pergolas, walls, pools, small utility sheds) shall be restricted to the curtilage area identified on the landscape plan approved under condition 5 of resource consent RM130884.
 - c) No structures located within the curtilage area, or any stored materials, implements or parked vehicles shall be visible from the Hawea Back Road or Hospital Creek Road.
 - d) All building shall be completed within 12 months of commencement of construction.
 - e) All future buildings shall have a maximum height no greater than 6m above existing ground level with the exception of chimney flues or other minor structures that may exceed the height limit to a maximum additional height of 1.2m.
 - f) All future buildings shall comply with the following design controls:
 - (i) Shall reach a height no higher than 6m above existing ground level.
 - (ii) Shall not cover a total area exceeding 600m².
 - (iii) All roof pitches shall be no steeper than 35°. Flat roofs shall be limited to a maximum of 20% of all roofs.
 - (ii) All roof claddings shall be steel (corrugated or tray), cedar/wooden shingles, slate, turfed grass, gravel, natural stone or other similar material approved by Council prior to construction.
 - (iii) Any painted or otherwise colour treated roof surfaces shall have a reflectivity value of less than 12% and shall be of natural tones (browns, greens or greys).
 - (iv) Wall materials shall comprise natural stone, timber, plaster, profiled steel or other similar material approved by Council prior to construction.
 - (v) The colour of wall materials shall be in the natural range of browns, greens or greys, have a reflectivity value of 27% or less, and appear appropriately recessive in the context of the surrounding environment.
 - (vi) All joinery and spouting shall be of similar colour to roof and walls or darker.
 - g) All external lighting shall be designed to minimise glare and prevent light spilling beyond the immediate dwelling environs. There shall be no lighting outside the curtilage area.
 - h) Any water tanks shall be buried; or painted a dark recessive colour and screened by planting and/or mounding.

- i) No existing trees identified on the landscape plan approved under condition 5 of RM130884 shall be removed unless identified for removal in a Landscape Plan approved by Council.
- j) All fencing outside of the curtilage area shall be limited to post and wire or post and netting.
- k) Any tennis court or pool fencing shall be visually recessive and screened by vegetation in any public view.
- l) The access driveway shall be constructed in gravel without kerb and channel and shall be a maximum width of 4m, except where passing bays are required.
- m) Any driveway entrance shall be limited to timber structures of no more than 1.2m in height and 3m in length (on either side of the entrance) and any gates shall be timber or steel barred gates.
- n) Within the landscape covenant area identified on the 'Proposed Site Development Plan' prepared by Anne Steven dated December 2013 and approved under RM130884:
 - (i) No healthy live native shrub species shall be removed; and
 - (ii) No mass planting of exotic trees or shrubs shall be carried out (i.e. no more than 3 plants in a group are permitted and any such planting shall be at least 250m from any other such planting); and
 - (iii) No linear or geometric planting shall be carried out; and
 - (iv) No blade clearance of fence lines shall be carried out; and
 - (v) No buildings or structures shall be constructed; and
 - (vi) No quarrying shall be carried out; and
 - (vii) No track or road, other than foot tracks less than 600mm wide, shall be constructed; and
 - (viii) Within 5 years (from the date this covenant is registered) all exotic woody weed species shall be removed and thereafter the landscape covenant are shall be kept clear of any pest plants being any exotic species that is capable of self seeding and spreading such as brier, hawthorn, elderberry, gorse, broom and wilding pines.
- o) At the time a dwelling is constructed within the lot, the owner shall either:
 - Elevate the building platform to minimum floor level at least 0.75 m above adjacent natural ground, or
 - Establish a diversion bund at least 0.75 m high to the north and east of the proposed development. Such a bund would need to be professionally designed, typically with side slopes 2(H): 1(V), vegetated by groundcover plants and potentially protected by erosion mat geofabric, placed to avoid ponding and/or diverting potential flows towards dwellings and other structures, and established and protected by appropriate regulatory instrument. This shall be subject to review by Council's Principal Resource Management Engineer.
 - Where possible any diversion bund or building platform earthworks shall appear natural and integrated with the surrounding topography.
- p) At the time a dwelling is erected on the lot, the owner shall construct a vehicle crossing to the lot from Hawea Back Road to be in terms of Diagram 2, Appendix 7 of the District Plan. This shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less

than the public roadway serving the property, whichever is the lower. Provision shall be made to continue any roadside drainage.

- q) At the time a dwelling is erected on the lot, the owner shall construct an access way to the dwelling that complies with Council's standards applicable at that time.
- r) At the time a dwelling is erected on the lot, the owner shall engage a suitably experienced person as defined in sections 3.3 & 3.4 of AS/NZS 1547:2012 to design an onsite effluent disposal system in compliance with AS/NZS 1547:2012. The design shall take into account the site-specific report and recommendations by Petherick Consultants Ltd, dated 2 September 2014 and take into consideration the Tonkin & Taylor Ltd '*Alluvial Fan Hazard Assessment, 230 Hawea Back Road, Hawea Flat*' (dated February 2013, T & T ref: 892834). The proposed waste water system shall be subject to the review of the Principal Resource Management Engineer at Council prior to implementation and shall be installed prior to occupation of the dwelling.
- s) At the time that a dwelling is erected on, the owner is to treat the domestic water supply by filtration and disinfection so that it complies with the Drinking Water Standards for New Zealand 2005 (revised 2008).
- t) Prior to the occupation of any dwelling on the lot, domestic water and fire fighting storage is to be provided. A minimum of 20,000 litres shall be maintained at all times as a static fire fighting reserve within a 30,000 litre tank. Alternatively, a 7,000 litre fire fighting reserve is to be provided for each dwelling in association with a domestic sprinkler system installed to an approved standard. A fire fighting connection in accordance with Appendix B - SNZ PAS 4509:2008 is to be located no further than 90 metres, but no closer than 6 metres, from any proposed building on the site. Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2008 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2008 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single family dwellings. In the event that the proposed dwellings provide for more than single family occupation then the consent holder should consult with the NZFS as larger capacities and flow rates may be required.

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

The connection point/coupling shall have a hardstand area adjacent to it that is suitable for parking a fire service appliance. The hardstand area shall be located in the centre of a clear working space with a minimum width of 4.5 metres. Pavements or roadways providing access to the hardstand area must have a minimum formed width as required by QLDC's standards for rural roads (as per NZS 4404:2004 with amendments adopted by QLDC in 2005). The roadway shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Access shall be maintained at all times to the hardstand area.

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

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

Fire fighting water supply may be provided by means other than the above if the written approval of the New Zealand Fire Service Operational Planning Officer for the Southern Fire Region is obtained for the proposed method.

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

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

7. Prior to the building platform being registered on the Computer Freehold Register, the consent holder shall complete the following:
 - a) The consent holder shall provide "as-built" plans and information required to detail all engineering works completed in relation to or in association with this development to the Principal Resource Management Engineer at Council. This information shall be formatted in accordance with Council's 'as-built' standards and shall Water reticulation (including private laterals and toby positions).
 - b) A digital plan showing the location of all building platforms as shown on the survey plan / Land Transfer Plan shall be submitted to the Principal Resource Management Engineer at Council. This plan shall be in terms of New Zealand Transverse Mercator 2000 coordinate system (NZTM2000), NZGDM 2000 datum.
 - c) The provision of a water supply to service the building platform in accordance with Council's standards. The building platform shall be supplied with a minimum of 2,100 litres per day of potable water that can be treated to comply with the requirements of the Drinking Water Standard for New Zealand 2005. This shall include the provision of bacterial and chemical tests. The chemical test results shall be no more than 5 years old, and the bacterial test results no more than 3 months old, at the time of submitting the test results. The testing must be carried out by a Ministry of Health recognised laboratory (refer to <http://www.drinkingwater.co.nz/mohlabs/labmain.asp>).
 - d) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an underground electricity supply has been made available (minimum supply of single phase 15kva capacity) to the 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.

Advice Note:

1. *This consent triggers a requirement for Development Contributions, please see the attached information sheet for more details on when a development contribution is triggered and when it is payable. For further information please contact the DCN Officer at Council.*

A handwritten signature in black ink, appearing to read 'DJ Taylor', with a large loop on the left and a horizontal line across the top.

Deborah Jane Taylor
INDEPENDENT COMMISSIONER

Date: 14 October 2014

APPROVED PLAN:
RM130884
Tuesday, 14 October 2014

P4070_S1
 SHEET 1 OF 1

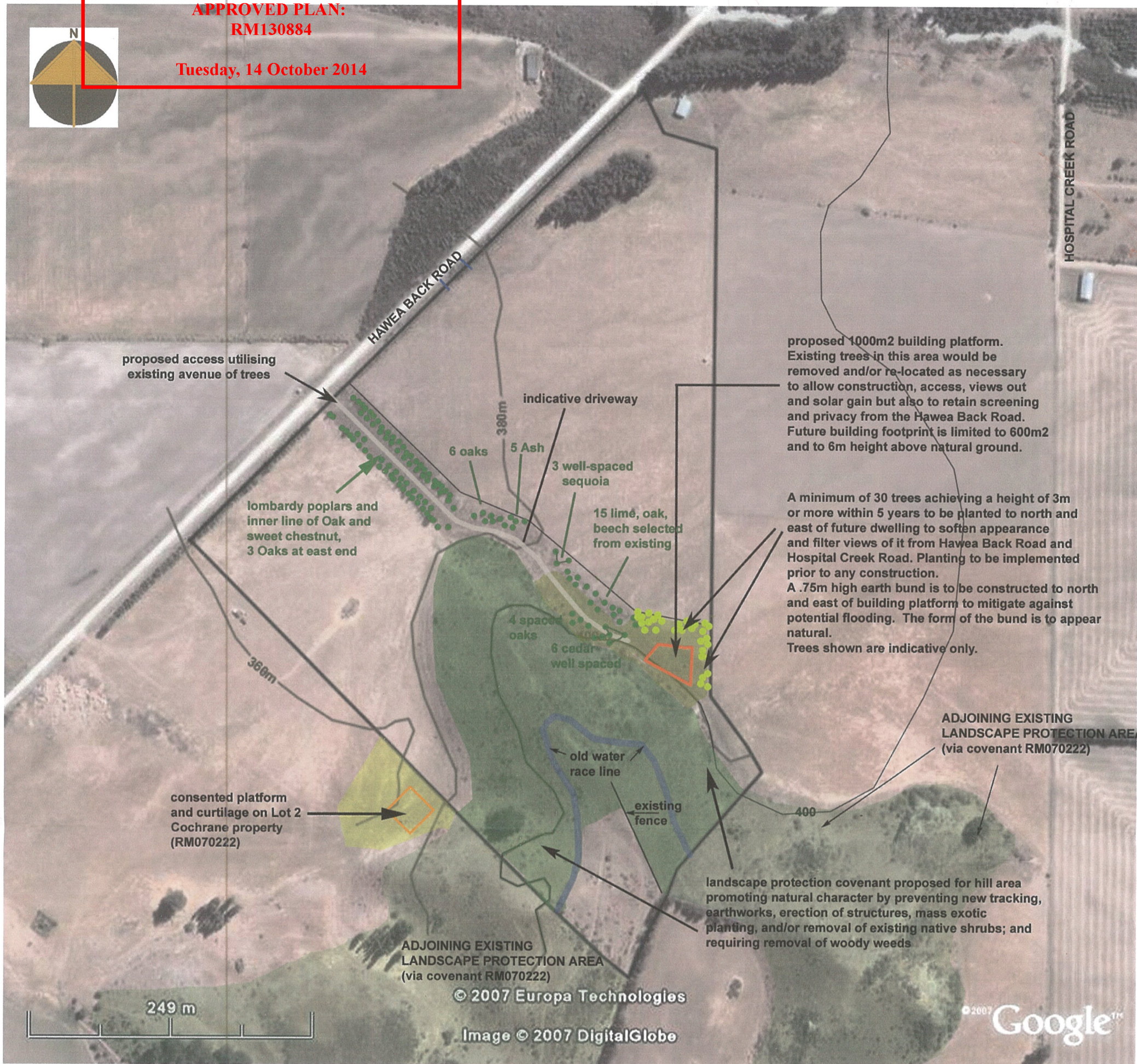
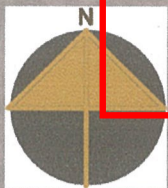


REVISION	DESCRIPTION	DATE
A	ORIGINAL ISSUE	15/11/13



**Proposed Residential Building Platform
 on Lot 1 DP 26156**

PREPARED FOR				SCALE	
Peter Nolet				1:3000 @ A3	
DATE				DATING & LEVEL	
31/10/12				XXXXXXXXXXXX	
15/11/13				LEVEL IN TERMS OF XXXX	
15/11/13				ORIGIN QIT XI DP XXXXXX RL = XXX.XX	
DRAWING REFERENCE				REVISION	
P4070_S1				A	





LEGEND

-  existing trees proposed to be retained
-  proposed new tree planting (indicative only)
-  proposed curtilage area
-  proposed covenant area

Revision A Dec 2013:
Application Site boundary adjusted.
Reference to Viewshaft from Hawea Back Road deleted.

Revision B Sept 2014:
Application Site boundary reflects ownership status as of Sept 2014.
Amended note re future dwelling and future tree planting and flood protection bund in curtilage.
Hill part of curtilage removed and placed in covenant.
Access drive removed.

Fig. 8
PROPOSED SITE DEVELOPMENT PLAN
Plan 160LP.01B

P NOLET BUILDING APPLICATION - RIFLE RANGE
Hawea Back Road



September 2014