

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a reference¹ under Clause 14 of the First Schedule to the Act

BETWEEN JON SINCLAIR WATERSTON

(RMA 1262/98)

Referrer

AND QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson (sitting alone under section 279 of the Act)

IN CHAMBERS at CHRISTCHURCH

FINAL DECISION

[1] This matter was the subject of an interim decision of the Court: C169/2000. The parties were to provide the Court with proposed rules designed to achieve certain objectives outlined at paragraph [24] of the Court's decision.

[2] A further issue arose relating to the status of a previous subdivision consent (RM 980131) granted to the referrer for a building platform at a higher elevation than the land subject to the Court's decision. That issue has subsequently been resolved with the grant of a further subdivision consent (RM 030580) and the Court has received the proposed new rules and an agreed method (covenants) to achieve the objectives set by the Court in C169/2000.

¹ As appeals on plans and policy statements were known prior to 1 August 2003.

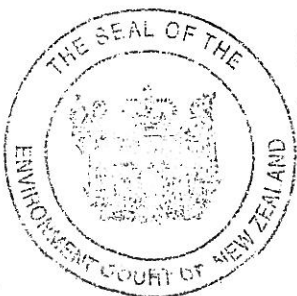
[3] It is noted that several of the additional provisions that are to be added to the District Plan attach to (but do not amend) parts of the Plan that were made operative following the Court's decision C134/2003 issued on 25 September 2003. This situation may raise a jurisdictional issue as to whether additions can be made to operative sections of a part-operative Plan.

[4] It would have been preferable for the Queenstown Lakes District Council ("the Council") to have indicated that the relevant sections were potentially going to be added to in the future and to have included a note to that effect in the part-operative District Plan. That was an error on the Council's part, although easily made. However, as the additions do not seek to amend any provisions of the Plan that were made operative and as it is unlikely that any person will have been prejudiced by this error (although the risk increases daily), I consider that I am able to use the Court's powers under section 292 of the Resource Management Act (where required) to make the changes sought.

[5] My finding in respect of this jurisdictional point seems to be supported by the notation in the partly operative Planning Maps which note (on Map 31) that zoning of the land in question is not yet operative. Oddly that omission is not resolved by the proposed order. There appear to be only two (indirect) references to the Planning Map in the consent documentation. One appears in the additional Zone Standard (Building Line Restriction) for the rural general zone and the other in Zone Subdivision Standards, both relate to the "no-build zone" that will be included in the Ferry Hill Rural Residential sub-zone, which is created by this agreement. Again I consider the failure to complete Map 31 is a simple oversight and reference to the consequential amendment to Planning Map 31 will be included in the orders below.

[6] Accordingly, having heard the reference and issued its interim decision, and having considered the application for a rehearing by the referrer and the memorandum of counsel for the referrer dated 2 July 2004 and the further memorandum of the parties dated 10 November 2004, the Court is prepared to make the orders set out below.

[7] I further record that no other person gave notice of an intention to become a party or to be heard under section 271A or section 274 of the Act.



[8] In confirming these orders the Court's consideration has been limited to whether the solution agreed by the parties accords with the findings in C169/2000. The Court has also confirmed that:

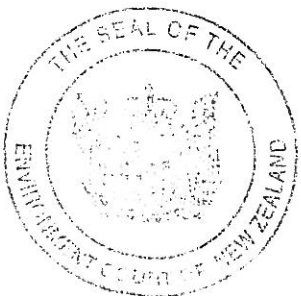
- (a) The parties to the proceeding have executed the memorandum requesting this order; and
- (b) The proposed order is within the scope of the submission and reference initiating the proceeding.

[9] Therefore, this Court ORDERS, by consent ^{of} and under section 292 of the Act (as required), that the reference is allowed to the extent that:

- 1) the Queenstown Lakes District Council is directed to modify its partly-operative District Plan in the manner set out in the Schedule attached to and forming part of this consent order; and
- 2) this Court further notes that order (1) above is conditional upon:
 - (a) the referrer surrendering the building platform on Lot 2 DP26910 created by Resource Consent RM 980131; and
 - (b) the referrer and the respondent entering into a registered covenant and deed of encumbrance in the form attached to and forming part of this consent order, marked "A",

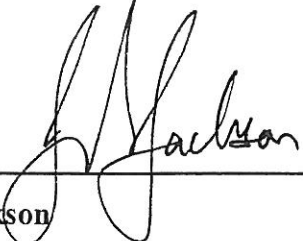
- and that the parties have agreed to the above matters.
- 3) As a consequential amendment, Planning Map 31 is to be altered to reflect the zoning outcome confirmed by these orders.

[10] The reference is otherwise at an end.

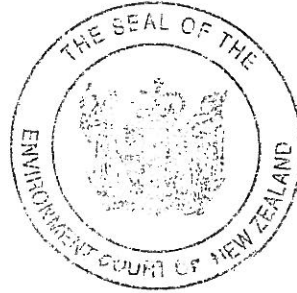


[11] There is no order as to costs.

DATED at CHRISTCHURCH 26 January 2005.



J R Jackson
Environment Judge
Issued: **27 JAN 2005**



~~5~~ **5 Rural General** — C11/2005 (Map)

Add the following to Zone Standard 5.3.5.2

(xiii) Building Line Restriction:

"No residential unit shall be erected within that part of Lots 1 & 2 DP 26910 at Tucker Beach Road, as shown as "NO BUILD ZONE" on Paterson Pitts Partners Ltd Building Platform Locations Plan No Q.4700.04-3C and being adjacent to the Ferry Hill Rural Residential sub-zone shown on Planning map 31, which plan is reproduced at Page xxx of the District Plan"

8 Rural Living Areas
Rural Lifestyle and Rural Residential

Implementation Methods

Rural living objectives and associated policies will be implemented through a number of methods including:

(i) District Plan

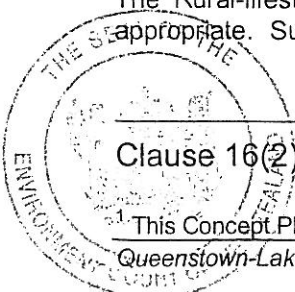
(e) Provision of a Concept Development Plan in respect of the Ferry Hill Rural Residential sub-zone¹

(f) Provision of a No Build Area on part of lots 1 and 2 DP 26910 as shown on Paterson Pitts Partners Ltd Building Platform Locations Plan No Q.4700.04-3C annexed to the Concept Development Plan.

8.2 Rural Living Areas Rules

The purpose of Rural-lifestyle and Rural-Residential Zones is to provide for low density residential opportunities as an alternative to the suburban living areas of the District.

The Rural-lifestyle Zone recognises that in some locations low density rural living development is appropriate. Subdivision rules are aimed at creating a diversity of allotment sizes which may be utilised



Clause 16(2) 19/01/99

This Concept Plan would sit within Parts 8 and 15 of the Plan
Queenstown-Lakes District Council Proposed District Plan

for a diversity of rural and/or residential activities. The imposition of a minimum and average allotment size is to protect the character and viability of the zone, as well as adjoining rural activities.

The Rural Residential Zone is anticipated to be characterised by low density residential areas with ample open space, landscaping and with minimal adverse environmental effects experienced by residents. Rural activities are not likely to remain a major use of land in the Rural Residential Zone or a necessary part of the rural residential environment.

8.2.1 District Rules

Attention is drawn to the following District Wide Rules which may apply in addition to any relevant Zone Rules. If the provisions of the District Wide Rules are not met then consent will be required in respect of that matter:

(i)	Heritage Protection	-	Refer Part 13
(ii)	Transport	-	Refer Part 14
(iii)	Subdivision, Development and Financial Contributions	-	Refer Part 15
(iv)	Hazardous Substances	-	Refer Part 16
(v)	Utilities	-	Refer Part 17
(vi)	Signs	-	Refer Part 18
(vii)	Relocated Buildings and Temporary Activities	-	Refer Part 19

8.2.2 Activities

8.2.2.1 Permitted Activities

Any Activity which complies with all the relevant Site and Zone Standards and is not listed as a Controlled, Discretionary, Non-Complying or Prohibited Activity, shall be a Permitted Activity.

8.2.2.2 Controlled Activities

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

i Buildings

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

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

ii Retail Sales

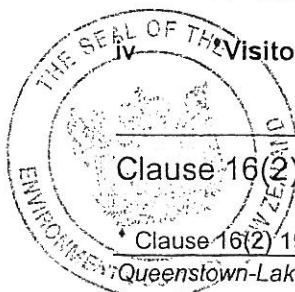
Retail Sales in respect of vehicle access and car parking.

iii Residential Flat

iv Visitor Accommodation activities within Visitor Accommodation Sub-Zones

Clause 16(2) 19/01/99

Clause 16(2) 19/01/99



8.2.2.3 Discretionary Activities

The following shall be Discretionary Activities provided they are not listed as a Prohibited or Non-Complying Activity and they comply with all the relevant Zone Standards:

- i **Visitor Accommodation**
- ii **Airports**

In the Rural Lifestyle Zone, Airports **other than** the use of land and water for emergency landings, rescues and fire fighting or for activities ancillary to farming activities.

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

8.2.2.4 Non-Complying Activities

The following shall be **Non-Complying Activities**, provided that they are not listed as a **Prohibited Activity**:

...

- v **Airports**

In the Rural Residential Zone Airports **other than** the use of land and water for emergency landings, rescues and fire fighting.

- vi **Residential Units**

a) In the Rural Lifestyle Zone
Any Residential Unit not contained within a Residential Building Platform approved under Rule 15.2.6.3.

3) b) In the Ferry Hill Rural Residential sub-zone -
Any Residential Unit not contained within a Residential Building Platform shown
on the Concept Development Plan

- vii Any Activity, which is not listed as a Prohibited Activity and which, does not comply with one or more of the relevant Zone Standards, shall be a Non-Complying Activity.

8.2.2.5 Prohibited Activities

The following shall be **Prohibited Activities**:

- i **Except** as part of a Permitted or Controlled Activity: Panelbeating, spray painting, motor vehicle repair or dismantling, fibreglassing, sheet metal work, bottle or scrap storage, motorbody building or fish or meat processing or any activity requiring an Offensive Trade Licence under the Health Act 1956.
- ii It is a prohibited Activity in the Johns Creek Rural Residential zone to plant the following tree species:

- Pinus radiata
- Pinus muriata
- Pinus contorta
- Pinus ponderosa
- Pinus sylvstris
- Pinus nigra
- Douglas Fir
- All Eucalyptus varieties



iii It is a Prohibited Activity in the Ferry Hill Rural Residential sub-zone to plant those species listed in Rule 8.2.2.5(ii) above, with the exception that Eucalyptus varieties shall be permitted in this sub-zone.

8.2.3 Non-Notification of Applications

Any application for a resource consent for the following matters may be considered without the need to obtain a written approval of affected persons and need not be notified in accordance with Section 93 of the Act, unless the Council considers special circumstances exist in relation to any such application:

- i All applications for **Controlled Activities**.
- ii Applications for the exercise of the Council's discretion in respect of the following **Site Standards**:
 - Access
 - Retail Sales
 - Tree Plantings
 - Flood Risk.

8.2.4 Standards – Rural Lifestyle and Rural Residential

8.2.4.1 Site Standards

i **Building Coverage**

Maximum building coverage for all activities on any site shall be 15%.

ii **Setback from Internal Boundaries**

Minimum setback from internal boundaries of any building for any activity shall be:

Rural Lifestyle Zone - 10 m.
Rural Residential Zone - 6 m.

iii **Access**

Each site shall have legal access to a formed legal road.

iv **Retail Sales**

(a) Buildings in excess of 25 m², which are to be used for retail sales, shall be setback from road boundaries by a minimum distance of 15 m.

(b) Parking associated with retail sales shall not be located within such a setback.

v **Nature and Scale of Activities**

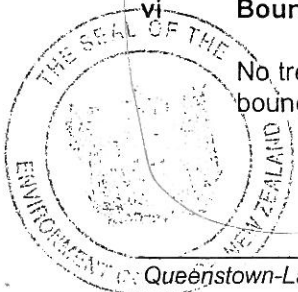
(a) In the Rural-Residential Zone the maximum gross floor area of non-residential activities shall not exceed 40 m²;

(b) In the Rural-lifestyle Zone the maximum gross floor area of non-farming or non-residential activities shall not exceed 100 m²;

vi **Boundary Planting (Johns Creek)**

No tree or hedgerow boundary planting shall exceed 1.9 metres in height within two metres of the boundary, at any point of its length.

See consent order C132/2000



8.2.4.2 Zone Standards

i Building Line Restriction

No building to be used for residential purposes shall be erected within 150 m of the sewage ponds on the adjoining land described as Sections 1 and 2, SO Plan 24120 Albert Town.

ii Building Height

(a) No part of any building shall protrude through a surface drawn parallel to and 8 m vertically above the ground level.

(b) No part of any building located between Beacon Point Road and the margins of Lake Wanaka shall protrude through a surface drawn parallel to and 7 m vertically above the ground level.

3) (c) Notwithstanding (a) no part of any building within Lots 9-15 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone shall protrude through a surface drawn parallel to and 5.5 metres above the ground level, provided that chimney and ventilation structures may exceed the height by a maximum of 1.2 metres only.

...

viii Residential Density

In the Rural Residential Zone:

(a) for allotments less than 8000 m² there shall be only one residential unit.

(b) for allotments equal to or greater than 8000 m² there shall be no more than 1 residential unit per 4000 m²;

6) except that in the Ferry Hill Rural Residential sub-zone, there shall be no more than one residential unit per lot

ix Setback from Roads

Minimum setback from road boundaries of any building for any activity shall be 10m.

x Roof Colours

The colour of any roof on any dwelling or accessory building situated on any part of the land situated south of State Highway 6 ("Ladies Mile") and southwest of Lake Hayes which is zoned Rural Residential as shown on Planning Map 30 shall be within the range of browns, greens, greys and blue greys.

.....

xiii In the Ferry Hill Rural Residential sub-zone -

(a) The location of buildings shall be in accordance with the Concept Development Plan for the Ferry Hill Rural Residential sub-zone.

(b) Within Lots 9-15 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone:

(i) The roof pitch of buildings shall be between 20° and 30° and roof dormers and roof lights are to be incorporated in the roof pitch;

(ii) Roof finishes of buildings shall be within the following range: Slate shingle, cedar shingle, steel roofing (long run corrugated or tray) in the following colours, or similar, only: Coloursteel colours New Denim Blue, Grey Friars, Ironsand or Lignite;



- (iii) Wall claddings of buildings shall be within the following range: cedar shingles, natural timber (clear stain), painted plaster in the following colours or similar: Resene 5YO18, 5B025, 5B030, 4GR18, 1B55, 5G013, 3YO65, 3YO20; stone cladding provided the stone shall be limited to Otago schist only and all pointing/mortar shall be recessed.
- (c) Any application for resource consent shall be accompanied by a Landscape Plan which shows the species, number, and location of all plantings to be established, and shall include details of the proposed timeframes for all such plantings and a maintenance programme.
- The Landscape Plan shall ensure:
- (i) That the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone is planted with a predominance of indigenous species in a manner which enhances naturalness; and
- (ii) That residential development is subject to screening along Tucker Beach Road.
- (d) Plantings at the foot of, on, and above the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone shall include indigenous trees, shrubs, and tussock grasses.
- Plantings elsewhere may include lombardy poplar, willow, larch, maple as well as indigenous species.
- (e) The on-going maintenance of plantings established in terms of (c) above shall be subject to a condition of resource consent.
- (f) The erection of solid or paling fences is not permitted.

8.3.2 Assessment Matters

i Nature and Conservation Values

8

(h) Within the Ferry Hill Rural Residential sub-zone, the extent to which:

- plantings with a predominance of indigenous species enhances the naturalness of the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone; and
- the species, location, density, and maturity of the planting is such that residential development will be successfully screened from views obtained when travelling along Tucker Beach Road

Within the Rural Residential sub-zone at Bob's Cove

(hi) Whether and the extent to which the proposed landscaping contains predominantly indigenous species (comprising.....

9

ix Access

(d) In the Ferry Hill Rural Residential sub-zone the extent to which:

- the number of accesses to roads is minimised; and
- the location and design of on-site vehicular access avoids or mitigates adverse effects on the landscape and visual amenity values by following the natural form of the land to minimise earthworks, providing common driveways and by ensuring that appropriate landscape treatment is an integral component when constructing such access.



15 Subdivision, Development and Financial Contributions

5.2 Subdivision, Development and Financial Contributions Rules

15.2.3 Subdivision Activities

15.2.3.1 Permitted Subdivision Activities

There shall be no **Permitted Subdivision Activities**.

15.2.3.2 Controlled Subdivision Activities

Except where specified as a Discretionary or Non-Complying Subdivision Activity in Rules 15.2.3.3 and 15.2.3.4 below, any subdivision which complies with all of the Zone and Site Subdivision Standards shall be a **Controlled Subdivision Activity**.

The matters in respect of which the Council has reserved control are specified in Rules 15.2.6 to 15.2.18.

15.2.3.3 Discretionary Subdivision Activities

15.2.3.5 ...

15.2.6 Lot Sizes, Averages and Dimensions

15.2.6.1 Controlled Subdivision Activities - Lot Sizes and Dimensions

Except where specified as Discretionary or Non-Complying Subdivision Activities in Rules 15.2.3.3 and 15.2.3.4, any subdivision of land in any zone, which complies with all of the Site and Zone Subdivision Standards, is a **Controlled Subdivision Activity**, with the Council reserving control in respect of the following:

...

15.2.6.2 Site Subdivision Standards - Lot Sizes and Dimensions

Except where specified as a Non-Complying Subdivision Activity in Rule 15.2.3.4, any subdivision of land which complies with all of the Zone Subdivision Standards, but does not comply with any one or more of the following Site Subdivision Standards shall be a **Discretionary Subdivision Activity**, with the exercise of the Council's discretion limited to the matter(s) subject to that standard.

i Lot Sizes

...

ii Lot Dimensions

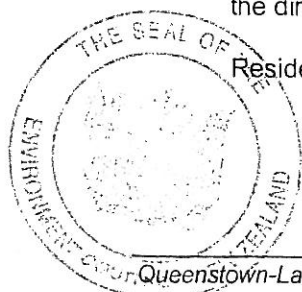
The dimensions of all lots created by subdivision in the following zones, other than lots for access, utilities, reserves and roads, shall be such that they can accommodate a rectangle of the dimensions specified below:

Residential and Township Zones

15m x 15m

Rural-Residential Zone

30m x 30m



The land which is contained within the rectangle specified above, shall, when the subdivision is completed, not exceed a ground slope of 1 in 2.5, measured in any direction across the full width of the rectangle.

15.2.6.3 **Zone Subdivision Standards - Lot Sizes and Dimensions**

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

10) i **Lot Sizes**

- (a) No lots to be created by subdivision, including balance lots, shall have a net area less than the minimum specified for each zone in the Table below, except as provided for in c, d and e below.

Zone	Minimum Lot Area
Rural Residential	4000 m ²
<u>In the Ferry Hill Rural Residential sub-zone</u>	<u>4000 m² - with up to a maximum of 17 rural residential allotments</u>

No minimum allotment size shall apply in the Low and High Density Residential Zones where each allotment to be created, and the original allotment, all contain at least one residential unit.

- (b) **Boundary Adjustments**

...

ii **Lot Averages**

- (a) The total lots to be created by subdivision, including balance lots, shall not be less than the average specified for each zone:

Zone	Average
Rural Lifestyle	2 ha

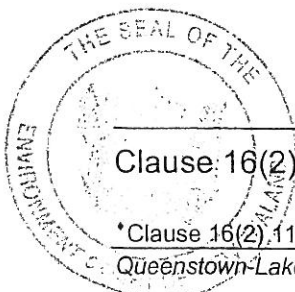
- (b) For the purpose of calculating any average, any allotment greater than 4 hectares, including the balance, in the Rural Lifestyle Zone is deemed to be 4 hectares.

iii **Building Platforms - Rural-General, Rural-Lifestyle, Gibbston Character and Bendemeer (Activity Areas 4-7- 1-8 only) Zones** [Decision C105/2000] → *Already changed*

Every allotment created shall have one Residential Building Platform approved at the time of subdivision of not less than 70 m² in area and not greater than 1000 m² in area, excluding lots greater than 20ha in the Rural General Zone.

11) vi **The Ferry Hill Rural Residential Sub-Zone**

- (a) Notwithstanding 15.2.6.3i(a) above, any subdivision of the Ferry Hill Rural Residential sub-zone shall be in accordance with the subdivision design as identified in the Concept Development Plan for the Ferry Hill Rural Residential sub-zone.
- (b) Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone shall be retained for Landscape Amenity Purposes and shall be held in undivided shares by the owners of Lots 1-8 and Lots 11-15 as shown on the Concept Development Plan.



Clause 16(2) 19/01/99

*Clause 16(2).11/05/99

- (c) Any application for subdivision consent shall:
- (i) Provide for the creation of the landscape allotment(s) referred to in (b) above;
 - (ii) Be accompanied by details of the legal entity responsible for the future maintenance and administration of the allotments referred to in (b) above;
 - (iii) Be accompanied by a Landscape Plan which shows the species, number, and location of all plantings to be established, and shall include details of the proposed timeframes for all such plantings and a maintenance programme.

The Landscape Plan shall ensure:

- That the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone is planted with a predominance of indigenous species in a manner which enhances naturalness; and
 - That residential development is subject to screening along Tucker Beach Road.
- (d) Plantings at the foot of, on, and above the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone shall include indigenous trees, shrubs, and tussock grasses.

Plantings elsewhere may include lombardy poplar, willow, larch, maple as well as indigenous species.

- (e) The on-going maintenance of plantings established in terms of (c) above shall be subject to a condition of resource consent, and given effect to by way of a consent notice that is to be registered on the title and deemed to be a covenant pursuant to section 221(4) of the Act.
- (f) Any subdivision shall be subject to a condition of resource consent that no buildings shall be located outside the building platforms shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone. The condition shall be subject to a consent notice that is to be registered on the title and deemed to be a covenant pursuant to section 221(4) of the Act.
- (g) Any subdivision of Lots 1 and 2 DP 26910 shall be subject to a condition of resource consent that no residential units shall be located and no subdivision shall occur on those parts of Lots 1 and 2 DP 26910 zoned Rural General as shown as "NO BUILD ZONE" on Paterson Pitts Partners Ltd Building Platform Locations Plan No Q.4700.04-3C, which plan is reproduced at Page xxx of the District Plan. The condition shall be subject to a consent notice that is to be registered and deemed to be a covenant pursuant to section 221(4) of the Act.

15.2.8 Property Access

15.2.8.2 Assessment Matters for Resource Consents

✓ should be 15.2.8.3?

- (xiii) In the Ferry Hill Rural Residential sub-zone the extent to which:
- the number of accesses to roads is minimised
 - the location and design of on-site vehicular access avoids or mitigates adverse effects on the landscape and visual amenity values by following the natural form of the land to minimise earthworks, providing common driveways and by ensuring that appropriate landscape treatment is an integral component when constructing such access.



15.2.17 Protection of Vegetation and Landscape

...

15.2.17.2. Assessment Matters for Resource Consents

...

- (xi) The extent to which plantings with a predominance of indigenous species enhances the naturalness of the escarpment within Lots 18 and 19 as shown on the Concept Development Plan for the Ferry Hill Rural Residential sub-zone.**
- (xii) The extent to which the species, location, density, and maturity of the planting is such that residential development in the Ferry Hill Rural Residential sub-zone will be successfully screened from views obtained when travelling along Tucker Beach Road.**



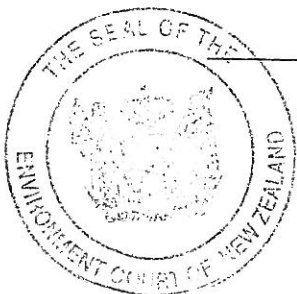
“A”

JON SINCLAIR WATERSTON

and

QUEENSTOWN LAKES DISTRICT COUNCIL

DEED OF COVENANT
AND
MEMORANDUM OF ENCUMBRANCE



PRESTON RUSSELL LAW
SOLICITORS
INVERCARGILL

PO BOX 355
TELEPHONE (03) 214 4626
FACSIMILE (03) 218-9536

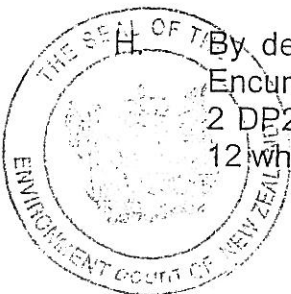
DEED OF COVENANT AND MEMORANDUM OF ENCUMBRANCE

PARTIES:

- I. JON SINCLAIR WATERSTON of Queenstown, farmer ("the Encumbrancer")
- II. THE QUEENSTOWN LAKES DISTRICT COUNCIL a body corporate under the Local Government Act 1974 ("the Council")

BACKGROUND:

- A. The Encumbrancer is registered as the proprietor of an estate in fee simple in the land described in Schedule A ("the property").
 - B. The Encumbrancer has lodged a reference in the Environment Court under number RMA 1262/98 to establish a Rural Residential sub-zone to be known as the Ferry Hill Residential sub-zone.
 - C. The sub-zone is situated on part of Lots 1 and 2 DP26910.
 - D. At the time of the subdivision created by DP26910, the Encumbrancer obtained building platforms for a dwelling house on each of Lots 1 and 2 DP26910. The building platform for Lot 2 was created by Resource Consent number RM 980131.
 - E. In its interim decision dated 5 October 2000 (*J. S. Waterston v Queenstown Lakes District Council*, C 169/2000) the Environment Court indicated it would allow the reference if the Encumbrancer surrendered the right to build on the building platform on Lot 2 DP26910 and covenanted that there would be no further residential development on Lots 1 and 2 DP26910 (other than the building platform already allowed for Lot 1 DP26910, and the development provided for in the sub-zone).
 - F. By order dated 20 September 2002 the Environment Court granted an application for a re-hearing by the Encumbrancer as to the determination of the interim decision that the Encumbrancer surrender his rights to build on Lot 2 DP26910.
 - G. By decision dated 1 May 2003 the Court adjourned the application for a re-hearing to enable the Encumbrancer to apply to the Council for a Resource Consent for an alternative building platform on Lot 2 DP26910, subject to conditions as to landscaping, retention of the pastoral sward on the north face of the Lots 1 and 2 DP26910 and a restrictive covenant preventing further subdivision on part of the north face of Lots 1 and 2 DP26910.
- By decision dated 16 June 2004 (RM 030580) the Council granted to the Encumbrancer a Resource Consent for an alternative building platform on Lot 2 DP26910 subject to certain conditions including conditions 6, 7, 10, 11 and 12 which provide as follows:



"6. The dwelling and ancillary buildings constructed on the lot shall comply with the following standards:

- (a) All structures shall be located within the building platform shown on drawing 096.05.
- (b) Building height shall be no more than 535 metres above existing ground level at the point marked A on Drawing 096.05 (Fig. 5).
- (c) Chimneys shall not exceed 1.2 metres beyond the 5.5 metre height control. The maximum height of any chimney shall be 6.7 metres.
- (d) Roofs
 - (i) Roof pitch shall be between 30°-35°. Flat roofs are permitted only as connections between structures and shall not exceed 20% of the total roof area.
 - (ii) Materials shall be steel or other metal sheeting (corrugated or tray), Onduline, cedar shingles, slate or turf. Unpainted galvan or zincalume shall not be permitted.
 - (iii) Colours shall be natural dark colours with reflectivity value (RV) of 10% or less.
- (e) Walls
 - (i) Walls/claddings shall be selected from painted/coloured plaster, concrete or concrete block, timber (natural, painted or stained); local stone; mud brick or rammed earth.
 - (ii) Colours shall be natural tones (browns, greys, green/brown/red/yellow oxides and have 27% RV (reflectivity value) or less.
 - (iii) Joinery shall be timber, steel or aluminium. Colours shall be similar to house colours.
 - (iv) Accessory buildings shall use the same materials and colours as the dwelling.
- (f) All guttering and spouting and service ducts shall be the same or similarly dark colour to roof and walls so they blend in.
- (g) All external lighting (excluding feature landscape lighting) shall be sensor lighting although porch and verandah lights may have a manual override. Any external lighting shall be kept to the immediate vicinity of the house and accessory buildings.
- (h) Water tanks shall be partially buried or painted a dark recessive colour and screened by planting and/or mounding.
- (i) Fencing



- (i) *Boundary and internal property fencing shall only be post and wire or post and netting similar to existing stock fences in the vicinity.*
 - (ii) *Ornamental and garden fencing and entranceways shall be of simple rural character using timber, wire, plastered finishes, and local stone. Large monumental gates are not permitted.*
- (j) *Prior to construction of the dwelling, the final design and material of the proposed dwelling shall be submitted for the approval of the Principal: Resource Management, Civic Corporation Limited.*
7. *Prior to any development being carried out on Lot 2 the consent holder shall submit to the Principal Landscape Architect (CivicCorp), a detailed landscaping plan which is consistent with Plan 096.05 (Fig. 5), submitted in support of the application (and stamped as approved) detailing the following:*
- (i) *The species, spacing and location of all proposed planting.*
 - (ii) *Planting method and after care.*
 - (iii) *Planting shall be of natural form and enhance the natural topography of the site. Linear, geometric and alternating planting shall not be permitted, particularly along fence lines.*
 - (iv) *Planting shall not obscure the ridgeline east of the house visible in views from the west.*
 - (v) *Planting may be exotic or native species, but shall be predominantly of species in keeping with the rural landscape character and shall complement the framework planting.*
 - (vi) *Variiegated and brightly coloured plants are permitted only close to buildings. They shall not be visible as part of the wider landscape.*
 - (vii) *Plants that naturally spread shall not be planted.*
10. (a) *There shall be no further subdivision or building development in those parts of Lot 1 DP26910 and Lot 2 DP26910 as are shown on Paterson Pitts Partners Limited drawing Q.4700.04-3C dated as received on 23 July 2003 and stamped as approved. (Referred to as the no build area).*
- (b) *The no build area shall be retained in an exotic pasture sward, maintained by grazing and/or mowing. On those parts of the no build area where the topography is too steep to allow for maintenance by mowing, those parts may be planted in native vegetation of the species shown on Anne Steven landscape architect drawing number 096.04 dates as received on 23 July 2003 and stamped as approved. Such vegetation shall be restricted generally to the areas shown on that plan.*



Upon the approval of this resource consent, and pursuant to section 138 of the Resource Management Act 1991, the consent holder shall surrender the consent for a building platform on this site presently held.

12. Pursuant to section 108(2)(d) of the Resource Management Act 1991, the consent holder and site owner is required to enter into a registered covenant in favour of the Council prior to the development of the site. The purpose of the covenant is to ensure compliance with conditions 6, 7, 10 and 11 above. The preparation and registration of this covenant shall be completed to the satisfaction of Civic Corporation's Principal: Resource Management, by the consent holder's solicitor."

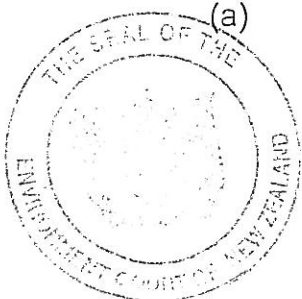
- I. The Encumbrancer and the Council have agreed the reference creating the sub-zone is to be allowed by consent subject to:
- A The Encumbrancer surrendering Resource Consent RM 980131 creating the first building platform on Lot 2 DP26910.
- B The Encumbrancer covenanting in favour of the Council to provide covenants identical to those required by conditions 10 and 11 of Resource Consent RM 030580.
- J. The Council had also required that a covenant be entered into, in favour of the Council, in respect of the performance of conditions numbered 6, 7, 10 and 11 of the consent RM 030580 under section 108(2)(d) of the Resource Management Act 1991.
- K. The Council requires that notice of the existence of the conditions and by the covenants created by this deed be given to any subsequent purchasers of the property and for this purpose requires that the covenant be registered against the title to the property.
- L. The Council requires that the covenant be enforceable by the Council as covenantee against subsequent purchasers of the property. As the covenants are or include covenants in gross in favour of the Council, the registration of a Memorandum of Encumbrance is required to ensure enforceability against subsequent purchasers of the property.

NOW THIS DEED WITNESSETH AS FOLLOWS:

COVENANTS:

1. In order to both satisfy the terms of conditions 10, 11 and 12 of Resource Consent RM 030580 and the terms of the consent order determining reference RMA 1262/98 the Encumbrancer covenants with the Council as follows:

- (a) There shall be no further subdivision or building development in those parts of Lot 1 DP26910 and Lot 2 DP26910 as are shown on Paterson Pitts Partners Limited drawing Q.4700.04-3C dated as received on 23 July 2003 and stamped as approved. (Referred to as the no build area). A copy of the drawing is hereunto annexed and marked 'A'.



- (b) The no build area shall be retained in an exotic pasture sward, maintained by grazing and/or mowing. On those parts of the no build area where the topography is too steep to allow for maintenance by mowing, those parts may be planted in native vegetation of the species shown on Anne Steven landscape architect drawing number 096.04 dated as received on 23 July 2003 and stamped as approved. Such vegetation shall be restricted generally to the areas shown on that plan. A copy of the plan is hereunto annexed and marked 'B'.
- (c) Upon the approval of resource consent RM 030580, and pursuant to section 138 of the Resource Management Act 1991 and upon the Environment Court approving the proposed consent order determining reference RMA 1262/98, the consent holder shall surrender the consent for the building platform created by Resource Consent RM 980131.
2. In order to satisfy conditions 6, 7 and 12 of Resource Consent RM 030580 the Encumbrancer covenants with the Council as follows:
- (a) The dwelling and ancillary buildings constructed on the lot shall comply with the following standards:
- (a) All structures shall be located within the building platform shown on drawing 096.05. A copy of the drawing is hereunto annexed and marked 'C'.
- (b) Building height shall be no more than 535 metres above existing ground level at the point marked A on Drawing 096.05.
- (c) Chimneys shall not exceed 1.2 metres beyond the 5.5 metre height control. The maximum height of any chimney shall be 6.7 metres.
- (d) Roofs
- (i) Roof pitch shall be between 30°-35°. Flat roofs are permitted only as connections between structures and shall not exceed 20% of the total roof area.
- (ii) Materials shall be steel or other metal sheeting (corrugated or tray), Onduline, cedar shingles, slate or turf. Unpainted galvan or zinalume shall not be permitted.
- (iii) Colours shall be natural dark colours with reflectivity value (RV) of 10% or less.
- (e) Walls
- (i) Walls/claddings shall be selected from painted/coloured plaster, concrete or concrete block, timber (natural, painted or stained); local stone; mud brick or rammed earth.
- (ii) Colours shall be natural tones (browns, greys, green/brown/red/yellow oxides and have 27% RV (reflectivity value) or less.



- (iii) Joinery shall be timber, steel or aluminium. Colours shall be similar to house colours.
 - (iv) Accessory buildings shall use the same materials and colours as the dwelling.
- (f) All guttering and spouting and service ducts shall be the same or similarly dark colour to roof and walls so they blend in.
- (g) All external lighting (excluding feature landscape lighting) shall be sensor lighting although porch and verandah lights may have a manual override. Any external lighting shall be kept to the immediate vicinity of the house and accessory buildings.
- (h) Water tanks shall be partially buried or painted a dark recessive colour and screened by planting and/or mounding.
- (i) Fencing
- (i) Boundary and internal property fencing shall only be post and wire or post and netting similar to existing stock fences in the vicinity.
 - (ii) Ornamental and garden fencing and entranceways shall be of simple rural character using timber, wire, plastered finishes, and local stone. Large monumental gates are not permitted.
- (j) Prior to construction of the dwelling, the final design and material of the proposed dwelling shall be submitted for the approval of the Principal: Resource Management, Civic Corporation Limited.
- (b) Prior to any development being carried out on Lot 2 the Encumbrancer shall submit to the Principal Landscape Architect (CivicCorp), a detailed landscaping plan which is consistent with Plan 096.05, submitted in support of the application (and stamped as approved) detailing the following:
- (i) The species, spacing and location of all proposed planting.
 - (ii) Planting method and after care.
 - (iii) Planting shall be of natural form and enhance the natural topography of the site. Linear, geometric and alternating planting shall not be permitted, particularly along fence lines.
 - (iv) Planting shall not obscure the ridgeline east of the house visible in views from the west.
 - (v) Planting may be exotic or native species, but shall be predominantly of species in keeping with the rural landscape character and shall complement the framework planting.
 - (vi) Variegated and brightly coloured plants are permitted only close to buildings. They shall not be visible as part of the wider landscape.
 - (vii) Plants that naturally spread shall not be planted.



3. The Encumbrancer acknowledges that the restrictions and obligations set out in clauses 1 and 2 shall apply to the property for the benefit of the Council representing the community of the Queenstown Lakes District and shall be enforceable by the Council in perpetuity against the Encumbrancer and the executors, administrators, assigns and successors in title of the Encumbrancer being the successive owners of the property and the tenants, licensees and invitees of the registered proprietor for the time being of the property.

MEMORANDUM OF ENCUMBRANCE:

4. The Encumbrancer encumbers the property for the benefit of the Council in perpetuity with an annual rentcharge of \$1.00 to be paid in January each year if demanded.
5. The Encumbrancer covenants with the Council as detailed in clauses 1 and 2 above.
6. The Encumbrancer shall pay the costs of preparation incurred in registration of this Memorandum of Encumbrance and any other costs incurred by the Council during the continuance of and in relation to this Memorandum.
7. Section 104 of the Property Law Act 1952 applies to this Memorandum of Encumbrance but otherwise, and without prejudice to the Council's rights of action at common law as a rent chargee or Encumbrancee:
 - a. The Council shall be entitled to none of the powers and remedies given to encumbrancees by the Land Transfer Act 1952 and the Property Law Act 1952; and
 - b. No covenants on the part of the Encumbrancer and its successors in title are implied in this Memorandum other than the covenants for further assurance implied by section 154 of the Land Transfer Act 1952.

DATED

2004



SCHEDULE A

Area	Lot	DP	CT
------	-----	----	----

SIGNED by JON SINCLAIR WATERSTON)

in the presence of:) _____

Witness:

Occupation:

Address:

SIGNED by)

THE QUEENSTOWN LAKES)

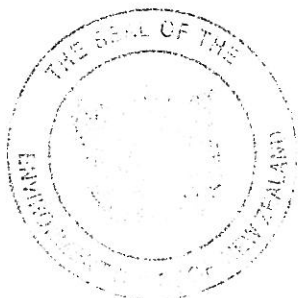
DISTRICT COUNCIL)

by affixing its common seal)

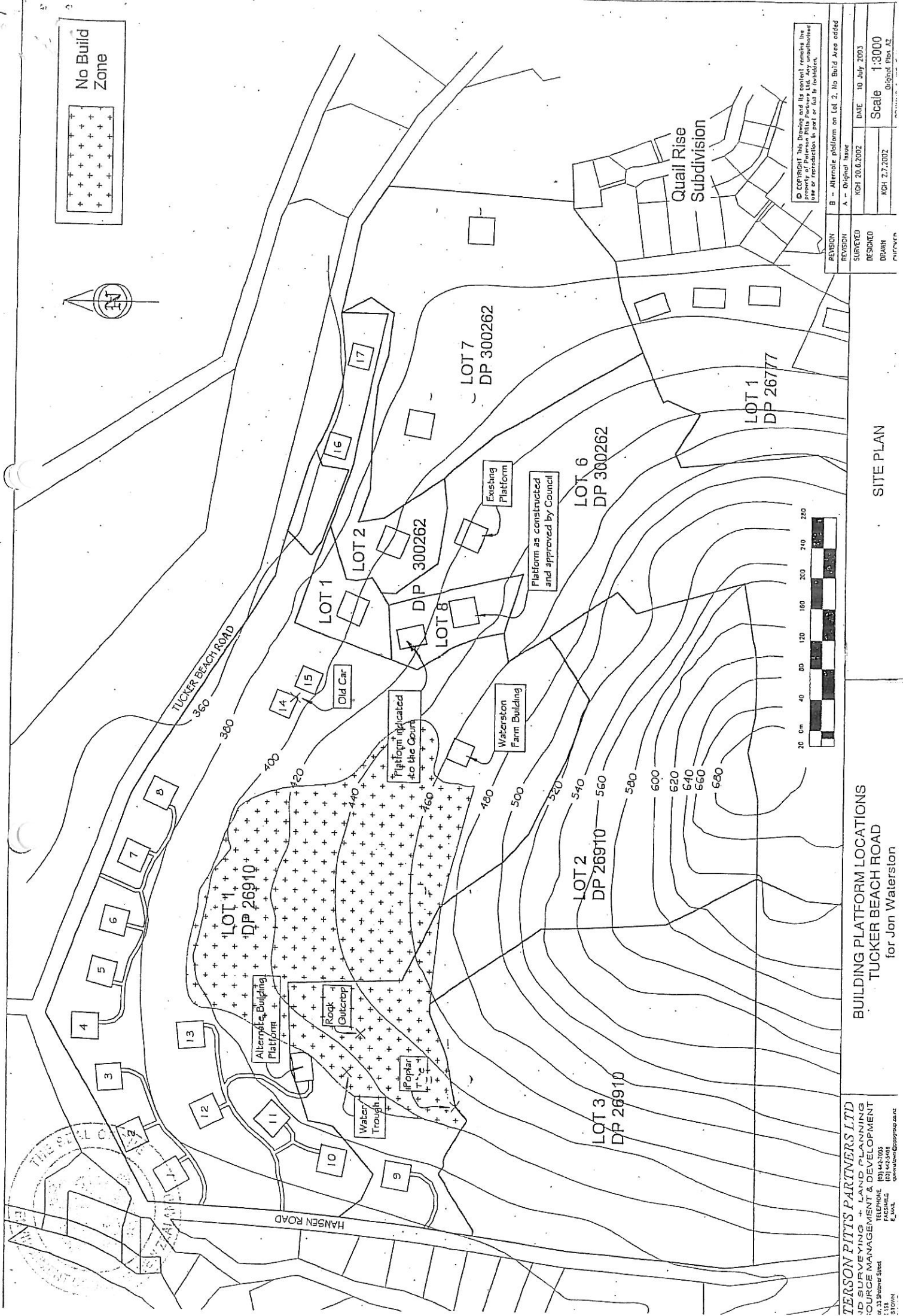
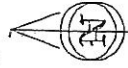
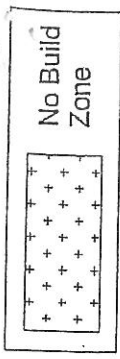
in the presence of)

Authorised witness:

Authorised witness:



A



© COPYRIGHT this Drawing and its content remains the property of Peterson Pitts Partners Ltd. Any unauthorised use or reproduction in part or full is forbidden.

REVISION	B - Alternative platform on Lot 2, No Build Area added
REVISION	A - Original Issue
SURVEYED	KCH 20.6.2002
DESIGNED	
DRAWN	KCH 2.7.2002
CHECKED	
DATE	10 July 2003
SCALE	1:3000
PROJECT	Original Plan 24

SITE PLAN

BUILDING PLATFORM LOCATIONS
TUCKER BEACH ROAD
for Jon Waterston

PETERSON PITTS PARTNERS LTD
 10 BAYVIEW AVENUE, BAYVIEW
 RESOURCE MANAGEMENT & DEVELOPMENT
 08 938694801
 TELEPHONE (08) 9457085
 FACSIMILE (08) 9457085
 E-MAIL info@petersonpitts.com.au

LEGEND

- Proposed Building Platforms + Access (1-17 Proposed Waterston Subdivision)
- Existing Buildings
- Existing Water Race
- Existing Fence
- Natural Gully
- Framework Tree Planting for Proposed Waterston Subdivision (CIP include Willow, Poplar, Laurel, Ma)
- Proposed Small Tree Species (to include Red Oak, Honey Locust, Pin, Fir, etc.)
- Existing Trees (mainly Willow and Poplar)
- Existing Mountain and Red Beech, Poplar, Loblolly, etc. (Innovative)
- Proposed Embankment Planting in Waterston Subdivision (mainly native)
- Proposed Awn under Open Space (steeper parts may be planted in fir)
- Mountain Peach with Avicennia component in selected site (Poplar, Ma, Southern Oak)
- Shrubland species - Olea, etc. (Pyrus, Quercus, etc.)

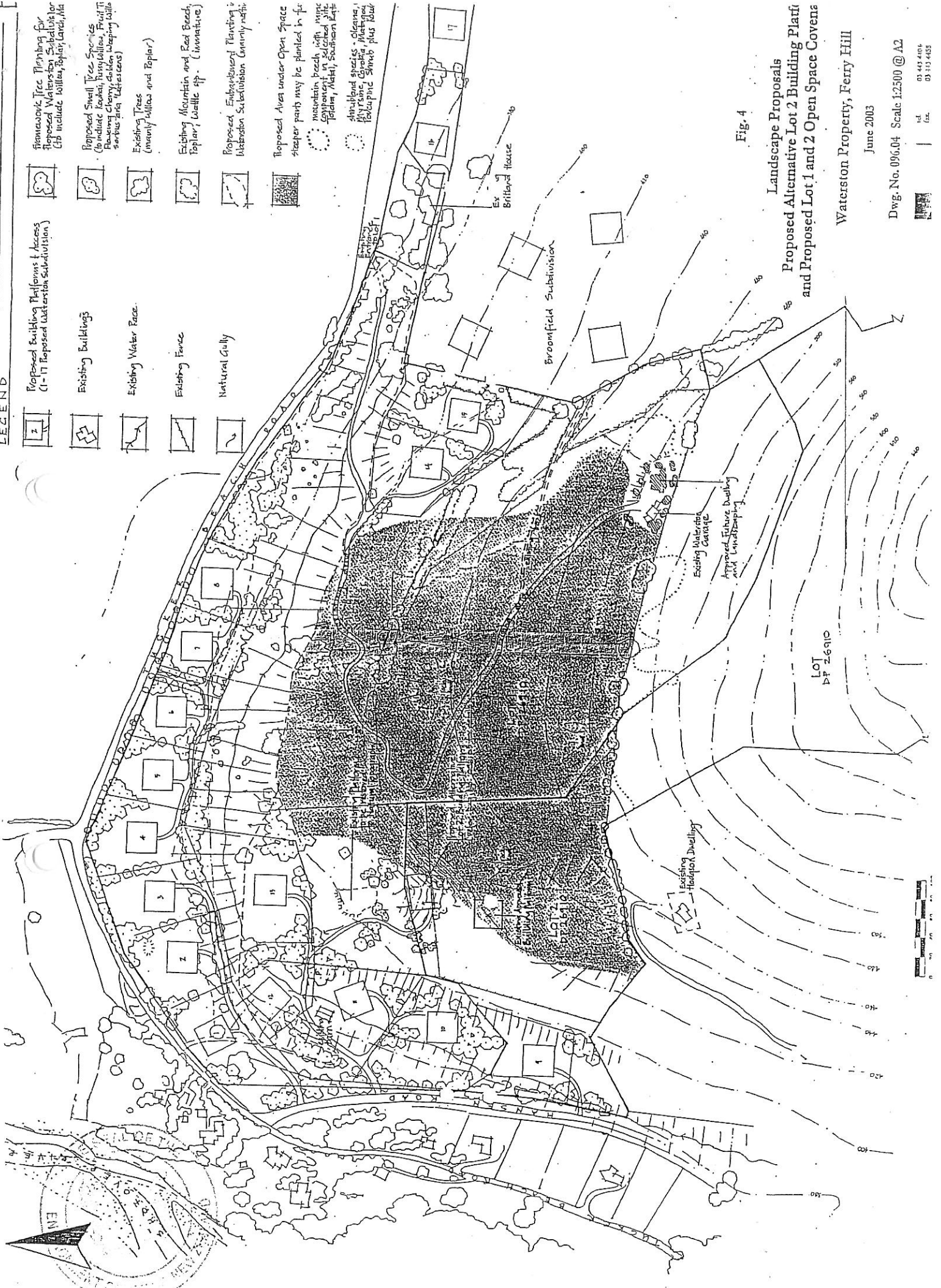


Fig. 4

Landscape Proposals
Proposed Alternative Lot 2 Building Platform
and Proposed Lot 1 and 2 Open Space Covers

Waterston Property, Ferry Hill
June 2003
Dwg. No. 090.04 Scale 1:2500 @ A2
D. 443.4004
D. 113.4453



LOT 1 DP 26910

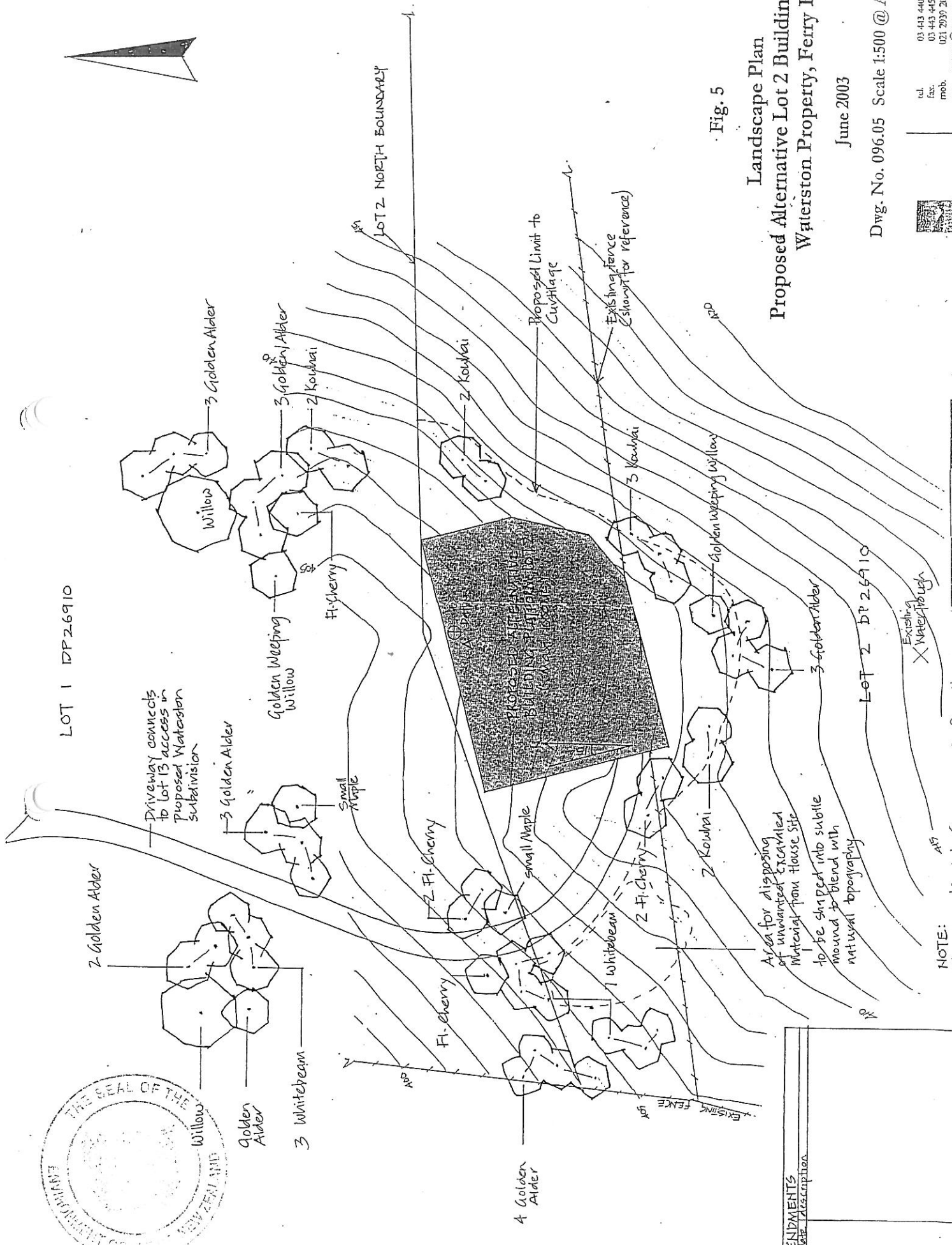


Fig. 5

Landscape Plan
 Proposed Alternative Lot 2 Building Platform
 Waterston Property, Ferry Hill

June 2003

Dwg. No. 096.05 Scale 1:500 @ A3

tel. 03 443 4404
 fax. 03 443 4458
 mob. 021 2939 207
 em. asferen@stsr.co.nz



Area for disposing of unwanted excavated material from house site to be sited into subtle mound to blend with natural topography

Existing Watercourse

NOTE:
 Plan is subject to Surveyors Confirmation

AMENDMENTS
 DATE DESCRIPTION

**DEED OF COVENANT AND
MEMORANDUM OF ENCUMBRANCE**

Correct for the purposes of the Land Transfer Act.

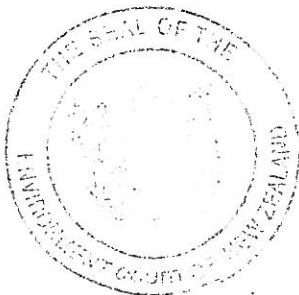
.....
Solicitor for the Encumbrancer

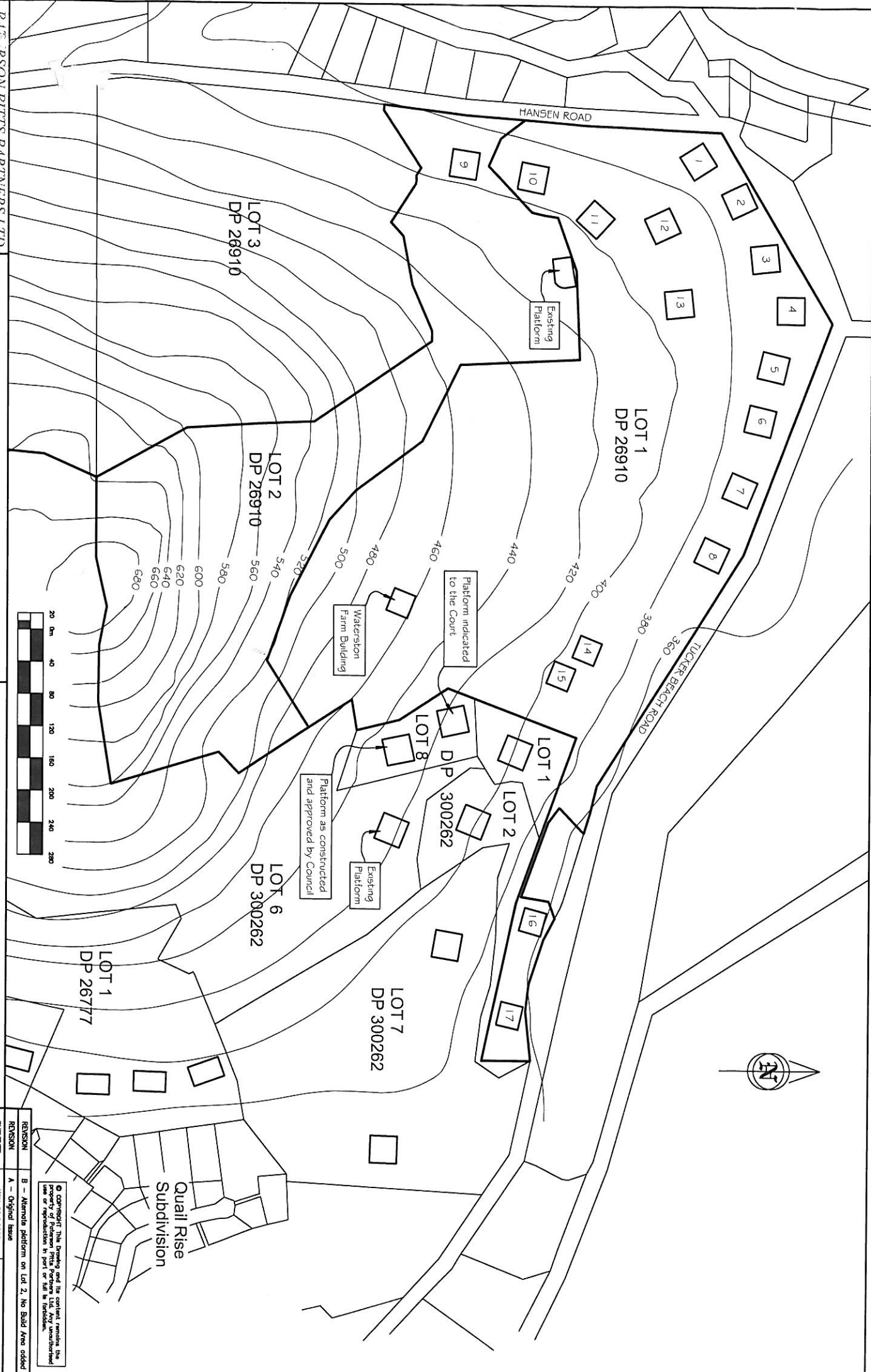
JON SINCLAIR WATERSTON
Encumbrancer

THE QUEENSTOWN LAKES DISTRICT COUNCIL
Encumbrancee

Particulars entered in the Registrar as shown in
the Schedule of land herein on the date and at
the time stamped below.

.....
Assistant/District Land Registrar of the
District of





PATRICKSON PITTS PARTNERS LTD
 LAND SURVEYING + LAND PLANNING
 150-152 St. Andrew Street
 PO BOX 150
 QUEENSTOWN
 NEW ZEALAND
 PHONE: (03) 442 7018
 FACSIMILE: (03) 442 7018
 E-MAIL: patrickson@pppartners.co.nz

BUILDING PLATFORM LOCATIONS
 TUCKER BEACH ROAD
 for Jon Waters

SITE PLAN



© Copyright. The drawing and its content remain the
 property of Patrickson Pitts Partners Ltd. No part of this
 drawing or reproduction in part or full is to be
 published.

**Quail Rise
 Subdivision**

REVISION	REVISION	DATE
B - Alterable platform on Lot 2, No Build Area added		10 July 2003
A - Original Issue		20.5.2002

DESIGNED	KOH 20.5.2002	DATE	10 July 2003
DRAWN	KOH 27.2002	Scale	1:3000
CHECKED		DRAWING & ISSUE No.	Original Plan A2
APPROVED			Q.4700.04-3C