

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL HEARING PANEL

IN THE MATTER of the Resource Management Act
1991

AND the renotification of two submissions
on Stage 1 of the Queenstown Lakes
Proposed District Plan concerning the
zoning of land at Arthur's Point by
Gertrude's Saddlery Limited and
Larchmont Developments Limited

SUPPLEMENTARY STATEMENT OF EVIDENCE OF BRETT JAMES GIDDENS

Dated 21 February 2023

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1. My name is Brett James Giddens.
2. I have been asked to provide comment on the supplementary reply information provided in the memorandum by Anderson Lloyd Lawyers dated 16 February 2023.
3. My qualifications and experience are set out in my evidence in chief (**EIC**) dated 6 December 2022.
4. As set out in my EIC and rebuttal evidence dated 3 February 2023, I have expressed the opinion that I consider that the site is not appropriate for the proposed urban zonings. Those opinions and conclusions are unchanged by the reply information. My comments below are additional to the evidence I previously filed and presented at the hearing.
5. An amendment has been made to proposed Policy 27.3.XX.4¹ to show intent about the connection of a *public* trail through the site. As there is no resource consent in place (or proposed) for a public trail in the DOC reserve which any public trail through the site would need to connect to, there is no practical merit in these amendments in my opinion. This amendment would have had more merit if the public trail was located entirely within the submitter's property and there was certainty that a trail would be located on the DOC reserve to provide an actual and meaningful connection to the wider trail network. I therefore remain of the view set out in paragraphs 10.37 to 10.39 of my EIC, and paragraphs 2.9 to 2.15 of my rebuttal with regard to the trail.
6. Proposed Rule 27.7.XX.3² has been inserted to provide a "non-complying regime" where subdivision in the LLR zone occurs prior to the upgrading of the legal access to the site. The memorandum confirms that resource consent for a restricted discretionary activity must be first obtained to provide a formed legal access prior to development of the land³. Rule 27.5.7 is referred to as being the rule where this would be assessed, which is the rule for subdivision in the LDSR zone. However I note that this rule does not cover the activity and that there are a number of further consents that would also be required under Chapter 29 (Transport) for access related breaches to the transportation standards, and Chapter 25 (Earthworks) for earthworks volumes, cuts and retaining⁴.

¹ see paragraph 6

² see paragraph 8

³ see paragraph 10

⁴ see paragraph 12 (c)

7. I still have a concern that the existence of the zone itself puts pressure on the Council to accept a roading design that is not to standard because there are no other options. The proposed new Policy 27.3.XX.6 and new Rule 27.7.XX.3 require road access but do not state what type/standard and there are still no provisions that enable the access design put forward by Mr Bartlett to be given effect to in future development plans. I note there is no objective concerning the roading outcome sought.
8. The District Plan and its rules need to be clear there is a risk to the implementation of the zone arising from the need for further consents to establish an access. This is particularly in light of the resource consent referred to at paragraph 12(b) of the memorandum, RM130588, which was limited notified to surrounding landowners. I have included a copy of this decision as **Annexure A**.
9. I understand from the amended provisions that the subdivision of the LLR zone remains as a controlled activity and residential land use is permitted. This is inappropriate for the reasons I have set out in my EIC at paragraphs 10.5 and 10.54.
10. In summary, I do not consider the changes made resolve the fundamental concern regarding legal road access. I am concerned that once a zone is in place, the Council will be obliged to accept a road of lesser quality in order to enable the existing and proposed zoning to be implemented. The proposed plan provisions need to be clear about the standard of road upgrades required before any activity occurs – this is usual practice in the PDP in my experience.
11. I do not have any further comments on the structure plan and I remain of the view expressed throughout section 10 of my EIC.

Brett Giddens

21 February 2023



DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	Michael George Swan and Barbara Mary Roney as Executors (formerly G F Swan)
RM reference:	RM130588
Location:	111 Atley Road, Arthurs Point
Proposal:	Subdivision consent to create four lots and land use consent for earthworks to form a road
Type of Consent:	Subdivision; Land Use
Legal Description:	Lot 1, being a lot created by subdivision consent RM 130558 which was a subdivision of Lots 1 and 2 DP 307630 contained within Computer Freehold Register 29585, and Part Section 1 Survey Office Plan 24074 contained in Computer Freehold Register OT17C/968
Valuation Number:	2910721100
Zoning:	Low Density Residential
Activity Status:	Non-Complying
Notification:	Limited notification
Commissioner:	Commissioner T D Nugent
Date Issued:	5 May 2014
Decision:	Granted subject to conditions

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER Applications under s.88 for
Subdivision and Earthworks
by M G Swan and B M
Roney as Executors
(formerly G F Swan) in
respect of 111 Atley Road,
Arthurs Point – RM130588

DECISION OF HEARING COMMISSIONER DENIS NUGENT

The Decision

1. Pursuant to s.104B of the Resource Management Act 1991 consent is hereby granted to M G Swan and B M Roney as Executors to:
 - A. Subdivide Lot 1, being a lot created by subdivision consent RM 130558 which was a subdivision of Lots 1 and 2 DP 307630 contained within Computer Freehold Register 29585, and Part Section 1 Survey Office Plan 24074 contained in Computer Freehold Register OT17C/968, to create four lots as shown on Clark Fortune McDonald & Associates drawing entitled “Lots 1-4 being a Proposed Subdivision of Lot 1 RM130558” Job No. 9362 Drawing 37A Dated 16.04.14 for the reasons set out above, subject to the conditions in Appendix 1 Part A;
 - B. Undertake earthworks on Lot 4, as shown on Clark Fortune McDonald & Associates drawing entitled “Lots 1-4 being a Proposed Subdivision of Lot 1 RM130558” Job No. 9362 Drawing 37A Dated 16.04.14, in accordance with the Clark Fortune McDonald & Associates drawings entitled “Atley Road Extension” Job No. 9362 Drawing No. 36 Sheets 1 to 4 Rev C dated 08.04.14 for the reasons given above and subject to the conditions in Appendix 1 Part B.

The Application

2. The proposal, as originally lodged, was for a subdivision so as to create a lot intended to be dedicated as road. This road would replace right of way access presently provided over the applicant’s land to some 15 dwellings.

3. The site is currently described as Lots 1 and 2 DP 307630, being 6.5923 hectares in area and contained within Computer Freehold Register 29585, and Part Section 1 Survey Office Plan 24074, being 430m² in area and contained in Computer Freehold Register OT17C/968. A subdivision consent has been granted for these sites (RM130558), and on implementation of that consent the land subject to this application will be Lot 1 RM130558, being 1.67 hectares in area. Lot 1 RM130558 is entirely zoned Low Density Residential. This application is to subdivide Lot 1 RM130558.
4. The proposed subdivision would result in the creation of the following lots:
 - Lot 1 being 2,473m² in area;
 - Lot 2 being 814m² in area;
 - Lot 3 being 1.00 hectares in area; and
 - Lot 4 being 2,315m² in area to be dedicated as legal road.
5. Lots 1, 2 and 3 would be held together in the same certificate of title. The applicant proposed the registration of a consent notice on the title of Lots 1, 2 and 3 prohibiting further subdivision or development until infrastructure services were provided.
6. In March 2014 the applicant added an application for earthworks required to form the road on Lot 4 to a standard required by the Council.
7. The application was originally lodged by Mr G F Swan. He is now deceased and Mr M G Swan and Ms M Roney as executors have been substituted as successors under s.2A of the Act.

Relevant Plan Rules

8. The following District Plan rules are relevant:
 - Rules 15.2.6.1, 15.2.6.3(i)(a) and 15.2.6.3(i)(d) – Lots sizes – controlled activity;
 - Rule 15.2.7.1 – Subdivision design – controlled activity;

- Rule 15.2.8.1 – Property access – controlled activity;
- Rule 15.2.10.1 – Natural and other hazards – controlled activity;
- Rule 15.2.11.3 – Water supply – non-complying activity;
- Rule 15.2.12.1 – Stormwater disposal – controlled activity;
- Rule 15.2.13.1 – Sewage treatment and disposal – controlled activity;
- Rule 15.2.15.1 – Energy supply and telecommunications – controlled activity;
- Rule 15.2.16.1 – Open space and recreation – controlled activity;
- Rule 15.2.17.1 – Vegetation and landscape – controlled activity;
- Rule 15.2.18.1 – Easements – controlled activity;
- Rule 15.2.3.4 – Non-complying subdivision activities – non-complying activity as a result of breaching Zone Standard 15.2.11.3;
- Rule 7.5.5.2(xvi) combined with Rule 7.5.3.4(vi) – Earthworks – restricted discretionary activity with discretion restricted to the volume, area and scale of earthworks, the height of cut and fill slopes, environmental protection measures and the protection of archaeological sites and sites of cultural heritage.

9. Overall the application is to be considered as a non-complying activity.

Relevant Statutory Provisions

10. As a non-complying activity it is necessary for the application to pass one of the threshold tests of s.104D before I can consider the application under s.104. If I reach the conclusion consent can be granted, I can impose conditions under s.108 and s.220.
11. The s.42A report raised the possibility of s.106 being relevant. I will refer to that in due course.

12. There are no matters of national importance under s.6 of the Act that are relevant, nor was any matter under s.8 brought to my attention. I will discuss the provisions of s.5 and s.7 when considering the application under s.104.
13. No provision in the Regional Policy Statement was brought to my attention.

Notification

14. The application was subject to limited notification. The registered owners of 12 adjacent properties were notified on 21 November 2013. Six submissions were received in time, five opposing the application and one in support.
15. I have reviewed all the submissions received, and had the benefit of hearing from most of the submitters at the hearing.

Background

16. This application (or alternatively “the Swan application”) and application RM130844 by Larchmont Developments Ltd (“the Larchmont application”) relate to adjoining sites zoned Low Density Residential at the end of Atley Road, Arthurs Point. The two applications are closely related. The Larchmont land gains legal road access via a right of way over part of the Swan land. However, that right of way also provides access for another 14 properties, the roadway on it is formed to basic standards, and topography and site boundaries create limitations on the ability of the right of way to carry more traffic. In particular, at one point the legal width of the site narrows to 6m, and that is also the location that a second accessway serving the properties to the south of the Swan land joins the right of way easement. This was referred to as “the pinch point” by all parties.
17. Following discussions with the Council as roading authority, the solution proposed to enable subdivision of the Larchmont property was to turn the right of way into a legal road thereby providing direct road frontage to the Larchmont property and easing the ability to subdivide it.
18. The Swan application is the vehicle for creating the legal road by creating a lot encompassing the right of way and dedicating that as road. A recently granted consent (RM130558) had subdivided the Swan land so as to separate the land zoned Low Density Residential from that zoned Rural General. This subdivision

proposal only involved the Low Density Residential land. Therefore it is a subdivision of Lot 1 created by consent RM130558 and can only proceed with the completion of that subdivision.

Hearings

Hearing on 25 February 2014 – Appearances

For Applicant

- Mr W Goldsmith, solicitor

Submitters

- Mr R Taylor for himself and Ms L Taylor and for Mr & Ms Gousmett
- Ms S Kooy and Mr J Gavin
- Mr G Barker for himself and Ms M Jowett
- Ms K Ramsay for herself and her husband

Council officers

- Ms A Giborees, Senior Planner
- Mr B Devlin, Manager, Resource Consents
- Ms L Overton, Engineer
- Mr D Mander, Transport Policy and Stakeholder Manager
- Mr T Ray, Council Solicitor
- Ms L Ryan, Committee Secretary

Hearing on 16 April 2014 – Appearances

For Applicant

- Mr W Goldsmith, Solicitor
- Mr N Geddes, Planning Consultant
- Mr J Bartlett, Traffic Engineer

Submitters

- Ms S Kooy and Mr J Gavin
- Mr K Gousmett for himself and Ms R Gousmett
- Mr R Taylor for himself and Ms L Taylor
- Ms K Ramsay for herself and her husband

- Ms M Jowett
- Mr G Barker

Council officers

- Ms A Giborees, Senior Planner
- Ms L Overton, Engineer
- Mr D Mander, Transport Policy and Stakeholder Manager
- Ms J Macdonald, Council Solicitor
- Ms R Beer, Committee Secretary

19. Site visits were undertaken on 20 February 2014 (accompanied by Ms Giborees) and 16 April 2014 (alone).
20. The hearing of this application commenced on 25 February 2014. At that hearing the applicant expressed the view that, as the proposal involved no increase in demand on roading, no upgrading was required and, therefore, no consent had been sought for earthworks. In particular, it was suggested that proposed conditions requiring the construction of the road to a certain standard should not be imposed on this application.
21. I was advised that the subdivision application lodged in respect of the Larchmont land (RM130844) would lead to increased traffic movements on the road to be dedicated and that application would cover the required earthworks on proposed Lot 4 on the Swan land.
22. After hearing Mr Goldsmith's submissions on behalf of the applicant I sought legal advice from Mr Ray. As a result of that advice I deferred consideration of this application until an application had been received for the earthworks required to construct the road. I also requested the provision of a traffic safety report on the proposed road, and stated that I when I reconvened the hearing of this application I would hear the Larchmont application at the same hearing. I set out my reasons in a Memorandum issued on 26 February 2014, which is attached as Appendix 2.
23. On 18 March 2014 Mr Goldsmith lodged an application for earthworks, a traffic safety report and comments on my earlier Memorandum. I reviewed the material provided and in a Memorandum dated 20 March 2014 (attached as Appendix 3) concluded that the additional material did not require public notification, but that it

should be provided to all submitters. I also provided the Council officers the opportunity to provide a supplementary s.42A report subject to a copy of it being provided to the applicant and each submitter not less than 5 working days prior to the reconvened hearing.

24. At the reconvened hearing on 16 April 2014 Mr Goldsmith made some additional submissions and adopted the s.42A reports subject to comments made in his submissions. He called no evidence, but I took the opportunity to question Mr Bartlett about the basis of his reports.
25. I heard detailed submissions from each of the submitters such that I was able to fully understand their concerns.
26. Before hearing from the Council officers I asked them to specifically address a number of matters that had been raised in the submissions. The officers did not alter their recommendation that consent be granted but suggested that some alterations to conditions would be required.
27. In his reply on behalf of the applicant, Mr Goldsmith also noted a number of matters that could be addressed through amended conditions. I adjourned the hearing to enable him to consult with the Council officers as to an agreed set of recommended conditions.

The Evidence

28. It is important to note at this point that, subject to some changes to the recommended conditions, Mr Goldsmith adopted the s.42A reports, including the recommended conditions, as the applicants' evidence at the commencement of the hearing.
29. The only expert evidence received comprised the two reports prepared by Mr Bartlett, one on the roadway design and one on traffic safety, and the s.42A report and associated documentation provided by the Council officers.
30. Mr Bartlett prepared two reports. The first was in the form of a letter to Mr Goldsmith, dated 2 December 2013, providing a design recommendation for the road proposed on Lot 4. Mr Bartlett referred in this to various urban road design requirements used by the Council and the cadastral and topographical constraints of the site before concluding that generally a 6.0m wide carriageway

was appropriate with a 1.4m wide footpath. At the pinch point he concluded the carriageway could narrow to 3.1m to provide a single lane that would operate similarly to a one-lane bridge. East of the pinch point Mr Bartlett considered a 5m wide carriageway adequate. This report was not included with the application as lodged and was only provided after I sought the additional information at the February hearing.

31. Mr Bartlett's second report, also in the form of a letter to Mr Goldsmith, was dated 18 March 2014. It is described as providing "*a safety comment for the proposed design recommendations for*" the proposed road on Lot 4. The main conclusions he reached in this report were:

- At the pinch point, priority be given to eastbound traffic (that is travelling from the existing Atley Road) – westbound traffic would give way and queue in the area east of the pinch point;
- The vehicle access for the southern properties at the pinch point be clearly demarcated so as to show a lower priority to vehicles leaving that accessway;
- The footpath and kerb be located on the southern side of the carriageway to reduce the need for a guardrail.

32. In response to my questions, Mr Bartlett stated that he had not calculated potential traffic flows in preparing either report. He advised that he had worked on the potential development, but did not explain what level of development that entailed.

33. Mr Bartlett considered that the only area of potential traffic conflict was at the pinch point, and the give way recommendation should minimise any conflict. He considered that vehicles leaving the adjoining accessway would need to pull over the footpath to have sufficient visibility to the right when turning.

34. Mr O Brown of MWH provided the Council officers with traffic engineering advice. The advice dated 3 April 2014 responded to Mr Bartlett's two reports and contained the following recommendations:

- The eastern approach road width be increased to 5.8m ...;

- Safety barriers are provided along the proposed road consistent with Paragraph 3.3.4 of Councils [sic] amendments to the NSZ [sic] 4404:2004;
- Priority at the one lane section is for westbound vehicles (travelling towards Atley Road) with eastbound vehicles (into the subdivision) required to give way.

35. Mr Brown responded to the revised road design plans on 15 April 2014. He noted that:

- the eastern approach had been widened to 5.8m;
- a safety barrier would be required on the eastern approach, but probably not on the curve;
- no further detail was provided on one-way operation; and
- footpaths were shown as 1.2m wide when they should be 1.4m minimum.

36. Ms Jowett lives at 100 Atley Road, which is immediately south of proposed Lot 4, east of the pinch point. Her concerns can be summarised as follows:

- There had been no consultation with her by the applicant;
- The retaining wall and barrier on the eastern approach would cause freezing of part of her property and would harm existing planting;
- There had been no traffic modelling;
- The experts cannot agree which is the safe option for the road;
- The proposed road on Lot 4 would not be safer than the present access as it would be faster with more traffic;
- The proposal would alter the character of the community.

37. Ms Kooy and Mr Gavin reside at 107B Atley Road. This property obtains access over the Swan land right of way and also over the Larchmont land. The concerns they raised relevant to this application were:

- The one-way pinch point on the proposed road would not be adequate for future development of the area;

- The proposed one-way solution is not a safe option;
- The right of way should be upgraded to a safe standard.

38. Mr Barker, from 100 Atley Road, raised the following concerns:

- The cross-sections on the road design plans do not show the steep slope to the west of the road on proposed Lot 1;
- The limited sight-lines approaching the pinch point make it dangerous;
- Where the footpath is shown ending at the northern extent of the proposed road there is nothing for it to connect to.

39. Mr Gousmett and his wife reside at 96 Atley Road. This is within the group of properties that obtains access via the right of way over Lot 6 DP 23786 which joins proposed Lot 4 at the pinch point (“the southern accessway”). Mr Gousmett provided two written sets of evidence as well as 5 photographs he had taken along the right of way to demonstrate the existing width and topographical constraints. He raised a number of concerns with the design of the proposed road, as well as expressing his concern that inadequate work on a traffic assessment had been undertaken. The design concerns raised included:

- An independent road safety audit should be undertaken post design rather than post construction;
- The plan of subdivision does not adequately provide for the required road width where proposed Lot 4 adjoins proposed Lot 1;
- No serious attempt has been made to obtain the additional land required to ease the pinch point;
- The design of the new road should not set the west side of the footpath at a height that increases the gradient on the southern accessway.

40. Mr Gousmett also provided suggestions as to how water supply could be improved to the new areas of development, and suggested that Chorus be encouraged to lay fibre optic cable in the roadway while it is being constructed.

41. Ms Ramsay resides at 107 Atley Road. This adjoins the north boundary of proposed Lot 4 and the Larchmont land. Her concerns in respect of this

application were primarily in respect of the proposed retaining wall along the boundary with Lot 4.

42. Mr Taylor resides at 108 Atley Road, one of the sites which obtain access via the southern accessway. While he would welcome an improvement to the current road access, he was concerned that the proposal was too narrow, did not make adequate provision for cyclists, and that to grant consent would merely continue the shortfall in adequacy of the existing access.
43. Prior to giving the Council officers the opportunity to comment, I asked them to deal with the following matters in their response:
- The issue of a post-design safety audit versus post-construction;
 - The adequacy of the analysis undertaken of traffic volumes;
 - The adequacy of the design given expected traffic volumes;
 - The adequacy of the number of cross-sections on the road adjoining proposed Lot 1 to determine whether guardrails are required;
 - The footpath link to the existing Atley Road; and
 - Whether Lot 4 should be aligned with the actual designed road.
44. Mr Mander advised that the Council proposed to part-fund the proposed road on Lot 4. As a consequence, it would be appropriate for there to be a safety audit of the design prior to construction as well as a post-construction safety audit. He also advised that the existing portion of Atley Road that the proposed road would connect to is yet to be finally designed and constructed. The final design would take account of the footpath on the west side of the proposed road and incorporate some provision to carry that on alongside the existing road.
45. While Ms Overton advised that more information was needed on future traffic volumes, that did not appear to change her recommendation that consent be granted subject to conditions.
46. She agreed that the cross-sections did not provide adequate information to determine whether guardrails would be required and considered the conditions should be amended to ensure the provision of guardrails reflected what was

required. She also agreed that the road boundary should align with the constructed alignment and considered that could be dealt with by a condition.

47. In terms of sightlines, Ms Overton considered the provision of signage and its location, plus the location of barriers should be controlled to maximise sight lines.

48. Ms Giborees maintained her recommendation that consent be granted subject to conditions.

49. In his reply, Mr Goldsmith made the following points:

- It was not necessary to require more information on future subdivision potential;
- While more cross-sections were not needed, it would be appropriate to erect barriers where steep slopes required it;
- It would be appropriate for the boundary of Lot 4 to be determined post-construction;
- It was accepted that a post-design safety audit was required;
- The link to the existing road was wide enough for there to be flexibility in alignment of the road and footpath;
- The shading concern of Ms Jowett would require a higher structure than is being proposed;
- The speed of traffic on the new road can be controlled by Council's normal measures such as speed humps;
- While Mr Bartlett and Mr Gousmett referred to NZS4404:2004, NZS4404:2010 suggested that the appropriate dimensions of a carriageway serving up to 200 houses would be 5.5-5.7m wide with a 1.2m footpath;
- While a condition can require a wider corridor to provide for future development beyond that proposed, a condition cannot require construction of a road suitable for development beyond that proposed;

- The minutes of a Council meeting held on 26 September 2013 agreeing to a certain standard of road were a relevant consideration for me, but did not carry much weight;
- An advice note regarding the laying of fibre optic cable by Chorus would be acceptable.

50. The hearing was adjourned so that I could receive an up-to-date certificate of title and a revised subdivision plan correcting an inaccurate dimension included on the plan lodged with the application. These were received on 22 April 2014.

Issues in Contention

51. The major issue, raised by all submitters in opposition, was the safety of the proposed road at the pinch point. Related to this was the concern that inadequate consideration to the potential of future development that could occur if the accessway became a legal road and the consequent increase in traffic flows.

52. A secondary issue was the fact that this subdivision was designed to provide direct legal frontage to the Larchmont land and that land already has a subdivision consent, albeit under appeal, which would provide access to Mathias Terrace. Therefore, an alternative existed for the Larchmont land and this subdivision was therefore unnecessary.

53. I will deal with the last issue first. At the hearing I explained that a resource consent is permissive, in that it allows the holder to undertake an activity, but does not require them to. There is nothing in the scheme of the Resource Management Act that stops a landowner applying for more than one consent. Thus, the fact that Larchmont had obtained a subdivision consent with access to Mathias Terrace did not in itself preclude that company from applying for an alternative subdivision consent with access to an extended Atley Road.

54. What I did not mention, but now include for completeness, is that the consent granted by the Council to Larchmont (RM110238) has been appealed to the Environment Court. Section 116 of the Act provides that a consent that has been appealed cannot commence until the appeal has been dealt with by the Environment Court or withdrawn. Thus, while Larchmont may have another subdivision consent, it is in no position to use that consent until the Environment

Court determines the appeal in Larchmont's favour, or the appellant withdraws the appeal. Even if I considered Larchmont's consent RM110238 relevant to consideration of this application, I can give it no more weight than application RM130844 heard at the same time as this application.

55. While it could be argued that the only relevance the Larchmont application RM130844 has to this application is that it also seeks consent for the earthworks to construct the road on proposed Lot 4, I remain of the view expressed in my Memorandum of 26 February 2014 that there is a commonality of purpose of the Swan and Larchmont applications that links their consideration. In my view, at a minimum, the development potential of the Larchmont land enabled by the creation of a legal road on Lot 4 will lead to a level of traffic generation that must be considered when assessing the adequacy of the proposed road.

Traffic Safety

56. The proposed road proposes a two lane carriageway 6m wide from the existing Atley Road to a point some 7m west of the pinch point. The road narrows from there to the pinch point where it will be 3.1m wide. This narrow section extends for almost 12m before widening gradually over some 26m to 5.8m wide, which width it retains to the cul-de-sac head. In addition, a 1.4m wide footpath is proposed the full length of the new road. The recommended conditions require formation and sealing of the carriageway to Council's urban standards. This compares with the existing accessway which has an unsealed formation with a width for most of its length of some 4m, with no footpath.
57. Two traffic engineers, Mr Bartlett for the applicant, and Mr Brown from MWH for the Council, have examined the road design and concluded, taking into account the additional traffic from the Larchmont subdivision, that the road will be safe provided various conditions are imposed. While there may have been some disagreement between the traffic engineers about the most suitable conditions, they both agreed it can be made safe.
58. I accept that evidence and agree with Mr Goldsmith that the proposed road would be an improvement over the existing access.
59. With respect to the potential for other properties to develop or subdivide such as to increase traffic flows on the road, I consider Council control of the road will put it in a better position to acquire additional land for widening than could be

achieved by a private individual. I also note that Rule 15.2.8.1 enables the imposition of conditions on subdivision consents requiring the widening or upgrading of existing roads.

60. I accept that the District Plan provisions provide the potential for dwellings to be erected on sites at a density of 1 per 450m² as a permitted activity. Using the information as to lot sizes provided on the subdivision plan and Mr Goldsmith's Plan A I have calculated that theoretically 68 additional dwellings could be built as a permitted activity on all the sites obtaining access from the proposed road, excluding the Larchmont land. Based on the subdivision plan lodged for the Larchmont application, a further 11 dwellings could locate on that land. Of the 68 theoretical dwellings, 22 could be developed on the submitters' properties and 21 on Lot 3 proposed in this subdivision. This calculation takes no account of any restrictive covenants on any of the sites that may limit future subdivision, nor the reality that it is unlikely that every site would be developed to the maximum potential and then subdivided.
61. While it is theoretically possible for there to be significant increase in the number of dwellings and consequent increase in traffic generation, I consider it fanciful that any significant number of additional dwellings would be built without separate lots being created for such dwellings. Thus, while the Larchmont proposal would increase the amount of traffic, I consider it unlikely that much additional traffic will be generated by further development without the Council having the ability to require a contribution to further road upgrading.
62. Finally, Mr Goldsmith referred me to NZS4404:2010 and suggested that standard provided for up to 200 dwellings off a road with a carriageway of 5.5-5.7m. I have had the opportunity to review the relevant parts of that standard. I think the best that can be said in this situation is that the new standard identifies that lower speed environments may be appropriate for a larger number of dwellings than the former standard. However, the context of this road is rather different from the typical suburban street in that other than at the cul-de-sac head, no dwellings will get direct access onto the road, reducing the points of vehicle conflict considerably.
63. Overall, I accept that with the imposition of conditions and the application of post-design and post-construction safety audits, the proposed road will provide a safe traffic environment, including for pedestrians and cyclists.

Effects on the Environment

Permitted Baseline

64. As all subdivision is at minimum a controlled activity, there is no permitted baseline in respect of the subdivision.
65. As a permitted activity the maximum quantity of earthworks is 100m³, with a maximum area of bare soil from any earthworks where the average depth exceeds 0.5m is 200m². The maximum height of a cut shall not exceed 2.4m and the maximum height of fill is not to exceed 2m. In addition, the height of any cut or fill is not to be greater than the distance to the site boundary. In practice, the amount of earthworks that can be undertaken as a permitted activity is barely sufficient to establish the footing and driveways for a new dwelling.
66. The dimensions of the proposed road are such that in terms of the quantities of earth moved and the area exposed, the permitted baseline is of little relevance. However, permitted depths of fill and cut do provide a useful baseline to consider the effects of the earthworks on adjoining properties.

Existing Environment

67. The land served by the existing rights of way comprises in large part a small enclave of large-lot residential development sitting on a terrace bounded on three sides by the Shotover River. The land slopes from north to south. To the north the terrace has been developed as an urban residential suburb.
68. Within the site itself, proposed Lot 3 is the most amenable to future urban development. Proposed Lot 1 drops steeply away from the accessway, while proposed Lot 2 rises above it.
69. I was not made aware of any existing consents which should be considered part of the existing environment, other than RM130558 referred to above.

Positive Effects

70. As I noted above, the reconstruction of the existing right of way to a road with the standards as required by the conditions will improve the standard of access for all those presently using the right of way.

71. The change in status from private accessway to legal road will also enhance the development opportunities of all residentially-zoned properties presently gaining access from the right of way. The change from private access to Council-owned road will also remove the direct maintenance responsibilities of the right of way users.

Traffic Safety

72. Effects under this heading were the ones that received the most attention in both the submissions and at the hearing. I have discussed this in detail above and am satisfied that with the imposition of conditions such effects will be minor.

Construction Effects

73. The suite of conditions recommended in respect of the earthworks serves to limit the potential for adverse effects on neighbouring properties by –
- Restricting the hours of operation;
 - Requiring the implementation of an approved traffic management plan;
 - Restricting earthworks to within the boundaries of the site;
 - Requiring all work to cease and independent investigations if any justifiable complaints of vibration are received by the Council;
 - The management of silt and sedimentation;
 - Measures to prevent deposition of debris on surrounding roads.
74. It must also be recognised that any construction effects will be temporary. Taking all of those matters into account I am satisfied that the construction effects will be minor.
75. Ms Ramsay raised concerns regarding the cut along the north side of the proposed road adjoining her boundary. A timber retaining wall is proposed along this cut. The Council engineer's advice is that such a wall would be satisfactory given the nature of the ground and the size of the cut. I accept that advice and also note that only part of the cut along the southern boundary of her site

exceeds the permitted baseline. I conclude that any effects of that cut on the Ramsay property would be minor.

Shading Effects

76. This was a concern of Ms Jowett. As I noted above, the terrace on which these properties are located falls in a roughly north to south direction. Ms Jowett's property sits lower than the existing accessway, which, where it adjoins Ms Jowett's property, is lower than the land immediately to the north.
77. An examination of sections F-F', G-G', H-H' and I-I' on Clarke Fortune McDonald & Associates Drawing 9362-35 Sheet 4 Revision C dated 8 April 2014 shows that it is not proposed to particularly alter the elevation of the carriageway. The section that shows the greatest effect on the Jowett property, H-H', shows that the roughly 2m difference in elevation between the property boundary and the roadway will be moved some 2m closer. It also shows that the bank on the other side of the roadway will remain some 2-3m higher than the carriageway.
78. The other cross-sections adjacent to the Jowett property show a similar movement of the height differential closer to the boundary, but of a much smaller amount. I-I' has the greatest height differential between the Jowett property and the carriageway, some 3m, but at that point the small amount of fill required for the footpath is some 4m from the boundary.
79. Taking those changes into account, along with the hedge planted along the northern boundary of the Jowett property, and allowing for the potential erection of a guardrail or other barrier along part of the roadway, I conclude that if there is any additional shading in winter as a result of the proposed construction, it would be minor.

Effects on Character of Community

80. This matter was also raised by Ms Jowett and Mr Barker. Their submission expressed the view that the existing large-lot subdivision character of the area is desirable and should not be altered.
81. The District Plan has zoned the land, including that of the submitters, Low Density Residential. That is an urban zone, not rural one, and accordingly provides for subdivision into 800m² lots or development followed by subdivision

down to 450m² lots. Thus the character of the area as expected by the District Plan is more intense than the residents presently enjoy. In my view, that more intense level of development is akin to a permitted baseline and the effects that may arise from such a level of development are to be expected. Thus, I conclude that if there is any change in the character either as a direct or indirect result of this subdivision which is within the level of development provided for by the zone provisions, such an effect must be considered negligible.

Effects on Property Development Potential

82. One of the direct effects on adjoining properties of changing the existing accessway to a legal road will be that the road setback requirement (Rule 7.6.5.1(i)) is more onerous than the internal setback rule (Rule 7.6.5.1(ii)) which applies on boundaries adjoining private accessways. Although this was raised in submissions, no issue was made of it at the hearing.
83. I note that Rule 7.6.5.1(i) provides that where there is an existing building on a site, then the road setback is the shortest distance between that building and the road. As it appears that all of the potentially affected sites, other than Lots 1 and 2 created by this subdivision, have existing buildings, this change in land status is unlikely to have any adverse effect on the development potential of those lots. Nor will it leave property owners reliant on existing use rights.

Lighting

84. Concerns were raised about the effects street lighting would have on the character of the area. In some respects this is the same as the issue of the potential change to the character of the area discussed above. However, I accept that the nature of street lighting installed can have effects that go beyond what could be appropriate for a low density residential area. I consider that the inclusion of a condition that any street lighting be designed to provide adequate safety for pedestrians at night while minimising light spill onto adjoining land and into the night sky above the road would ensure that any adverse effects from street lighting were minor.

Other Effects

85. Ms Giborees presented a comprehensive analysis of the potential effects of the proposal in terms of:

- Lot sizes and dimensions;
- Subdivision design;
- Property access;
- Natural and other hazards;
- Infrastructure; and
- Stormwater.

86. I accept her conclusions that, subject to the imposition of appropriate recommended conditions, potential effects in respect of those matters would be minor.

Overall Conclusion in Respect of Effects on the Environment

87. I am satisfied that the effects of this proposal on the environment, subject to the conditions that would be imposed, would be minor or less than minor.

Objectives and Policies of the District Plan

88. I have reviewed the relevant objectives and policies in the District Plan. I note that those in the Residential Chapter aim for urban residential areas that are distinct from rural development, consistent with the view I expressed above regarding the concerns over the potential for there to be a change of character.

89. Having reviewed all the relevant objectives and policies I am satisfied that this proposal is overall consistent with them. I am also satisfied the proposal is not contrary to the objectives and policies of the Plan.

Other Matters

Consultation

90. The lack of consultation by the applicant was raised as an issue in several submissions. The Resource Management Act imposes no requirement for an applicant to consult with neighbours or any other person (see s.36A). While it

may be good practice to undertake consultation, and in my experience consultation often assists the applicant by reducing adverse submissions, the choice of whether to consult or not is entirely that of the applicant.

Cost

91. Several submitters were concerned that no costing details were provided. In the same way that the Resource Management Act does not require an applicant to show that a proposed activity will be profitable, the Act does not require an applicant to explain the likely costs and how those can be met.
92. It is apparent from the written submissions that the concerns related to the potential expenditure of the Council as a funding contributor to the road formation on Lot 4. That is not a matter I can address.

Section 104D

93. I have concluded that the adverse effects of the proposal on the environment will be minor and that the proposal is not contrary to the objectives and policies of the District Plan. I am therefore able to consider the proposal under s.104 and determine whether to grant or decline consent.

Section 106

94. There are no natural hazard or access issues which are a bar to granting consent.

Part 2 and Assessment Under S.104

95. I must have particular regard to the matters listed ins.7 of the Act. The following matters are relevant:
- (b) *The efficient use and development of natural and physical resources:*
 - (c) *The maintenance and enhancement of amenity values:*
 - (g) *Any finite characteristics of natural and physical resources:*

96. The subject land is zoned for residential purposes. The provisions of the Low Density Residential Zone, through various requirements of the District Plan, set a level of amenity values that is considered appropriate in this zone. In terms of subdivision, these relate to lot size, access provisions, and the provision of services to the new lots. The lot sizes comply with the provisions of the District Plan. While the three residential lots are not provided with services, the applicant has proposed a condition to be imposed as a consent notice allowing no further subdivision or development of these sites until such services are provided. Thus, no diminution of amenity values will occur as a result of this subdivision.
97. The formation and legalisation of the road on Lot 4 will improve the amenity values of those persons using the present accessway.
98. It is also relevant that the availability of residentially-zoned land is a limited, and ultimately finite, resource in the Wakatipu Basin. The creation of legal and formed road to replace an existing metalled private accessway will enable the better utilisation of residentially-zoned land, both on the applicants' land and on neighbouring land also served by the accessway. That represents an efficient use of natural and physical resources.
99. While the earthworks could have the potential to adversely affect amenity values, I am satisfied that the suite of conditions attached to the earthworks consents would minimise any such effects.
100. When considered in the broad way that it is necessary to approach s.5 of the Act, this proposal represents sustainable management of natural and physical resources. It enables the community to make use of residentially-zoned land for residential purposes and any effects beyond those that can be expected given the zoning, can be mitigated, remedied or avoided through the imposition of conditions.
101. I am satisfied that consent can be granted subject to adequate conditions.

Conditions

102. I have been provided with a set of recommended conditions which differ from those attached to the s.42A report. The differences arose as a result of matters discussed during the hearing and discussion held post-hearing between the applicant's advisors and Council officers. I am generally satisfied that those

recommended conditions are appropriate in ensuring this application achieves the purpose of the Act.

103. However, there are three amendments that I am making to the conditions to ensure the purpose of the Act is achieved. All of these amendments are to the subdivision consent.

104. The first is an amendment to Condition 11 relating to the approved survey plan. Section 2.1 of the Assessment of Effects on the Environment stated that Lots 1, 2 and 3 would be held together in one certificate of title. This amendment requires that be shown on the survey plan.

105. The second amendment relates to the formation of the road on Lot 4 and the provisions of Condition 7(b). The applicants agreed at the hearing that the formation of the roadway on Lot 4 should not increase the gradient on the right of way contained in Lot 6 DP 23786. The following condition to be inserted in the list of bullet points addresses this:

The horizontal and vertical alignment of the formed roadway shall not increase the gradient of the right of way within Lot 6 DP 23786.

106. The third amendment is to insert provisions in Condition 7(d) to limit the light spill effects of street lighting as discussed above. The condition will therefore read:

The provision of road lighting in accordance with Council's road lighting policies and standards, including the Southern Light lighting strategy. All lights shall be located and designed so as to minimise light spill on adjacent properties and into the night sky. Any road lighting installed on private roads/rights of way/access lots shall be privately maintained and all operating costs shall be the responsibility of the lots serviced by such access roads. Any lights installed on private roads/rights of way/access lots shall be isolated from the Council's lighting network circuits.

Decision

107. Pursuant to s.104B of the Resource Management Act 1991 consent is hereby granted to M G Swan and B M Roney as Executors to:

A. Subdivide Lot 1, being a lot created by subdivision consent RM 130558 which was a subdivision of Lots 1 and 2 DP 307630 contained within Computer Freehold Register 29585, and Part Section 1 Survey Office Plan 24074 contained in Computer Freehold Register OT17C/968, to create four

lots as shown on Clark Fortune McDonald & Associates drawing entitled "Lots 1-4 being a Proposed Subdivision of Lot 1 RM130558" Job No. 9362 Drawing 37A Dated 16.04.14 for the reasons set out above, subject to the conditions in Appendix 1 Section A;

- B. Undertake earthworks on Lot 4, as shown on Clark Fortune McDonald & Associates drawing entitled "Lots 1-4 being a Proposed Subdivision of Lot 1 RM130558" Job No. 9362 Drawing 37A Dated 16.04.14, in accordance with the Clark Fortune McDonald & Associates drawings entitled "Atley Road Extension" Job No. 9362 Drawing No. 36 Sheets 1 to 4 Rev C dated 08.04.14 for the reasons given above and subject to the conditions in Appendix 1 Part B.



Denis Nugent
Hearing Commissioner
2 May 2014

APPENDIX 1: CONDITIONS

Section A: Subdivision Consent Conditions

General Conditions

1. That the development must be undertaken/carried out in accordance with the plans:

a) Clark Fortune McDonald & Associates Limited:

- 'Lots 1 – 4 Being a Proposed Subdivision of Lot 1 RM130558' – Job No. 9362, Drawing No. 37A, dated 16.04.14

stamped as approved on 2 May 2014

and the application as submitted, with the exception of the amendments required by the following conditions of consent.

2. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.

Engineering

General

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.

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

4. Prior to the commencement of any works on site, the consent holder shall provide a letter to the Principal Resource Management 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 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. At least 5 working days prior to commencing work on site the consent holder shall advise the Principal Resource Management Engineer at Council of the scheduled start date of physical works.
6. 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. 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 Resource Management Engineer at Council prior to works commencing.
7. Prior to the commencement of any works on the site the consent holder shall provide to the Principal Resource Management Engineer at Council for review and certification, copies of specifications, calculations and design plans as are considered by Council to be both necessary and adequate, in accordance with Condition (3), to detail the following engineering works required:
 - a) The consent holder shall engage an independent and suitably qualified and experienced traffic engineer to carry out a detailed design safety audit in general accordance with the NZTA Manual "Road Safety Audit Procedures For Projects". This shall include

confirmation that appropriate traffic signs and road marking have been installed in accordance with the New Zealand Transport Agency's Manual of Traffic Signs and Markings (MOTSAM). The consent holder shall comply with any recommendations at their own cost. A copy of this report shall be submitted to Council for review and approval.

- b) The formation and sealing of Atley Road within Lot 4, in accordance with Council's standards as agreed by Council's Transport Policy and Stakeholder Manager, Denis Mander at Council's meeting on the 26 September 2013 and the recommendations made in the MWH report received 3 April 2014. This shall include:
- The general carriageway width for the two lane section is to be formed to a width of 5.8m on the straights and 6.0m on the horizontal curve.
 - Safety barriers shall be provided for vehicular and pedestrian safety where the internal accessways and footpath run parallel with land which drops away to a height of greater than 1m at an angle of greater than 45° within 2m of the edge of the accessway and footpath, in accordance with Clause 3.3.4 of QLDC's Development and Subdivision Engineering Standards (amendments to NZS 4404:2004).
 - The eastern approach road width is increased to 5.8m to be consistent with the general road width in Bullet Point 1 and provide safe operation with respect to the footpath width and users.
 - Priority at the one lane section is for westbound vehicles (travelling towards Atley Road) with eastbound vehicles (into the subdivision) required to give way.
 - The provision of a 1.4m wide footpath.
 - The one lane section of road is to be formed to 3.1m in width.
 - No structures shall be placed within the pinch point area of the accessway that may obstruct existing sight lines from the right of way within Lot 6 DP 23786.
 - The horizontal and vertical alignment of the formed roadway shall not increase the gradient of the right of way within Lot 6 DP 23786.
 - Signage and road markings. No stopping on one side shall be clearly defined. Location of limit lines and extent of one lane section must be clearly defined.
 - Details of the earthworks required for the provision of the Atley Road upgrade. This shall include details on the reinforced earth fill system proposed for the fill batter slopes.
 - Sealing of existing unsealed vehicle crossings to the boundary.
- c) A stormwater disposal system to cater for the stormwater from the carriageway shall be designed in accordance with Council's standards.
- d) The provision of road lighting in accordance with Council's road lighting policies and standards, including the Southern Light lighting strategy. All lights shall be located and designed so as to minimise light spill on adjacent properties and into the night sky. Any road lighting installed on private roads/rights of way/access lots shall be privately maintained and all operating costs shall be the responsibility of the lots serviced by such access roads. Any lights installed on private roads/rights of way/access lots shall be isolated from the Council's lighting network circuits.
- e) 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 Roads). The certificates shall be in the format of the NZS4404 Schedule 1A Certificate.
- f) A site management plan that details silt and sedimentation mitigation for the Atley Road works and the site works. 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

8. If at any time Council, or its elected representatives, receive justifiable complaints about or proof of effects from vibration sourced from the earthworks activities approved by this resource consent, the consent holder at the request of the Council shall cease all earthworks activities and shall engage a suitably qualified professional who shall prepare a report which

assesses vibration caused by earthworks associated with this consent and what adverse effect (if any) these works are having on any other land and/or buildings beyond this site. Depending on the outcome of this report, a peer review may be required to be undertaken by another suitably qualified professional at the consent holder's expense. This report must take into consideration the standard BS 5228:1992 or a similar internationally accepted standard. Both the report and peer review (if required) shall be submitted to Council for review and certification. The Consent holder shall implement any measures proposed in the report that will mitigate any negative effects of the vibration.

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 his/her expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.
10. No earthworks, temporary or permanent, are to breach the boundaries of the site.

To be completed before Council approval of the Survey Plan

11. Prior to the Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, the consent holder shall complete the following:
 - a) All necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved. This may include a right to drain stormwater in Gross over Lot 1.
 - b) Lots 1, 2 and 3 shall be shown as being held together in one certificate of title.
 - c) The formed road shall be contained within Lot 4.
 - d) Lot 4 may be shown as a road to be dedicated on the Survey Plan so that the following eight interests may remain EC.680119.5, T.931834.4, T.863574.10, T.5006042.1, T.931834.5, T.821620, T.931834.5, T.5731966.3, EC.863574.9, EC.884991.6, T.5389650.12, T.5548727.2, EC.8107012.5, Court Order 5812091.1, Part IV(a) Conservation Act 1987 and Section II Crown Minerals Act 1991.

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

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 and information required to detail all engineering works completed in relation to or in association with this subdivision/development at the consent holder's cost. 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).
 - b) The completion and implementation of all works detailed in Condition (7) above.
 - c) The submission of Completion Certificates from the Contractor and the Engineer advised in Condition (4) for all engineering works completed in relation to or in association with this subdivision (for clarification this shall include all Roads). The certificates shall be in the format of a Producer Statement, or the NZS4404 Schedule 1B and 1C Certificate.
 - d) All signage shall be installed in accordance with Council's signage specifications and all necessary road markings completed.
 - e) On completion of the earthworks the consent holder shall submit to the Principal Resource Management Engineer at Council for review and certification an engineer's

PS4 Producer Statement for the permanent retaining walls within Atley Road which exceed 1.5m in height or are subject to additional surcharge loads.

- f) All earthworked/exposed areas shall be top-soiled and grassed/re-vegetated or otherwise permanently stabilised.
- g) All newly constructed stormwater mains shall be subject to a closed circuit television (CCTV) inspection carried out in accordance with the New Zealand Pipe Inspection Manual. A pan tilt camera shall be used and lateral connections shall be inspected from inside the main. The CCTV shall be completed and reviewed by Council before any surface sealing.
- h) The consent holder shall engage an independent and suitably qualified and experienced traffic engineer to carry out a post construction safety audit in general accordance with the NZTA Manual "Road Safety Audit Procedures For Projects". This shall include confirmation that appropriate traffic signs and road marking have been installed in accordance with the New Zealand Transport Agency's Manual of Traffic Signs and Markings (MOTSAM). The consent holder shall comply with any recommendations at their own cost. A copy of this report shall be submitted to Council for review and approval.
- i) The submission of Completion Certificates from the Contractor and the Engineer advised in Condition (4) for all engineering works completed in relation to or in association with this subdivision/development (for clarification this shall include all Roads). The certificates shall be in the format of a Producer Statement, or the NZS4404 Schedule 1B and 1C Certificate.
- j) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

Ongoing Conditions/Consent Notices

13. 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 s.221 of the Act.
- a) Lots 1, 2 and 3 may not be further subdivided or developed until appropriate services are to be installed. For the avoidance of doubt these services include water supply and wastewater disposal. At the time the site is further developed all necessary Development Contributions will apply.
 - i) Development contributions will be payable for these Lots at this time, noting that no historic dwelling equivalent credits as set out in the Council's Policy on Development Contributions are available for these lots.
 - ii) In the event that access & services are provided to these lots and development contributions are paid as per (i) above, this consent notice condition shall be deemed to have expired and may be removed from the Computer Freehold Register for Lots 1, 2 and 3.

Advice Note:

1. This consent does not trigger the requirement for Development Contributions.

Section B: Land Use Consent Conditions

General Conditions

1. That the development must be undertaken/carried out in accordance with the application as submitted, including additional information provided in the correspondence entitled

“RM130588 G F Swan – Memorandum Following Adjournment of Hearing” (dated 18 March 2014), with the exception of the amendments required by the following conditions of consent.

- 2a. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.
- 2b. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991 and shall pay to Council an initial fee of \$100. This initial fee has been set under section 36(1) of the Act.

Engineering and Earthworks Conditions

General

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.

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

4. Prior to the commencement of any works on site, the consent holder shall provide a letter to the Principal Resource Management 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 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. At least 7 days prior to commencing excavations, the consent holder shall provide the Principal Resource Management Engineer at Council with the name of a suitably qualified professional as defined in Section 1.4 of NZS 4404:2004 who shall supervise the excavation and filling procedure. 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 Resource Management 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.
6. At least 5 working days prior to commencing work on site the consent holder shall advise the Principal Resource Management Engineer at Council of the scheduled start date of physical works.
7. 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. 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 Resource Management Engineer at Council prior to works commencing.
8. Prior to the commencement of any works on the site the consent holder shall provide to the Principal Resource Management Engineer at Council for review and certification, copies of specifications, calculations and design plans as are considered by Council to be both necessary and adequate, in accordance with Condition (3), to detail the following engineering works required:
 - a) 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 Roads). The certificates shall be in the format of the NZS4404 Schedule 1A Certificate.
 - b) A site management plan that details silt and sedimentation mitigation for the Atley Road works and the site works. 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

9. If at any time Council, or its elected representatives, receive justifiable complaints about or proof of effects from vibration sourced from the earthworks activities approved by this resource consent, the consent holder at the request of the Council shall cease all earthworks activities and shall engage a suitably qualified professional who shall prepare a report which assesses vibration caused by earthworks associated with this consent and what adverse effect (if any) these works are having on any other land and/or buildings beyond this site. Depending on the outcome of this report, a peer review may be required to be undertaken by another suitably qualified professional at the consent holder's expense. This report must take into consideration the standard BS 5228:1992 or a similar internationally accepted standard. Both the report and peer review (if required) shall be submitted to Council for review and certification. The Consent holder shall implement any measures proposed in the report that will mitigate any negative effects of the vibration.
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 his/her expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.
11. No earthworks, temporary or permanent, are to breach the boundaries of the site.

On completion of earthworks

12. On completion of the earthworks the consent holder shall submit to the Principal Resource Management Engineer at Council for review and certification an engineer's PS4 Producer Statement for the permanent retaining walls within Atley Road which exceed 1.5m in height or are subject to additional surcharge loads.
13. On completion of the earthworks the consent holder shall submit to the Principal Resource Management Engineer at Council for review and certification Completion Certificates from the Contractor and the Engineer advised in Condition (4) for all engineering works completed in relation to or in association with this development. The certificates shall be in the format of a Producer Statement, or the NZS4404 Schedule 1B and 1C Certificate.
14. All earthworked/exposed areas shall be top-soiled and grassed/re-vegetated or otherwise permanently stabilised.
15. The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

Hours of Operation – Earthworks

16. Hours of operation for earthworks, shall be Monday to Saturday (inclusive): 8.00am to 6.00pm. Sundays and Public Holidays: No Activity

In addition, no heavy vehicles are to enter or exit the site, and no machinery shall start up or operate earlier than 8.00am. All activity on the site is to cease by 6.00pm.

Accidental Discovery Protocol

17. If the consent holder:
 - a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder shall without delay:
 - (i) notify Council, Tangata whenua and New Zealand Historic Places Trust and in the case of skeletal remains, the New Zealand Police.

- (ii) stop work within the immediate vicinity of the discovery to allow a site inspection by the New Zealand Historic Places Trust and the appropriate runanga and their advisors, who shall determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Any koiwi tangata discovered shall be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation. Site work shall recommence following consultation with Council, the New Zealand Historic Places Trust, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

- b) discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder shall without delay:
 - (i) stop work within the immediate vicinity of the discovery or disturbance and;
 - (ii) advise Council, the New Zealand Historic Places Trust and in the case of Maori features or materials, the Tangata whenua and if required, shall make an application for an Archaeological Authority pursuant to the Historic Places Act 1993 and;
 - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work may only recommence following consultation with Council.

**APPENDIX 2: MEMORANDUM AND DETERMINATION CONCERNING ADDITIONAL MATERIAL
AND ADJOURNMENT**

IN THE MATTER

of the Resource
Management Act 1991

AND

Application RM130588 for
Subdivision Consent under
the Queenstown Lakes
District Plan by G F Swan

MEMORANDUM AND DETERMINATION CONCERNING
ADDITIONAL MATERIAL AND ADJOURNMENT

Introduction

108. On 25 February 2014 I commenced hearing this application by G F Swan to subdivide Lot 1 created by Subdivision Consent RM130558 at 111 Atley Road, Arthurs Point. Consent is sought to create four lots (three additional lots) of which one, proposed Lot 4, would be dedicated as road.
109. Mr Goldsmith appeared for the applicant. The s42A Report by Ms Giborees had been circulated prior to the hearing, and at the commencement she provided an Addendum to that report. I provided Mr Goldsmith with an opportunity to consider that Addendum before he opened his case.
110. After hearing Mr Goldsmith's opening submissions and questioning him on a number of points, I retired to obtain legal advice on a number of matters arising. I had the benefit of the legal advice of Mr Ray, the Council's solicitor.
111. On reconvening the hearing I stated that:
- (a) I would not proceed with further hearing of this application in accordance with s.91 of the Act until an application was received for the earthworks required for the upgrading of the road to be dedicated to standards acceptable to the Council; and
 - (b) I requested the applicant to provide a traffic safety report in respect of the proposed road under s.41C(3); and
 - (c) I would adjourn the hearing so that it could be heard in conjunction with the subdivision consent application RM130844 by J A Murphy & K A Strain.

112. I stated that I would provide my reasons in writing. This Memorandum sets out that reasoning.

Background

113. At the southern end of Atley Road there is an existing private road serving 17 lots (taking into account Consent RM130558) by way of easement over Lot 1 of Consent RM130558. Under the application before me, proposed Lot 4 would contain the bulk of this private road, although easements would remain in place over proposed Lot 3 to provide access to Lot 2 RM130558 and Lot 2 DP 398656.
114. The existing private road constrains development of the sites having legal access over it due to the provisions of Rule 14.2.4.1 iv, which requires *inter alia*:
- (a) Where the number of dwellings served by the private road is between 7 and 12, the formed width of the private road is to be 5m, and the legal width 6m. There is an existing pinch point adjoining Lot 2 DP 337696 where the legal width is only 4.5m.
 - (b) “No private way or private vehicle access or shared access shall serve sites with a potential to accommodate more than 12 units on the site and adjoining sites.”
115. Rule 14.2.2.3 ii provides that a breach of Rule 14.2.4.1 iv is a discretionary activity with discretion restricted to the matters specified in the rule. No matters are specified in the rule. I therefore take it that a full discretionary consent would be required for a subdivision which sought to add additional lots and/or a land use consent that sought to add additional dwellings on the sites served by the private road.
116. I note also that Rule 14.2.4.1 iv also requires all vehicular access to be in accordance with the standards contained in NZS4404:2004.
117. Mr Goldsmith explained that the reason for this application was to correct what he described as errors in previous subdivision consents that have left the owner of the land (Lot 1 DP 398656) immediately to the north of the Swan land unable to develop his land. I heard, along with a co-commissioner, an application for subdivision consent by the owner of that land in August 2011 (RM110238). The

Assessment of Environmental Effects prepared and lodged for that application, stated:

The applicant has investigated the option of upgrading the existing right of way off Atley Road which provides access to the subject site. However this right of way is located on land owned by a number of other parties and its legal width is 6 metres along its length. The legal width is sufficient under current Council standards to service the 12 properties currently accessed off that right of way but is not wide enough to service additional development.

Taking into account that current number of users, plus potential development of the remaining Low Density Residential zoned land serviced by that right of way, the right of way would need to be upgraded to a legal road with a width of 18 metres, a formed width of 6 metres and a 1.4 metre wide footpath. That is beyond the legal control of the applicant. There are also significant practical difficulties in achieving the required formed width, in addition to the legal difficulties in achieving the required legal width.¹

118. Mr Goldsmith advised that following the grant of that consent by the Council and its subsequent appeal to the Environment Court, Larchmont Developments Ltd had come to a three-way agreement with Mr Swan and the Council, which involves the creation of a legal road over the private road and thereby providing frontage to legal road for Lot 1 DP 398656 ('the Larchmont property'). I was advised that an application for subdivision application had been lodged by J A Murphy & K A Strain (RM130844) to subdivide the Larchmont property based on having frontage to the new road to be created by the Swan subdivision.

Discussion and Reasoning

119. In his submissions Mr Goldsmith quoted paragraphs from the Conclusion of Ms Giborees' s.42A Report which suggested the primary effect of the subdivision proposal was the change in legal status of proposed Lot 4 from private way to legal road; that upgrading of the road would be required before it could be accepted by the Council; and that the applicant has not provided sufficient information to enable an assessment of the effects of such upgrading work.
120. It was Mr Goldsmith's submission that:

¹ E Dixon, *Assessment of Effects on the Environment: Larchmont Developments Limited Subdivision Consent*, Clark Fortune McDonald & Associates, April 2011

- (c) The determination of whether the road should be upgraded before dedication was not an RMA matter but rather would be decided by the Council in its corporate capacity;
- (d) There will be no environmental effects at all arising from this application;
- (e) Affected persons would not lose the right to be consulted as an affected party in relation to upgrade works, and noted that Application RM130844 anticipates and proposes an upgrade of this vehicle carriageway and that all the submitters in opposition to the Swan application have submitted on RM130844;
- (f) A volunteered condition which reads -

This consent may not be implemented until and unless the Council (acting in its corporate capacity, and at its entire discretion) resolves to accept Lot 4 as legal road

diverts the matter of whether upgrading is required to the Council in a different capacity from its RMA capacity.

121. I understood the essence of Mr Goldsmith's submission to be that this subdivision application created no development potential on the applicant's land, therefore no costs of upgrading the road could be visited upon the applicant. He noted that Application RM130844 anticipates and proposes an upgrade of the vehicle carriageway, although as I do not have that application before me I am unable to come to any conclusions as to what is proposed in that application.
122. From all of the above, including the contents of the application documentation and Ms Giborees' reports, I draw the following conclusions:
- (g) The District Plan, through Rule 14.2.4.1 iv, provides a clear intention of requiring adequate roading standards when more than 12 dwellings are to have access from a road, with a preference in those circumstances for private ways to become legal roads;
 - (h) There is some form of agreement between the applicant, the Council and the applicants in RM130844, the nature and details of which I am not privy to, and this agreement is directed toward providing legal road frontage to the Larchmont property;

- (i) Notwithstanding that they relate to different parcels of land, albeit adjoining, and the applicants in each case are different, applications RM130588 and RM130844 are clearly related one to the other such that a full understanding of one is necessary for a full understanding of the other;
- (j) There is an intention by the applicants in RM130844 to provide some form of upgrading of the vehicular access, although that has not yet been finalised;
- (k) Any earthworks required for road upgrading, no matter who is to undertake that work, are likely to require a consent under the provisions of the Low Density Residential Zone;
- (l) Both the change in legal status of the private road and the physical works of upgrading it are likely to have adverse effects on other persons owning and or occupying land gaining access over this road;
- (m) If the legal status of the road were not to be altered, that is it was to remain a private way, the effects of upgrading the road, both beneficial and adverse, on the other users of the road would need to be considered in any discretionary activity application;
- (n) Changing the legal status of the private road road would create development potential on many of the sites presently gaining access over this road, such development being a permitted activity;
- (o) There are physical constraints on the road such that dual carriageway cannot be achieved in parts and the topography limits sight distances.

123. I consider the proposition being put to me by the applicant, that this subdivision does no more than create a site that can be dedicated as legal road, is analogous to the proposition put to the High Court by the appellant in *Mawhinney v Auckland Council* [2013] NZHC 3566. Without repeating the details of Justice Cooper's reasoning, it is clear that a subdivision proposal needs to be considered in the round and it is both artificial and contrary to sound resource management practice to treat subdivision as a purely paper exercise and leave the effects of servicing the created lots to some future time or future owner. Thus, while on the face of it, the consent notice conditions proposed by the applicant avoid the immediate occurrence of effects arising from the subdivision, the proposed

consent notice appears inconsistent with the approach mandated by Justice Cooper.

124. For all of the above reasons, I consider I am unable to understand the nature of the proposal in the round without also considering the application for earthworks consent that will be required for bringing the road up to a standard appropriate for the level of service expected of it. Thus I have deferred hearing this application under s.91 of the Act until such an application has been lodged and reached the same stage in processing as the subdivision application.
125. The difficult configuration of the road does raise questions of traffic safety given the expected service levels required. A professionally prepared traffic safety report that can provide input into the carriageway design is needed to address these questions. Hence my request that such a report be provided under s.41C.
126. I recognise that there is a clear relationship between this subdivision application and Application RM130844 and that the same applications for earthworks and need for traffic engineering input apply to both applications. For that reason I consider both applications should be heard together and I have requested the Council to make arrangements for that to occur.
127. I have not made any directions in respect of the conditions volunteered by the applicant, but suggest that his advisors consider the *vires* of such conditions given the judgment of the High Court I have referred to above.

Determination under s.91(1)

128. For the above reasons I hereby determine not to proceed with the hearing of this application at this time. The hearing is accordingly adjourned for the matter to be heard in conjunction with RM130844 once the earthworks application has been lodged and processed to hearing stage.



Denis Nugent
Hearing Commissioner
26 February 2014

APPENDIX 3: MEMORANDUM CONCERNING ADDITIONAL MATERIAL PROVIDED BY THE APPLICANT

IN THE MATTER

of the Resource
Management Act 1991

AND

Application RM130588 for
Subdivision Consent under
the Queenstown Lakes
District Plan by G F Swan

MEMORANDUM CONCERNING
ADDITIONAL MATERIAL PROVIDED BY THE APPLICANT

Introduction

129. In a memorandum dated 26 February last I determined that I would not proceed with the hearing of this application until an application was received for the earthworks required for the upgrading of the road to be dedicated, and I requested the provision of a traffic safety report.
130. The applicant lodged details of the design of the roadway and earthworks associated with that and a traffic safety report with the Council on 19 March 2014. While it is not expressly stated whether, in respect of the earthworks, this constitutes a separate application or a variation of application RM130588 I conclude that it is more logical for it to be considered additional material in respect of application RM130588 which varies that application.

Notification

131. I have considered whether this additional material raises any issues which could suggest that any person, other than those that have already lodged a submission, would be affected by the proposal to any degree more than they would have been when the notification determination was made by Ms Millton in 2013. I have concluded there would be no additional persons affected by this new information as the new information serves to answer questions that were raised by the original application. Consequently I conclude there is no requirement for the Council to either publicly notify or undertake limited notification of this additional material.
132. There may be some direct effects from the works proposed on one or more of the submitters. They are entitled to receive copies of this material and may respond to this at the reconvened hearing when they have the opportunity to put their respective cases at the conclusion of the applicant's case.

Supplementary s.42A Reports

133. The Council officers may wish to provide a supplementary report in respect of this additional material. Any such report is to be provided to the applicant and the submitters a least 5 working days prior to the reconvened hearing.

Procedure at Reconvened Hearing

134. I note that I adjourned the hearing before Mr Goldsmith had closed the case for the applicant. When the hearing is resumed Mr Goldsmith will be able to provide additional submissions and evidence on behalf of the applicant as he considers appropriate.
135. In my memorandum of 26 February I directed that the reconvened hearing be held in conjunction with subdivision consent application RM130844. At this stage I consider that the two matters could be heard together, rather than one after the other. That is, Mr Goldsmith could present one case with the submissions and evidence clearly distinguishing between the two applicants where appropriate, and equally the submitters could each present one case separating comments on the two applications to the extent necessary. If counsel or submitters disagree with this proposed procedure I will hear submissions at the commencement of the hearing.

Clarification of Dimension

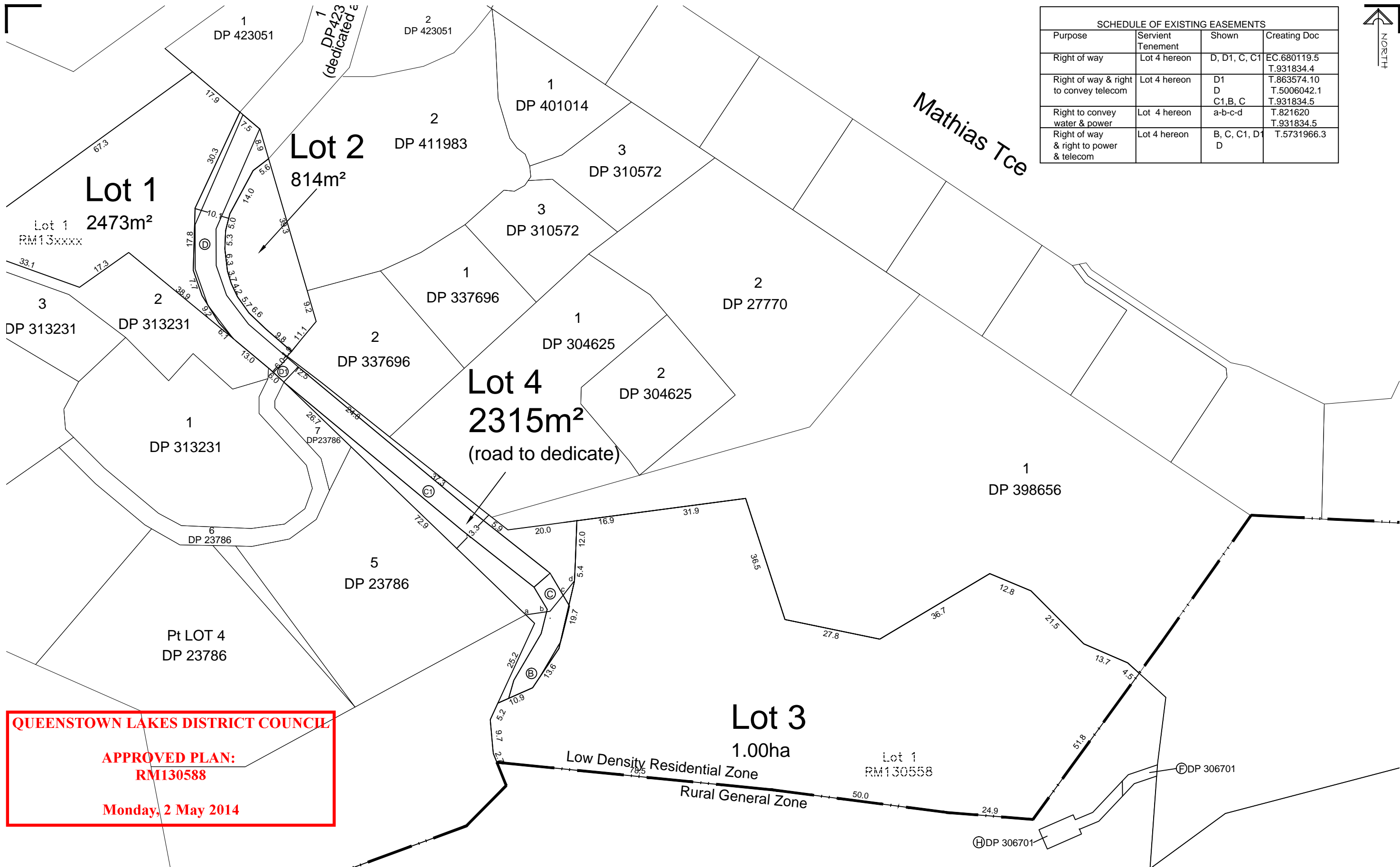
136. Mr Goldsmith made a number of comments on my memorandum of 26 February. There is only one matter I will raise now in respect of those as it may require further clarification from the applicant prior to the hearing.
137. In paragraph 2 Mr Goldsmith suggests that my reference to the 'pinch point' being 4.5m is incorrect. In making this comment I relied on the information contained in the subdivision plan included as Appendix D to the application (p. 72 of the Agenda Papers). This plan shows a dimension of 4.5m between the southwestern corner of Lot 2 DP 337696 and the southwestern boundary of proposed Lot 4 at the point the 6.0m wide access strip on Lot 6 DP 23786 adjoins proposed Lot 4. If my reading of this plan is incorrect, I would be grateful for clarification of the dimensions shown on the subdivision plan.

Directions

138. The further material lodged by the applicant along with this memorandum is to be served immediately on each of the submitters on application RM130588. The covering letter is to explain that they will have the opportunity to comment on this material at the reconvened hearing in the course of presenting their case in support of their submission and there is no need for them to file any further submission or other material with the Council prior to the hearing.
139. The Council officers may provide a supplementary s.42A report provided it is provided to the applicant and each submitter no later than 5 working days prior to the reconvened hearing.
140. The Council administrative staff are to set the hearing down to be completed in conjunction with the hearing of application RM130844 subject to the requirements of the previous direction being complied with.

A handwritten signature in blue ink, appearing to read 'Nugent', is centered on the page. The signature is fluid and cursive.

Denis Nugent
Hearing Commissioner
20 March 2014



SCHEDULE OF EXISTING EASEMENTS			
Purpose	Servient Tenement	Shown	Creating Doc
Right of way	Lot 4 hereon	D, D1, C, C1	EC.680119.5 T.931834.4
Right of way & right to convey telecom	Lot 4 hereon	D1 D C1,B, C	T.863574.10 T.5006042.1 T.931834.5
Right to convey water & power	Lot 4 hereon	a-b-c-d	T.821620 T.931834.5
Right of way & right to power & telecom	Lot 4 hereon	B, C, C1, D D	T.5731966.3

QUEENSTOWN LAKES DISTRICT COUNCIL

**APPROVED PLAN:
RM130588**

Monday, 2 May 2014

Shotover Design Limited trading as
Clark Fortune McDonald & Associates
 Licensed Cadastral Surveyors - Land Development - Planning Consultants

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Rev.	Date	Revision Details	By
			CCH

**LOTS 1- 4 BEING A PROPOSED SUBDIVISION OF
LOT 1 RM130558**

Client	Surveyed	Signed	Date	Job No.	Drawing No.
G F SWAN				9362	37A
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	ED		16.04.14	1:1500 @ A3	
	Designed	Signed	Date	Datum & Level	
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Monday, 2 May 2014

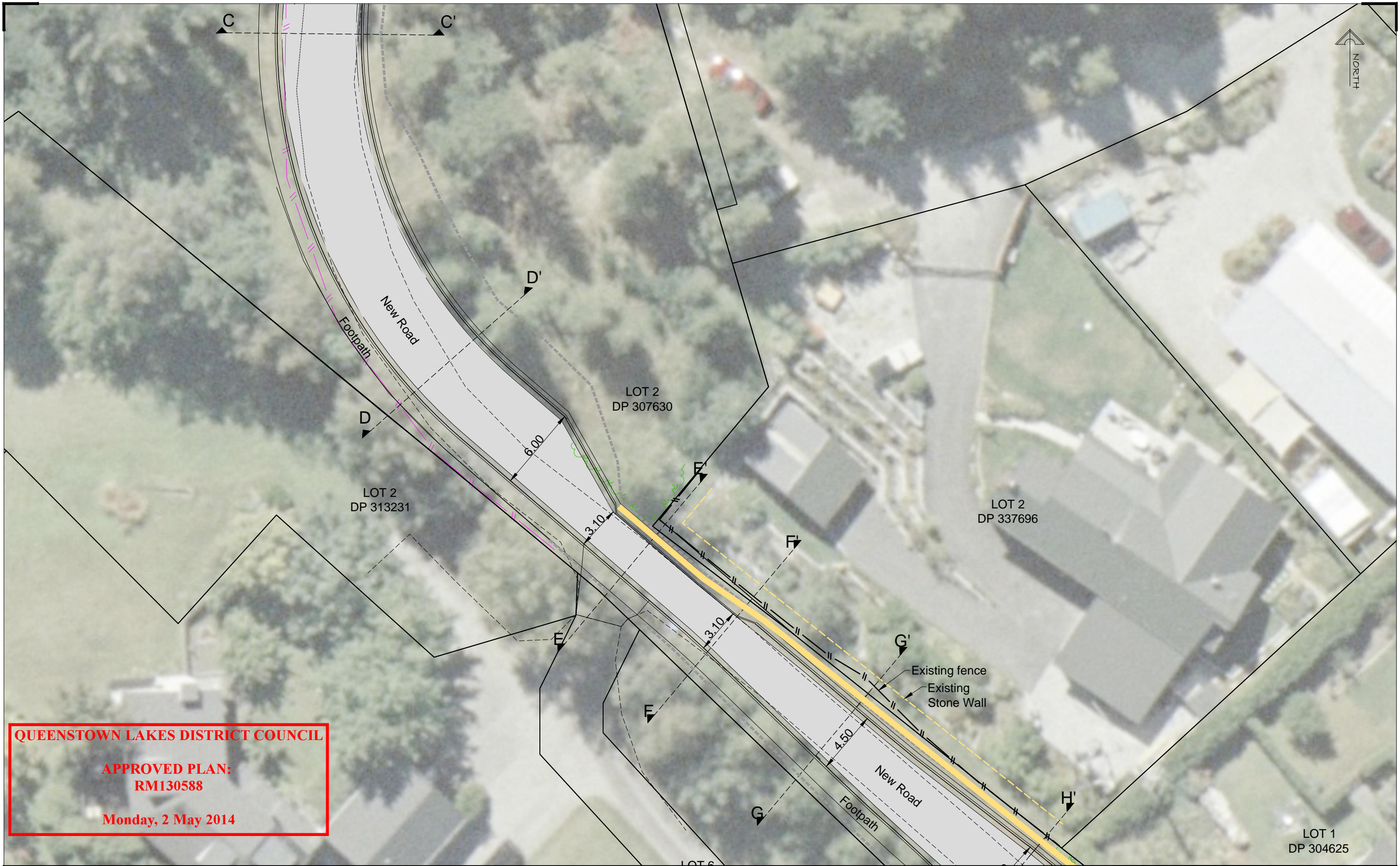

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Rev.	Date	Revision Details	By
A	15.05.13	Amend road design	RB
B	25.02.14	Add Sheet 2	RB
C	8.04.14	Add additional X-sections	CW

ATLEY ROAD EXTENSION

Client	Surveyed	Signed	Date	Job No.	Drawing No.
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	RB		08.08.12	1:125 @ A1 1:250 @ A3	
	Designed	Signed	Date <td>Datum & Level <td>Rev. </td></td>	Datum & Level <td>Rev. </td>	Rev.
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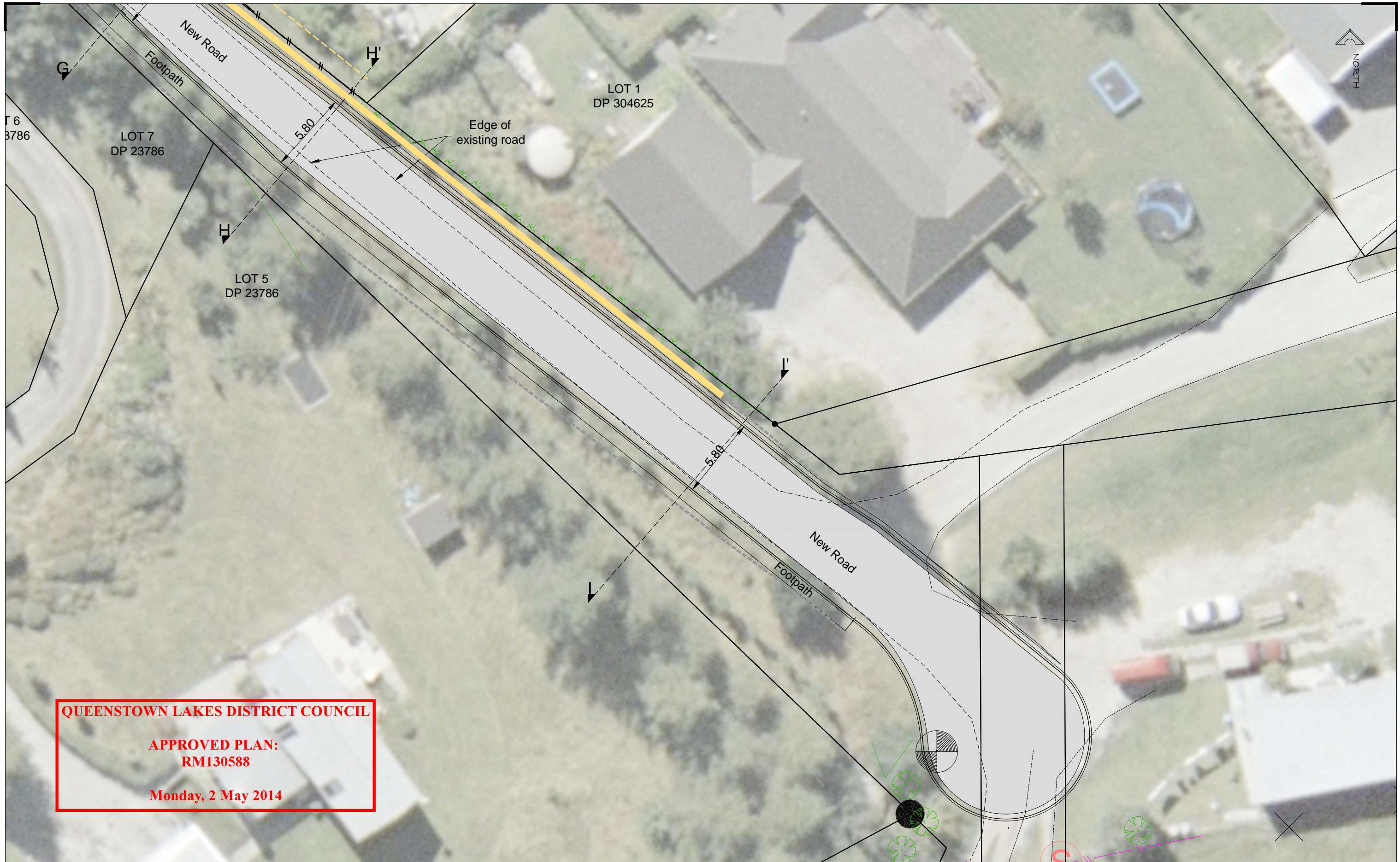

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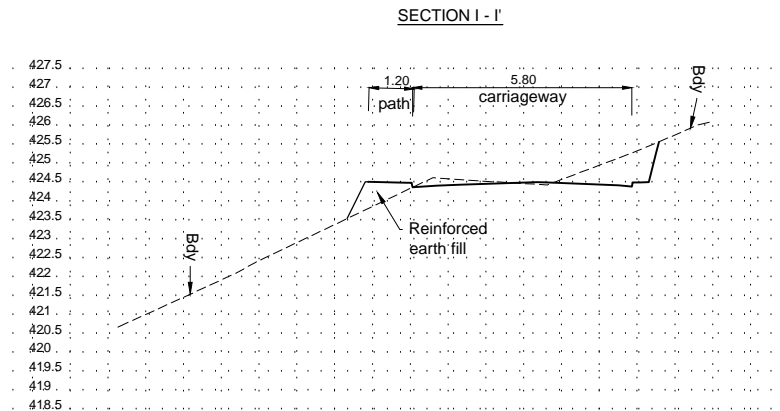
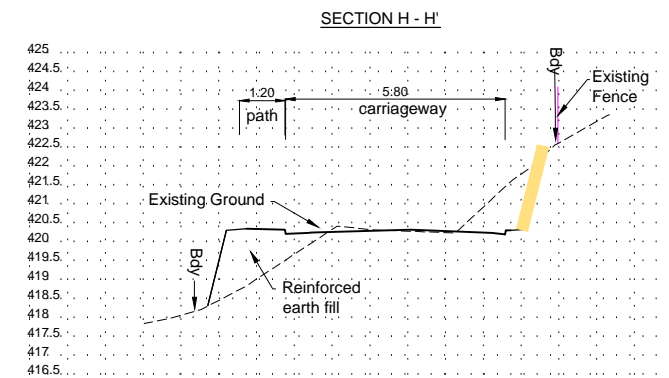
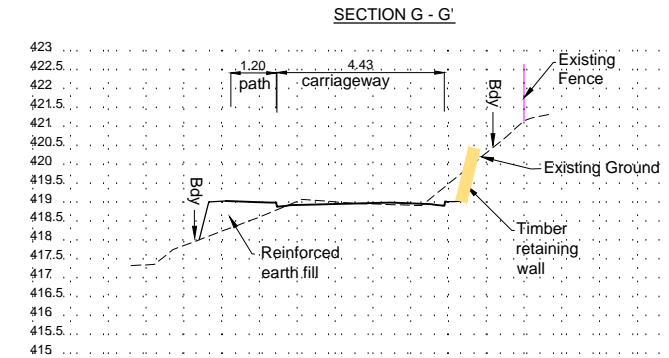
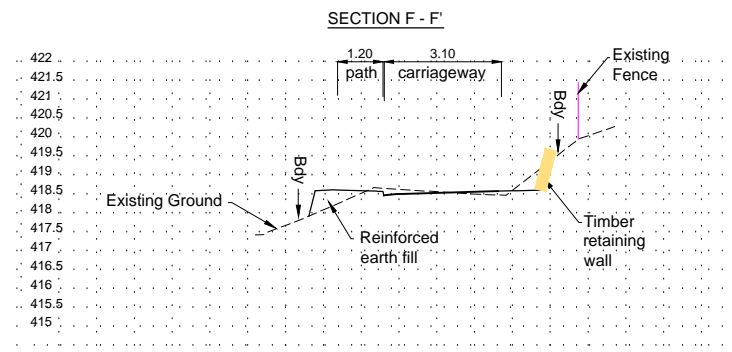
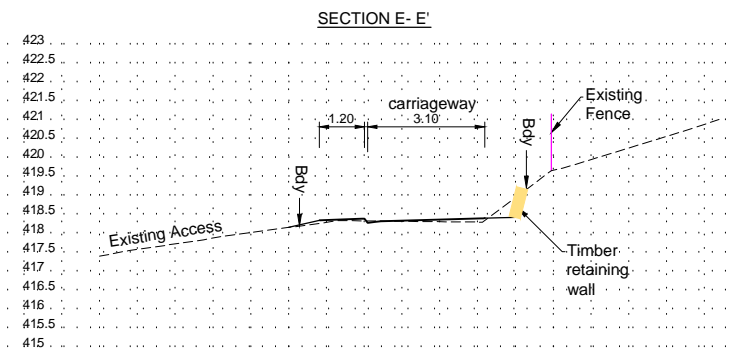
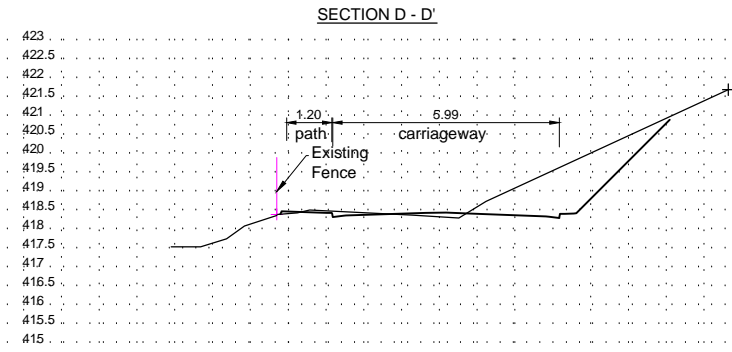
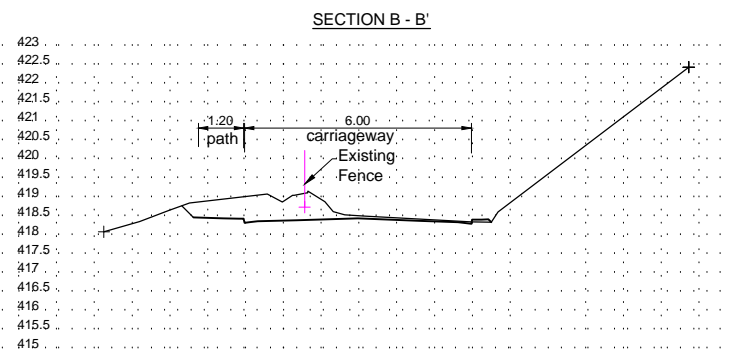
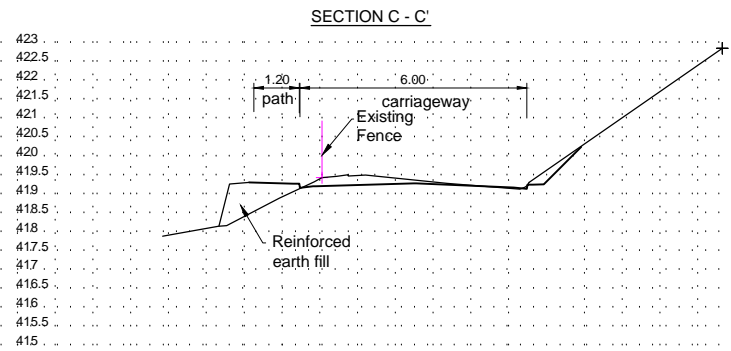

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	Designed	Signed	Date	Datum & Level	Rev.
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ATLEY ROAD EXTENSION SECTION VIEWS

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Drawn	Signed	Date	Scale		
RB		08.08.12	1:200 @ A3		
Designed	Signed	Date	Datum & Level		Rev.
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