

## Memorandum

**Date** 26 July 2018  
**Matter no.** 2010  
**To** Hearing Commissioners, Hearing Stream 14, District Plan Review  
**From** Warwick Goldsmith  
**Subject** Submission 526 by Michaela Meehan

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1. This Memorandum is lodged on behalf of Michaela Meehan in respect of S526 following the hearing on 17 July 2018, in response to the Directions of the Commission.

### Previous consent decisions

2. The following consent decisions accompanying this Memo:
  - a. RM080323 Littles Ridge Limited
  - b. RM120007 Redemption Song LLC
  - c. RM120433 M W Meehan
  - d. Environment Court Consent Order dated 25 July 2013 which resolved an appeal against RM120433.
3. RM080323 is included because it consented three Residential Building Platforms (RBP's) located within the ONL on the Redemption Song property west of the Meehan property, and because that consent established a consented baseline for the subsequent RM120007.
4. MR120007 dated 25 May 2012 effectively replaced RM080323. RM120007 granted land use consent for two dwellings located within the ONL in the locations shown by the two red dots on Mr Baxter's Attachment A. The following aspects of RM120007 are potentially relevant to this hearing:
  - a. Paragraph 16 records that the proposed 'Pond House' has a ground floor area of 531m<sup>2</sup>;
  - b. Paragraph 17 records that the 'Saddle House' has a ground floor area of 473m<sup>2</sup>;

- c. Paragraph 26 records proposed *"Earthworks (apart from the carpark) are to cover an area of 28,068m<sup>2</sup>, and include 2,600m<sup>3</sup> of stripping, 17,646m<sup>3</sup> of cut and 13,417m<sup>3</sup> of fill ..."*
5. In respect of RM120433, the following aspects are potentially relevant to this Hearing:
- a. The applicant sought to amend the location of the ONL boundary (being the same ONL boundary, and to the same extent, as the proposed ONL boundary relocation subject to this Hearing). The Hearing Panel determined that it did not have jurisdiction to relocate the ONL boundary and that any such relocation would require a Schedule 1 plan change process (refer paragraphs 22-41).
- b. The application sought land use consent for two building platforms on the Meehan property. Consent was refused for both dwellings.
- c. The decision contains the following paragraphs 96 and 149:

*"96 We find that the effect of granting consent to each building platform would be to allow a form of development consistent in large part with that which has occurred on the Northridge development to the east such that development on Lot E, whether on one of the building platforms or on both, would appear to be a part of a wider Northridge development."*

*"149 In coming to this conclusion we have considered each of the three applications separately. While each of RBP<sub>1</sub> and RBP<sub>2</sub> have different effects on the environment, each, either separately or in combination with the other, would be disruptive of the landscape values the site contributes to the outstanding natural landscape ..."*

- d. A brief reference to the earlier Redemption Song consents in paragraph 120 states:

*"The Redemption Song site has two sets of three consented building platforms, of which either set could be developed. Each of those building platforms is sufficiently distant from the applicant's site and visually separated so as not to compromise the overall landscape values ..."*

That consideration address visual aspects only. There is no reference to effects on other characteristics of an ONL, such as the very extensive earthworks required to implement the two consented Redemption Song ONL houses, and the effects those earthworks might have on the natural ONL characteristics of the Redemption Song land.

6. The RM120433 refusal of consent was appealed. The appeal was resolved by the attached Consent Order dated 25 July 2013 which granted consent for one RBP (the other having been withdrawn). The RBP consented under that Consent Order was the westernmost of the two RBPs refused consent by Council. That consented RBP is the westernmost blue dot shown on Mr Baxter's Attachment A. Attached to this Memorandum marked "A" is a copy of part of Mr Baxter's Attachment A which includes a small black cross which identifies

the location of the second RBP (in respect of which consent was refused and no appeal was pursued).

7. If one considers the previous paragraph, plus the two paragraphs 96 and 149 of RM120433 quoted above, I submit that it must reasonably be concluded that the effects anticipated by those two paragraphs will flow from development of the RBP authorised by RM120433. That must be directly relevant to consideration of the appropriate location of the ONL boundary.
8. It will be clear from the previous paragraph that RM120007 consented two very large houses plus a very significant amount of earthworks necessary to enable those two houses to be constructed. Those factors, in combination, must significantly affect the pre-existing natural character of the area of land in question.
9. The Commission is reminded that, in Decision No. C3/2002, it was the mere presence of the consented houses which caused the Environment Court to locate the ONL boundary so as to exclude those consented houses from the ONL. It was not specifically the visibility characteristics of those houses or the effect of those houses on the natural landform or the vegetation associated with those houses or any other particular factors. It was the mere presence of those houses. That is a relevant consideration, when taking into account the fact that there are now three additional consented houses located in the current ONL west of the current ONL boundary.

#### **Decision No. C3/2002 – Ralf Kruger’s ONL boundary**

10. The Council has managed to source a copy of the original Decision No. C3/2002 from the Environment Court. Counsel understands that it has been forwarded to the Commission.

#### *Small RLC area*

11. If the ONL boundary is relocated as requested in S526, the consequence would be a small area of RCL Rural zoned land located between the large ONL Rural zoned land to the west and the Wakatipu Basin WBRAZ to the east. That consequence led to some questions from Commissioner Smith. Those questions are responded to as set out below.
12. A question was asked as to whether there would be jurisdiction to extend the WBRAZ to incorporate that small area of land. Counsel records the submission made that there is no jurisdiction under the Stage 2 Variation to extend the WBRAZ beyond the boundary of the land that is subject to the Stage 2 Variation as notified.
13. A question was asked as to whether creating a small RCL area would cause problems with administration of the District Plan. In response:
  - a. The primary response is that the determination of an ONL and its boundaries is a matter which must be determined prior to consideration of relevant objectives, policies and rules. That is well established in relevant case law. It is not appropriate to reverse the process and determine the ONL boundary by reference to consequences which would

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arise under relevant objectives, policies and rules (many of which are not yet settled). If the consequence of determination of an ONL boundary is a small area of RCL land, then that consequence must be dealt with through the District Plan.

- b. The District Plan contains objectives, policies and rules relating to RCL land. There is no requirement for an area of RCL land to be a certain size in order to be able to be dealt with under the District Plan regime. There is no reason to suggest that any problem would arise in respect of administration of the District Plan.
- c. The practical reality is that the ONL boundaries are determined on the basis of the appropriate considerations and the zone boundaries are determined on the basis of (a different set of) appropriate considerations. While the ONL boundaries often coincide with zone boundaries, that is not always the case. Attached to these Submissions marked A1-A6 are copies of parts of some of the Stage 1 determined Planning Maps with black circles around small areas of RCL land located between an ONL boundary and a zone boundary. Those extracts were located through a brief search which was not exhaustive. There may be other examples. The point is that the situation is relatively common and that the District Plan has to deal with it.
- d. In light of a.-c. above I submit that this is not a factor which can or should count against relocation of the ONL boundary.

#### *Extension of relevant Landscape Character Units (LCU's)*

14. A question was asked as to whether or not relocation of the ONL boundary would or should result in extension of either or both of the adjoining LCU's, and if so, which LCU's should be extended. In response I make the following points.
15. The LCU's are a fundamental part of the Stage 2 Variation and only apply to the part of the Wakatipu Basin which is subject to the Stage 2 Variation. I submit there is no jurisdiction to extend the LCU's, on the same basis that there is no jurisdiction to extend the WBRAZ.
16. Even if there is jurisdiction to extend the LCU's, I submit there would be little point in doing so. The LCU's are only referenced in Chapter 24. They are not referenced in Chapter 21. The consequential area of RCL land (if the ONL boundary is relocated) will be dealt with under Chapter 21, not Chapter 24, in the event of a consent application. It is therefore difficult to see how an extension of the relevant LCU's would be of any assistance.
17. Having reviewed LCU's 1 and 2, I submit that there would be no need for any consequential changes if the ONL boundary is relocated as requested.
18. The Commission requested Mr Baxter to prepare a short Statement advising which of the two relevant LCU's 1 and 2 should be extended if either or both were to be extended. In response:
  - a. On reflection, Counsel submits that this is a legal issue rather than a landscape issue.

**Warwick Goldsmith**

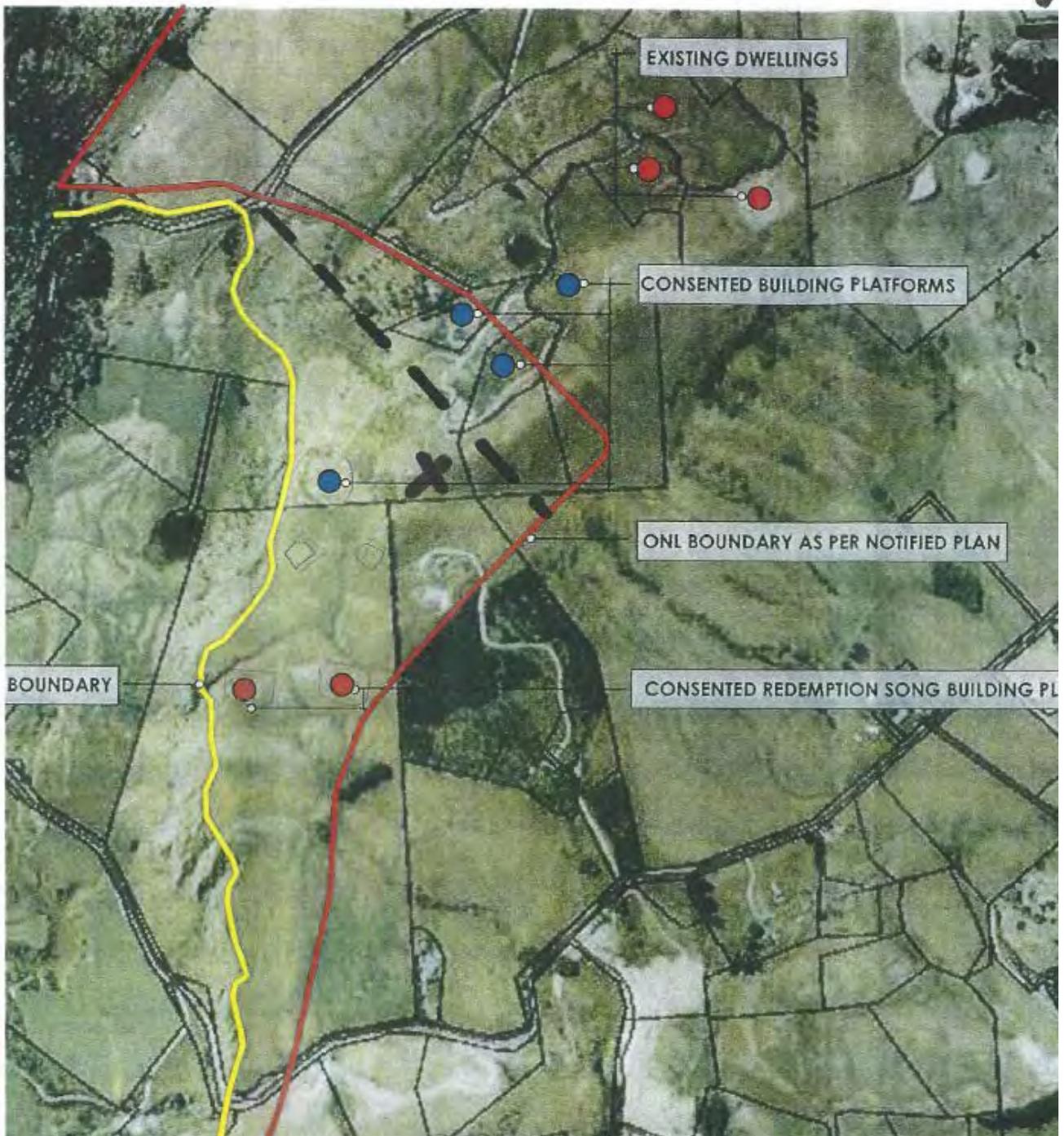
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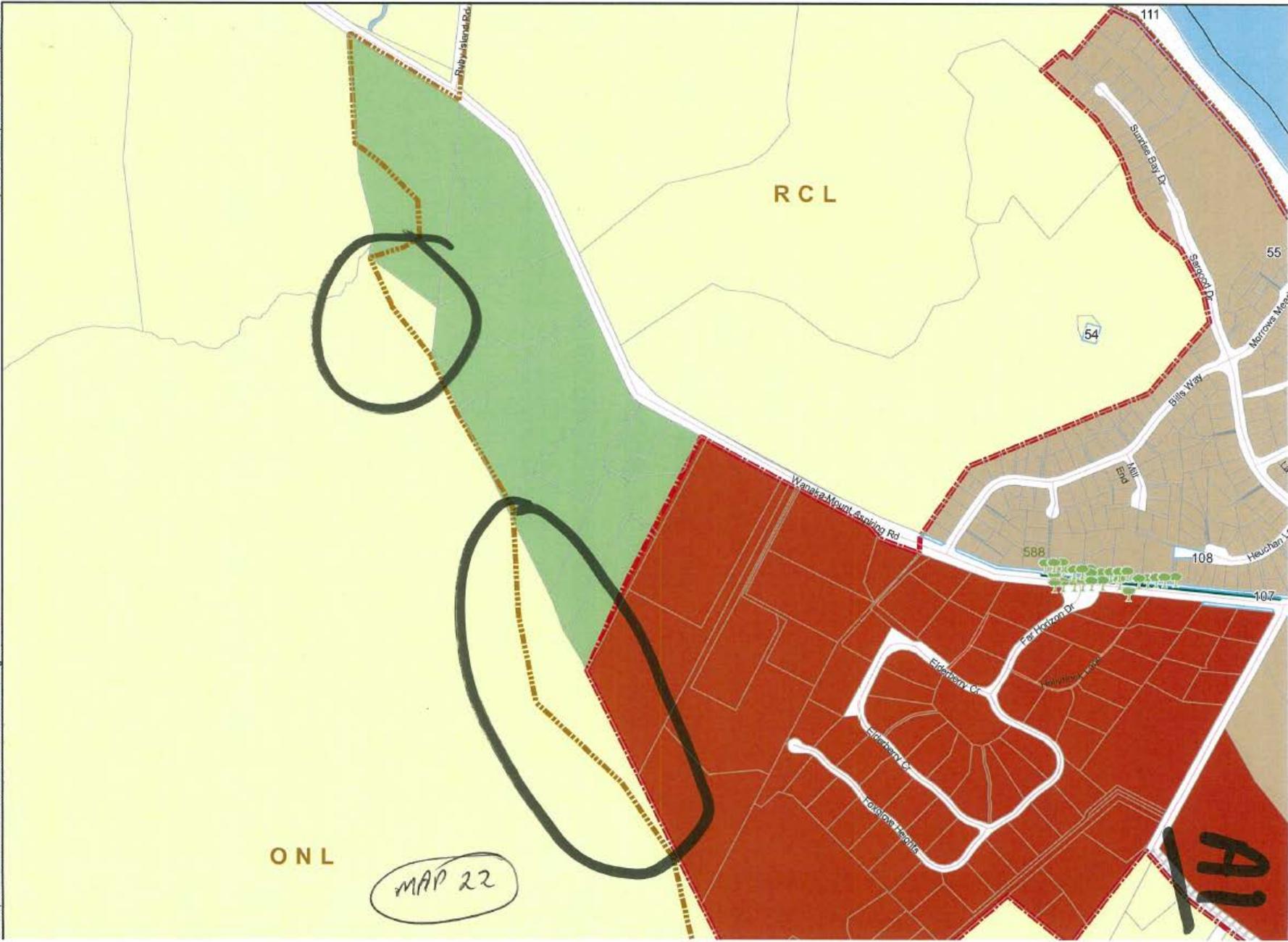
- b. For the reasons detailed above, Counsel submits that any LCU extension is both unnecessary and inappropriate.
  
- c. If the previous submission is not accepted, and the Commission decides that either or both of LCU's 1 and 2 should be extended, then the answer to the question is obvious. LCU 1 relates to Malaghans Valley. LCU 2 relates to Fitzpatrick Basin. The dividing line is the crest of North Ridge. That crest runs right through to the top of the steep western escarpment. The area subject to the LCU extension is very small (compared to the size of the two LCU's). The dividing line between LCU 1 and LCU 2 would have to be extended along the crest of North Ridge to the edge of the escarpment. Land north of the ridge would be part of LCU 1 and land south of the ridge would be part of LCU 2. Essentially both LCU's would be extended by a very small amount. That is the only outcome which would fit the detailed descriptions of LCU 1 and LCU 2 in Schedule 24.8.



**Warwick Goldsmith**  
Barrister  
Counsel for Michaela Meehan

**Dated 26 July 2018**

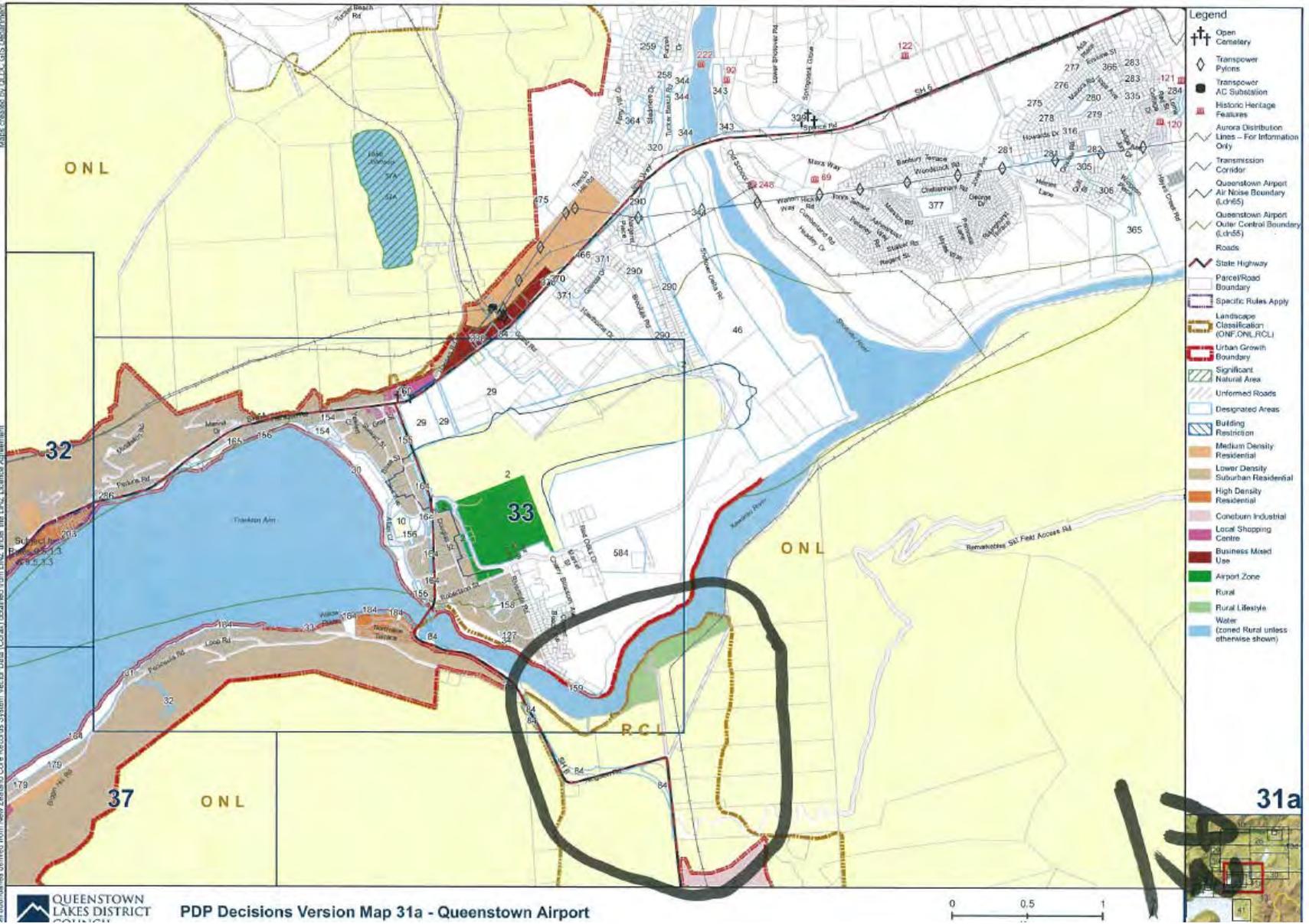


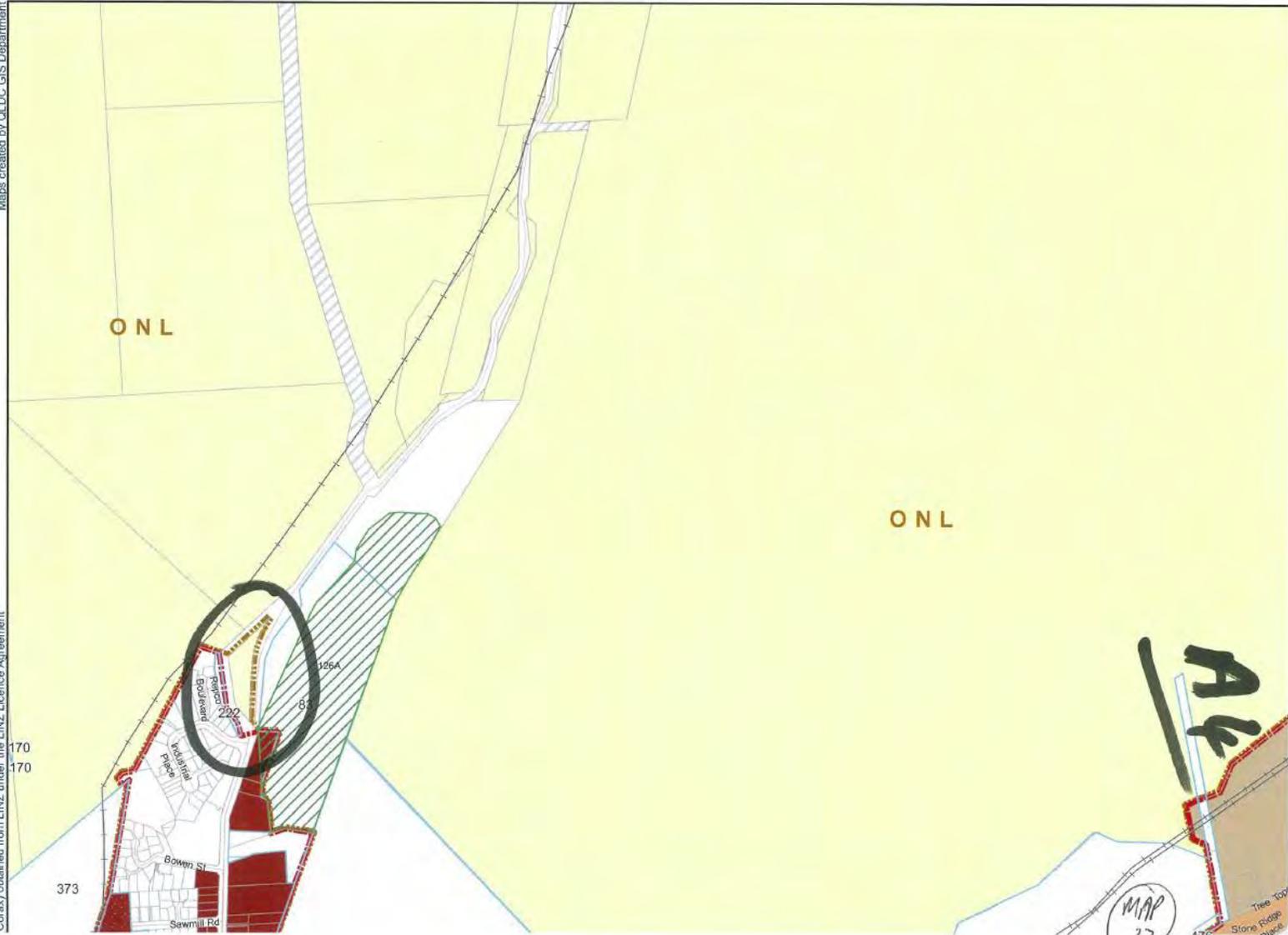




Maps created by QLIC GIS Department

all boundaries derived from New Zealand Core Records System Vector Data (Corau) obtained from LINZ under the LINZ Licence Agreement

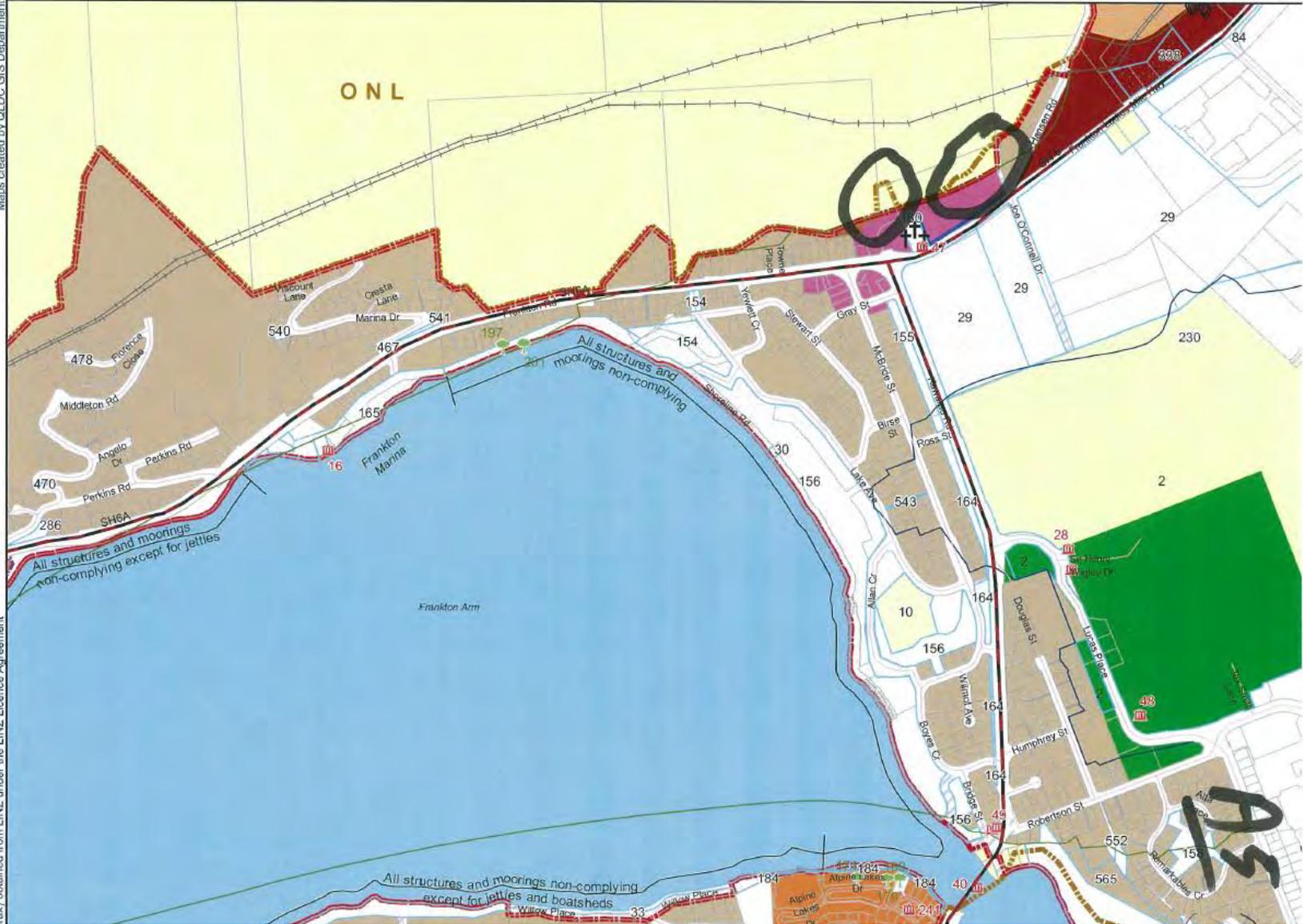




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**DECISION OF QUEENSTOWN LAKES DISTRICT COUNCIL**

**RESOURCE MANAGEMENT ACT 1991**

<b>Applicant:</b>	<b>REDEMPTION SONG LLC</b>
<b>RM Reference:</b>	RM 120007
<b>Location:</b>	Little's Road, Wakatipu Basin
<b>Proposal:</b>	Subdivision consent for a two lot subdivision, the identification of three residential building platforms and earthworks; and land use consent to construct three dwellings and to exceed the access gradient standard
<b>Type of Consent:</b>	Subdivision consent & Land use consent
<b>Legal Description:</b>	Part Country Section 29 Block XIX Shotover Survey District and Sections 28 & 30 SO 328674
<b>Valuation Number:</b>	2907108901
<b>Zoning:</b>	Rural General
<b>Activity Status:</b>	Non-complying activity & Discretionary activity
<b>Notification:</b>	25 January 2012
<b>Commissioners:</b>	W D Whitney & L Cocks
<b>Date of Decision:</b>	25 May 2012
<b>Decision:</b>	<b>Consent granted subject to conditions.</b>

## **A. INTRODUCTION**

### **A.1 Background**

1. Redemption Song LLC has applied to the Queenstown Lakes District Council for subdivision consent for a two lot subdivision, the identification of three residential building platforms and earthworks; and for land use consent to construct three dwellings and to exceed the access gradient standard. The subject site has frontage to Littles Road and is located approximately 600 metres to the east of Malaghans Road in the Wakatipu Basin. The site is described as Part Country Section 29 Block XIX Shotover Survey District and Sections 28 and 30 SO 328674 as held in Computer Freehold Register Identifier OT 58/178 Part-Cancelled in the Otago Land Registration District.
2. The subject site has an area of 48.9123 hectares more or less. The subject site includes the southern portion of the landform known as Littles Ridge which has been described as a ridge of rock shaped like a “long spiny-backed lizard” by the Environment Court in Wakatipu Environmental Society Inc v QLDC Dec C3/2002.
3. The subject site encompasses three reasonably distinct areas. The first is the southern face which slopes reasonably steeply from south to north and also from east to west. This area rises from Littles Road and comprises, in the main, open pasture albeit that an old pine shelterbelt and a clump of willows are present on the higher slopes. The second area encompasses the rolling top of the ridge where distinct steeply sided knolls are interspersed with valleys and small flattish areas declining, overall, to the north. The vegetation in this area is mostly pasture with some indigenous grasses and wetland plants. The third area encompasses a strip occupying the western most third of the site and is the location of the cliffs which fall from the ridge to the bottom of the Arthurs Point Basin. This area includes some indigenous scrub and woody exotic weeds. The site boundary encompasses a narrow strip of more level land at the foot of the cliffs.

### **A.2 Planning History**

4. Land use consent RM 060914 was granted subject to conditions on 21 March 2007. RM 060914 authorised the construction of a dwelling, the formation of an access and

earth mounds and other associated works on the subject site. This consent was not implemented.

5. Subdivision and land use consent RM 080323 was granted subject to conditions on 17 June 2009. RM 080323 authorised a four lot subdivision (to be held in three titles), the identification of three building platforms and the construction of three dwellings on the subject site. Consent was also granted to undertaken earthworks to create mounding and access and to install various services. One of the building platforms consented under RM 080323 was previously granted consent under RM 060914.
6. The Commissioners' decision on RM 080323 at paragraph 7 records that if consent were granted to RM 080323, the then applicant would surrender RM 060914. It appears that such formal surrender has never occurred. The Commission simply records that RM 060914 has been subsumed within RM 080323; and that RM 060914 will now have lapsed.
7. RM 080323 is of particular relevance to the current proposal as it establishes a consented baseline. The applicant has advised that RM 080323 (and RM 060914) will be surrendered in the event that consent is granted to the current application. The Commission acknowledges that if consent were not granted to RM 120007 then subdivision and development could occur as authorised by RM 080323.

### **A.3 The Proposal**

8. Subdivision consent is sought to subdivide the property into two allotments as shown on the Aurum Survey plan 3249-10R-1B dated 19 December 2011 and revised on 1 May 2012 (the plan of subdivision) which was presented at the hearing.
9. Lot 1 has an area of 3.804 hectares and contains two residential building platforms for future dwellings referred to as the "Pond House" and the "Saddle House" on the plan of subdivision. Lot 2 has an area of 45.108 hectares and contains a residential building platform for the "Barn House".

10. Access to Lot 1 and Lot 2 is to be achieved from an existing entrance to Littles Road that is located close to the eastern boundary of the subject site. Lot 1 will achieve access to Littles Road via right of way A over Lot 2.
11. The plan of subdivision identifies curtilage areas adjacent to the residential building platforms (being the dwelling footprints) on Lot 1 and Lot 2. Easements are proposed for services.
12. The plan of subdivision also identifies a right of way for a carpark (identified as E) and a right of way easement for walking and mountain bike use (walkway) adjacent to the western and south-western boundaries of the site (identified on the plan of subdivision as D).
13. The Commission notes that the Pond House on Lot 1 approximates the location of the consented dwelling on Lot 2 RM 080323. For completeness it is noted that the dwellings on Lot 1 and Lot 3 RM 080323 were located further to the north, beyond the boundary of Lot 1 as shown on the [current] plan of subdivision.
14. The Commission acknowledges that Lots 1 and 2 are to be subject to a covenant (consent notice) that prevents future subdivision.
15. Land use consent is sought for the three dwellings and to construct the access which in part exceeds a gradient of 1:6.
16. The Pond House is referred to in the application as a guest dwelling and has a ground floor area of 531m<sup>2</sup>. The Pond House contains five bedrooms, five bathrooms, a kitchen, a scullery, gymnasium and plant room. This building stands 4.2 metres in height above excavated ground level and has a roof to be covered with earth and vegetation.
17. The Saddle House is to be nestled into a low saddle to the east of the Pond House. The Saddle House is described in the application as an owners dwelling. The Saddle House essentially recreates the saddle landform by removing the ground and replacing it with built form, then regrading and planting the roof and surrounding slopes to restore the saddle when viewed from a distance. The Saddle House has a

ground floor area of 473m<sup>2</sup> and a maximum height of 4.2 metres above the excavated ground level.

18. The Barn House is described in the application as a manager's residence. It was confirmed at the hearing that the applicant's intention is that Lot 2 be transferred to a charitable trust to facilitate ecological restoration and land management. This is why the Barn House is referred to as a "manager's residence" albeit that the Barn House will not be held in the same title as the dwellings on Lot 1.
19. The Barn House is to be located approximately 125 metres from Littles Road (as scaled off the plan of subdivision) in the south-eastern corner of Lot 2. The Barn House has a ground floor area of 157m<sup>2</sup> and an upper floor area of 84m<sup>2</sup>. The Barn House stands 6.65 metres above excavated ground level. The exterior of the Barn House is to be painted in a recessive colour with a light reflectivity of less than 36%; such colour to be within the tones of greys and browns. The Barn House is to be partially screened by natural landform, enhanced landform and planting including a shelter belt extension adjacent to Lot 2 DP 22657 being the Nagy property that is located immediately to the east of the subject site.
20. The Commission acknowledges that a full description of the proposed buildings and their curtilages is contained in the document entitled "Redemption Song Ecological Restoration and Design Report" attached as Appendix B to the Assessment of the Effects of the Environment (AEE) and in architectural plans that were attached to the AEE at Appendix C.
21. As noted above curtilage areas have been identified around each of the buildings. All outdoor activities associated with residential use are to be contained within these curtilage areas. It was noted at the hearing that the curtilage areas should be adjusted to terminate at the highest retaining wall structure located within mounding to the east of the Saddle House.
22. The applicant proposes to manage land outside the curtilage areas in two ways. Part of the land is to be ecologically restored in accordance with the Redemption Song Ecological Restoration and Design Report; with details to be finalised in the context of

a management plan. The remainder of the site is to be managed as grazing land. Fencing will be restricted to traditional post and wire only.

23. The Commission acknowledges that extensive ecological restoration is proposed to be undertaken as part of the proposal, including restoration, conservation and preservation. The applicant has advised that this includes the restoration of 19.7 hectares of land as follows:

- Restoring native vegetation and ecological processes on the undulating terrain of the site's perched terraces, ledges and crevices of the western cliffs; and open tussock grassland remaining on the northern rocky outcrops.
- Conserving 13.3 hectares of land by protecting and maintaining the diversity of habitat and niches provided on the sheer cliff face to the west.
- Preserving the pastoral character of 17.6 hectares of land.

24. The ecological restoration project is fully described in the Redemption Song Ecological Restoration and Design Report – Appendix B to the AEE.

25. Earthworks are proposed in conjunction with the subdivision and development as shown on a plan prepared by Aurum Survey being plan 3249-6E-1D dated 8 August 2011 and revised on 19 December 2011. The Commission notes that additional earthworks will also be required to form the carpark adjacent to the western boundary of the site as detailed in the Aurum Survey Plan 3249-6E-8A dated 1 April 2012 that was tabled at the hearing.

26. Earthworks (apart from the carpark) are to cover an area of 28,068m<sup>2</sup>; and include 2600m<sup>3</sup> of stripping, 17,646m<sup>3</sup> of cut and 13,417m<sup>3</sup> of fill. The balance fill will be disposed of at an approved fill site within the Wakatipu Basin.

27. The applicant proposes to construct a public walkway along the base of the cliffs that will link the walkway over Littles Stream land (on the opposite side of Littles Road from the eastern extent of the walkway as shown on the plan of subdivision) with properties towards Malaghans Road. The applicant has noted that the walkway has the potential to be extended should the adjoining properties be developed in the future. It is noted in this context that the walkway has connections to the boundaries with Part Section 23 and Part Section 28 Block XIX Shotover Survey District. The applicant also

proposes to construct a carpark in conjunction with the walkway adjacent to the western boundary of the site which is to have sufficient space to accommodate five carparks.

28. Servicing is detailed in the engineering report prepared by Hadley Consulting Limited attached as Appendix I to the AEE. Domestic water is proposed via existing reticulation as part of the Littles Stream Water Company (LSWC) and this is to be supplemented with a further bore supply on site. The LSWC supply will serve the Barn House and the bore supply will serve the Pond House and the Saddle House. It is proposed that all drinking water undergoes filtration and UV treatment prior to reticulation. Roof rainwater may also be collected albeit that such collection will be limited at the Pond House and Saddle House, given that the roofs of these dwellings will be covered in earth and vegetated.

29. Independent sprinkler systems are to be installed in each of the dwellings. The pond (tarn) is to be restored between the Saddle House and the Pond House and this is also proposed as an open static fire-fighting water supply that will comply with suction source requirements.

30. Each of the dwellings is proposed to dispose of wastewater by on-site treatment including a secondary treatment process and sub-surface disposal system. It is proposed that each dwelling will have a separate system, albeit that the Pond House and the Saddle House will share trenching and adjacent disposal beds.

31. The Commission confirms that it has assessed the proposal on the basis of the application as lodged; the further information provided on behalf of the applicant by Mr Vivian of Vivian + Espie Ltd in an email dated 5 January 2012 and in correspondence dated 23 March 2012; and in terms of the conditions offered by the applicant at the hearing.

#### **A.4 Zoning**

32. The site is located in the Rural General Zone as shown on Maps 29 and 31 of the Queenstown Lakes District Plan (the District Plan) which became fully operative on 10 December 2009.

33. Rule 15.2.3.3(vi) confirms that subdivision and the location of residential building platforms within the Rural General Zone is a discretionary activity. In this instance however the subdivision is a non-complying subdivision activity in terms of Rule 15.2.3.4(i) as Rule 15.2.6.3iii(b) is breached due to two residential building platforms being located on Lot 1. This Rule (Zone Standard) states as follows:

**“15.2.6.3 Zone Subdivision Standards – Lot Sizes and Dimensions**

*Any subdivision of land that does not comply with any one or more of the following Zone Standards shall be a **Non-Complying Subdivision Activity**.*

...

**iii Building Platforms – Rural-General, Rural-Lifestyle, Gibbston Character, Bendemeer (Activity Areas 1-8 only).**

...

**(b) In the Rural General (and Gibbston Character) Zones**

*Every allotment created shall have **one** Residential Building Platform approved at the time of the subdivision of not less than 70m<sup>2</sup> in area and not greater than 1000m<sup>2</sup> in area, ...”*

34. The subdivision is therefore a non-complying activity.

35. The proposed subdivision is a restricted discretionary activity in terms of Rule 15.2.3.3(i) as the subdivision does not comply with Rule (Site Standard) 5.3.5.1viii1(a)(b) and 2(b) and (c) in regard to the maximum volume of 1000m<sup>3</sup> of earth moved within a 12 month period over an area of 2500m<sup>2</sup> and in terms of the nature of cuts and fills. A total volume of 33,663m<sup>3</sup> of earthworks is proposed over a total area of 28,068m<sup>2</sup> for the construction of the access, building platforms and mounding associated with the subdivision, in addition to earthworks required for the walkway carpark. Maximum cuts and fills are 5.2 metres and 5.5 metres respectively and the cuts are almost vertical where they adjoin the buried houses.

36. Rule 5.3.3.3i(a) provides for the addition, alteration or construction of any building and any physical activity associated with any building such as roading, landscaping and earthworks as a discretionary activity. In this instance a dwelling and associated roading (access), landscaping and earthworks are proposed. The land use activity has status as an unrestricted discretionary activity in terms of Rule 5.3.3.3.i(a).

37. Rule 14.2.4.2iii(a) confirms that the maximum gradient for any private way used for vehicle access shall be 1 in 6. A breach of this Site Standard is a discretionary (restricted) activity in terms of Rule 14.2.2.3ii.

38. The Commission has therefore considered the proposal as an application for subdivision consent to a non-complying activity and for land use consent to a discretionary activity.

## **A.5 Submissions**

39. The application was publicly notified on 25 January 2012 and three submissions were received by the closing date of 23 February 2012. A submission from Jim Turrell was withdrawn on 2 May 2012 and has not been considered by the Commission.

40. Submissions from Little Stream Limited and Winton Partners New Zealand Limited were lodged in support of the application and sought conditions of consent. The Commission has given consideration to the contents of these submissions.

## **A.6 Reports and Hearing**

41. We had the benefit of a planning report from Mr David Wallace, a Planner with Lakes Environmental Limited; a Landscape Assessment report from Dr Marion Read, the Principal : Landscape Architecture with Lakes Environmental Limited; and an engineering report from Ms Lyn Overton, an Engineer with Lakes Environmental Limited. At the hearing we were assisted by Mr Wallace, Dr Read and Ms Overton. Ms Rebecca Willey the Committee Secretary at Lakes Environmental Limited provided administrative support at the hearing.

42. We have had the opportunity to consider the application and supporting material including further information filed by the applicant together with the contents of the submissions as provided to us prior to the hearing. In the company of Mr Wallace we made a site inspection on the morning of Thursday 3 May 2012.

43. At the hearing the applicant was represented by Mr Graeme Todd, counsel; Mr Ben Espie a landscape architect and Principal of Vivian + Espie Ltd; Mr Carey Vivian a

resource management planning consultant and Principal of Vivian + Espie Ltd; Mr Antony White a Registered Professional Surveyor and Principal of Aurum Survey Consulting Ltd; Ms Dawn Palmer an ecologist and environmental consultant with Natural Solutions for Nature Ltd; Sarah Scott the Principal Architect of Sarah Scott Architects; and Ms Anne Salmond the Principal Architect at Salmond Architecture.

44. Mr Goldsmith appeared as counsel for the submitters being Little Stream Limited and Winton Partners New Zealand Limited.

45. The planning, landscape and engineering reports were taken as read and Ms Overton, Dr Read and Mr Wallace were invited to comment following the presentation of submissions and evidence. Following Mr Todd's reply the hearing was adjourned.

#### **A.7 Principal Issues in Contention**

46. The principal issues in contention before us were the effects on the environment of allowing the subdivision and land use activity having regard to the effects of activity permitted in terms of the consented baseline.

### **B. EFFECTS ON ENVIRONMENT**

#### **B.1 Permitted and Consented Baseline**

47. Farming activities within the site are permitted. Other permitted activities that could occur on the site include buildings not exceeding 5m<sup>2</sup> in area and 2 metres in height; viticulture, market gardening, planting of exotic tree species, gardens and fencing; and any other activities that meet the standards which apply in the Rural General Zone and which are not otherwise listed.

48. Section 104(2) of the Resource Management Act 1991 (the Act) states that the consent authority may disregard an adverse effect of an activity on the environment if the plan permits an activity with that effect.

49. The consented baseline includes the subdivision and development authorised by RM 080323. This includes three dwellings, mounding for visual screening, services, access and curtilage areas associated with the dwellings on the upper portion of the

site. The subdivision and development consented under RM 080323 establishes a consented baseline that is relevant when assessing the effects of the proposed activity.

## **B.2 Affected Persons Approvals**

50. No affected persons approvals have been provided.

## **B.3 Assessment Matters**

51. The District Plan contains assessment matters in Part 5, Part 14 and Part 15 that are relevant to subdivision and development in the Rural General Zone. Clause 5.4.2 confirms that in considering whether or not to grant consent or to impose conditions assessment matters contained in Clause 5.4.2 are to be addressed in addition to considering any other relevant matters.

52. Clause 5.4.2.1 advises that there are three steps in applying the assessment criteria. These include Step 1 – Analysis of the Site and Surrounding Landscape, Step 2 – Determination of Landscape Category and Step 3 – Application of the Assessment Matters.

53. The Environment Court in Dec C3/2002 categorised landscapes in the vicinity of the subject site. That decision found that approximately the south-eastern quarter of the site is part of a Visual Amenity Landscape (VAL) while the remainder of the site is part of an Outstanding Natural Landscape of the Wakatipu Basin (ONL(WB)). The landscape categorisation is shown at Appendix 8B – Map 2 Landscape Categorisation in the Wakatipu Basin as presented in the District Plan. Mr Espie and Dr Read accepted this classification for the purpose of their analyses.

54. The Commission assesses the proposal in terms of the assessment matters that apply to the ONL(WB) and the VAL along with other relevant assessment matters below.

## **ONL(WB) – Pond House and Saddle House**

55. Assessment Matter 5.4.2.2(1) contains assessment matters specific to the ONL(WB) that applies to that part of the site where the Pond House and the Saddle House are to be constructed. Each assessment matter stated in Assessment Matter 5.4.2.2(1) is presented in italics below, followed by the Commission's assessment of the proposal in terms of that matter, including our discussion of effects.

56. The opening paragraphs of Assessment Matter 5.4.2.2(1) state as follows:

*“These assessment matters should be read in the light of two further guiding principles. First that they are to be stringently applied to the effect that successful applications for resource consent will be exceptional cases. Secondly, existing vegetation which:*

- (a) was either
  - *planted after; or*
  - *self seeded and less than 1 metre in height at*
    - *28 September 2002; and**
  
- (b) obstructs or substantially interferes with views of the landscape (in which the proposed development is set) from roads or other public places*
  - *shall not be considered:*
    - (1) as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and*
    - (2) as part of the permitted baseline.*
  - *nor shall removal of such vegetation be considered as a positive effect of any proposal.”*

57. The Commission acknowledges that the assessment matters in Assessment Matter 5.4.2.2(1) are to be read in light of the above guiding principles.

*“(a) Effects on openness of landscape*

*In considering whether the proposed development will maintain the openness of those outstanding natural landscapes and features which have an open character at present when viewed from public roads and other public places, the following matters shall be taken into account:*

- (i) whether the subject land is within a broadly visible expanse of open landscape when viewed from any public road or public place;*
  
- (ii) whether, and the extent to which, the proposed development is likely to adversely affect open space values with respect to the site and surrounding landscape;*

- (iii) *whether the site is defined by natural elements such as topography and/or vegetation which may contain and mitigate any adverse effects associated with the development.”*

58. The subject site is split into two visual catchments by a ridgeline that bisects the site.

The northern and western portions are only visible from locations to the north of the site that include Arthurs Point, Mt Dewar, Coronet Peak and the Malaghans Valley. In essence these areas are in the ONL(WB) as is the top of the ridge which is also visible from the south and east (including the Fitzpatrick Bowl at Littles Road and land to the east including Lower Shotover Road). Both catchments (ONL(WB) and VAL) are widely visible open landscapes in the sense that there is little visible built form and few trees.

59. Given the design of the dwellings which involves excavation and the vegetation of roofs the Commission accepts Dr Read’s opinion that the proposed dwellings would have a small adverse effect on the open space values of the site and surrounding landscape. The Commission accepts the view of the applicant’s witnesses as supported by Dr Read that moving the Saddle House off the ridgeline would have significant adverse effects in terms of exposing development to views from the west.

60. The Commission also acknowledges, in the context of the openness of the landscape, the consented baseline established by RM 080323 that would result in three dwellings being located on the upper portion of the site in the ONL(WB).

*“(b) Visibility of development*

*In considering the potential visibility of the proposed development and whether the adverse visual effects are minor, the Council shall be satisfied that:*

- (i) *the proposed development will not be visible or will be reasonably difficult to see when viewed from public roads and other public places and in the case of proposed development in the vicinity of unformed legal roads, the Council shall also consider present use and the practicalities and likelihood of potential use of unformed legal roads for vehicular and/or pedestrian, equestrian and other means of access; and*
- (ii) *the proposed development will not be visually prominent such that it dominates or detracts from public or private views otherwise characterised by natural landscapes; and*

(v) *the proposed development is not likely to adversely affect the appreciation of landscape values of the wider landscape (not just the immediate landscape).*

(vi) *the proposal does not reduce neighbours' amenities significantly."*

61. The application is accompanied by visual simulations from various viewpoints in the Wakatipu Basin. The Commission has found these visual simulations and Mr Espie's exposition on several of these to be of a material assistance when considering the potential visibility of the proposed development and in assessing potential adverse visual effects.

62. In terms of Assessment Matter 5.4.2.2(1)(b)(i) the Commission is satisfied that the proposed development will be reasonably difficult to see when viewed from public roads and other public places.

63. The development will be visible from above on Coronet Peak Road and Skippers Road. Any such views will be seen in the context of other development which has occurred in the ONL(WB), including development which has occurred at North Ridge. Development consented under RM 080323 would also be visible from such viewpoints.

64. The use of mounding provides effective screening from any viewpoints from the north including Malaghans Road and Arthurs Point Road in the vicinity of the Coronet Peak Road intersection; and from the east from Littles Road and Fitzpatrick Road. Any distant views from the east will encompass other built development and the proposed development will be reasonably difficult to see in such distant views.

65. The Commission is satisfied that the proposed development will not be visually prominent such that it dominates or detracts from public or private views otherwise characterised by natural landscapes; and that the proposed development is not likely to adversely affect the appreciation of landscape values of the wider landscape (not just the immediate landscape).

66. The Commission also considers that the proposal does not reduce neighbours' amenities significantly. In this context the Commission acknowledges that the submission from Jim Turrell has been withdrawn and that Mr Turrell's dwelling is at

approximately the same elevation as the Pond House and the Saddle House. The Commission also notes in this context the consented baseline established by RM 080323 that would result in residential development being closer to the Turrell dwelling than is currently proposed.

67. A matter of relevance in the context of visibility is night lighting. Dr Read's Landscape Assessment noted that the Saddle House has the potential to detract from public and private views from the east when lit at night. The Commission acknowledges in this context that Mr Wallace has observed that several other houses exist that would be prominent when lit at night in the same view path from public and private places to the east. As noted above the Turrell dwelling is located at about the same elevation as the Saddle House and the Commission is satisfied that lighting from the Saddle House is unlikely to have an adverse effect that is greater than minor when viewed at night.

*“(c) Visual coherence and integrity of landscape*

*In considering whether the proposed development will adversely affect the visual coherence and integrity of the landscape and whether these effects are minor, the Council must be satisfied that:*

- (i) structures will not be located where they will break the line and form of any ridges, hills and any prominent slopes;*
- (ii) any proposed roads, earthworks and landscaping will not affect the naturalness of the landscape;*
- (iii) any proposed new boundaries will not give rise to artificial or unnatural lines or otherwise adversely (such as planting and fence lines) affect the natural form of the landscape.”*

68. The Saddle House and associated mounding will break the line of a prominent ridge in distant views from the south and east. This mounding will closely mimic the original ridge form and any change to the ridgeline will be hard to discern by viewers.

69. The Pond House will break the skyline from one viewpoint on Coronet Peak Road. Any such skyline breach will be difficult to discern given the trees which exist between passers-by on Coronet Peak Road and the subject site and given the undulations in topography on the site.

70. The Commission is satisfied that any effects of the proposal on the visual coherence and integrity of the landscape will be no greater than minor. In essence structures will not break the line and form of any ridges, hills and any prominent slopes to a significant extent; proposed access carriageways, earthworks and landscaping will not affect the naturalness of the landscape; and proposed new boundaries will not give rise to artificial or unnatural lines or otherwise adversely affect the natural form of the landscape.

*“(d) Nature Conservation Values*

*In considering whether the proposed development will adversely affect natural conservation values and whether these effects are minor with respect to any ecological systems and other nature conservation values, the Council must be satisfied that:*

- (i) the area affected by the development proposed in the application does not contain any indigenous, ecosystems including indigenous vegetation, wildlife habitats and wetlands or geological or geomorphological feature of significant value;*
- (ii) the development proposed will not have any adverse effects that are more than minor on these indigenous ecosystems and/or geological or geomorphological feature of significant value;*
- (iii) the development proposed will avoid the establishment of introduced vegetation that have a high potential to spread and naturalise (such as wilding pines or other noxious species).”*

71. Significant indigenous ecosystem restoration is an integral part of the proposal as explained in the Redemption Song Ecological Restoration and Design Report – Appendix B to the AEE.

72. The development proposal aims to support the indigenous biodiversity on the site, to undertake revegetation planting within the gullies and along the tops of the cliffs, and to restore several wetlands. The cliffs on the western side of the site are a key feature of the Arthurs Points Basin that is a geomorphological feature of some note. The proposal to eradicate exotic weed species from these cliffs will help restore the visual coherence of these cliffs and would have a positive effect.

73. Dr Read and Mr Espie have observed that the significant indigenous ecosystem restoration programme that is proposed will result in a positive effect on the environment. The Commission acknowledges that such ecological restoration

programme is not provided for in terms of the consented baseline provided by RM 080323; and the Commission therefore acknowledges that the ecological restoration that is proposed is a significant positive effect associated with the current proposal.

*“(e) Cumulative effects of development on the landscape*

*In considering the potential adverse cumulative effects of the proposed development on the natural landscape with particular regard to any adverse effects on the wider values of the outstanding natural landscape or feature will be no more than minor, taking into account:*

- (i) whether and to what extent existing and potential development (ie. existing resource consent or zoning) may already have compromised the visual coherence and naturalness of the landscape;*
- (ii) where development has occurred, whether further development is likely to lead to further degradation of natural values or domestication of the landscape or feature such that the existing development and/or land use represents a threshold with respect to the site’s ability to absorb further change;*
- (iii) whether, and to what extent the proposed development will result in the introduction of elements which are inconsistent with the natural character of the site and surrounding landscape;*
- (iv) whether these elements in (iii) above will further compromise the existing natural character of the landscape either visually or ecologically by exacerbating existing and potential adverse effects;*
- (v) where development has occurred or there is potential for development to occur (ie. existing resource consent or zoning), whether further development is likely to lead to further degradation of natural values or domestication of the landscape or feature.”*

74. Current development in the vicinity of the subject site includes a dwelling and farm shed on the Turrell property to the east; roading and dwellings on the North Ridge property to the north; and a bund on the subject site that we were informed was built as a permitted activity some years ago. This bund is indiscernible unless one knows where it is.

75. The Commission accepts Dr Read’s opinion that the overall level of compromise of the naturalness of the landscape is low.

76. The Commission also accepts Dr Read’s opinion that the extent of any adverse impact on the natural character of the ONL portion of the subject site would not breach any threshold with respect to the site’s ability to absorb change. Again the

Commission acknowledges in this context that RM 080323 permits three residential activities on that part of the site included in the ONL(WB) without provision for ecological restoration.

77. The Commissions' conclusion is that any adverse cumulative effects of the proposed development on the natural landscape would be no greater than minor.

*“(f) Positive Effects*

*In considering whether there are any positive effects in relation to remedying or mitigating the continuing adverse effects of past inappropriate subdivision and/or development, the following matters shall be taken into account:*

- (i) whether the proposed activity will protect, maintain or enhance any of the ecosystems or features identified in (f) above which has been compromised by past subdivision and/or development;*
- (ii) whether the proposed activity provides for the retention and/or re-establishment of native vegetation and their appropriate management, particularly where native revegetation has been cleared or otherwise compromised as a result of past subdivision and/or development;*
- (iii) whether the proposed development provides an opportunity to protect open space from further development which is inconsistent with preserving a natural open landscape, particularly where open space has been compromised by past subdivision and/or development;*
- (iv) whether the proposed development provides an opportunity to remedy or mitigate existing and potential adverse effects (ie. structures or development anticipated by existing resource consents) by modifying, including mitigation, or removing existing structures or developments; and/or surrendering any existing resource consents;”*

78. The removal of exotic species on the exposed rock faces (cliffs) and the overall re-vegetation programme and wetland restoration will have positive effects on the environment consistent with Assessment Matters 5.4.2.2(1)(f)(i) and (ii).

79. Open space will be protected by the applicant's proposal to prohibit further subdivision and to limit domestication to the nominated curtilages. This will ensure the protection of open space outside the curtilage areas from further development consistent with Assessment Matter 5.4.2.2(1)(f)(iii). The reduction in the number of dwellings from 3 to 2 in the ONL(WB) and associated reduction in curtilage areas and the length of the access carriageway will also have a positive effect in terms of Assessment Matter 5.4.2.2(f)(iv).

“(g) *Other Matters*

*In addition to consideration of the positive effects (i) – (iv) in (f) above, the following matters shall be taken into account, but considered with respect to those matters listed in (a) to (e) above:*

- (i) the ability to take esplanade reserves to protect the natural character and nature conservation values around the margins of any lake, river, wetland or stream within the subject site;*
- (ii) the use of restrictive covenants, easements, consent notices or other legal instruments otherwise necessary to realise those positive effects referred to in (f) (i) – (v) above and/or to ensure that the potential for future effects, particularly cumulative effects, are avoided.”*

80. In terms of Assessment Matter 5.4.2.2(1)(g)(i) the ecological restoration that is proposed will positively contribute to wetland values at the site. Domestication effects are to be restricted to curtilage areas; and no further subdivision of the subject site is to be permitted. The Commission also acknowledges that the provision of the walkway for walking and mountain bike riding purposes will have positive effects as will the provision of the carpark which has the potential to serve the walkway on the subject site and the Littles Stream walkway which provides access to the Shotover River. These are all matters that are relevant in the context of Assessment Matter 5.4.2.2(g)(ii).

81. The Commission concludes that having stringently applied the assessment matters relevant to the ONL(WB) that what is before us is a truly exceptional case – see Assessment Matter 5.4.2.2(i). The Commission has concluded that the positive effects associated with the proposed activity outweigh any minor adverse effects that have been identified in the context of the ONL(WB).

**VAL – Barn House**

82. The Barn House is to be located approximately 125 metres from Littles Road on that part of the site that is VAL.

83. Assessment Matter 5.4.2.2(3) contains assessment matters specific to VAL. Each assessment matter stated in Assessment Matter 5.4.2.2(3) is presented in italics below, followed by the Commission’s assessment of the proposal in terms of that matter, including our discussion of effects.

84. The opening paragraphs of Assessment Matter 5.4.2.2(3) state as follows:

*“These assessment matters should be read in the light of the further guiding principle that existing vegetation which:*

- (a) was either
  - planted after; or
  - self seeded and less than 1 metre in height at - 28 September 2002; and*
- (b) obstructs or substantially interferes with views of the landscape (in which the proposed development is set) from roads or other public places*
- shall not be considered:
  - (1) as beneficial under any of the following assessment matters unless the Council considers the vegetation (or some of it) is appropriate for the location in the context of the proposed development; and*
  - (2) as part of the permitted baseline.**
- nor shall removal of such vegetation be considered as a positive effect of any proposal.”*

85. The Commission simply acknowledges that the assessment matters in Assessment Matter 5.4.2.2(iii) are to be read in light of the above guiding principle.

*“(a) Effects on natural and pastoral character*

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

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

*covenants, consent notices and other restrictive instruments) having regard to the matters contained in (b) to (e) below;”*

86. The Commission accepts Dr Read’s opinion that the development proposed within the VAL will not visually compromise the open character of the adjacent ONL.

87. The proposed development within the VAL portion of the site includes the access carriageway that serves the Barn House and which also serves the Pond House and the Saddle House on the upper portion of the site. The Barn House that is located within the VAL is to be two storeyed and will be painted in a recessive colour in the tones of greys and browns. The Commission also notes that mounding and the design and orientation of the Barn House will limit domestication effects, as viewed from the short portion of Littles Road from which the Barn House will be visible. In all the circumstances the Commission is satisfied that the scale and nature of the development will not compromise the natural or arcadian character of the surrounding VAL and that the development will not degrade any natural or arcadian pastoral character of the landscape by causing over-domestication of the landscape.

88. The Commission is satisfied that the conditions of consent which have been offered by the applicant will serve to avoid, remedy or mitigate any adverse effects on the natural and pastoral character of the landscape. It is noted in particular that pastoral character is to be maintained on that part of the site that is VAL and that the applicant has offered a condition which will prohibit further subdivision of the subject site.

*“(b) Visibility of Development*

*Whether the development will result in a loss of the natural or arcadian pastoral character of the landscape, having regard to whether and the extent to which:*

- (i) the proposed development is highly visible when viewed from any public places, or is visible from any public road and in the case of proposed development in the vicinity of unformed legal roads, the Council shall also consider present use and the practicalities and likelihood of potential use of unformed legal roads for vehicular and/or pedestrian, equestrian and other means of access; and*
- (ii) the proposed development is likely to be visually prominent such that it detracts from public or private views otherwise characterised by natural or arcadian pastoral landscapes;*

- (iii) *there is opportunity for screening or other mitigation by any proposed method such as earthworks and/or new planting which does not detract from or obstruct views of the existing natural topography or cultural plantings such as hedge rows and avenues;*
- (iv) *the subject site and the wider Visual Amenity Landscape of which it forms part is enclosed by any confining elements of topography and/or vegetation;*
- (v) *any building platforms proposed pursuant to rule 15.2.3.3 will give rise to any structures being located where they will break the line and form of any skylines, ridges, hills or prominent slopes;*
- (vi) *any proposed roads, earthworks and landscaping will change the line of the landscape or affect the naturalness of the landscape particularly with respect to elements which are inconsistent with the existing natural topography;*
- (vii) *any proposed new boundaries and the potential for plantings and fencing will give rise to any arbitrary lines and patterns on the landscape with respect to the existing character;*
- (viii) *boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape and/or landscape units;*
- (ix) *the development constitutes sprawl of built development along the roads of the District and with respect to areas of established development.”*

89. The Barn House will be visible from a short portion of Littles Road between two 25kph vertical and horizontal curves. When viewed from the road the Barn House will be seen against a backdrop of the rising land behind and the proposed conifer and indigenous vegetation hedges, being an extension of the existing shelterbelt that is located between the subject site and Lot 2 DP 22657, being the Nagy property to the east. The use of recessive colours, as now proposed, will ensure that the proposed development will not be visually prominent such that it detracts from public or private views otherwise characterised by natural or arcadian pastoral landscapes.

90. The Commission also considers that the proposed access carriageway and earthworks will not significantly change the line of the landscape or adversely affect the naturalness of the landscape. The access carriageway is to be metalled apart from steep sections which are unlikely to be visible from Littles Road. The Council also acknowledges that the permitted baseline provided by RM 080323 makes provision for an access carriageway between Littles Road and the upper portion of the subject site that is less sensitively located in visual terms.

91. The Commission is also satisfied that the location of the Barn House in close proximity to the Nagy dwelling (albeit separated by the shelterbelt and its extension) will minimise any sense of sprawl of built development along Littles Road. The Commission accepts that the development will read as a cluster of built development, consistent with historic development elsewhere at Littles Road where barn type buildings are found in the immediate vicinity of dwellings, with plantings providing screening between each.

*“(c) Form and Density of Development*

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

- (i) there is the opportunity to utilise existing natural topography to ensure that development is located where it is not highly visible when viewed from public places;*
- (ii) opportunity has been taken to aggregate built development to utilise common access ways including pedestrian linkages, services and open space (ie. open space held in one title whether jointly or otherwise);*
- (iii) development is concentrated in areas with a higher potential to absorb development while retaining areas which are more sensitive in their natural or arcadian pastoral state;*
- (iv) the proposed development, if it is visible, does not introduce densities which reflect those characteristic of urban areas.*
- (v) If a proposed residential building platform is not located inside existing development (being two or more houses each not more than 50 metres from the nearest point of the residential building platform) then on any application for resource consent and subject to all the other criteria, the existence of alternative locations or methods:*
  - (a) within a 500 metre radius of the centre of the building platform, whether or not:*
    - (i) subdivision and/or development is contemplated on those sites;*
    - (ii) the relevant land is within the applicant’s ownership; and*
  - (b) within 1,100 metre radius of the centre of the building platform if any owner or occupier of land within that area wishes alternative locations or methods to be taken into account as a*

*significant improvement on the proposal being considered by the Council*

*- must be taken into account.*

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

92. There is no natural topography available on this part of the subject site into which development could be located so as to reduce visibility from public places. This is because the Barn House is to be located on an open portion of the site which is above Littles Road.

93. A common access carriageway is proposed to serve all three dwellings on the subject site, consistent with Assessment Matter 5.4.2.2(3)(c)(ii).

94. The Barn House is to be located in close proximity to the Nagy dwelling on the eastern portion of the site, retaining much of the land in VAL for pastoral purposes. In essence development is concentrated in an area with a high potential to absorb development and other land in VAL is to be retained in its pastoral state consistent with Assessment Matter 5.4.2.2(3)(c)(iii). The Commission is also satisfied that the proposed development does not introduce densities which reflect those characteristic of urban areas in terms of Assessment Matter 5.4.2.2(3)(c)(iv).

95. The Barn House is approximately 50 metres from the Nagy dwelling and this aspect of the proposal is “inside existing development” for the purposes of Assessment Matter 5.4.2.2(3)(c)(v). Alternative locations therefore need not be considered in terms of that assessment matter.

96. The Commission’s conclusion is that the form and density of the Barn House and associated development is appropriate.

*“(d) Cumulative effects of development on the landscape*

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

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

97. Existing and consented residential development in the vicinity of the Barn House is reasonably dispersed, aside from the immediately adjacent Nagy dwelling. The Commission accepts Dr Read's opinion that most of this consented or existing development is not or would not be prominent in views from Littles Road. The Commission finds that the proposed development would lead to some degradation or domestication of the landscape but not to the extent that the proposal would breach the ability of the vicinity to absorb further change. The Commission also notes in this context that the lower portion of the subject site adjacent to Littles Road that includes the Barn House is visible from a short portion of Littles Road between the two 25kph bends.

98. The Commission is satisfied that the proposed development will not require any infrastructure consistent with urban landscapes.

99. The applicant's proposal to offer a prohibition on further subdivision is a positive factor in the context of Assessment Matter 5.4.2.2(3)(d)(vii).

*“(e) Rural Amenities*

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

- (i) the proposed development maintains adequate and appropriate visual access to open space and views across arcadian pastoral landscapes from public roads and other public places; and from adjacent land where views are sought to be maintained;*
- (ii) the proposed development compromises the ability to undertake agricultural activities on surrounding land;*
- (iii) the proposed development is likely to require infrastructure consistent with urban landscapes such as street lighting and curb [sic] and channelling, particularly in relation to public road frontages;*
- (iv) landscaping, including fencing and entrance ways, are consistent with traditional rural elements, particularly where they front public roads.*
- (v) buildings and building platforms are set back from property boundaries to avoid remedy or mitigate the potential effects of new activities on the existing amenities of neighbouring properties.”*

100. The Commission is satisfied that the proposal will not have an adverse effect in terms of rural amenities. The Barn House will be visible from a short length of Littles Road. The proposal will maintain adequate and appropriate visual access to open space and views across arcadian pastoral landscapes as adjacent land on the subject site is to be maintained for pastoral purposes.

101. No evidence was presented to us to indicate that the proposed development will compromise the ability to undertake agricultural activities on surrounding land; and the Commission is satisfied that the proposed development will not require infrastructure consistent with urban landscapes.

102. Post and wire fencing only is proposed, consistent with traditional rural elements. The entrance way from Littles Road has been upgraded in the context of RM 080323 (or RM 060914) including the installation of a sealed taper on the opposite side of Littles

Road from the entrance. The status quo will therefore be maintained in terms of the entranceway. The metalled access carriageway within the subject site is consistent with traditional rural elements. An extension to the existing shelterbelt will serve to remedy or mitigate potential effects of new activities on the existing amenities of the neighbouring Nagy property.

103. The Commission is satisfied that any effects that relate to the Barn House and associated development will be no more than minor in the context of the VAL.

### **Assessment Matters - General**

104. Assessment Matter 5.4.2.3 contains Assessment Matters – General which have been considered by the Commission. The Commission does not propose to reproduce these assessment matters in detail as to a considerable extent they overlap with the assessment matters specific to the ONL(WB) and VAL discussed above.

105. The proposal will have a positive effect in terms of Assessment Matter 5.4.2.3i General – Nature Conservation Values. The proposed ecological restoration programme provides the opportunity to protect and enhance indigenous biodiversity and ecosystems and this is considered to be a significant positive effect of the proposal. Mr Wallace noted that the proposal will assist in assuring the survival of plants that are rare as at least one endangered species *Olearia lineata* (tree daisy) is proposed to be planted. This is consistent with Assessment Matter 5.4.2.3i(e).

106. In the context of Assessment Matter 5.4.2.3ii Natural Hazards – General the Commission acknowledges that the applicant has provided a report from Royden Thomson, Geologist, dated 23 August 2011 which has concluded that there are no geotechnical issues at any of the platforms which would prevent construction, as envisaged. Mr Thomson has noted that there are, however, some minor features that are worth pursuing either during or at the completion of the excavation process that involve both schist and glacial till lithologies. The Commission has concluded that the activity will not exacerbate any natural hazard in this instance.

107. In terms of Assessment Matter 5.4.2.3iv Controlled and Discretionary Activity – All Buildings (except in Ski Area Sub-Zones) the Commission is satisfied that the location of buildings and associated earthworks, access and landscaping will not significantly

break the line and form of the landscape; and that the external appearance of buildings (including the Barn House) is appropriate within the rural context.

108. In terms of Assessment Matter 5.4.2.3xxvii Residential Units – Discretionary and Non-Complying Activities the Commission notes that the applicant has provided a report from Hadley Consultants Limited relating to the Feasibility of Utility Services & Infrastructure dated September 2011. In essence the residential units are able to be supplied with potable water and roof collection is feasible, particularly for the Barn House. Wastewater disposal can be disposed of on site. The Commission also acknowledges in this context that Mr Wallace tabled correspondence from Chorus dated 5 April 2012 and from Aurora Energy Limited dated 11 April 2012 which confirmed that telecommunications and electricity services can be provided to the dwellings.

109. In terms of Assessment Matter 5.4.2.3xxviii Earthworks any adverse effects due to earthworks taking place can be managed and mitigated by the imposition of appropriate conditions that require site management during construction and appropriate shaping and revegetating to ensure that the earthworks blend into their surroundings. The Commission also notes in this context that a significant level of earthworks has been consented under RM 080323.

110. The Commission is satisfied that the proposed earthworks will not significantly adversely affect the visual quality and amenity values of the landscape; the natural landform of any ridgeline or visually prominent areas; and the visual amenity values of surrounding sites.

### **Other Assessment Matters**

111. Assessment matters in Section 14 – Transport and Section 15 – Subdivision, Development and Financial Contributions are also relevant in this instance.

112. In terms of Assessment Matter 14.3.2v the access point has previously been consented under RM 080323. The Commission acknowledges that the access carriageway design has been altered from that proposed in RM 080323 to better fit into the topography and that such changes do not give rise to any adverse effects that are greater than minor. The Commission also acknowledges that the plan of

subdivision provides for passing bays at appropriate intervals along the access carriageway.

113. The access carriageway will exceed the maximum grade of 1 in 6 specified in Rule 14.2.4.2iii(a). The Commission has considered this aspect of the proposal in the context of Assessment Matter 14.3.2vi and notes in particular that the proposal to seal or reinforce with non-slip surfacing steeper sections of the access carriageway is consistent with Assessment Matter 14.3.2vi(b) which provides for a non-slip surface to be considered in the context of maximum gradient.
114. Assessment matters relating to subdivision commence at Assessment Matter 15.2.6.4. The Commission is satisfied that Lot 1 and Lot 2 are of sufficient area and dimensions to effectively fulfil their intended purpose. In essence Lot 1 is to accommodate two residential building platforms and Lot 2 is intended to be held by a charitable trust and will contain the majority of the areas intended for ecological restoration and pastoral use along with the Barn House as a manager's residence.
115. Both lots are of sufficient area to provide for the proposed residential use and stormwater and wastewater disposal.
116. In terms of Assessment Matter 15.2.7.3 provision is to be made for a walkway for walkers and mountain bike use that will serve to enhance the rural trails network in the Wakatipu Basin over time. A carpark is to be provided in conjunction with the walkway that will be available to those who use the walkway through the Littles Stream subdivision to access the Shotover River. The provision of the walkway and carpark is a positive effect associated with the proposed subdivision. Connectivity with neighbouring properties is provided for in the plan of subdivision.
117. In terms of Assessment Matter 15.2.8.3 the Commission considers that the proposed subdivision will have no particular effect in terms of the safety and efficiency of the roading network given that an access to Littles Road is authorised by RM 080323. Matters relating to natural hazards and the provision of services in terms of Assessment Matter 15.2.10.3 and Assessment Matter 15.2.12.3 have been addressed above. Conditions of consent can ensure that any such effects can be avoided, remedied or mitigated.

#### **B.4 Summary : Effects and Assessment Matters**

118. The Commission finds that the proposal will not have adverse effects that are greater than minor. The Commission considers that the consented baseline is particularly relevant in this context. The proposal will have positive effects in terms of ecological restoration, the provision of a walkway and associated carpark and in terms of a prohibition of future subdivision of Lots 1 and 2. The Commission is satisfied that these positive effects outweigh any adverse effects associated with the proposed activity. The ultimate question to be addressed is whether granting consent will better serve to achieve the purpose of the Act (which we discuss below).

#### **C. THE QLDC DISTRICT PLAN : OBJECTIVES & POLICIES**

119. Parts 4, 5, 14 and 15 of the Operative District Plan contain objectives and policies for the whole district, for rural areas, for transportation and for subdivision respectively. The objectives and policies from Parts 4, 5, 14 and 15 have been presented in the AEE and in Mr Wallace's report. To a large extent the objectives and policies relate to matters discussed in the context of the assessment matters. It is neither desirable or necessary, therefore, to undertake a line by line analysis of every objective and policy as this would involve a significant amount of repetition without materially advancing our analysis of this application.

##### **C.1 Part 4**

120. Objective 4.1.4.1 and its associated policies aim to protect and enhance indigenous ecosystems, geological features, wetlands and natural landscapes.

121. The proposal will result in enhancement and subsequent protection of indigenous ecosystems. The various geological features on the site will be physically affected by proposed earthworks to a limited extent. The earthworks will appear natural when revegetated and conditions of consent will ensure that cut batters created by the formation of the access carriageway do not have long term adverse effects.

122. The proposal will enhance wetland areas within the site and will provide opportunities to provide linkages between different habitat communities within the proposed ecological restoration areas.

123. Objective 4.2.5 is:

***“Objective:***

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

124. Objective 4.2.5 is supported by a number of policies. Policies of relevance include Policy 1 Future Development which relates to the effects of development; Policy 3 that relates to Outstanding Natural Landscapes (Wakatipu Basin); Policy 4 which relates to Visual Amenity Landscapes; Policy 9 that relates to Structures; Policy 10 that relates to Utilities; Policy 12 that relates to Transport Infrastructure; and Policy 17 that relates to Land Use.

125. Policy 1 – Future Development – is to avoid, remedy or mitigate the effects of development and/or subdivision in those areas of the District where the landscape and visual amenity values are vulnerable to degradation; to encourage development and/or subdivision to occur in areas of the District that have a greater potential to absorb change without detracting from landscape and visual amenity values; and to ensure that subdivision and/or development harmonises with local topography and ecological systems and other nature conservation values as far as possible.

126. The Commission is satisfied that this policy is satisfied in this instance. The consented baseline provided by RM 080323 is relevant as it permits subdivision and development of the subject site. The Commission is satisfied that the subdivision and development is to occur in an area with greater potential to absorb change without detracting from landscape and amenity values.

127. Policy 3 – Outstanding Natural Landscapes (Wakatipu Basin) states as follows:

***“3. Outstanding Natural Landscapes (Wakatipu Basin)***

*(a) To avoid subdivision and development on the outstanding natural landscapes and features of the Wakatipu Basin unless the subdivision and/or development will not result in adverse effects which will be more than minor on:*

*(i) Landscape values and natural character; and*

*(ii) Visual amenity values*

- recognising and providing for:

- (iii) *The desirability of ensuring that buildings and structures and associated roading plans and boundary developments have a visual impact which will be no more than minor, which in the context of the landscapes of the Wakatipu basin means reasonably difficult to see;*
  - (iv) *The need to avoid further cumulative deterioration of the Wakatipu basin's outstanding natural landscapes;*
  - (v) *The importance of protecting the naturalness and enhancing the amenity values of views from public places and public roads.*
  - (vi) *The essential importance in this area of protecting and enhancing the naturalness of the landscape.*
- (b) *To maintain the openness of those outstanding natural landscapes and features which have an open character at present.*
  - (c) *To remedy or mitigate the continuing effects of past inappropriate subdivision and/or development.”*

128. The Commission is satisfied that the subdivision and development proposed will not result in adverse effects which will be more than minor on landscape values and natural character; and visual amenity values. The Commission acknowledges in this context that the development proposed in the ONL(WB) will be reasonably difficult to see; and will not compromise naturalness and amenity values as viewed from public places and public roads. The proposal will also serve to maintain the openness of the ONL(WB) particularly having regard to the consented baseline established by RM 080323.

129. Policy 4 – Visual Amenity Landscapes states as follows:

**“4. Visual Amenity Landscapes**

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

(c) *To discourage linear tree planting along roads as a method of achieving (a) or (b) above.*”

130. The proposal will serve to avoid, remedy or mitigate adverse effects of subdivision and development on the visual amenity landscapes. The Barn House will be located 125 metres from Littles Road and will be visible from a short portion of that road. The location of the Barn House and the retention of adjacent land in pastoral use will serve to mitigate visual effects and enhance natural character on the subject site.

131. In terms of Policy 8 – Avoiding Cumulative Degradation – the Commission is satisfied that the proposed density of development will not increase to the point where the benefits of further planting and building are outweighed by adverse effects on landscape values of over-domestication of the landscape. Again the consented baseline is relevant in the context of this policy. The Commission is satisfied that the proposal is consistent with Policy 8(a) and 8(b) having regard to the contents of the document entitled Redemption Song Ecological Restoration and Design Report – Appendix B to the AEE.

132. Policy 9 – Structures – refers specifically to preserving the visual coherence of outstanding natural landscapes and visual amenity landscapes by locating structures such that they are in harmony with the landscape and designed appropriately to blend into the landscape within which they are proposed. The policy also encourages colours of buildings and structures to complement the dominant colours in the landscape and promotes the use of local, natural materials and construction in the context of the ONL(WB) – Policy 9(a). The Commission is satisfied that the proposal is consistent with this policy.

133. The Commission also notes that Policy 9(b) is specific to VAL and encourages screening structures from roads and other public places by vegetation whenever possible to maintain and enhance the naturalness of the environment. In this instance mounding and curtilage planting will provide some screening of the Barn House when viewed from Littles Road.

134. The Commission is satisfied that the proposal is consistent with Policy 10 – Utilities and Policy 12 – Transport Infrastructure. Utility services are to be located underground and the access carriageway is to be sensitively located on the site.

135. Policy 17 – Land Use – encourages land use in a manner which minimises adverse effects on the open character and visual coherence of the landscape. The Commission is satisfied that the proposal is consistent with this policy.
136. The proposal is consistent with Objective 4.4.3.2 as it will provide for recreational activities to be undertaken in a way which avoids, remedies or mitigates significant adverse effects on the environment. The proposal makes provision for a walkway for walkers and mountain bikers within the ONL(WB). The Commission considers that the proposal is consistent with the above objective and is not contrary to relevant policies including Policies 2.3, 2.5 and 2.6.
137. Objective 4.10.3 and its associated policies relate to earthworks. The objective and the associated policies aim to avoid, remedy or mitigate adverse effects from earthworks on the nature and form of existing landscapes and landforms, particularly in areas of Outstanding Natural Landscapes.
138. The Commission is satisfied that any minor adverse effects resulting from the proposed earthworks on the ONL(WB) will diminish as the vegetation on the mounds is established. Conditions of consent can be applied to ensure that any nuisance effects associated with undertaking earthworks are avoided.

## **C.2 Part 5**

139. Part 5 of the District Plan contains objectives and policies that specifically relate to Rural Areas. Objective 1 and its associated policies seek to allow the establishment of a range of activities that are managed in such a way as to protect the character and landscape values of the rural area:

### ***“Objective 1 – Character and Landscape Value***

*To protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.*

#### ***Policies:***

- 1.1 Consider fully the district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.*
- 1.2 Allow for the establishment of a range of activities, which utilise the soil resource of the rural area in a sustainable manner.*

- 1.3 *Ensure land with potential value for rural productive activities is not compromised by the inappropriate location of other developments and buildings.*
- 1.4 *Ensure activities not based on the rural resources of the area occur only where the character of the rural area will not be adversely impacted.*
- 1.5 *Provide for a range of buildings allied to rural productive activity and worker accommodation.*
- 1.6 *Avoid, remedy or mitigate adverse effects of development on the landscape values of the District.*
- 1.7 *Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.*
- 1.8 *Avoid remedy or mitigate the adverse effects of the location of structures and water tanks on skylines, ridges, hills and prominent slopes.”*

140. In terms of Policy 1 the district wide landscape objectives and policies have been considered fully above. In terms of Policy 1.4 the character of the rural area will not be adversely impacted in this instance. The Commission considers that the proposal is consistent with Policies 1.6-1.8 having regard to the matters discussed above. The Commission also notes in this context that the consented baseline provided by RM 080323 is relevant as this provides for three dwellings and associated earthworks on the upper portion of the site in the ONL(WB).

141. The Commission also notes that Objective 3 and its associated policies seek to avoid, remedy or mitigate adverse effects of development and activity on rural amenity. In this instance the adverse effects of the proposed development on rural amenity are sufficiently avoided, remedied or mitigated and the Commission finds that the proposal is in accordance with the policies that relate to rural amenity.

### **C.3 Part 14**

142. Part 14 contains objectives and policies with respect to Transport. The Commission considers that the proposal is consistent with the objectives and policies that relate to the efficiency, safety and environmental effects of the transportation system of the District. The Commission notes that access to Littles Road has been consented under RM 080323.

143. The Commission is satisfied that the access carriageway has been designed to visually complement the surrounding area and to mitigate visual impact on the landscape, consistent with Objective 14.1.3.3 and the associated Policy 3.4.

144. The Commission considers that the provision of a carpark adjacent to Littles Road in the vicinity of the walkway and the walkway itself is consistent with Objective 14.1.3.5 and Objective 14.1.3.6 and their associated policies. The Commission also considers that the gradient proposed for the access carriageway will not be contrary to any objectives or policies specified in Part 14 of the District Plan.

#### **C.4 Part 15**

145. Part 15 contains objectives and policies that relate to Subdivision, Development and Financial Contributions. Objective 15.1.3.1 and its associated policies that relate to Servicing seek to ensure necessary services are provided in anticipation of the effects of future land use activities in the context of subdivision. In this instance appropriate access and provision for water, wastewater, telecommunications and electricity services can be provided in the context of the subdivision.

146. Objection 15.1.3.4 and associated policies relates to Outstanding Natural Features, Landscapes and Nature Conservation Values. In this instance the proposal will have a positive effect in terms of ecological restoration. The subdivision, which will result in much of the property being held in an allotment to be held by a charitable trust, will facilitate the protection of Outstanding Natural Landscapes and Nature Conservation Values.

147. Objection 15.1.3.5 and associated policies relate to Amenity Protection. The Commission is satisfied that the proposed subdivision will not be contrary to this policy.

#### **C.5 Summary : Objectives and Policies**

148. Following the above analysis, the Commission finds that the proposal is consistent with those objectives and policies that are relevant to the application; and the Commission has concluded that this is a location in the ONL(WB) and VAL where the proposed activity is appropriate in terms of Clause 1.5.3iii(iii) and (iv) of the District Plan.

#### **D. OTHER MATTERS**

149. Section 104(1)(c) requires the consent authority to have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application.
150. Precedent is a relevant matter as subdivision consent is sought for a non-complying activity. The Commission acknowledges that non-complying status results from the applicant's proposal to establish two building platforms within Lot 1 of the proposed subdivision. Mr Vivian and Mr Wallace have acknowledged that the non-complying status has resulted from a technical breach of Rule 15.2.6.3iii(b).
151. The Commission acknowledges that the site has exceptional characteristics given the consented baseline established by RC 080323. In essence the effects of the proposed activity will be no greater in terms of the number of residential building platforms proposed than the effects of activity permitted by RC 080323.
152. In all the circumstances the Commission finds that the proposal will not establish a significant precedent.

#### **E. SECTION 104D**

153. Section 104D of the Act contains particular restrictions for non-complying activities. Section 104D(1) states that:
- “...  
a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either-*
- (a) the adverse effects of the activity on the environment... will be minor, or*
  - (b) the application is for an activity that will not be contrary to the objectives and policies of-*
    - (i) the relevant plan,....”*
154. The Commission is satisfied that in this instance the adverse effects of the activity on the environment will be no greater than minor and that the activity will not be contrary to the objectives and policies of the District Plan.

155. The Commission therefore has discretion to grant consent as the threshold conditions stated in section 104D have been fulfilled.

## **F. PART 2 OF THE ACT**

156. Part 2 of the Act contains sections 5 to 8. We refer to them in reverse order.

157. Section 8 requires us, in exercising our functions on this application, to take into account the principles of the Treaty of Waitangi. No issues were raised with us in reports or evidence in relation to section 8.

158. Section 7 directs that in achieving the purpose of the Act we are to have particular regard to certain matters which include, of relevance here, the efficient use and development of natural and physical resources; the maintenance and enhancement of amenity values; intrinsic values of ecosystems; maintenance and enhancement of the quality of the environment; and any finite characteristics of natural and physical resources. The Commission is satisfied, having regard to the matters addressed in Parts B and C of this decision that the proposal is consistent with the relevant matters stated in section 7 of the Act. There are no other matters stated in section 7 which are of any particular relevance to the current application.

159. Section 6 sets out a number of matters which are declared to be of national importance and directs us to recognise and provide for them. Section 6(a) and section 6(b) confirms that the following are matters of national importance:

*“(a) The preservation of the natural character of ... wetlands, ... and the protection of them from inappropriate subdivision, use, and development:*

*(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:”*

160. The applicant proposes to restore the capacity of naturally occurring ephemeral wetlands to hold water and proposes to initiate native wetland plantings to reinstate lost diversity. The Commission therefore considers that the proposal is consistent with section 6(a) of the Act.

161. Part of the subject site and the dwellings proposed on Lot 1 are located in an Outstanding Natural Landscape in the Wakatipu Basin (ONL(WB)). The Commission finds that the proposed activity does not constitute inappropriate subdivision, use and development in this instance. Accordingly the Commission finds that the proposal is consistent with section 6(b) of the Act.
162. There are no other matters stated in section 6 which are of any particular relevance to the application.
163. Section 5 sets out the purpose of the Act – to promote the sustainable management of natural and physical resources. Taking into account the definition of sustainable management contained in section 5(2), the Commission has reached the view that the application before us will better serve to achieve the purpose of the Act.
164. Sustainable management means managing the use, development and protection of natural and physical resources within certain parameters. The physical resources of this site will be developed in such a way that the social and economic wellbeing of the applicant is provided for, while the potential of natural and physical resources will be sustained to meet the reasonably foreseeable needs of future generations. The life-supporting capacity of ecosystems will be enhanced by the ecological restoration proposed and any adverse effects of the activity can be avoided, remedied or mitigated by adherence to appropriate conditions of consent.

## **G. OUTCOME**

165. Section 104 directs that when considering an application for resource consent and any submission received in response to it, we must, subject to Part 2, have regard to the actual and potential effects on the environment of allowing the activity together with the relevant provisions of the Operative District Plan. In the course of considering the application and submissions and in reaching this decision the Commission has followed this process. Under section 104B the Commission has discretion to grant consent to the application and we hereby do so subject to the imposition of conditions of land use consent and subdivision consent as attached in a Schedule to this decision.

This decision on RM 120007 is dated 25 May 2012.



**W D Whitney**

**COMMISSIONER**

**For the Commission being W D Whitney and L Cocks**

## **SCHEDULE : CONDITIONS OF CONSENT FOR RM 120007: REDEMPTION SONG LLC**

### **Land Use Conditions**

1. The land use activity shall be undertaken in accordance with the following plans:
  - Proposed Subdivision for Redemption Song LLC 3249-10R-1B, prepared by Aurum Survey, dated 19 December 2011 and revised 1 May 2012.
  - Whole Site Plan and site and house plans for the Pond House, Saddle House and Barn [House], prepared by Sarah Scott Architects Limited, Drawings RC 01 – RC 15 all print dated 23 November 2011.
  - Proposed House Sites Engineering Plans, prepared by Aurum Survey, Drawing No.s 3249-6E- 1D:D, 2B:B, 3B:B, 4A:A, 5A:A, 6A:A, 7A:A; 3249-8E-1A:A, 2A:A, 3A:A and 4A:A; 3249-9E-1A:A to 3249-9E-8A:A.
  - Site Plan – Earthworks Littles Road Carpark prepared by Aurum Survey Drawing No 3249-6E-8A dated 1 April 2012.
  - Site Layout Plan 112226-01:B; Water Reticulation Plan 112226-02:B and Wastewater Reticulation and Disposal Plan 112226-03; prepared by Hadley Consultants Limited dated 2 September 2011.

(stamped as approved on 24 May 2012) and specifications submitted with the application, subject to the eastern extent of the curtilage of the Saddle House (as shown on Aurum Survey plan 3249-6E-2B:B and any other plans) being altered to coincide with the position of the highest retaining wall in the mound and with the exception of the amendments required by the following conditions of consent.

2. The consent holder shall, immediately after the commencement of this consent, surrender Resource Consents RM060914 and RM080323 by giving written notice pursuant to section 138 of the Act.

### **Landscape Conditions**

3. The exterior of the 'Barn House' shall be painted a recessive colour with a light reflectivity of less than 36 percent; such colour to be within the tones or greys and browns to ensure that the house blends with the receiving environment.
4. All elements of domestic curtilage (such as car parking areas, lawns, domestic landscape planting, outdoor storage areas, and clotheslines) for each dwelling shall be contained within the curtilage areas identified on Drawing 3249-10R-1B "*Proposed Subdivision for Redemption Song LCC*", prepared by Aurum Survey Consultants Ltd, dated 19 December 2011 and revised 1 May 2012 and as further altered in terms of Condition 1. All elements of domestic curtilage shall be 2.0 metres or less in height from finished ground level; including landscape planting which shall have a maximum height at maturity of 2.0 metres.
5. All of the site that is outside the permitted curtilage areas shall be managed as ecological restoration or as pastoral land that is to be maintained by way of grazing and/or mowing. No additional exotic planting shall be permitted on this pastoral land, except as permitted in terms of Condition 6.
6. The exotic shelterbelt at the boundary with Lot 2 DP 22657 [the Nagy property] shall be extended as shown on the diagram at page 43 of the *Redemption Song Ecological Restoration and Design Report*, and a native shelterbelt shall also be established as shown on that diagram. Any tree or plant that forms part of the exotic shelterbelt or the native shelterbelt that is required in terms of this condition and that dies shall be replaced in the next available planting season.

7. All exterior lighting associated with any dwelling shall be fixed no higher than 2.0 metres above finished ground level and shall be capped, filtered or pointed downwards so as to reduce or avoid visibility from any point off-site of light sources and to minimise visibility of lit areas.
8. No fencing shall be permitted (including boundary fencing) other than fences of a traditional farming post and wire type (but not deer fencing) around the curtilage areas and along the cliff tops; albeit that existing fencing may be repaired or replaced (with the same type) as necessary. All fencing shall be 1.0 metres or less in height.

### **Ecological Restoration**

9. An *Ecological Restoration Management Plan* shall be submitted for approval by the Principal: Landscape Architect (Lakes Environmental Limited) within six months of the commencement of this consent. The purpose of the *Ecological Restoration Management Plan* shall be to implement the proposed ecological restoration as detailed in the *Redemption Song Ecological Restoration and Design Report* submitted with the application. All works approved within the *Ecological Restoration Management Plan* shall be implemented within five or less years from approval date of the *Ecological Restoration Management Plan*. The *Ecological Restoration Management Plan* shall, as a minimum, include the following:
  - o Weed removal and pest control.
  - o A plant schedule showing grades, quantity and botanical names for all plantings.
  - o A plan showing clearly the location for all plantings and species to be planted.
  - o A strategy for the ongoing management and maintenance of the plantings.
  - o Annual work plans for planting and ongoing management and maintenance of the plantings.
  - o A planting regime to mitigate visual effects in the event that the fenced boundary at the north-western upper limit of the "Growing Lands/Agriculture" area as indicated on the plan at page 21 of the *Redemption Song Ecological Restoration and Design Report* is not moved to follow the ridge immediately south of the Pool House to avoid visual change in vegetation cover as viewed from Littles Road.

### **Walkway [Trail] and Car Park**

10.
  - a) The walkway [trail] and associated car park shall be constructed and open to the public prior to any other development (excluding ecological restoration) taking place on the site and the walkway formation shall extend to the seal edge of Littles Road. The walkway shall include appropriate Queenstown Lakes District Council (QLDC) / Queenstown Trails Trust signage at the southern end and seating for two people at the northern end. Such signage shall include a interpretative panel detailing the cliff geomorphology and ecology. The consent holder shall consult with QLDC and the Queenstown Trails Trust on such signage and seating. A swing gate shall be installed at the southern end of the trail.
  - b) The walkway shall permit public access by foot and mountain bike.
  - c) The landowner shall be responsible for the ongoing maintenance of the walkway and car park.
  - d) Prior to the walkway opening to the public the applicant shall register an easement in favour of the QLDC for public access to the walkway and car park.

- e) Plans of the walkway and car park including any associated landscape plantings shall be lodged with the Principal : Landscape Architecture at Lakes Environmental Ltd for approval prior to construction.

### **Engineering Conditions**

11. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.
12. Prior to commencing works on site, the consent holder shall submit a traffic management plan to the Road Corridor Engineer at Council for approval. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor (STMS). All contractors obligated to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan. A copy of the approved plan shall be submitted to the Principal Engineer at Lakes Environmental prior to works commencing.
13. The consent holder shall install measures to control and/or mitigate any dust, silt run-off and sedimentation that may occur, in general accordance with the Hadley Consultants Ltd (HCL) Site Management Plan and Earthworks Specification for Contractors Undertaking Physical Works contained in Appendix 7 of the HCL Feasibility of Utility Services & Infrastructure report (dated September 2011). These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project.
14. At least 7 days prior to commencing excavations, the consent holder shall provide Council with the name of a suitably qualified professional as defined in Section 1.4 of NZS 4404:2004 who is familiar with the Hadley Consultants Ltd Feasibility of Utility Services & Infrastructure report dated September 2011 and who shall supervise the excavation and filling procedure and site management. Should the site conditions be found unsuitable for the proposed excavation/construction methods, then a suitably qualified and experienced engineer shall submit to the Council new designs/work methodologies for the works prior to further work being undertaken, with the exception of any necessary works required to stabilise the site in the interim.
15. Prior to the commencement of any works on the land being developed the consent holder shall provide to the Principal Engineer at Lakes Environmental for review and certification, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition 11, to detail the following engineering works required:
  - a) The provision of a water supply to the dwellings in terms of Council's standards and the Hadley Consultant's Ltd Feasibility of Utility Services & Infrastructure report, dated September 2011. Each dwelling shall be supplied with a minimum of 2,100 litres per day of potable water that complies with/can be treated to comply with the requirements of the Drinking Water Standard for New Zealand 2005.
  - b) The provision of secondary flow paths to contain overland flows in a 1 in 100 year event so that there is no inundation of any buildable areas on Lots 1 and 2, and no increase in run-off onto land beyond the site from the pre-development situation.
  - c) The provision of vehicular access to each dwelling that complies with the guidelines provided for in Council's development standard NZS 4404:2004 with amendments as adopted by the Council in October 2005. The design shall be in general accordance with the Aurum Survey Consultants Ltd design plans submitted with the application and shall meet the following requirements:
    - i) All vehicular access ways shall have a minimum formation standard of 150mm compacted AP40 with a 3.5m minimum carriageway width.

- ii) The carriageway shall have a minimum cross-fall of 4% to prevent stormwater ponding on the carriageway surface.
  - iii) Drainage swales shall be provided for stormwater disposal from the carriageway. The invert of the water channel shall be at least 100mm below the lowest portion of the sub-grade to prevent carriageway deformation as a result of stormwater infiltration.
  - iv) Existing overland flow paths shall be maintained through use of culverts.
  - v) The average gradient of the access way shall not exceed 1 in 6 and no section of the access way shall exceed 1 in 5. Where the gradient exceeds 1 in 6 the carriageway surface shall be sealed or reinforced with non-slip surfacing.
  - vi) Passing bays or areas of carriageway widening shall be provided at practical, safe locations along the access carriageway to allow oncoming vehicles to pass. The number and location of these passing areas shall be determined by a suitably qualified professional and be subject to review and certification by the Principal Engineer at Lakes Environmental.
  - vii) Passing bays or carriageway widening shall be provided to prevent vehicle conflicts along the access. The number, location and design of passing areas shall form part of the overall access design with consideration given to available sight lines, vehicle safety and minimising earthworks cut and fill batters.
- d) Prior to the construction of the "Pond House" the consent holder shall provide to the Principal Engineer at Lakes Environmental an assessment from a suitably qualified and experienced Chartered Professional Engineer which includes subsoil investigations to determine the nature of materials at depth and to confirm the strength characteristics of the saturated materials in the vicinity of the 'Pond House' as recommended in the Royden Thomson report dated 23 August 2011 that is presented at Appendix 2 to the Hadley Consultants Ltd Feasibility of Utility Services & Infrastructure report dated September 2011. The assessment shall be specific to the proposed building and local geotechnical conditions and outline any engineering works or specific foundation design to suitably mitigate any geotechnical issues.
- e) The provision of a fire fighting design that meets NZ Fire Fighting Code of Practice, SNZ PAS 4509:2008. The design is to be approved by the NZ Fire Service and the approval letter is to be included with the design.
- f) The provision of Design Certificates for all engineering works associated with this subdivision/development submitted by a suitably qualified design professional (for clarification this shall include all access carriageways,, water supply, wastewater and stormwater systems and the walkway and associated carparking area (including the carpark access and walkway crossing point at Littles Road). The certificates shall be in the format of an IPENZ Producer Statement PS1, or the NZS4404 Schedule 1A Certificate.
16. The earthworks and site management shall be undertaken in accordance with the recommendations of the Feasibility of Utility Services & Infrastructure report by Hadley Consultants Ltd (dated September 2011). This shall include, but not be limited to:
- o The pond is to be lined with suitable impermeable material to prevent further saturation of adjacent materials.
  - o The landscape mound proposed in the vicinity of the south end of the 'Pond House' is to be extended to match Figure 2a, in the Royden Thomson report dated 23 August 2011 that is presented at Appendix 2 to the Hadley Consultants Ltd Feasibility of Utility Services & Infrastructure report dated September 2011.
17. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at his/her expense,

to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.

18. No earthworks, temporary or permanent, are to breach the boundaries of the site.
19. At the completion of the earthworks, all earth worked/exposed areas shall be top-soiled and grassed/revegetated or otherwise permanently stabilised within six weeks.
20. Prior to the occupation of the dwellings, the consent holder shall complete the following:
  - (a) The submission of 'as-built' plans and information required to detail all engineering works completed in relation to or in association with this development at the consent holder's cost. This information shall be formatted in accordance with Council's 'as-built' standards and shall include all access carriageways, water and wastewater reticulation (including private laterals and toby positions), and the walkway and associated carparking area (including the carpark access and walkway crossing point at Littles Road).
  - (b) The completion of all works detailed in Conditions 14 and 15 above.
  - (c) The submission of Completion Certificates from both the Approved Contractor and Approved Certifier for all engineering works completed in relation to or in association with this development (for clarification this shall include all access carriageways, water supply, stormwater and wastewater systems). The certificates shall be in the format of IPENZ Producer Statement PS3 and PS4, or the NZS4404 Schedule 1B and 1C Certificate.
  - (d) The construction of all vehicle manoeuvring and car parking areas to Council's standards.
  - (e) The provision of an effluent disposal system in accordance with the Hadley Consultants Ltd "On Site Wastewater Disposal Site Assessment, Design & Specification" report (dated September 2011) submitted with the application. This system shall be in terms of AS/NZS 1547:2000 and shall provide sufficient treatment/renovation to effluent from on-site disposal, prior to discharge to land. To maintain high effluent quality, the following requirements shall be met:
    - o Regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of the system to undertake this maintenance.
    - o Intermittent effluent quality checks to ensure compliance with the system designer's specification.
    - o Disposal areas shall be located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore.
    - o Distribution pipes shall be buried at least 300mm below ground level to protect from freezing.
    - o Cut-off drains shall be installed above disposal beds where necessary, to intercept groundwater flows or seepage.
    - o A producer statement shall be provided to Principal Engineer at Lakes Environmental that confirms that the system has been installed in accordance with the approved design as per Condition 20c) above.
  - (f) The consent holder shall provide a suitable and usable power supply and telecommunications connection to the development. This connection shall be underground from any existing reticulation and in accordance with any requirements/standards of the relevant network supplier.
  - (g) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

## **Review Condition**

21. Within 10 working days of each anniversary of the date of this consent or upon the receipt of information identifying non-compliance with the conditions of this consent, the Council may, in accordance with sections 128 & 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:
- (a) there is or is likely to be an adverse environmental noise effect as a result of the exercise of this consent, which was unforeseen when the consent was granted.
  - (b) monitoring of the exercise of the consent has revealed that there is or is likely to be an adverse effect on the environment.
  - (c) there has been a change in circumstances such that the conditions of the consent are no longer appropriate in terms of the purpose of the Act.

## **Subdivision Conditions**

1. The subdivision activity shall be undertaken in accordance with the plans listed in Condition 1 of the land use consent RM 120007.
2. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.
3. Prior to commencing works on site, the consent holder shall submit a traffic management plan to the Road Corridor Engineer at Council for approval. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor (STMS). All contractors obligated to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan. A copy of the approved plan shall be submitted to the Principal Engineer at Lakes Environmental prior to works commencing.
4. The consent holder shall provide a letter to the Principal Engineer at Lakes Environmental advising who their representative is for the design and execution of the engineering works and construction works required in association with this subdivision and shall confirm that this representative will be responsible for all aspects of the works covered under Sections 1.4 & 1.5 of NZS4404:2004 "Land Development and Subdivision Engineering", in relation to this subdivision.
5. Prior to the commencement of any works on the land being subdivided the consent holder shall provide to the Principal Engineer at Lakes Environmental for review and certification, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition 1, to detail the following engineering works required:
  - (a) The provision of a water supply to the building platforms on Lots 1 and 2 in accordance with Council's standards and the Hadley Consultant's Ltd Feasibility of Utility Services & Infrastructure report, dated September 2011. Each lot shall be supplied with a minimum of 2,100 litres per day of potable water that complies with/can be treated to comply with the requirements of the Drinking Water Standard for New Zealand 2005.
  - (b) The provision of secondary flow paths to contain overland flows in a 1 in 100 year event so that there is no inundation of any buildable areas on Lots 1 and 2, and no increase in run-off onto land beyond the site from the pre-development situation.
  - (c) The provision of vehicular access to each building platform that complies with the guidelines provided for in Council's development standard NZS 4404:2004 with amendments as adopted by the Council in October 2005. The design shall be in general accordance with the Aurum Survey Consultants Ltd design plans submitted with the application and shall meet the following requirements:

- All vehicular access ways shall have a minimum formation standard of 150mm compacted AP40 with a 3.5m minimum carriageway width.
- The carriageway shall have a minimum cross-fall of 4% to prevent stormwater ponding on the carriageway surface.
- Drainage swales shall be provided for stormwater disposal from the carriageway. The invert of the water channel shall be at least 100mm below the lowest portion of the sub-grade to prevent carriageway deformation as a result of stormwater infiltration.
- Existing overland flow paths shall be maintained through use of culverts.
- The average gradient of the access way shall not exceed 1 in 6 and no section of the access way shall exceed 1 in 5. Where the gradient exceeds 1 in 6 the carriageway surface shall be sealed or reinforced with non-slip surfacing.
- Passing bays or areas of carriageway widening shall be provided at practical, safe locations along the access carriageway to allow oncoming vehicles to pass. The number and location of these passing areas shall be determined by a suitably qualified professional and be subject to review and certification by the Principal Engineer at Lakes Environmental.
- Passing bays or carriageway widening shall be provided to prevent vehicle conflicts along the access. The number, location and design of passing areas shall form part of the overall access design with consideration given to available sight lines, vehicle safety and minimising earthworks cut and fill batters.
- The provision of Design Certificates for all engineering works associated with this subdivision submitted by a suitably qualified design professional (for clarification this shall include all access carriageways in rights of ways, water supply, stormwater and wastewater systems and the walkway and associated carparking area (including the carpark access and walkway crossing point at Littles Road). The certificates shall be in the format of an IPENZ Producer Statement PS1, or the NZS4404 Schedule 1A Certificate.

***To be completed before Council approval of the Title Plan***

6. All necessary easements including those shown on plan entitled Proposed Subdivision for Redemption Song LLC 3249-10R-1B prepared by Aurum Survey dated 19 December 2011 and revised 1 May 2012 shall be shown in the Memorandum of Easements attached to the Title Plan and shall be duly granted or reserved.

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

7. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall complete the following:
  - (a) The submission of 'as-built' plans and information required to detail all engineering works completed in relation to or in association with this subdivision at the consent holder's cost. This information shall be formatted in accordance with Council's 'as-built' standards and shall include all access carriageways in right of ways, water supply, stormwater and wastewater systems (including private laterals and toby positions and the walkway and associated carparking area (including the carpark access and walkway crossing point at Littles Road).
  - (b) The completion and implementation of all works detailed in Condition 5 above.
  - (c) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an underground electricity supply has been made available (minimum supply of single phase 15kva capacity) to the boundary of all lots created and that all the network supplier's requirements for making such means of supply available have been met.

- (d) Written confirmation shall be provided from the telecommunications network supplier responsible for the area, that provision of underground telephone services has been made available to the boundary of all saleable lots created and that all the network supplier's requirements for making such means of supply available have been met.
- (e) The submission of Completion Certificates from both the Approved Contractor and Approved Certifier for all engineering works completed in relation to or in association with this subdivision/development (for clarification this shall include all access carriageways in rights of ways, water supply, wastewater and stormwater systems and the walkway and associated carparking area (including the carpark access and walkway crossing point at Littles Road). The certificates shall be in the format of IPENZ Producer Statement PS3 and PS4, or the NZS4404 Schedule 1B and 1C Certificate.
- (f) Any earthworks required for the provision of access and services associated with this subdivision shall be carried out in accordance with the earthworks conditions (Conditions 12, 13, 15-19) of the land use component of this consent.
- (g) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.
- (h) The walkway and car park identified on Drawing 3249-10R-1B "Proposed Subdivision for Redemption Song LCC", prepared by Aurum Survey Consultants Ltd, dated 19 December 2011, and revised 1 May 2012 shall be subject to an easement in gross in favour of the Queenstown Lakes District Council.
- (i) The walkway and car park shall be formed to Council Standards and the walkway formation shall extend to the seal edge of Littles Road.
- (j) Swing gates shall be erected at the southern end of the site where the entrance to the walkway adjoins Littles Road.
- (k) The implementation of the Ecological Restoration Management Plan as required in terms of Condition 9 of the land use consent RM 120007.

### ***Ongoing Conditions/Consent Notices***

8. The following conditions of the consent shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notice pursuant to section 221 of the Act.
  - (a) At the time a dwelling is erected on Lot 1 and 2, the owner for the time being shall engage a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 to design a stormwater disposal system that is to provide stormwater disposal from all impervious areas within the site. The proposed stormwater system shall be subject to the review of Council prior to implementation.
  - (b) At the time a dwelling is erected on Lot 1 and 2, the owner for the time being shall engage a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 to design an effluent disposal system in terms of AS/NZS 1547:2000 that will provide sufficient treatment/renovation to effluent from on-site disposal, prior to discharge to land. To maintain high effluent quality such a system will require the following:
    - o Specific design by a suitably qualified professional engineer. This design shall have regard to the Hadley Consultants Ltd Feasibility of Utility Services & Infrastructure report dated September 2011, submitted with RM120007.
    - o A minimum of secondary treatment of effluent by means of a biological packed bed reactor or equivalent system.
    - o Regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of each system to undertake this maintenance.

- Intermittent effluent quality checks to ensure compliance with the system designer's specification.
  - Irrigation lines (or distribution pipes) shall be buried at least 300mm below ground level to protect from freezing.
  - Disposal areas shall be located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore, unless a consent for this is obtained by the Otago Regional Council.
  - A producer statement shall be provided to Principal Engineer at Lakes Environmental that confirms that the system has been installed in accordance with the approved design.
- (c) At the time a dwelling is erected on Lots 1 and 2, the owner for the time being is to treat any rainwater supplies intended for domestic water supply by filtration and disinfection so that it complies with the Drinking Water Standards for New Zealand 2005.
- (d) Prior to the construction of any dwelling within the building platform adjoining the pond on Lot 1, the owner shall provide to the Principal Engineer at Lakes Environmental an assessment from a suitably qualified and experienced Chartered Professional Engineer which includes subsoil investigations to determine the nature of materials at depth and to confirm the strength characteristics of the saturated materials in the vicinity of the 'Pond House' building platform as recommended in the Royden Thomson report dated 23 August 2011 that is presented at Appendix 2 to the Hadley Consultants Ltd Feasibility of Utility Services & Infrastructure report dated September 2011 submitted for the RM120007 Resource Consent application. The report shall be specific to the proposed building and local geotechnical conditions and outline any engineering works or specific foundation design to suitably mitigate any geotechnical issues.
- (e) At the time a dwelling are erected on Lot 1 and 2, domestic water and fire fighting storage is to be provided. A minimum of 20,000 litres shall be maintained at all times as a static fire fighting reserve within a 30,000 litre tank for each dwelling. Alternatively, a 7,000 litre fire fighting reserve is to be provided for each dwelling in association with a domestic sprinkler system installed to an approved standard. A fire fighting connection in accordance with Appendix B - SNZ PAS 4509:2008 is to be located no further than 90 metres, but no closer than 6 metres, from any proposed building on the site. Where plastic tanks are used for storing fire fighting water, consideration needs to be given to shielding them from the effects of radiated heat from a fire.

Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2008 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2008 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single family dwellings. In the event that the proposed dwellings provide for more than single family occupation then the consent holder should consult with the NZFS as larger capacities and flow rates may be required.

The Fire Service connection point/coupling must be located so that it is not compromised in the event of a fire.

The connection point/coupling shall have a hardstand area adjacent to it that is suitable for parking a fire service appliance. The hardstand area shall be located in the centre of a clear working space with a minimum width of 4.5 metres. Pavements or roadways providing access to the hardstand area must have a minimum formed width as required by QLDC's standards for rural roads (as per NZS 4404:2004 with amendments adopted by QLDC in 2005). The roadway shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Access shall be maintained at all times to the hardstand area.

Underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1 metre above ground) may be accessed by an opening in the top of the tank whereby couplings are not required. A hardstand area adjacent to the tank is required in order to allow a fire service appliance to park on it and access to the hardstand area must be provided as above.

The Fire Service connection point/coupling/fire hydrant/tank must be located so that it is clearly visible and/or provided with appropriate signage to enable connection of a fire appliance.

Fire fighting water supply may be provided by means other than the above if the written approval of the New Zealand Fire Service Operational Planning Officer for the Southern Fire Region is obtained for the proposed method.

The fire fighting water supply tank and/or the sprinkler system shall be installed prior to the occupation of the building.

- (f) All elements of domestic curtilage (such as car parking areas, lawns, domestic landscape planting, outdoor storage areas, and clotheslines) for each dwelling shall be contained within the curtilage areas identified on Drawing 3249-10R-1B "*Proposed Subdivision for Redemption Song LCC*", prepared by Aurum Survey Consultants Ltd, dated 19 December 2011 and revised 1 May 2012 and as further altered in terms of Condition 1 of the land use consent RM 120007. All elements of domestic curtilage shall be 2.0 metres or less in height from finished ground level; including landscape planting which shall have a maximum height at maturity of 2.0 metres.
- (g) All of the site that is outside the permitted curtilage areas shall be managed as ecological restoration or as pastoral land that is to be maintained by way of grazing and/or mowing. No additional exotic planting shall be permitted on this pastoral land, except as permitted in terms of Condition 6 of the land use consent RM 120007.
- (h) The ecological works implemented in terms of Condition 9 of the land use consent RM 120007 shall be maintained by the consent holder or successor.
- (i) No fencing shall be permitted (including boundary fencing) other than fences of a traditional farming post and wire type (but not deer fencing) around the curtilage areas and along the cliff tops; albeit that existing fencing may be repaired or replaced (with the same type) as necessary. All fencing shall be 1.0 metres or less in height.
- (j) Lots 1 and 2 shall not be further subdivided except for a boundary adjustment meeting the requirements to be a controlled subdivision activity under Rule 15.2.3.2(i) of the Queenstown Lakes District Plan.

**Advice Note:** The New Zealand Fire Service considers that often the best method to achieve compliance with SNZ PAS 4509:2008 is through the installation of a home sprinkler system in accordance with Fire Systems for Houses SNZ 4517:2010, in each new dwelling. Given that the proposed dwellings are approximately 9km from the nearest New Zealand Fire Service Fire Station the response times of the New Zealand Fire Service in an emergency situation may be constrained. It is strongly encouraged that a home sprinkler system be installed in each new dwelling.

*Note: Consent Notice Condition 8(d) and 8(e) are not required to be registered on the Computer Freehold Registers for the lots where fire fighting water supply requirements and/or any geotechnical issues affecting building foundations have been addressed under the land use component of this consent prior to 224c certification being obtained.*

### **Review Condition**

- 9 Within 10 working days of each anniversary of the date of this consent or upon the receipt of information identifying non-compliance with the conditions of this consent, the Council may, in

accordance with sections 128 & 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:

- (a) there is or is likely to be an adverse environmental noise effect as a result of the exercise of this consent, which was unforeseen when the consent was granted.
- (b) monitoring of the exercise of the consent has revealed that there is or is likely to be an adverse effect on the environment.
- (c) there has been a change in circumstances such that the conditions of the consent are no longer appropriate in terms of the purpose of the Act.



**QUEENSTOWN  
LAKES DISTRICT  
COUNCIL**

**DECISION OF THE QUEENSTOWN-LAKES DISTRICT COUNCIL**  
**RESOURCE MANAGEMENT ACT 1991**

Applicant:	Littles Ridge Limited
RM reference:	RM080323
Location:	Littles Road, Wakatipu Basin, Queenstown
Proposal:	Subdivision into four lots, with three building platforms. Build houses on three lots.
Type of Consent:	Subdivision and Land Use
Legal Description:	Part Country Section 29, Block XIX Shotover Survey District and Sections 28 & 30, Survey Office Plan 328674 Certificate of Title OT 58/178
Zoning:	Rural General (Partially Operative District Plan)
Activity Status:	Discretionary
Notification:	2 April 2008
Commissioners:	Commissioners Shiels and Overton
Date of Decision:	17 June 2009
Decision:	Granted, subject to conditions

## **A INTRODUCTION**

1. We have been appointed as Independent Commissioners to hear and determine on behalf of the Queenstown Lakes District Council an amended resource consent application by Littles Ridge Limited.
2. We need to record the history of this Application, and also an earlier consent in respect of the same site.
3. By Resource Consent RM060914, Commissioners Collins and Overton for the Council granted land use consent for one dwelling on the site, to which this Application relates. That consent was subject to conditions, including Condition 19 as follows:

“19. All of the site that is outside the permitted curtilage area shall continue to be managed in its current paddock state by way of grazing and/or mowing. No additional planting shall be permitted in this area, except that up to 20 trees may be planted in the vicinity of the eastern boundary near the existing dwelling on the adjoining property, so as to provide a continuous screening shelter belt of a uniform species between the two dwellings.”
4. Application RM080323 was lodged on 12 March 2008. It was publicly notified on 2 April 2008 and came before us for hearing on 27 August 2008. The outcome that the Applicant sought was that the site would be divided into four lots, with residences on three, and a balance lot to remain in pasture. However, it presented the Application on the basis that we only needed to (and were only entitled to) consider the effects related to the subdivision and two additional houses, with one house already having consent.
5. The s42A Report for the August 2008 hearing noted that the Applicant had not applied to vary Condition 19 of Resource Consent RM060914 but provided an assessment and recommendation, both for the Application as lodged and for a variation of Condition 19.

6. After some discussion at the August 2008 hearing, we concluded that what was applied for in Application RM080233 was so inconsistent with what had been granted by Resource Consent RM060914 that no one reading the earlier consent and Application RM080233 could possibly think that Condition 19 was to remain unaltered. We were therefore prepared to read Application RM080233 as including an application to vary Consent RM060914. This did not resolve all the difficulties.
7. After seeking further submissions from the Applicant, we came to the view that 'Condition 19' in Consent RM060914, while worded as a condition, was in fact an integral part of the consent and not capable of being varied under s127. We based this view on the Court of Appeal decision in *Body Corporate 90710 v Auckland CC* [2000] 3 NZLR 513; (2000) 6 ELRNZ 303; [2000] NZRMA 529. That view was indicated to the Applicant by Memorandum. In the light of that indication, the Applicant elected to amend Application RM080233 so as to seek consent for the subdivision and all three residences. It indicated that if the amended application now before us were granted, it would surrender Consent RM060914.
8. The Council has received legal advice that there was no need to re-notify the amended application, except to those persons who submitted when the original Application RM080323 was notified last year. This was done.
9. We do not need to discuss further the form of the Application that came before us in August 2008 and now turn to consider the amended Application that came before us for hearing on 11 May 2009.
10. The Applicant seeks consent to subdivide a parcel of land at Littles Road in the Wakatipu Basin into four lots. The legal description is set out on the front page of this decision. Proposed Lot 1 has an area of 1.14 hectares. Proposed Lot 2 is 8560m<sup>2</sup> in area. (We have taken this figure from the Subdivision Plan rather than the slightly different figure in the text of AEE.) Proposed Lot 3 is 9575m<sup>2</sup> in area. The proposed balance lot (identified as

Lot 100) is 45.59 hectares. It is proposed that Lot 100 be held in one-third shares, with amalgamation certificates so that a one-third share is permanently held with each of Lot 1, Lot 2 and Lot 3.

11. The Applicant also seeks land use consent for residences on each of Lots 1, 2 and 3. The Application includes detailed plans for the proposed residences.
12. The Application also proposes curtilage areas (of irregular shape) around the proposed dwellings on Lots 1, 2 and 3, with all elements of domestic curtilage being restricted to those curtilage areas. The curtilage areas are 2500m<sup>2</sup> for Lot 1; 2400m<sup>2</sup> for Lot 2; and 2000m<sup>2</sup> for Lot 3. The elements of domestic curtilage specifically referred to are "car parking areas, lawns, domestic landscape planting, additional storage areas, clotheslines etc".
13. It is proposed to access the dwellings by a new access from Littles Road. The length of this to Lot 1 is approximately 1000 metres. It would also have short extensions to Lot 2 and to Lot 3. This follows the line of the access approved by RM060914 to what is now proposed Lot 1, but in the circumstances we put no weight on that. The Applicant states that the proposed access follows slight topography differences in the slope in order to mitigate visual effects. It further states that it complies with the Council's standards in terms of width and formation, and with the minimum sight distances where it meets Littles Road. Some earthworks are necessary for the formation of the accesses.
14. The Applicant proposes mounding near Littles Road and around the dwellings on Lots 1, 2 and 3. The Applicant states that the mounding will follow natural contours of the adjoining land. The detail of the mounding is shown on drawings and plans prepared by Aurum Survey Consultants Limited. For the position of the various mounds in relation to the access and the proposed buildings, we refer in particular to Drawing 2331-21R2A (11 January 2009).

15. Under the Partially Operative District Plan (hereafter 'the Plan'), earthworks can be approved as part of a subdivision consent or as a land use consent. The Application appears to seek land use consent for all earthworks and we will follow that approach. Detailed quantities for the proposed earthworks are given in the amended Application, broken down for roads, mounds and building platforms. It is accepted that the only adverse effect of earthworks that we need be concerned about is the permanent visual effect. The temporary effects of undertaking the earthworks are appropriately dealt with by the proposed Site Management Plan and the effects of removing the surplus spoil can be dealt with by the proposed Traffic Management Plan.
16. The Applicant proposes a condition to require that Lot 100, and the balance of Lots 1 to 3 outside defined curtilage areas, be managed in its current paddock state by way of grazing and/or mowing, with no additional planting, except (as we understand it) the boundary planting as referred to in Condition 19 of Consent RM060914. (See paragraph [3] of this Decision.) The Applicant now also proposes a consent notice requiring that the balance of the site remain free of built form.
17. The Applicant lodged letters with the Application in April 2008 indicating that the building sites could be serviced with reticulated electricity and telecommunications. Those letters were in the form of quotes for work, with the quotes having expired a long time ago. There is no reason to believe that servicing of the three sites is not possible, but the Applicant should be required to demonstrate this by obtaining updated letters of confirmation from the providers.
18. The Applicant also proposes to reticulate water from a nearby private water scheme and has produced a Licence to Occupy from the Council authorising reticulation under Littles Road.
19. Electricity, telecommunications and water would all be reticulated underground from existing reticulation.

20. Further, the Applicant proposes on-site wastewater and stormwater disposal.
21. The Subdivision Plan lodged with the Subdivision Application identifies building footprints for Lots 1-3 and the land use application gives details of the proposed buildings for Lots 1, 2 and 3, including height, internal structure, number of floors, and the nature of external claddings.
22. The amended Application before us now expressly seeks the approval of residential building platforms as part of the subdivision consent. Following discussion at the original hearing of Application RM080323, we are treating the footprint of the three houses proposed as building platforms for the purposes of the Plan. This is not a shortcut in any way. Building platforms allow assessment in a general way of anticipated development on a site. When detailed plans are provided, the effects of the particular proposed dwellings can be fully assessed. The disadvantage of this approach, if there be one, is that the consent holder loses some degree of flexibility in final design of the residences.
23. We do not appear to have been given the dimensions for the house on Lot 1. However, the external finish will be schist walling and glazing with some cedar timberwork. It will have a concrete roof with earth and tussock grasses with some uncovered non-reflective solar panels, and a small part of the roof will be Iron Sand tray roofing.
24. The house proposed for Lot 2 is single storey (approximately 4m high) with four bedrooms and a footprint of about 670m<sup>2</sup>. Its primary external claddings include schist walling, glazing, unfinished concrete fascia board, cedar weatherboard and charcoal alloy window frames.
25. The house proposed for Lot 3 is a split-level four-bedroom dwelling with a footprint of about 673m<sup>2</sup>. The first level is 3.4m in height, and the combined height of both levels is 7.5m. It will have the same external design and appearance.

26. Each of the houses will be recessed into the hillside and have a concrete roof covered in soil and planted in a variety of grasses to match surrounding paddock vegetation.

## **B CONSENTS NEEDED**

27. As noted above, the site is in the Rural General Zone in the Plan. The Transitional District Plan has no relevance, except in relation to financial contributions, which are not in issue.
28. Under Rule 15.2.3.3(vi) of the Plan, subdivision and location of building platforms in the Rural General Zone is a discretionary activity, unless specified as a controlled activity in Rule 15.2.3.2 or as a non-complying activity in Rule 15.2.3.4. There is no suggestion that the subdivision applied for in this Application would be a controlled activity. Under Rule 15.2.3.4, the subdivision will be a non-complying activity if it does not comply with all the Zone Subdivision Standards. The only Zone Subdivision Standard in issue is at Rule 15.2.3.6(iii)(b), which requires every allotment created by a subdivision in the Rural General Zone to have one Residential Building Platform approved at the time of subdivision of not less than 70m<sup>2</sup> in area and not greater than 1000m<sup>2</sup> in area. By treating the footprint of the proposed buildings as residential building platforms, Lots 1, 2 and 3 have residential building platforms. The balance lot, i.e. Lot 100, does not have a residential building platform. However, under the amended Application (although not under the original RM080419 Application) the Applicant proposes that Lot 100 be subject to a covenant restricting buildings in the future. Because of that covenant, Zone Subdivision Standard 15.2.3.6(iii)(b) does not apply to Lot 100.
29. It follows that all Zone Subdivision Standards are complied with and the subdivision is a discretionary activity.
30. Land use consent is sought for the three residences, one in each of proposed Lots 1, 2, and 3, and for mounding, earthworks, and the

construction of an access from Littles Road to each of the three residences. From Littles Road, the access road is approximately 1000m. Under Rule 5.3.3.2(i)(b), the construction of residences within approved residential building platforms is a restricted discretionary activity. The Council's discretion is restricted to:

- external appearance;
- associated earthworks, access and landscaping; and
- provision of water supply, sewage treatment and disposal, electricity and telecommunication services.

31. Site Standard 5.3.5.1(viii) sets quantitative limits for earthworks. The Applicant's proposal significantly exceeds those limits. As a result, the proposed earthworks become a restricted discretionary activity. See Rule 5.3.3.3(xi).
32. Overall, the subdivision and land use applications are for discretionary activities.

## **C THE HEARING**

33. Five submissions were received last year in respect of the original Application RM080323 and were treated as being applicable to the amended Application. These were as follows:

- Mark Thomas - in opposition
- Gillian Tremaine - in opposition
- Michelle Falla - in opposition
- Ducks In A Row Ltd - in support
- New Zealand Fire Service - neither, seeks conditions

34. Mrs Tremaine and Ms Falla took the opportunity to file a further submission on the amended Application. For the avoidance of any doubt in the circumstances, we record that we have considered and taken into account

each of the original submissions as well as the further submissions of Mrs Tremaine and Ms Falla.

35. Written approval was provided by PASP Properties Limited, the owner of 217 Littles Road. In accordance with s104(3)(b) RMA, effects on PASP Properties Limited are disregarded.
36. Prior to our hearing on 11 May 2009, we received a brief report prepared pursuant to s42A of the Resource Management Act 1991 (hereafter 'RMA') by Ms Hanna Afifi, Planner, Lakes Environmental Ltd. She invited us to read this in conjunction with her report prepared for the hearing in August last year. There was no opposition to this. On the same basis, we received the Landscape Report prepared for the August 2008 hearing by Mr Andrew Norwood, Landscape Architect, Lakes Environmental Ltd, and the Engineering Report prepared for the August 2008 hearing by Ms Sandra King, Engineer, Lakes Environmental Ltd. These reports assisted us. In oral comments at the start of the May 2009 hearing, Ms Afifi indicated that her recommendation was to decline the three-house, four-lot proposal but she would support one house at the site of Lot 1 along with the necessary access. As the Applicant's willingness to surrender Consent RM060914 was conditional on the present Application being granted, granting consent to the house on Lot 1 and the access is not an option we need to consider.
37. Also prior to the hearing, we re-read and considered the Agenda prepared for the August 2008 hearing, the amended Application lodged on 26 January 2009, and the submissions of the submitters.
38. The hearing for the amended Application was held at Queenstown on 11 May 2009. At the hearing, we were assisted by Ms Afifi, Mr Norwood and Ms Rachel Beer, Planning Process Manager, Lakes Environmental Ltd.
39. No appearance was entered, either in August 2008 or in May 2009, for any of the submitters.

40. We visited the site with Ms Afifi and Mr Norwood immediately prior to, and again during the course of, the August 2008 hearing. The purpose of a site visit is to assist us in the assessment of the material presented at and before the hearing, and we have been careful to use the site visit only for that purpose. In the circumstances, we did not consider it necessary to visit the site in conjunction with our latest hearing.

### **Submissions and Evidence from the Hearings**

41. In this part of the decision we highlight key points from the submissions and evidence as presented in the August 2008 and from the further supplementary evidence presented in May 2009. In doing so, we will disregard those matters relating to jurisdiction and procedure which are no longer relevant. We make some comments on the weight we give to various parts of the evidence.

### **Submissions of Mr R H Ibbotson**

42. In August 2008, Mr Ibbotson introduced the Application and made comments on the permitted baseline and the receiving environment. He also addressed the issue of a precedent being established. He placed some emphasis on the small number of submissions in opposition. His conclusion was that we could properly grant a consent on the basis that there were no adverse effects on the environment that were more than minor, and that the activity was consistent with the relevant Objectives and Policies of the Plan. He further submitted that granting of consent was more likely to serve the purpose and principles of the RMA than to offend them. In May 2009, Mr Ibbotson made further brief submissions but in general relied on the submissions he had made and the evidence that had been given in August 2008. No one objected to that approach and we will proceed on that basis.

### **Evidence of Dr Michael Steven**

43. Dr Steven gave evidence in August 2008. He attended, but did not give

further evidence at, the May 2009 hearing. Dr Steven is a well-qualified and experienced Landscape Architect employed in the Queenstown office of Vivian + Espie Limited. His evidence addressed the landscape issues associated with the Application. It drew on the analysis and findings contained in the Landscape Assessment Effects Report prepared by Mr Ben Espie and lodged as part of the Application, but he told us he had undertaken his own independent field assessments. He accepted that the proposed residential buildings were located within an Outstanding Natural Landscape and we should also deal with the subdivision on that basis. (We note here that part of the site, nearer Littles Road, is in a Visual Amenity Landscape. However, the new lots to be created and the new activities to take place are clearly in the Outstanding Natural Landscape, with the exception of part of the access.) However, it is his opinion that effects on the natural character of the site and its wider locality would be less than minor and the proposal "passed the test" of the Plan assessment criteria for Outstanding Natural Landscapes (Wakatipu Basin).

44. Dr Steven then assessed the effects having regard to the Assessment Matters of Section 5.4.2.2 of the Plan. He adopted a scale for assessing the naturalness of the site ranging from natural to cultural. While such a scale may be a useful reference and discussion point, we remind ourselves that we need to be careful to consider the Assessment Matters as identified in the Plan and not be distracted by a paraphrase of them.
45. Dr Steven took some issue with Mr Norwood's report. We have taken into account the differing views of these two Landscape Architects when we discuss and record our own conclusions on effects and the Assessment Matters. We were not helped by some of Dr Steven's comments on Mr Norwood's opinions, such as "not credible", "spurious objection", and "grossly over-estimating".
46. Dr Steven's conclusion was that adverse effects of the proposed dwellings on landscape values "should be" no more than minor, the proposed

development "should be" reasonably difficult to see, the proposed development "should not" contribute towards the deterioration of the Outstanding Natural Landscape within which it is located, naturalness "should be" protected and enhanced and amenity values enhanced, and the openness of open landscapes "should not" be diminished. It would be possible to interpret his language ("should be" and "should not") as showing a lack of certainty in his conclusions. However, on the whole of his evidence, we do not think that he is expressing uncertainty.

### **Evidence of Mr Carey Vivian**

47. Mr Vivian gave evidence in August 2008 and brief supplementary evidence in May 2009. He is a well-experienced and qualified Resource Management Consultant. He gave a full description of the proposal. He provided a useful appendix of conditions offered by the Applicant. He also analysed the proposal against the Rules, Objectives, Policies and Assessment Matters in the Plan. He also reviewed the Application with reference to Part 2 of the RMA. We have taken into account everything he had to say in forming our own conclusions and judgments.

### **Closing Comments of Reporting Officers**

48. After the completion of the Applicant's evidence, we invited supporting staff to make closing comments. Mr Norwood noted that sealing of the visible portion of the access in a recessive colour addressed one of his concerns. However, he still considered that any visibility of the proposed development was inappropriate and would have adverse effects. Ms Afifi adopted the same approach. She considered that while the residence on Lot 1 would be invisible, the other two would be partly visible. She repeated the recommendation in her report that we refuse the application.

## **Applicant's Closing**

49. Mr Ibbotson was critical of the closing comments of reporting officers and reminded us that the Plan did not create an expectation that residences would be invisible, but only that they would be reasonably difficult to see.

## **D STATUTORY CONSIDERATIONS**

50. Section 104 RMA sets out the matters that are to be considered. The relevant sub-sections are as follows:

### **“104. Consideration of applications**

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to –
- (a) any actual and potential effects on the environment of allowing the activity; and
  - (b) any relevant provisions of—
    - (i) a national policy statement:
    - (ii) a New Zealand coastal policy statement:
    - (iii) a regional policy statement or proposed regional policy statement:
    - (iv) a plan or proposed plan; and
  - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- (2)-(2A) [not applicable]
- (3) A consent authority must not—
- (a) have regard to trade competition when considering an application:
  - (b) when considering an application, have regard to any effect on a person who has given written approval to the application:
  - (c) grant a resource consent contrary to—
    - (i) section 107 or section 107A or section 217:
    - (ii) an Order in Council in force under section 152:
    - (iii) any regulations:

(iv) a *Gazette* notice referred to in section 26(1), (2), and (5) of the Foreshore and Seabed Act 2004:

(d) grant a resource consent if the application should have been publicly notified and was not.

(4) [not applicable]

(5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.”

51. Having regard to the conclusion that the Application is for discretionary activities, we also need to refer to s104B, which is as follows:

**“104B Determination of applications for discretionary or non-complying activities**

After considering an application for a resource consent for a discretionary activity ....., a consent authority -

(a) may grant or refuse the application; and

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

52. Both s108 RMA and, in relation to the subdivision only, s220 RMA, authorise the imposition of conditions.

53. We will now consider the various matters that the RMA refers us to.

**Actual and Potential Effects on the Environment**

54. The s42A Report and the Applicant’s August 2008 evidence identified a permitted baseline. On the amended Application as now presented, the relevant permitted baseline is small-scale earthworks, fences less than 2m in height, and farming practices. Mr Ibbotson did not put much weight on these, although Mr Vivian relied on them to counter Mr Norwood’s concerns about the visibility of the proposed mounds and fences.

55. We now turn to the specific effects and deal with them under the headings

used at paragraph 8.1.2 of the s42A Report.

- Land, Flora and Fauna
- Visibility of Development
- Landscape Character
- Cumulative Effects
- Infrastructure
- Natural Hazards
- Traffic Generation and Vehicle Movements
- Positive Effects

★ **Land, Flora and Fauna**

56. We have already noted the proposed screening mounds. They will very significantly mitigate effects of visibility of the houses and curtilages.
57. We acknowledge that two similar mounds were approved as part of RM060914. For the purposes of this Application, this is not part of the permitted baseline or receiving environment but nonetheless the assessments made at that time are helpful. The s42A Report for our hearing advises that at the time of that consent, the Council's Landscape Architect indicated that, once revegetated, those mounds would integrate with the site's existing landform. The Applicant contends that the same conclusions should be reached for all the mounding now proposed.
58. Mr Norwood and Ms Afifi do not challenge this. However, they are concerned that the creation of the mounds would detract from the natural character of the landscape by reducing the extent to which the topography is accentuated. We accept that the mounds would be visible from Coronet Peak Road and Malaghans Road. However, and given the apparent acceptance that they can be re-vegetated to integrate with the existing pastoral appearance, we do not consider that they would be noticeable to anything more than a very minor degree. Particularly as viewed from the Coronet Peak turnoff, the cliff edge on the property is rugged and striking.

We agree that the earth mounds proposed do reduce the naturalness of the rugged edge of the escarpment but consider this is minor and will not lead to a significant adverse visual effect on the landscape character.

59. It is common ground that the earthworks necessary to prepare the building areas will in due course be obscured by the dwellings and this would mitigate any adverse effects of those earthworks.

60. We also have to consider the effect of earthworks to create the accesses. We are unsure quite what the views of the reporting officers are on these given that they seemingly considered it was appropriate to consent to the access from Littles Road to service Lot 1. On reading all the reports and evidence, we have come to the view that the effect of the earthworks involved in the access formation is minor and not significant. It appears that the branch accesses to Lot 2 and Lot 3 will not be visible from any relevant viewpoint, although there may be minor visibility of batter.

★ **Visibility of Development**

61. With the mounding proposed, visibility of the proposed residences on the site is confined to Coronet Peak Road, Skippers Road and the Coronet Peak ski field road. We disregard visibility from the PASP site.

62. The Applicant produced simulated views of the proposed houses and accesses from various viewpoints. The detail of visibility does not seem to be in issue. What is in issue is an assessment of its significance.

63. In considering the significance of visibility, we take into account the recessive materials and grass roofing. We note the concern of the reporting officers about the absence of any proposal for reflective glazing. We also note their acceptance that, with that exception, visibility of buildings is mitigated.

64. It appears that the concern about visibility may be more focussed on the curtilage areas. It is accepted that the entirety of the three curtilage areas

will not be visible from any one vantage point.

65. We have concluded that visibility effects are not significant. The particular points that have led us to that conclusion are the distances of the viewpoints from the site and the totality of the views from the viewpoints. We accept that the houses on Lots 2 and 3 will be marginally more visible than the house on Lot 1, but have decided that this is not significant in all of the circumstances.
66. The first viewpoint that Mr Norwood was concerned about was from a short stretch of the Coronet Peak Road approximately 1.4 km from the site. Our site inspection confirmed that the area concerned provided a fleeting view for vehicle passengers. The relatively steep and far from straight nature of the road should mean that vehicle drivers have their eyes elsewhere. There are few obvious stopping points. Even when a vehicle is stopped for viewing, the subject site is part of a much larger view, including the North Ridge development to the north west of the site. We accept that parts of the mounding and curtilage areas are potentially visible, but in the context of the overall view available, we doubt that they would be noted by anyone not specifically looking for them.
67. Officers were also concerned about views from Skippers Road and Coronet Peak Ski Field (particularly the Base building). Different considerations apply to these viewing points. There are off-road viewing areas. Viewers would have opportunity for a much more careful inspection of the landscape. Two of the houses would be partially visible from here, although visibility would be mitigated by the earth moundings and recessive construction elements. Curtilages may be more visible from here.
68. These viewing points are much higher and present a view looking down on the site. However, the elevation has other consequences. From these viewpoints, much of the Wakatipu Basin is visible. The subject site does not stand out in any way. To its northwest is the much more visible North Ridge

development. Behind it is the Dalefield area with extensive rural lifestyle developments and significant enclosing vegetation. The Shotover River is a feature of this view.

69. The higher viewing points, where more of the proposed development can be seen, are at a distance of about 4km to 6km. Mr Ibbotson drew our attention to three Environment Court decisions where views from significant distances were discounted. These were:

- *Just One Life Limited v QLDC* EnvC 163/01
- *Highground Land Company Limited v QLDC* EnvC 088/02
- *Highground Land Company Limited v QLDC* EnvC 178/02

70. The particular propositions in those cases are fact-specific, and cannot be read as laying down a general rule that visibility from beyond a certain distance is to be disregarded. However, they are each concerned with similar district plan provisions to those we are considering and do give some guidance.

71. After careful consideration, we have come to the conclusion that the development will be difficult to see from the closer and lower viewing points because of mounding, which itself will not be particularly noticeable. From the further and higher viewing points, the mounding is not quite as effective in screening, but the recessive elements of construction and the sheer distance are significant in reducing visibility effects to quite minor.

★ **Landscape Character**

72. The site currently has a pastoral appearance and is maintained in paddocks. There are a variety of permitted uses for the site that would not maintain the status quo. In particular, there is no obligation to keep stock on the site. Some trees could be planted.

73. We pay particular regard to earlier statements in Environment Court decisions about the landform. The site is the western most portion of what the Environment Court has referred to as "a ridge of rock shaped like a long spine-backed lizard", [EnvC 3/2002]. It was in that decision that the Court determined that the application site is part of an Outstanding Natural Landscape, and that is not in dispute. It is notable that the Court excluded the North Ridge development, to the northwest of the application site, from the Outstanding Natural Landscape classification. This was because of the development already approved on that site. However, the North Ridge development is quite different from the Applicant's proposed development.

74. We first consider the effect on the skyline of the mounding. The steep western cliffs and the hummocky topography are significant geomorphologic features. The proposal in no way alters the cliffs but would slightly alter the appearance of the skyline at the top of the cliffs. For reasons set out above, we are satisfied that this would not, in the long term, be a noticeable change. While the creation of mounds to screen visibility through some of the present gaps in the skyline needs to be considered, even if it would not in the long term be identifiable as a man-made change, we do not think that the mounds proposed in this case will have a significant effect on the skyline. They will only slightly reduce the variety of shapes along the top of the cliff visible against the skyline from lower viewing points. From higher viewing points, the skyline is not affected. We consider that from the higher viewpoint, the changes will not be detectable as changes, and the mounds will be barely visible, at least to the untrained eye and without magnification.

75. We now consider the effects of the houses. We consider that from lower altitudes, such as the Coronet Peak Road intersection, there would be no visibility of housing or development. From higher elevations, such as the Skippers Road, the site is a very small patch in a large and varied view. To the northwest is the North Ridge development, with some very large

residences with no attempt to screen them. To the extent that houses on the application site will be visible, they will have a minor effect compared with the rather blunt intrusion into the landscape that the North Ridge residences present. As already noted, from this height views include more densely developed parts of the Wakatipu Basin.

76. Mr Norwood's report refers to lot boundaries and the "roading network" in this context. With respect, we consider that a reference to a "roading network" rather over-states the case, particularly as even now the reporting officers seem to consider that a house on Lot 1 and the roading associated with that would be appropriate. The Aurum simulations seem to indicate no visibility of the branch accesses to Lot 2 and Lot 3, even from higher viewpoints, although possibly very slight visibility of earthworks associated with them. Mr Norwood's report seems to anticipate visibility of these branch accesses, although he did not question the Aurum simulations or otherwise raise the point at the hearing. The Applicant now proposes that there will be no fencing on lot boundaries but there would be fencing around curtilage areas and along the cliff top. However, it would confine these to farming type fences. In considering the effect of these, we have to take into account that farming fences are part of the permitted baseline. We do not say that these fences will have no effect, but we consider that they would have only a very minor effect from the height and the distance at which they would be seen.

77. Perhaps of slightly more importance are the domestic land treatment and the incidental uses of the curtilage areas. We accept that these might well be noticeable, even from the height and distance of the viewing points we are concerned with. However, they will be minor additional intrusions on a large and varied view.

78. In summary, the reporting officers comment that the components of the development, including the dwellings, access, curtilage area, and earth mounding would all be visible from areas discussed and will cue observers to

the presence of residential activity. We accept this may be so, at least if the observer concentrates on this particular site.

79. We do not accept that the proposed activity would mean that the site could no longer be considered part of an Outstanding Natural Landscape. We note the comments in Environment Court decision C3/2002 about the North Ridge development but consider that this proposed development is markedly different from the North Ridge development. While the Plan creates a number of expectations for the Outstanding Natural Landscape areas, a total absence of any visible cue to domestic activity is not one of them.

★ **Cumulative Effects**

80. We acknowledge that from certain viewpoints, including travelling down Coronet Peak Road, the North Ridge development and the Applicant's development could be viewed together. We have already commented on the extent and significance of the view when travelling down Coronet Peak Road. The marked differences between the two developments have been commented on also. We reject the suggestion that the proposed development would constitute sprawl of the existing development and do not consider that there is any significant adverse cumulative effect.

★ **Infrastructure**

*Water Supply and Fire fighting Provision*

81. We accept that appropriate conditions can be imposed and we will do so.

*Power and Telecommunications*

82. As noted, the letters from Delta and Telecom are now well out of date. Subject to updating these, we accept that these services can be provided to the site.

*Effluent Disposal and Stormwater Control*

83. We agree, as do the report writers, that with the imposition of the recommended conditions these services can be provided without generating adverse effects.

★ **Natural Hazards**

84. Subject to suitable conditions of consent having regard to potential flooding of development on Lot 2, there will be no natural hazards affecting the proposed development.

★ **Traffic Generation and Vehicle Movements**

85. While Council's standards require passing bays at 100-metre distances, in this case the officers recommend that specific approval of passing bays be obtained from Council. We accept that recommendation.

86. There is no suggestion that the additional traffic that three houses will generate will be significant for Littles Road. It is common ground that there should be a Traffic Management Plan to deal with the effects of the removal from the site of approximately 2,900m<sup>3</sup> of earth. We agree that there are no significant safety effects in relation to traffic generation or vehicle movements.

★ **Positive Effects**

87. We disregard the positive financial benefit to the Applicant. We think this is beyond the scope of relevant positive effects.

88. However, the volunteered condition that all land outside the identified curtilage areas will be maintained in its current paddock state is useful. Particularly given doubts about the economics of farming the property, there is a prospect of the site being abandoned to nature if no development is allowed. When the s42A Reports were written, they commented that limited

weighting could be given to the volunteered condition, as there was a similar condition in RM060914. On the basis on which we are now considering the Application, that comment has no relevance. There is a worthwhile positive effect in the volunteered condition but we do not wish to over-state it.

### **Conclusion on Actual and Potential Effects on the Environment**

89. Both the Applicant and the reporting officers recognised that the key issue is visibility. They did not, at least largely, differ on the extent of visibility but differed on the significance of the visibility. Ultimately, that is a judgment. We have decided that effects from visibility will be minor and that overall the adverse effects will be minor, subject to mitigation as proposed, plus conditions requiring glass to be non-reflective and controls on outdoor lighting.

### **Relevant Provisions Of Planning Documents**

90. There was no suggestion that there is any relevant provision of a national policy statement, a coastal policy statement or a regional planning document.
91. In considering relevant provisions of the Plan, the first point to note is that the proposed activities are discretionary.
92. We note and take into account the purpose of the Rural General Zone. We also note that it is common ground that the parts of the site that we are particularly concerned with are in the Outstanding Natural Landscape (Wakatipu Basin).
93. In our consideration of effects above, we have taken into account the Assessment Matters at Section 5.4.2.3 (in the Rural Section) of the Plan. There is no need to comment specifically on all those Assessment Matters but we make some comments in relation to Mr Norwood's assessment.
94. We acknowledge that there is a possibility of house lights and potentially

vehicle lights, being seen on the site. However, the distance from which these will be visible means they will not be unduly intrusive. We will impose a condition requiring any outdoor lighting to be pointed downwards. Insofar as they give cues to domestication, they will be no more significant than the cues given during daylight hours. To a close observer they will indicate three houses relatively close together on a much larger area of land. There is no obvious reason why the eye would be drawn to this particular part of the viewing vista. The view is a large one in which there are many signs of domestication. Visibility of lights is not an issue from lower viewpoints such as the Coronet Peak turnoff and it is only from the more distant and higher viewpoints that it would be possible. While there is no evidence on this, we suspect that users of the Skippers Road or the Coronet Peak Road at night time are not using it primarily for sightseeing purposes and in all of the circumstances we consider that any visibility of lighting is a very minor issue.

95. We have not overlooked that there is an Assessment Matter relating to the integrity of landscape. We accept that noticeability and visibility of man-made changes is not necessarily the test in relation to this Assessment Matter. However, for the reasons already given, we consider that the impact on the integrity of the landscape caused by proposed mounding and the proposed accesses is minor.

96. Mr Norwood discusses nature conservation values. To the extent that he discusses geomorphologic features under this heading, we consider we have dealt with them elsewhere. He does note, and we need to mention and record, that the Applicant has proposed to restrict planting around the curtilage area so that it does not exceed 1.5 metres at maturity and that there will be no trees outside the curtilage areas but for the boundary planting referred to above. These are positive aspects of the proposal, although perhaps more directly relevant to the issue of the openness of the landscape.

97. We have considered the District Wide Objectives and Policies set out in the

s42A Report.

98. The Objective at Section 4.2.5 of the Plan is for subdivision, use and development in a manner that avoids, remedies or mitigates adverse effects on landscapes and visual amenity values. This is an effects-based Objective and does not warrant detailed separate consideration in the circumstances of this Application.
99. Policy 1 to that Objective refers to future development. This again is effects-based. It positively encourages development and/or subdivision in those areas with a greater potential to absorb change without detracting from landscape and visual amenity values. The relevant point is that it is concerned with adverse effects of subdivision and development, and is not a policy against subdivision and development as such.
100. Policy 3 to that Objective relates specifically to Outstanding Natural Landscapes (Wakatipu Basin) and it obviously needs careful consideration. It is here in particular that, with respect, we consider the officers rather over-stated the case against the proposal. There is no general policy to avoid subdivision and development in the Outstanding Natural Landscapes of the Wakatipu Basin. What the policy seeks to avoid is subdivision or development resulting in adverse effects that are more than minor. We have held that this proposed subdivision development would not have adverse effects on the stated values that are more than minor. In particular, we note that the policy contemplates that subdivision and development having visual impacts may be appropriate so long as those impacts are no more than minor. We acknowledge that the policy goes on to say that in the context of the landscapes in the Wakatipu Basin this means "reasonably difficult to see". The tenor of the officers' comments at various stages, including in their closing comments, was that there should be complete invisibility, but this is not what the policy aims to achieve.
101. We again remind ourselves of the Environment Court decisions that that Mr

Ibbotson referred us to. Here, there will be some visibility of earth mounds from lower and closer distances but probably only noticeably so to the trained eye. There will be some visibility of the development including the access road, possibly two of the houses, and the curtilage areas and activities from higher and more distant viewing points. In the context of the panoramic views available, they will hardly stand out and we consider they will be reasonably difficult to see. In relation to the visibility from the Coronet Peak Road where there are few viewing points, we think the fleeting nature of visibility is relevant to "reasonably difficult to see".

102. The volunteered conditions in relation to height of shrubs and trees within the curtilage and the absence of trees outside the curtilage will assist in maintaining the openness of the landscape.
103. The lower part of the site is in the Visual Amenity Landscape (referred to in Policy 4 to that Objective) rather than an Outstanding Natural Landscape. It was not suggested that the proposal was contrary to that policy.
104. Policy 8 to that Objective relates to cumulative degradation. There is also a reference to cumulative deterioration in Policy 3. For the reasons given, we do not consider the proposal will lead to cumulative degradation or deterioration.
105. Policy 9 to that Objective relates to structures. We note that this policy positively encourages structures that are in harmony with the line and form of the landscape. We consider that the structures here are certainly not out of harmony with the line and form of the landscape. Subject to dealing with the possibility of non-reflective glazing, we consider that the proposal is in accordance with this policy.
106. Policy 17 to this Objective is very much effects-based and we do not need to comment on it further.
107. The report writers considered that the proposal was largely consistent with

Objective 1 at Section 4.8 (Natural Hazards) of the Plan and the Objective at Section 4.10 (Earthworks) of the Plan. We agree with Mr Norwood as far as he goes. For the reasons already discussed, we disagree with his opinion that there would be adverse effects from earthworks that are not appropriately avoided, remedied or mitigated in relation to the nature and form of existing landscapes and landforms.

108. We now turn to the Objectives and Policies in Part 5 of the Plan, which deals specifically with Rural Areas. Again, many of these Objectives and Policies are effects-based. We have considered the Objectives and Policies and Mr Norwood's comments on them. Because they are effects-based, and the particular concerns Mr Norwood expresses relate to effects that we have already considered, we do not need to discuss them further.
109. In concluding our consideration of the Plan, we note as a starting point that the activities are discretionary. However, they are in the Outstanding Natural Landscape (Wakatipu Basin) and the Plan does have some quite particular Objectives and Policies in relation to such land. These are effects-based. The key issue is whether the proposed activity will have a visual impact that will be no more than minor, which the Plan tells us in the context of this Application means "it is reasonably difficult to see". Having regard to the significant distances of the viewing points from which the houses and curtilages can be seen, and particularly having regard to the statements of the Environment Court in *Just One Life Limited*, we consider that the proposed activities will be reasonably difficult to see.

### **Other Matters**

110. It was not suggested that there are any other matters which we should have regard to under s104(1)(c) and none have come to our minds. When the Application was first before us in August last year, there was considerable discussion about a precedent. That had a particular relevance when it was initially thought that the Application was for a non-complying activity but has

no particular importance at this stage.

### **Part 2 of Resource Management Act 1991**

111. As is commonly the case, a consideration of Part 2 of the RMA does not bring into consideration any factors that have not already been fully considered.

### **E OVERALL DECISION**

112. We have given this Application very careful consideration. As presented to us in August last year, it suffered some fundamental problems of analysis. However, these have now been addressed, and we have before us an application for three houses and associated accesses, curtilages and moundings. We are satisfied for the reasons set out above that these are discretionary activities.
113. Considerable care has gone into the development of the proposal. With the exception of a criticism of the failure to specify for non-reflective glass, there is no suggestion that the detail of the proposal can be improved.
114. For the reasons given, we have decided to allow the proposal subject to conditions generally put forward by the Applicant but including a condition requiring non-reflective glass. In the exercise of our overall discretion, we are satisfied that it is appropriate to grant consent to the Application on the terms set out below.

## SUBDIVISION CONSENT

**CONSENT IS HEREBY GRANTED** pursuant to Sections 104 and 104B of the Resource Management Act 1991 to subdivide Part Country Section 29, Block XIX, Shotover Survey District and Sections 28 and 30 Survey Office Plan 328674, Certificate of Title OT 58/178 **SUBJECT TO** the following conditions imposed pursuant to Sections 108 and 220 of the Act.

- 1 That the activity be undertaken in accordance with the following plans:
  - Proposed Subdivision — Drawing No. 2331.20R.1E
  - Vehicle Manoeuvring Areas — Drawing No. 2331-21R-11A
  - Roading & Landscape Mounding Layout — Drawing No. 2331-21R-2A
  - Lot Earthworks — Drawing No. 2331-21R-2A
  - Road 1 Long Section Ch 0.00 - Ch 550.00 – End - Drawing No. 2331-21R-3A
  - Road 1 Long Section Ch 525.00 – End - Drawing No. 2331-21R-4A
  - Road 1 Cross Sections — Drawing No. 2331-21R-5A
  - Road 1 Cross Sections & Lot 1 Sections — Drawing No. 2331-21R-6A
  - Lot Sections — Drawing No. 2331-21R-7A
  - Mound 1, 2 & 3 Sections — Drawing No. 2331-21R-8A
  - Road 1 Details — Drawing No. 2331-21R-9A
  - Road 2 & 3 Long Sections & Typical Section — Drawing No. 2331-21R-10A

**(stamped as approved 17 June 2009)** and specifications submitted with the application, with the exception of the amendments required by the following conditions of consent.

- 2 The consent holder shall, immediately after the commencement of this consent, surrender Land Use Consent RM060914 and shall not exercise this consent in any way before doing so.
- 3 All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.
- 4 The subdividing owner of the land shall provide a letter to the Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this subdivision and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.4 & 1.5 of NZS4404:2004 "Land Development and Subdivision Engineering", in relation to this development.
- 5 Prior to commencing works on site, the consent holder shall submit a Traffic Management Plan to Council for approval. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor (certification gained by attending the STMS course and getting registration). All contractors obligated to implement temporary Traffic Management Plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan.
- 6 Prior to commencing any work on the site the consent holder shall install a vehicle crossing, which all construction traffic shall use to enter and exit the site. The minimum standard for this crossing shall be a minimum compacted depth of 150mm AP40 metal. This crossing shall be upgraded in accordance with Council's standards, or removed, at

the time the access road is completed.

- 7 The consent holder shall install measures to control and or mitigate any dust, silt run-off and sedimentation that may occur, including those measures defined in the Site Management Plan prepared by Aurum Survey Consultants Ltd, reference number 2331S-1 Site Management Plan and dated December 2006. Specific attention shall be given to protecting silt-laden waters from entering any watercourse or boggy area on the site. These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project.
- 8 The consent holder shall provide Council with the name of a suitably qualified professional as defined in Section 1.4 of NZS 4404:2004 who is to supervise the excavation procedure. This engineer shall continually assess the condition of the excavation and implement any design changes/additions if and when necessary.
- 9 The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at their expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.
- 10 At the completion of the earthworks, all earth-worked areas shall be top soiled and grassed or otherwise permanently stabilised within six weeks.
- 11 Prior to the commencement of any works on the land being subdivided and prior to the Council signing the Title Plan pursuant to section 223 of the Resource Management Act 1991, the consent holder shall provide to the Queenstown Lakes District Council for review and approval copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition (3), to detail the following engineering works required:
  - (a) Further test pitting in areas of uncertain ground conditions as recommended by Royden Thomson in his report dated 25 September 2006.
  - (b) The formation of the access within Lot 100 to each vehicle crossing onto Lots 1, 2 & 3 in terms of Table 3.2(a) of the NZS 4404:2004 amendments as adopted by the Council in October 2005. The design shall take account of test pit results in Condition 11(a) above. The access shall be formed with a 3.5m wide metalled carriageway, grassed shoulders, swale drains, stormwater control. Provided, however that the section of accessway between chainage 750 and the dwelling on proposed Lot 1 and the accessways to Lots 2 & 3 are to be sealed in a custom made aggregate to achieve a dull, darkish grey colour which is recessive in the landscape. Passing bays shall be provided at a maximum spacing of 100m unless otherwise approved by Council.
  - (c) The provision of a water supply to the boundaries of Lots 1, 2 & 3 in terms of Council's standards. Each lot shall be supplied with a minimum of 2,100 litres per day of potable water that complies with the requirements of the Drinking Water Standard for New Zealand 2005.
  - (d) The provision of a sealed vehicle crossing to Lot 100 from Littles Road, and vehicle crossings to Lots 1, 2 & 3 from Lot 100 to be in terms of Diagram 2, Appendix 7 and Rule 14.2.4.2 of the District Plan. This shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property,

whichever is the lower. Provision shall be made to continue any roadside drainage.

- (e) The provision of a stormwater assessment of the flooding risk to the building platform on Lot 2 (taking account of Royden Thomson's report dated 29 April 2008) from the swampy area immediately to the east under a 100 year (1% AEP) storm event, and associated recommendations for floor levels and/or drainage of the swamp area.
  - (f) Confirmation that the consent holder has contractual arrangements for the supply of electricity and telecommunications services to Lots 1, 2 and 3.
- 12 Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall complete the following:
- (a) The submission of 'as-built' plans in accordance with Council's as-built standard and information required to detail all engineering works completed in relation to or in association with this subdivision.
  - (b) The completion and implementation of all works detailed in Condition (11) above.
  - (c) If the water supply will ultimately serve more than 25 people for more than 60 days per year then the consent holder is to notify Public Health South, PO Box 2180, Queenstown, Ph 03 442 2500 of the details of the water supply.
  - (d) The consent holder shall provide evidence to the satisfaction of Council as to how the water supply will be monitored and maintained on an ongoing basis to ensure that it continues to comply with the Drinking Water Standard for New Zealand 2005.
  - (e) The consent holder shall provide evidence to the satisfaction of Council as to how the roading access within Lot 100 will be monitored and maintained on an ongoing basis.
  - (f) Each lot created, for residential use, by this subdivision shall be provided with a minimum electricity supply of single-phase 15kVA capacity. This supply shall be made available to the net area of each of the lots. Each supply shall be underground from any existing reticulation.
  - (g) The consent holder shall provide a suitable and usable telecommunications connection to each lot. These connections shall be underground from any existing reticulation and in accordance with any requirements/standards of Telecom.
  - (h) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.
  - (i) On the completion of the earthworks a suitably qualified engineer experienced in soils investigations shall provide certification, in accordance with NZS 4431:1989, for all areas of fill within the site on which buildings are to be founded (if any).
  - (j) No earthworks, temporary or permanent, are to breach the boundaries of the site.
  - (k) Upon completion of the earthworks, the consent holder shall complete the following:

- i) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.
  - ii) An engineer's design certificate/producer statement shall be submitted with regards to any permanent retaining walls on site.
- 13 Prior to certification pursuant to section 224 of the Act and in accordance with section 221 of the Resource Management Act 1991, a consent notice shall be registered on the pertinent Certificate of Title for the performance of the following conditions on a continuing basis:
  - (a) At the time a dwelling is erected on Lot 2, the owner for the time being shall ensure that the dwelling maintains a minimum floor level as outlined in the stormwater assessment report prepared under this consent.
  - (b) At the time a dwelling is erected on either of Lots 2 & 3, the owner for the time being shall follow the recommendations of Royden Thomson's geotechnical appraisal dated 29 April 2008, with respect to excavation batters, stormwater drainage, and minimum floor levels.
  - (c) At the time a dwelling is erected on any of Lots 1, 2 & 3, the owner for the time being shall engage a suitably qualified professional as defined in Section 1.4 of NZS 4404:2004 to design a stormwater disposal system that is to provide stormwater disposal from all impervious areas within the site. The proposed stormwater system shall be subject to the review of Council prior to implementation.
  - (d) At the time a dwelling is erected on any of Lots 1, 2 & 3, the owner for the time being shall construct an access way to the dwelling that complies with the guidelines provided for in Table 3.2(a) of Council's amendments to NZS 4404:2004 as adopted by the Council in October 2005, and following the alignment set out under RM060914 for Lot 1, and this consent for Lots 2 & 3.
  - (e) At the time a dwelling is erected on any of Lots 1, 2 & 3, the owner for the time being shall engage a suitably qualified professional as defined in Section 1.4 of NZS 4404:2004 to design an effluent disposal system in terms of AS/NZS 1547:2000 that will provide sufficient treatment/renovation to effluent from on-site disposal, prior to discharge to land. To maintain high effluent quality such a system would require the following:
    - Specific design by a suitably qualified professional engineer.
    - A requirement that each lot must include systems that achieve the levels of treatment determined by the specific design.
    - Regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of each system to undertake this maintenance.
    - Intermittent effluent quality checks to ensure compliance with the system designer's specification.
    - Disposal areas shall be located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore.

- (f) The drinking water supply is to be monitored in compliance with the Drinking Water Standard for New Zealand 2005 for the presence of E.coli, by the consent holder, and the results forwarded to the Queenstown Lakes District Council. The Ministry of Health shall approve the laboratory carrying out the analysis. Should the water not meet the requirements of the Standard then the management group for the lots shall be responsible for the provision of water treatment to ensure that the Drinking Water Standards for New Zealand 2005 are met or exceeded.
- (g) In the event that the number of persons to be accommodated on any of Lots 1, 2 & 3 to be greater than 3, then the Queenstown Lakes District Council will require commensurate increases in the water supply to that lot at the rate of 700 litres per extra person per day.
- (h) At the time a dwelling is erected on any of Lots 1, 2 & 3, domestic water and fire fighting storage is to be provided. A minimum of 20,000 litres shall be maintained at all times as a static fire fighting reserve within a 30,000-litre tank for each dwelling. Alternatively, an 11,000-litre fire fighting reserve is to be provided for each dwelling in association with a domestic sprinkler system installed to an approved standard. A fire fighting connection in accordance with Appendix B - SNZ PAS 4509:2003 is to be located within 90 metres of any proposed building on the site. Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2003 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2003 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single family dwellings. In the event that the proposed dwellings provide for more than single family occupation then the consent holder should consult with the NZFS as larger capacities and flow rates may be required.

The Fire Service connection point/coupling must be located so that it is not compromised in the event of a fire.

The connection point/coupling shall have a hardstand area adjacent to it that is suitable for parking a fire service appliance. The hardstand area shall be located in the centre of a clear working space with a minimum width of 4.5 metres. Pavements or roadways providing access to the hardstand area must have a minimum formed width as required by QLDC's standards for rural roads (as per NZS 4404:2004 with amendments adopted by QLDC in 2005). The roadway shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Access shall be maintained at all times to the hardstand area.

Underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1 metre above ground) may be accessed by an opening in the top of the tank whereby couplings are not required. A hardstand area adjacent to the tank is required in order to allow a fire service appliance to park on it and access to the hardstand area must be provided as above.

Fire fighting water supply may be provided by means other than the above if the written approval of the New Zealand Fire Service is obtained for the proposed

method.

The fire fighting water supply tank and/or the sprinkler system shall be installed prior to the occupation of the building.

- (i) Lot 100 shall not be further subdivided (except by way of boundary adjustment meeting the requirements to be a controlled subdivision activity under Rule 15.2.3.2 of the Queenstown Lakes District Council Partially Operative District Plan)
  - (j) There shall be no building on Lot 100.
  - (k) All of the site, including Lot 100, that is outside the permitted curtilage areas shall continue to be managed in its current paddock state by way of grazing and/or mowing. No additional planting shall be permitted in this area, except that up to 20 trees may be planted near the eastern boundary near the existing dwelling on the adjoining property, to provide a continuous screening shelterbelt of a uniform species between the two dwellings.
  - (l) The section of accessway between chainage 750 and the dwelling on proposed Lot 1 and the accessways to Lots 2 & 3 are to be sealed in a custom made aggregate to achieve a dull, darkish grey colour that is recessive in the landscape.
  - (m) All elements of domestic curtilage (such as car parking areas, lawns, domestic landscape planting, outdoor storage areas and clotheslines) for each dwelling shall be contained within the curtilage area identified on Aurum Survey Consultants Ltd, Drawing 2331.20R.1E, 20 February 2008. All domestic landscape planting shall be of species that achieve a maximum height at maturity of 1.5 metres.
  - (n) That all glazing in the building be restricted to systems with a reflected visible light of less than or equal to 8%.
  - (o) No fencing shall be permitted (including boundary fencing) other than fences of a traditional farming type (but not deer fencing) around the curtilage areas and along the cliff tops. However, existing fencing may be repaired or replaced (with the same type) as necessary.
- 14 All easements shall be granted or reserved.
- 15 That Lot 100 hereon be held as 'to three undivided one-third shares by the owners of Lots 1, 2 and 3 hereon as tenants in common in the said shares and that individual Computer Registers be issued in accordance therewith (CSN Request 731789).

## LAND USE CONSENT

**CONSENT IS HEREBY GRANTED** for the erection of residential dwellings on each of Lots 1, 2 and 3, to be authorised by the subdivision consent set out above **SUBJECT TO** the following conditions imposed pursuant to section 108 of the Resource Management Act.

### General Conditions

1 That the development be carried out in accordance with the following plans:

- Littles Ridge Lot 1 -- Floor Plan - Drawing No. 0001
- Littles Ridge Lot 1 -- Southern Elevation - Drawing No. 0002
- Littles Ridge Lot 1 -- North Elevation - Drawing No. 0003
- Littles Ridge Lot 1 -- East Elevation - Drawing No. 0004
- Littles Ridge Lot 1 -- West Elevation - Drawing No. 0005
- Littles Ridge Lot 1 -- Site Plan - Drawing No. 0006
- Littles Ridge Lot 1 -- Cross Sections - Drawing No. 0007
- Littles Ridge Lot 1 -- Cross Sections - Drawing No. 0008
- Littles Ridge Lot 1 -- Cross Sections - Drawing No. 0009
  
- Lot 2 Littles Ridge -- Site Plan- Drawing No. 0001
- Lot 2 Littles Ridge -- Cross Section A - Drawing No. 0002
- Lot 2 Littles Ridge -- Cross Section B - Drawing No. 0003
- Lot 2 Littles Ridge -- Cross Section C - Drawing No. 0004
- Lot 2 Littles Ridge -- Cross Section D - Drawing No. 0005
- Lot 2 Littles Ridge -- Cross Section E - Drawing No. 0006
- Lot 2 Littles Ridge -- Cross Section F - Drawing No. 0007
- Lot 2 Littles Ridge -- Floor Plan - Drawing No. 0008
- Lot 2 Littles Ridge -- West Elevation - Drawing No. 0009
- Lot 2 Littles Ridge -- North Elevation - Drawing No. 0010
- Lot 2 Littles Ridge -- East Elevation - Drawing No. 0011
- Lot 2 Littles Ridge -- South Elevation - Drawing No. 0012
  
- Lot 3 Littles Ridge -- Site Plan - Drawing No. 0001
- Lot 3 Littles Ridge -- Cross Section G - Drawing No. 0002
- Lot 3 Littles Ridge -- Cross Section H - Drawing No. 0003
- Lot 3 Littles Ridge -- Cross Section I - Drawing No. 0004
- Lot 3 Littles Ridge -- Cross Section J - Drawing No. 0005
- Lot 3 Littles Ridge -- Floor Plan Upper Level - Drawing No. 0006
- Lot 3 Littles Ridge -- Floor Plan Lower Level - Drawing No. 0007
- Lot 3 Littles Ridge -- West Elevation - Drawing No. 0008
- Lot 3 Littles Ridge -- North Elevation - Drawing No. 0009
- Lot 3 Littles Ridge -- East Elevation - Drawing No. 0010
- Lot 3 Littles Ridge -- South Elevation - Drawing No. 0011
- Lot 3 Littles Ridge -- Cross Section K - Drawing No. 0012
- Lot 3 Littles Ridge -- Cross Section L - Drawing No. 0013
  
- Vehicle Manoeuvring Areas -- Drawing No. 2331-21R-11A
- Roading & Landscape Mounding Layout -- Drawing No. 2331-21R-2A
- Lot Earthworks -- Drawing No. 2331-21R-2A
- Road 1 Long Section Ch 0.00 -- Ch 550.00 -- End - Drawing No. 2331-21R-3A
- Road 1 Long Section Ch 525.00 -- End - Drawing No. 2331-21R-4A

- Road 1 Cross Sections — Drawing No. 2331-21R-5A
- Road 1 Cross Sections & Lot 1 Sections — Drawing No. 2331-21R-6A
- Lot Sections — Drawing No. 2331-21R-7A
- Mound 1, 2 & 3 Sections — Drawing No. 2331-21R-8A
- Road 1 Details — Drawing No. 2331-21R-9A
- Road 2 & 3 Long Sections & Typical Section — Drawing No. 2331-21R-10A

**(stamped as approved on 17 June 2009)** and the application as submitted, with the exception of the amendments required by the following conditions of consent.

- 2 That unless it is otherwise specified in the conditions of this consent, compliance with any monitoring requirement imposed by this consent shall be at the consent holder's own expense.
- 3 The consent holder shall pay to the Council an initial fee of \$240 for the costs associated with the monitoring of this resource consent in accordance with Section 35 of the Act.

### Engineering

- 4 All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.
- 5 The developing owner of the land shall provide a letter to the Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this subdivision and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.4 & 1.5 of NZS 4404:2004 "Land Development and Subdivision Engineering", in relation to this development.
- 6 Prior to commencing works on site, the consent holder shall submit a Traffic Management Plan to Council for approval, which also takes account of the excavated material to be removed from site. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor (certification gained by attending the STMS course and getting registration). All contractors obligated to implement temporary Traffic Management Plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan.
- 7 Prior to commencing any work on the site the consent holder shall install a vehicle crossing, which all construction traffic shall use to enter and exit the site. The minimum standard for this crossing shall be a minimum compacted depth of 150mm AP40 metal. This crossing shall be upgraded in accordance with Council's standards, or removed, at the time the access road is completed.
- 8 The consent holder shall install measures to control and or mitigate any dust, silt run-off and sedimentation that may occur, including those measures defined in the Site Management Plan prepared by Aurum Survey Consultants Ltd, reference number 2331S-1 Site Management Plan and dated December 2006. Specific attention shall be given to protecting silt-laden waters from entering any watercourse or boggy area on the site. These measures shall be implemented prior to the commencement of any

earthworks on site and shall remain in place for the duration of the project.

- 9 The consent holder shall provide Council with the name of a suitably qualified professional as defined in Section 1.4 of NZS 4404:2004 who is to supervise the excavation procedure. This engineer shall take account of Royden Thomson's geotechnical appraisal dated 29 April 2008 with respect to excavation batters, and continually assess the condition of the excavation and implement any design changes/additions if and when necessary.
- 10 The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at their expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.
- 11 On the completion of the earthworks a suitably qualified engineer experienced in soils investigations shall provide certification, in accordance with NZS 4431:1989, for all areas of fill within the site on which buildings are to be founded (if any).
- 12 At the completion of the earthworks, all earth-worked areas shall be topsoiled and grassed or otherwise permanently stabilised within six weeks.
- 13 No earthworks, temporary or permanent, are to breach the boundaries of the site.
- 14 Upon completion of the earthworks, the consent holder shall complete the following:
  - (a) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.
  - (b) An engineer's design certificate/producer statement shall be submitted with regards to any permanent retaining walls on site.
- 15 Prior to commencement of any works on the land being developed, the consent holder shall provide to the Queenstown Lakes District Council for review and approval, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition 4, to detail the following engineering works required:
  - (a) Further test pitting in areas of uncertain ground conditions as recommended by Royden Thomson in his report dated 25 September 2006.
  - (b) The provision of an accessway to the dwellings in terms of Table 3.2(a) of the NZS 4404:2004 amendments as adopted by the Council in October 2005. The design shall take account of test pit results in Condition [15(a)] above. The access shall be formed with a 3.5m wide metalled carriageway, grassed shoulders, swale drains, stormwater control, and appropriate passing bays as approved by Council.
  - (c) The provision of a sealed vehicle crossing to the site from Littles Road, and vehicle crossings to each dwelling from the main access road to be in terms of Diagram 2, Appendix 7 and Rule 14.2.4.2 of the District Plan. This shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Provision shall be made to continue any roadside drainage on Littles Road.

- (d) The formation of all parking and manoeuvring areas for each dwelling in accordance with the plan, 'Vehicle Manoeuvring Areas– Drawing No. 2331-21R-11A', stamped as approved and attached to this decision.
- (e) The provision of a water supply to each dwelling in terms of Council's standards. The dwellings shall be supplied with a minimum of 2,100 litres per day of potable water that complies with the requirements of the Drinking Water Standard for New Zealand 2005.
- (f) The provision of a stormwater assessment of the flooding risk to the dwelling, located on proposed Lot 2, (taking account of Royden Thomson's report dated 29<sup>th</sup> April 2008) from the swampy area immediately to the east under a 100 year (1% AEP) storm event, and associated recommendations for floor levels and/or drainage of the swamp area.
- (g) The provision of a stormwater disposal system that is to provide stormwater disposal from all impervious areas within the site. The proposed stormwater system shall be designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 and subject to the review of Council prior to implementation.
- (h) The provision of an effluent disposal system for each dwelling, designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004, in terms of AS/NZS 1547:2000, which will provide sufficient treatment/renovation to effluent from on-site disposal, prior to discharge to land. To maintain high effluent quality such a system would require the following:
  - Specific design by a suitably qualified professional engineer.
  - A requirement that each lot must include systems that achieve the levels of treatment determined by the specific design.
  - Regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of the system to undertake this maintenance.
  - Intermittent effluent quality checks to ensure compliance with the system designer's specification.
  - Disposal areas shall be located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore.

16 Prior to occupation of the dwellings, the consent holder shall complete the following:

- (a) The submission of 'as-built' plans in accordance with Council's as-built standard and information required to detail all engineering works completed in relation to or in association with this subdivision.
- (b) The completion and implementation of all works detailed in Condition [15] above.
- (c) The consent holder shall provide evidence to the satisfaction of Council as to how the water supply will be monitored and maintained on an ongoing basis to ensure that it continues to comply with the Drinking Water Standard for New Zealand 2005.

- (d) The consent holder shall provide evidence to the satisfaction of Council as to how the roading access within Lot 100 will be monitored and maintained on an ongoing basis.
- (e) The consent holder shall provide a suitable and useable power supply and telecommunications connection to the dwellings. These connections shall be underground from any existing reticulation and in accordance with any requirements/standards of Aurora Energy/Delta or Telecom.
- (f) Prior to the occupation of the dwellings, domestic water and fire fighting storage is to be provided. A minimum of 20,000 litres shall be maintained at all times as a static fire fighting reserve within a 30,000-litre tank for each dwelling. Alternatively, an 11,000-litre fire fighting reserve is to be provided for each dwelling in association with a domestic sprinkler system installed to an approved standard. A fire fighting connection in accordance with Appendix B - SNZ PAS 4509:2003 is to be located within 90 metres of any proposed building on the site. Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2003 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2003 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single family dwellings. In the event that the proposed dwellings provide for more than single family occupation then the consent holder should consult with the NZFS as larger capacities and flow rates may be required.

The Fire Service connection point/coupling must be located so that it is not compromised in the event of a fire.

The connection point/coupling shall have a hardstand area adjacent to it that is suitable for parking a fire service appliance. The hardstand area shall be located in the centre of a clear working space with a minimum width of 4.5 metres. Pavements or roadways providing access to the hardstand area must have a minimum formed width as required by QLDC's standards for rural roads (as per NZS 4404:2004 with amendments adopted by QLDC in 2005). The roadway shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Access shall be maintained at all times to the hardstand area.

Underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1 metre above ground) may be accessed by an opening in the top of the tank whereby couplings are not required. A hardstand area adjacent to the tank is required in order to allow a fire service appliance to park on it and access to the hardstand area must be provided as above.

Fire fighting water supply may be provided by means other than the above if the written approval of the New Zealand Fire Service is obtained for the proposed method.

The fire fighting water supply tank and/or the sprinkler system shall be installed prior to the occupation of the building.

- 17 The drinking water supply shall be monitored in compliance with the Drinking Water Standard for New Zealand 2005 for the presence of E.coli, by the consent holder, and the results forwarded to the Queenstown Lakes District Council. The Ministry of Health shall approve the laboratory carrying out the analysis. Should the water not meet the requirements of the Standard then the management group for the lots shall be responsible for the provision of water treatment to ensure that the Drinking Water Standards for New Zealand 2005 are met or exceeded.
- 18 In the event that the number of persons to be accommodated in any dwelling is to be greater than 3, then the Queenstown Lakes District Council will require commensurate increases in the water supply to that lot at the rate of 700 litres per extra person per day.

#### Landscape Protection Conditions

- 19 All elements of domestic curtilage (such as car parking areas, lawns, domestic landscape planting, outdoor storage areas, and clotheslines) for each dwelling shall be contained within the curtilage area identified on Aurum Survey Consultants Ltd, Drawing 2331.20R.1E, 20 February 2008. All domestic landscape planting shall be of species that achieve a maximum height at maturity of 1.5 metres.
- 20 All of the site, including Lot 100, that is outside the permitted curtilage areas shall continue to be managed in its current paddock state by way of grazing and/or mowing. No additional planting shall be permitted in this area, except that up to 20 trees may be planted near the eastern boundary near the existing dwelling on the adjoining property, to provide a continuous screening shelterbelt of a uniform species between the two dwellings.
- 21 The section of accessway between chainage 750 and the dwelling on proposed Lot 1 and the accessways to Lots 2 & 3 are to be sealed in a custom made aggregate to achieve a dull, darkish grey colour that is recessive in the landscape.
- 22 All exterior lighting associated with any dwelling shall be fixed no higher than 2 metres above finished ground level and shall be capped, filtered or pointed downwards so as to reduce or avoid visibility from any point off-site of light sources and to minimise visibility of lit areas.
- 23 All glazing in the building be restricted to systems with a reflected visible light of less than or equal to 8%.
- 24 No fencing shall be permitted (including boundary fencing) other than fences of a traditional farming type (but not deer fencing) around the curtilage areas and along the clifftops. However, existing fencing may be repaired or replaced (with the same type) as necessary.

#### Review

- 25 Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:
  - (a) To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was

considered and which it is appropriate to deal with at a later stage.

- (b) To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.
- (c) To avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

DATED this 17<sup>th</sup> day of June 2009



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Trevor J Shiels  
for Commissioners

QLDC

31 JUL 2013

BEFORE THE ENVIRONMENT COURT

QUEENSTOWN

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN M W MEEHAN

(ENV-2013-CHC-22)

Appellant

AND

QUEENSTOWN LAKES DISTRICT  
COUNCIL

Respondent

Environment Judge J R Jackson sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

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**CONSENT ORDER**

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[A] Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed to the extent that land use consent is granted for a residential building platform located on Part Lot 7 DP25924, on Malaghans Road Queenstown, subject to the conditions set out in Schedule 1 (including the plans referenced in Condition 1), attached to and forming part of this order;
- (2) the appeal is otherwise dismissed.

[B] Under section 285 of the Resource Management Act 1991, there is no order as to costs.



## REASONS

### **Introduction**

[1] On 31 January 2013 M W Meehan lodged an appeal against decisions of the Queenstown Lakes District Council in respect of an application by M W Meehan for subdivision consent and two land use consents- land use consent A was for a residential building platform in the position identified within proposed Lot 1 and land use consent B was for a residential building platform in the position identified within proposed Lot 2.<sup>1</sup>

[2] The parts of the appeal concerning the subdivision consent and land use consent A have been withdrawn.

[3] The court has now read and considered the consent memorandum of the parties dated 15 July 2013 which proposes to resolve the remainder of the appeal.

### **Other relevant matters**

[4] No person has given notice of an intention to become a party under section 274 of the Resource Management Act 1991 (“the RMA” or “the Act”).

[5] The parties are advised that the court has corrected the following minor grammatical/formatting errors as follows:

- (a) Schedule 1 page 1: The first sentence in condition 1 has been reworded so that it does not begin with “that”;
- (b) Schedule 1 page 4: The indenting after para [17] has been removed and new para numbers inserted (including subsequent renumbering);
- (c) Schedule 1 page 5: Heading “On-Going Conditions” has been hyphenated;
- (d) Schedule 1 page 11: Condition 22(g)(ii) bullet points changed to a, b and c, to accord with reference in condition 22(g)(iv);
- (e) Schedule 1 page 12: Underlining in Advice Note has been removed.

### **Orders**

[6] The court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;

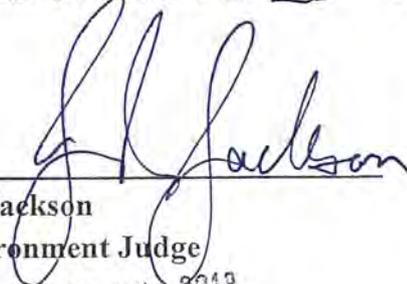
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<sup>1</sup> RM120433.



- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

DATED at Christchurch *25* July 2013

  
\_\_\_\_\_  
J R Jackson  
Environment Judge



Issued: *29 JUL 2013*  
2013-chc-meehan v qldc consent order

## Schedule 1

### Conditions of Consent

#### Land use consent:

#### General Conditions

1. The building platform and associated earthworks and landscaping is to be located and carried out in accordance with the following plans:
  - a. Clark Fortune McDonald & Associates, *RM120433* – Building Platform on Pt Lot 7 DP 25924, Job 10796, Drawing No. 03, Rev B dated 2-05-13.
  - b. Clark Fortune McDonald & Associates, *RM120433* - Proposed Earthworks & Design Contours for Building Platform on Pt Lot 7 DP 25924, Job 10796, Drawing No. 005, Sheet 001, Issued 2-05-13.
  - c. Clark Fortune McDonald & Associates, *RM120433* - Proposed Earthworks on Cut / Fill Depth Range for Building Platform on Pt Lot 7 DP 25924, Job 10796, Drawing No. 005, Sheet 002, Issued 2-05-13.
  - d. Clark Fortune McDonald & Associates, *RM120433* - Proposed Earthworks for Building Platform on Part Lot 7 DP 25924 Sections 1 - 3, Job 10796, Drawing No. 005, Sheet 003, Issued 2-05-13.
  - e. Baxter Design Group, Building Platform and Curtilage, Reference 1641-D, Attachment D, Dated 26 April 2013.
  - f. Baxter Design Group, Site Management, Reference 1641-F, Attachment F, Dated 26 April 2013.
2. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of The Resource Management Act 1991 (the Act) and shall pay to Queenstown Lakes District Council (“Council”) an initial fee of \$240.
3. All engineering works shall be carried out in accordance with the Council’s policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.



**Building Platform**

4. In order to give effect to this consent, the consent holder shall create a “Land Transfer Covenant Plan” identifying the approved building platform shown on the plan *Clark Fortune McDonald & Associates, RM120433 – Building Platform on Pt Lot 7 DP 25924, Job 10796, Drawing No. 03, Rev B dated 2-05-13* – stamped as approved under Condition 1. The consent holder shall register this “Land Transfer Covenant Plan” on the Computer Freehold Register 538341 Otago and shall execute all documentation required to register this plan. The costs of doing so are to be borne by the consent holder

***Prior to the registration of the Land Transfer Covenant Plan***

5. The following conditions 6 to 21 are to be completed either prior to the Land Transfer Covenant Plan being registered pursuant to condition 4 or included as ongoing conditions in the covenant registered under condition 22.

***Earthworks***

**To be completed prior to the commencement of any works on-site**

6. At least 7 days prior to commencing excavations, the consent holder shall provide the Principal Engineer at Council with the name of a suitably qualified professional as defined in Section 1.4 of NZS 4404:2004 and who shall supervise the excavation and filling. Should the site conditions be found unsuitable for the proposed excavation/construction methods, then a suitably qualified and experienced engineer shall submit to the Principal Engineer at Council new designs/work methodologies for the works prior to further work being undertaken, with the exception of any necessary works required to stabilise the site in the interim.
7. The owner of the land being developed shall provide a letter to the Principal Engineer at Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.4 & 1.5



of NZS4404:2004 “Land Development and Subdivision Engineering”, in relation to this development.

8. At least 5 working days prior to commencing work on site the consent holder shall advise the Principal Engineer at Council of the scheduled start date of physical works.
9. Prior to the commencement of any works, the consent holder shall implement the following traffic management measures during the excavation phase:
  - Suitable site warning signage shall be in place on the road in both directions from the site entrance.
  - High visibility safety clothing shall be worn by any staff working on the road.
  - Safe sight distances and passing provisions shall be maintained at all times.
10. The consent holder shall install measures to control and/or mitigate any dust, silt run-off and sedimentation that may occur, in accordance with NZS 4404:2004 and “*A Guide to Earthworks in the Queenstown Lakes District*” brochure, prepared by the Council. These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project, until all exposed areas of earth are permanently stabilised.

To be monitored throughout earthworks

11. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at his/her expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.
12. No earthworks, temporary or permanent, are to breach the boundaries of the site.



On Completion of earthworks

13. All earth worked/exposed areas shall be top-soiled and grassed/revegetated or otherwise permanently stabilised.
14. The consent holder shall provide certification, in accordance with NZS 4431:1989, for all areas of fill within the site on which buildings are to be founded (if any).

***Engineering***

15. The consent holder shall provide “as-built” plans and information required to detail all engineering works completed in relation to or in association with this development to the Principal Engineer at Council. This information shall be formatted in accordance with Council’s ‘as-built’ standards and shall include all Roads (including right of ways and access lots), Water, Wastewater and Stormwater reticulation (including private laterals and toby positions).
16. A digital plan showing the location of all building platforms required to be shown on the survey plan / Land Transfer Plan shall be submitted to the Principal Engineer at Council. This plan shall be in terms of New Zealand Transverse Mercator 2000 coordinate system (NZTM2000), NZGDM 2000 datum.
17. The consent holder shall provide a geotechnical completion report and a Schedule 2A “Statement of professional opinion as to suitability of land for building construction” in accordance with Section 2.11.1 of NZS 4404:2004 that has been prepared by suitably qualified geotechnical engineer as defined in Section 1.2.3 and demonstrates to Council that the proposed building platform is suitable for building development. In the event that the site conditions within the building platform is only found to be suitable for building construction subject to certain mitigation measures and/or remedial works being carried out, then a suitably qualified and experienced professional shall submit to the Council for review and approval full details of such works. The consent holder shall be responsible for implementing all necessary mitigation measures and/or remedial works required to prepare the land for building construction.
18. A covenant shall be registered on the relevant Computer Freehold Registers for any lot in respect of which the Schedule 2A statement indicates that building



construction would only be suitable if certain mitigation measures and/or remedial works were carried out at the time of construction. The covenant condition shall require that, prior to any construction work (other than work associated with geotechnical investigation), the owner of such a lot shall submit, to Council for certification, plans prepared by a suitably qualified engineer detailing the proposed mitigation measures and/or remedial works AND require the owner to implement all such measures prior to occupation of any building.

19. A covenant shall be registered on the relevant Computer Freehold Registers for any lot in respect of which the Schedule 2A statement indicates that no building construction would be suitable within the lot or on any part of a lot. The covenant condition shall refer to the Schedule 2A statement and record that no residential development may be undertaken on the lot or on the relevant part of the lot.
20. Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an underground electricity supply has been made available (minimum supply of single phase 15kva capacity) to the building.
21. Written confirmation shall be provided from the telecommunications network supplier responsible for the area that provision of underground telephone services has been made available to the building platform.

### **On-Going Conditions**

22. At the time that Land Transfer Covenant Plan is registered on the certificate of title, a covenant pursuant to section 108(2)(d) of the Resource Management Act 1991 shall be registered on the Computer Freehold Register of the subject site providing for the performance of the following conditions on a continuing basis:

- a. **Effluent Disposal**

At the time a dwelling is erected on the building platform, the owner for the time being shall engage a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 to design an effluent disposal system in terms of AS/NZS 1547:2012 that will provide sufficient treatment/renovation to effluent from on-site disposal, prior to discharge



to land. The design shall take into account the site specific report and recommendations by Southern Monitoring Services Ltd, dated 25 August 2012. The proposed waste water system shall be subject to the review of the Principal Engineer at Council prior to implementation and shall be installed prior to occupation of the dwelling. Consent for this may also need to be obtained from the Otago Regional Council.

At such a time that a reticulated Council stormwater/sewage disposal system is available to service the lot, within a period of no more than three months from the system's availability, the owner for the time being shall cease the use of the alternative disposal system and connect to the Council system. The cost of making this connection shall be borne by the owner of the lot. At this time the owner for the time being shall pay to the Council the applicable development contribution.

b. **Drinking Water**

At the time that a dwelling is erected on the building platform, the owner for the time being is to treat the domestic water supply by filtration and disinfection if necessary to comply with the Drinking Water Standards for New Zealand 2005 (revised 2008).

c. **Water Storage and Fire fighting**

At the time a dwelling is erected, domestic water and fire fighting storage is to be provided. A minimum of 20,000 litres shall be maintained at all times as a static fire fighting reserve within a 30,000 litre tank. Alternatively, a 7,000 litre fire fighting reserve is to be provided for each dwelling in association with a domestic sprinkler system installed to an approved standard. A fire fighting connection in accordance with Appendix B - SNZ PAS 4509:2008 is to be located no further than 90 metres, but no closer than 6 metres, from any proposed building on the site. Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2008 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than



100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2008 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single family dwellings. In the event that the proposed dwellings provide for more than single family occupation then the consent holder should consult with the New Zealand Fire Service as larger capacities and flow rates may be required.

The New Zealand Fire Service connection point/coupling must be located so that it is not compromised in the event of a fire.

The connection point/coupling shall have a hardstand area adjacent to it (within 5 metres) that is suitable for parking a fire service appliance. The hardstand area shall be located in the centre of a clear working space with a minimum width of 4.5 metres. Pavements or roadways providing access to the hardstand area must have a minimum formed width as required by the Council's standards for rural roads (as per NZS 4404:2004 with amendments adopted by the Council in 2005). The roadway shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Access shall be maintained at all times to the hardstand area.

Underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1 metre above ground) may be accessed by an opening in the top of the tank whereby couplings are not required. A hardstand area adjacent to the tank is required in order to allow a fire service appliance to park on it and access to the hardstand area must be provided as above.

The Fire Service connection point/coupling/fire hydrant/tank must be located so that it is clearly visible and/or provided with appropriate signage to enable connection of a fire appliance.



Fire fighting water supply may be provided by means other than the above if the written approval of the New Zealand Fire Service is obtained for the proposed method.

The fire fighting water supply tank and/or the sprinkler system shall be installed prior to the occupation of the building.

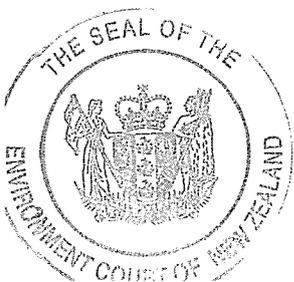
**Advice Note:** The New Zealand Fire Service considers that often the best method to achieve compliance with SNZ PAS 4509:2008 is through the installation of a home sprinkler system in accordance with Fire Systems for Houses SNZ 4517:2010, in each new dwelling. Given that the proposed dwelling is approximately 11.5km from the nearest New Zealand Fire Service Fire Station the response times of the New Zealand Volunteer Fire Service in an emergency situation may be constrained. It is strongly encouraged that a home sprinkler system be installed in the new dwelling.

d. **Electricity and Telecommunications**

All electrical and telecommunications services shall be installed underground.

e. **Building Controls**

- i) The residential unit and any residential accessory buildings shall be constructed within the designated building platform shown on plan - *Clark Fortune McDonald & Associates, RM120433 – Building Platform on Pt Lot 7 DP 25924, Job 10796, Drawing No. 03, Rev B dated 2-05-13.*
- ii) No building or other structure shall be constructed with the designated building platform until conditions 6 to 21 have been completed.
- iii) No building or other structure, including water tanks, shall be visible when viewed from Malaghans Road or Arthurs Point Road. Methods to comply with this condition shall include



restrictions on heights of buildings, landscaping and earth shaping to be used as and where appropriate in the circumstances of the location of the building within the prescribed building platform and its design.

- iv) Subject to condition ii) above, the maximum height of any structure within the building platform shall be 514.25masl for the northern portion of the platform, and 515.25masl for the southern portion of the platform as marked and shown on Baxter Design Group Plan 1641-D.
- v) The maximum building footprint within the designated building platform is limited to 70% of the area of the building platform.
- vi) All structures including residential units, water tanks, garages and accessory residential buildings, or any building used as an accessory to any farming activity, shall conform to the following building design controls:
- Roof claddings to be in steel (corrugated or tray), slate (natural or imitation), natural grass and/or membrane. Roofs shall be limited to mono-pitches.
  - Roof colours to be natural slate or grass, or the colours of steel, imitation slate and membrane roofs to be dark greys only, and of light reflectance less than 20%.
  - Wall colours to be in a recessive colour with a light reflectivity of less than 36%; to be within the tones of greys and browns to ensure that the house blends with the receiving environment.
  - Wall cladding to be in timber, smooth plaster, stone (local schist), concrete or corrugated steel (to complement roof colours where both exist). Note wall claddings are to be continuous in one cladding from ground to roof. Mixing of



claddings over one wall surface is to be discouraged. Artificial weatherboards are to be avoided.

- Eaves shall extend from the northern façade by a minimum of 2 metres.
- vii) North facing façades (+/- 45 degrees of true north) to be articulated or broken to ensure no continuous length of façade longer than 14m and, irrespective of existing or proposed ground level, no façade to have a vertical height above finished ground level greater than 4m.
- viii) All exterior lighting associated with any dwelling shall be fixed no higher than 2.0 metres above finished ground level and shall be capped, filtered or pointed downwards so as to reduce or avoid visibility from any point off-site of light sources and to minimise visibility of lit areas.
- ix) Exterior joinery shall be in timber, steel or aluminium. Joinery colours (excepting timbers) shall match roofing, gutter and spouting colours.

f. **Curtilage Areas**

- i) All elements of domestic curtilage (such as car parking areas, lawns, domestic landscape planting, outdoor storage areas, and clotheslines) shall be contained within the curtilage area and building platform identified on Plan 1641-D, Attachment D, prepared by Baxter Design Group Ltd. All elements of domestic curtilage (excluding vegetation) shall be 2.0 metres or less in height from finished ground level.
- ii) All curtilage fencing shall be of a traditional farming type (but not deer fencing).



g. **Site Controls**

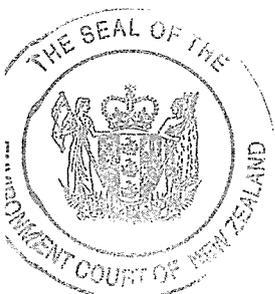
- i) No fencing shall be permitted (including boundary fencing) other than fences of a traditional farming type, and shall follow natural contours.
- ii) For the purposes of this condition "Pest Plant" means and includes any fir or conifer species with potential to spread naturally, sweet briar, lupins, gorse, broom, hawthorn, and seedlings of sycamore or silver birch, and any other Pest Plant as specified in the Regional Pest Management Strategy for Otago.
  - a. All Pest Plants shall be removed prior to the construction of a dwelling on the site, and the site shall be kept clear of all Pest Plants in perpetuity.
  - b. The areas marked "A" on Attachment F shall be maintained in a pastoral state by grazing and/or mowing.
  - c. The areas marked "B" on Attachment F shall be allowed to regenerate in indigenous vegetation species.
- iii) No exterior lighting shall be permitted outside of the curtilage areas.
- iv) Prior to any construction commencing within the building platform, the consent holder shall submit for certification a landscape plan to Council's Principal: Landscape Architecture. The plan shall ensure that:
  - Condition 22(e)(iii) is achieved
  - All mounding has naturalistic contours
  - Landscape treatment adjoining the Redemption Song property (Part Sec 29 Blk XIX Shotover SD) to the south achieves a seamless cross boundary transition. Notwithstanding condition 22(g)(ii)(b) to give effect to this condition beech trees may be



planted in that part of Area A adjoining the Redemption Song Property.

- v) Once certified, the landscape plan shall be implemented within the first planting season following construction and irrigated and maintained as necessary. Should any tree or shrub die or become diseased it shall be replaced during the first available planting season.
- vi) No new exotic plants (other than pasture grasses) are to be introduced outside the curtilage area, and trees within the curtilage area are to be selected from species that will not exceed a mature height of 5m.

**Advice Note:** Conditions 6 to 21 shall be included in the covenant to be registered pursuant to condition 22 in that event that those conditions have not been completed prior to registration of the Land Transfer Covenant Plan (refer condition 5).









CONTOUR INTERVAL:  
0.5m MINOR  
2.0m MAJOR

Pt Lot 7  
DP 25924  
20.88ha  
538341

**LEGEND**

2 - 3m FILL
1 - 2m FILL
0 - 1m FILL
0 - 1m CUT
1 - 2m CUT
2 - 3m CUT
3 - 4m CUT

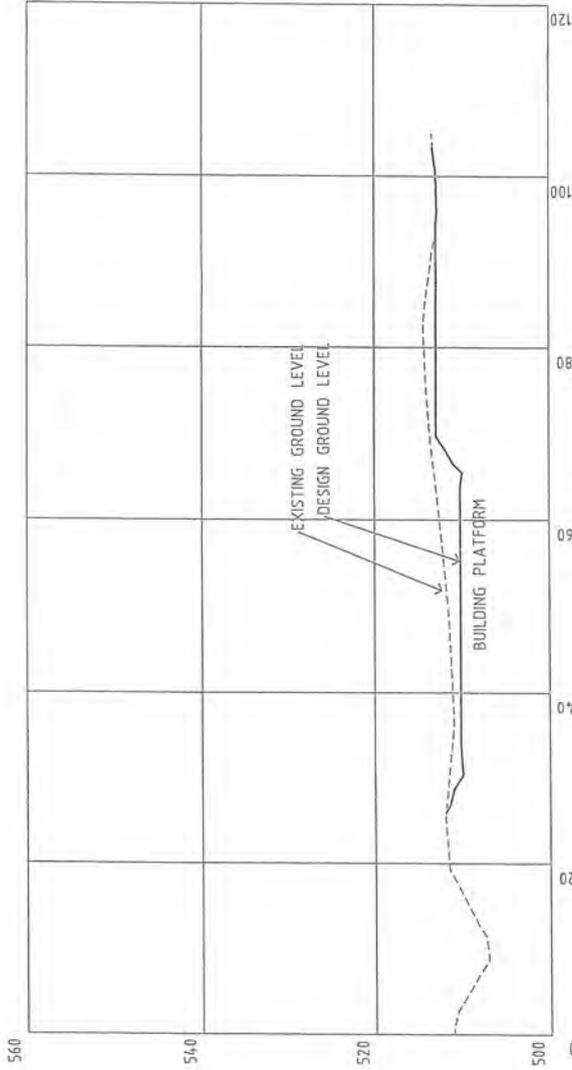


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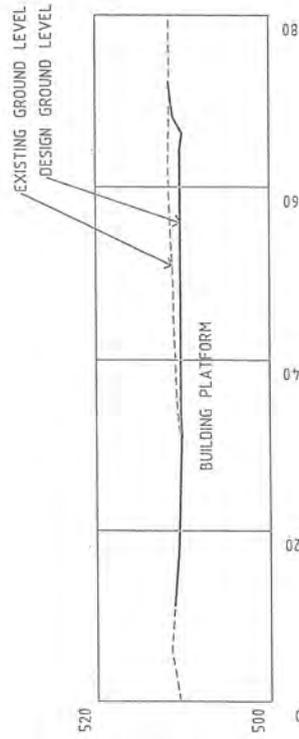
**Clark Fortnum McDonald & Associates**  
 21 Kings Street, P.O. Box 550, Yamba  
 NSW 2445, Australia  
 Phone: (02) 6561 1111, Fax: (02) 6561 1112

**RM120433 - PROPOSED EARTHWORKS ON  
CUT / FILL DEPTH RANGE FOR BUILDING  
PLATFORM ON PT LOT 7 DP 25924**

Client	MICHAELA MEEHAN	Drawn	15	Checked	MS	Scale	1:500 @ A1 1:1,000 @ A3	Sheet No.	10796	Drawn	01/12	Scale & Plot	MSL	Rev	B
Notes	<p>All dimensions shown are in meters unless otherwise stated. All dimensions are to the center of the object unless otherwise stated. All dimensions are to the center of the object unless otherwise stated. All dimensions are to the center of the object unless otherwise stated. All dimensions are to the center of the object unless otherwise stated.</p>														



SECTION 1



SECTION 2

ISSUED FOR MEDIATION 02.05.13


  
 REGISTERED PROFESSIONAL ENGINEER  
 Michael Meehan  
 10796  
 1300 NAT @ A1  
 1775 NAT @ A1  
 MSL  
 B

**RM120433 - PROPOSED EARTHWORKS FOR BUILDING PLATFORM ON PART LOT 7 DP 25924 SECTIONS 1 - 3**

REV.	DATE	REVISION DETAILS	BY
A	24.10.12	Issue: Members and see platform	ED

Client: MICHAELA MEEHAN  
 Surveyed: 005  
 Drawn: TS  
 Checked: 005  
 Date: 03.12  
 Scale: 1:300 NAT @ A1  
 Date: 03.12  
 Scale: 1:175 NAT @ A1  
 Drawing: MSL  
 Rev: B

Notes:  
 - All dimensions shown are to centre unless otherwise indicated.  
 - All dimensions are to be taken from the original drawings and not from this drawing.  
 - All dimensions are to be taken from the original drawings and not from this drawing.  
 - All dimensions are to be taken from the original drawings and not from this drawing.  
 - All dimensions are to be taken from the original drawings and not from this drawing.





All exotic wilding species and noxious weeds to be removed. Area maintained to prevent reinfestation and allow regeneration of indigenous species.

Pastoral area to be maintained

SITE MANAGEMENT

+ MICHAELA MEEHAN

Evidence of P. Baxter  
REFERENCE 1641-F 26 April 2012



ATTACHMENT **F**





**DECISION OF THE QUEENSTOWN-LAKES DISTRICT COUNCIL**

**RESOURCE MANAGEMENT ACT 1991**

<b>Applicant:</b>	M W Meehan
<b>RM reference:</b>	RM120433
<b>Location:</b>	Malaghans Road, Wakatipu Basin
<b>Proposal:</b>	Subdivision of a site resulting from a boundary adjustment between Lot 6 DP 300837 and Part Lot 7 DP 25924 (Consent RM110664 as varied by Consent RM120417) into two lots, identification of a building platform on each proposed lot, along with associated earthworks and landscaping.
<b>Type of Consent:</b>	Subdivision Consent and Land Use Consents
<b>Legal Description:</b>	Lot 6 Deposited Plan 300837 held in Computer Freehold register 548443 and Part Lot 7 Deposited Plan 25924 held in Computer Freehold Register 538341.
<b>Valuation Number:</b>	2907100532 (Lot 6), 2907100526 (Pt Lot 7)
<b>Zoning:</b>	Rural General
<b>Activity Status:</b>	Discretionary
<b>Notification:</b>	Notified
<b>Commissioners:</b>	Commissioners T D Nugent and L Alfeld
<b>Date Issued:</b>	8 January 2013
<b>Decision:</b>	<b>Consent refused</b>

**DECISION OF INDEPENDENT COMMISSIONERS DENIS NUGENT & LOU ALFELD**

**Hearing Date and Location**

Heard in Queenstown on 13 December 2012.

**Appearances**

For the Applicant

Mr Warwick Goldsmith, Legal Counsel

Mr Paddy Baxter, Landscape Architect

Mr Alistair Smith, Resource Management Planner

For Redemption Song LLC (submitter)

Mr Graeme Todd, Legal Counsel

In Attendance

Ms Adonica Giborees, Reporting Planner

Ms Lyn Overton, Engineer

Dr Marion Read, Landscape Architect

Ms Rachel Beer, Committee Secretary

**Introduction**

1. This application raises important questions about how the provisions in the District Plan apply to landscape classifications in the Wakatipu Basin. The application was lodged on the basis that the existing classification of the majority of the site as an outstanding natural landscape (ONL) was incorrect. Rather, the applicant's landscape architect suggested the area within which the building platforms were proposed should be classified as a visual amenity landscape (VAL).
2. The application is in reality three applications. The applicant separated out the applications for each of the building platforms and the subdivision so that we may grant consent to any single component, or any

combination thereof. For ease of understanding this decision, we will undertake a single analysis and refer to the applications in the singular, but will in our determination make three separate decisions as required by the applications.

3. After describing the site and surrounding environment and details of the application, we will deal with the question of the landscape classification before moving onto the assessment required under the provisions of the Resource Management Act 1991 (the Act) and the District Plan.
4. Finally, there is a procedural matter in respect of the submission lodged by J M & B A Hay. This submission was received after the time for submissions had closed. We are able to waive the time limit for the receipt of that submission after taking into account, under s.37A:
  - The interests of any person who, in our opinion, may be directly affected by the extension or waiver; and
  - The interests of the community in achieving adequate assessment of the effects of the proposal; and
  - Our duty under s.21 to avoid unreasonable delay.
5. The Hays' submission was in support of the proposal. We consider that no person would be directly affected by the grant of a waiver, although we did check the applicant's position through Mr Goldsmith. The submission neither adds to nor subtracts from our ability to assess the proposal and no time delay will be incurred. Therefore we grant the waiver of time for lodgement of this submission under s.37(1) of the Act.

### **Site Description**

6. The site that these applications relate to is a lot of 23.71 ha to be created from the adjustment of the boundary between Part Lot 7 DP 25924 and Lot 6 DP 300837. The boundary adjustment (consented in Consent RM110664 and varied by Consent RM120417) involves an increase in size of Pt Lot 7 so as to include existing formed access roads which presently run through Lot 6. It is the increased Pt Lot 7 that these three applications relate to. For convenience throughout this decision we will refer to this as "Lot E" (for Extended) to distinguish it from the existing Pt Lot 7 which forms the bulk of the future lot.

7. Pt Lot 7 has an area of 20.8995 ha and extends east from Malaghans Road to the ridge separating the Malaghans Road valley from the Littles Road area. Some 2.81 ha will be added to this lot from Lot 6 DP 300837 to create Lot E.
8. Access to Lot E is via easements over the private roads within the adjoining Northridge development. Mr Smith described the topography of Lot E as containing<sup>1</sup>:

*[t]hree reasonably distinct areas:*

- *The lower north-west portion is part of a glacial outwash valley that descends from Malaghans road in the north, through the site and the neighbouring land to the south-west, towards Littles Road and the Shotover River. Some dense trees in the western most part screen views into the site from Malaghans Road.*
- *The central area comprises a steep scrub covered rocky slope and the northern extent of a prominent rock escarpment that extends to Littles Road in the south.*
- *The elevated eastern part of the site, on which both the proposed building platforms are located. The topography is complex, comprising areas of flat, to gently sloping, terraces of pastoral and maintained grasses, interspersed with steeper slopes, bedrock outcrops and runoff valleys vegetated in both indigenous and exotic scrub and [planted] clusters of introduced trees.*

9. Access roads have been constructed to both of the proposed building platforms, and electricity, telephone and water services are installed to service the upper proposed building platform (RBP 1). We understood this work to have been undertaken when the access roads and services were installed for the adjoining Northridge subdivision some 9 or 10 years ago.
10. No building platform has ever been consented on Pt Lot 7, nor on the portion of Lot 6 that is to be amalgamated with it to form Lot E.
11. The following, taken from Dr Read's s.42A report, describes the context for the site.

*The site extends from the top of the ridgeline of the glacial feature known colloquially as the 'Spiny Backed Lizard' down to the valley floor and encompasses the north eastern edge of the Arthurs Point*

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<sup>1</sup> A Smith, Evidence, para 3.1, p.3

*Basin. The highest point of the site is just over 560masl and the lowest approximately 400masl.*

*The 'Spiny Backed Lizard' is a glacial feature with steep exposed bluffs on its northern and western faces and more gently falling hummocky landforms to the south where the bedrock is overlain with moraine deposits. It declines overall towards the east, the subject site being located on its highest end. Between the steep exposed bluffs the terrain ranges between very steep and gently sloping as it declines to the north. Areas of ground with a more gentle slope have been grazed in the past and are generally still grazed or mown today. The more steeply sloping portions of the feature and some more gently sloping areas which have not been managed, show evidence of exotic weeds. These areas also include indigenous scrub, particularly in the more western reaches of the feature in the vicinity of the subject site.*

*The Arthurs Point Basin and western extent of Malaghans Valley have been described thus:*

*The ice-evacuated basin, and series of outwash terraces complete with remnant moraines and kettle holes, between the Shotover River and the Malaghan-Dalefield Rd intersection, is the best preserved, most easily accessible example of a glacier terminus in the Wakatipu Basin. It has the advantage of having clear features that could be readily explained to and understood by a layperson in their gaining of an understanding of glacial processes ... The Arthurs Point landforms are as good a set of examples of these features as can be found anywhere in New Zealand ...<sup>2</sup>*

*The site is located to the immediate south of Mount Dewar. Coronet Peak is located to the north east of the site and Bowen Peak is located to the west. Queenstown Hill looms over the site to the south west.*

## **The Applications**

12. Consent was sought in the following terms:

### Subdivision Consent

To subdivide Lot E - comprising Pt Lot 7 DP 25924 and a portion of Lot 6 DP 300837 – subject to final implementation of boundary adjustment

<sup>2</sup> Barrell, DJA (2001), *Origin of Landforms in the Arthurs Point Area, Wakatipu Basin, New Zealand* Institute of Geological and Nuclear Sciences.

RM110664 as varied by RM120417 – into two fee simple allotments with an identified residential building platform on each proposed lot. The subdivision includes earthworks associated with the levelling of the building platforms and shaping of identified curtilage areas.

Land Use Consent A

To establish a new residential building platform and associated earthworks in the position indicated within proposed Lot 1. (We will refer to this as RBP 1)

Land Use Consent B

To establish a new residential building platform and associated earthworks in the position indicated within proposed Lot 2. (We will refer to this as RBP 2)

13. The subdivision layout and the location of the building platforms are shown on the Clark Fortune McDonald & Associates Plan 10796-03 *Lots 1 and 2 Being a Proposed Subdivision of Lot 7 RM110664*.
14. The details of the proposal are described in Section 2.2 of the Assessment of Environmental Effects prepared by Mr Smith and lodged with the application. In summary, RBP 1 would have an area of 784m<sup>2</sup> and be contained within a proposed Lot 1 comprising some 22.28 ha. RBP 2 would have an area of 991m<sup>2</sup> and be contained in proposed Lot 2 comprising some 1.43 ha. A curtilage area is proposed in association with each building platform, and all domestic activities and landscaping to be contained in these curtilage areas.
15. The conditions proposed by the applicant included restrictions on the height, bulk and design of future buildings, use of the curtilage areas and fencing controls. Additionally proposed conditions offered to undertake removal of pest plants and undertake landscaping specific to RBP2.
16. The application for subdivision consent also offered to construct a walkway through the lower part of the site from Malaghans Road to link up (via another property owned by the applicant) to a walkway proposed as part of consent on the adjoining Redemption Song LLC land. We understood the applicant to offer the construction of the walkway

and the provision of an easement in favour of the Council both on Lot E and the adjoining site under the applicant's control.

### Reasons Resource Consent Required

17. The following table sets out the rules in the District Plan under which this proposal requires consent.

#### Subdivision Consent:

Rule No.	Provision and degree of compliance	Activity status
15.2.3.3(vi)	In the Rural General Zone all subdivision and location of residential building platforms shall be a Discretionary Activity	Discretionary activity
14.2.4.2(iii)(a)	The maximum gradient for any private way used for vehicle access shall be 1 in 6 – a small portion of the access to RBP2 exceeds this gradient.	Rule 14.2.2.3(ii) makes this breach a restricted discretionary activity

18. The application for subdivision consent includes the earthworks to form the building platforms and level the curtilage areas on each proposed lot. These activities also breach various rules but rather than repeat them they are as detailed in relation to each of the land use consent applications.

19. Land Use Consent A (RBP1):

Rule No.	Provision and degree of compliance	Activity status
5.3.3.3[i](b)	The identification of a building platform of not less than 70m <sup>2</sup> in area and not greater than 1000m <sup>2</sup> in area – RBP1 is 784m <sup>2</sup> .	Discretionary activity
5.3.5.1[viii](1)(a)	Earthworks shall not exceed a maximum area of bare soil exposed of 2500m <sup>2</sup> per site, within any consecutive 12 month period – approximately 3,720m <sup>2</sup> of bare soil is proposed.	Rule 5.3.3.3[xi] makes this breach a restricted discretionary activity

5.3.5.1[viii](1)(b)	Earthworks shall not exceed a maximum volume of moved earth greater than 1000m <sup>3</sup> per site, within any consecutive 12 month period – approximately 3,9400m <sup>3</sup> of earthworks are proposed.	Rule 5.3.3.3[xi] makes this breach a restricted discretionary activity
5.3.5.1[viii](1)(c)	Where any earthworks are undertaken within 7m of a water body the total volume shall not exceed 20m <sup>3</sup> –an area of fill exceeding 20m <sup>3</sup> is proposed within 7m of a water body.	Rule 5.3.3.3[xi] makes this breach a restricted discretionary activity
5.3.5.1[viii](2)(c)	The maximum height of any fill shall not exceed 2 metres – the maximum fill height proposed is 2.4m	Rule 5.3.3.3[xi] makes this breach a restricted discretionary activity

## 20. Land Use Consent B (RBP2):

Rule No.	Provision and degree of compliance	Activity status
5.3.3.3[i](b)	The identification of a building platform of not less than 70m <sup>2</sup> in area and not greater than 1000m <sup>2</sup> in area – RBP2 is 919m <sup>2</sup> .	Discretionary activity
5.3.5.1[viii](1)(a)	Earthworks shall not exceed a maximum area of bare soil exposed of 2500m <sup>2</sup> per site, within any consecutive 12 month period – approximately 4,480m <sup>2</sup> of bare soil is proposed.	Rule 5.3.3.3[xi] makes this breach a restricted discretionary activity
5.3.5.1[viii](1)(b)	Earthworks shall not exceed a maximum volume of moved earth greater than 1000m <sup>3</sup> per site, within any consecutive 12 month period – approximately 5,480m <sup>3</sup> of earthworks are proposed.	Rule 5.3.3.3[xi] makes this breach a restricted discretionary activity
5.3.5.1[viii](2)(c)	The maximum height of any fill shall not exceed 2 metres – the maximum fill height proposed is 3.5m.	Rule 5.3.3.3[xi] makes this breach a restricted discretionary activity

21. Overall, the three applications are each to be dealt with as discretionary activities.

### **Landscape Classification**

22. Maps 1 and 2 of Appendix 8A – *Landscape Categorisation in the Wakatipu Basin* show Pt Lot 7 as being contained within the Outstanding Natural Landscape (Wakatipu Basin) (“ONL(WB)”) and Lot 6 and the remainder of the Northridge development as being within a Visual Amenity Landscape (“VAL”). This boundary is shown as a solid line on these maps and was determined by the Environment Court in 2002.<sup>3</sup>
23. The application was supported by a report by Mr Baxter re-assessing the landscape categorisation of the site and concluding that the boundary between the ONL(WB) and the VAL should be moved so as to run along the top of the escarpment on the western side of Lot E, leaving the two proposed building platforms within the VAL. Mr Baxter’s subsequent assessment of the proposal that accompanied the application was based on the VAL classification applying to the upper part of Lot E, although he also provided an assessment against the provisions applying if the land were classified ONL(WB) at the hearing. Notwithstanding that additional assessment, it was the applicant’s case that the landscape boundary should be moved.
24. Dr Read, as part of her s.42A report, undertook a re-evaluation of the landscape values of the site and concluded that the boundary between the ONL(WB) and VAL should remain unaltered.
25. We raised with Mr Goldsmith whether we had jurisdiction to amend the landscape classification for this site. We suggested as the boundary was shown as a District Plan provision, it was not possible on a resource consent application to effectively amend the Plan without a Schedule 1 process. We also queried whether we were not bound by the Environment Court’s decision fixing the boundary.
26. As to the last point, Mr Goldsmith submitted that the Environment Court’s determination was of a question of fact, and we were not bound by findings of fact. As to the first point he referred to changes of classification that had occurred in the Hawthorn Estates triangle.

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<sup>3</sup>

*Wakatipu Environmental Society Inc v Queenstown Lakes District Council, C3/2002*

27. Mr Todd pointed us to the legend on Maps 1 and 2 which states in relation to a boundary marked by a solid line "*These boundaries are fixed and are not subject to change or further analysis*". He submitted that direction meant we were unable to alter the landscape classification on this site.
28. In his reply, Mr Goldsmith maintained his stance that the maps in Appendix 8A were indicative information only and not rigid provisions. He did accept that any changes made from those shown on the maps would need to be well reasoned.
29. Dr Read advised us that she has also understood the maps to be determinative, and in 2009 had sought a legal opinion from the Council solicitors on that point. She considered the legal opinion supported Mr Goldsmith's position. She provided us with a copy of that legal opinion after the hearing. We do not consider the legal opinion to be quite as unequivocal on the matter as Mr Goldsmith would wish.
30. We consider this question of the status of the contents of Appendix 8 of the Plan to be important to our evaluation of the application. Therefore we have reviewed the relevant Environment Court decisions in relation to the landscape categorisation of the District. Our conclusion, after considering those decisions, is that we are not able to change the landscape categorisation of Lot E as part of the resource consent application process. A Schedule 1 plan change process would be required. Our reasons are as follows.
31. In C180/99<sup>4</sup> the Court found as a fact that there was an outer ring within the Wakatipu Basin that was an outstanding natural landscape<sup>5</sup>. The Court set out in paragraph 110 the criteria from the Pigeon Bay factors which were considered the most significant in determining the bounds of the inside of the ring. Relevant to this hearing, the bounds in the vicinity of the Meehan property were described as:
- *across the Shotover River immediately west of Queenstown Hill homestead*
  - *up the Shotover River at the edge of the terraces to the next marked stream and up the stream to Littles Road*
  - *west along Littles Road to the edge of the escarpment*

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<sup>4</sup> *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*, C180/99  
<sup>5</sup> C180/99, para 109, p.61

- north to Point 558m and then north east through Trig J (596m) to the formed end of Mountain View Road
  - north to Malaghans Road<sup>6</sup>
32. East of this line was not outstanding natural landscape, west was. The Court stated it was prepared to move this boundary ... *if any party:*
- a. *Can show us why it is necessary to do so as a matter of law (since zone boundaries will be the real issue); and*
  - b. *Calls cogent evidence on the matter.*<sup>7</sup>
33. At this stage the Court made no determination that the areas it identified as outstanding natural landscapes should be shown on maps in the District Plan.
34. However, in C186/2000<sup>8</sup> the Court concluded that "*there should be lines indicating the inner and outer boundaries of the ONL(WB).*"<sup>9</sup> The Court proposed the insertion of Appendix 8 – Landscape Guidelines.
35. C75/01<sup>10</sup> dealt with the rules in relation to the four landscape categories: ONL, ONL(WB), VAL and ORL. The Court stated:
- The rules for all four categories as they apply to the Rural General zone and to subdivision (throughout all zones) are the subject of this decision. In each case in future, with two exceptions, it will be for the Council to decide what category a site falls into when applying the plan. The two exceptions are the outstanding natural landscapes of the Wakatipu Basin and of the Inner Upper Clutha. [our emphasis]*
36. This decision directed the inclusion of Appendix 8 with the wording currently in the District Plan and noted that the Council would have to amend the maps as the Court heard and gave further decisions on the Wakatipu Basin and Upper Clutha Area.<sup>11</sup>
37. Decision C162/01<sup>12</sup> dealt with a number of issues where parties sought amendments to provisions determined in previous decisions. Relevant to

<sup>6</sup> C180/99 para 111, p.63

<sup>7</sup> C180/99 para 112, p.66

<sup>8</sup> *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*, C186/2000

<sup>9</sup> C186/2000 para 43, p.26

<sup>10</sup> *Lakes District Rural Landowners Society Inc v Queenstown Lakes District Council*, C75/2001

<sup>11</sup> C75/01, Directions p.44

<sup>12</sup> *Lakes District Rural Landowners Society Inc v Queenstown Lakes District Council*, C162/2001

this hearing, the Court accepted Mr Goldsmith's submission that the wording in Appendix 8 as directed in C75/01 should be amended by:

- a) Deleting paragraph 1;
- b) Amending the heading to read "Landscape Boundaries"; and
- c) Deleting the word "also" in paragraph 2.<sup>13</sup>

38. These changes do not appear to have been made to the District Plan and it has been made operative with the wording as directed in C75/01. If those changes had been made the text in Appendix 8 would read:

*Appendix 8 – Landscape Boundaries*

*The appendix contains maps determining the position of the boundary in both the Wakatipu Basin and the Inner Upper Clutha (around Wanaka) between the Outstanding Natural Landscapes and the Visual Amenity Landscapes contained with the Outstanding Natural Landscape. [emphasis in original]*

39. We accept that we are required to follow the wording of the operative District Plan rather than what it might have said. However, the inclusion of "also" between the words "appendix" and "contains" does not substantively alter the meaning of the quote in the previous paragraph.
40. We note also that the example referred to by Mr Goldsmith at the hearing related to whether land was VAL or other rural landscape (ORL). Such land did not fall within the exceptions described by the Court in C75/01. Additionally, the references in the legal opinion provided to us do not appear to relate to solid line demarcations of ONL from other landscape categories in the Wakatipu Basin or Inner Upper Clutha.
41. For completeness, we note that in C3/2002<sup>14</sup> the Court reconsidered the inner edge of the ONL(WB) in the western Malaghans Road area and directed that the line be shown in the District Plan as it appears on Maps 1 and 2 of Appendix 8A.
42. While we are satisfied that the Environment Court has settled the line between the ONL(WB) and the VAL in respect of this site, we have also undertaken the landscape assessment process set out in Section 5.4.2.1 of the District Plan. To assist with this we had the assessment made by Mr

<sup>13</sup> C162/01, para 83, p.39.

<sup>14</sup> *Wakatipu Environmental Society Inc v Queenstown Lakes District Council, C3/2002*

Baxter<sup>15</sup> and Dr Read's s.42A report. We were also able to refer to the landscape evaluations undertaken of this landscape by the Environment Court in C180/99 and C3/2002.

43. The Northridge landform, or "Spiny-backed Lizard" extends from the dramatic cliffs at the western end to the more subtle shapes east of Dalefield Road. The geological processes that lead to its formation and its status as the best preserved example of glacial moraine debris in the Wakatipu Basin<sup>16</sup> give scientific value to the particular topography which distinguishes the ridge from the mountains to the north.
44. We agree with Mr Baxter that topographically there is little to distinguish the land either side of the ONL/VAL boundary. The ridge is an entity which has value as a whole.
45. As Mr Baxter notes, the vegetation on the ridge is generally a function of grade. On those slopes able to be cleared for pastoral purposes, pasture grasses and a scattering of trees predominate, while steep slopes are characterised by wilding species such as briar and hawthorn. The valley floor is grazed.
46. The landscape within which the ridge sits is experienced by the general public from Malaghans Road, Arthurs Point Road, Littles Road, Skippers Road and Coronet Peak Road. From Malaghans Road the ridge feature is one wall of the valley – it forms the southern bounds of the landscape experienced.
47. From Arthurs Point Road one is confronted with the end of the ridge containing the landscape of the Arthurs Point basin. Littles Road is so close to the ridge and cuts through it in part, that, from Littles Road, it is hard to get any experience of the ridge form as part of the wider landscape.
48. Skippers Road takes the viewer from the valley floor (Malaghans Road) up the opposite valley wall across from the "Spiny-backed Lizard". From this road, and Coronet Peak Road, the ridge is an important component of the foreground within the wider unfolding landscape.

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<sup>15</sup> *Landscape Assessment Report Michaela Meehan, Northridge, Malaghans Road, Queenstown, dated July 2012*

<sup>16</sup> IGNS Report referred to in C3/2002, para 10

49. The naturalness of this landscape has been altered, both by the land use practices that have contributed to the vegetative cover, and by the recent introduction of built forms, and resource consents exist for additional built-form.
50. From Malaghans Road, the only evidence of the Northridge development is the entrance drive with manicured planting, and letterboxes. The Hay property south of Malaghans Road and the Manners-Wood property on the north side comprise the only apparent development until one reaches the vicinity of Dalefield Road.
51. However, when viewed from Skippers Road, the intrusion of built-form into the landscape is more obvious, particularly that in the Northridge subdivision and on the sites accessed off Mountain View Road.
52. When considered in the overall context and taking into account the relevant criteria as discussed by each landscape architect without repeating it all, we agree with Dr Read that, if you put to one side the built and consented development on Northridge, the ridge west from a point near the end of Mountain View Road would form part of the Outstanding Natural Landscape. The built development only diminishes the value of the landscape where it is established. It does not act to reduce the landscape value of a wider area, or the full length of the ridge. Thus we agree with Dr Read and the Environment Court in C3/2002 that the boundary between the ONL(WB) and VAL is as directed by the Environment Court in that decision.
53. Mr Baxter made much of the similarity of landscape values either side of the ONL/VAL boundary in topographic and vegetation terms. However, such similarity, rather than being a reason to move the boundary west to extend the VAL, confirms the original conclusion of the Environment Court in C3/2002 that if it were not for the consent granted for the subdivision and building platforms on the Northridge property, that land would be classified ONL(WB).
54. Mr Baxter appeared to suggest that the consent granted to Redemption Song LLC in 2009 affected the classification of the landscape on the applicant's site. We do not agree with that proposition. The building platforms are in a separate visual catchment and are more part of the

Arthurs Basin landscape than the Coronet Peak-Malaghans Road landscape.

55. We will assess this application on the basis that the relevant parts of the site are contained within the ONL(WB). We acknowledge that the boundary adjustment has had the effect of including a small amount of VAL into the site on the eastern side, but the building platforms and earthworks proposed are within the area defined as ONL(WB).

### **Relevant Statutory Provisions**

56. Under s.104 of the Act, when considering this application, we must, subject to Part 2, have regard to, relevantly<sup>17</sup>

Any actual and potential effects on the environment of allowing the activity; and

Any relevant provisions of –

...

(vi) *A plan ...; and*

Any other matter the consent authority considers reasonably necessary to determine the application.

57. Section 106 contains special provisions relevant to subdivision consents, enabling us to refuse consent or impose special conditions if the land is subject to natural hazards or insufficient provision has been made for legal and physical access.
58. As a discretionary activity, after considering the application, under s.104B we may grant or refuse consent, and if we grant consent we may impose conditions under s.108.

### **Relevant Statutory Documents**

59. The only relevant document is the Queenstown Lakes Operative District Plan. Within this the Assessment Criteria in Sections 5.4.2 and 15.2.3.6 and the District Wide and Rural General objectives and policies are particularly relevant.

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<sup>17</sup>

Section 104(1)

## Summary of the Evidence

60. Mr Baxter described the details of the two building platforms and associated curtilage areas and the conditions proposed in respect of each. He concluded the building and site controls proposed were similar to those implemented for the adjacent Northridge development. The exception was in relation to building height, where maximum building heights on RBP1 and RBP2 were lower than the 6m allowed in Northridge. He explained in respect of each building platform that the maximum permitted building height was driven by a desire to ensure no views to future dwellings would be available from Malaghans or Arthurs Point Roads, and that a proposed condition would reinforce that.
61. Future dwellings would be limited to 70% coverage of the relevant building platform and would be restricted to dark and recessive colours to minimise visibility. Conditions to control light spill were also proposed. Fencing of the curtilage areas would be restricted to post and wire farm fencing to reduce the apparent delineation of the curtilage areas from the surrounding land.
62. Mr Baxter also described proposed site controls as being intended to maintain and enhance the existing pastoral and Arcadian character of the site's surrounding landscape. These included removing all vegetation from an area close to Malaghans Road and using it for grazing, and removing all wilding plants off steeper land and planting 1,000 native plants in groups within that area.
63. Although Mr Baxter maintained his opinion that the ONL/VAL boundary should be moved, in his evidence he assessed the proposal against the ONL(WB) assessment criteria.
64. Mr Baxter did not consider the site and surrounding land to be open, and in his view the growth of trees on the Northridge site and planting on the Redemption Song site would reduce any openness that does exist. He concluded that given the foreseeable reduction in openness the proposed dwellings would not have an adverse effect on the landscape, but will be a minor addition.<sup>18</sup>

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<sup>18</sup>

P Baxter Evidence, para 52, p.8

65. While Mr Baxter agreed that the future dwellings would be visible from Skippers and Coronet Peak Roads, he considered the development would be unlikely to adversely affect the appreciation of the landscape values of the wider landscape.<sup>19</sup> He did not consider the proposed development would adversely affect neighbours' amenity values.
66. In terms of cumulative effects, Mr Baxter considered the existing development (on the Northridge and Hay properties) has compromised the naturalness of the landscape and changed it to an Arcadian and pastoral landscape. We understood his evidence to be that the proposed development would not compromise the visual coherence of the landscape as it would repeat the Arcadian and pastoral character of the adjoining land.<sup>20</sup> It was also Mr Baxter's opinion that the proposed development would not lead to further domestication of the landscape as the landscape character is already Arcadian and pastoral.<sup>21</sup>
67. Mr Baxter considered the proposed site controls requiring vegetation removal and additional planting would be positive effects arising from the proposal.
68. His conclusion was:
- ... the visual and landscape effects of the proposed two lot subdivision, under the ONL(WB) assessment matters in the QLDC District Plan, will be a minor alteration to the landscape and will introduce elements that are consistent with and complementary to the surrounding landscape. The proposed development will retain the natural and Arcadian nature of the western end of the Northridge landform, and will not compromise the legibility of the glacial formation of the landform.*<sup>22</sup>
69. In answer to our questions, Mr Baxter clarified that he had not undertaken an analysis of the site to determine the most appropriate locations for building. He implied that without the existing accessway to RBP1, the location of RBP1 did not make sense. He briefly considered the remainder of the site and suggested RBP2 is the most suitable location on Lot E as it is able to be screened.

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<sup>19</sup> Ibid, paras 54 – 59, p.9

<sup>20</sup> Ibid, para 65, p.10

<sup>21</sup> Ibid, para 66, p.10

<sup>22</sup> Ibid, para 72, p.11

70. Mr Smith outlined the permitted baseline and listed the consents on the subject and adjoining sites which he considered modified the receiving environment.
71. Mr Smith considered the effect on the landscape to be the key matter for consideration. He relied on Mr Baxter's evidence and his own visual assessment to conclude the effects would be no more than minor. In terms of other potential adverse effects, Mr Smith considered the conditions proposed would mitigate such effects.
72. In addition to the positive effects identified by Mr Baxter, Mr Smith identified the walkway proposed as a condition of the subdivision consent as a positive effect.
73. Mr Smith considered the objectives and policies of the District Plan relevant to VAL classification of the landscape, and the ONL(WB) classification. His view was that the proposal was consistent with the relevant objectives and policies and that the proposal accorded with the purpose and principles of the Act.
74. Although Redemption Song LLC lodged a submission in opposition, no evidence was presented in support of that submission. Mr Todd outlined four conditions that the applicant had agreed to have attached to the proposal to satisfy Redemption Song's issues. Mr Todd also noted that we should be satisfied that the proposal meets the reasonably difficult to see test of the ONL(WB).
75. Ms Overton assessed the proposal from an engineering perspective. She was satisfied that, subject to compliance with conditions, transport, services, earthworks and hazards could be satisfactorily be dealt with.
76. Dr Read assessed the proposal against the assessment matters for ONL(WB). Her conclusions were that the erection of dwellings on the proposed building platforms would have a significant adverse effect on the visual coherence and integrity of the landscape. She was concerned that the proposal is for development of the type consented within Northridge to be extended further into the ONL, and that would further degrade the natural value of the site and further domesticate the landscape.

77. Dr Read considered that a dwelling on RBP2 and the creation of Lot 2 would detract from the amenity of the neighbour to the south (Redemption Song) and would detract from the landscape value of the site.
78. Overall, she considered the proposed subdivision would have a significant adverse effect on the landscape value of the site.
79. Ms Giborees, relying on the reports of Ms Overton and Dr Read, considered the effects of the proposal and concluded that overall they would be adverse, notwithstanding the positive effects of clearing pest plants and constructing a walkway.
80. She assessed the proposal against the relevant objectives and policies of the District Plan. Her overall conclusion was that, while the proposal was consistent with some of the objectives and policies, it was not consistent with key objectives and policies relating to future development, Outstanding Natural Landscapes (Wakatipu Basin), avoiding cumulative degradation, structures and land use.
81. Ms Giborees recommended that consent be refused.

### **Permitted Baseline**

82. When considering the effects of the proposal on the environment, we have discretion under s.104(2) to disregard an adverse effect on the environment if the plan permits an activity with that effect.
83. The permitted activities on Lot E are limited to such activities as:
- Grazing or mowing pasture;
  - Fencing where the fences are less than 2m in height;
  - Planting, subject to limitations related to area, proximity to roads or other boundaries and a restriction on planting wilding species;
  - Minor earthworks amounting to less than 1,000m<sup>2</sup> of bare earth and less than 300m<sup>3</sup> of earth moved per 12 month period with additional limitations on depth of cut and height of fill;
  - Clearance of exotic plants;

- Clearance of indigenous vegetation subject to limitations on scale and proximity to other indigenous vegetation.
84. While we will take the effects of these permitted activities into account when assessing the applications, the effects are so minor as to not be of much assistance.
85. Mr Smith also noted that existing lawful activities and the future environment as modified by unimplemented resource consents are relevant considerations.
86. Lot E contains access tracks constructed to the location of each of the proposed building platforms. Each proposed building platform also appears to have been subjected to limited earthworks in the past. Mr Baxter told us it was his understanding the modifications were undertaken when the works on the adjoining Northridge subdivision were undertaken. We were not advised of any resource consent being granted for such works, nor did the applicant claim the works were a permitted activity at the time they were undertaken. We note also that part of the access breaches Rule 14.2.4.2(iii)(a). We do not consider that we can include these access tracks and modified building platforms as part of the existing permitted environment.
87. The unimplemented resource consents that form part of the permitted baseline adjust the boundaries of the site. They do not change the range of activities that may occur on the site, and consequently do not alter the permitted range of effects on the environment.
88. Mr Smith also referred us to unimplemented resource consents on the Northridge and Redemption Song properties. These alter the nature of the receiving environment rather than the permitted baseline on this site and will be taken account of appropriately.

### **Principal Issues in Contention**

89. The only significant issue in contention, other than the issue of landscape classification that we have already dealt with, was the effect of the proposal on landscape values.

90. The experts agreed that effects related to infrastructure matters and required earthworks could be dealt with by conditions provided the major issue relating to landscape effects was settled.

### **Findings on Effects of Proposal on Landscape Values**

91. There was no dispute that with the application of the proposed conditions, buildings on each of the building platforms would not be visible from Malaghans Road or Arthurs Point Road. We did raise the issue of the glow of lights at night being visible on what would otherwise be a dark and unlit hillside. The applicant was prepared to accept conditions that ensured such a glow was not visible from the aforementioned roads.
92. There was some disagreement between the witnesses as to the visibility of the potential buildings from Skippers and Coronet Peak Roads. We are satisfied, following careful inspection of the land from those roads, that both building platforms would be visible from those roads and that the visibility increases as one proceeds down Skippers Road toward Malaghans Road, although for the last few hundred metres (Dr Read suggested 700m) the building platforms are not visible. We note also that on the lower portion of Skippers Road the trees along the roadside are deciduous and while they may somewhat obscure the elevated building platforms in summer when we undertook our site visit, in winter those trees would have less effect on reducing visibility.
93. We noted from our site visit that RBP2 appeared to be visible from Queenstown Hill. Mr Baxter agreed that probably a slice of this building platform would be visible from there, but noted that it was private land with no formal public access.
94. We also noted that from both building platforms we could clearly see the house of Mr Manners-Wood on the opposite side of Malaghans Road. We visited his site and confirmed that from a point adjacent to the small on-site shop open to the public, some 90m north of Malaghans Road, the location of both building platforms are clearly visible.
95. From our site visits we were able to obtain an appreciation of the effect the existing dwellings on the Northridge property have on the landscape setting. As noted above, in Mr Baxter's view the conditions proposed would lead to buildings on Lot E being of a similar form, albeit with a lower

maximum height. Other than the height, the scale of the buildings can be expected to be similar, with limitations of some 550m<sup>2</sup> and 640m<sup>2</sup> in area for buildings on RBP1 and RBP2 respectively.

96. We find that the effect of granting consent to each building platform would be to allow a form of development consistent in large part with that which has occurred on the Northridge development to the east such that development on Lot E, whether on one of the building platforms or on both, would appear to be a part of a wider Northridge development.

### **Assessment Against Provisions of the District Plan**

#### Section 1.5.3 – Status of Activities

97. Section 1.5.3 describes the status of activities. Relevant to these applications, this section identifies that activities have been afforded discretionary activity status:

...

(iii) *because in or on outstanding natural landscapes and features the relevant activities are inappropriate in almost all locations within the zone, particularly within the Wakatipu basin or in the Inner Upper Clutha area; or ...*

*Alternatively, activities may be listed as permitted activities but cannot meet all the site standards for that zone, in which case they shall be discretionary activities only in respect of those matters of non-compliance. ...*

98. Subdivision and the identification of building platforms fall under the first reason given, while the breaches of earthworks and access standards fall under the second. In considering the subdivision and the building platforms against the assessment criteria and objectives and policies of the Plan, we must give weight to the Plan's direction that such activities are inappropriate in almost all locations. We conclude this places a high threshold on the applicant to show the proposals are appropriate on this site.

Section 5.4.2.2(1) – Assessment Matters – Outstanding Natural Landscapes (Wakatipu Basin)

99. These assessment matters are to be read in the light of the following relevant guiding principle:

*they are to be stringently applied to the effect that successful applications will be exceptional cases<sup>23</sup>*

*Effects on Openness of Landscape*

100. The site is within a broadly visible expanse of open landscape when viewed from Malaghans Road, Skippers Road/Coronet Peak Road, Littles Road and Arthurs Point Road. From each road different portions of the site are visible in the context of different parts of the wider landscape. The locations where the majority of the site is visible within the context of the broader open landscape to the west and south are along Skippers Road and Coronet Peak Road.
101. Mr Baxter stated that he disagreed with Dr Read's assessment that the upper portion of the site was open in that it lacked both buildings and trees. We consider that the trees that have been planted on the upper portion of the site do little to diminish the open pastoral character of the upper portion of the site.
102. Mr Baxter suggested that introducing two more buildings would not have an adverse effect as the site and surrounding landscape is progressing to being more enclosed due to tree and shrub planting maturing. We disagree with that opinion. By giving the appearance of extending the Northridge development westward, the proposal, whether one or two building platforms, would reduce the open space values of the site and increase the degree to which the upper parts of the site appeared manicured and domesticated.
103. The eastern edge of the site is not particularly defined by topography or vegetation. The cliffs on the west side appear to define that edge, but in fact the boundary only runs along the cliffs in part.

*Visibility of Development*

104. While the development allowed on each building platform would be difficult or impossible to see from Malaghans, Littles or Arthurs Point Roads, it will be extremely visible from Skippers Road, and although Coronet Peak Road is further away, we cannot conclude that it would be reasonably difficult to see from locations on that road. There was no disagreement between Mr Baxter and Dr Read on this point.
105. Mr Baxter, however, suggested the buildings on the proposed platforms would not be visually prominent because they would be of smaller scale than the buildings on the adjoining Northridge development. As we discussed above, the smaller scale relates primarily to height. Each building platform could contain buildings of significant bulk. We do not accept Mr Baxter's assessment on this point.
106. The construction of buildings on either or both of RBP1 and RBP2 would dominate the views from the Manners-Wood property which at present are of a natural landscape. Such construction would also detract from the present views from Skippers Road. We have been unable to determine the extent to which the proposal affects views from Queenstown Hill. Dr Read listed three other properties from which private views would be likely to be affected by this proposal. We agree that the additional domesticating of the upper part of the site would potentially detract from those views, particularly from the properties on Skippers Road and Mount Dewar.
107. Mr Baxter agreed there would be minor effects on the private views listed by Dr Read but implicitly dismissed such effects as they had not lodged submissions. We note that neither these landowners, nor Mr Manners-Wood, were directly notified of the applications. While in a general sense we consider little weight can be put on the non-lodgement of a submission, we consider even less weight should be placed on such a fact when the parties were not directly notified.
108. Within the wider landscape the cumulative effect of development on the building platforms would be to reduce the naturalness of the landscape.
109. The proposal would significantly detract from the amenities presently enjoyed by the Manners-Wood property.

110. Mr Baxter's disagreements with Dr Read's assessment were largely predicated on his view that the dwellings would have reduced visibility as they would be repeating the existing pattern of development with lesser structures. We consider that approach to be flawed as it suggests that an outstanding natural landscape can be developed in the same manner as a visual amenity landscape. That is in contradiction to the scheme of the District Plan and takes no account of the guiding principle that for development to be approved in the locations proposed on Lot E it should be exceptional.

*Visual Coherence and Integrity of Landscape*

111. The structures will not break the line and form of any ridges or hills. From certain viewpoints the proposed building platforms form significant slopes that would be broken by buildings.
112. The existing roads in part, particularly that leading to RBP2, detract from the naturalness of the landscape. While the earthworks would in time appear to be a natural part of the landscape, they would serve to mask the natural humps and hollows which are a feature of the moraine remnant that the site is located on.
113. The proposed boundaries separating Lot 1 from Lot 2 do not follow natural topographic lines and could lead to unnatural lines from fencing and planting. To this end Mr Baxter proposed a condition prohibiting fencing the north-eastern and north-west boundaries of Lot 2 and the curtilage areas.
114. Screening of buildings on either of the building platforms from views from Skippers Road would be impractical. There may be the potential to screen such buildings from views from the Manners-Wood property. Such screening, whether earthworks or vegetation, would be of such a scale as to reduce the naturalness of the site.

*Nature Conservation Values*

115. There are no particular indigenous ecosystems affected by the proposal.

116. There is a risk that further earthworks on the site will detract from the values of the geological feature the site sits on. Dr Read and Mr Baxter categorised the effects of such works as small.
117. The proposal will avoid the establishment of wilding species.

*Cumulative Effects on the Landscape*

118. In considering the extent to which existing and consented development may have already compromised the visual coherence of the landscape, it is necessary to consider the Northridge development and the Hay property to the northeast, and the Redemption Song LLC property to the south. There is a further property immediately to the south of RBP1 but the building on that property is in a different landscape and visual catchment.
119. Mr Goldsmith provided us with a plan identifying all the consented building platforms in the vicinity. From this we can conclude that the Northridge and Hay development forms a cluster within its own area northeast of the subject site. This area is outside of the ONL(WB).
120. The Redemption Song site has two sets of three consented building platforms, of which either set could be developed. Each of those building platforms is sufficiently distant from the applicant's site and visually separated so as to not compromise the overall landscape values. The more recent of the two consents granted for this site requires significant planting of indigenous species. While that will change the character of the landscape over time, it will not compromise the natural values but rather serve to enhance them.
121. As we noted above, the development proposed in these applications would have the effect of extending the character of the Northridge development west. The Northridge development has reduced the naturalness of the land it is contained within such that it has a landscape classification of Visual Amenity Landscape. We consider that allowing development of a similar character on this site would change the natural values of the site to an extent that the site is unable to absorb. This would also have the effect of introducing elements more consistent with the adjoining VAL than the ONL(WB), thereby undermining the landscape values.

*Positive Effects*

122. The applicant proposes the removal of exotic vegetation and the planting of 1,000 native plants. There is no existing indigenous ecosystem that could be enhanced so any works will contain a degree of manicuring to establish a limited cover of indigenous vegetation. We note that the 1,000 plants would be planted within a site of 22ha, although concentrated in an area of perhaps one third of the site. Mr Baxter envisaged planting in 9 or 10 groups to provide seed sources by gradual dispersion.
123. In relation to the subdivision application, the applicant also proposes the establishment of a walkway through the lower part of the site.
124. While the opportunity would exist to remove the development potential from remaining parts of the site, no such offer was made by the applicant. While we do not hold that against the applicant, the assessment criteria do require consideration of whether permanent removal of land from further development so as to avoid potential future effects is provided.

*Other Matters*

125. The conditions proposed do envisage the use of consent notices to ensure compliance with conditions on built development and to ensure the landscape enhancement work was undertaken. In addition, easements in favour of the Council are proposed in respect of the walkway.

Section 5.4.2.3 – Assessment Matters General

126. We do not propose to go through these in detail as they are in large part picked up in the matters dealt with above where the matters are in contention. Where the matters are not in contention, such as in relation to earthworks, we accept the evidence of the expert witnesses.

Section 15.2.3.6(b) Subdivision Assessment Matters

127. The subdivision and building platforms would not maintain nor enhance landscape values or visual amenity. The associated removal of vegetation and planting of indigenous plants would maintain and enhance rural character and the life supporting capacity of soils, vegetation and water.

128. The proposal is neutral in respect of infrastructure, with one exception which we outline below, and will not adversely affect adjoining land uses. There is no expectation that the subdivision would be subject to natural hazards, nor exacerbate any natural hazard.
129. The exception to the infrastructure issue relates to the walkway proposed by the applicant. This is designed to link to a walkway proposed on the Redemption Song land. That walkway incorporates a car parking area on Littles Road. Ms Overton recommended that the applicants consider provision of car parking at the Malaghans Road entry to this walkway.
130. We accept that the topography at the Malaghans Road entry to the walkway is not overly conducive to the provision of off-road car parking, but question the value of the walkway without such parking and are concerned that without the provision of off-road parking potential users may park along Malaghans Road creating potential pedestrian safety concerns.
131. We are asked to consider the long term development of the entire property. In addition to the two residential building platforms this involves the removal of plant pests in perpetuity, grazing of part of the site and encouraging steeper slopes to regenerate in indigenous vegetation. We have taken that into account in considering the positive effects of the proposal.

#### Effects of the Proposal on the Environment

132. The consideration of the three applications against the assessment criteria above has enabled a consideration of the effects of the proposal on the environment. It is our conclusion that those effects are adverse to a degree beyond that contemplated by the District Plan.

#### Section 4.2.5 – District Wide Objectives and Policies

133. The critical provision is policy 3 relating to Outstanding Natural Landscapes (Wakatipu Basin). To achieve the objective of subdivision and development being undertaken in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values, this policy requires the avoidance of subdivision and development that results in adverse effects that are more than minor on landscape values and

natural character and visual amenity values. The policy also seeks to maintain the openness of those outstanding natural landscapes which have an open character and the remediation or mitigation of the continuing effects of past inappropriate subdivision and or development.

134. We do not consider this proposal is consistent with this policy. The adverse effects of the proposal on the landscape and natural character, and visual amenity values, recognising and providing for the matters set out in part (a) of the policy, would be more than minor as we have discussed above. In addition, the proposal would not maintain the openness of the site.
135. Policy 8 is to encourage comprehensive and sympathetic development of rural areas. We do not consider the applications promote this policy. As Mr Baxter admitted, the applications were predicated on the works undertaken some 9 or 10 years ago putting in access tracks and building platforms and the building limitations based on those applying to the Northridge development. No comprehensive analysis has been undertaken of the site and its ability to contain development, nor what form of development would be sympathetic to the landscape values of the site.
136. Mr Goldsmith was critical of the work undertaken on behalf of Redemption Song for its most recent consent application, suggesting that the level of analysis undertaken was beyond that required to obtain a consent. We understood Mr Todd, in providing a copy of the Redemption Song analysis for us to examine, to be providing an example of a comprehensive analysis as expected by the Plan for development within the ONL(WB). We agree that the process undertaken for the Redemption Song land is a process that accords with the policy of achieving a comprehensive and sympathetic development.
137. Policy 9(a) relates to structures in outstanding natural landscapes. While the applications propose conditions to control visual effects of the potential buildings, there is no indication of how the structures would be in harmony with the landscape. While technically the Plan allows the definition of a building platform and the subsequent approval of a building on the building platform as a controlled activity, the stricter regime of the ONL(WB) calls for more information on the final form of the

buildings to show that the application achieves the exceptional level of appropriateness required.

138. Policy 12 relates to transport infrastructure. Generally the access tracks are consistent with this policy, although there are sections which are highly visible.

Section 5.2 – Rural General Objectives and Policies

139. These add little to the District Wide objectives and policies in respect of this site. We do not consider the applications are appropriate within the landscape and consider the adverse effects cannot be mitigated to a level where they are less than minor.

Section 15.1.3 – Subdivision Objectives and Policies

140. Objectives 1 and 2 and their associated policies relate to servicing of new lots. The proposal accords with these.
141. Objective 4 and its policies are concerned with landscape issues, and Objective 5 and policies with amenity values. To the extent that these are relevant to this proposal, the issues raised are similar to those covered by the District Wide and Rural General objectives and policies discussed above. The only additional matter raised is by policy 4.1 concerning taking the opportunity to protect outstanding natural landscapes through the subdivision process. We do not see this proposal as taking that opportunity.

**Part 2 of the Act and Overall Conclusions**

142. Under section 6 we are required to recognise and provide for, as a matter of national importance, the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development. We were first asked contemplate that much of the subject site was outside of an outstanding natural landscape, notwithstanding an Environment Court determination of 2003. We have concluded that we have no jurisdiction to modify the Court's determination, and even if we had, we would not do so. Thus, we are satisfied the activities proposed are within an outstanding natural landscape.

143. The District Plan has a well-developed set of assessment criteria and objectives and policies for the determination of whether a subdivision, use or development is inappropriate in an outstanding natural landscape. Having undertaken an assessment in accordance with those provisions, we are satisfied that the subdivision, use and development represented by these three applications is inappropriate.
144. Under s.7 we are to have particular regard to, relevantly:
- (aa) *The ethic of stewardship;*
  - (b) *The efficient use and development of natural and physical resources;*
  - (c) *The maintenance and enhancement of amenity values;*
  - (f) *Maintenance and enhancement of the quality of the environment;*
145. The ethic of stewardship includes caring for the land in such a way as to remove pest plants and encourage appropriate vegetation species to establish. This proposal demonstrates such stewardship on part of the site.
146. Lot E is a natural and physical resource. Mr Goldsmith submitted that we should give weight to the fact that no building platform had been defined for Pt Lot 7, with the implication that efficient use of the land should provide for some development rights. What this application omits to consider is that Lot E is larger than Pt Lot 7 by some 2.81ha. This area of 2.81ha is classified as Visual Amenity Landscape under which classification consent for a residential building platform is not subject to such stringent criteria as the remainder of the site. We have not examined the potential for a building platform to be located within that portion of Lot E but consider that to do so would represent a more efficient use of the natural and physical resources of the site than the present proposal.
147. We have discussed the effect of the proposal on amenity values and the quality of the environment in our discussion of the District Plan provisions.
148. Turning to the purpose of the Act as defined in s.5, we do not consider this proposal represents sustainable management of natural physical resources. While there are some positive attributes of the proposal, such as the removal of pest plants, revegetation and the provision of a walkway, as well as the obvious benefits to the applicant and subsequent occupiers of the proposed lots, we consider those attributes are

overwhelmed by the adverse effects this proposal would have on the outstanding natural landscape and the rural character and amenity values of the site and surrounding land.

149. In coming to this conclusion we have considered each of the three applications separately. While each of RBP1 and RBP2 have different effects on the environment, each, either separately or in combination with the other, would be disruptive of the landscape values the site contributes to the outstanding natural landscape. Although the subdivision application makes no sense without both building platforms, to grant consent to the subdivision application by itself would lead inevitably to the disruption of the landscape values in a similar manner to the combination of all three applications.

### **Decision**

150. For the reasons set out above, consent is refused to each of the following applications:

- To subdivide the site comprising Pt Lot 7 DP 25924 and a portion of Lot 6 DP 300837 as shown on the Clark Fortune McDonald & Associates Plan 10796-03 *Lots 1 and 2 Being a Subdivision of Lot 7 RM110664*.
- To establish a new residential building platform and associated earthworks in the position indicated within proposed Lot 1 shown on the Clark Fortune McDonald & Associates Plan 10796-03 *Lots 1 and 2 Being a Subdivision of Lot 7 RM110664*.
- To establish a new residential building platform and associated earthworks in the position indicated within proposed Lot 2 shown on the Clark Fortune McDonald & Associates Plan 10796-03 *Lots 1 and 2 Being a Subdivision of Lot 7 RM110664*.

For the Commission



Denis Nugent  
8 January 2013