

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource
Management
Act 1991

AND

IN THE MATTER of Hearing Stream 12
– Upper Clutha
Mapping

**MEMORANDUM OF COUNSEL FOR QUEENSTOWN LAKES DISTRICT
COUNCIL PROVIDING INFORMATION REQUESTED BY THE PANEL AT
THE UPPER CLUTHA HEARING**

6 June 2017

 **Simpson Grierson**
Barristers & Solicitors

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PO Box 874
SOLICITORS
CHRISTCHURCH 8140

MAY IT PLEASE THE PANEL:

1. This memorandum is filed on behalf of the Queenstown Lakes District Council (**Council**).

2. During the course of the Council presenting its case to the Hearings Panel (**Panel**) on the week of 15 May 2017, the Panel made a number of requests for further documentation. The requested documents are now provided to the Panel in the following appendices:
 - 2.1 **Appendix 1** – a map of Hawthenden's (776) development plan (Hannah Ayres Evidence in Chief Sheet 7) overlaid with the 346m contour line;
 - 2.2 **Appendix 2** – copies of the Glen Dene (282) lease and licence;
 - 2.3 **Appendix 3** – the Glendhu Bay Structure Plan (583) with the Environment Court covenants overlaid;¹
 - 2.4 **Appendix 4** – copies of the relevant Rekos Point decisions, referred to in paragraph 12.4 of Mr Barr's Group 3 Rural evidence, and further explained in paragraph 3 below (relating to 703 and 339); and
 - 2.5 **Appendix 5** – copies of RM140279, RM140733, RM030390, RM020352, and RM081523 (relating to 253).

3. In relation to 'Rekos Point', there are several decisions attached in **Appendix 4**, as follows:
 - 3.1 RM040158 – resource consent granted in 2006 for a duration of five years, to allow for 52 leasehold properties with leases to endure for no longer than 30 years. Condition 23 required that all buildings be removed from the site after 30 years and the identified building platforms be removed from the certificate of title;
 - 3.2 *Cleary v Queenstown Lakes District Council* EnvC Christchurch C70/2006, 8 June 2006 – upheld Condition 23;² and
 - 3.3 *Congreve v Big River Paradise Limited* HC Auckland CIV 2005-404-6809, 8 March 2007 – declaration that the true meaning and effect of the covenant contained in transfer 5066489.5 Otago Registry is to

1 The covenant map is sourced from Appendix 2 (Third Parkins Bay decision – location and details of covenants) to Dr Marion Read's evidence in chief dated 17 March 2017.

2 An appeal to the High Court was dismissed (Minute of Chisholm J dated 3 August 2006, CIV 2006 409 768), and Mr Cleary's interest in RM040158 was transferred to Big River Paradise Limited.

prevent the creation of more than three allotments of the Rekos Point site.³

4. Mr Barr in his Group 3 s42A report states incorrectly at paragraph 12.4(e) that the resource consent was quashed. Mr Barr will address this error in his reply evidence.
5. In addition, the Panel made some information requests, which are explained further below with the requested information.

Clutha River Outstanding Natural Landscape (ONL) Corridor

6. The Panel asked Ms Helen Mellsop to confirm the width of the ONL corridor near the southern end of the ONL at the Red Bridge near Luggate. This is where the ONL finishes but the Outstanding Natural Feature (**ONF**) of the river carries on to the east. At this point it is approximately 700m wide.
7. Elsewhere, within the main part of the ONL, the minimum width is 1.1km wide. This point is just south-east of the largest area of pivot irrigation.

Building cover of Health Centre and Enliven Care Facility

8. The Panel requested information regarding the approved building coverage of the Wanaka Health Centre and Enliven Care Facility. The Council advises that:
 - 8.1 the building coverage of the approved Wanaka Health Centre at 23 Cardrona Valley Road is 23.6% (RM140279); and
 - 8.2 the building coverage of the Enliven Care Facility at 21 Cardrona Valley Road is 35.88% (RM140733).
9. The Panel also enquired about the gross floor area (**GFA**) of the existing buildings on the site. The GFA of the restaurant and car museum (now the wedding venue) is 430m² (RM030390) and the GFA of the café is 217m² (refer plans approved through RM020352).

³ An appeal against the High Court decision was dismissed (*Big River Paradise Limited v Congreve* [2008] NZCA 78). The Supreme Court refused leave to appeal (*Big River Paradise Limited v Congreve* [2008] NZSC 51).

10. Finally, the Panel enquired about whether the wedding function activity was lawful. A consent (RM081523) was granted with conditions to convert the existing restaurant/ museum to a conference and function facility. A copy of each of these resource consents is included in **Appendix 5**.

Designation 51, Ballantyne Road

11. The Panel enquired about the Council's position (in its territorial authority capacity) on Designation 51 on Ballantyne Road. Prior to notification of the PDP, the Council (as territorial authority) invited requiring authorities to give written notice stating whether their designations should be included in the PDP with or without modification.⁴ The Council in its capacity as requiring authority advised that Designation 51 should be deleted. Consequently, the designation was not rolled over into Chapter 37 of the PDP.

Population statistics of Luggate and Hāwea

12. The Chair asked Mr Barr to assist the Panel by providing the resident population of Luggate and Hāwea townships. Statistics New Zealand includes both townships in the same area. The Council is undertaking work to identify each separately, however this is not yet available.

DATED this 6th day of June 2017

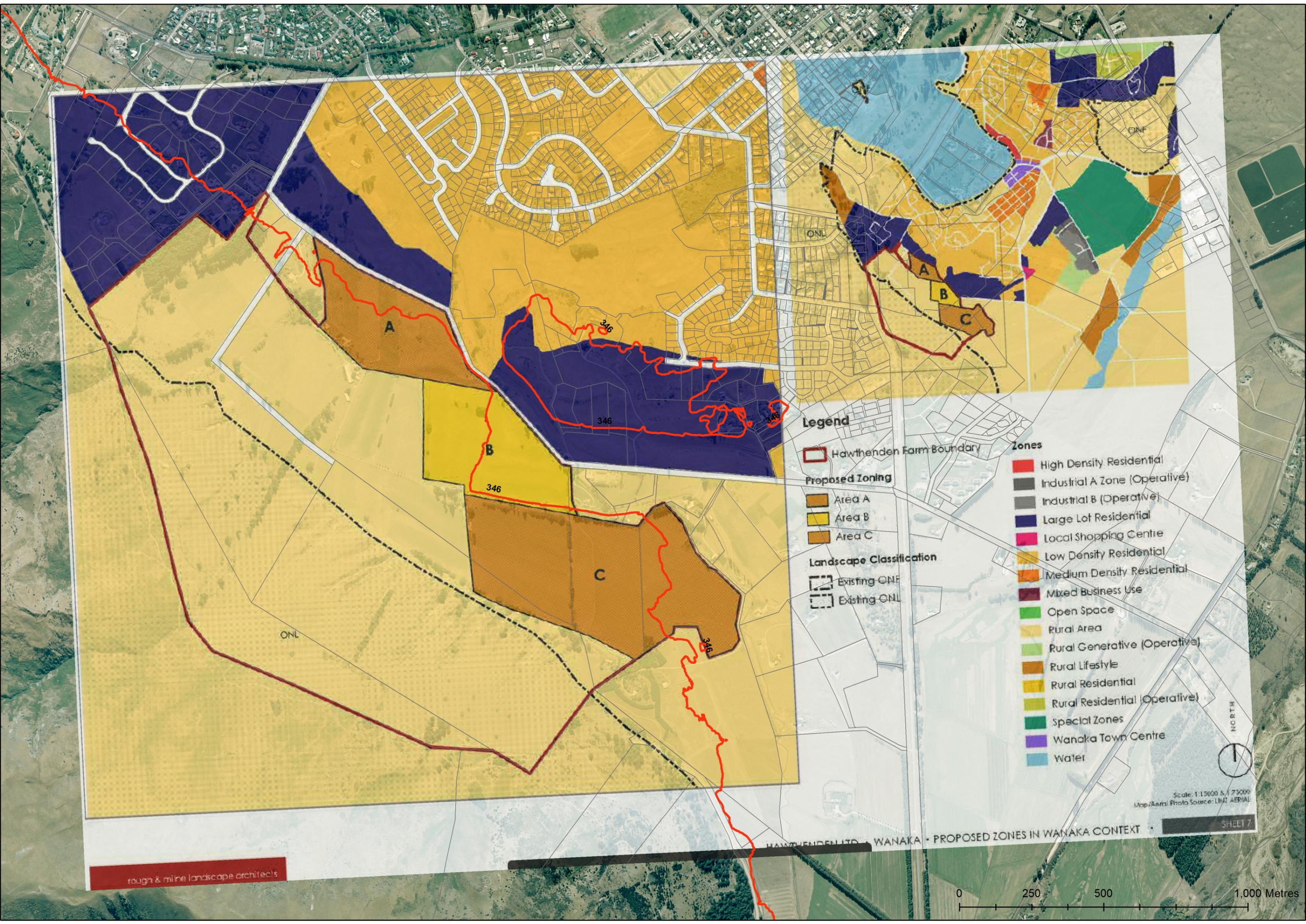


S J Scott / H L Baillie
Counsel for Queenstown Lakes District Council

⁴ As required by clause 4 of Schedule 1 of the Resource Management Act 1991.

Appendix 1

**Map of Hawthenden's (776) development plan
(Hannah Ayres Evidence in Chief Sheet 7) overlaid with the 346m contour line**



Legend

- Hawthenden Farm Boundary
- Proposed Zoning**
- Area A
- Area B
- Area C
- Landscape Classification**
- Existing ONE
- Existing ONL

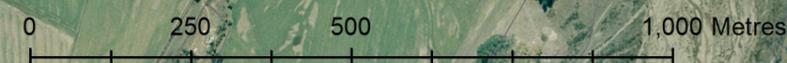
Zones

- High Density Residential
- Industrial A Zone (Operative)
- Industrial B (Operative)
- Large Lot Residential
- Local Shopping Centre
- Low Density Residential
- Medium Density Residential
- Mixed Business Use
- Open Space
- Rural Area
- Rural Generative (Operative)
- Rural Lifestyle
- Rural Residential
- Rural Residential (Operative)
- Special Zones
- Wanaka Town Centre
- Water



Scale: 1:15000 & 1:75000
Map/Aerial Photo Source: LINZ AERIAL

SHEET 7



Appendix 2.

Copies of Glen Dene (282) lease and licence

Approved by Registrar-General of Land under No. 2002/3048

Lease instrument
Section 115, Land Transfer Act 1952



BARCODE

Land registration district
OTAGO

Unique identifier(s) or C/T(s) All/part Area/description of part or stratum
370244 All

Lessor *Surname(s) must be underlined or in CAPITALS*
QUEENSTOWN LAKES DISTRICT COUNCIL

Lessee *Surname(s) must be underlined or in CAPITALS*
Richard Turnbull COTTER, Michael John COTTER (continued in Annexure Schedule)

Estate or interest* *Insert "fee simple", "leasehold in lease number", etc*
Leasehold

Lease memorandum number
Subject to the attached Memorandum

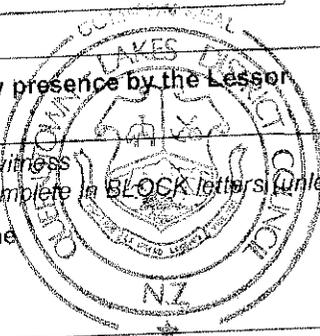
Term
Thirty Three (33) years commencing on the 1st day of January 2004

Rental
\$3,950.88 per annum plus GST

Operative clause *If required, set out the terms of lease in Annexure Schedule(s).*
The Lessor leases to the Lessee and the Lessee accepts the lease of the above estate or interest in the land in the above certificate(s) of title or computer register(s) for the term and at the rental and on the terms of lease set out in the above lease memorandum or in the Annexure Schedule(s) (if any).

Dated this 16th day of July

Attestation
Chris Goodwin
Wally [unclear]
Signature [common seal] of Lessor
Signed in my presence by the Lessor
Signature of witness
Witness to complete in BLOCK letters (unless legibly printed)
Witness name
Occupation
Address



Signature [common seal] of Lessee
Signed in my presence by the Lessee
Signature of witness
Witness to complete in BLOCK letters (unless legibly printed)
Witness name
Occupation
Address

Certified correct for the purposes of the Land Transfer Act 1952.
[Solicitor for] the Lessee

*The specified consent form must be used for the consent of any mortgagee of the estate or interest to be leased
REF: 7012 - AUCKLAND DISTRICT LAW SOCIETY

Annexure Schedule



Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Lease

Dated

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Pages

(Continue in additional Annexure Schedule, if required.)

Continuation of "Lessee"

and Mary Therese Van Eden and CHECKETTS McKAY TRUSTEES LIMITED

WHEREAS all that land described as Lots 1 and 2 DP 390448 (the Leased Land) is vested in the Lessor pursuant to Section 26A of Reserves Act 1977 and Gazette Notice 1967 p1209.

AND

WHEREAS THE Lessor leases to the Lessee all the Leased Land to be held by the Lessee for the term of thirty three (33) years on the following terms:

1. (a) THAT the Lessee shall pay unto the Queenstown Lakes District Council (hereinafter referred to as "the Council") or other Authority for the time being having charge of the Hawea Domain the rent hereinbefore reserved at the time and in the manner aforesaid free of exchange and all other deductions and shall also pay and discharge all rates, taxes or other charges whatsoever now or hereafter to become payable for or in respect of the said land or any part or parts thereof.
- (b) The rent hereinbefore specified shall be reviewed by the Lessor every eleven years throughout the term of this lease. The annual rent payable for the period of eleven years following shall be a sum equal to two percentum of the gross takings of the Lessee for the financial year immediately preceding the date of such review.
- (c) The commencing rent for the period 1 January 2004 to 31 December 2015 shall be \$3,950.08 per annum plus GST
2. THAT the Lessee shall hold and use the said land bona fide for the benefit and enjoyment of the public for the purpose of a public camping ground and will conduct all operations in a proper and efficient manner and maintain the standard of upkeep to the satisfaction of the Council and the Minister of Conservation or a designated agent of the Minister (hereinafter referred to as "the Commissioner").
3. THAT the Lessee shall during the term of this Lease erect further cabins on the land as finance is available and the demand warrants Provided That this clause is always subject to clause 13 hereof.
4. THAT the Lessee will not assign, transfer or part with possession of the said land or any part or parts thereof or any buildings erected by the Lessee upon the said land without the consent in writing of the Lessor first had and obtained, but such consent shall not be unreasonably or arbitrarily withheld in the

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Lease
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(Continue in additional Annexure Schedule, if

required.)

case of a solvent and respectable assignee who intends to use the said land for the purposes of a public camping ground.

5. THAT the Lessee shall at all times during the said term and to the satisfaction of the Council prevent the growth or spread of gorse, broom, sweetbriar and other noxious weeds or plants upon the said land and shall duly and fully comply in respect thereof with all the provisions of the Biosecurity Act 1993 or any amendments thereof and shall free and keep free the said land from rabbits and other noxious vermin.
6. THAT the Lessee shall at all times during the said term keep all buildings, fences, enclosures and other improvements now erected or made, or which may hereafter be erected or made, on the said land or on the boundaries thereof in good repair, order and condition, and will not, without the prior written consent of the Council pull down or remove such improvements or any part or parts thereof.
7. THAT the Lessee shall throughout the term of this lease to the satisfaction of the Council cut and trim all live fences and hedges upon the said land and keep clean and clear from weeds, and keep open all creeks, drains, ditches and watercourses upon the said land, including any drains, ditches and watercourses which may be constructed after the commencement of the term of this lease: provided that if there is any breach of this covenant, the Council may do any work necessary to remedy the breach and charge the Lessee the reasonable cost of the work.
8. THAT the Lessee shall not discriminate in any manner against or refuse facilities to any person or persons except on the grounds of misconduct or misdemeanour or uncleanness or by reason of the fact that the camp and facilities are fully occupied but will at all times observe a strictly uniform and impartial attitude as to admission, rates and services and in all respects to all persons except as aforesaid the Lessee will afford as efficient a service as is usual for the undertaking mentioned in Clause 2 hereof.
9. THAT the Lessee shall comply with the Camping Ground Regulations 1985.
10. THAT the Lessee shall maintain a space of at least fifteen (15) feet between each cabin on the said land.
11. THAT the Lessee shall make only such charges for the use of the camping ground and facilities provided as are approved from time to time by the Council or Commissioner.
12. THAT the Lessee shall permit any person or persons appointed by the Council or the Minister to inspect the said land and all buildings, erections and installations situated thereon and the Lessee will immediately comply with all directions from the Council or/and the Commissioner in regard to any matter whatsoever.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule



Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Lease
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(Continue in additional Annexure Schedule, if

required.)

- 13. THAT the Lessee shall not erect or place any further buildings on the said land or vary any development programme already agreed with Council without the prior approval in writing of the Council or the Minister of Conservation.
- 14. THAT all buildings shall comply with the by-laws and Code of Ordinances of the Queenstown Lakes District Council and to all relevant health requirements of the Ministry of Health and Council.
- 15. THAT the Lessee shall not nor will cause or suffer any damage or injury to any trees on the said land and the Lessee will at all times during the said term use all reasonable means to preserve and protect all trees and shrubs thereon and the Lessee will not cut down any trees whatsoever upon the said land without the consent in writing of the Lessor first had and obtained.

AND it is hereby agreed and declared by and between the Lessor and the Lessee as follows:

- 16. THAT the Lessee will not dispose of any rubbish on the said land other than by burning and will not permit fires to be lighted save and except in a properly appointed fireplace upon the said land and will use his/her best endeavours to avoid the risk of fire and to prevent grass and other fires upon the said land.
- 17. THAT the Lessee will not carry on or permit to be carried on any noxious noisome or offensive act trade business occupation or calling upon the said land and will refrain from causing any noise or other disturbance likely to disturb adjoining occupiers or land whether belonging to the Lessor or not.
- 18. THAT the Lessee will insure within the meaning ascribed to those words in the Fourth Schedule to the Land Transfer Act 1952 and will produce to the Council on demand the receipt or receipts for the annual or other premiums payable on account thereof and the policy or policies and all monies received pursuant to any such insurance shall be expended in or towards repair reinstatement and re-erection of buildings on the said land.
- 19. THAT the Lessee shall indemnify the Lessor against all or any claim injury damage or loss which may arise during the construction erection or operation of any authorised building or works including permitted alterations maintenance and additions thereto and shall further indemnify the Lessor against all or any claims injury damage or loss which may arise during the said term or any renewal thereof.
- 20. THAT the Lessee shall have no right of acquiring or purchasing the fee simple of the said land.
- 21. AT the expiry of the term hereby granted or the sooner termination thereof the Lessor shall determine whether or not the land or any part thereof is to be again let on lease or licence and if not whether the Lessor intends him/herself to use the land or any part thereof for a public camping ground or similar purpose and if so which of the said improvements he/she requires shall be left on the said land and after such determination has been made by the Lessor the following provisions shall apply:

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Annexure Schedule



Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Lease
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(Continue in additional Annexure Schedule, if

required.)

- (a) If the Lessor determines that the land is not again to be let on lease or licence and that the Lessor will not herself use the land or any part thereof as a public camping ground or for a similar purpose then the Lessee shall be entitled to remove all removable improvements (except boundary fencing) purchased erected or made by her on the said land and in existence and unexhausted at the date of the expiration or termination of the term hereby created but shall not be entitled to any compensation in respect of any such improvements or any other improvements purchased erected or made by her on the said land and in existence and unexhausted at the date of the expiration or termination of the term hereby created.
- (b) If the Lessor determines that the land is not to be let on lease or licence but that the Lessor will herself use the land or part thereof as a public camping ground or for a similar purpose then the value as determined by the Lessor of the abovementioned improvements or such part thereof as the Lessor determines shall be left on the land shall be paid to the Lessee. Before any such payment is made the Lessor may deduct from the money due to the Lessee (a) any monies due to the Crown or any Department of State in respect of the land by the Lessee, (b) any expenses incurred by the Crown should the Crown have terminated the lease on account of default by the Lessee, (c) any arrears of rates due by the Lessee in respect of the said land, (d) any arrears of rent due by the Lessee in respect of the said land. The Lessee shall be entitled to remove from the said land any of the removable improvements which the Lessor does not determine shall be left on the said land exclusive however of boundary fencing.
- (c) Should the Lessor determine that the land or any part thereof shall again be let on lease or licence and that the Lessor shall not herself use the land or part thereof for a public camping ground or a similar purpose then the Lessor shall cause a valuation to be made of such of the improvements abovementioned as are on the whole or part of the said land as the case may be which the Lessor has determined shall be again let on lease or licence. As soon as possible after the value referred to is determined the land or part thereof as the case may be shall be offered for lease or licence weighted with the value of improvements as so determined by the Lessor. If the Lessor at any time is of the opinion that the leasing or licensing of the land or part thereof is being hindered by reason of the value as fixed by the Lessor being excessive she may at her discretion from time to time reduce the value of the improvements and again offer the land or part thereof for leasing or licensing.
- (d) Where land offered for leasing or licensing as provided in the preceding subsection is acquired by an incoming lessee or licensee the value of the improvements shall be paid by him/her in cash before he/her is admitted into possession of the land. From the amount payable by the incoming Lessee or Licensee there shall be deducted (i) any monies due to the Crown or to any Department of State in respect of the land by the Lessee, (ii) any expense incurred by the Lessor should the lease have been terminated upon the default by the Lessee, (iii) any sum in respect of rates owing by the Lessee, (iv) any arrears of rent due by the Lessee in respect of the

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Annexure Schedule



Insert type of instrument
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Lease
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(Continue in additional Annexure Schedule, if

required.)

said land and the balance remaining shall be paid to the Lessee. Where part only of the land is again let under lease or licence and some of the abovementioned improvements are on the part not being again let on lease or licence the Lessee shall have the same rights of removal as are hereinbefore set out in the proceeding subclause (a) hereof. Should the Lessor determine that part of the land shall again be leased or licensed but that the Lessor shall herself use the balance of the land as a public camping ground or for a similar purpose then the value determined by the Lessor of the portion of the said improvements that are upon the portion of the land to be used by the Lessor for such purposes shall be paid by the Lessor subject to the same deductions as are above set out in subclause (b) hereof. The Lessor shall notify the Lessee in writing not later than six months before the expiry of the term hereby granted or should the lease be determined by the Lessor on account of the default of the Lessee then as soon as possible after such determination whether the Lessor intends to again let the said land or part thereof on lease or licence and if he/she does not whether the Lessor will him/herself use the land or part thereof as a public camping ground or for similar purpose.

(e) In every case where the Lessee under these presents is given the right to remove improvements he/she may do so at any time not exceeding six months after the termination of these presents. In every instance in this clause (21) hereof where the phrase "expiry of the term hereby granted" is used that shall be deemed to be expiry of the lease or of the renewal granted pursuant to the provisions hereof should a renewal be granted.

22. IF and whenever the rent hereby reserved or any part thereof shall be in arrear and unpaid for thirty days whether the same shall have been formally demanded or not or if and whenever there shall be any breach non-observance or non-performance of any of the covenants conditions or agreements herein on the part of the Lessee contained or implied or if the Lessee shall cease to use the said land solely and bona fide for the purposes of a public camping ground then and in any such case it shall be lawful for the Lessor forthwith and without making any demand or giving any notice whatsoever to re-enter into and upon the said demised land and thereupon the term hereby created shall absolutely cease and determine and that without releasing the Lessee from liability for any rent due or accruing due hereunder and without prejudice to the landlord's rights and remedies in respect of any such breach.

23. ALL or any of the powers and functions exercisable by the Lessor under these presents may from time to time be exercised by the Minister of Lands or by any person authorised in that behalf by the Minister of Lands.

24. THE Lessee shall have the full free uninterrupted right liberty and privilege for the Lessee its agents, contractors, servants, employees and visitors in common with the Lessor its agents, contractors, servants, employees, visitors and the general public, to pass and re-pass on foot and with vehicles, machinery and implements over and along the right of way marked A on the attached plan, being a right of way over Part Section 2 Block II Lower Hawea Survey District. (the Servient Land).

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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Annexure Schedule



Insert type of instrument
"Mortgage", "Transfer", "Lease" etc

Lease
Pages

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(Continue in additional Annexure Schedule, if

required.)

- 25. THE Lessor shall bind its assigns or successors of Part Section 2 Block II Lower Hawea Survey District (the Servient Land referred to in clause 24) to the obligations set out in clause 24 above and before any transfer or change of management under the Reserves Act 1977 of that land takes place, shall give the Lessee the right at the Lessee's cost to register the right of way easement set out in clause 24.
- 26. THAT these presents are intended to take effect as a lease under Section 54 of the Reserves Act 1977 and the provisions of the said Act and of the regulations made thereunder applicable to such a lease shall be binding in all respects upon the parties hereto in the same manner as if such provisions had been fully set out herein.

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

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Annexure Schedule



insert type of Instrument
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(Continue in additional Annexure Schedule, if required.)

SIGNED by the said
RICHARD TURNBULL COTTER
as Lessee
in the presence of )
WANAKA
Checketts McKay
Legal Secretary

SIGNED by the said
MICHAEL JOHN COTTER
as Lessee
in the presence of )
MARILYN OLIVER
Legal Secretary
Checketts McKay
WANAKA

SIGNED by the said
MARY THERESE VAN EDEN
as Lessee
in the presence of )
MARILYN OLIVER
Legal Secretary
Checketts McKay
WANAKA

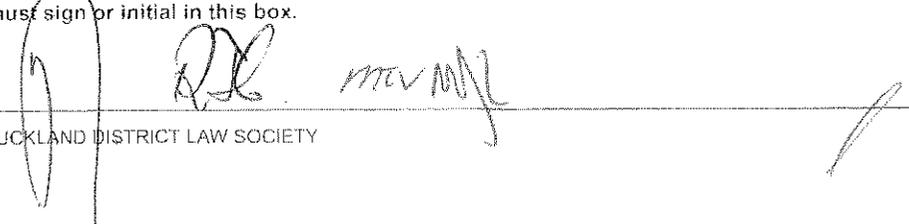
SIGNED for and on behalf of
CHECKETTS McKay
TRUSTEES LIMITED
as Lessee
in the presence of )
MARILYN OLIVER
Legal Secretary
Checketts McKay
WANAKA

SIGNED by the said
QUEENSTOWN LAKES DISTRICT COUNCIL
by affixing its common seal in
the presence of )



Mayor
Chief Executive Officer

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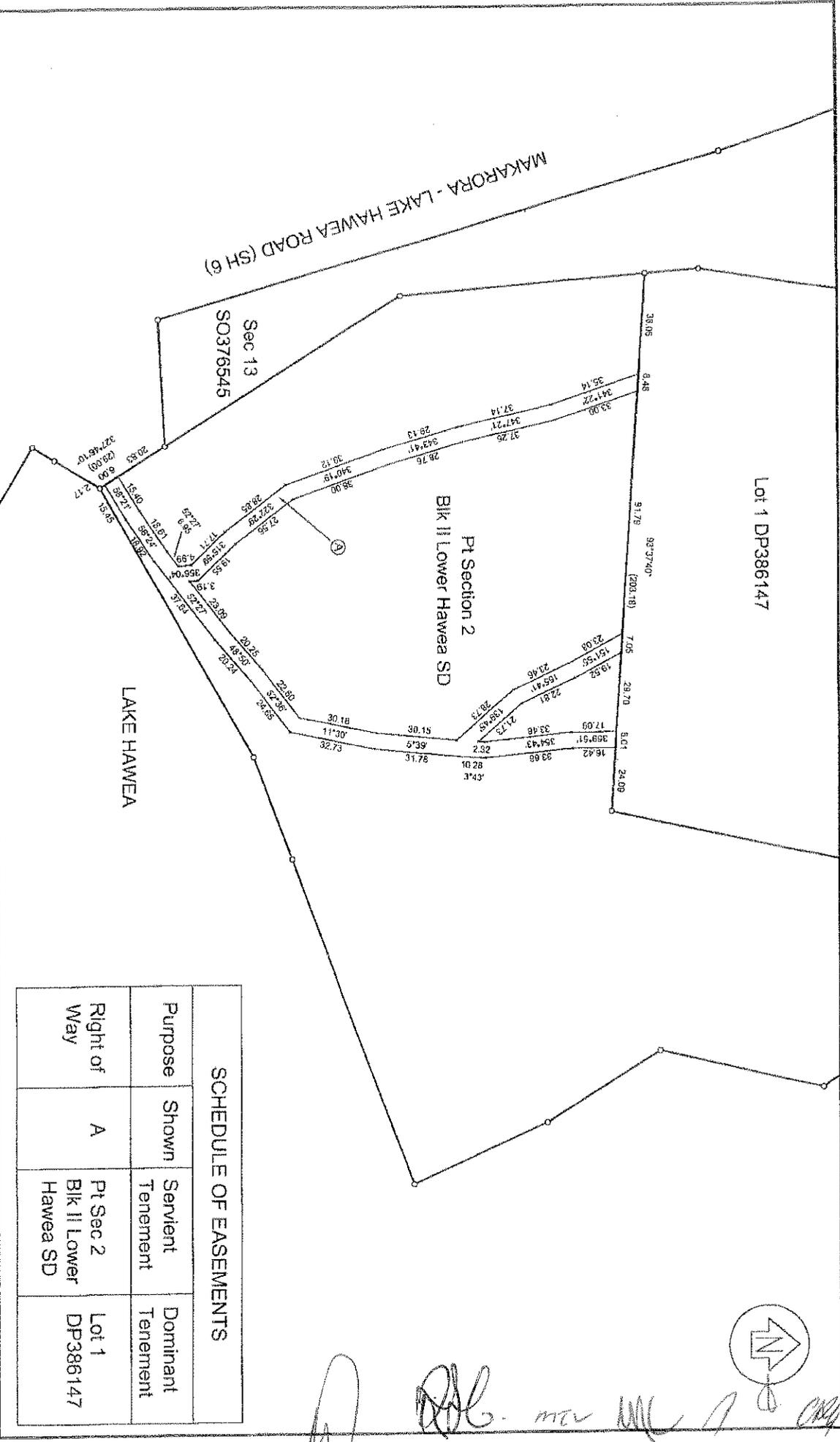


C. HUGHES & ASSOCIATES LTD
 Surveying and Resource Management • Central Otago



Easements Over Pt Sec 2
Blk II Lower Hawea SD
 Hawea Camping Ground

ISSUE	DATE	SCALE	JOB No.
A		1:1750 (A3)	4449
B			
C			
D			
E			



SCHEDULE OF EASEMENTS			
Purpose	Shown	Servient Tenement	Dominant Tenement
Right of Way	A	Pt Sec 2 Blk II Lower Hawea SD	Lot 1 DP386147

PLAN No. W456
 Drawn By: JDJL
 DATE Sept 2007

[Handwritten signatures and notes]

DATED

14 October

2008

QUEENSTOWN LAKES DISTRICT COUNCIL

(the Council)

Richard Turnbull COTTER, Michael John COTTER, Mary Therese VAN EDEN and CHECKETTS
MCKAY TRUSTEE LIMITED

(The Licensee)

LICENCE TO OCCUPY RESERVE

MACALISTER TODD PHILLIPS

Barristers, Solicitors, Notaries

Queenstown • Wanaka • Cromwell • Alexandra

Ph: (03) 441 0125 - Fax: (03) 442 8116

Email: queenstown@mactodd.co.nz

P O Box 653

QUEENSTOWN 9348

LICENSE TO OCCUPY RESERVE

DATED

14 October 2008

PARTIES:

- (1) QUEENSTOWN LAKES DISTRICT COUNCIL (hereinafter called "the Council") of the one part
- (2) Richard Turnbull COTTER, Michael John COTTER, Mary Therese VAN EDEN and CHECKETTS MCKAY TRUSTEES LIMITED (hereinafter called "the Licensee") of the other part

BACKGROUND

- A. The QUEENSTOWN LAKES DISTRICT COUNCIL a Body Corporate under the Local Government Act 1974 (the Council) is the vested owner of all that land described as Part of Part Section 2 Block II Lower Hawea Survey District, pursuant to Section 26A of the Reserves Act 1997 and Gazette Notice 1967 p1209 (the Council's Land).
- B. The Licensee has applied for a license from the Council to occupy part of the Licensees land for seasonal summer camping and caravan storage (the Licensee's Business) being that part of the Licensees Land is shown hatched black on the attached aerial photograph (hereafter called the Licensed Land).

TERMS OF THIS LICENCE

1. The Council grants to Richard Turnbull COTTER, Michael John COTTER, Mary Therese VAN EDEN and CHECKETTS MCKAY TRUSTEES LIMITED (the Licensee) a Licence to Occupy the Licensed Land for a term of three (3) years together with nine (9) rights of

Handwritten initials: MTVE

Handwritten initials: RLL

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Handwritten initials: JF

renewal each of three (3) years and one (1) right of renewal of one (1) year and four (4) months (subject to clause 21 hereof) on the terms and conditions set out herein.

2. THAT the Licensee shall pay unto the Council or other Authority for the time being having charge of the Hawea Domain the Licence Fee hereinbefore reserved at the time and in the manner aforesaid free of exchange and all other deductions and shall also pay and discharge all rates, taxes or other charges whatsoever now or hereafter to become payable for or in respect of the said Licensed Land or any part or parts thereof. The Council acknowledges that no rates are currently charged in respect of the Licensed Land.
- (b) The Licence Fee hereinbefore specified shall be reviewed by the Council on the date of renewal of this licence in accordance with clause 2(d) hereof.
- (c) The commencing Licence Fee for the period 1 September 2008 to 31 October 2011 shall be \$3,000.00 per annum plus GST.
- (d) The Licence Fee shall be reviewed by the Council on each renewal date (the review dates) in accordance with the following provisions:
- (i) the annual Licence Fee on each review date shall be the Licence Fee payable for the previous twelve (12) months adjusted by the accumulated Consumer Price Index (CPI) (all groups) increase that shall have occurred between the Commencement Date or last review date (as the case may be) provided that in no circumstances shall the annual Licence Fee be less than the annual Licence Fee payable during the preceding twelve (12) months.
- (ii) the Licence Fee review at the option of either party may be recorded in a Deed, the cost of which shall be borne by the Licensee.
3. THAT the Licensee shall hold and use the said Licensed Land bona fide for the benefit and enjoyment of the public for the purpose of a public camping ground for seasonal summer camping and caravan storage (the Licensee's Business) and will conduct all operations in a proper and efficient manner and maintain the standard of upkeep to the satisfaction of the Council and the Minister of Conservation or a designated agent of the Minister (hereinafter referred to as "the Commissioner").
4. THAT the Licensee shall not during the term of the licence, erect any structures, improvements or buildings whatsoever on the Licensed Land without the prior written consent of the Council.



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5. THAT the Licensee will not assign, transfer or part with possession of the said Licensed Land or any part or parts thereof or any buildings erected by the Licensee upon the said land without the consent in writing of the Council first had and obtained, but such consent shall not be unreasonably or arbitrarily withheld in the case of a solvent and respectable assignee who intends to use the said Licensed Land for the purposes of a public camping ground for seasonal summer camping and caravan storage.
6. THAT the Licensee shall at all times during the said term and to the satisfaction of the Council prevent the growth or spread of gorse, broom, sweetbriar and other noxious weeds or plants upon the said Licensed Land and shall duly and fully comply in respect thereof with all the provisions of the Biosecurity Act 1993 or any amendments thereof and shall free and keep free the said land from rabbits and other noxious vermin.
7. THAT the Licensee shall at all times during the said term keep all buildings, fences, enclosures and other improvements now erected or made, or which may hereafter be erected or made, on the said Licensed Land or on the boundaries thereof in good repair, order and condition, and will not, without the prior written consent of the Council pull down or remove such improvements or any part or parts thereof.
8. THAT the Licensee shall throughout the term of this license to the satisfaction of the Council cut and trim all live fences and hedges upon the said land and keep clean and clear from weeds, and keep open all creeks, drains, ditches and watercourses upon the said Licensed Land, including any drains, ditches and watercourses which may be constructed after the commencement of the term of this lease: provided that if there is any breach of this covenant, the Council may do any work necessary to remedy the breach and charge the Licensee the reasonable cost of the work.
9. THAT the Licensee shall not discriminate in any manner against or refuse facilities to any person or persons except on the grounds of misconduct or misdemeanour or uncleanness or by reason of the fact that the camp and facilities are fully occupied but will at all times observe a strictly uniform and impartial attitude as to admission, rates and services and in all respects to all persons except as aforesaid the Licensee will afford as efficient a service as is usual for the Licensees Business.


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10. THAT the Licensee shall comply with the Camping Ground Regulations 1985.
11. THAT the Licensee shall make only such charges for the use of the camping ground and facilities provided as are approved from time to time by the Council or Commissioner.
12. THAT the Licensee shall permit any person or persons appointed by the Council or the Minister to inspect the said Licensed Land and all buildings, erections and installations situated thereon and the Licensee will immediately comply with all directions from the Council or/and the Commissioner in regard to any matter whatsoever.
13. THAT the Licensee shall not vary any development programme already agreed with Council without the prior approval in writing of the Council or the Minister of Conservation.
14. THAT all buildings, structures or improvements erected on the Licensed Land (with the consent of the Council pursuant to clause 4) shall comply with the by-laws and Code of Ordinances of the Queenstown Lakes District Council and to all relevant health requirements of the Ministry of Health and Council.
15. THAT the Licensee shall not nor will cause or suffer any damage or injury to any trees on the said Licensed Land and the Licensee will at all times during the said term use all reasonable means to preserve and protect all trees and shrubs thereon and the Licensee will not cut down any trees whatsoever upon the said Licensed Land without the consent in writing of the Council first had and obtained.

AND it is hereby agreed and declared by and between the Council and the Licensee as follows:

16. THAT the Licensee will not dispose of any rubbish on the said Licensed Land other than by burning and will not permit fires to be lighted save and except in a properly appointed fireplace upon the said land and will use his/her best endeavours to avoid the risk of fire and to prevent grass and other fires upon the said Licensed Land.


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17. THAT the Licensee will not carry on or permit to be carried on any noxious noisome or offensive act trade business occupation or calling upon the said Licensed Land and will refrain from causing any noise or other disturbance likely to disturb adjoining occupiers of land whether belonging to the Council or not.
18. THAT the Licensee will insure all improvements on the Licensed Land within the meaning ascribed to those words in the Fourth Schedule to the Land Transfer Act 1952 and will produce to the Council on demand the receipt or receipts for the annual or other premiums payable on account thereof and the policy or policies and all monies received pursuant to any such insurance shall be expended in or towards repair reinstatement and re-erection of any buildings on the said land.
19. THAT the Licensee shall indemnify the Council against all or any claim injury damage or loss which may arise during the construction erection or operation of any authorised building or works including permitted alterations maintenance and additions thereto and shall further indemnify the Council against all or any claims injury damage or loss which may arise during the said term or any renewal thereof.
20. THAT the Licensee shall have no right of acquiring or purchasing the fee simple of the said Licensed Land.
21. AT the expiry of the term hereby granted (or any renewals of it) or the sooner termination thereof the Council shall determine whether or not the Licensed Land or any part thereof is to be again let on licence and if not whether the Council intends itself to use the land or any part thereof for a public camping ground or similar purpose and if so which of the said improvements it requires shall be left on the said land and after such determination has been made by the Council the following provisions shall apply:
- (a) If the Council determines that the Licensed Land is not again to be let on licence and that the Council will not itself use the land or any part thereof as a public camping ground or for a similar purpose then the Licensee shall be entitled to remove all removable improvements (except boundary fencing) purchased erected or made by it on the said land and in existence and unexhausted at the date of the expiration or

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termination of the term hereby created but shall not be entitled to any compensation in respect of any such improvements or any other improvements purchased erected or made by the Licensee on the said Licensed Land and in existence and unexhausted at the date of the expiration or termination of the term hereby created.

- (b) If the Council determines that the Licensed Land is not to be let on licence but that the Council will itself use the Licensed and or part thereof as a public camping ground or for a similar purpose then the value as determined by the Council of the abovementioned improvements or such part thereof as the Council determines shall be left on the land shall be paid to the Licensee. Before any such payment is made the Council may deduct from the money due to the Licensee (a) any monies due to the Crown or any Department of State in respect of the land by the Licensee, (b) any expenses incurred by the Crown should the Crown have terminated the Licence on account of default by the Licensee, (c) any arrears of rates due by the Licensee in respect of the said land, (d) any arrears of License Fee due by the Licensee in respect of the said Licensed Land. The Licensee shall be entitled to remove from the said land any of the removable improvements which the Council does not determine shall be left on the said Licensed Land exclusive however of boundary fencing.
- (c) Should the Council determine that the Licensed Land or any part thereof shall again be let on licence and that the Council shall not itself use the Licensed Land or part thereof for a public camping ground or a similar purpose then the Council shall cause a valuation to be made of such of the improvements abovementioned as are on the whole or part of the said Licensed Land as the case may be which the Council has determined shall be again let on licence. As soon as possible after the value referred to is determined the Licensed Land or part thereof as the case may be shall be offered for licence weighted with the value of improvements as so determined by the Council. If the Council at any time is of the opinion that the licensing of the Licensed Land or part thereof is being hindered by reason of the value as fixed by the Council being excessive it may at its discretion from time to time reduce the value of the improvements and again offer the Licensed Land or part thereof for licensing.
- (d) Where the Licensed Land offered for licensing as provided in the preceding subsection is acquired by an incoming licensee the value of the improvements shall


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be paid by him/her in cash before he/her is admitted into possession of the land. From the amount payable by the incoming Licensee there shall be deducted (i) any monies due to the Crown or to any Department of State in respect of the land by the Licensee, (ii) any expense incurred by the Council should the Licence have been terminated upon the default by the Licensee, (iii) any sum in respect of rates owing by the Licensee, (iv) any arrears of License Fee due by the Licensee in respect of the said Licensed Land and the balance remaining shall be paid to the Licensee. Where part only of the land is again let under licence and some of the abovementioned improvements are on the part not being again let on licence the Licensee shall have the same rights of removal as are hereinbefore set out in the proceeding subclause (a) hereof. Should the Council determine that part of the Licensed Land shall again be licensed but that the Council shall itself use the balance of the Licensed Land as a public camping ground or for a similar purpose then the value determined by the Council of the portion of the said improvements that are upon the portion of the Licensed Land to be used by the Council for such purposes shall be paid by the Council subject to the same deductions as are above set out in subclause (b) hereof. The Council shall notify the Licensee in writing not later than six (6) months before the expiry of the term hereby granted or should the licensee be determined by the Council on account of the default of the Licensee then as soon as possible after such determination whether the Council intends to again let the said Licensed Land or part thereof on licence and if it does not whether the Council will itself use the Licensed Land or part thereof as a public camping ground or for similar purpose.

- (e) In every case where the Licensee under these presents is given the right to remove improvements it may do so at any time not exceeding six months after the termination of these presents. In every instance in this clause (21) hereof where the phrase "expiry of the term hereby granted" is used that shall be deemed to be expiry of the licence or of the renewal granted pursuant to the provisions hereof should a renewal be granted.

22. If the Licensee has not been in breach of this Licence AND has given the Council at least three (3) months written notice of the Licensee's desire to renew this Licence, AND the Council is in agreement that the Council does not require the Licensed Land for itself or for other purposes pursuant to clause 21 hereof then the Council will at the cost of the Licensee

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renew this Licence for one (1) or more of the renewal periods specified in the recitals hereto on the following terms:

- (a) The annual Licence Fee shall be agreed by the parties upon each renewal or failing agreement shall be determined in accordance with clause 2(d) but such annual Licence Fee shall not be less than the Licence Fee payable during the period of twelve (12) months immediately preceding the renewal date.
 - (b) The annual Licence Fee shall be subject to review on each subsequent renewal date.
 - (c) Pending the determination of the License Fee the Licensee shall pay the License Fee proposed by the Council provided that the License Fee is substantiated by an appropriate land valuation of the Licensed Land in accordance with clause 2(d). Upon determination of the renewal, the License Fee on appropriate adjustment shall be made.
 - (d) The renewed Licence shall otherwise be upon and subject to all covenants and agreements herein expressed and implied except that the term of this Licence shall expire on or before the 31st December 2037.
 - (e) The granting of one renewal period by the Council does not mean that the Council will grant further renewals if the Council requires the Licensed Land for itself or other purposes pursuant to clause 21.
23. IF and whenever the License Fee hereby reserved or any part thereof shall be in arrear and unpaid for thirty days whether the same shall have been formally demanded or not or if and whenever there shall be any breach non-observance or non-performance of any of the covenants conditions or agreements herein on the part of the Licensee contained or implied or if the Licensee shall cease to use the said Licensed Land solely and bona fide for the purposes of the Licensees Business then and in any such case it shall be lawful for the Council forthwith and without making any demand or giving any notice whatsoever to re-enter into and upon the said Licensed Land and thereupon the term hereby created shall absolutely cease and determine and that without releasing the Licensee from liability for any License

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Fee due or accruing due hereunder and without prejudice to the Council's rights and remedies in respect of any such breach.

24. ALL or any of the powers and functions exercisable by the Council under these presents may from time to time be exercised by the Minister of Lands or by any person authorised in that behalf by the Minister of Lands.

25. THAT these presents are intended to take effect as a Licence under Section 54(d) of the Reserves Act 1977 and the provisions of the said Act and of the regulations made thereunder applicable to such a licence shall be binding in all respects upon the parties hereto in the same manner as if such provisions had been fully set out herein.

SIGNED by the said)
QUEENSTOWN LAKES DISTRICT COUNCIL)
by affixing its common seal)
In the presence of:)

Chris Fiedler

Mayor

Wallyly D

Chief Executive Officer

Signature of Witness

Name

Occupation

Address



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MTVE
mp
WJ
2586

SIGNED by the said)
RICHARD TURNBULL COTTER)
as Licensee)
In the presence of)

R.T. Cotter

[Signature]
Signature of Witness

Name **MARILYN OLIVER**
Legal Secretary
~~Checketts McKay~~
Occupation **WANAKA**

Address

SIGNED by the said)
MICHAEL JOHN COTTER)
as Licensee)
In the presence of)

[Signature]

[Signature]
Signature of Witness

Name **MARILYN OLIVER**
Legal Secretary
~~Checketts McKay~~
Occupation **WANAKA**

Address

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SIGNED by the said)
MARY THERESE VAN EDEN)
as Licensee)

M.T. van Eden

In the presence of)
[Signature])
Signature of Witness

Name **MARILYN OLIVER**
Legal Secretary
Occupation **Checketts McKay**
WANAKA

Address

SIGNED for and on behalf of)
CHECKETTS MCKAY)
TRUSTEES LIMITED)
as Licensee)

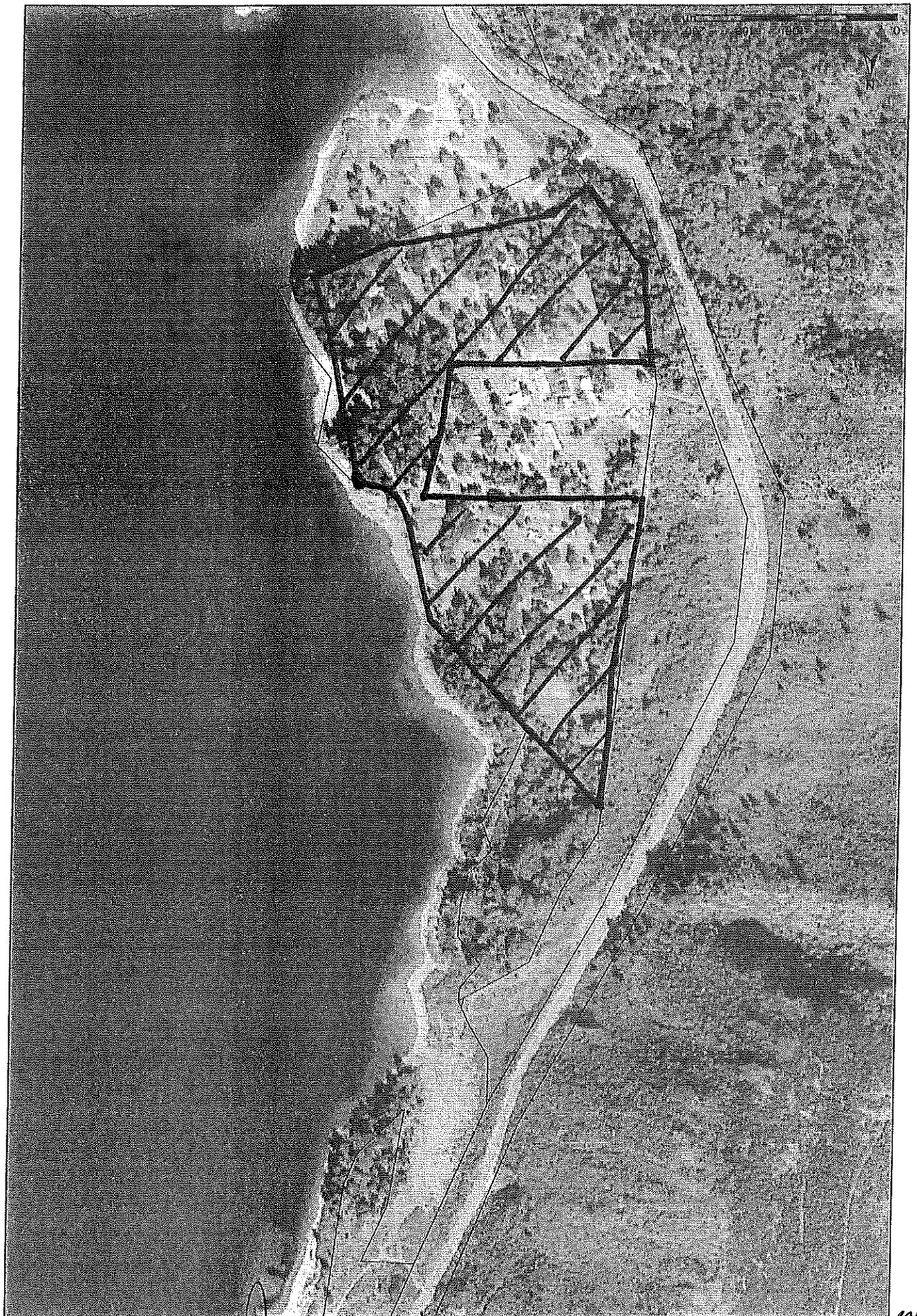
[Signature]

In the presence of)
[Signature])
Signature of Witness

Name **MARILYN OLIVER**
Legal Secretary
Occupation **Checketts McKay**
WANAKA

Address

MA

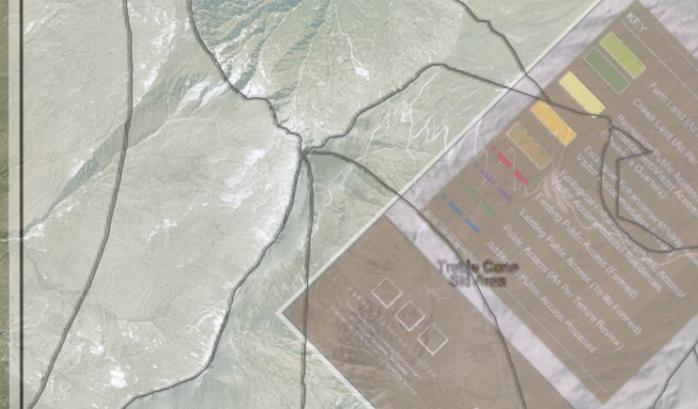
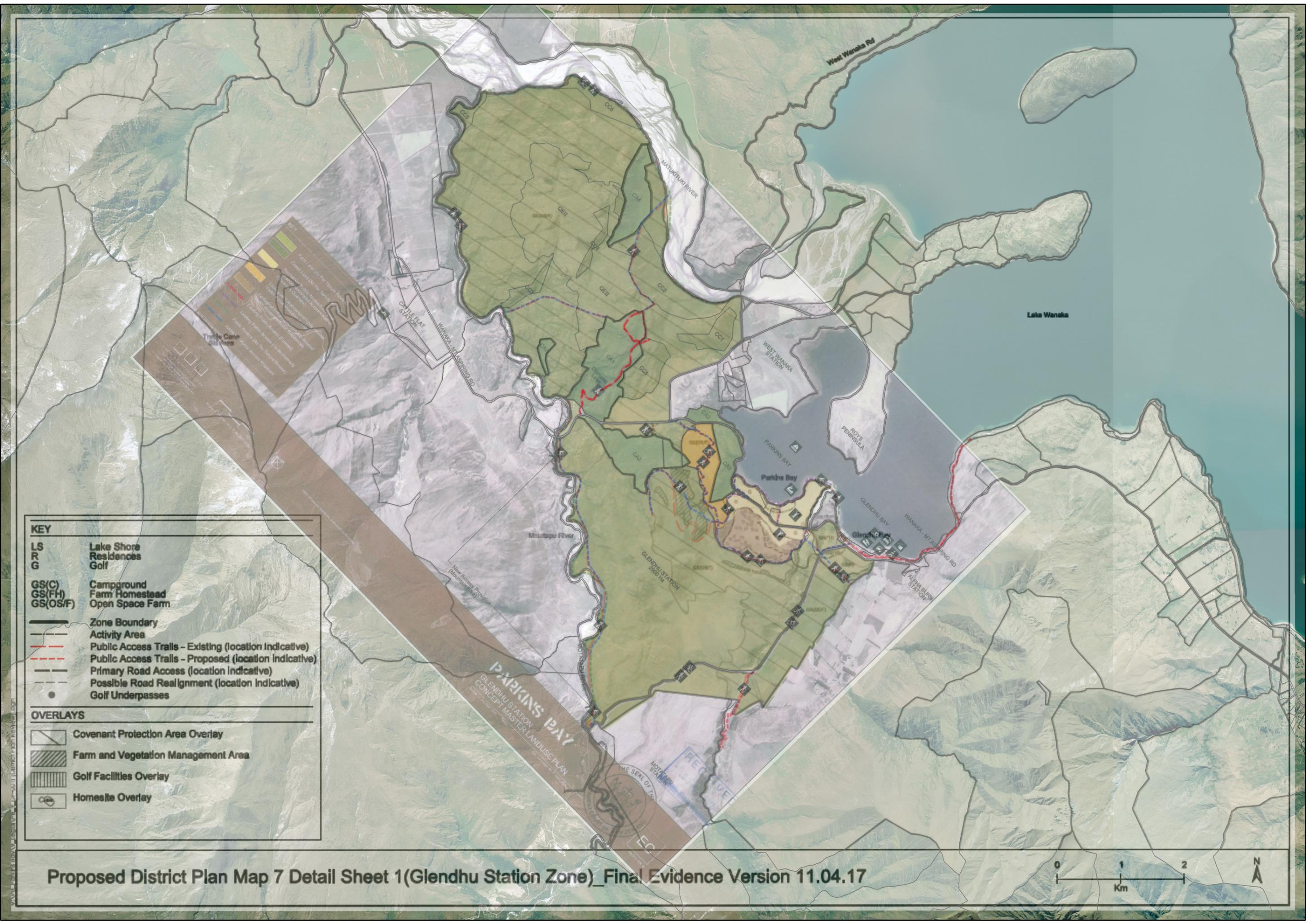


map. *[Handwritten signature]*

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Appendix 3

Glendhu Bay Structure Plan (583) with Environment Court covenants overlaid



KEY	
LS R G	Lake Shore Residences Golf
GS(C) GS(FH) GS(OS/F)	Campground Farm Homestead Open Space Farm
—	Zone Boundary
- - -	Activity Area
---	Public Access Trails - Existing (location indicative)
---	Public Access Trails - Proposed (location indicative)
---	Primary Road Access (location indicative)
---	Possible Road Realignment (location indicative)
●	Golf Underpasses

OVERLAYS	
▨	Covenant Protection Area Overlay
▨	Farm and Vegetation Management Area
▨	Golf Facilities Overlay
○	Homesite Overlay



PARKINS BAY
 GLENDHU STATION
 CONCEPT MASTER LANDUSE PLAN
 THE SEAL OF THE
 RECEIVED
 11/04/17

Appendix 4

Copies of relevant Rekos Point decisions (703 and 339)

In the matter of

a Resource consent Application by FOX
ROCK DEVELOPMENTS LIMITED under
the Resource Management Act in relation to
RM040158.

DECISION OF INDEPENDENT COMMISSIONER

- [1] I am delegated by the Queenstown-Lakes District Council to hear a notified Resource consent Application RM 040158 by Fox Rock Developments Limited in relation to land at Kane Road, Hawea Flat. Its legal description is Lot 4, DP 20242, CT OT 11D/497.
- [2] The application was publicly notified on 7 August 2004, with submissions closing on 3 September 2004, by which time some 40 submissions had been received in response to the Application which were all opposed to it.
- [3] The consent sought is for land use, namely to undertake earthworks in the order of 10,400 m³, comprising 9,195 m³ of cut and 1,205 m³ of fill.
- [4] The purpose of the activity is to establish 52 building platforms on the site, and consent is also sought in relation to design controls to be associated with these building platforms and which generally concern the design and appearance of the building and landscaping (including fencing), building height, servicing of the buildings to be built thereon. No Resource consent is sought for subdivision of the site.
- [5] The description of the site in the application is as follows:

The subject site contains 190.8 hectares of land located on the northern side of the Clutha River, immediately upstream of the Luggate-Hawea Bridge.

The subject site topographically has two flat areas, separated by a large terrace rise of about 30 metres in height. The lower terrace, where development is proposed; joins a prominent peninsula created by the meandering nature of the Clutha River.

The subject site has a very sparse vegetation cover, mainly brown top grass and tea tree.

Access to the site is via a ROW over Lot 2 DP 312182 from the Luggate-Hawea Back Road. At present this accessway is unformed and runs down a natural gully system from the top terrace to the lower terrace.

The subject site is legally described as Lot 4 DP 202442 as described in Certificate of Title OT 11D/497.

- [6] The land is currently used for farming, with the surrounding environment comprising generally small-holdings of land used for rural activities.
- [7] Directly across the Clutha River from this site is the Wanaka Airport, and it is also noteworthy that the site lies within an area designated as a Low Flying Area under the New Zealand Air Navigation Register (which identifies the agency permitted to use that LFA as Aspiring Air Limited, one of the submitters; as is the owner of the Wanaka Airport, Queenstown-Lakes District Council, which submitted via the Wanaka Airport Management Committee).
- [8] The resource consent sought relates to 27.35 hectares only of the site in which the proposed works are to identify 52 residential building platforms of no more than 1000m² in area, although the applicant has volunteered a covenant that will restrict development within each building platform to less than 600m².
- [9] The part of the site for which application is made (namely the 27.35 hectares) is zoned Rural Residential and which specific zone became an operative part of the Partially Operative District Plan by virtue of Environment Court Decision

ESS Marketing Limited v Queenstown-Lakes District Council (RMA 1379/98) dated 19 July 2002. There is apparently a minor error in the Consent Order set out in that decision in that it appears to incorrectly include the whole 190.83 hectares as being zoned Rural Residential. There seems no dispute that only the land the subject of this application was intended to be zoned Rural Residential.

- [10] According to Section 8.2 (page 8-5) in Part 8 of the Partially Operative District Plan, a Rural Residential Zone is for the purpose of providing low density residential opportunities as an alternative to suburban living areas of the district and is anticipated to be characterised by low density residential areas with ample open space, landscaping and with minimal adverse environmental effects experienced by residents. Rural activities are not likely to remain a major use of land in the Rural Residential Zone nor as a necessary part of the Rural Residential Environment.
- [11] It is proposed that the land will be divided into 52 leasehold properties, such leases to endure for no longer than 30 years. As such, the division of the land in that way avoids the proposal qualifying as a subdivision under the Act. No doubt the applicant and/or its successors will have to be assiduous to ensure that there is no representation to prospective purchasers that any greater right to the land is being given or is in prospect beyond that period. It may be that some notation may be necessary so that notice of the limitation of the non-subdivision is also available to the seeker of a Land Information Memorandum.

The Resource consents sought

- [12] A Resource consent is sought for a controlled activity under Rule 8.2.2.2(i) (page 3-6) which provides as follows:

Controlled Activities

The following shall be Controlled Activities provided that they are not listed as Prohibited, Non-Complying or Discretionary Activity and they comply with the relevant Site and Zone standards. The matters in respect of which the Council has reserved control are listed with each Controlled Activity:

Buildings

The addition, alteration or construction of buildings, including Residential Units added to, altered or constructed with Residential Building Platforms approved pursuant to Rule 15.2.6.3, in respect of:

- (a) the location and external appearance of the buildings and associated earthworks, access and landscaping, to avoid or mitigate adverse effects on landscape and visual amenity values, nature conservation values and the natural character of the rural environment;*
- (b) the provision of water supply, sewage treatment and disposal, electricity and telecommunication services.*

- [13] The proposal for this resource consent is for building platforms and design controls, where Council's control is restricted to matters including location, appearance, earthworks, landscaping, and the provision of services.
- [14] A second Resource consent required is for a discretionary activity pursuant to Rule 8.2.2.3 which provides as follows:

Discretionary Activities

The following shall be Discretionary Activities provided they are not listed as a Prohibited or Non-Complying Activity and they comply with all relevant zone standards.....

(iv) *Any activity which is not listed as a Non-Complying or Prohibited activity and complies with all the zone standards but does not comply with one or more of the site standards shall be a Discretionary Activity with the exercise of the Council's discretion being restricted to the matter(s) specified in the standard(s) not complied with.*

- [15] The proposal is for the applicant to undertake a total of 10,400m³ of earthworks across both the subject site, and the balance site (of the 190.8 hectares) substantially in respect of associated access-ways. As can be seen from the Rule, the Council's discretion is restricted.
- [16] During the hearing, it became apparent that the earthworks to occur in the Rural General zone were for the creation of the proposed formal access-way from the Luggate-Hawea Back Road to the Rural Residential site, and the earthworks in the latter were to be the creation of the Rural Residential building platforms, together with associated accessways within that site.
- [17] I note that the Transitional District Plan does not include rules relating to earthworks, and therefore such earthworks as are proposed by this Resource consent Application are non-complying; but given the negligible weighting that is now appropriate for the Transitional District Plan, bearing in mind that the majority of the Proposed District Plan is operative by virtue of Decision of the Environment Court in December 2003, the latter should be afforded the greater weight in considering this application.
- [18] Rule 8.2.2.2(i), which is part of the operative part of the Partially Operative District Plan renders the construction of buildings a controlled activity; and under Rule 8.2.2.3 earthworks within the Rural Residential Zone are a discretionary activity.
- [19] The earthworks effects have been assessed by Mr Girvan the CivicCorp Landscape Architect who provided a report to Ms Klitscher, the CivicCorp

planner for this matter and by Mr Hesseling, the CivicCorp Engineer who provided a report to Ms Klitscher.

[20] Mr Girvan found that:

A total volume of 10,400m³ of earthworks is proposed for the site. This comprises of a total of 9,195m³ of cut and 1,205m³ of fill. These earthworks are proposed to form the building platforms and access ways throughout the residential development. The site's topography is generally flat with a general overlay of some gentle undulations formed through water movement over the site. I believe the proposed volume of earthworks when viewed in the context of the entirety of the development will be absorbed into the flat natural character of the site. To ensure this is the case, I believe the condition should be imposed that requires mounding to be formed with a shallow incline in order to avoid unnecessary steep lumpy areas reducing the present flat natural character. It should also be ensured areas are further spread to maintain the present flat natural character of the site.

(Paragraph 19)

[21] In relation to the earthworks, there are no relevant zone standards requiring compliance. Therefore regard can only be to any relevant site standards, of which the only one is 8.2.2.3(iv).

[22] The relevant assessment matters for earthworks are set out at Section 8.3.2(xiv)(page 8-17) of the Partially Operative District Plan. And the reports of Ms Klitscher, Mr Girvan, and Mr Hesseling, as well as the evidence of Messrs McDonald and Ferguson on behalf of the Applicant, indicate that with the suggested conditions by the CivicCorp personnel referred to in their reports, the earthworks proposed are in accord with assessment matters under that rule. I accept their collective assessment.

[23] The resource consent relating to the building platforms is guided by the plans attached to the Application as amended to locate the 52 building platforms as

per drawing 8635/1; and the applicant has offered a covenant to be placed on the title in relation to each building on the title which would prohibit any built development outside of the identified building platforms. A further covenant is offered by the applicant to prohibit any building coverage in excess of 600m² within each building platform.

- [24] The purpose of these restrictions is to ensure that the density of development within the zone does not exceed 15%. It is noted that the density of the development which will result from this proposal does not exceed that for development within a Rural Residential Zone (which in allotments greater than 8000m² in area provides for one residential unit per 4000m²). Thus, the 52 residential units proposed within the Zone are well below the potential density of 68 residential units.
- [25] The applicant has offered a suite of design controls which are set out in the application and I note the suggestions by Mr Girvan in paragraphs 15, 17, 18, 19, 21 and 22 of his report and I adopt and approve his suggested conditions as set out at the conclusion of that report.
- [26] Mr Ibbotson on behalf of the applicant in his submissions (paragraph 7.4-7.6) indicated the applicant's acceptance of Mr Girvan's views. I note that the application indicates that the design controls will be covenanted against the parent title to ensure that the leaseholders comply. It seems to be there must be some condition that requires those provisions to be incorporated by reference, or perhaps by express agreement, into the proposed leases. There should be a condition to this effect, and I invite the applicant to provide a suggested wording to CivicCorp for approval (on which it can take the requisite legal advice) – this is to be a condition of the consent.
- [27] The relevant considerations concerning earthworks are set out at 8.3.2(xiv)(1)-(5)(page 8-18). I am of the view that the conditions suggested by the Applicant, as supplemented by the CivicCorp personnel, mean that the effects of the earthworks will be no greater than minor and not contrary to the relevant plan provisions.

- [33] The submissions articulated by Mr Todd were by the Council in its own right, and as owner of the airport. He raised a number of pertinent issues relating to the unusual nature of the leasehold interests which were to be offered by the Applicant to circumvent the provisions of the Resource Management Act 1991 relating to subdivision (and thereby avoid the effect of the provisions of the aforementioned covenant), the permitted baseline and the history relating to the zoning of the subject site. He also raised a number of concerns held by the Council relating to other aspects of the application concerning landscaping, access, water/sewerage, disposal of effluent on the site, servicing of the building platforms, among others.
- [34] He also addressed me on the status of the Application and referred to an opinion obtained by CivicCorp in relation to the applicability of Rule 8.2.2.2(i), with which he conceded agreement. He also called the evidence of Mr Johnson who gave evidence on behalf of the Wanaka Airport Management Committee who, among other things, described the circuit flown by aircraft approaching the Wanaka Airport, the overflying of the subject site, and some history of accidents which had occurred in the vicinity of the site and at the airport.
- [35] I also heard from Mr Verduyn on behalf of a number of parties including the Upper Clutha Environmental Society Incorporated, Pioneer Rafting, Clutha River Parkway Steering Group, Otago Fish and Game Council, among others. He was concerned specifically about the natural values relating to the Clutha River and its environs and referred to the "parkway" corridor concept, and referred me to a number of provisions which he said were relevant to deciding on the application. He also described to me the history of Pioneer Rafting and the tourism experiences which that provided on the unspoilt river environment.
- [36] The thrust of the submissions were on the whole, threefold. First the concerns relating to the proximity of the site to the Wanaka Airport and therefore the flying that occurred there and in its environs and approaches; as well as the fact of the Low Flying Area of which the airspace above the site comprised part, and the training of fixed wing and helicopters that occurred in the vicinity

- [28] Similarly, when considered against the Assessment Matters in 8.3.2(iii), the proposed buildings as subject to the design controls offered and subject to the suggested conditions of consent, and subject to the imposition of the covenant volunteered by the Applicant will not adversely affect the factors there set out.

Submitters

- [29] There were a substantial number of submitters to this proposal; as I have indicated they numbered 40, but I note that of those 40 a number were either companies or organisations representing a number of persons, as well as individuals. Thus, I recognise that the submitters are representative of a much larger grouping of individuals and interests.
- [30] I had the benefit of detailed evidence by way of submission from Mr Taylor who is a long time resident of Wanaka and had been involved in community bodies during the past few years. He was able to provide me with a good deal of information about flying activities which occurred over and around the subject site, with particular relevance to issues such as noise and safety.
- [31] I also heard from Mr Peter Rhodes on behalf of Aviation Systems Safety & Training who addressed the air movements and training around the site, as well as a covenant currently on the title for the subject land relating to subdivision, and the 20/20 workshop relating to, among other things, long term planning for the Wanaka Airport. He kindly provided me with relevant maps relating to the LFA already referred to.
- [32] Mr Blake, solicitor, appeared on behalf of a number of parties who were submitting against the application and identified his submissions with those made by the law firm Russell McVeagh on behalf of Dr R L Congrieve and the Congrieve Family Trust, and submissions which were made by Mr G Todd, solicitor, on behalf of the Queenstown-Lakes District Council.

of the site. Second, there was the concern expressed by a number of submitters that the resource consent was contrary to the restricted covenant registered against the title, apparently entered into by the applicant (or a predecessor of the applicant) in favour of the airport (and therefore the Council), that the subject-land should not be subdivided into more than three separate allotments with one dwelling on each allotment (the covenant dated evidently 5 June 2001). Thirdly, concerns in relation to the effect upon the conservation and tourism features of the Clutha River which is immediately to the south of the subject site.

- [37] I was also provided on the morning of the hearing with a letter of submission from Russell McVeagh as referred to above on behalf of their stated clients, as well as a statement of evidence by Mr J W Hollows on behalf of the Otago Fish and Game Council.
- [38] To deal with each one in turn. First, the imposition of a Rural Residential Zone in this location by consent, given the concerns expressed by the numerous aviation interests and particularly helpfully by Mr Rhodes at the hearing is very surprising. However, it does seem that the Zone was put in place virtually unchallenged, and has been confirmed by a Consent Order. The minor error relating to the extent of the Zone (as referred to earlier in this Decision) is easily remediable under the provisions of the RMA and is not a fatal defect in my view; and is not something that is within my power to deal with.
- [39] More importantly, the Rural Residential Zone is in place and is part of the Partially Operative District Plan and I must apply that. A great many of the submissions relating to the considerations concerning air traffic are effectively a questioning of this zoning. It is not within my power to entertain those considerations, however much those submissions appear to be cogent, compelling and raise serious concerns.
- [40] The second consideration, relating to the covenant, is not un-associated with the first. It may well be that the existence of the covenant had the effect of persuading the parties who might otherwise have objected to the zoning of this

land to withhold embarking upon what might have been a lengthy and costly involvement in Environment Court proceedings. However that may be, the covenant is an issue which is not amenable to any decision I have power to make. The applicant has carefully crafted its application in order not to offend against the letter of the covenant by subdividing the land. By proposing to provide leases of the length set out in the application, the applicant is in compliance with the Resource Management Act 1991 (as amended). Whether there will be a market for such leases is no doubt something the applicant has taken into consideration.

- [41] However that may be, I see no basis on which I can investigate that covenant, nor is there anything on the face of this Application which offends against that. Accordingly, I have to place that matter to one side.
- [42] In relation to the third issue, a number of submitters raised concerns about the effects upon the Clutha River, in particular Mr Verduyn on behalf of himself and the other interests I have previously referred to. Those concerns relating to the environment and the river are encapsulated in points 4 and 5 (pages 6 and 7) of Miss Klitscher's report.
- [43] As has been noted in Mr Hesselings' report, it is proposed that there will be the construction of at least 1750 metres of six metre wide roading; with the total volume of earthworks proposed being 10,400 m³, with the fill to be removed from the site.
- [44] I agree that the effects of the earthworks will be less than minor, and there is nothing to indicate that if a suitable site management plan is put in place (as seemed acceptable to the applicant – see Mr Ferguson's evidence at paragraph 78), there is no reason to suppose that the environment will not be protected.
- [45] Understandably, there are concerns about the visual effects on environmental and recreational values, but these have again to be seen in the context of the zoning for this site, which sets a low threshold for the applicant to overcome. There is nothing in the Application that indicates that the required standards