

**SUBMISSION ON NOTICE OF INTENTION TO GRANT A RIGHT OF WAY EASEMENT UNDER SECTION 48 OF THE RESERVES ACT 1977**

**TO:** Queenstown Lakes District Council ("**QLDC**")

**SUBMITTER:** Bridesdale Farm Developments Limited ("**BFDL**")

**SUBMISSION ON:** Notice of intention to grant a right of way easement over an area of the Greater Widgeon Place Recreation Reserve, for the benefit of farm access and gardening lots associated with the Bridesdale Development, pursuant to section 48 of the Reserves Act 1977 ("**Notice**")

**Introduction and background**

1. BFDL is the developer of the 138-lot Special Housing Area ("**SHA**") subdivision in Lake Hayes Estate known as Bridesdale Farm. At the Southern end of Bridesdale Farm are two lots legally described as Lot 404 and 405 DP 505513 ("**Lot 404**" and "**Lot 405**" respectively). Lot 404 is currently a vacant balance lot, zoned and used (currently) for farming. Lot 405 surrounds a number of individual "garden allotments" which are linked to each of the 138 principal lots within the Bridesdale Farm subdivision.
2. Neither Lot 404 nor Lot 405 have legal access to the road network, but both adjoin a road located within Lot 205 DP 505513 ("**Lot 205**"), which since the subdivision of Bridesdale Farm in 2017 has been used to access Lot 404 and Lot 405. Lot 205 is a recreation reserve administered by QLDC. Adjoining near the top of Lot 205 is another lot which is a Council recreation reserve, Lot 308 DP 505513 ("**Lot 308**").
3. BFDL owned Lot 205 until completion of the Bridesdale Farm subdivision in 2017. Prior to the subdivision of Bridesdale Farm, there was no road on this land. BFDL proposed a road on Lot 205 as part of its SHA application, intending that the road would provide access to the Kawarau River, as well as to the adjoining land at Lot 404, Lot 405 and the garden allotments.
4. As part of the implementation of the Bridesdale Farm subdivision, BFDL vested Lot 205 in QLDC. As is typical in these sorts of arrangements, QLDC was not asked to provide any consideration for the vesting (i.e. it was vested at no cost to QLDC). BFDL also paid for and constructed the road and public carpark within Lot 205.
5. Initially, BFDL intended that Lot 205 would be vested in QLDC as a road reserve, as shown on the subdivision planning documents lodged with QLDC. As noted above, the intent was that the road to be constructed on Lot 205 would provide public access to the Kawarau River, as well as providing access to Lot 405 (for the owner of that Lot and for the residents of the Bridesdale Farm subdivision to access their garden allotments) and to Lot 404. However, at QLDC's request, Lot 205 was ultimately vested in QLDC as a recreation reserve. From BFDL's perspective, this change in status was not intended to reflect any modification of the planned routes for public access to the Kawarau River and to Lot 405, and access to Lot 404. However, the change to recreation reserve status unfortunately had the unintended (and, at that time, unanticipated and unforeseen) result of restricting legal access to, and infrastructure service provision for, Lot 404 and Lot 405. As Lot 405 provides

access to the garden allotments, the change to recreation reserve status for Lot 205 also means that the 138 owners of these allotments do not have legal access to their land.

6. When this issue was discovered (after the subdivision was implemented), BFDL requested that QLDC grant a right-of-way easement to use the road on Lot 205 as the legal means of vehicle and pedestrian access to Lot 404 and Lot 405. This was consistent with the original intention, and indeed would simply have formalised the established position on the ground with respect to Lot 205. After some protracted discussions with QLDC, however, BFDL ultimately agreed to seek approval of a compromise position, and amended its request for a right-of-way easement to a revised proposal to use a small portion of Lot 205 and Lot 308 to provide access to Lot 404 and Lot 405. This proposal is the subject of the Notice and this submission.

#### **Nature of submission**

7. BFDL supports the intention of the Notice to grant a right of way easement over Lot 205 and Lot 308 in favour of Lot 404 and Lot 405. With the exception of the matters outlined below, BFDL considers the conditions proposed by QLDC as set out in the Notice are appropriate and it supports the granting of the right of way easement on such terms. BFDL wishes to be heard in this regard if there is any opposition to the granting of the right of way easement, or proposed conditions (other than those outlined below, which are discussed separately), from any other submitter on the Notice.
8. BFDL objects to three of the conditions proposed by QLDC as detailed in paragraph 9 and seeks the amendments set out in paragraph 10.
9. BFDL objects to the following conditions proposed by QLDC as set out in the Notice:
  - (a) Condition (a) states "Use to be restricted to light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments". BFDL is comfortable that the proposed wording reflects the current use of Lot 404 and Lot 405. However, Lot 404 may be the subject of future rezoning and / or planning applications for a change in use. BFDL is concerned to ensure that the easement is adequately "future-proofed" by having the terms of the easement expressly contemplate possible future changes in use of the land so as to avoid the need for a further process under the Reserves Act (or further negotiation and/or debate between QLDC and the landowner), which would unnecessarily take up valuable time and resources. Future-proofing the easement in this manner would also avoid the possible "catch-22" of any rezoning of or granting of resource consent in respect of Lot 404 being impacted by the lack of legal access to those Lots for such use.

Any change in use of Lot 404 (and, therefore, the uses to which the right of way easement could be put) would, of course, be subject to normal planning processes (i.e. approval of rezoning or granting of resource consent) so in BFDL's submission there can be no prejudice to QLDC or the public in crafting the permitted use description in the easement to encompass such approved future uses.
  - (b) Condition (d)(iii) requires that the final terms of the easement contain conditions enabling "Council to relocate the access in the event that Council develops an alternative access to the reserve land through Widgeon Place at Bridesdale Farm Development Limited's cost". BFDL has significant concerns with this requirement:

- (i) Firstly, while (subject to the below) BFDL is open to the necessity of changing the access to accommodate QLDC's future plans for the reserve land, the justification for requiring BFDL (or the registered owner of Lot 404 and Lot 405) to bear the costs of relocation is not at all clear, fair or reasonable. The distance between Widgeon Place and Lot 404 and Lot 405 is substantial, and the cost of forming a road over that distance would be significant. Had Lot 205 vested as road reserve as part of the subdivision (as was originally intended), there could be no suggestion of QLDC having the ability to impose the cost of relocating the QLDC road on BFDL. It is not appropriate, equitable or reasonable that, due simply to accident of circumstance, BFDL has been put in the position of having to seek the grant of this new right of way easement and is proposed to be saddled with the cost of decisions that QLDC might make at its discretion at any time in the future.

It is particularly unreasonable given that the compromise position proposed by BFDL that is the subject of this Notice is for an easement only over a very small portion of Lot 205 and Lot 308. This proposed easement area is directly adjacent to a legal road and flows in a direct line to the garden allotments via Lot 405, and then down to Lot 404. In practical terms, while QLDC may seek to remove the formed road from the bulk of Lot 205, it is not clear to BFDL why the access over the very small portion of Lot 205 and the even smaller portion of Lot 308 would need to be removed. Constructing a much longer road from Widgeon Place would take up much more space of QLDC's recreation reserve (the plan attached as an Appendix shows the small size of the proposed easement for ease of reference). Not only does this seem illogical in replacing a small access route with a much lengthier one, it also would be entirely impractical for the access of the owners of the garden allotments who instead of having a direct route from the Bridesdale Farm subdivision, where they live, to their respective allotments (which are intended to be easily accessed), each garden allotment owner would be forced to travel a circuitous route around the subdivision to access their respective garden.

- (ii) Secondly, the condition would pose an unreasonable financial burden on any future owners of the land for the reasons set out above. The condition as drafted is expressed as falling on "Bridesdale Farm Developments Limited"; however the easement needs to contemplate that Lot 404 and 405 may be owned by other parties in the future. The costs of relocation could be significant and it is unreasonable for this financial burden to be placed on either BFDL (which may in the future not own Lot 404 and 405) or on a future owner of Lot 404 and 405 who may be a single rural landowner.

- (c) Finally, condition d(v) states that "Bridesdale Farm Development Limited will pay for all ongoing maintenance costs associated with the easement". We make the same point as above about the condition expressly referring to "Bridesdale Farm Development Limited". The reference should be to the registered owner of Lot 404 and Lot 405. QLDC has communicated to BFDL that this condition has been imposed as the sole purpose of the easement will be to access BFDL's land. That is incorrect, as the easement will also allow access by the above referred garden allotment owners. As already noted, such users are far greater in number and will likely use the right of way more frequently than BFDL. In other words, the

proposed right of way easement is intended to provide benefit to a number of parties. QLDC also currently bears the maintenance costs of access to the garden allotments and Lot 405 in its capacity as owner of Lots 205 and 308. Given these factors, and the historical circumstances that require this easement to now be put in place, it would be inequitable and unreasonable to require BFDL to bear 100% of the costs to maintain the easement. Going forward, a split between the parties as set out in the easement terms in Schedule 5 of the Land Transfer Regulations 2018 is appropriate.

### Relief sought

10. BFDL seeks the following amendments to the proposed terms of the right of way easement (amendments shown in underline and deletions shown in strike-through):
  - (a) Condition (a): "Use to be restricted to light vehicle and pedestrian access for the current farming use and to enable access to the garden allotments, and/or any other use of [Lot 404] that may be permitted by relevant zoning or consents from time to time".
  - (b) Condition (d)(iii): "Enable Council to relocate the access in the event that Council develops an alternative access to the reserve land through Widgeon Place at the cost of the Council.", ~~at Bridesdale Farm Development Limited's cost~~
  - (c) Condition d(v): "~~Bridesdale Farm Development Limited will pay for~~ All ongoing maintenance costs associated with the easement shall be split equally between the parties to the easement in accordance with Schedule 5 of the Land Transfer Regulations 2018".
11. BFDL wishes to be heard and have the opportunity to call evidence in support of its submission.

### BRIDESDALE FARM DEVELOPMENTS LIMITED

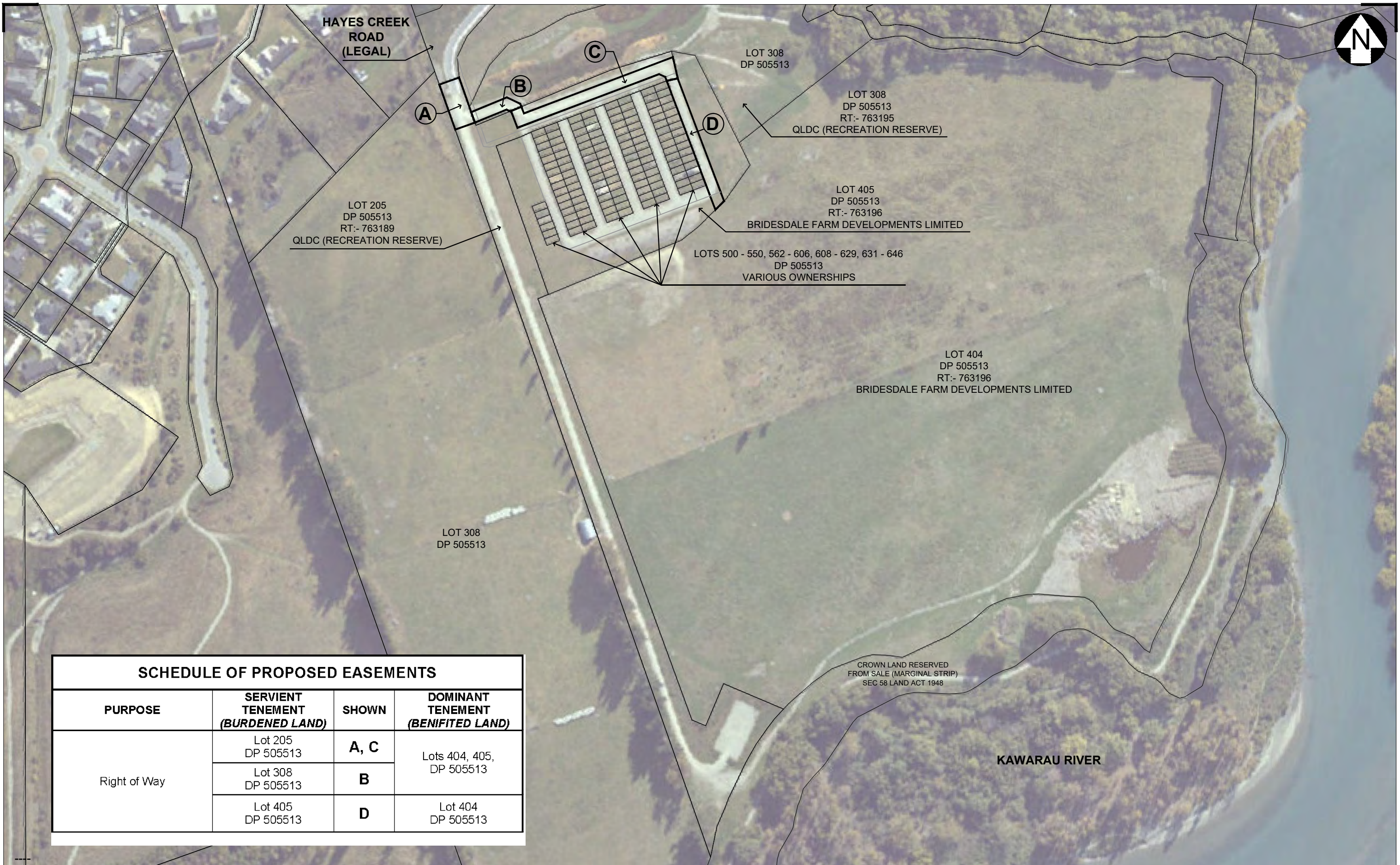


Signature:

Date: 14.02.22

Address for Service: [lauren.christie@winton.nz](mailto:lauren.christie@winton.nz), PO Box 2962, Wakatipu, Queenstown, 9300





**SCHEDULE OF PROPOSED EASEMENTS**

| PURPOSE      | SERVIENT TENEMENT<br>(BURDENED LAND) | SHOWN       | DOMINANT TENEMENT<br>(BENEFITED LAND) |
|--------------|--------------------------------------|-------------|---------------------------------------|
| Right of Way | Lot 205<br>DP 505513                 | <b>A, C</b> | Lots 404, 405,<br>DP 505513           |
|              | Lot 308<br>DP 505513                 | <b>B</b>    |                                       |
|              | Lot 405<br>DP 505513                 | <b>D</b>    | Lot 404<br>DP 505513                  |


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| Rev. | Date     | Revision Details | By |
|------|----------|------------------|----|
| A    | 15.05.20 | RsOW AMENDED     | HK |

**PROPOSED EASEMENTS OVER LOTS 205, 308 AND 405  
DP 205513**

|        |      |          |      |         |    |               |                            |             |    |
|--------|------|----------|------|---------|----|---------------|----------------------------|-------------|----|
| Client | BFDL | Surveyed | Date | Checked | HK | Job No.       | 11670                      | Drawing No. | 18 |
|        |      | Drawn    | Date | Checked | HK | Scale         | 1:1250 @ A1<br>1:2500 @ A3 |             |    |
|        |      | Designed | Date | Checked | HK | Datum & Level | NZGD2000 / MSL             | Rev.        | A  |

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