

**Wanaka Community Board**  
**21 October 2015**

**Report for Agenda Item: 1**

**Department: Infrastructure**

**Hawea Unformed Legal Roads**

**Purpose**

- 1 The purpose of this report is to brief the Wanaka Community Board on Hawea Unformed Legal Roads proposal and obtain Board support for the principles of an agreement between Council, Clutha Fisheries Trust, Upper Clutha Tracks Trust and Mr JW Cooper.

**Executive Summary**

- 2 This report outlines a proposal for the stopping and vesting of unformed legal roads in Hawea. (This is described as Option 2 in the Options section of this report.) This proposal will deliver significantly improved public access to the Clutha River and enhance the Upper Clutha track network. The proposal, if it goes ahead, would result in a minor increase in Council's track maintenance costs and carry a risk around the need to upgrade a track to cope with increased demand in future years.
- 3 An agreement to implement the proposal between Council, the Clutha Fisheries Trust, the Upper Clutha Tracks Trust and Mr JW Cooper will be drafted. The Council will be asked to authorise the Chief Executive to sign the agreement on behalf of Council.

**Recommendation**

That the Wanaka Community Board:

1. **Note** the contents of this report;
2. **Recommend to Council** that it approves the principles of an agreement as set out in Attachment C of this report for the implementation of the proposal for stopping and vesting of roads, and creation of easements in Hawea.

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## Background

### Issues

- 4 The issues that the proposal set out in this report seeks to address came to a head in 2012 when Mr Cooper (the owner of land farmed by his company, Devon Dairy Farms Ltd), Clutha Fisheries Trust (CFT) and Upper Clutha Tracks Trust (UCTT) were all raising public access issues affecting the Devon Dairy Farm. In short:
  - a) The CFT was seeking access between Kane Road and the Clutha River. This part of the Clutha River was important to the CFT because of the poor access for anglers. From a wider public interest perspective this area provides spectacular views of the Clutha River. For achieving access, the CFT had focused on use of existing unformed legal road, shown in the plan below that bisects the south-eastern corner of the farm.

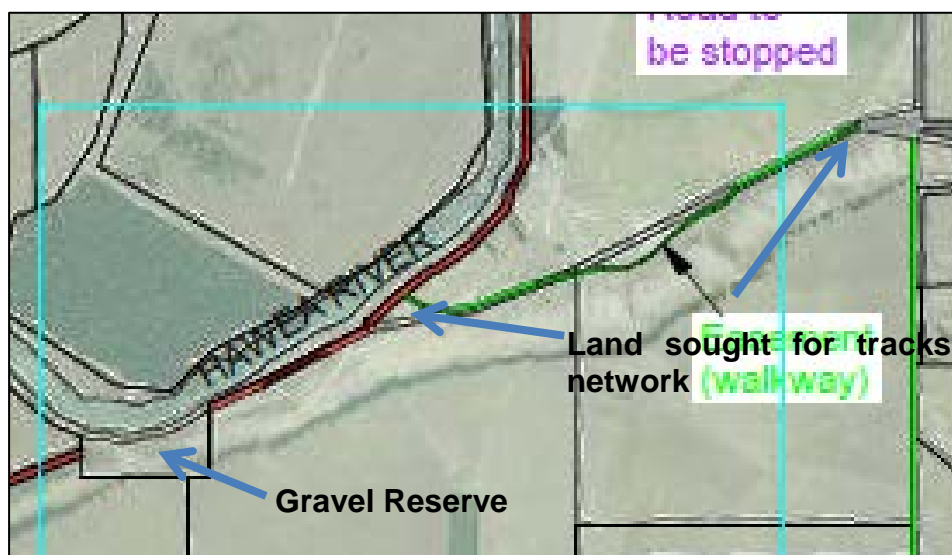
**Figure 1: Excerpt from Overall Plan (refer Attachment 2) showing the unformed legal road originally proposed Clutha River Access**



While part of this road is on flat land, the section aligned in a north-south direction has gradients that would make construction of a vehicular track impractical.

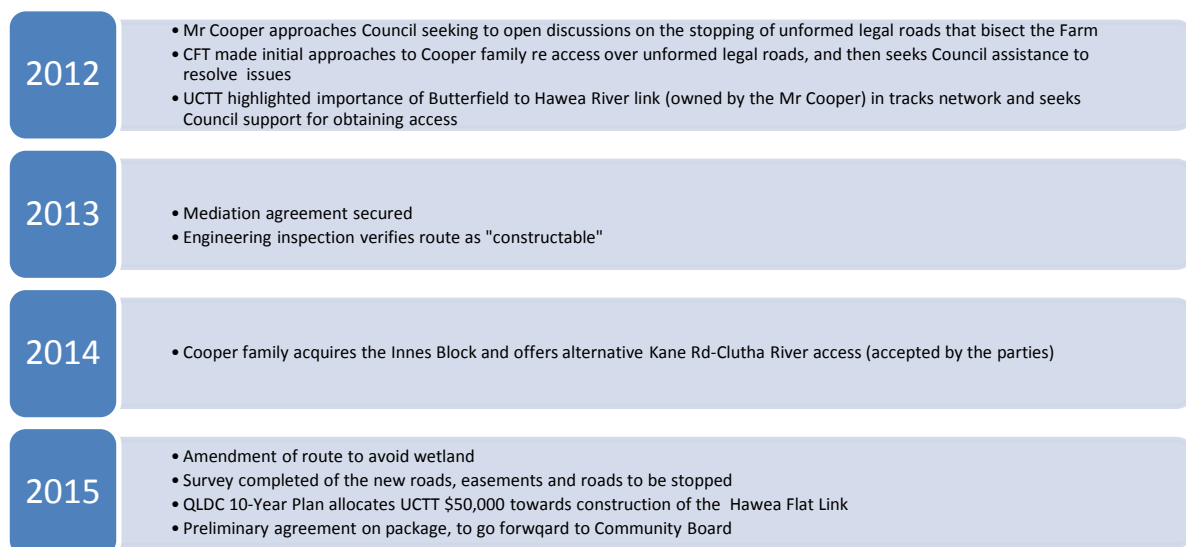
- b) The UCTT was seeking access over a section of land owned by the Coopers on the north-eastern section of the farm. This is shown in Figure 2.

**Figure 2: Excerpt from overall plan (refer Attachment 2) showing section of Cooper family land sought for Tracks Network**



This piece of land had been unformed legal road many years ago. It was stopped, but was never amalgamated, in a legal sense, into an adjoining property. The UCTT had highlighted to Council staff that securing this section was a priority within its planned tracks network as it would provide a missing link between Hawea Flat and the Hawea River Track.

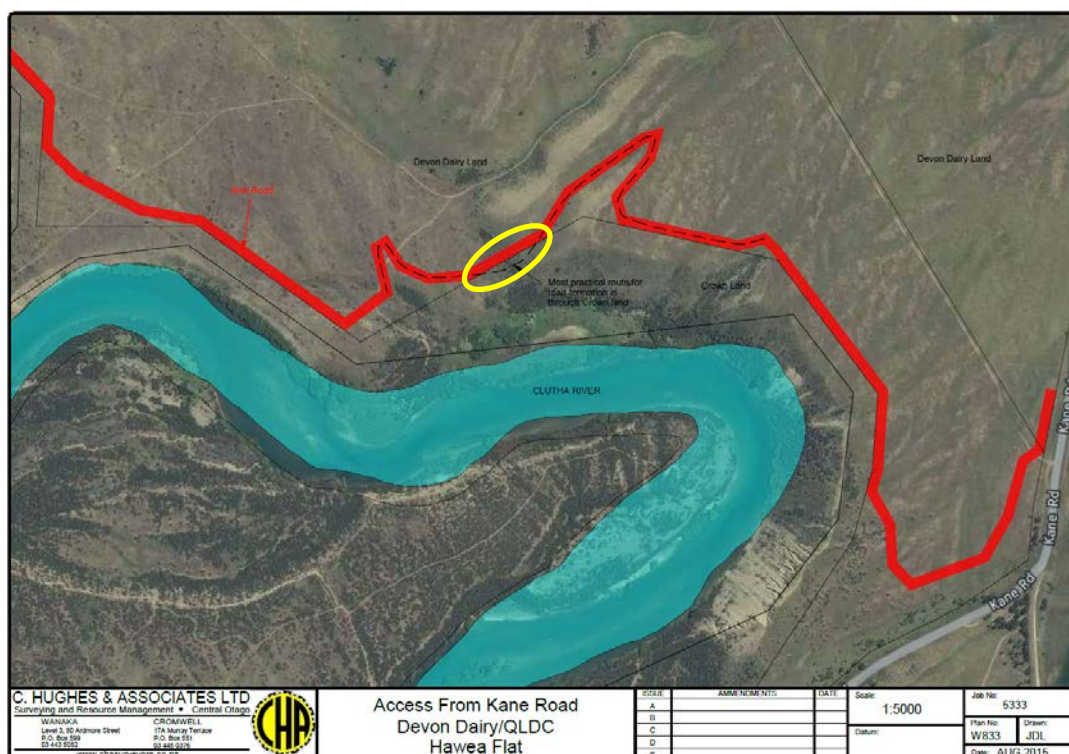
- c) Mr Cooper has been developing a dairy farm through his company, Devon Dairy Farms Ltd. The development of the farming operation included the installation of pivot irrigators, some of which traversed unformed legal roads. These presented consenting issues which initially provided motivation for Mr Cooper to enter into discussions with the other parties. Although the consenting issues since been resolved through Environment Court decision (i.e. that Mr Cooper does not require resource consents for pivot irrigators), Mr Cooper has continued to assist the resolution of the public access issues raised by the two trusts.
- 5 Initial efforts to resolve the issues in isolation proved unsuccessful. Figure 3 shows the actions that have led to this report.

**Figure 3: Project Timeline**

- 6 A key part of the process was a mediation session convened in 2013. The text and map from the resulting mediation agreement is attached (Attachment 1). This provided a way forward for resolution of the issues. Since 2013 the detail of the proposal has gone through a series of iterations, the most notable one being the proposal for a more direct route between Kane Road and the Clutha River, made possible by Mr Cooper's acquisition of additional land near Kane Road.
- 7 The Department of Conservation (DoC) was initially not directly affected by the issues that the Cooper family and the trusts had raised with Council. However DoC involvement has evolved because DoC is the owner of land adjacent to the farm and in two instances the route will need to incur into land that will be owned by DoC:
- a) The first instance is a short section of land on the route between Kane Road and the Clutha River.<sup>1</sup> In this instance topography means that a practical route cannot be provided completely inside the current farm boundary. The following plan (Figure 4) shows the extent of the incursion. The red line is the proposed route of the legal road.

<sup>1</sup> This land is in the process of being acquired by DoC from Contact Energy. This is expected to be completed within the next 1-2 months.

**Figure 4: Detailed plan of Proposed Legal Road route between Kane Road and Clutha River (incursion into land to be owned by DoC highlighted)**

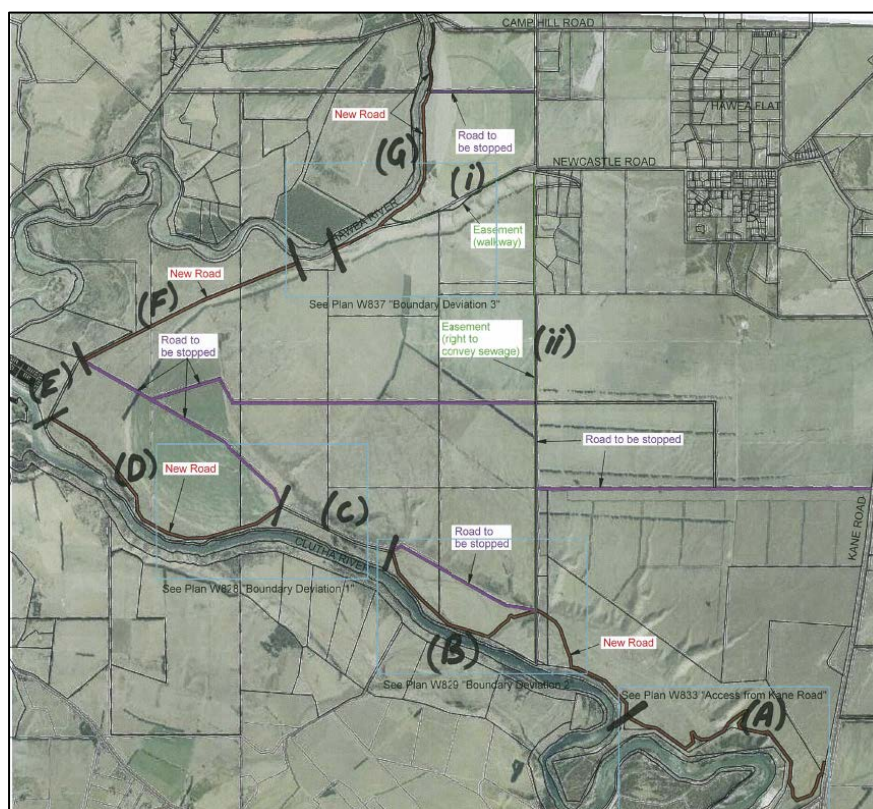


- b) The second instance is adjacent to the Gravel Reserve (location shown in Figure 2). An easement or road through the Gravel Reserve is not possible because of the heritage values of the reserve. Pedestrian/cyclist access occurs through the adjacent marginal strip (between the reserve and the Hawea River).

### ***The proposal***

- 8 The proposal comprises a series of elements. The plan below in Figure 5, and included in larger scale in Attachment B, shows a series of existing unformed legal roads that would be stopped in return for the provision of an unformed legal road around the periphery of the farm and easements for the Hawea Flat link and a potential utilities corridor.



**Figure 5: The Proposal**

9 This peripheral route and the three easements are described below

- **Section A:** New unformed legal road between Kane Road to Clutha River.
  - Road to be formed and maintained to farm track standard by CFT.
  - Area includes three locations for car parking
  - CFT will also contribute to fencing north side of road boundary.
  - Alignment, as proposed, would require earthworks consent. Alternative alignment making use of existing farm track presently being explored with the Cooper family and CFT.
  - 'Indent' of road alignment in from the riverbank is to avoid a wetland.
- **Sections B, D, F and G:** New unformed legal road
  - Alignment follows the farm boundary
  - No works (fencing or track formation) required.
  - It is feasible to construct a road on this alignment however no such construction is contemplated in the foreseeable future.
- **Section C:** Existing unformed legal road
  - No new works required
- **Section E:** Existing unformed legal road
  - No new works required
- **Easement (i):** Track between Butterfield Road and Hawea River
  - Easement in favour of the Walking Access Commission over land owned by Mr JW Cooper. Council would need to agree to be controlling authority and have day to day responsibility for the track.

- Use restricted to pedestrians, cyclists and Council/DoC management vehicles.
- UCTT to construct track, install dog-proof fencing and construct an overpass/underpass before public access permitted
- **Easement (ii):** Services easement between Newcastle Road and Clutha River
  - Replacement of 3440m of unformed legal road (20m wide) with a 4636m long services easement (10m wide) between Newcastle Road and the Clutha River
  - Easement in favour of Council enabling the future installation and maintenance of Council utility services. The easement is to provide for the timing of physical works to be agreed with Mr Cooper so that as little disruption as possible is caused to the farming operation.

### ***Implementation of the Proposal***

10 Under the proposal the accountabilities for implementation would be shared between the Council, the trusts and the Cooper family. The table attached (Attachment C) outlines the accountabilities. In broad terms:

- **All parties** (excluding Department of Conservation) will share the legal costs of stopping and vesting the roads and creating the easements. As agreed through the 2013 mediation agreement, the stopping and vesting of the unformed legal roads would take place using Public Works Act 1981 procedures. Mr Cooper's support for the agreement is dependent upon use of the Public Works Act procedure as opposed to Local Government Act processes that would be more expensive and time consuming.
- **The CFT** is responsible for the construction and maintenance of Section (A) to a standard agreed with Council.
  - If Council subsequently wants a higher standard, it would be the Council's responsibility to construct and maintain that higher standard formation.
  - The track standard would be built to standard to permit dry weather access by two wheel drive vehicles.
- **The UCTT** will be responsible for the construction of the track within Easement (i).
- **Council** will
  - promulgate a bylaw seeking to restrict vehicles (apart from DoC and Council maintenance vehicles) from using the unformed legal roads (this excludes Section (A))
  - accept maintenance responsibility for the track constructed by UCTT within Easement (i)
  - secure consent from DoC for the Section A track incursion onto public conservation land.

11 Attachment C has been signed-off by Mr Cooper, the CFT and the UCTT. This report proposes that Attachment C provide the basis for the legal agreement between the parties, which would be drafted following Council's approval of the principles set out in Attachment C.

## Comment

12 A central principle is that the proposal is justified because of its close alignment to Council's community outcomes. The following provides explanation of this.

- a) Quality landscapes and natural environment with enhanced public access
  - i. The proposal seeks to improve public access to the Hawea and Clutha Rivers. It does this by securing a key link for the Upper Clutha Tracks network (the Butterfield Road to Hawea River link) and by creating a link between Kane Road and the Clutha River.
  - ii. It needs to be acknowledged that the proposal will reduce public access through Mr Cooper's land. We argue that on balance the net benefit of the proposal is overwhelmingly positive because of the improved connections to the river and the enhancement of the tracks network.
  - iii. Where new road follows the farm boundary, the improved public access provided by this road is negligible because of the presence of a cycling/walking track in the adjacent DoC land.
- b) Effective and efficient infrastructure that meets the needs of growth
  - i. The proposal seeks to reserve a potential route for future Council infrastructure. We stress that there are no plans at this stage to use the corridor, so its use is hypothetical. The proposal simply creates an opportunity for future use.
- c) A strong and diverse economy
  - i. The proposal facilitates the operation of the Devon Dairy Farm. The main beneficiary will be the farm company and its employees

13 Accordingly, the proposal aligns with the community outcomes, with improved public access providing the main reason for bringing this proposal to the Board.

14 Overall the proposal would result in the stopping of 30.9 hectares of unformed legal road and creating 27.7 hectares of new road. In addition the proposal would create easements over 12.7 hectares for the Butterfield to Hawea River link and 45.9 hectares for services corridor (all land owned by Mr JW Cooper).

## Options

15 The trusts and Mr Cooper see this package as an all-or-nothing proposal. If for example the link between Kane Road and the Clutha River did not proceed, then public access over the easement created for the Hawea River links would also not proceed. Council could have the option of going it alone.

### 16 Option 1: Do nothing

#### *Advantages:*

17 Council would avoid expenditure relating to the stopping and vesting of roads, and the creation of easements.

18 Council would avoid the risk that it may need to upgrade the Kane Road to Clutha River track (which is likely to be attractive to the public for river access).



*Disadvantages:*

- 19 Doing nothing would mean that access issues over unformed legal roads raised by CFT are not resolved.
- 20 Opportunities to deliver benefits recognised by Council's community outcomes are not exploited.
- 21 Option 2: Implement the package as proposed

*Advantages:*

- 22 Advances achievement of Council community outcomes.
- 23 Resolves public access issues identified by the CFT and UCTT.

*Disadvantages:*

- 24 May open Council up to risks around the future upgrade of the Kane Road to Clutha River link.
- 25 Council will incur costs in implementing the proposal.
- 26 Option 3: Secure the routes outside of agreement with the parties

*Advantages:*

- 27 This approach would resolve access issues identified by the CFT and UCTT.
- 28 Would avoid situation where roads on the periphery of the farm run parallel to an adjacent walking cycling track

*Disadvantages:*

- 29 This approach would be more expensive and time-consuming than through a willing party's agreement. At an extreme it could require designation of new roads and tracks and would result in ill-will between the parties who are presently working together constructively.
- 30 This report recommends Option 2 for addressing the matter.

***Significance and Engagement***

- 31 The factors to be considered in assessing the significance of the matters addressed by this report are fourfold. These, and the assessment are outlined in the following table

Factor	Assessment
Importance to the Queenstown Lakes District	<b>Low.</b> The proposed changes are of low impact in terms of physical changes.

Community Interest	<b>Medium:</b> the matters of high importance to sectors of the community as illustrated by the CFT and UCTT support for the proposed changes
Inconsistency with existing policy and strategy	<b>Low-Medium.</b> The Council's 10-Year Plan community outcomes include "Quality landscapes and natural environment with enhanced public access."
The impact on the Council's capability and capacity	<p><b>Low.</b> The proposal will create approximately 1900m of track to be maintained. Operations believe that this can be absorbed within existing budgets.</p> <p>There is a risk that the track to be formed by the CFT may become attractive to the wider public, necessitating an upgrade in track standard. This may impact on roading budgets (no provision for Council upgrade of the track is made within the 10-Year Plan)</p>

32 Overall, this matter is of low-medium significance, as determined by reference to the Council's Significance and Engagement Policy. We do believe that the Trusts' involvement in the proposals means that the public interest has been well represented. Opportunity for the wider public to review the proposals and make their views to Council will be afforded by this matter being considered in the open agendas for the Board's and Council's meetings.

### ***Risk***

33 This matter relates to the strategic risk SR1, as documented in the Council's risk register. The risk is classed as high. This matter relates to this risk because the proposal is seeking to resolve public access issues and provide an option for a future utilities corridor

34 The recommended option considered above mitigates the risk by: Treating the risk - putting measures in place which directly impact the risk.

### **Financial Implications**

35 If the proposal is approved we expect the following costs:

- a) Council's share of legal fees for road stopping, and vesting, and creation of easements: approximately \$10,000. This funding is contained within the Council's transport operational budget.
- b) Ongoing maintenance/renewal of the track between Butterfield Road and the Hawea River (Easement (ii)): \$3,600 per annum. This would require an adjustment to annual plan budgets that would be sought from the 2016/17 annual plan onwards.

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

36 The following Council policies, strategies and bylaws were considered:

- Council's Significance and Engagement Policy. This is reported on in the Significance and Engagement section of this report.
- Council's 10-Year Plan 2015-25: This plan identifies 7 community outcomes, 3 of which are directly relevant to the proposal.

37 The recommended option is consistent with the principles set out in the named policy/policies.

38 This matter is not specifically identified in the 10-Year Plan. The proposal if adopted would be funded through programmes that are within the 10-Year Plan.

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

39 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. This will be through
  - Reservation of a corridor for future Council utility services
  - Improved public access to the Clutha and Hawea Rivers and improvements to the overall tracks network through the provision of the Butterfield Road – Hawea River link.
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; 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**

40 The persons who are affected by or interested in this matter are

- a) The Cooper family and their company, Devon Dairy Farms Ltd
- b) UCTT
- c) CFT
- d) DoC
- e) Walking Access Commission
- f) Upper Clutha residents and visitors

41 Parties a) – d) have been involved in the development of the proposal, while the Walking Access Commission has been briefed on the proposal.

42 For the reasons set out in the Significance and Engagement section of this report we do not believe that formal consultation over the proposal is required.

## **Legal Considerations and Statutory Responsibilities**

43 Given that the report could lead eventually to a legal agreement and promulgation of a new bylaw, this report has been reviewed by Council's internal legal team. At this stage there are no legal considerations to report.

## **Attachments**

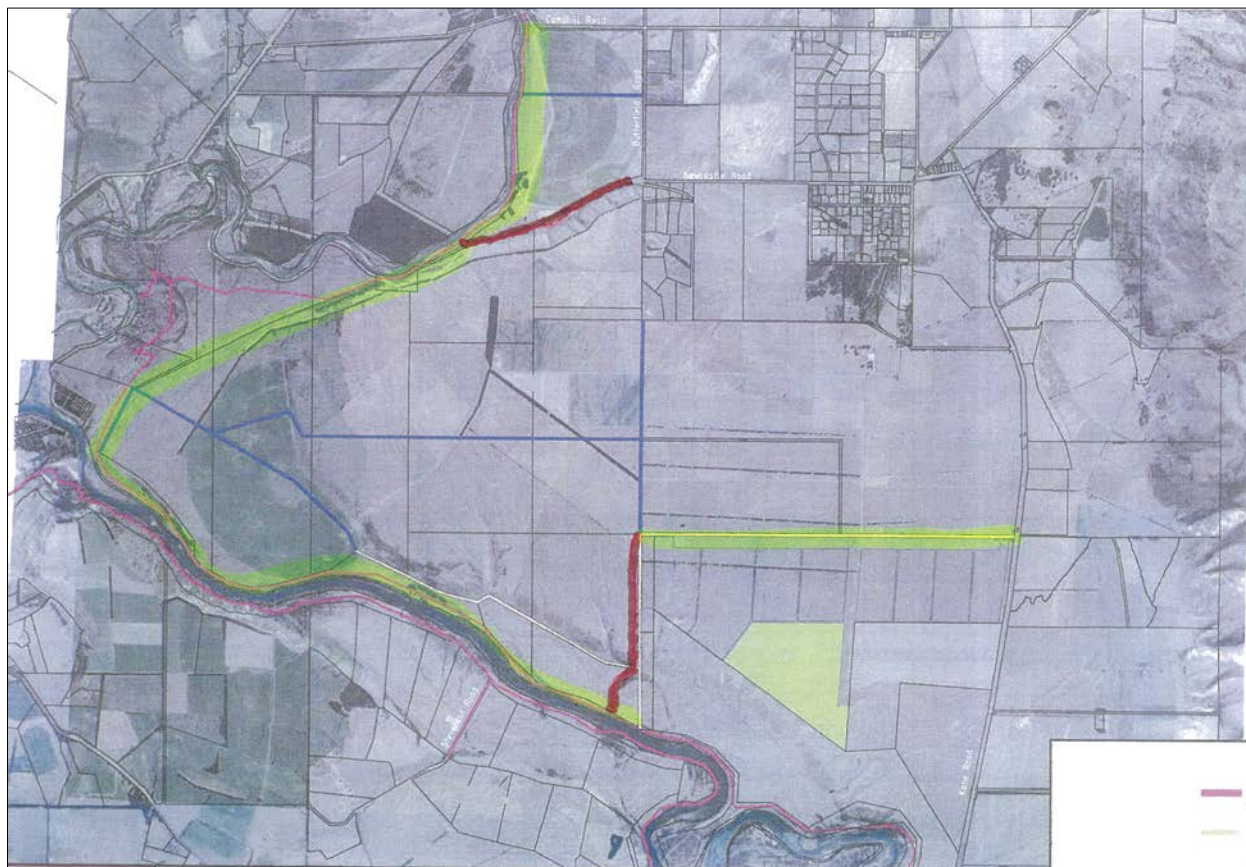
- A Mediation Agreement 2013
- B Proposal Map
- C Implementation Accountabilities Table

## Attachment A: Mediation Agreement 2013

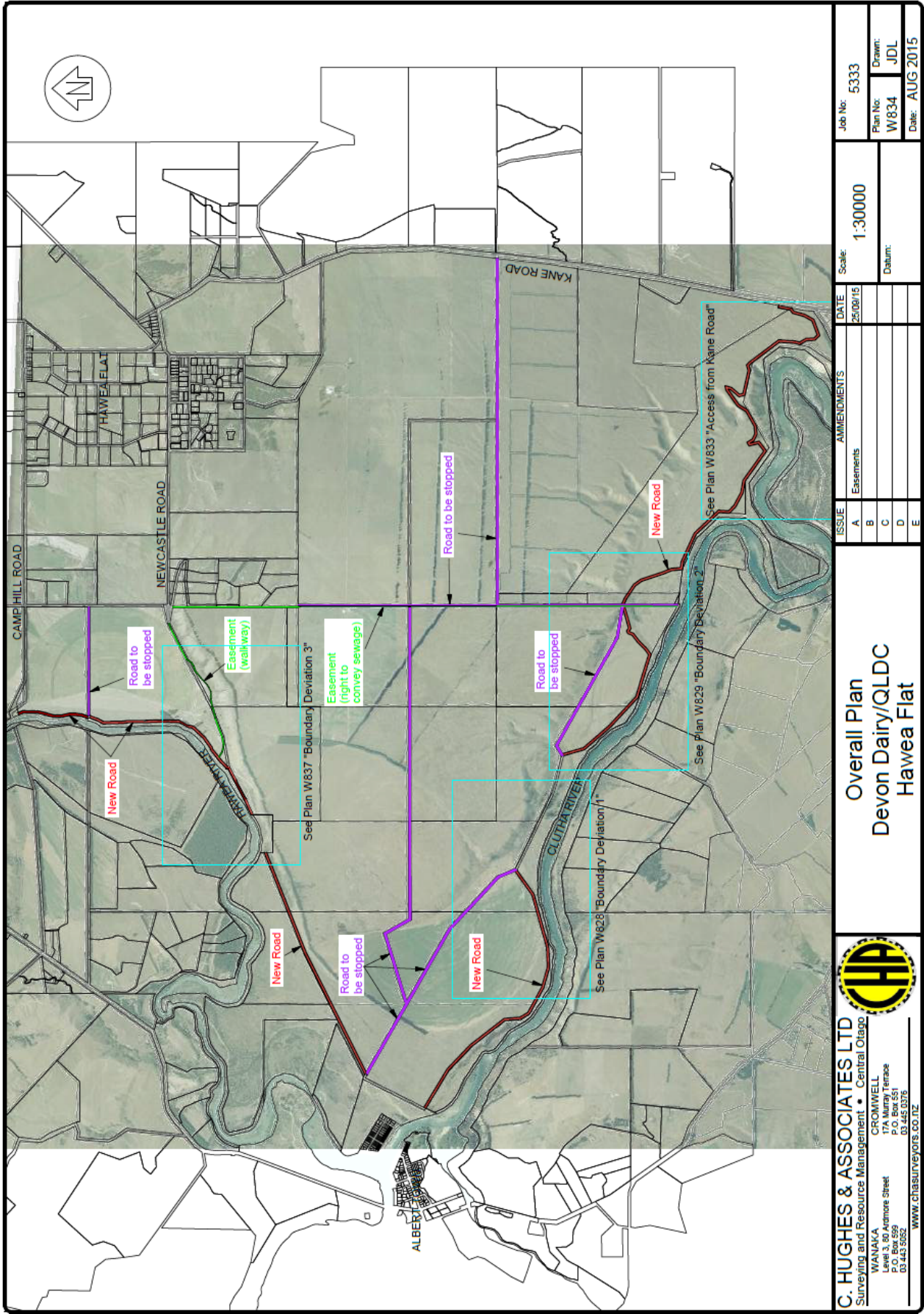
The parties agree to explore the option of there being a package settlement of issues between them whereby:

- i. CFT will obtain access to the Clutha River via an unformed road off Kane Road marked yellow on the attached map, with an exchange of land where the unformed road turns 90° south to follow the approximate red line marked on the map, terminating in a carpark adjacent or close to the boundary of the Cooper land.
  - a. Formation where necessary of a track at cost of CFT
  - b. Formed track to be fenced by CFT at its cost
  - c. Access through fence for farming needs at points to be agreed with the Coopers and provided at CFT cost.
- ii. UCTT will obtain an easement to form a track marked red on the attached plan from Butterfield Rd to the Hawea River on the basis
  - a. Formation at cost of UCTT
  - b. Fenced by UCTT at its cost
  - c. Underpass formed at place to be agreed with Coopers so track does not traverse its formed farm track
  - d. Fencing can contemplate safety of farming operations
- iii. Unformed legal roads marked blue on the attached plan be swapped for a new unformed road marked generally yellow on the attached plan, the intent being that there will be an unformed road (some of which is partly formed) from Kane Road to Camphill Road following the western boundary of the Cooper land.
- iv. This is subject to
  - a. An understanding that all parts of the area to be swapped are capable of being made into legal road
  - b. The QLDC being persuaded that the process of swapping can take place under the Public Works Act.
  - c. If the answer to iv(b) is 'no', the parties supporting a process under the road closing provisions of the Local Government Act
  - d. QLDC having rights if it so wishes to an easement for underground services over existing unformed legal roads marked blue
- v. QLDC will investigate the feasibility of the yellow road section and report back to the parties by the end of November 2013.
- vi. Consultation will take place about appropriate signage at any point on the unformed legal roads.





Attachment B: Map of Proposal



## Attachment C: Implementation accountabilities

Area (extents to be specified on the survey plans)	Clutha Fisheries Trust (CFT)	Upper Clutha Tracks Trust (UCTT)	Queenstown Lakes District Council (QLDC)	Mr JW Cooper
<b>Construction of carriageway between Kane Rd and the Clutha River Section (A) in Figure 5)</b>	Funding of <ul style="list-style-type: none"> <li>construction and maintenance of track to standard agreed with QLDC</li> <li>fencing &amp; gates (Fence standard to be the equivalent of the cost of a good three wire fence)</li> <li>fencing only on northern side of new road</li> </ul>	-	Acknowledgement that QLDC is to be responsible for any track/maintenance standard beyond the standard agreed with CFT.  Would seek an easement over the DoC land to provide practical route (as illustrated in figure 3).	May construct fencing to higher standard (i.e. deer fencing) but agrees that it will only be reimbursed by CFT for the cost of the agreed standard of fencing.  Would undertake earthworks to form track.
<b>Creation of easement between Butterfield Road and the Hawea River (Easement (i) in Figure 5), and construction of track</b>	-	Construction of track (including underpass), fencing (dog proof, deer fencing) and screening. The underpass is to be suitable for pedestrian and cyclist use (not vehicles)	Agreement to maintain track  Agreement to part fund UCTT's obligations for the upgrade of the track (as per the Council's 10-Year Plan)	Granting of easement for uninterrupted walking, and cycling access in favour of Walking Access Commission once track and fencing is constructed to agreed standard  Vehicular access restricted to DOC / QLDC (and their contractors) vehicles for management purposes.  Agreement that ongoing maintenance of fencing is DDF's responsibility.
<b>Services easement (Easement (ii) in Figure 5)</b>	-	-	Agreement to easement in favour of QLDC enabling the installation and maintenance of utility services within the easement.  Easement to include constraints	Granting of easement for QLDC utilities installation and maintenance.



			on routine access to services (based on farming operations) and emergency access arrangements.	
<b>Stopping of 'Internal' roads and vesting of new roads</b>	Acknowledgement of creation of peripheral route and agreement not to object to stopping of roads.	Acknowledgement of creation of peripheral route and agreement not to object to stopping of roads.	Agreement (QLDC/DDF) to stop roads in return for 3-waters easement in favour of QLDC and vesting t QLDC of roads on the periphery of the Devon Dairy Farm (including route through former Gravel Reserve).	
			Council to seek to limit use of new unformed legal roads to prevent vehicular access.	
<b>Cost sharing of stopping and vesting roads, easement</b>	Will bear cost of vesting new road between Kane Road and the Clutha River.	Agreement to fund creation of legal easement in favour of Walking Access Commission to securing access over the track.	Cost of vesting /stopping roads (excluding Kane Rd to Clutha River, and Butterfield Rd to Hawea River sections) to be shared equally with Mr Cooper.	Cost of vesting /stopping roads to be shared with QLDC.
			Will bear cost of creating the services easement	