



QUEENSTOWN
LAKES DISTRICT
COUNCIL

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DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	Bridesdale Farm Developments Limited
RM reference:	RM180882
Location:	Hayes Creek Road, Lake Hayes Estate, Queenstown
Proposal:	Land use consent is sought to establish, construct and operate a tennis centre that will include two covered courts and six outdoor courts, associated car parking spaces and landscaping, and to undertake earthworks. The tennis centre is to be accessed from Hayes Creek Road, via the Recreation Reserve, and / or from Widgeon Place via the Recreation Reserve.
Type of Consent:	Land Use Consent
Legal Description:	Lot 404 - 406 DP 505513, Lot 1 DP 21087 and Lot 3 DP 447906 held in Record of Title 763196
Zoning:	Rural General Zone: Operative District Plan Rural Zone: Proposed District Plan
Activity Status:	Non-complying Activity
Notification:	11 October 2018
Commissioner:	Commissioners Ms Gina Sweetman and Mr David Mead
Date Issued:	17 May 2019
Decision:	CONSENT REFUSED

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an application to **QUEENSTOWN LAKES
DISTRICT COUNCIL** by **BRIDESDALE FARM
DEVELOPMENTS LIMITED (RM180882)**

**DECISION OF COMMISSIONERS MS GINA SWEETMAN AND MR DAVID MEAD APPOINTED BY
QUEENSTOWN LAKES DISTRICT COUNCIL**

The Proposal

1. We have been given delegated authority to hear and determine this application by the Queenstown Lakes District Council ("Council") under section 34 of the Resource Management Act 1991 ("the Act") and, if granted, to impose conditions of consent.
2. This decision contains the findings on the application for resource consent and has been prepared in accordance with section 113 of the Act.
3. Bridesdale Farm Developments Limited (BFDL) has sought consent to establish and operate a tennis centre (Tennis Academy / Academy) that will include two covered courts and six outdoor courts, associated car parking spaces and landscaping, and to undertake earthworks.
4. A detailed description of the proposal was provided in section 2 of the applicant's AEE prepared by John Edmonds and Associates. The Council's s42A report adopted this description subject to the amendments. The applicant subsequently refined the proposal through the evidence and hearing process. The final proposal, as we considered it, was:
 - (a) The application proposes two potential accesses to the site. Access is proposed from Hayes Creek Road over the recreation reserve described as Lot 205 DP 505513, or an alternative or second access from Widgeon Place via recreation reserve Lot 400 DP 445230 & Lot 321 DP 379403 and recreation reserve Lot 205 DP 505513. We note that the s42A and submission from the Council's Parks Department raised access from Alec Robins Road as an alternative. The applicant clarified at the hearing that they did not seek access from Alec Robins Road. We have therefore disregarded it from our consideration.
 - (b) The application proposes pre-commencement conditions to allow the approvals to construct the access to be obtained.
 - (c) The tennis centre is a private facility and the applicant is seeking consent for Commercial Recreational activities. One outdoor court would be allocated permanently for use by the general public. The other seven courts would be available for use by the public when not in use by the Academy. An online public booking system would be established, as well as an onsite camera/webcam so the public could check for availability.
 - (d) The containers that would be used as changing rooms, teaching rooms, etc for the Academy would have timber cladding on their northern and western elevations and would be an "Ironsand" colour.
 - (e) Twenty-four parking spaces would be provided; with between 18 and 22 informal overflow carparks available for tournaments.
 - (f) The proposed earthworks volume would consist of approximately 49,410m³ over an area of 22,700 m². This would comprise 20,870m³ of cut and 28,560m³ of fill. The maximum fill height would be 3.0m and the maximum cut depth would be 2.5m. More specifically, these total volumes are proposed for the following purposes:

- Undercutting the site = 19,300 m³;
 - Cut from stormwater retention pond = 1,570 m³;
 - Reinstating the undercut area = 19,300 m³; and
 - Raising ground levels and to create mounding = 9,260 m³.
5. The Otago Regional Council granted approval 'To disturb the bed of Kawarau River for the purpose of defence against water' on the 16 August 2018 under reference RM18.328.
 6. The Commission would like to thank all parties to the hearing and this application for their contributions.

The Site

7. The 16.82 hectare application site comprises generally flat land covered in pasture and characteristic of a riverine flood plain. A detailed description of the site and receiving environment within which the application will operate is set out within section 2 of the AEE. This description generally accords with our impressions from our visit to the site and surrounding area, and this is therefore adopted for this decision.
8. For completeness, we note that the AEE states the location of the application site as being on Hayes Creek Road, which is accessed from Red Cottage Drive. We acknowledge Council's s42A report raises that Hayes Creeks Road formally stops to the north of the application site with access to the site via a narrow strip of recreation reserve Lot 205 DP 505513, which provides access to the car park for river and trail access. Therefore, actual legal access to the site is from Alec Robins Road, while noting the legal and topographical impediments in obtaining such access as described to us during the hearing.

Notification, Submissions and Affected Party Approvals

9. The application was publicly notified on 11 October 2018 and 34 submissions were received.
10. Of these submissions, 24 opposed the application and 10 supported the application. All submissions were received within the submissions period.
11. The Council's s42A report provided a comprehensive summary of the submissions, which we have not repeated. The main points raised through the submissions can be summarised as follows:
 - (a) Adverse traffic effects, including safety, congestion and the capability of the local roads to deal with additional traffic volumes and new traffic types such as coaches.
 - (b) Adverse traffic effects on the residents of Bridesdale Farm.
 - (c) The development does not uphold the vision for Bridesdale Farm to protect the valued natural landscape.
 - (d) Inappropriate place for a private, commercial enterprise.

- (e) The building design, including its height, will be visually dominating and is inconsistent with the zoning and surrounding landscape.
- (f) Protection of public greenspace, including this outstanding natural landscape, is needed.
- (g) The development will interfere with the existing use of the application land for informal recreation purposes by locals.
- (h) The development will significantly affect general amenity values and quality of life from the building dominance, light pollution, dust, noise pollution, its impact on the natural landscape, and from increased traffic congestion.
- (i) The development will diminish the ability of the recreation reserves to fulfil their purpose.
- (j) There is no cohesion with neighbouring Widgeon Place Reserve where there are draft plans being consulted on at present.
- (k) Lack of community benefit from the development.
- (l) The development will have significant and definitive impacts on the tranquil residential nature of the Lake Hayes Estate / Bridesdale Terrace area, and their private views.
- (m) The proposal will have a significant impact during the construction and earthworks phase within the immediate and outlying areas.
- (n) The site is subject to a flood risk with the proposed mounding not sufficient to prevent flooding.
- (o) The development will exacerbate traffic congestion which is currently bad at peak times.
- (p) There is a need to preserve recreational areas and large green spaces due to the rapid loss of these areas, and to prevent the loss of the valued natural landscapes.
- (q) The proposal will establish a precedent for commercial development to use recreational reserves, community spaces and development in an outstanding natural landscape area.
- (r) The centre sets a dangerous precedent for further development on the River flats / outstanding natural landscape which will adversely change the character and landscape values of the area.
- (s) The centre will have negative impacts on views from the trails and residents' properties.
- (t) The proposed hours of operation are too long.
- (u) The impact of the development on the outstanding natural landscape classification will be detrimental, and the rural aspect enjoyed by residents and trail users.
- (v) The landscape changes and light pollution will have a significant negative impact.

The Hearing

12. A hearing to consider the application was convened on 4 April 2019, in Queenstown. The Commission undertook a site visit on 3 April 2019 prior to the hearing.
13. The Council's consultant planner, Mr John Daly, who had prepared a section 42A report was in attendance. Also appearing for the Queenstown Lakes District Council were:
 - (a) Mr Alan Hopkins, Consultant Engineer
 - (b) Ms Kris MacPherson, Consultant Landscape Architect.

Ms Alana Standish, Team Leader for the Queenstown Lakes District Council also attended the hearing.
14. The applicant was represented by Mr Warwick Goldsmith, Counsel. Attendances for the applicant included:
 - (a) Mr Chris Meehan, director of Bridesdale Farm Developments Ltd (BFDL)
 - (b) Mr George Wadworth-Watts, Design and Project Manager, Winton Group
 - (c) Mr Paul Wilson, Consultant Lighting Designer
 - (d) Mr Andy Carr, Consultant Transportation Engineer
 - (e) Dr Shane Galloway, Consultant Recreation expert
 - (f) Mr Stephen Skelton, Consultant Landscape Architect
 - (g) Mr Craig McLachlan, parent of tennis-playing children
 - (h) Mr John Edmonds, Consultant Planner
15. We also had pre-circulated evidence from Mr Gary Dent¹, Mr Fraser Wilson² and Mr Hayden Knight³ for the applicant. We had no questions for those experts, and as such, their attendance was not required at the hearing.
16. The submitters who were in attendance were:
 - (a) Mr Aaron Burt, Senior Planner, Parks and Reserves Planning Team, Queenstown Lakes District Council

¹ Flood hazard and stormwater management

² Geotechnical

³ Infrastructure

- (b) Mrs Lynley Illingworth, 38 Judge and Jury Drive
- (c) Ms Debbie Townsend, Lake Hayes Estate Shotover Country Community Association (LHCA).

17. We also received a tabled email from Jane and Richard Bamford at the start of the hearing.
18. The hearing was adjourned on 5 April 2019 to allow for the applicant to provide an updated set of recommended conditions, for these to be reviewed and commented on by the Council and submitters and for the applicant to provide any further comment. The final comments were received on 29 April 2019 and the hearing was closed on 3 May 2019.

The District Plan and Resource Consents Required

19. Full details of the resource consents required, and the status of the activity are set out in the application and Council's section 42A report. A complete list of the consents required is set out in the Agreed Statement of Facts dated 1 April 2019.

Queenstown Lakes Operative District Plan

20. The application relates to a 16.82 hectare property zoned Rural General in the Queenstown Lakes Operative District Plan (the ODP). The site is located within an Outstanding Natural Landscape (ONL).
 - (a) A non-complying activity resource consent is required for:
 - The proposed maximum building height exceeding 8m, pursuant to Rule 5.3.3.4 (a) (vi);
 - (b) A discretionary activity resource consent is required for:
 - The proposed 24 carparking spaces for activities not identified in Table 1 (Parking Space Requirements) of Section 14, pursuant to Rule 14.2.2.3 (i). Commercial recreational activities in the Rural General Zone are not identified in Table 1.
 - The two proposed covered tennis courts with the outer walls of the building consisting of stacked shipping containers, pursuant to Rule 5.3.3.3 (i) (a).
 - The proposed sign exceeding 2m², pursuant to Rule 18.2.5. The proposed sign on the side wall of the container adjacent to the carpark and entry to the courts will be 3m².
 - (c) A restricted discretionary activity resource consent is required for:

- The proposed maximum gross floor area of all buildings on the site exceeding 100m², pursuant to Rule 5.3.3.3 (xi). The indoor tennis courts will have a floor area of 2,200m².
- The proposed indoor commercial activity and the scale of the recreational activity being more than five people, pursuant to Rule 5.3.3.3 (xi). The application proposes up to 16 people receiving coaching.
- The proposed earthworks exceeding 1000m³ within one consecutive 12-month period, pursuant to Rule 22.3.2.3 (a). The total volume of earthworks is 49,430m³.

21. Overall, the application is a non-complying activity under the Plan.

Queenstown Lakes Proposed District Plan

22. The site is zoned Rural under Stage 2 of the Queenstown Lakes Proposed District Plan (or the PDP). The site is located within an ONL.

23. On the 19 February 2019 the Panel hearing submissions on Stage 2 of the PDP released their recommendations. These were to be taken to full Council on 7 March 2019 for ratification and subsequently the Council's decision was publicly notified on 21 March 2019. The release of the Council's decisions on submissions means that the rules contained in Stage 2 have legal effect. It also means that some further weight needs to be given the PDP provision; however, until the appeal period is over, any Stage 2 provisions that have not been appealed cannot be deemed operative.

(a) A discretionary activity resource consent is required for:

- The construction of any building, including the physical activity associated with buildings including road, access, lighting, landscaping and earthworks, not provided for by any other rule, pursuant to Rule 21.4.11.
- The proposed indoor commercial recreation activity and the scale of the activity being more than 12 people, pursuant to Rule 21.9.1. The application proposes up to 16 people receiving coaching and 2 coaching staff. We note that the conditions seek up to 50 people on a day to day basis and up to 100 persons for a tournament.
- The proposed two signs exceeding 2m², pursuant to Rule 31.11.1. The two proposed signs are 9m² and 2m².

(b) A restricted discretionary activity resource consent is required for:

- The construction of a building, and subject to exterior surfaces within the colour range of greens, greys or browns, and in this case, with a light reflectance value of less than 30%, pursuant to Rule 21.7.2.

- The proposed maximum gross floor area of all buildings on the site exceeding 500m², pursuant to Rule 21.7.3. The indoor tennis courts will have a floor area of 2,200m².
- The proposed maximum building height exceeding 8m, pursuant to Rule 21.7.4
- The proposed earthworks exceeding 1000m³ within one consecutive 12-month period, pursuant to Rule 25.5.6. The total volume of earthworks is 49,430m³.
- The proposed earthworks occurring over a contiguous area of 21.600m², which exceeds the 10,000m² standard, pursuant to Rule 25.5.11.
- The proposed 24 carparking spaces for activities do not meet the parking standards for courts that are used for private or public use, pursuant to Rule 29.8.31. The Plan requires 27 visitor parks and 10 staff parks to be provided.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (the NESCS)

24. We concur with the reporting officer's assessment that the proposal is not impacted by the prescriptions of the NESCS, and do not address it further.

Overall consent status

25. The overall activity status is as a non-complying activity.

Summary of the Evidence Heard

26. As evidence for this hearing was pre-circulated, the applicant's witnesses generally provided a summary of their evidence and responded to questions. The Council officers provided us an update on their advice and recommendations after we had heard from the applicant and submitters. The following is a brief outline of the submissions and evidence presented and the material tabled at the hearing. This summary does not detail everything that was advanced at the hearing but captures key elements.

Tabled correspondence

27. The email from Jane and Richard Bamford expressed their continued opposition to the application, for the same reasons as stated in their submission. They supported the LHCA submission. They did not agree with the applicant's rationale that the degradation that had occurred through the Bridesdale development and gardens was an appropriate reason to continue degradation. They also considered that there was nothing philanthropic about the proposal.

Evidence for the applicant

28. As evidence for this hearing was pre-circulated and pre-read, for the most part the applicant's witnesses responded to questions. Mr Edmonds provided supplementary evidence and Mr Meehan spoke to written evidence.
29. Mr Goldsmith provided an overview of the proposal, then submitted on the following points:
- (a) The purpose of the application, being for philanthropic purposes and not private gain;
 - (b) Amendments that had occurred to the application, which have been acknowledged in the description of the proposal earlier in this decision;
 - (c) The issues under debate that needed to be addressed in his submissions, being the zoning, access, Council's Parks and Reserves Department and landscape and visual amenity. He noted that many submitters appeared to be under the misapprehension that the site is public, and not private, land.
 - (d) The zoning
 - (e) Consent status
 - (f) Access
 - (g) Evidence for the Council's Parks and Reserves Department
 - (h) Landscape and visual amenity
 - (i) The section 42A report
 - (j) The section 104D gateway tests
 - (k) Part 2; and
 - (l) Conditions.
30. Mr Goldsmith's summary position was that:
- (a) All issues in respect to the proposal would be full and adequately addressed and should not be of concern to the Commission, with the exception of landscape and visual amenity.
 - (b) The application faces challenges in respect to impacts on landscape and visual amenity; which some people may consider adverse
 - (c) If the Commission comes to a point where it is undecided to grant consent; then reference to Part 2 is warranted; which should enable the Commission to grant consent.

31. BFDL had submitted on Stage 2 of the PDP, seeking that the ONL be removed from the wider river flat and that its site be rezoned to Open Space and Recreation. The Council rejected these submissions, which BFDL intends to appeal. Mr Goldsmith submitted that the rural zoning is inappropriate, the site cannot be farmed as an economic farming unit and maintaining it as rural is not an efficient use of the land. In his view, it is unlikely the site will remain zoned Rural, and this uncertainty is a significant factor.
32. Mr Goldsmith identified that the height exceedance is a restricted discretionary activity under the PDP and not non-complying as identified in the AEE, meaning that the proposal is a discretionary activity overall under the PDP. He submitted that the PDP height rule was unchallenged and the ODP rule must be considered as inoperative. This meant ultimately that the PDP does now contemplate such a proposal and provides policy guidance. However, he acknowledged that the non-complying activity status is retained pursuant to section 88A.
33. In terms of access, he noted the Council had recently granted two consents which included conditions requiring legal access be obtained before work commenced. In terms of this situation, he outlined how the site has no legal access from Hayes Creek Road as a result of the preceding subdivision; an error that had not been identified at the time by the Council or the applicant. The adjacent gardens do not have legal access as well. Technically the site has access to Alec Robins Road to the north-east.
34. The applicant had raised the potential to gain legal access to Hayes Creek Road with the Council's Parks Department in July last year, who were not favourable on access being obtained over Lot 205, and subsequently suggesting this was best addressed when the Council prepared a concept plan for the reserves. Mr Goldsmith tabled a copy of an application for a right-of-way the applicant had submitted on 20 March 2019; yet to be determined. The applicant had also only initially proposed access from Lot 205, adding the Widgeon Place access in response to correspondence with the Council's Parks Department. However, their preference remained for access over Lot 205; unless access from Widgeon Place was preferred by the Council's Parks Department. Forming the Alec Robins Road access option involved three challenges; additional traffic at a substandard intersection, locating within an ONL and crossing Hayes Creek. Further, the applicant had not sought this access as part of their consent.
35. Mr Goldsmith submitted that the evidence presented by Mr Burt for the Council's Parks Department was not expert evidence and queried whether it had been done so lawfully under delegated authority. In terms of Mr Burt's evidence, he considered Mr Burt's reference to parkland supported Mr Skelton's assessment, rather than Ms MacPherson; and that he had not justified why the proposal would impact on the recreation reserves from a landscape effects perspective. He also submitted that it was not appropriate for Mr Burt to discount what the Council may choose to do with the designation 365 land in the future. Mr Burt's position that Alec Robins Road should be used for access had not taken into account the factors Mr Goldsmith had detailed. Mr Goldsmith also submitted that there was not a valid argument for not providing access over Lot 205, given the formed access already in place, and if the concern is whether it is sealed or not, the applicant would be comfortable either way. Mr Goldsmith

raised additional matters to that raised by Mr Burt that may be relevant to our consideration, being a yet-to-be notified application by Kawarau Jet Services Holdings Ltd for a river ferry operation served by a terminus at the end of Lot 205, the proposed Remarkables Park gondola which may have a 'stop' on the northern bank of the river (yet to be lodged) and the Council's initiatives in respect to public transport which may include ferry services.

36. Mr Goldsmith submitted that Mr Burt could not provide any credible evidence as to Council's intentions with the recreation reserves, particularly due to the lack of any formal Management Plan.
37. In terms of impact on the ONL, Mr Goldsmith submitted that this part of the ONL is at the lower end of the continuum; noting that there were differing views on this. He considered that the proposal would face few difficulties if it was for uncovered courts and would be seen as an appropriate use of the river flat. He acknowledged that given the area is in a flood plain that extensive developments of buildings on the adjacent council land is unlikely; however, the reserves could be expected to be developed for appropriate recreation activities. He submitted that the Commission should look at the ONL as a whole and assess the effects of the proposal on the experience of engaging with it as a whole; and that viewpoints are important, and the majority of the public ones are from the riverside trail.
38. Mr Goldsmith submitted that Mr Daly had taken an unbalanced view to his evaluation of the objectives and policies; relying too heavily on Ms MacPherson's evaluation and without undertaking his own balanced evaluation.
39. In terms of the s104D(1)(b) gateway test, he submitted that there is no possibility of concluding that the proposal is contrary as a whole to the objectives and policies of both the ODP and PDP. However, he acknowledged that the proposal is contrary to some of the landscape and visual amenity objectives and policies.
40. He submitted that it was appropriate and necessary for the Commission to consider Part 2, given the lack of clear answers in both the PDP and proposed Regional Policy Statement, and the lack of a sufficient level of detail in the latter. He commented on section 6(b), stating that the PDP contained the difficulty on not having identified what is sought to be protected or preserved by the ONL, meaning it was problematic to identify what might be inappropriate. With the lack of values having been identified and disparate views between the landscape architects, he considered the Commission could not reasonably choose between those to determine what the values are. He submitted that the Commission should rather consider the current zonings and their outcomes and that the actual facts of the land involved; the relevant planning provisions should inform the opinion of what ONL values the District Plan seeks to protect. He noted that if the land was used for farming purposes, a reasonable outcome would be shelter belts, which could significantly affect views across the site. He submitted the proposal to be consistent with sections 7(b), (c), (f) and (g).
41. Mr Goldsmith submitted the proposal is consistent with Part 2 and section 5 because:

- (a) The tennis centre would provide a facility for Queenstown's growing population
 - (b) The tennis centre is an appropriate use for the land, given its location on a flood plain
 - (c) Its impact on the overall ONL would be at the lower end of the scale of effects
 - (d) It is a rare and philanthropic opportunity, unlikely to be experienced again.
42. Finally, Mr Goldsmith presented an updated pre-commencement access condition and volunteered a condition preventing shelter belts from being planted.
 43. Mr Meehan explained his relationship with the proposed tennis centre, as well as an overview of why he was funding the development of the Tennis Centre and Academy. In his view, playing sport provides children important life skills. He sought to give back to the Queenstown community, following a number of land developments he had undertaken. Winton had founded the Lakes District Tennis Trust to establish and manage the Winton Tennis Academy. The Trust would provide tennis facilities and specialist tennis training free to up to 16 students at any one time. The Academy also hoped to run introduction courses for primary school children in the district; which is currently unable to be run due to a lack of covered courts.
 44. In Mr Meehan's view, there is a lack of appropriate facilities within Queenstown for the Academy to operate from. While there are lots of tennis courts, many of these are multi-purpose and do not have enough space for proper training. There are only a couple of courts within Queenstown of an appropriate calibre.
 45. He explained that the containers would include teaching and meeting rooms, indoor viewing areas, kitchenette and additional training and gym areas. The tennis centre would have a higher availability for public use than as notified. The charitable program and facility would be fully funded by the Trust; making the land available without charge, fully funding the construction cost of between \$3-3.5million and any operation deficits. The tennis centre would be an asset to the Wakatipu Basin community and is a facility that the Council would be unlikely to fund to provide itself, with no identified plans to do so. He could not understand why the Council was opposing the proposal, given its benefits. Mr Meehan also brought our attention to the gondola proposal Mr Goldsmith raised; stating that the gondola proposer had contacted him around availability of land for that facility.
 46. In response to questions, Mr Meehan was of the view that it was only a tiny proportion of the ONL affected, and the centre would provide the public with the opportunity to get closer to and enjoy the ONL. The roading situation was very unfortunate. He had spent some time investigating the availability of flat land for a tennis centre; noting that it is pretty hard to find suitable flat land that is not too expensive. If the proposal is not approved, there would be no tennis centre. Shipping containers were being used for the centre given their proprietary system. The metal rooves provided appropriate snow loading and structural support for the canopy and the containers were cost effective. They were appropriate to use in the flood plain as they could be locked up in a flooding event.

47. Mr Wadworth Watts advised that the tree planting intended to screen the facility would take 8 to 9 years to achieve a 12m height, as shown on the landscape drawings. He confirmed that the landscape plan simulations were artistic, in that they would not be as viewed from an actual viewpoint. He considered the hayshed located on the adjacent council reserve would be approximately 5 to 6 m in height and that the garden sheds would be approximately 3.6m in height⁴. He confirmed that the ground was proposed to be raised by 300mm, meaning that the containers and the court cover would be 11.7m high from existing ground level. Visually, he considered that there was not much between the different accesses proposed to the site.
48. Dr Galloway advised that there is only one tennis court in the local area. Given high population growth, as well as demands from visitors, the proposal for one court to be dedicated to public use with public booking of other courts possible would be a large step in the community's favour; noting that he is a local resident. He had not looked at alternative locations where a facility could be located.
49. Mr Wilson advised that the two covered courts would be lit for night-time use. There would be four pairs of light per court, with a total of 16 lights mounted onto the canopy. He was confident in the extent of light-spill that would occur, as shown in his written evidence. He confirmed that when viewed from the Bridesdale development, the building would appear as a green glow at night. The Southern Lighting Strategy is a non-statutory document. The relevant rule in the PDP is 21.5.7, lighting and glare.
50. Mr Skelton talked through the size and scale of the garden sheds on the nearby Bridesdale garden allotments. The sheds are 3.5m wide, with a maximum height of 3.4m. In relation to the tennis centre, there would be approximately 350 trees planted, growing to at least 12 metres in height, over around 10 years. In his view, the area has a developing parkland type of environment. He could see the Council reserve area being developed for a golf course or similar. He noted the urban character on the edge. In his opinion, a cow paddock is out of place and the pastoral character degrades the values of the land.
51. In terms of the values of this ONL, Mr Skelton considered that it had formative legibility with clear and legible banks. The northern terrace defines the edge of the Kawarau River corridor. The vegetation is part of what makes it outstanding. However, there is nothing much special about the space between the terrace and the River. He did not think that the area is outstanding in its own right; that flooding every 4 to 5 years does not make it outstanding. He maintained the area has an urban parkland character. He considered the level of adverse effect on landscape values would be moderate over the first three years, but then effects would recede as the trees grew. He considered that seeing another building on the site would not change things a lot. There would be only a small impact if other development did not occur.
52. Mr McLachlan is a parent of two tennis players. He was very supportive of the proposal. His children have been very successful in tennis and had trained in the Queenstown Gardens. He

⁴ Mr Skelton subsequently confirmed they are allowed to be 3.4m in height.

would like to see more opportunity for children and families in the town; noting a good facility would also attract people to move here.

53. Mr Edmonds provided a summary of his evidence. He added that the Council's Parks and Open Space Strategy 2017 as also being a relevant matter under s104(1)(c). In terms of the s104D gateway tests, while acknowledging that the proposal would result in landscape effects that are more than minor, it is not contrary to the overall objective and policy framework in the ODP and PDP, taking into account:
 - (a) The location, design, layout and mitigation proposed
 - (b) The close association of the facility to the adjacent reserve land
 - (c) The low-lying nature of the land and the confining characteristics of the river terrace;
 - (d) The proximity of the residential neighbourhoods;
 - (e) The future recreational needs of the community, the reserve status of the adjoining land, and the public benefits of the tennis courts;
 - (f) The submissions to the zoning and ONL under the PDP; and
 - (g) The existing and consented garden allotments.
54. In Mr Edmond's opinion, the more than minor landscape effects are outweighed by the overall assessment against the objectives and policies of the planning framework; and the proposal will achieve the purpose of the Act.
55. He critiqued Mr Burt's evidence, considering that Mr Burt should have taken into account the amendments to the proposal to provide increased public use and the proximity of the proposal to the residential communities. Mr Burt should have also identified recreational planning proposed for these communities and the Council's Parks and Open Space Strategy 2017, which referenced establishing partnerships with the private sector to deliver public open space opportunities. He queried Mr Burt's statement that the existing rules contained in Designation 365 to be generic and little reliance placed on them; while noting that the proposal would have a parkland type of environment. In respect to Mr Burt considering that the proposed access to be inappropriate, he identified a number of local situations where reserve land is used for access purposes. Mr Burt did also not identify that Lot 205's recreational benefit is to provide access to a carpark area adjacent to the Kowarau River. He refuted Mr Burt that there would be nuisance dust and lights effects arising. Mr Edmonds also provided us with relevant activity tables for the Rural, Open Space and earthworks chapters and a copy of Designations 365 and 465 and their associated rules.
56. We queried Mr Edmonds on cumulative and precedent effects. He considered it would be rare to find such a location with such characteristics, and where an applicant wished to develop a philanthropic venture such as this. He considered the proposal is unique and can be set by

itself and considered on its own merits. In terms of cumulative effects, he was of the view that the characteristics of the site would mean it would be unlikely that any further development would occur that would result in adverse cumulative effects.

Submitters

57. Mrs Illingworth set out their primary concerns as being the increased volume of traffic and the impact on the natural landscape. She said that the area was already struggling to cope with traffic and the proposal would introduce more. Increased construction traffic and impacts on safety because of this were of concern. The proposal would not meet the policy matter of being reasonably difficult to see and it would have an impact on private views. The containers would not be attractive. The outstanding natural landscape should be preserved for everyone.
58. Ms Debbie Townsend represented the LHCA. She was not supportive of any access from Alec Robins Road as it would change the landscape substantially and the area where it was located is well used by the community. She expressed the LHCA's concerns that the proposal would have adverse landscape effects because of its height, that it would be unsightly on the river flat and it would not blend in and look natural. The residents value having open space on their doorstep, away from the busyness of Queenstown. The tennis centre would only be for a few people, while the area is wider used.
59. Ms Townsend expressed concern about the maintenance and upkeep of the trees; being of the view that it is difficult to do so, as evidenced by the limited development of the landscaping put in as part of the Bridesdale development. In terms of the need for tennis facilities, she advised that the existing tennis court in the local park was not well used and that there are many tennis courts around Wakatipu that could be upgraded and used. She advised of the engagement the LHCA had had with the Council in December 2018 over a draft concept plan for the Council land. She said that the majority of the community members who had commented on a Facebook community poll had expressed a preference for open space, trees, trails and gardens within the Widgeon Place reserve. Ms Townsend subsequently provided us a screenshot of the poll results.
60. Mr Burt had provided expert evidence to be pre-circulated in advance of the hearing and also tabled a supplementary submission. Subsequently, Mr Burt confirmed he was not appearing as an expert, but rather was appearing for the Queenstown Lakes District Council in its role as administering body of the Widgeon Place Recreation Reserves. Mr Burt clarified the reserves are Recreation Reserves and the management of these are undertaken in accordance with the Reserves Act 1977.
61. Mr Burt stated that the administering body opposed access over the recreation reserves and considered that the proposal would adversely affect the landscape character of the area; detrimentally affecting the reserves. He responded to the applicant's raising a jetboat and associated park and ride and a new gondola as being potential future activities in the vicinity of the Reserves. He advised that there were no firm proposals, noting that the Reserves Act 1977 only anticipates parking for reserve activities on reserve land. He raised as relevant an

application made by Waterfall Park Developments Ltd to store 2,500m³ of cut material on the site for use as landscaping. This application was on hold⁵. He also expressed concern that heavy vehicles had been using the recreation reserve trail to transport fill to the site in May 2018.

62. Mr Burt then spoke of the value of reserves and the role of the administering body. He agreed with Mr Goldsmith that flat land is like “hen’s teeth”. He said that the acquisition of suitable land for public reserves and open space is a challenge in the Wakatipu Basin; especially when considering land values. In his view, the value and future of potential of the Recreation Reserves must be assured. He was also concerned with the approach he said the applicant had taken in conveying their views of how the recreation reserves should be developed, to accommodate the proposed development by providing access and presumably additional commercial development by the rezoning they were seeking through the PDP. Mr Burt appended a plan where the applicant had proposed the tennis facility on the recreation reserve adjacent. He was clear that any use of the recreation reserves would occur through an open public process, involving the preparation of a Reserves Management Plan. He also stated that the administering body had no intention of granting any right of way easements over Lot 205 DP 505513, Lot 400 DP 445230 or Lot 321 DP 379403).
63. In response to questions, Mr Burt advised that likely development of the Recreation Reserves would be in the form of public toilets or similar and minor earthworks to raise levels, while maintaining the contour and character of the land. In terms of any easements to access the tennis centre, he advised that it is an administering body decision whether to advance any easements or not. At this point, no consent had been granted to an easement. Mr Daly had undertaken a scoping exercise of demand for tennis facilities; reviewing the Queenstown Lakes – Central Otago Regional Sport and Recreation Facility Strategy 2018. He advised that this did not identify a need for tennis facilities, and that there is more capacity to provide for tennis courts. He noted that should there be local demand, that there is ample room in MacBride Park, within the Lake Hayes development.
64. In his view, the section of Hayes Creek Road that runs across the recreation reserve and then the Bridesdale land is more useful for cycling and walking and should be kept free of traffic. As part of the development of the Council recreation land, it may be that vehicle access to the cycle trail is provided via Widgeon Place and there would be no need for separate access and parking areas on the tennis centre site.

Council response

65. Mr Hopkins sought clarification on what access had been applied for, as the draft conditions did not take an access from Alec Robins Road into account. While being clarified that the applicant did not seek access from there, he also advised that access was not a good idea in that location. He noted that his assessment had been on the basis of the applicant constructing any access from Widgeon Place, rather than being dependent on the Council doing so, and

⁵ We were subsequently advised by the applicant that this application is on hold as they cannot obtain legal access to the site.

queried how it would work if that was the case. In terms of access via Lot 205, he considered that it should be asphalted / sealed on the basis of the increased number of vehicle movements. It could be kept in gravel, because of the distance from residential properties, but it would need a higher level of ongoing maintenance.

66. Mr Hopkins had also considered the revised plans showing an area for overflow parking. Because this was a boggy area, it would need to have ground excavated, free draining gravels added, and be grassed, with a gravel driveway leading to it. He noted that as shown, it would conflict with the landscape planting. In respect to Mr Burt's comments on the use of the recreation reserves, he noted that the river flats are very important to the regional council as a spillover ponding area. Changes to the flats could increase flooding downstream as a result of displacement of flood waters. He noted the ORC had granted consent for this application. As well as an easement for access, the applicant would also need easements to allow servicing of the site.
67. Ms MacPherson, who holds a Bachelor of Landscape Architecture and NZ Certificate in Engineering, advised that her opinion had not changed since preparing her report for the s42A report. In her view, an ONL has to be approached in its entirety, rather than just considering one section of it. There would always be variations over the length / area of an ONL. An ONL as a whole required protection; in this instance the ONL incorporates the Kowarau River, Morvern Hill, the flats, the terraces, escarpments and the northern side of the Remarkables. There was a natural expressive character to this area. While the terraces and flats are sometimes modified, the contrast to residential patterns exemplifies the flatness and openness of the flats.
68. Ms MacPherson considered that the scale of the garden sheds was commensurate with rural activity. In her view, the openness of the landscape is a key component of the character, and there was clear evidence of expressiveness of the riverine process. She considered the area had a rural open character, and the site itself has a central location in this section of the river flats. The extent of works proposed can only be achieved by modifying the flats. While trees and mounding would screen the development, they create a large and high block that would shut down views of the terraces and Morvern Hill by people using the reserves and trails. The open river flats are part of the integrity of the river margin and are highly legible of a dynamic process. She noted section 6(a) of the RMA; the preservation of the natural character of rivers and their margins.
69. Ms MacPherson remained concerned there was insufficient information in respect of lighting. While she accepted the montages demonstrated light spill, in her view there was insufficient information on the design of the containers. In respect of the Alec Robins access, she considered this would have significant landscape effects. Access from Hayes Creek Road would have the least and retaining it in gravel would be appropriate. She noted that there was no information on access to and safety around the stormwater pond.

70. In respect of cumulative effects, Ms MacPherson was of the view that the garden sheds are a threshold. The coherence of the flat open character of the flats creates a sensitivity and there remains low absorption capacity, reduced by its central location. She noted that Hearing 18.11 on the PDP considered the location of the ONL line, with the applicant seeking it be amended. The Council decision on submissions upheld the ONL line as notified, being the top of the lower terrace. She noted that the Kowarau River as an outstanding natural feature (ONF) had not been disputed.
71. Mr Daly also stood by his recommendations in the s42A report. He noted that Mr Burt is not an expert witness for the Council in respect of the s42A report. In his view, we could only put limited weight on the PDP objectives and policies because of the appeals period. We should therefore place greater weight on the ODP; noting there was not much change proposed.
72. He considered the receiving environment to include designation 365; noting that he did not consider that the administering body would develop the recreation reserve to the scale that the designation provides. To date, there had been no outline plan lodged. In his view, the garden sheds are significantly smaller than the proposal. In respect of landscape effects, he placed greater reliance on Ms MacPherson's evaluation. He preferred her evidence in terms of the characteristics and approach taken. He considered there would be significant adverse landscape effects. The proposal would not be difficult to see. There is no capacity to absorb the development, and it should be avoided. He considered that there is also potential for adverse effects arising from lighting, in an otherwise dark environment. The muted green glow would not be in keeping with the character of the area.
73. In terms of access to the site, he raised concern about the uncertainty of access being obtained. In his view, maintaining the existing gravel would not give rise to greater effects. However, the effects on the recreation reserve was more complicated because of the administering body's position that it would diminish reserve use. He noted that the reserve is already used for access and the level of traffic generation on the network was acceptable. Overall, however, he considered any access effects would be less than minor.
74. Mr Daly then discussed conditions he would seek to be imposed, should consent be granted. These would include a management plan for tournaments, no offsite parking, dates of tournaments to be notified. He noted that there would be positive effects arising from the development and noted that the public benefits had increased. However, in his view, the main focus of commercial recreation does not align with needs. He confirmed that the Southern Lighting Strategy is a non-statutory document.
75. Mr Daly then reconfirmed his view that the effects would be more than minor on landscape character and visual amenity. He had considered the proposal as a whole, and the effects would be significant. He had carefully considered the policy framework. In his view, there was nothing exceptional about this proposal and it would not be difficult to see. It was contrary to a number of objectives and policies and failed s104D of the RMA. Overall, he remained of the view that consent should be refused.

Applicant's right of reply

76. Mr Goldsmith firstly responded to the matters raised by submitters. In respect to Illingworth, he noted that their main concern was traffic, and that there was no expert evidence that there would be any traffic issues arising. He noted that the submitter may be confused about who owns the land. The proposal would not affect people escaping the hustle and bustle of Queenstown. In terms of the LHCA, he noted that Mr Meehan had searched for years to find alternative locations, including proposing to locate it on the adjoining reserve, which was not acceptable to the Council. He did not disagree with the LHCA that development on the reserves should be along the lines of the Queenstown gardens.
77. Mr Goldsmith said he could not understand why the Council was opposing a tennis court adjacent to a reserve, particularly given Mr Burt's acknowledgement of the difficulty in acquiring land. While there may be an option with MacBride Park, Mr Burt had not discussed funding or competing demands for the use of that land. The administering body couldn't supply an academy and tennis centre. He queried in passing why the administering body had decided to zone reserves, rather than designate them, given it would likely increase the number of resource consents required.
78. There was no certainty over when a reserve management plan may be produced. He considered the second page of the regional sports strategy to be relevant. The Commission should prefer the evidence of Dr Galloway on how the proposal would impact on Council reserves. He was of the view that Mr Burt did not have delegated authority to make any determination on the right of way application and we should place little weight on Mr Burt's statement that approval would not be given.
79. In terms of the forming of the access, the applicant would accept the Council's position. In terms of landscape, Mr Goldsmith considered Ms MacPherson had changed her position between considering a portion of versus the whole of the landscape. He considered that Ms MacPherson had fallen into error as treating the flat as a landscape, rather than part of the wider ONL. He disagreed that views would be shut down, and if they were, it would only be temporary. The containers would have no doors or windows, and therefore lighting would not be an issue.
80. In respect to Mr Daly's position, he noted Mr Daly had not responded to the critique that he had taken a narrow view to the assessment of the objectives and policies. Mr Goldsmith did not consider it tenable to say that the proposal failed s104D because it had just failed some in respect to landscape and amenity.
81. In terms of precedent, Mr Goldsmith submitted the unusual elements of the proposal to be its location in a floodplain and for it being philanthropic. He said these factors made it unique, or almost unique, and it was unlikely anyone else would come along with a similar proposal.
82. He submitted that the ONL is of a large size and that the flats are at the lower end of the ONL; with the river and mountains having higher value. The lower end is of relevance to the

seriousness of the effect on the ONL. We should look at the zoning and expect things to happen and the character to change. In terms of the impact on the ONL and its character, values and factors, he submitted that:

- (a) The river flat is part of the River and no one is going to have trouble in recognising the river flat, as it would be virtually unchanged.
- (b) The openness is a combination of vegetation and buildings. The quality of the openness is different to the River and the Remarkables. The tennis courts would not detract from the openness, particularly considering the small size of coverage compared to the overall site area, and site area and reserves combined.

83. He submitted the tennis court buildings would appear as a large barn.

84. In terms of the objectives and policies, he submitted we need to look at the extent of the breach. He acknowledged it would not be difficult to see for a period, noting that planting would grow. In his view, it would meet the test over time. Given the uncertainty with the plans, Part 2 should apply, where we consider the positives and negatives. We could make adverse findings on landscape and then grant consent. He submitted that the wording of policy 3 in respect to landscape was vague and uncertain. The effect is not just about the landscape, it is also about people. While some people would notice the change, others would not. The tennis centre would provide an important social benefit for youth. A new tennis court facility would increase demand for tennis facilities, even if there is not enough now. Overall, he submitted the positives outweigh the negatives, and that such opportunities do not come along often.

85. Mr Goldsmith provided final commentary in his memorandum to the Commission of 29 April 2019. In this, he advised the Commission that:

- (a) The Widgeon Place access had only been included if the Council may in the future wish to prevent public vehicle access to the river flat from Hayes Creek Road and rather direct it to Widgeon Place. The applicant would be happy with that option being deleted if the Commission had any concern or difficulty with the Widgeon Place access.
- (b) Legal roads created / vested after the date the ODP was first publicly notified are not shown in white in the ODP Maps, unless the Maps are amended by variation. To the best of Mr Goldsmith's knowledge, this has not happened.
- (c) Lot 205 was constructed by the applicant, at their cost, and was being used by the public as public road and carpark, prior to the date DP505513 was deposited and Lot 205 subsequently vested in Council as Recreation Reserve.
- (d) Road is defined in the District Plan as meaning a road under section 315 of the Local Government Act 1974, which includes "every square or place intended for use of the

public generally” within its definition. Lot 205 was built for the purposes to a public road and carpark as required by the Bridesdale SHA consent.

- (e) If Lot 205 is not a legal road, then Lot 4040 is effectively landlocked. BFDL is entitled to rely upon use of Lot 205 as legal road to provide access. This would mean conditions 3 and 4 would be unnecessary and minor amendments would be required to condition 11.

Statutory Assessment

Section 104D

- 86. As a non-complying activity, the proposal must satisfy one of the two thresholds set out in section 104D before it can be considered under section 104 and 104B, namely:

- (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.*

- 87. Should a non-complying activity consent pass one of the s104D “gateway” tests, section 104 sets out those matters to be addressed by the consent authority when considering a resource consent application, as follows:

- (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*

- (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*

- (b) any relevant provisions of –*

- (i) a national environmental standard [not applicable];*

- (ii) other regulations [not applicable];*

(iii) a national policy statement [not applicable]:

(iv) a New Zealand coastal policy statement [not applicable]:

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

(vi) a plan or proposed plan [i.e. the operative District Plan]; and

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

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

(3) A consent authority must not –

(a) when considering an application, have regard to –

...

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

...

Section 104B

88. Section 104B states:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

(a) may grant or refuse the application; and

(b) if it grants the application, may impose conditions under section 108.

89. We consider below the assessment of effects and the proposal as measured up against the objectives and policies of the relevant plans.

Assessment of Effects – Section 104D(1)(a)

90. After analysis of the application and supporting evidence (including proposed mitigation measures and volunteered conditions), submissions and a full review of the section 42A report, the proposed activity raises the following effects:

(a) Landscape and visual amenity, including lighting

(b) Access to the site

- (c) Traffic and parking
- (d) Flooding, stormwater, earthworks, geotechnical and infrastructure

Landscape and visual amenity

91. Both planners agreed that there would be more than minor adverse landscape effects⁶. Based on Mr Wilson's evidence, Mr Edmonds was of the opinion that any lighting effects would be less than minor.⁷
92. Mr Edmonds' view was somewhat contrary to Mr Skelton, who advised in evidence that he considered the proposal would result in no more than low adverse effects on landscape character or visual amenity⁸. However, during the hearing, he did acknowledge that there would be moderate adverse effects over the first three years, receding as the trees grew. We heard from Mr Wadsworth Watts that the tree planting would take some 8 to 9 years to achieve a 12m height, which is the height shown on the landscape drawings. This implies that the period to more effectively screen the Academy would be longer than the three years Mr Skelton referred to.
93. We took from Ms MacPherson's evidence that in her view, adverse effects on landscape were at least moderate, if not greater. The proposal would adversely affect the natural character of the river flats, in particular its open character. Development would be visible. The proposal for mounding and substantial screen planting around the edges of the facility would reduce the sense of openness and reduce the extent to which the river flats could be seen as an integral landscape unit.
94. In considering effects, Mr Goldsmith stressed to us that we needed to first consider the reasons why the site's landscape was characterised as outstanding, before making a call on the extent of effects on these landscape qualities. We agree that this is a useful approach, but as the ODP or PDP do not identify the specific characteristics of each section of ONL in the Wakatipu Basin, then we have few pointers on which to go by. Mr Goldsmith suggested that the land's zoning as Rural provided a pointer as to what type of development may be appropriate. For example, there could be shelter belt planting, farm sheds and hay barns. The proposed planting, mounding and covered courts were not out of step with these types of features, which are already present in the area.
95. Both Mr Skelton and Ms MacPherson agreed that the ONL encompassed the Kawarau River corridor, formed by the Remarkables to the south and the small escarpment to the east upon which sits the Lake Hayes and Bridesdale housing developments. The river flats are part of this landscape unit. While the landscape experts agreed that the river and associated landform created the Outstanding Natural Landscape unit, the experts differed as to the extent of development that might be able to be absorbed by this landscape. Mr Skelton appeared to

⁶ Paragraph 10.3 of Mr Edmonds' evidence

⁷ Paragraph 8.47 of Mr Edmonds' evidence

⁸ Paragraph 32 of Mr Skelton's evidence.

place weight on the housing that can be seen on the escarpment, the adjacent garden sheds and the potential for development of the recreation reserve when forming his view that the development would be compatible with the landscape qualities present. Ms MacPherson's view was that while the housing and garden sheds may be visible, these features did not tip the balance away from what is still an open landscape.

96. We are concerned that in making his assessment, Mr Skelton placed too much emphasis on what may happen on the recreation reserve to the west. He referred a number of times to the river flats developing a park-like character, with the Council land being used for a range of outdoor activities like a golf course with associated landscaping and possible small scale buildings. In this context a tennis centre would not be out of character. In a similar vein the applicant referred to the tennis courts in Queenstown Gardens. We consider that any consideration of what may happen on the Council reserve land is speculation at this point in time.
97. In relation to the ability of the existing landscape to absorb the level of change proposed, we find that the proposal for mounding and extensive tree planting to screen the tennis courts, containers and roof structures to be a strong indication that the landscape of the river flats cannot absorb the development proposed. The landscape has to be modified to achieve the outcome of the development being barely visible.
98. Our finding on the landscape issues is that there would be a moderate to significant adverse effect on the landscape values present. We agree with Ms MacPherson that the development would compromise the qualities present and substantially detract from the area's ONL classification. While we appreciate that the landscape of the site could be modified through the likes of shelter belt planting and incidental farm buildings, and that the Council land may be developed in some way in the future, we do not consider that the possibility of these features is sufficient to say that the effects of the proposed development on the landscape are appropriate. We also note that the container and roof structure proposed for the Academy is greater than what could be anticipated to occur as-of-right.

Access to the site

99. Legal access to the site was discussed at some length during the hearing. The applicant sought access to the site from either Hayes Creek Road or from Widgeon Place, over the Council Reserve and Council-owned land. Both of these accesses would require consent from the Council Parks Department as administering body.
100. As a result of a previous subdivision application for the Bridesdale Farm Special Housing Area land, the site does not have legal access to it from Hayes Creek Road. Mr Simon Ash, General Manager of Winton, in his letter to us of 24 April 2019, outlined that BFDL constructed and built the road within Lot 205 and the carpark at the end of this access road. Section 224C was granted on 5 April 2017 and the plan deposited with Land Information New Zealand on 12 April 2017.

101. We had evidence from Mr Hopkins that both accesses are feasible from an engineering perspective and conditions could be imposed to ensure the access was constructed to Council's standards. There was discussion during the hearing about what type of formation was required; the applicant conceding that they would be happy to provide whatever formation the Council required.
102. We have addressed landscape and visual amenity effects, which includes those arising from the accesses, earlier in this decision. Lot 205 is already used for vehicular access, as we noted on our site visit. New access would need to be put in place should Widgeon Place be used, which we noted would be more challenging given the geophysical characteristics of the land concerned. We accept Mr Daly's opinion that any adverse effects on Lot 205 would be less than minor, subject to conditions requiring legal access to be obtained in advance, which have been agreed by the applicant.
103. We heard from Mr Burt that the Council as administering body would not be amenable to such access being provided. Ultimately, that is a matter under the Reserves Act and the Local Government Act, and our consideration must be limited to the extent of adverse effects that may arise from such access. We do not accept Mr Daly's proposition in his s42A report that because of the uncertainty of whether access would be granted by the administering body that adverse effects may be more than minor. However, we do accept his opinion as expressed at the end of the hearing that any access effects would be less than minor.

Traffic and parking

104. Submitters were concerned in respect of both traffic and parking effects arising from the proposal. Mr Hopkins had sought further information on potential traffic effects on the Howards Drive/SH6 intersection and on parking to be provided for normal day to day activities as well as for tournaments. These matters were traversed in pre-circulated evidence and through the hearing.
105. By the end of the hearing, the applicant and the Council were generally agreed over conditions of consent to manage both traffic and parking effects. We conclude that subject these conditions, as adopted by the applicant, any adverse effects would be no more than minor.

Flooding, stormwater, earthworks, geotechnical and infrastructure

106. Mr Edmonds and Mr Daly, as informed by their experts, considered that any adverse flooding, stormwater, earthworks, geotechnical and infrastructure effects would be minor or less than minor. We had no expert evidence from submitters to the contrary. Conditions were recommended which would address the management of any effects. We accept Mr Edmonds and Mr Daly's evidence and conclude any adverse effects would be no more than minor. However, as confirmed by Mr Hopkins, we note that servicing the site would require the Council Parks Department to grant the necessary easements over Lot 205.

Section 104D(1)(b) Assessment

107. Both the applicant and the Council agreed that the proposal would not meet the s104D(1)(a) test, as there would be more than minor landscape and visual amenity effects. We accept their evidence.
108. The two parties then differed in their s104D(1)(b) assessment. Mr Daly considered that the proposal was contrary to the relevant objectives and policies of both the ODP and the PDP. Mr Goldsmith and Mr Edmonds both agreed that the proposal did not sit comfortably with the landscape and visual amenity related objectives and policies in both the ODP and PDP; however, as a whole, the proposal was not contrary to either Plan.
109. Mr Daly in his s42A report set out that as a consequence of deferral of PDP Stage 1 decisions to Stage 2, he placed limited weight to the PDP Stage 1 objectives and policies. He also took the same approach to Stage 2. In relation to the weight to be given to the relevant District wide objectives and policies of the PDP, he identified that the PDP contains a number of other chapters that are relevant to this Proposal, however he gave those less weight due to coverage of ongoing appeals to the chapters.
110. Both Mr Daly and Mr Edmonds provided us with extensive analyses of the proposal. As requested by the Commission, they tabled an agreed statement of facts outlining the relevant objectives and policies from both the ODP and the PDP, which were as follows:

Operative District Plan

- *Part 4 District Wide Issues*
 - *4.2 Landscape and Visual Amenity*
 - Objective 4.2.5*
 - Policy 1 - Future Development*
 - Policy 2 - Outstanding Natural Landscapes (District-Wide / Greater Wakatipu)*
 - Policy 3 - Outstanding Natural Landscapes (Wakatipu Basin)*
 - Policy 8 - Avoiding Cumulative Degradation*
 - Policy 12 - Transport Infrastructure*
 - *4.4 Open Spaces and Recreation*
 - Objective 2 – Environmental Effects*
 - Supporting Policies 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6.*
 - Objective 3 – Effective Use*
 - Supporting Policies 3.1, 3.2, 3.3*
 - *4.8 Natural Hazards*
 - Objective 1 - General*
 - Supporting Policies 1.4, 1.5 and 1.7*
 - *5.2 Rural General and Ski Area Sub-Zone*
 - Objective 1 Character and Landscape Value*

Supporting Policies 1.1, 1.4, 1.6 and 1.7.

Objective 3 – Rural Amenity

Supporting Policies 3.2 and 3.3.

- *Part 14. Transport*

Objective 1 – Efficiency

Supporting Policy 1.9.

Objective 2 – Safety and Accessibility

Supporting Policy 2.1.

Objective 5 – Parking and Loading – General

Supporting Policies 5.1, 5.2, 5.3, 5.4 and 5.5.

- *Part 22 Earthworks*

Objective 1 – General

- *Part 18 Signs*

Objective 1 - Signs

Proposed District Plan

- *Chapter 3 – Strategic [Stage 1]*

Objective 3.2.1.6 – Diversification of economic base and creation of employment opportunities

Objective 3.2.1.8 – Diversification of land use in rural areas

Objective 3.2.5 - Retention of the District's distinctive landscapes

Objective 3.3.2.1 – Recognise commercial recreation and tourism related activities may be appropriate in the Rural Zone

Objective 3.3.30 – Avoid adverse effects on the landscape and visual amenity values and natural character of the District's ONLFS that are more than minor and or not temporary in duration.

- *Chapter 6 – Landscapes and Rural Character [Stage 1]*

Policies 6.3.4, 6.3.5, 6.3.10, 6.3.12, 6.3.14, 6.3.16, 6.3.23, 6.3.26, 6.3.27, 6.3.29

- *Chapter 21 – Rural Zone [Stage 1]*

Objective 21.2.1 – Enable a range of land use, while protecting values

Supporting Policies 21.2.1.1, 21.2.1.4, 21.2.1.5, 21.2.1.15

Objective 21.2.4 – Minimise conflicts between incompatible land uses

Supporting Policy 21.2.4.2

Objective 21.2.9 – Provide for diversification, while protecting landscape and natural resource values and maintaining rural landscape character

Supporting Policies 21.2.9.1, 21.2.9.2, 21.2.9.3

Objective 21.2.10 – Commercial recreation is commensurate to amenity values

Supporting Policies 21.2.10.1, 21.2.10.2, 21.2.10.3, 21.2.10.4

Objective 21.2.12 – Natural character of rivers and their margins is protected, maintained or enhanced

Supporting Policies 21.2.12.5

- *Chapter 25 – Earthworks [Stage 2]*

Objective 25.2.1 – Earthworks minimise adverse effects, protect people and communities and maintain landscape and visual amenity values

Supporting Policies 25.2.1.2, 25.2.1.3, 25.2.1.4

- *Chapter 28 – Natural Hazards [Stage 1]*

Objective 28.3.1 – Risks are managed

Supporting Policies 28.3.1.2 and 28.3.1.3

Objective 28.3.2 – Development only occurs when risks are appropriately managed

Supporting Policy 28.3.2.2

- *Chapter 29 – Transport [Stage 2]*

Policies 29.2.1.1, 29.2.2.1

Objective 38.2.2 – Recreation activities maintain or enhance open space values

Supporting Policies 38.2.2.1, 38.2.2.2, 38.2.2.3, 38.2.2.4, 38.2.2.5, 38.2.2.6

Objective 38.4.1.1 – Enable a variety of informal recreation activities

Supporting Policies 38.4.1.1, 38.4.1.2, 38.4.1.3, 38.4.1.4, 38.4.1.5, 38.4.1.6

- *Chapter 38 – Open Space and Recreation Zones [Stage 2]*

Objective 38.2.1 – Contribution of Council-administered open space land and facilities

Supporting Policies 38.2.1.1 and 38.2.1.2

Objective 38.2.2 – Recreation activities maintain or enhance open space values

Supporting Policies 38.2.2.1, 38.2.2.2, 38.2.2.3, 38.2.2.4, 38.2.2.5, 38.2.2.6

Objective 38.4.1.1 – Enable a variety of informal recreation activities

Supporting Policies 38.4.1.1, 38.4.1.2, 38.4.1.3, 38.4.1.4, 38.4.1.5, 38.4.1.6

111. Mr Edmond's evidence was that the proposal is consistent with and gives effect to the overall objectives and policies of both the ODP and PDP and is not contrary to them. He acknowledged that the proposal does not achieve clause (iii) of Policy 3 of the ODP, as the development will not be difficult to see. Mr Daly's evidence was that the proposal is contrary to the relevant ODP and PDP objectives and policies. Particular objectives and policies he considered the proposal was contrary to are:

ODP:

- Part 4 District Wide Issues
- Part 4.4 Open Space and Recreation

- Part 5 – Rural Areas

He was satisfied that the proposal is not contrary to ODP Part 4.8 Natural Hazards, Part 18 Signs and Part 22 Earthworks. After hearing the evidence, he was satisfied that it was not contrary to Part 14, Transport.

PDP:

- Strategic policies 3.3.21 and 3.3.30
 - Chapter 6 Landscape and Rural Character
 - Chapter 21 Rural
 - Chapter 38 Open Space and Recreation
112. He was satisfied that the proposal is not contrary to PDP Chapters 28 Natural Hazards, 25 Earthworks and 31 Signs. After hearing the evidence, he was satisfied that it was not contrary to Chapter 29 Transport.
 113. We record here that we concur that the proposal is not contrary to the relevant objectives and policies in both the ODP and PDP relating to natural hazards, earthworks, signs and transport.
 114. Where there is disagreement between the parties, it is in relation to the objectives and policies which refer to landscape values and natural character, visual amenity and rural amenity.
 115. Having considered the extensive evidence we received on the matter; we have concluded that the development faces strong discouragement from our reading of policy 4.2.3 of the ODP. This policy refers to avoiding subdivision and development where effects on landscape values and character are more than minor. The policy further refers to maintaining openness, avoiding cumulative deterioration and maintaining the naturalness of views from public places. Development should be barely visible. In our reading, the policy does not support mounding or planting to hide development from public view. A similar policy in the PDP also strongly discourages buildings and development within ONLs, being policy 6.3.12. This policy states that recognition needs to be made that development is inappropriate in almost all locations in ONLs, meaning successful applications will be exceptional cases where landscape features can absorb the change and structures will be reasonably difficult to see. Another policy (6.3.16) refers to maintaining the openness of ONLs.
 116. In relation to 104D(1)(b), Mr Goldsmith considered that the plan needed to be read as a whole and that some inconsistency with some policies did not render the application as being contrary to the objectives and policies of the plan. Mr Daly's approach was to focus assessment of whether the development was contrary to the ODP and PDP on 'relevant' objectives and policies. In this case we consider that the ODP policy direction is sufficiently directive in relation to landscape matters that we cannot say that the development is, overall, not contrary to the objectives and policies of the operative and proposed plans. While the application is consistent with, and not contrary to, many of the policies of the ODP and PDP we do not consider that this can 'make up' for the high degree of inconsistency with the key policy

direction. In short, the application is contrary to a very important policy 'plank' of the District Plan. Our finding is that the application fails the second gateway test. That is, it is contrary to the objectives and policies of the ODP and the PDP.

Section 104(1)

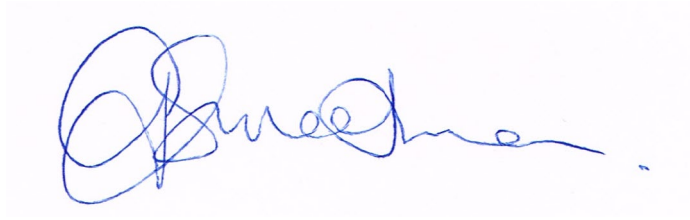
117. Having made a finding that the application cannot pass through the section 104 gateway tests, we do not have the jurisdiction to consider the merits of the application under section 104(1). We have nevertheless, out of an abundance of caution, turned our minds to whether the application could satisfy section 104(1).
118. Here our finding is the same as the 104D assessment. Effects on landscape values are at least moderate. The mitigation planting and mounding proposed further aggravates the extent of adverse effects, rather than ameliorating them.
119. While there are a range of positive benefits from the development these do not outweigh the negative benefits. The strongly worded policies relating to avoiding inappropriate development in ONLs means that we must place a high weight on avoiding these negative effects.

Part 2 of the RMA

120. Mr Goldsmith suggested that we take recourse to Part 2 of the Act. In his view, consideration of Part 2 would lead to a conclusion that consent be granted. Mr Goldsmith suggested that in terms of the ONL provisions of the ODP, the plan was incomplete in that it did not state what specific landscape qualities of the ONL in the application area should be protected from inappropriate development.
121. We do not consider that we need to refer to Part 2 in this case, particularly given the proposal fails to meet either s104D test. However, given we have turned our mind to s104, we are of the view that while it is true that the ODP is silent on specific qualities to be protected, the expert landscape evidence agreed in general terms as to the qualities present in the ONL, as of today. Where there was debate was over the extent of future development on the river flats. At a policy level, if anything the close alignment between the ODP and the PDP's provisions for ONLs suggests to us that the ODP's framework is still very relevant.

Determination

122. In exercising our delegation under sections 34 and 34A of the Act, and having regard to the matters discussed above under sections 104 and Part 2 of the Act, we have determined that resource consent to the non-complying activity application by Bridesdale Farm Developments Limited to establish and operate a tennis centre that will include two covered courts and six outdoor courts, associated car parking spaces, landscaping, and to undertake earthworks, be refused.
123. The reasons for our decision set out in the sections above.

A handwritten signature in blue ink, appearing to read 'G Sweetman', is centered on the page. The signature is fluid and cursive, with a large initial 'G' and a trailing flourish.

G Sweetman (Chair)

For the Hearings Commission

17 May 2019