



DECISION OF QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	R and G. Pettit
RM Reference:	RM190316
Location:	Morven Ferry Road
Proposal:	To undertake a subdivision into two lots and establish residential building platforms including provision for the future construction of a residential unit
Legal Description:	Lot 2 DP 301351
Operative Zoning:	Rural General
Proposed Zoning:	Part Wakatipu Basin Rural Amenity Zone and Part Rural
Activity Status:	Non-complying
Notification:	16 May 2019
Commission:	Robert Nixon
Date of Decision:	5 December 2019
Decision:	Granted Subject to Conditions

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

**of an Application to QUEENSTOWN
LAKES DISTRICT COUNCIL by R. AND
G.PETTIT**

(RM190316)

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

The Hearing and Appearances

Hearing Date:	Tuesday, 15 October 2019 at the Crowne Plaza Hotel, Queenstown
Appearances for the Applicant:	<p>Mr Graeme Todd, Todd and Walker Law, Legal Counsel</p> <p>Mr T. Gresson, Todd and Walker Law, Legal Counsel</p> <p>Mr John Edmonds, Planning Consultant</p> <p>Mr Patrick Baxter, Consultant Landscape Architect</p> <p>Mr Rick Pettit, Applicant</p>
Appearances for the Queenstown Lakes District Council	<p>Ms Melissa Shipman, Senior Planning and Policy Consultant, 4Sight Consulting Limited, on behalf of the Queenstown Lakes District Council</p> <p>Ms Helen Mellsop, Consultant Landscape Architect, on behalf of the Queenstown Lakes District Council</p> <p>Mr Michael Pridham, Land Development Engineer, Queenstown Lakes District Council</p>
Submitter:	Mr. Chris Willett

Abbreviations

The following abbreviations are used in this decision:

R.and G. Pettit	“the Applicant”
Queenstown Lakes District Council	“the Council”
The Operative Queenstown Lakes District Plan	“the ODP”
The Proposed Queenstown Lakes District Plan	“the PDP”

The Resource Management Act 1991	“the RMA”
The Proposed Otago Regional Policy Statement	“the PORPS”
Outstanding Natural Landscape	“ONL”
Visual Amenity Landscape (ODP)	“VAL”
Wakatipu Basin Rural Amenity Zone (PDP)	“WBRAZ”

The land subject to this application is referred to as “the site”. Throughout this decision I will refer to proposed Lot 1 and proposed Lot 2 as simply “Lot 1” and “Lot 2”.

THE PROPOSAL AND BACKGROUND

1. The applicant seeks consent to undertake a subdivision of Lot 1 DP 301351 (4.0360 ha) to create two lots, one of 2.6ha (Lot 1) and the other of 1.15ha (Lot 2) with a right-of-way across Lot 1 serving Lot 2. The applicant also proposed to establish a 583m² residential building platform on Lot 2. The site is located towards the southern extremity of Morven Ferry Road at the base of a small hill. Beyond this hill to the south is the Kawarau River, with a larger hill to the west and a river terrace to the east, below which is the deeply incised gorge of the Arrow River. Lot 1 contains an existing dwelling and other buildings.
2. Access to the site is obtained by a right-of-way off the southern end of Morven Ferry Road serving five existing dwellings¹ and extending some distance to the east as far as the Willett property. Lot 2 has frontage to this accessway along its northern boundary but will not rely on this frontage for vehicular access.
3. For a ‘small’ proposal such as this, the site configuration and background to this application is complex.
4. A feature of Lot 2 is the Arrow Irrigation Race which after passing through Lot 1, contains a pronounced ‘bend’ as it passes through the southern part of Lot 2 before exiting the site to the east. This creates a small triangular shaped ‘peninsula’ of land bounded on two sides by the irrigation race, which contains the proposed building platform. The identified curtilage of the proposed dwelling extends beyond the ‘triangle’ and across the irrigation race. The current alignment of the irrigation race follows the land contour, but the applicant proposes to pipe and ‘straighten’ the race so that it will run south of the building platform² along the southern boundary of Lot 2. The alignment of the irrigation race became a significant issue during the hearing of this application, specifically with respect to landscape matters. It was also a matter of concern to a submitter, who places reliance on the security of water supply from this irrigation race for their farming operation.

¹ Report of Mr Pridham, paragraph 2.4

² Section 42A report, Figure 3

5. The land within the 'triangle' containing the proposed residential building platform is slightly elevated (by approximately 2m) within the bend created by the irrigation race, beyond which the balance of Lot 2 slopes gently down to its northern frontage. To the south of Lot2, the land rises much more steeply and contains a partly overgrown vineyard that appears to have been abandoned.
6. In addition to the above, the applicant holds a currently unimplemented resource consent granted on 20 July 2017³ to permit the establishment of a car storage and workshop building with an area of 126m² and a maximum height of 6m. This building is now proposed to form part of the proposed residential building platform. In other words, the building platform would accommodate both the car storage and workshop building as well as the dwelling proposed through the current application. At the hearing I was advised that it remains the applicant's intention to proceed with the construction of this workshop.
7. With respect to a future dwelling on the Lot 2 residential building platform, the applicant volunteered that the dwelling be restricted to a maximum height of 6.5m above existing ground level; that roofing material be limited to steel tray cladding, timber or corrugated iron; exterior wall cladding be limited to timber, steel tray, concrete and locally sourced schist stone; and that all exterior material have a reflectivity of less than 27%⁴.
8. A 110kv transmission line between Cromwell and Frankton passes to the south of the site, which I understand is the boundary between the between the ONL and the VAL landscape classifications under the ODP. As the closest part of the proposed building platform on Lot 2 is not within 32m of this line, the objectives policies and rules relating to the National Grid Corridor do not apply⁵.
9. Access to Lot 2 would be provided by way of an existing gravel driveway through Lot 1, which will require a right-of-way to be established across Lot 1.

NOTIFICATION AND SUBMISSIONS

10. The application was publicly notified (at the request of the applicant) on 16 May 2019, with submissions closing on 14 June 2019. Two submissions were received in opposition to the application as follows:
 1. Chris Willet (352 Morven Ferry Road)
 2. Derek Bell and Robin Lonsdale (307 Morven Ferry Road)
11. The applicants obtained the written approval of three adjoining neighbours, these being D. and M.Bunn (297 Morven Ferry Road), S.L and S.F Mahon (351 Morven Ferry Road), and also from Lake Hayes Property Ltd (346 Morven Ferry Road) who own the adjoining land to the south and east.

³ RM170619

⁴ Applicants AEE, paragraph 2.0

⁵ Evidence J Edmonds, paragraph 8.3

12. The application also stated that the written consent of the Arrow Irrigation Company had been obtained⁶. For some reason this was not attached to the application, the Applicant's evidence, or the Council's S42A report, and I did not receive a copy (after repeated requests) until as late as Tuesday, 19 November. I note this was a 'conditional' affected party approval signed by Mr Tony Strain, the Chairman of the company, dated 19 November.
13. Affected parties approvals should not in fact be conditional, and if any conditions are sought they should be included by way of a submission on the application. I received a copy of a proposed set of conditions initialled on each page, and containing annotated 'comments' in the margin. These comments draw attention to the need for armouring the building platform slopes, and a right to convey water easement in favour of the Arrow Irrigation Company for the realigned sections of the water race, which must be consistent with the legal width of the existing easement.
14. I am required to disregard any adverse effects on those parties who have given affected party approval to the proposal.
15. The Applicant's written reply was received on 6 November 2019, accompanied by an amended set of proposed conditions. These had not been discussed with Council officers, and I forwarded the draft conditions for their comment. Subsequently there were ongoing discussions between the Applicant and the Council, although some points of disagreement remained as addressed later in this decision. A 'final' set of conditions were received by me on 4 December, and I closed the hearing as of that date.
16. During the course of the hearing, three additional matters arose. The first related to the need to amend the location of the building platform for the existing dwelling on Lot 1. The second was with respect to a resource consent granted in 2000⁷ for a building platform on the neighbouring land to the east of Lot 2. The third concerned the use of an existing building on Lot 1 containing a kitchen which could potentially be regarded as a second unit on that lot.
17. The first matter at least was of direct relevance to the hearing. With respect to the building platform for the existing dwelling on Lot 1, I note that in terms of consent required the Applicant made reference to the need for consent for 'building platforms' under the ODP⁸. Under the 'Proposal and Site Description' contained in the S42A report, it is stated that:

*Further to this description and to clarify, the proposal also involves the following:
An unqualified curtilage around the dwelling on proposed Lot 1 is proposed to the north-east of the building platform.*
.....
18. I consider it would been helpful had this issue, matters relating to the status and legal protection of the irrigation race, and the potential relevance of the consent granted to the east of Lot 2, had been more adequately explained in the planning evidence for the Council and the Applicant.

⁶ Applicant's AEE, paragraph 2.1

⁷ RM000008

⁸ AEE, paragraph 3.2

STATUTORY MATTERS

(1) THE OPERATIVE DISTRICT PLAN (ODP)

19. The Council and the Applicant were in agreement as to the appropriate zoning applicable under the ODP, in contrast to their position with respect to the PDP, as discussed below.
20. The site is zoned Rural General and is located within a Visual Amenity Landscape (VAL). Adjacent to the south the land is classified as Outstanding Natural Landscape – Wakatipu Basin (ONL – WB). The boundary between these landscape features is a transmission line running south of the application site.
21. The application as notified and the section 42A report identifies consent being required under the following rule:

A **discretionary activity** resource consent pursuant to Section 15 (Subdivision) Rule 15.2.3.3 (iv) for subdivision and the location of a building platforms within the Rural General Zone.

22. The section 42A report identified consent also being required under the following rules:

A **discretionary activity** resource consent pursuant to Section 5 (Rural Areas) to establish a residential building platform on a site with a building platform of no less than 70m² in area and not greater than 1000m² in area. The proposed residential building platform is 583 m².

A **restricted discretionary activity** resource consent pursuant to Rule 5.3.3.3 (xi) as the proposal breaches site standard 5.3.5.1 (vi) in relation to the minimum setback from internal boundaries. The site standard specifies a minimum setback of 15m, and the proposed platform will be 12m from the eastern boundary and 8m from the southern boundary. The Council's discretion is confined to the matters specified in the standard.

23. Overall, the proposed activity is a **discretionary** activity under the ODP.

THE PROPOSED DISTRICT PLAN - STAGE 2

24. There was disagreement between the Council and the Applicant as to the applicable zoning of this land under the PDP. Under the PDP, the site has a split zoning between 'Rural' to the south and 'Wakatipu Basin Rural Amenity Zone (WBRAZ)' to the north. The split zoning was not in itself in dispute, but the location of the boundary between the two zones and landscape classifications, was.
25. As described briefly in the summary of evidence below, it was the contention of Mr Baxter and Mr Edmonds that the correct position of the boundary followed the toe of the hill to the south of the application site, on the basis that this would be the logical boundary between the lower lying land to the north (*including* the site of the building platform), and the steeper terrain to the south containing the disused vineyard.

26. There is an element of potential confusion because of the scale of the planning maps. Both the s42A report⁹ and the evidence of Mr Edmonds contained enlarged versions of the planning maps following decisions from Stage 2 hearings on the PDP.
27. I am satisfied that any examination of the planning maps supports the irrigation race being the boundary between the Rural Zone and the WBRAZ – and that this is also the boundary for the ONL to the south. Accordingly, I agree with the position taken by the Council on this matter, which I think was reinforced through questioning at the hearing. Any argument about the boundary between the zones can only occur in terms of whether it can be argued to be an anomaly, and a factor which *might* support a grant of consent having regard to ‘other matters’ under Section 104(1)(c) of the Act. Whatever its merits or otherwise – and I go on to discuss that later in this decision – I am in no doubt that it follows the existing line of the irrigation race adjacent to the building platform.
28. Accordingly, while the majority of Lot 2 is within the WBRAZ, the proposed building platform is within the Rural Zone and the ONL under the PDP. The proposed curtilage extends over both the Rural Zone and across the irrigation race to the north within the WBRAZ. As Lot 2 straddles *both* zones, consent is required under both as follows:
29. Chapter 24: Wakatipu Basin

A **noncomplying activity** resource consent pursuant to Rule 24.5.1.5 for any site located in the WBRAZ which provides a minimum residential density of 80 ha per residential unit;

A **restricted discretionary activity** resource consent pursuant to Rule 24.5.6 which requires a minimum setback of the building from internal boundaries of 10m, with discretion restricted to building location, character, scale, form, external appearance and land for modification;

A **restricted discretionary activity** resource consent pursuant to Rule 24.5.7.1 as a height of the proposed residential building within a building platform exceeding 6m but not than 8m, with discretion restricted to building location, character, scale and form, external appearance and land for modification.

A **restricted discretionary activity** resource consent pursuant to Rule 24.5.4 where a residential building as constructed within the building platform under Rule 24.4.6 and the ground floor area exceeds 500m². The proposed building platform has an area of 583m² and is intended to contain the approved car storage/workshop and a future dwelling;

(Although the proposed building platform is in my opinion within the ONL and the Rural Zone, I observe there is no rule for the identification of a residential building platform in the WBRAZ. If in fact a building platform is an ‘activity’, it would be ‘caught’ by Rule 24.4.1, as an ‘other’ activity not listed in Tables 24.1 and 24.2).

⁹ S42A Report, page 14, Figure 5 and Evidence J Edmonds, paragraph 8.2, Figures 7 and 8

30. Chapter 25: Earthworks

A **restricted discretionary activity** consent pursuant to Rule 25.5.19 which requires a setback of 10m from the bed of any water race that flows to a river, limiting earthworks to 5m³ within any 12 month period.

31. Chapter 27: Subdivision

A **noncomplying activity** resource consent is required pursuant to Rule 27.5.19 as the proposed subdivision does not comply with the minimum lot area specified in Part 27.6 which requires a minimum lot area of 80ha in the WBRAZ, which in contrast to that part of Lot 2 containing the building platform, is the zoning applicable to the majority of Lot 1 and Lot 2. (I note that there is no minimum area specified in Part 27.6 relating to the Rural Zone).

32. Chapter 21: Rural

A **restricted discretionary activity** resource consent pursuant to Rule 21.5.1 because the building platform is located less than 15m from an internal boundary, in this case 12m from the eastern boundary and 8m from the southern boundary. Discretion is restricted to rural amenity and landscape character, privacy, outlook and amenity from adjoining properties.

A **discretionary activity** resource consent pursuant to Rule 21.4.10 to establish a building platform between 70m² and 1000m². (I note that there is no rule requiring the identification of a residential building platform within the WBRAZ, but there is within the Rural Zone which I consider is the zoning applicable to the proposed building platform).

33. Overall the activity is a **noncomplying activity** under the PDP, and accordingly is a **noncomplying activity** overall, a point conceded in the evidence of Mr Edmonds¹⁰.
34. A review of the Regional and District Council's records by the Applicant has not revealed the previous presence of any HAIL activities on the site, and consent is not required in terms of the National Environmental Standard. This has been accepted by the Council, and I have adopted this conclusion.
35. Consent was also sought (at least initially) pursuant to section 348 of the Local Government Act 1974 for the establishment of a right of way over Lot 1 in favour of Lot 2. This matter is addressed later in this decision.
36. As a final matter, a plan was attached to the application showing a revised building platform of 874m² for the existing dwelling on Lot 1. This dwelling is not entirely contained within the approved building platform (1000 m²). This matter was the subject of only very brief discussion during the hearing, but an amendment to the platform was acknowledged as being necessary by both the Applicant and the Council, with the latter seeking a detailed condition as set out at the conclusion of this decision (proposed Land Use condition 2 (b)).

¹⁰ Evidence J Edmonds, paragraph 8.5

EVIDENCE

The Landscape Evidence

37. Landscape matters, as is characteristically the case with rural subdivision and building platform applications, dominated evidence to this hearing.
38. Ms MacPherson presented a landscape assessment in support of the officer's section 42A report. She noted that the ONL boundary line was now more specifically defined in the PDP than it was under the ODP, and that its boundary in this location was not subject to submissions as part of the hearings process. She said the greater portion of the site was within the WBRAZ, and LCU18.
39. In her opinion:

*"The receiving hummocky landscape is predominantly rural in character despite there being three or four dwellings present along the accessway shared by the subject site. In my opinion those dwellings are located on rural land and only near to each other because of the proximity of the shared access way and the narrowing of the flat land in this area – not because this is a rural residential neighbourhood"*¹¹.
40. In support of this argument she stated that the typical lot size in LCU 18 was greater than 10ha and half were more than 50ha, with the sizes of adjoining lots ranging from 9ha to 37ha. She disagreed with the Applicant's contention that the approved car storage/workshop building on the same building platform was comparable, as the earlier consent was granted under a different planning environment, was a different kind of building, and did not involve the creation of an additional lot. She contended that the proposed building was a farm building, which could not be considered as part of the permitted baseline in assessing an application such as this.
41. In terms of the PDP, she was of the opinion that the development amounted to over - domestication, claiming that the building platform and curtilage occupied approximately one third of proposed Lot 2, and was sited on the highest portion of the subject site. She rated the adverse effects on the pastoral character of the landscape under the ODP as moderate – low.
42. She placed considerable emphasis on the provisions of the PDP, and the application site's proximity to the boundary between the ODP and the WBRAZ. In her opinion the landscape could not absorb the changes proposed with respect to cumulative effects, would constitute a form of rural lifestyle character, and would likely create a precedent for similar development. She was firmly of the view that adverse effects would be generated by the proposed intensity of built form resulting from the development, and that any 'clustering effect' would cross a threshold, resulting in a loss of rural landscape quality. She did however, accept that the application site would be difficult to see, and that there would not be more than minor adverse visual amenity effects from public viewpoints ¹².

¹¹ K. MacPherson, paragraph 20

¹² Evidence H Mellsop, paragraph 51

43. Mr Baxter presented evidence for the Applicant, stating that:

“The proposed RBP is located within an established rural residential neighbourhood, characterised by scattered residential dwellings within a framework of existing roads, gravel driveways, shelterbelts and open pastoral land”¹³.

44. He disagreed with the Council’s landscape witness, Ms MacPherson, that the irrigation race defined the boundary of the ONL. He asserted that while the irrigation race extended out beyond the edge of the escarpment, there was no landscape logic to the ONL line following the irrigation race. In his opinion, the location of the ONL in terms of the irrigation race was an aberration and did not form a logical landscape boundary. He contended that the *“proposed development is located in the ONL in the PDP by way of anomaly, not by way of landform”¹⁴.*
45. In his opinion the application site would not be visible from the Crown Range Road and to only intermittent views from State Highway 6, and even then, from distances of between 870m and 940m. He did not agree with Ms MacPherson’s suggestion that should consent be granted, that the height of the building be reduced from 6.5m to 5.5 m, along with a reduction in the curtilage area.
46. While he accepted that the proposed lot was smaller than the average density in the wider landscape, he felt this was not of relevance as the distance between structures varies, and clusters are not uncommon in the landscape. He said this particular cluster would not be readily visible from a public place. He contrasted this with other areas more visible from the road and from the state highway, where developments such as this would be highly visible¹⁵. In his opinion the location of the application site needed to take account of the complexity of the landscape, wherein some locations development would be highly visible, and in others it would not.

The Planning Evidence

47. As would be expected, the reporting planner’s conclusions were informed by the detailed analysis undertaken by Ms MacPherson. Ms Shipman noted that the case for the Applicant was heavily influenced by the lack of visibility of the proposed development when seen from public places, a conclusion broadly accepted by all witnesses. Notwithstanding that, she concurred with Ms Macpherson’s view that the development was characteristic of rural residential living. She resiled from her earlier contention that the consented car storage/workshop could not be considered part of the permitted baseline, as the subject building was not consented as a “farm building”.

¹³ Evidence P. Baxter, paragraph 9

¹⁴ Ibid, paragraph 36

¹⁵ Evidence P Baxter, paragraph 30

48. With reference to the report by Mr Pridham on engineering matters, she noted that any adverse effects with respect to natural hazards and earthworks could be addressed through conditions and would be less than minor. She acknowledged that there were some existing small lots in the vicinity¹⁶. She noted that it would be possible to adequately provide for water supply, wastewater and stormwater management on the site.
49. She made reference in passing to an authorised rental/visitor accommodation activity within the studio on Lot 1 and commented that the outcome of the current application would determine whether the Applicant would make a separate application for resource consent for either a residential flat or for visitor accommodation.
50. In considering the objectives and policies, she considered that the proposal was inconsistent with (not contrary to) the provisions of the PORPS, and any relevant remaining provisions under the operative Regional Plan. With respect to the PDP, she conceded that limited weight should be given to this plan given the extensive range of appeals. Notwithstanding, in her view the landscape assessments contained within the WBRAZ reflected contemporary conclusions about the character of LCU18 which applied to most of proposed Lot 2. She was concerned with the fragmentation of the rural land, and the risk of precedent for the development of other sites which might also be argued to have limited visibility from public places. She was of the opinion that the ODP – and not just the PDP – took into account the intensity of development and the ability of the environment to absorb change and was not confined to consideration of whether development was visible from a public place.
51. For the Applicant, Mr Edmonds stated that apart from the new lot to be created, the nearest proposed building platform was over 550m from the application site. He emphasised the importance of applying the permitted baseline, because the car storage/workshop building consented under RM 170619 was not a farm building, and insisted that the provisions under ODP Rule 5.3.3.2 (i)(d) which excluded farm buildings from consideration under the permitted baseline, was not relevant in this case.
52. He drew attention to passages contained in the decision on RM 170619¹⁷ for the proposed car storage and workshop, whereby the Council's decision concluded that the proposed car storage and workshop building (granted consent on a non-notified basis) would not detract from the VAL, and would not be visible from public viewpoints.
53. Relying on the evidence of Mr Baxter, he considered the obvious demarcation of the ONL was not the position of the irrigation race, but the change in slope to the steeper land beyond the southern boundary of the application site, which was defined by a row of poplars and close to the position of the proposed realignment of the irrigation race. A consistent theme in his evidence was that little or no weight could be given to the provisions of the PDP. He noted that the key provisions relevant to landscape matters were subject to challenge through appeals, and to this end, he produced a table in his evidence showing the number of appeals against various rules and assessment matters in Chapters 3, 6, and particularly Chapter 24, of the PDP¹⁸.

¹⁶ S42A report, page 25 (249, 287 and 307 Morven Ferry Road)

¹⁷ Evidence J Edmonds, paragraph 10.12

¹⁸ Evidence J Edmonds, paragraph 10.24, Table 1

54. Turning to the ODP, he did not agree that Policy 4 applying to Visual Amenity Landscapes ‘discouraged’ development, taking a contrasting view that it was essentially ‘enabling’. In response to the Council’s criticism that his opinion was unduly dependent on a lack of significant visual impacts, he said:

“I maintain that opinion, and also add, that I am also relying on the conclusions reached by the Council in granting consent to the workshop”¹⁹.

55. In terms of concerns about domestication, he stated that:

“In my experience, the term over - domestication is constantly changing and evolving in response to the evolution of the Wakatipu Basin. Planners and Landscape Architects have been calling ‘over domestication’ since the ODP was advertised in 1995. I believe it can only be meaningful when used within a particular context. It needs to be a site by site analysis rather than applied as a general statement to any rural subdivision. In this case there is a small cluster of dwellings developing near the end of Morven Ferry Road that is developing a character in its own right. The addition of a further house will contribute to that character – which obviously still retains a spacious rural openness. There remains a high degree of privacy between the dwellings and sufficient room within each site to avoid feelings of domestication”²⁰.

Evidence of Mr Willett

56. Mr Willett’s property is located beyond the application site to the east and comprises a narrow tongue of land extending to the confluence of the Kawarau and Arrow Rivers. He explained that he is dependent on the irrigation race for the farming of his property.
57. He raised a number of concerns, some of which were of an engineering nature, including the location of the water supply bore to serve the development, and the effect of the required earthworks to realign and pipe the water race. He was concerned about the safety of the water race over Lot 1 (considering that this should also be piped), and the fact that the realigned water race easement would be very close to the proposed dwelling on Lot 2. His primary concern was the intensification associated with the development and the fact that it would create a small urban cluster which would be an adverse effect on the environment.
58. He was also concerned about the additional number of people resulting from the subdivision and additional dwelling, and the effects of traffic on the shared accessway.
59. In his evidence, Mr Willett wondered whether the relocation of the water race meant that the boundary between the zones and the boundary of the ONL would also change as a consequence. *(My understanding of the situation is that it would not – if the boundary is to be changed, this would have to be undertaken by way of a variation or change to the PDP.)*

¹⁹ Ibid, paragraph 10.20

²⁰ Ibid, paragraph 11.12

Legal Submissions

60. Mr Todd drew attention to what he submitted were errors of fact and law in the Council's assessment in terms of the classification of the landscape, the application of the permitted baseline, and contradictory conclusions in terms of visual effects. He reinforced Mr Edmonds conclusions that the permitted baseline was applicable because the car storage/workshop was not a farm building and that case law supported the application of the permitted baseline for a non-fanciful use²¹. He considered that the ONL boundary based on the water race should be considered as an anomaly. He was firmly of the view that visual impacts were the most important consideration in assessing landscape effects, and particularly the 'reasonably difficult to see test' in setting the threshold for acceptable landscape impacts²².

ASSESSMENT OF EFFECTS

The nature and character of the site and the application

61. The issues arising from this application are relatively complex – or perhaps best described as “messy” – because of the unusual juxtaposition of the zone boundaries and landscape classifications associated with Proposed Lot 2. Lot 2 is split zoned, with most of the lot located within the WBRAZ/LCU18, but with the building platform within the Rural Zone/ONL. Under the PDP, an 80ha minimum lot size is proposed. This is not a mere refinement of the provisions in the ODP, but a fundamental realignment of the regulatory framework for subdivision and dwellings in the Wakatipu Basin.
62. There is no minimum area standard for subdivision in the Rural Zone under the ODP, and this remains the case under the PDP, albeit that this may appear somewhat anomalous. If the PDP were operative, there would be a challenging environment for Applicants regardless of whether they were within the Rural Zone with an ONL landscape classification, or within the WBRAZ with its proposed 80 ha minimum.
63. I have already concluded earlier under 'Statutory Matters' that I am satisfied that under the PDP, the residential building platform on Lot 2 is located within the ONL and the Rural Zone. My understanding of the Applicant's submissions is that even if this is accepted, the zone boundary/landscape classification should be treated as an anomaly²³. This argument was advanced on the basis that the 'triangle' containing the building platform for the consented car storage/workshop and the proposed dwelling, can be readily read as an extension of the toe of the hill behind.

²¹ Legal Submissions, paragraph 16

²² Ibid, paragraph 20

²³ Applicant's right of reply, paragraphs 3 – 5

64. From having visited the site, the unusual circumstances pertaining in this case means it is difficult to reach a firm conclusion as to whether the boundary should be treated as an anomaly. While I agree with the Applicant's case that the terrain steepens appreciably behind the proposed building platform, when one has regard to the scale of the surrounding rural environment, and of the scale of planning maps in a rural zone, the 'triangle' is a very small feature. Proposed Lot 2 is small in itself, but the 'triangle' is barely any larger than a typical residential section. It is preferable for a zone boundary to follow an identifiable ground feature where possible, and the water race, albeit imperfect, is an example of such a feature. At this scale in a rural zone, it is not always realistic to expect the position of the zone boundary to reflect the physical character and location of very small parcels of land in the absence of cadastral boundaries.
65. If the boundary is in fact anomalous, in my opinion it only becomes so because of the proposed relocation of the water race to the rear of the building platform, but that was not the situation when the (unchallenged) boundaries were notified as part of the PDP. While the regulatory provisions of the PDP are subject to appeal, the location of the zone boundary is not.
66. There are unusual and specific circumstances prevailing with respect to Lot 2 and within this, the proposed residential building platform, when set against the background of the zone boundary and landscape classifications applicable to the site. I have concluded that a pragmatic assessment needs to be undertaken rather than a more narrowly focused 'forensic' approach.
67. It appeared to be common ground between the landscape experts that the visual impacts of the proposed dwelling on the application site will not have any significant adverse visual impacts from any public viewpoints. The fundamental point of disagreement between the Council and the Applicant is whether the intensity of the development – the creation of an additional small lot and dwelling – will exceed the capacity of the environment to absorb the additional dwelling, regardless of its visual impact beyond the site. This became (primarily) an argument about objectives and policies. Do the objectives and policies of the ODP extend beyond an assessment of visual impacts? Do the objectives of the PDP extend beyond merely assessing visual impacts, and if so, what weight can be placed on them?
68. In considering the recent Baker application I concluded that a more intensive pattern of subdivision is nearly always associated with the more intensive pattern of dwellings and associated features which could create an impression of a rural residential character.²⁴ Justification for a grant of consent to the Baker application was supported by the fact that it sought consent for a proposed dwelling on an existing vacant site.
69. I appreciate the Council's concerns with respect to the creation of additional small allotments as proposed here, but it is apparent to me that under the ODP the regulatory regime is based on the potential visual impacts of proposed subdivision and dwellings, reinforced by the absence of any minimum area criteria. The PDP proposes a very different regime. This is a debate that will ultimately be resolved through decisions on forthcoming appeals on the PDP.

²⁴ RM 181540

70. In considering the current proposal, even if there is an additional element of domestication, the location of the proposed dwelling and associated workshop and storage shed is such that it will not have a significant adverse visual impact beyond the immediate vicinity. I consider the following aspects are important in this respect.
71. Firstly, it appears inevitable that the workshop and storage shed will be built on the site and this would be a relatively large structure. The bulk and scale of development will undoubtedly increase with the erection of a slightly higher dwelling adjacent to it, but not to a degree that it would result in a threshold of development being exceeded in terms of visual impacts. This may raise questions about the implications of approving 'non-farm' related buildings in the rural area, but this is not something I can revisit through this application.
72. I have commented earlier on the unusual circumstances applicable to the site and the location of the proposed building platform, relative to zone boundaries/landscape classifications under the PDP. Taking this into account, I do not consider that the integrity of the ONL in this location would be undermined by a grant of consent. This is because upon viewing the site from a more distant perspective (e.g. from State Highway 6 to the north) it was apparent that significant visual impacts would only occur if there were development on the much steeper land rising behind Lot 2. For example, I note that the north facing slopes of the smaller 'hillock' (as described by Mr Edmonds) is clearly visible from State Highway 6 along the straight west of Swiftburn, albeit intermittently and at a distance. Put another way, I do not think that any prospective Applicant could draw much comfort from relying on a grant of consent to this application as a basis for providing support for a dwelling on the rising ONL landscape behind.
73. In contrast, the proposed building platform at the base of the hill is not readily visible, although I acknowledge Mr Willett's observation that to at least some extent, the presence of intervening trees on other properties helps provide screening for development along the base of this otherwise prominent hill.
74. I also note that the majority of proposed Lot 2 is not located within the ONL.
75. While a very small 'cluster' of dwellings is apparent in the vicinity of the existing dwelling on Lot 1, and that the proposed dwelling would add to this, any such 'cluster' would still be so small in scale, that it would be difficult to see this as having urban qualities, or for that matter, even that of an incipient Rural Lifestyle Zone.
76. I have taken into account the assessment matters in the ODP, which appear to be broadly similar to those in the PDP, albeit that the latter are under extensive challenge through appeals.

Assessment matters – ODP

77. Rule 5.4.2.2(3) is specific to Visual Amenity Landscapes. I have followed the subheadings under the applicable assessment matters.

(a) Effects on natural and pastoral character²⁵

In considering whether the adverse effects (including potential effects of the eventual construction and use of buildings and associated spaces) on the natural and pastoral character are avoided, remedied or mitigated, the following matters shall be taken into account:

- (i) where the site is adjacent to an Outstanding Natural Landscape or Feature, whether and the extent to which the visual effects of development proposed will compromise any open character of the adjacent Outstanding Natural Landscape or Feature;*
- (ii) whether and the extent to which the scale and nature of the development will compromise the natural or Arcadian pastoral character of the surrounding Visual Amenity Landscape;*
- (iii) whether the development will degrade any natural or Arcadian pastoral character of the landscape by causing over domestication of the landscape;*
- (iv) whether any adverse effects identified in (i) – (iii) above are all can be avoided or mitigated by appropriate subdivision design and landscaping, and/or appropriate conditions of consent (including covenants, consent notices and other restrictive instruments) having regard to the matters contained in (b) to (e) below;*

78. As discussed above, I do not consider that the development would have an adverse effect on the adjoining ONL. Although located in the foreground to the ONL, Lot 2 at the toe of the hill is largely screened from public view.
79. The development would contribute to the small cluster of dwellings located at the southern end of Morven Ferry Road, although in a position which is not visible from the wider area, a characteristic which would remain even with further on-site domestication potentially resulting from a grant of consent to this proposal.
80. *(b) Visibility of Development²⁶*
Whether the development will result in a loss of the natural or Arcadian pastoral character of the landscape, having regard to whether and the extent to which:
- (i) the proposed development is highly visible when viewed from any public places, or is visible from any public road and in the case of proposed development in the vicinity of unformed legal roads, the Council shall also consider present use and practicalities and the likelihood of potential use of unformed legal roads for vehicular and/or pedestrian, equestrian and other means of access and*
 - (ii) the proposed development is likely to be visually prominent such that it detracts from public or private views otherwise characterised by natural or Arcadian pastoral landscapes;*
 - (iii) there is opportunity for screening or other mitigation by any proposed method such as earthworks and/or new planting which does not detract from or obstruct the views of the existing natural topography or cultural plantings such as hedgerows and avenues;*
 - (iv) the subject site and the wider Visual Amenity Landscape of which it is forms part is enclosed by any confining elements of topography and/or vegetation;*

²⁵ ODP Rule 5.4.2.2(3) (a) (i) to (iv)

²⁶ ODP Rule 5.4.2.2 (3)(b) (i) to (ix)

(v) any building platforms proposed pursuant to rule 15.2.3.3 will give rise to any structures being located where they will break the line and form of any skylines, ridges, hills or prominent slopes;

(vi) any proposed roads, earthworks and landscaping will change the line of the landscape or affect the naturalness of the landscape particularly with respect to elements which are inconsistent with the existing natural topography;

(vii) any proposed new boundaries and the potential for planting and fencing will give rise to any arbitrary lines and patterns on the landscape with respect to the existing character;

(viii) boundaries follow, wherever reasonably possible and practicable the natural lines of the landscape and/or landscape units;

(ix) the development constitutes sprawl of built development along the roads of the District and with respect to areas of established development.

81. While there was no unanimity with respect to the visual impacts of the proposal, it was generally accepted by the landscape witnesses for both the Applicant and the Council that the proposed development on Lot 2 would not have a significant visual impact beyond the immediate environment. It is located at the toe of a prominent hillock, but while that feature itself is clearly visible, the base of the hillock is relatively well screened from the adjoining area except as seen from the Applicant's dwelling located on Lot 1.
82. The building platform is not located such that it would break any skyline, ridge, hills or prominent slope, in contrast to the rising land beyond proposed Lot 2 to the south. The roading and earthworks associated with the establishment of the building platform and access to it, do not involve significant earthworks which would be visible from beyond the immediate vicinity. Boundary planting will similarly not create any incongruous patterns in the landscape, particularly on the southern boundary where it follows the bottom of the steeper sloping land marked by a line of poplars. There was no suggestion that the development would result in sprawling development along district roads.

(c) Form and Density of Development²⁷

In considering the appropriateness of the form and density of development the following matters the Council shall take into account whether and to what extent:

(i) there is the opportunity to utilise existing natural topography to ensure that development is located where it is not highly visible when viewed from public places;

(ii) opportunity has been taken to aggregate built development to utilise common access ways including pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);

(iii) development is concentrated in areas with a higher potential to absorb development while retaining areas which are more sensitive in their natural or arcadian pastoral state;

(iv) the proposed development, if it is visible, does not introduce densities which reflect those characteristic of urban areas.

(v) if a proposed residential building platform is not located inside existing development then on any application for resource consent and subject to all the other criteria, the existence of alternative location or methods:

.....

²⁷ ODP Rule 5.4.2.2 (3)(c) (i) to (vi)

(vi) recognition that if high densities are achieved on any allotment that may in fact preclude residential development and/or subdivision on neighbouring land because of the adverse cumulative effects would be unacceptably large.

83. The proposed development on Lot 2 will not be highly visible from public places. The size of Lots 1 and 2 are in themselves characteristic of a rural lifestyle development, but even considered in conjunction with dwellings on adjoining properties, do not create a rural cluster of a scale which constitutes a *de facto* Rural Lifestyle Zone.

(d) Cumulative effects of development on the landscape²⁸

In considering whether and the extent to which the granting of the consent may give rise to adverse cumulative effects on the natural or arcadian pastoral character of the landscape with particular regard to the inappropriate domestication of the landscape, the following matters shall be taken into account:

- (i) the assessment matters detailed and (a) to (c) above;*
- (ii) the nature and extent of existing development within the vicinity or locality;*
- (iii) whether the proposed development is likely to lead to further degradation or domestication of the landscape such that the existing development and/or land use represents a threshold with respect to the vicinity's ability to absorb further change;*
- (iv) whether further development as proposed will visually compromise the existing natural and arcadian pastoral character of the landscape by exacerbating existing and potential adverse effects;*
- (v) the ability to contain development within discrete landscape units as defined by topographical features such as ridges, terraces or basins, or other visually significant natural elements, so as to check the spread of development that might otherwise occur either adjacent to or within the vicinity as a consequence of granting consent;*
- (vi) whether the potential for the development to cause cumulative adverse effects may be avoided, remedied or mitigated by way of covenant, a consent notice or other legal instrument (including covenants controlling or preventing future buildings and/or landscaping, and covenants controlling or preventing future subdivision which may be volunteered by the applicant).*

84. I consider there is some force in the Council's argument that the creation of lot sizes such as those proposed through this application could have an adverse cumulative effect. In this case, I do not consider a 'tipping point' has been reached, notably in the absence of any adverse visual impacts as seen from public places. That, the unusual juxtaposition of boundaries in this location, and the proposed construction of an approved large workshop and storage building are factors which tip the scales in favour of a grant of consent.

(e) Rural Amenities²⁹

In considering the potential effect of the proposed development on rural amenities, the following matters the Council shall take into account whether and to what extent:

²⁸ ODP Rule 5.4.2.2 (3)(d) (i) to (vii)

²⁹ ODP Rule 5.4.2.2 (3)(e) (i) to (v)

(i) the proposed development maintains adequate and appropriate visual access to open space and views across arcadian pastoral landscapes from public roads and other public places; and from adjacent land where views are sought to be maintained;

(ii) the proposed development compromises the ability to undertake agricultural activities on surrounding land;

(iii) the proposed development is likely to require infrastructure consistent with urban landscapes such as street lighting and curb and channelling, particularly in relation to public road frontages;

(iv) landscaping, including fencing and entranceways are consistent with traditional rural elements, particularly where they front public roads.

(v) buildings and building platforms are setback from property boundaries to avoid remedy or mitigate the potential effects of new activities on the existing amenities of neighbouring properties.

85. I am satisfied that the potential effects of the proposed development on rural amenities will be minor. I acknowledge Mr Willett's concerns about small scale development in this location, but given the factors already described in this decision and the current lack of any density restrictions in the ODP, I do not consider there would be sufficient grounds to decline consent. I also acknowledge the importance of the irrigation race to the farming of his property to the east, but my understanding is that there are sufficient legal mechanisms in place to ensure that the Applicant cannot interfere with the supply of water to his property. This matter is also addressed below and under Condition 4 at the end of this decision.
86. Access to the property is to be provided by way of what appears to be a partly formed driveway across Lot 1, rather than through the construction of an entirely new access, and I consider that this would not detract from traditional rural elements in this area. The building platform on Lot 2 would only appear to be clearly visible from the Applicants own dwelling on Lot 1.
87. In conclusion, while the application does not have a great deal to commend it, it is largely 'rescued' by the very unusual juxtaposition of zone and landscape boundaries, it's small scale, the inevitable visual impacts of the already approved large workshop and storage building, and the lack of any significant visual impact beyond the immediate vicinity. In addition, whether or not a positive factor, the ODP relies primarily on an assessment of visual impacts rather than the density of development.
88. I am also satisfied on the basis of the evidence and the Council's assessment, that for a development on this scale there would not be any significant traffic or engineering implications arising from a grant of consent, subject to the imposition of appropriate conditions.
89. On this basis, I have concluded that the subdivision and proposed residential building would have a no more than minor effect on the receiving environment of this area.

OBJECTIVES AND POLICIES

90. I have concluded that the appropriate way to apply the objectives and policies to this application is to put greater weight on those in the ODP. While I am satisfied that the zoning places the building platform within the (unchallenged) ONL landscape classification under the PDP, I consider that the very small scale of the building platform as a component of Lot 2, and as part of the wider environment, is such that its unusual circumstances need to be recognised. Lot 2 as a whole, straddles the zone and landscape boundaries under the PDP.

Objectives and Policies – ODP

91. Chapter 4 of the ODP contains District Wide Issues, Objectives and Policies. Objective 4.2.5 and its associated policies specifically address matters concerning landscape and visual amenity.

Objective 4.2.5:

Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values.

92. This is an overarching objective is expressed in very general terms, paraphrasing the provisions of section 5(2)(c) of the Act, but which is given more specific focus in its accompanying policies. Policy 1 reads as follows:

Future Developments

- (a) *To avoid, remedy or mitigate the adverse effects of development and/or subdivision in those areas of the District where the landscape and visual amenity values are vulnerable to degradation.*
 - (b) *To encourage development and/or subdivision to occur in those areas of the District with greater potential to absorb change without detracting from landscape and visual amenity values.*
93. I was made aware of recent (and prospective) subdivision activity in the Morven Ferry Road area. I consider that this is a location that has some vulnerability to degradation, but given the circumstances and visibility of this particular site, I do not consider there would be significant adverse effects on the quality of the environment upon a grant of consent to this application. The immediate environment of this location can absorb the development proposed.

94. Policy 4 is specific to VAL's.

Visual Amenity Landscapes

- (a) *To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:*
 - *Highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); and*
 - *Visible from public roads.*
- (b) *To mitigate loss of or enhance natural character by appropriate planting and landscaping.*

95. It was agreed between all parties that the site is not highly visible from public places or places frequented by the public. I am aware that a popular public cycling route (the Twin Bridges cycleway from Arrowtown to Gibbston) passes in relatively close proximity to the north. From the evidence and in response to questioning, I was advised that this route follows a lower terrace such that the site would not be visible from there. The site itself is largely screened from State Highway 6 by both distance and intermittent planting on the intervening terraces.
96. Policy 6 seeks to restrain urban development within a VAL. I do not consider that a grant of consent to this proposal would constitute 'urban development'.
97. Policy 8 is concerned with cumulative effects.

Avoiding Cumulative Degradation

In applying the policies above the Council's policy is:

- (a) *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.*
- (b) *To encourage comprehensive and sympathetic development of rural areas.*
98. Were it not for the relatively secluded nature of the small rural enclave containing the application site, there would be distinct potential for cumulative adverse effects. On balance, I am satisfied this will not occur with respect to this proposal.
99. The proposed application is for the establishment of a residential building platform, which is clearly intended to be followed by the construction of a dwelling, co-located with the approved storage shed and workshop. Policy 9 addresses the effect of structures in the landscape and reads as follows:

Structures

To preserve the visual coherence of:

- (a) *Outstanding natural landscapes and features and visual amenity landscapes by:*
- *Encouraging structures which are in harmony with the line and form of the landscape;*
 - *Avoiding, remedying or mitigating any adverse effects of structures on the skyline, ridges and prominent slopes and hilltops;*
 - *Encouraging the colour of buildings and structures to complement the dominant colours in the landscape;*
 - *Encouraging placement of structures in locations where they are in harmony with the landscape;*
 - *Promoting the use of local, natural materials in construction.*
- (b) *Visual amenity landscapes*
- *By screening structures from roads and other public places by vegetation whenever possible to maintain and enhance the naturalness of the environment; and*
- (c) *All rural landscapes by*
- *Providing for greater development setbacks from public roads to maintain and enhance amenity values associated with the views from public roads.*

100. As assessed earlier, development on the site will not intrude into a skyline ridge or on to a prominent slope. Subsequent consent will be required for the dwelling as a controlled activity, but in addition, the Applicant proposes to adopt the 'standard' measures with respect to the colour and materials to be used for cladding the proposed dwelling. Given the height and scale of the approved workshop and storage building, I do not consider that an additional (very small) restriction on height as proposed by the Council, would serve any meaningful purpose.
101. Part 5 contains the objectives and policies relevant to 'Rural Areas'. Objective 5.2.1 is rather general in its application, and its related policies addresses the need to protect landscape values and retain the capacity for rural production. The existing allotment provides little potential scope for rural production, and the proposed subdivision will not alter that situation.
102. Chapter 14 (Transport), Objectives 14.1.3, Objective 1 and Objective 2 apply to the functioning and efficiency of transport in the District. Policy 2.2 states:
- "To ensure the intensity and nature of activities along particular roads is compatible with road capacity and function, to ensure both vehicle and pedestrian safety".*
103. Although reliant on an accessway and a minor road, the scale of traffic likely to be generated by the additional dwelling is likely to be negligible.

Objectives and Policies – PDP

104. I am required to have regard to the objectives and policies in the PDP, although as previously noted, these are subject to an extensive array of appeals. Nevertheless, I consider that some weight needs to be attached to these objectives and policies, as indicated by the Environment Court³⁰.
105. Chapter 3 contains the Strategic Directions. Proposed Objective 3.2.5 calls for the retention of the District's distinctive landscapes. Proposed Objective 3.2.5.2 is specifically relevant to the WBRAZ (rather than the ONL) but Lot 2 is within both, and I consider it would be appropriate that it be considered. Objective 3.2.5.2 seeks that the rural character and visual amenity values within identified Rural Character Landscapes are maintained or enhanced by directing new development to occur in those areas that have the potential to absorb change without detracting from their values.
106. Proposed Policy 3.3.24 seeks to ensure that cumulative effects of new subdivision and development does not result in the character of the rural environment losing its 'rural' character. Taken in combination with the proposed minimum subdivision area of 80 ha, a proposal such as this would be contrary to this policy. In addition, proposed Policy 6.3.4 seeks to avoid subdivision and development to urban densities, and it is plain that in isolation, Lots 1 and 2 exhibit lot sizes of a rural lifestyle character. Given the size of the two lots, even if the outcome of the appeals resulted in a substantially reduced minimum subdivision area, this proposal would be inconsistent with this proposed regulatory framework.

³⁰ Ballantyne Barker Holdings Ltd v QLDC, Decision No.[2018]NZEnvC 181, paragraph 68

107. Policy 3.3.30 is relevant to ONL's and seeks to avoid adverse effects on landscape and visual amenity which are more than minor or not temporary in duration. Unlike Policy 3.3.24, this application at least arguably satisfies this policy, as the characteristics of the small enclave containing the application site are such that the proposed development would not have an effect which is more than minor in terms of wider visual impacts and effects on rural character.
108. Chapter 24 contains objectives and policies related to the Wakatipu Basin Rural Amenity Zone.
109. Objective 24.2.1 and Policy 24.2.1.3 respectively seek to maintain landscape character and visual amenity values in the Wakatipu Basin Rural Amenity Zone and on the Landscape Character Units within the basin. While the impacts of this proposed development are not significant in isolation, in general terms development of this nature would be arguably inconsistent with this objective and policy framework.
110. The reporting officer's assessment made reference to a number of other objectives and policies of much more general application, but I do not consider these have significant bearing on whether the application should be declined.
111. Given the size of the existing allotment being subdivided, I do not consider that issues of rural productivity arise in this case.

Objectives and Policies – Proposed Otago Regional Policy Statement

112. The Operative Otago Regional Policy Statement has now reached the point where it has been largely supplanted by the Proposed Regional Plan (PORPS). It's provisions with respect to landscape protection are very general and given effect to through the much more specific provisions of the ODP and the PDP.
113. Policy 5.5.6 calls for the protection of Otago's outstanding natural features and landscapes, which are unique or characteristic of the region or are representative a particular landform or land cover. I have doubts that a proposal of this scale raises an issue of regional significance, quite apart from complications arising from the unique size and location of this small allotment straddling zone and landscape boundaries under the PDP. I consider the proposal is at worst inconsistent with, but not contrary to, this policy.

PART 2 AND SECTION 104 RMA

114. Section 104D of the RMA provides that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that the adverse effects of the activity on the environment will be minor, or that it is not contrary to the objectives and policies of the relevant plan or proposed plan.

115. I have come to a clear view that in terms of assessing the effects of this proposal on the environment, any adverse effects would be no more than minor. I have reached this conclusion given the proposal's unusual site characteristics, the anticipated visual impacts of the already approved workshop and storage building, the relatively secluded location and limited impact of the development on public views, and its relatively small scale. On this basis, I have concluded that it satisfies one of the two limbs under section 104D.

116. The relevant provisions of section 104 are as follows:

104 Consideration of applications

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to –

- (a) any actual or 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 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*
- (ii) other regulations;*
- (iii) a national policy statement;*
- (iv) a New Zealand coastal policy statement;*
- (v) a regional policy statement or proposed regional policy statement;*
- (vi) a plan or proposed plan; and*

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

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

.....

(3) a consent authority must not, –

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

- (i) trade competition or the effects of trade competition; or*
- (ii) any effect on a person who has given written approval to the application.*

.....

117. The application of Part 2 of the RMA has been the subject of proceedings before the Courts, including most recently in the findings of the Court of Appeal in *RJ Davidson Family Trust versus Marlborough District Council*³¹. My understanding of the Appeal Court's findings is that if a plan has been competently prepared the consent authority may in many cases consider an evaluation under Part 2 RMA was unnecessary. Given the extent to which relevant objectives and policies of the PDP are subject to extensive appeal, I have taken a cautious approach and will give at least brief consideration to Part 2.

³¹ RJ Davidson Family Trust versus Marlborough District Council[2018] NZCA 316

118. I consider that reference needs to be made to section 6 of the RMA, as the site is contained within an ONL under the unchallenged landscape boundaries contained in the PDP, thus introducing the application of section 6(b) RMA. That said however, the unique factors described earlier in this decision with respect to the scale and location of the development site in terms of its location on the boundary of the ONL, are such that a grant of consent would not represent an inappropriate subdivision, use, and development.
119. In terms of section 7(b) of the RMA, I consider that the proposed subdivision is essentially neutral with respect to the efficient use of the land resource. The small lot sizes proposed are not a positive effect, but the existing site is also very small, and the subdivision will not have any significant additional effect on potential productive use of this rural land. I am satisfied that the proposed development would maintain amenity values and the quality of the environment in terms of subsections 7 (c) and 7 (f).
120. I consider the proposed subdivision and development is not contrary to the objectives and policies of the ODP but would be at least inconsistent with the objectives and policies of the PDP, with the latter conclusion only qualified by the fact that many of these provisions are subject to appeal.
121. Having regard to subsection 104(1)(c) RMA, I have carefully considered whether a grant of consent might create a precedent or undermine confidence in the administration of the plan. There may be some element of risk of precedent in terms of similar applications within the WBRAZ, and there is a possibility that applications of this nature may be seeking to pre-empt any 'unfavourable outcomes' that might follow Environment Court decisions on appeals to the WBRAZ. I do not consider there is any risk of precedent from granting consent with respect to the adjoining ONL, as the visibility of this rising land to the south is very much greater than is the case with the application site.
122. I do not consider that given the nature of the rules framework, that the permitted baseline under subsection (2) has any useful application to this proposal with the obvious exception of the approved workshop and storage shed building.
123. Overall, the activity will not have effects which are more than minor and that it is not contrary to the objectives and policies of the ODP. I consider it is at least inconsistent with the objectives and policies of the PDP. Overall, I consider that a grant of consent would on balance be consistent with the Purpose of the Act as set out in section 5.

Access Arrangements and Conditions

124. The Applicant and the Council were unable to reach full agreement on conditions should the application be granted consent.

The Arrow Irrigation Race

125. Mr Willett was justifiably concerned to ensure that the functionality of the water race serving his property was secured. While I have some reservations about the Arrow Irrigation Company's 'consent', I acknowledge that appropriate conditions have been agreed between the Council and the Applicant, and these reflect the concerns of the Company. Proposed Subdivision Condition 9 provides that an easement be granted in favour of the Arrow Irrigation Company for the realigned section of the water race, and that this be consistent with the legal width of the existing easement. Its realigned position should not require the water race to be crossed by vehicles.

Building Platform – Lot 1

126. Although only sparsely covered during the course of the hearing and evidence, the Council has sought that a building platform reflecting the location of the existing dwelling on Lot 1 be identified under Subdivision Condition 11. The only issue in contention related to proposed planting along the boundary with Block 2, with the Council sought to retain existing planting, whereas the applicant sought a condition requiring new planting on Lot 2. I see little practical difference, provided some planting is retained, albeit that the 'protection' provided by that planting is for two proposed parcels of land which are currently in the ownership of the applicant himself. I have concluded that it would be more appropriate to retain the existing vegetation on Lot 1.

Building and Landscape Design Controls – Lot 2.

127. This was the area of most disagreement between the Applicant and the Council (Subdivision Condition 11 (c) and Land Use Consent Condition 3 (d)).
128. It was my understanding at the hearing – and in particular having regard to the limited size of the building platform – that the approved workshop and storage shed would be incorporated into one building including the dwelling itself. The Council consistently sought that the maximum building height of the proposed dwelling be reduced from the height sought by the applicant of 6.5m, to 5.5m. In this respect, the Council noted that a height of 6.5 m would result in the dwelling on Lot 2 being 2m higher than the existing dwelling on Lot 1. The applicant opposed this but proposed a condition that the roof pitch shall be between 35° and 40° over a minimum of 65% of the roof area. The applicant's contention was that a steep pitched roof would be preferable and a condition as suggested would avoid the 'bulk' of the building having a height of 6.5m.
129. I also note the applicant's argument that restrictions on the height of the building have inevitable implications on roof pitch and/or the dimensions of the proposed dwelling and rooms within it.

130. Given the circumstances of this proposal, and the allowable height granted for the workshop building (6m), I do not consider any significant amenity advantage would be achieved by reducing the height of the proposed dwelling to 5.5m. This would have little or no effect on potential public views, and given restrictions on roof pitch to avoid a high flat roofed structure, I doubt that any reduction in height would provide a 'benefit' to the occupants of the dwelling owned by the Applicant on Lot 1. Any future purchaser of the dwelling on Lot 1 would be aware of the height of the proposed building on Lot 2 at the time of purchase. I am also satisfied that the proposed condition on roof pitch would ensure that a large bulky structure of 6.5 m in height would not otherwise eventuate. I also note that the parties have agreed on more stringent restrictions on the reflectivity of roof and wall claddings.
131. The other issue was the maximum area building within the approved building platform on Lot 2. This was originally identified on the application as being 583m², but the Applicant proposed that this be reduced to 475m², with the Council seeking that it be further reduced to 350m². Given the constraints of the site, I consider that a reduction to 425m² would be appropriate and would be sufficient to provide for both the dwelling, the workshop, and to enable a sufficient setback from the location of the realigned (piped) water race.
132. A final matter concerns access across Lot 1. As originally notified, the application sought s348 certification with respect to access across Lot 1 to Lot 2. It was not entirely clear to me what the position of the Applicant and the Council was with respect to this matter following the close of the hearing. As part of what appeared to be an extended process of communication between the Applicant and the reporting planner over this matter and other conditions, I received a copy of an email from Mr Edmonds to the reporting planner (Ms Shipman) on behalf of the Applicant, confirming that the Applicant's surveyor (Bruce McLeod, Aurum Survey Consultants) did not consider that s348 certification was in fact required³².
133. I was then forwarded a copy of an email from Ms Shipman³³ confirming that from her discussions with the Mr Wardill (QLDC Engineer) that "*....any rights to access the shared ROW will extend from the existing lot (which contains an existing ROW easements in favour of Lot 1) to both proposed Lot 1 and Lot 2 by default*". Internal easements will be created under the subdivision process.
134. Accordingly, I have taken the position that the Applicant has withdrawn that aspect of the application.

³² Email J Edmonds to Melissa Shipman, dated 3 December

³³ Email Melissa Shipman to Charlie Evans dated 4 December

DECISION

I have resolved that pursuant to sections 104, 104D and 108 of the RMA that the application be granted subject to the conditions specified below.

A handwritten signature in dark ink, appearing to read 'R. Nixon', with a stylized, cursive script.

Robert Charles Nixon

Hearings Commissioner

5 December, 2019

APPENDIX 1 – Consent Conditions

APPENDIX 1 – CONSENT CONDITIONS

SUBDIVISION CONSENT CONDITIONS

General Conditions

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

- Aurum Survey, drawing 4196.2R.1B, 1 August 2018
- Baxter Design Group, Plan 2838, SK09, 29 January 2019

Stamped and approved on 5 December 2019 and the application as submitted, with the exception of the amendments required by the following conditions of consent.

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

Engineering Conditions

General

3. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being QLDC's Land Development and Subdivision Code of Practice adopted on 3rd May 2018 and subsequent amendments to that document up to the date of issue of any resource consent.

Advice note: The current standards are available on Council's website via the following link:
<http://www.qldc.govt.nz>

4. The consent holder shall install measures to control and/or mitigate any dust, silt run-off and sedimentation that may occur, in accordance with QLDC's Land Development and Subdivision Code of Practice, prepared by the Queenstown Lakes District Council to ensure that neighbouring sites and the 'Arrow Irrigation' water race remain unaffected from earthworks. Specifically the consent holder shall prevent silt laden stormwater from entering the 'Arrow Irrigation' water race and shall include, but not be limited to, the installation of an onsite cut off drain below the earthwork areas feeding to a suitably sized temporary detention pond/area with overflow discharge passed through silt fencing. These measures shall be implemented **prior** to the commencement of any earthworks on site and shall remain in place for the duration of the project, until all exposed areas of earth are permanently stabilised.
5. At least 7 days prior to commencing excavations, the consent holder shall provide the Manager of Resource Management Engineering at Council with the name of a suitably qualified professional as defined in Section 1.7 of QLDC's Land Development and Subdivision Code of Practice and who shall supervise the fill procedure and ensure compliance with NZS 4431:1989 (if required).

6. Prior to commencing works on the site, the consent holder shall obtain 'Engineering Review and Acceptance' from the Queenstown Lakes District Council for development works to be undertaken and information requirements specified below. The application shall include all development items listed below unless a 'partial' review approach has been approved in writing by the Manager of Resource Management Engineering at Council. The 'Engineering Review and Acceptance' application(s) shall be submitted to the Manager of Resource Management Engineering at Council for review, prior to acceptance being issued. At Council's discretion, specific designs may be subject to a Peer Review, organised by the Council at the Applicant's cost. The 'Engineering Review and Acceptance' application(s) shall include copies of all specifications, calculations, design plans and Schedule 1A design certificates as is considered by Council to be both necessary and adequate, in accordance with Condition (3), to detail the following requirements:
 - a) Detailed proposal plans of the piping of the Arrow Irrigation race in accordance with the specifications/requirements of the Arrow Irrigation Company and QLDC Land Development and Subdivision Code of Practice, adopted 3 May 2018. The detailed design plans shall include the following engineering details:
 - (i) Demonstration that the culvert capacity sufficiently matches race capacity and prevents the race from backing up (from the culvert) under any flow conditions; and
 - (ii) Inlet structures to manage and control overflow scenarios to prevent blocking up and scouring of the race; and
 - (iii) Provision is made for armouring building platform slopes and approach slopes.
7. No permanent batter slope within the site shall be formed at a gradient that exceeds 2(V):1(H) or 65 degrees.
8. No silt laden material from earthworks carried out under this consent shall enter the 'Arrow Irrigation' water race on Lot 2.

To be completed before Council approval of the Survey Plan:

9. Prior to the Council signing the Survey Plan pursuant to section 223 of the Resource Management Act 1991, the consent holder shall complete the following:
 - a) All necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved. This must include a right to convey water easement in favour of the Arrow Irrigation Company for the re-aligned sections of the water race. These must be consistent with the legal width of the existing easement.

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

10. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall complete the following:
 - a) A digital plan showing the location of all building platforms as shown on the survey plan /Land Transfer Plan shall be submitted to the Subdivision Planner at Council. This plan shall be in terms of New Zealand Transverse Mercator 2000 coordinate system (NZTM2000), NZGDM 2000 datum.
 - b) The completion and implementation of all works detailed in Condition 3 above.

- c) Provision of a minimum supply of 2,100 litres per day of potable water to the building platform on Lot 2 that complies with/can be treated to consistently comply with the requirements of the Drinking Water Standard for New Zealand 2005 (Revised 2008).
- d) The consent holder shall submit to the Subdivision Planner at Council Chemical and bacterial tests of the water supply to the Lot 2 building platform that clearly demonstrates compliance with the Drinking Water Standards for New Zealand 2005 (Revised 2008). 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.esr.cri.nz/mohlabs/labmain.asp>).
- e) In the event that the test results required above show the water supply does not conform to the Drinking Water Standards for New Zealand 2005 (Revised 2008) then a suitably qualified and experienced professional shall provide a water treatment report to the Subdivision Planner at Council for review and certification. The water treatment report shall contain full details of any treatment systems required to achieve potability, in accordance with the Standard. The consent holder shall then complete the following:
 - i) The consent holder shall install a treatment system that will treat the subdivision water supply to a potable standard on an ongoing basis, in accordance with Drinking Water Standards for New Zealand 2005 (Revised 2008). The design shall be subject to review and certification by Council prior to installation and shall be implemented prior to the issue of section 224(c) certification for the subdivision.

OR:

- ii) A consent notice shall be registered on the relevant Records of Title for the lots, subject to the approval of Council. The consent notice shall require that, prior to occupation of the residential unit an individual water treatment system shall be installed in accordance with the findings and recommendations contained within the water treatment report submitted for the RM190316 subdivision consent. The final wording of the consent notice shall be reviewed and approved by Council's solicitors prior to registration.
- f) The consent holder shall provide evidence to the satisfaction of the Subdivision Planner at Council as to how the water supply will be monitored and maintained on an ongoing basis. The legal documents are to be checked and approved by the Council's solicitors at the consent holder's expense to ensure that all of the Council's interests and liabilities are adequately protected.
- g) The provision of a formed access way to the building platform on Lots 1 and 2 that complies with the guidelines provided for in QLDC's Land Development and Subdivision Code of Practice. The access shall have a minimum formation standard of 150mm compacted AP40 with a 3.5m minimum carriageway width. Provision shall be made for stormwater disposal from the carriageway.
- i) All earthworks, geotechnical investigations and fill certification shall be carried out under the guidance of suitably qualified and experienced geotechnical professional as described in Section 2 of the Queenstown Lakes District Council's Land Development and Subdivision Code of Practice. At the completion of onsite earthworks the geo-professional shall

incorporate the results of ground bearing test results for Lot 2 regardless of whether affected by development cut and fill earthworks and include the issue of a Geotechnical Completion Report and Schedule 2A certificate covering the Lot 2 building platform. The Schedule 2A certification shall include a statement under Clause 3(e) covering Section 106 of the Resource Management Act 1991 including necessary secondary stormwater flow protection measures for a 1% AEP, if any. In the event the Schedule 2A includes limitations or remedial works against Lot 2 the Schedule 2A shall include a geotechnical summary table identifying requirements for reference by future lot owners. Any remedial works outlined on the Schedule 2A that requires works across lot boundaries shall be undertaken by the consent holder prior to 224(c) certification being issued.

- i) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an underground electricity supply has been made available (minimum supply of single phase 15kVA capacity) to the net boundary of Lot 2 created and that all the network supplier's requirements for making such means of supply available have been met. Provide written evidence of an existing electricity connection to the building platform on Lot 1.
- j) Written confirmation shall be provided from the telecommunications network supplier responsible for the area, that provision of underground telephone services has been made available to the net boundary of lot 2 created and that all the network supplier's requirements for making such means of supply available have been met. Provide written evidence of an existing telecommunications connection to the building platform on Lot 1.
- k) All earthworked areas shall be top-soiled and revegetated or otherwise permanently stabilised.
- l) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

Ongoing Conditions/Consent Notices

- 11. The following conditions of the consent must be complied with in perpetuity and must be registered on the relevant Titles by way of Consent Notice pursuant to s.221 of the Act.

Building and Landscape Design Controls – Lot 1

- a) All future buildings must be contained within the building platform as identified on Land Transfer Plan XXXXX and must comply with the following building and landscape design controls:
 - (i) The maximum height for all new buildings on Lot 1 is 6m.
- b) The curtilage on Lot 1 must be contained within an area not extending beyond 10.5m to the north of the existing dwelling, 7.5m to the west of the western most portion of the existing dwelling or beyond a distance of 55m running perpendicular to the eastern boundary. Curtilage must not extend beyond the southern face of the existing sheds on Lot 1.
- c) Existing planting on the shared boundary with Lot 2 must be retained and maintained in perpetuity with any tree species which achieve a minimum 6m height at maturity to achieve a visual barrier between the houses on Lots 1 and 2. The tree row must be

maintained to extend from the southern boundary and extend northwards for no more than 55m (excluding the margins of the race and the driveway).

Building and Landscape Design Controls – Lot 2

- d) All future buildings within the Lot 2 building platform must comply with the following:
- (i) All future buildings must be contained within the Building Platform within Lot 2 as shown on Land Transfer Plan XXXX.
 - (ii) The maximum height for all new buildings is limited to a maximum of 6.5m.
 - (iii) The roof pitch shall be between 35-40 degrees (over a minimum of 65% of the roof area).
 - (iv) The maximum area of building form within the approved building platform is limited to 425m².
 - (v) The curtilage area on Lot 2 must be contained within the identified and defined curtilage area on approved plan Baxter Design Group 2838-SK04, 29 Jan 2019. The curtilage area shall be reduced so that it extends out to where topo 380 crosses the north eastern boundary of the current curtilage area as drawn on the plan.
 - (vi) Landscaping identified on the Baxter Design Group plan 2838-SK04, 29 Jan 2019 must be implemented within the first planting season following completion of the development and maintained in perpetuity.
 - (vii) Roofing material will be limited to steel tray cladding, timber or corrugated iron and a maximum LRV of 15%.
 - (viii) Exterior wall cladding is limited to timber, fibre cement, steel tray, concrete and locally sourced schist stone and a maximum LRV of 27%.

Engineering

- e) At the time that a residential unit is erected on Lots 2, the owner for the time being is to treat the domestic water supply by filtration and disinfection, if required by condition (7) above, so that it complies with the Drinking Water Standards for New Zealand 2005 (revised 2008).
- f) In the event that the Schedule 2A certificate and Geotechnical Completion Report issued under Condition (7) contains limitations or remedial works required, then a consent notice shall be registered on the relevant Computer Freehold Registers detailing requirements for the lot owner(s).
- g) At the time a residential unit is erected on Lot 2, the owner for the time being shall engage a suitably experienced person as defined in sections 3.3 & 3.4 of AS/NZS 1547:2012 to design an onsite effluent disposal system in compliance with AS/NZS 1547:2012. The proposed wastewater system shall be subject to Council review and acceptance prior to implementation and shall be installed prior to occupation of the residential unit. The wastewater disposal field shall be blocked off to vehicular traffic and stock. This shall be achieved through use of a physical barrier, such as fencing or other suitable measures that will prevent vehicles and stock from passing over the disposal area.
- h) At the time a residential unit is erected on Lot 2, domestic water and firefighting storage is to be provided. A minimum of 20,000 litres shall be maintained at all times as a static firefighting reserve within a 30,000 litre tank (or equivalent). Alternatively, a 7,000 litre firefighting reserve is to be provided for each residential unit in association with a domestic

sprinkler system installed to an approved standard. A firefighting connection in accordance with Appendix B - SNZ PAS 4509:2008 (or superseding standard) is to be located no further than 90 metres, but no closer than 6 metres, from any proposed building on the site. Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2008 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2008 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single family residential units. In the event that the proposed residential units provide for more than single family occupation then the consent holder should consult with Fire and Emergency New Zealand (FENZ) as larger capacities and flow rates may be required.

The FENZ connection point/coupling must be located so that it is not compromised in the event of a fire. The connection point/coupling shall have a hardstand area adjacent to it (within 5m) that is suitable for parking a fire service appliance. The hardstand area shall be located in the centre of a clear working space with a minimum width of 4.5 metres. Pavements or roadways providing access to the hardstand area must have a minimum formed width as required by Council's standards for rural roads (as per Council's Land Development and Subdivision Code of Practice). 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 FENZ appliance to park on it and access to the hardstand area must be provided as above.

The FENZ 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.

Firefighting water supply may be provided by means other than the above if the written approval of the Fire and Emergency New Zealand Fire Risk Management Officer is obtained for the proposed method. The firefighting water supply tank and/or the sprinkler system shall be installed prior to the occupation of the building.

Note: Fire and Emergency New Zealand considers that often the best method 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 residential unit. Given that the proposed residential unit is approximately 7.5 km from the nearest FENZ Fire Station the response times of the New Zealand **Volunteer** Fire Brigade in an emergency situation may be constrained. It is strongly encouraged that a home sprinkler system be installed in the new residential dwelling.

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.*

LAND USE CONSENT CONDITIONS

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

- Baxter Design Group, Plan 2838, SK09, 29 January 2019
- Proposed Map of proposed Arrow Irrigation Piping relocation

Stamped and approved on 5 December 2019 and the application as submitted, with the exception of the amendments required by the following conditions of consent.

2. Building and Landscape Design Controls – Lot 1

a) All future buildings must be contained within the approved building platform identified and must comply with the following building and landscape design controls:

- (i) The maximum height for all new buildings on Lot 1 is 6m.
- b) *The curtilage on Lot 1 must be contained within an area not extending beyond 10.5m to the north of the existing dwelling, 7.5m to the west of the western most portion of the existing dwelling or beyond a distance of 55m running perpendicular to the eastern boundary. Curtilage must not extend beyond the southern face of the existing sheds on Lot 1.*
- c) Planting on the shared boundary with Lot 2 must be retained and maintained in perpetuity with any tree species which achieve a minimum 6m height at maturity to achieve a visual barrier between the houses on Lots 1 and 2. The tree row must be maintained to extend from the southern boundary and extend northwards for no more than 55m (excluding the margins of the race and the driveway).

3. Building and Landscape Design Controls – Lot 2

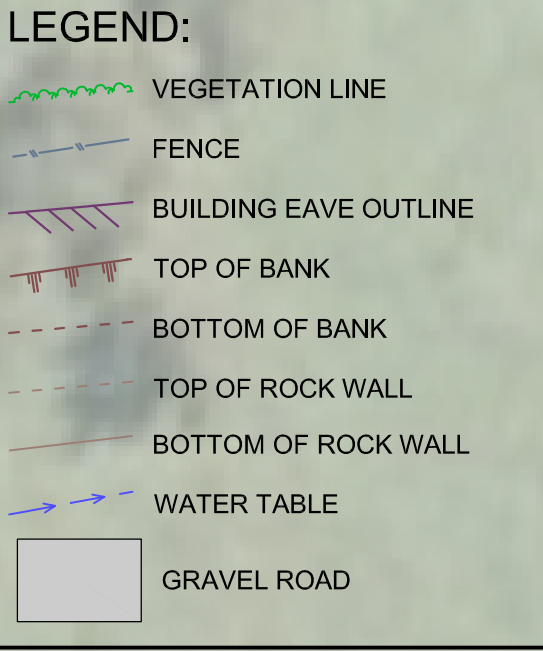
a) All future buildings within the approved building platform must comply with the following:

- (i) All future buildings must be contained within the approved Building Platform within Lot 2.
- (ii) The maximum height for all new buildings is limited to a maximum of 6.5m.
- (iii) The roof pitch shall be between 35-40 degrees (over a minimum of 65% of the roof area).
- (iv) The maximum area of building form within the approved building platform is limited to 425m².
- (v) The curtilage area on Lot 2 must be contained within the identified and defined curtilage area on approved plan *Baxter Design Group 2838-SK09, 29 Jan 2019*. The curtilage area shall be reduced so that it extends out to where topo 380 crosses the north eastern boundary of the current curtilage area as drawn on the plan.
- (vi) Landscaping identified on the *Baxter Design Group plan 2838-SK09, 29 Jan 2019* must be implemented within the first planting season following completion of the development and maintained in perpetuity.
- (vii) Roofing material will be limited to steel tray cladding, timber or corrugated iron and a maximum LRV of 15%.

- (viii) Exterior wall cladding is limited to timber, steel tray, fibre cement concrete and locally sourced schist stone and a maximum LRV of 27%.
4. The kitchen within the sleepout on Lot 1 must be removed within 3 months of the issue of this consent.
 5. This consent must 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.
 6. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991.

Advice Notes:

1. *This site may contain archaeological material. Under the Heritage New Zealand Pouhere Taonga Act 2014, the permission of the Heritage New Zealand Pouhere Taonga must be sought prior to the modification, damage or destruction of any archaeological site, whether the site is unrecorded or has been previously recorded. An archaeological site is described in the Act as a place associated with pre-1900 human activity, which may provide evidence relating to the history of New Zealand. These provisions apply regardless of whether a resource consent or building consent has been granted by Council. Should archaeological material be discovered during site works, any work affecting the material must cease and the Heritage New Zealand Pouhere Taonga must be contacted (Dunedin office phone 03 477 9871).*



PROPERTY DATA
The property data has been sourced from land Information New Zealand (LINZ) and is current as at July 2018. The boundary data has been compiled from various existing surveys of different ages. Boundary lengths shown as calculated may vary from those shown on the Certificate of Title, and are subject to a legal redefinition survey. The accuracy of the boundary data is estimated to be within 30mm.

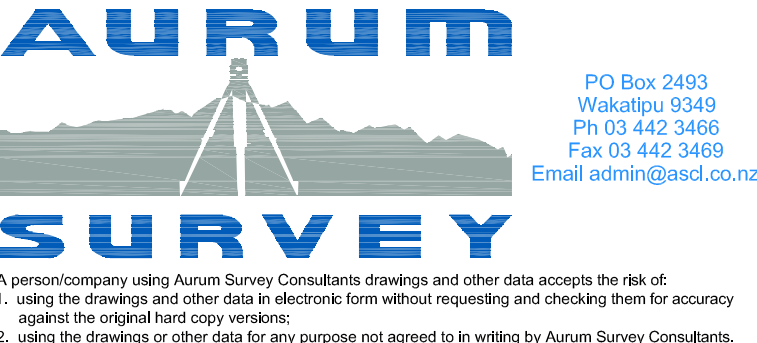
Surveyed data has been captured using survey equipment, to a relative accuracy within approximately 50mm (horizontal and vertical).

The locations of underground services are not shown. Where services have features visible on the surface, their positions have been shown. There may be services for which no records were provided and which are not shown on this plan. In all cases, if the location of a service is considered important, the relevant service provider should be consulted.

Horizontal coordinates are in terms of NZ Geodetic Datum 2000, Mount Nicholas 2000 Circuit. Vertical elevations are in terms of Aurum iBase. The origin of levels is OIT X DP 15534, RL 377.60. Contour interval is 0.5m

All areas and dimensions are subject to final survey.
Additional service easements may be required.

<p>Title:</p> <p>PROPOSED SUBDIVISION</p>			
<p>Project:</p> <p>LOT 1 DP 301351</p> <p>3336 MORVEN FERRY ROAD</p> <p>for RICK PETTIT</p>			
ISSUE DATE:	ISSUE:	PREPARED BY:	B McLeod
Aug 2018	B - ROW adjust	Scale 1:500 @ A1 1:1000 @ A3	
		DRAWING & ISSUE No.	4196.2R.1B





QUEENSTOWN LAKES DISTRICT COUNCIL

**APPROVED PLAN:
RMRM190316**

Thursday 5 December 2019

Approved Arrow Irrigation Race Re-Alignment



Figure 3: Location Map of proposed Arrow Irrigation Piping relocation (supplied by Applicant)

QUEENSTOWN LAKES DISTRICT COUNCIL

**APPROVED PLAN:
RMRM190316**

Thursday 5 December 2019