

**QLDC Council  
26 November 2015**

**Report for Agenda Item: 5**

**Department: Operations**

**Chorus NZ – Easement over Reserve Land**

**Purpose**

To consider an in-ground easement over Recreation Reserve along the Frankton Track.

**Recommendation**

That Council:

- 1 **Note** the contents of this report;
- 2 **Approve** an underground easement over Section 1 SO 325746 and Section 52 Blk XXI Shotover SD subject to section 48A (1)(b) of the Reserves Act 1977, in favour of Chorus NZ with the following special conditions:
  - a) Chorus to be responsible for all maintenance and additional risk associated with an early install of the fibre, prior to development of the Frankton Marina;
  - b) Chorus to notify and liaise with QLDC Infrastructure department in advance of any onsite works so that they can oversee and provide input relating to the existing in ground infrastructure;
  - c) Operating health and safety plan to be received;
  - d) Certificate of adequate public liability cover to be received;
  - e) Materials to be on site only once installation commences;
  - f) Public access to be maintained at all times. Adequate safety measures to be put in place to ensure public safety is maintained;
  - g) Reinstatement of the area to be completed by Chorus within two months after commencement date (unless otherwise agreed), otherwise preferred supplier of maintenance for the reserve will be used at the applicants expense. Reinstatement shall be done to the QLDC Trails and Tracks Standards and Specifications;
- 3 **Agree** that notification of the grant of the easement is not required as the statutory test in section 48(3) of Reserves Act 1977 is met for the reasons set out below.
- 4 **Agree** to a waiver of fees to Chorus NZ in relation to an easement over part of the Frankton Track known as Section 1 SO 325746, Recreation Reserve and Section 52 Blk XXI Shotover SD, Recreation Reserve.

- 5 **Delegate** authority to approve final terms and conditions and execution authority to the Chief Executive;
- 6 **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of an easement to Chorus NZ over Section 1 SO 325746, Recreation Reserve and Section 52 Blk XXI Shotover SD, Recreation Reserve.

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2/11/2015

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10/11/2015

## Background

- 7 Council administers the lakeside recreation reserve known as Frankton Track, part of which is also formed as Sugar Lane. Easements are proposed in two areas. The first area is legally described as Section 1 SO 325746 Certificate of title OT149849, classified as Recreation Reserve. This was vested from the Crown to Council on 3 September 2004, as per gazette notice NZGZ 2004 p 2816. The second area proposed is legally described as Section 52 Blk XXI Shotover SD Certificate of title OT7B/844, classified as Recreation Reserve. This was vested from the Crown to Council in 1997 as recreation reserve, as per gazette notice NZGZ 1997 p 1262. There was a change in classification in 2012 to Local Purpose (Marina) Reserve, as per gazette notice NZGZ 2012 p 4423 in order to prepare for the possible construction of a new marina.

## Comment

- 8 Chorus NZ have sought an easement over an area of these reserves for the purpose of deploying fibre optic cabling to the houses and businesses fronting the Lake Wakatipu shoreline. The area proposed is currently part of the Frankton Track and Sugar Lane, and is predominantly used for walking and biking.
- 9 Chorus have proposed to lay a 32mm multi duct to provide air blown fibre along the routes indicated on the site plan (see appendix A). The installation method will either be by drilling or trenching depending on the ground conditions and services. Chorus will lay the duct to a depth of between 600mm and 1.0m and approximately 1.2m from the boundary line. The proposed installation start date is 1 December 2015 and its duration is two weeks. If the project needs to lap over past 13 December, Chorus have confirmed they will cease work over the Christmas and New Year period, and recommence work the week of 14 January 2016.

- 10 One complicating factor relating to the install of the fibre, is the development of the Frankton Marina access way. The timeline and specifics relating to the marina development are still being confirmed, and therefore it will be clarified with Chorus that the installation of the equipment would be best left until after this work is completed. Should Chorus wish to install the equipment prior to the marina development and access way work, they will need to confirm that they accept the risk to their services.
- 11 Council already has existing infrastructure in the land being requested for the easement, namely a sewer and water main. The infrastructure department have been consulted and have raised no objection to the install of fibre in this area, however they have stipulated that Chorus liaise with them directly so they can oversee the works to ensure existing infrastructure is not damaged during the install.
- 12 An alternative easement location has been suggested (see Attachment A), but this would not minimize any effects on the reserve, in fact, it may slightly increase them due to the alternative route being longer than the preferred.
- 13 Public access of the road, reserve and trails will still be available while the work is taking place. Temporary footpath surfaces will be laid for users. Safety fences will be utilised to enclose the working space and or attended worksites, and cones connected with cone bars may also be utilised. Chorus will be required to supply a detailed health and safety plan, detailing measures to be put in place for public safety whilst the works are being completed.
- 14 The underground easement length requested is 383m in area 1 and is 177m in area 2 (refer to appendix B), with a total area of 560m. The proposed trenches are to be at a width of 300mm, if the duct cannot be drilled in. Based on this measurement, as per section 3 (a) of the Easement Policy 2008, the total amount to be charged for the easement fee would be \$22,052.19 plus GST. The easement application fee is \$600.00 plus GST, which has already been paid by Chorus. A bond of \$2,000.00 is proposed, and may be used to rectify any problems which have been identified during the installation of the fibre and reinstatement of the area.
- 15 As per the Easement Policy 2008, both an application fee along with a one off underground services easement fee are charged, for the privilege of having the easement encumbrance placed on Council's title. Chorus have sought to have the easement fee waived. They believe that the installation of the ducting on reserve land will not devalue Council's land, and the roll out of fibre optic broadband is set to benefit 31 residents connected to the proposed cable running through the reserve area.
- 16 The ultra-fast broadband initiative is part of a New Zealand Government programme, building fibre-to-the-home networks. This is part of a 5 year roll out programme. Chorus have been contracted by the government to carry out this work.
- 17 Under the Reserves Act 1977, Ministerial consent is required before an easement can be granted over a reserve. This consent is now delegated to Council and must be granted prior to the Easement being lodged with LINZ.

- 18 Granting an easement is permitted by the Reserves Act 1977, however, such easement must be publically notified unless it can be shown that people's ability to enjoy the reserve is not affected and that there is no long term effect on the land. These matters are considered below:

Does the easement affect the ability of people to use and enjoy the reserve:

- 19 The area where the easement is proposed is currently located along the Frankton track and Sugar Lane. Whilst there would be some temporary minor disruption during the installation of the cables, long term there would be no detrimental effect on the ability of the public to use and enjoy the reserve. Once the installation is complete, users of the reserve would be unaware that any changes have been made to the reserve.
- 20 Taking into account the above factors, the easement will not permanently affect the ability of people to use and enjoy the reserve.

Does the easement create any long term permanent effect on the reserve:

- 21 Aside from during the installation process, this easement will not affect the ability of the reserve to provide for its current purpose. As the infrastructure will be underground it is considered that the creation of the easement will not have any long term effect on the reserve.
- 22 The exact placement of the easement will be agreed with Council's infrastructure team to ensure that no restrictions will be placed on future expansion of the utilities onsite.

***Options***

- 23 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002:
- 24 Option 1 The first option is to approve the easement and full waiver of fees to Chorus NZ over Recreation Reserve known as Section 1 SO 325746 and Section 52 Blk XXI Shotover SD.

*Advantages*

- 25 Ultra-fast broadband will be installed, benefiting the households within that area. 31 households will benefit directly from the installation.
- 26 The broadband roll out is part of a New Zealand Government initiative providing benefits for the public and businesses in the area, and this option would support this initiative by not introducing additional costs.

*Disadvantages:*

- 26 The presence of an easement on the reserve may devalue the land if the site were to be developed in the future; this may be a consideration in terms of valuation.
- 27 The easement fees could be applied to benefit development of the reserve.

- 28 Waiving the fees increases risk to Council, whereby a precedent may be set where future fee waivers are expected.
- 29 There will be temporary disruption to the users of the reserves whilst the cabling is being installed.
- 30 Option 2 The second option is to approve the easement, but decline the waiver of the easement fee to Chorus NZ, and for the easement fee to be paid in full.

*Advantages:*

- 31 Ultra- fast broadband will be installed, benefiting 31 households.
- 32 The easement fees paid may be applied to benefit the users of the reserve and the community as a whole.
- 33 The fees paid would compensate for any future decrease in land value due to the easement.
- 34 There is no risk of a precedent being set whereby easement fees are expected to be waived in the future.

*Disadvantages:*

- 35 As discussed in option 1, there will be temporary disruption to the users of the reserves whilst the cabling is being installed.
- 36 This option would be less supportive of the New Zealand Government initiative by introducing additional costs.
- 36 Option 3 The third option is to decline the easement.

*Advantages:*

- 37 The reserve would remain untouched and there would be no disruption to reserve usage.
- 38 There is no risk of a precedent being set whereby easement fees are waived in the future.

*Disadvantages:*

- 39 Chorus would need to seek an alternative location for the installation of the cabling, which may impact residents more significantly.
- 40 Residents would miss out on ultra-fast broadband if an alternative could not be found.
- 41 This report recommends **Option 1** for addressing the matter as it enables Chorus to install the ultra-fast broadband in this location, and supports a government initiative, which will have public benefit.

### ***Significance and Engagement***

- 42 This matter is of low significance, as determined by reference to the Council's Significance and Engagement policy because it does not involve a Council strategic asset, is of low importance to the Queenstown Lakes District, is not of interest to the general community, is not inconsistent with policy and strategy and does not impact on Council's capability and capacity.

### ***Risk***

- 43 This matter relates to operation risk OR011A Decision making. The risk is classed as moderate. A perpetual property right contained in the recreational reserve does carry a significant risk to Council for any future development, and this risk needs to be highlighted when considering approving the easement.
- 44 This matter also relates to operational risk OR001A Decrease in revenue. The risk is classed as low. The matter relates to this risk because the options highlighted require the Council to follow a regulatory process in order to consider waiving the easement fee to Chorus resulting in a reduction in potential revenue.

### **Financial Implications**

- 45 If the Council approve the recommendation to waiver the fees it would not receive a payment of \$22,052 (plus GST) but would be supporting the New Zealand Government initiative by not introducing additional costs. Alternatively, if option two were approved, Council would receive a payment of \$22,052 (plus GST) as per the easement policy.
- 46 All costs associated with the survey and registration of the easement on Councils title will be paid for by the applicant.

### **Council Policies, Strategies and Bylaws**

- 47 The following Council policies, strategies and bylaws were considered:
- Significance & Engagement Policy 2014 –the proposal is a matter with low significance in terms of this policy as determining as it is not considered significant as it does not impact Council's strategic assets, affect a large number of residents, ratepayers and the environment or and is not expected to create a community interest in the matter.
  - Easement Policy 2008 – the application is consistent with the policy.
  - Sunshine Bay to Kelvin Heights Reserve Management Plan 1991 – The activity broadly conforms to the management plan section 4.3 (S52) whereby 'the maintenance or construction works associated with the existing sewer line be undertaken so as to minimise disturbance to the walkway and existing vegetation.' Whilst this easement will not affect or alter the current sewer line, similar measures will be implemented to ensure that disturbance is minimised to the area when the fibre is installed. As per the conditions stipulated in the recommendations, Chorus will be required to liaise with the QLDC infrastructure team to ensure appropriate measures are put in place.

## **Local Government Act 2002 Purpose Provisions**

48 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by supporting and enabling the ultra-fast broad to be available to the residents and businesses in the area.
- Is consistent with the Council's plans and policies and in particular the easement policy; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

## **Consultation: Community Views and Preferences**

49 No consultation is envisaged or required by Council as it has low significance with regard to the Significance & Engagement Policy 2014, is consistent with s10 of the Local Government Act and is not included in the 10-Year Plan/Annual Plan.

## **Attachments**

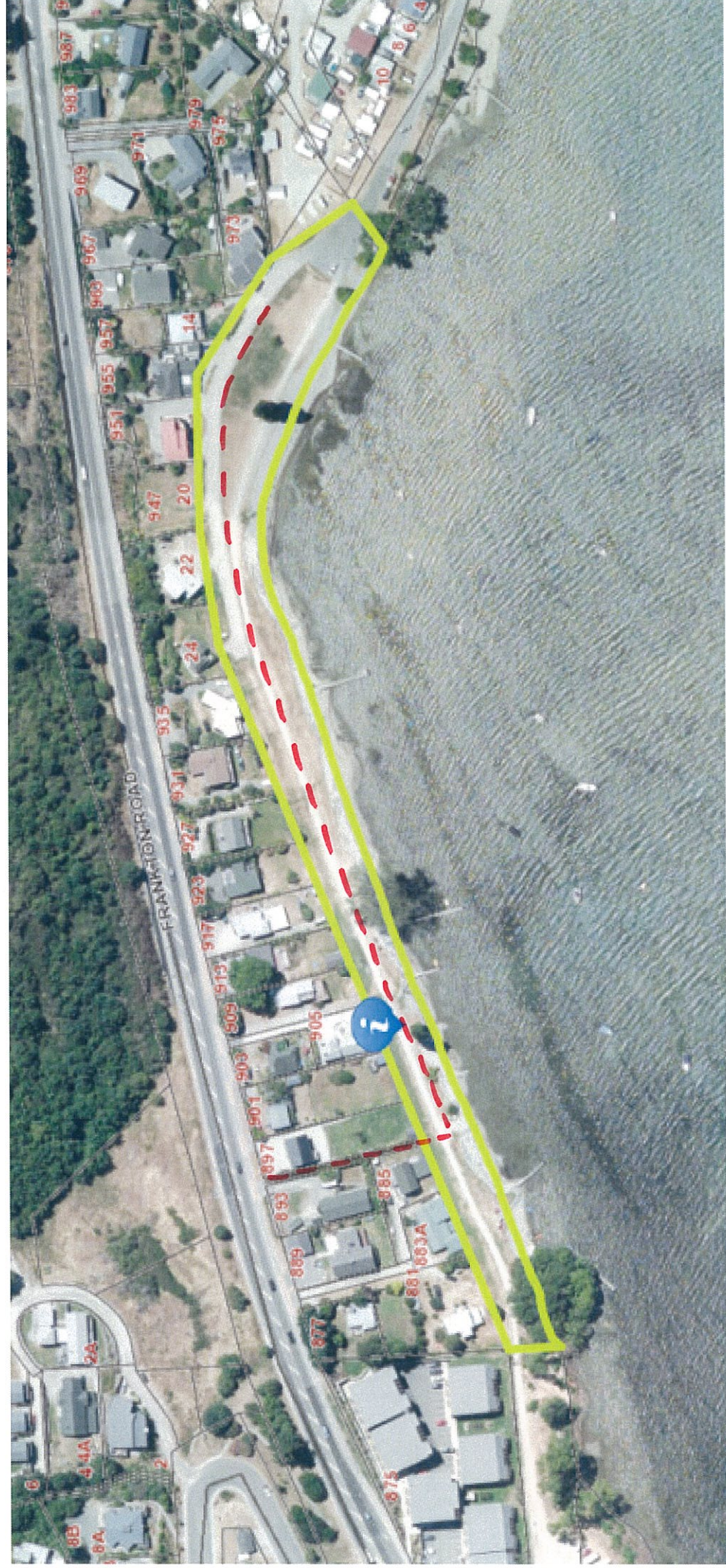
- A Chorus Easement – Reserve Aerial
- B Chorus Easement – Easement Plan



## Chorus Easement

### Area A

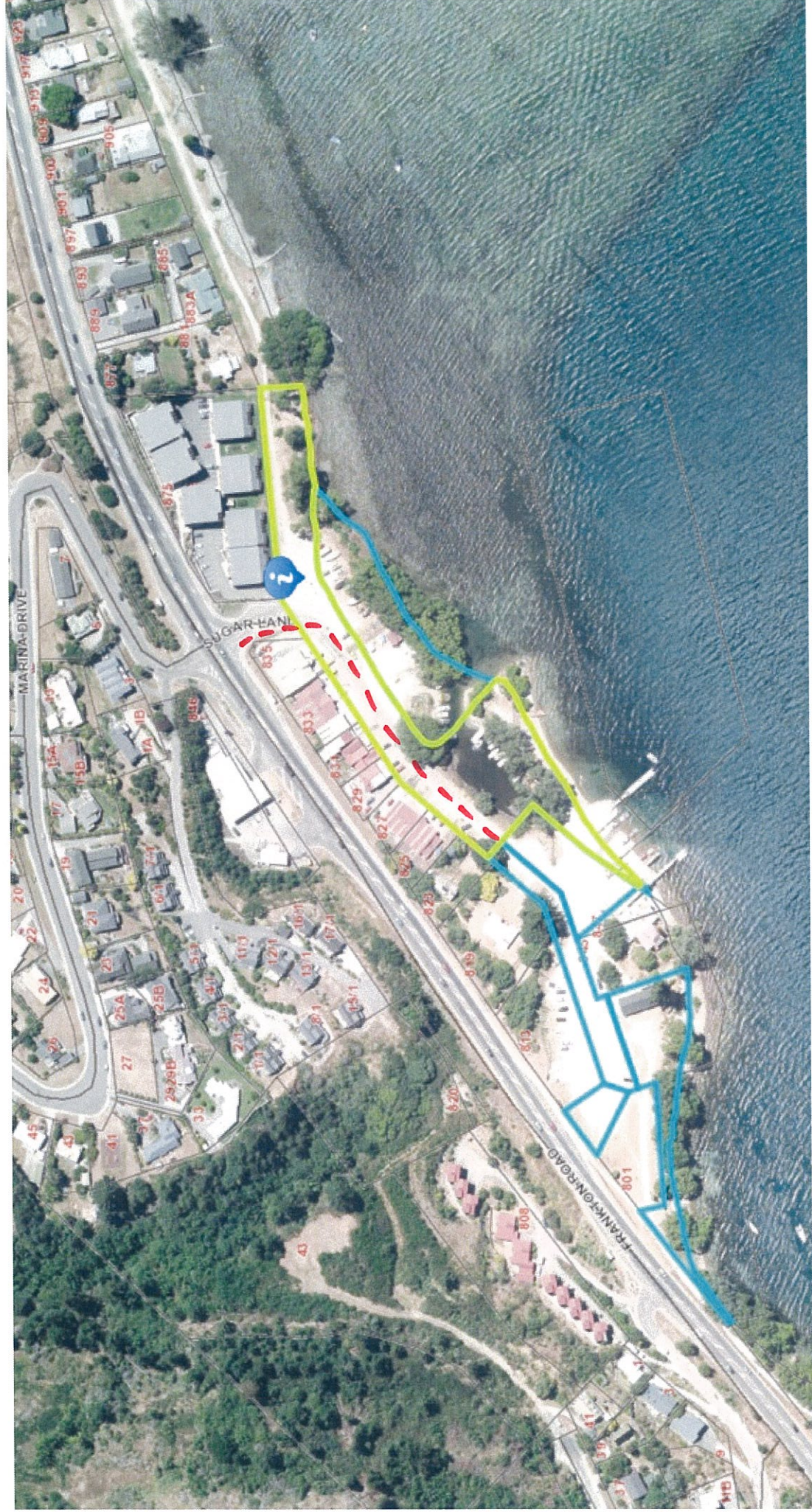
Approximate route indicated in red





## Area B

Approximate route indicated in red





Note that all routes indicated would be within 1.5m from the boundary lines indicated where possible.

The service lane would be the preferred route if we are able to build. The seems to be an existing concrete pipe of 450mm in size along the service lane.

