

Before Queenstown Lakes District Council

In the matter of The Resource Management Act 1991

And The Queenstown Lakes District Proposed District Plan Topic 12
Upper Clutha Mapping

LEGAL SUBMISSIONS (Part Two) FOR

Allenby Farms Limited (#502 and #1254)

Dated 25 May 2017

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MAY IT PLEASE THE COMMISSIONERS

Introduction

- 1 These legal submissions are presented on behalf of Allenby Farms Limited ("**Allenby**") in relation to Hearing Stream 12 (Upper Clutha Mapping) in respect of Submission #502 (**Allenby Submission**). These submissions comprise Part Two of legal submissions lodged on behalf of Allenby, and supplement Part One which was lodged with the Commission on 05 April 2017.
- 2 Part One clarified the following matters for the Commission, to assist in reading the pre-lodged evidence for Allenby (**Allenby Case**):
 - (a) An explanation of some of the key plans lodged with the Allenby Case which detail: various stages of development of the original Allenby Farm, an overview of the public tracks and trails proposed to be created through this rezoning process, a proposed Structure Plan for the Mt Iron Park Rural Lifestyle Zone ("**MIPRL**"), and clarification of the amended Significant Natural Area ("**SNA**") location sought by the Allenby Case.
 - (b) An explanation of the revised relief package sought by the Allenby Case, as compared to its original AllenbySubmission, including confirmation that the density of development being sought within the MIPRL remains unchanged.
 - (c) An overview of the rule framework submitted in the Allenby Case, and associated proposed Structure Plan, which together provide a structure for comprehensive development, ecological restoration and protection, and recreation management over the whole of the MIPRL, the wider original Allenby land ("**Mt Iron**") and the recently purchased Little Mt Iron ("**Little Mt Iron**").
- 3 Part Two will in particular focus on:
 - (a) An overview of the 'big picture' of the Allenby Submission and the options for future management of Mt Iron and Little Mt Iron;
 - (b) An explanation of the legal jurisdiction for the revised relief requested in the Allenby Case;
 - (c) Part 2 of the Act and related issues;
 - (d) A response to the Council's case on the requested rezoning.
 - (e) Various minor issues

(f) Amendments to the MIPRL Provisions and Structure Plan

Process and Natural Justice

4 The Opening Legal Submissions of Counsel for the Council comprise a mere four paragraphs 5.21-5.24 on page 15. The Council does not take any position in respect of the substantive merits of the Allenby Case.

5 In paragraph 5.24 Counsel for the Council states:

'5.24 The Council reserves its position on the issue of scope and the Panel's jurisdiction until it has heard Allenby's legal submissions at the hearing and will respond in its right of reply.'

6 Counsel is unsure whether that statement is intended to mean that the Council will limit its right of reply to scope and jurisdiction, and will not take any position on the merits of the Allenby Case. However that seems unlikely.

7 Allenby therefore has to come to this hearing without any knowledge of the Council's position and (in the normal course of events) will not have any opportunity to respond to the Council's position. Counsel submits that that would be contrary to the principles of natural justice.

8 Accordingly Counsel formally requests, on behalf of Allenby, the opportunity to respond in writing within a specified period following receipt of the Council's Right of Reply. In making that request Counsel acknowledges that any such final response will be limited just to matters in reply, and will not be an opportunity to restate the Allenby Case.

Overview

9 In respect of the 'big picture' looking at the future management options for Mt Iron and Little Mt Iron, I refer to the evidence of Mr Cleugh. I submit that the Council (through this Panel) is currently faced with a choice of two options for the future management of this important land resource:

(a) Provide for a holistic management and development regime for all of this land which will ensure that significant ecological and recreation community values are protected and enhanced for the benefit of future generations, while providing a sensitive development outcome to ensure those positive benefits can be realised; or

(b) Continue with the status quo as notified in the Proposed District Plan ("PDP") which provides an inadequate land management regime without adequate protection of this land and ecological resource which will not

secure the future certainty of public use and enjoyment and will seriously endanger the significant existing ecological values.

- 10 I submit that the first option is undoubtedly the preferable outcome for the community, and is an outcome which accords with the Council's primary statutory purpose, to establish a planning framework which achieves integrated management of the effects of the use, development and protection of land and associated natural and physical resources of the District.¹ The first option also meets the objective of the Council in a District Plan Review (**DPR**), being to establish the 'most appropriate way'² to achieve that integrated management within the overall purpose of the Act, being to provide for the sustainable management of resources.³
- 11 The task of the Council is to select the most appropriate way, being the one it considers to be the best. That is inherently a judgement decision. I submit that, in this instance, the most appropriate way to achieve the purpose of the Act is an obvious one, when considering the overall objectives of, and reasons for, rezoning as follows:
- (a) Mt Iron and Little Mt Iron are currently identified as Rural Zoned land which, as notified, provides a preference for farming activities to be carried out. The land is not obviously suitable for farming.
 - (b) The Mt Iron and Little Mt Iron land contains significant ecological values which are not adequately protected and enhanced through the present zoning regime.
 - (c) Mt Iron and Little Mt Iron are currently used extensively by the public as a recreation resource, but without any legal basis for a significant part of such use. Allenby has full rights to restrict or prevent such unauthorised use at any time.
 - (d) Mt Iron and Little Mt Iron make up approximately 117ha of Rural land which is surrounded by DoC estate and urban development on all sides. Future farming of this land (in accordance with the Rural Zone core objectives) would likely involve some sort of alternative or specialist intensive farming in order to productively use the land. It is almost certain that such an outcome would not protect the significant public access, ecological, recreation, and amenity values of this land, as compared to the rezoning proposal put forward in the Allenby evidence.

¹ Section 31 RMA

² Section 32(1)(a) and (b) RMA

³ Section 5 RMA

- (e) The positive ecological and recreation benefits of this proposal can only be realised by ensuring landowners are bound to contribute legally and financially to an ongoing management regime and by providing an initial economic return for Allenby to undertake the first stages of the process. Those realities mean that a specifically designed rural lifestyle development associated with the overall proposal is intrinsic to the rezoning.
- (f) The specifically designed rural lifestyle type development within the MIPRL is an appropriate outcome for that land, in terms of landscape, amenity, infrastructural and geotechnical capability, and servicing. This type of development will be sensitive to the values of the land, and will be consistent with existing established development in the area.

Jurisdictional Issues

- 12 Counsel acknowledges that the extent and the nature of the case now being presented by Allenby, when compared with the general thrust and detail of the Allenby Submission, raises some potential issues relating to scope and jurisdiction which need to be addressed.
- 13 Appendix One to these submissions contains a summary of relevant principles and leading authorities on scope on a plan review. I do not understand there to be any difference between the legal advice from Council's solicitors on this issue and the principles detailed in Appendix One.
- 14 I summarise those principles, even more succinctly, as follows:
 - (a) An amendment is beyond scope if it goes beyond what is reasonably and fairly raised in submissions;
 - (b) That issue of 'reasonably and fairly raised' must be approached in a realistic and workable fashion rather than from the perspective of legal nicety.
 - (c) Amendment is admissible if it falls fairly between the plan provisions as notified and the amendments requested in the collective of original submissions;
 - (d) Under clause 10(2) of Schedule 1 the Panel's decision may include:
 - (i) Matters relating to any consequential alterations necessary, arising from the submission;
 - (ii) Any other matter relevant arising from the submission;

- 15 In addition, not addressed in Appendix One because it has been covered previously, is the fact that, for the purpose of this issue, scope is determined by all submissions lodged to the DPR, not just by the relevant submission being considered.
- 16 I now list the separate points which might possibly give rise to a scope issue. I then address those points in detail. Those points are:
- (a) Change from LLR to RL zoning
 - (b) Amendments to a different zone
 - (c) Amended SNA
 - (d) Mt Iron Protection Area
 - (e) Rules relating to the land outside the zone
 - (f) Public Access
 - (g) Little Mt Iron

a Change from LLR to RL zoning

- 17 The Allenby Submission requested the zoning of an identified area of land containing approximately 19.7ha from Rural to Large Lot Residential (**LLR**). The Allenby Case now requests that the zoning be changed to Rural Lifestyle (**RL**) rather than LLR. I submit that facts relevant to this issue include:
- (a) The land to be rezoned as RL is exactly the same 19.7ha area of land originally proposed to be rezoned LLR. As far as anyone reviewing the Summary of Submissions is concerned, with particular reference to the maps on the Council DPR website which clearly identified areas of land subject to rezoning submissions, there is no change to the area of land proposed to be rezoned.
 - (b) The LLR zone under the Proposed District Plan (**PDP**) has a minimum lot size of either 2,000m² or 4,000m². Any potential submitter who reviewed the Summary of Submissions, and perhaps the maps on the Council's website, but did not review the Allenby Submission in detail, could reasonably have expected the notified LLR rezoning to result in up to either 24 houses or 49 houses if the zoning was confirmed. The maximum of 15 lots/houses (including 3 existing) now proposed in the Allenby Case is a significant reduction on what any such submitter might have anticipated.

- (c) If any such potential submitter had reviewed the Allenby Submission in detail they would have found that the rezoning was proposed to enable a minimum 10 houses and a maximum 15 houses. That figure of 15 might arguably have been interpreted to be 18, depending on whether or not it took into account the 3 existing houses. The Allenby Case now proposes a maximum 15 houses (including 3 existing). That is unchanged from the relief requested in the Allenby Submission.
 - (d) It is debatable whether an LLR zone enabling maximum 15 houses in 19.7ha (average 1.3ha per dwelling) as a zone which could reasonably flow from the LLR objectives and policies designed to enable minimum 2,000m² or 4,000m² residential lots. The Allenby Case average 1.3ha per lot falls somewhere between the notified Rural Residential (**RR**) zone density of minimum 4,000m² per lot and the notified RL zone density of minimum 1ha/average 2ha per lot. Accordingly the RL zone better reflects what the Allenby Submission originally requested than does the LLR zoning.
- 18 It is relevant to the previous point that the Allenby Case does not seek any amendments to the notified RL Zone objectives and policies because, when one considers the Allenby Case against the notified RL objectives and policies, no change is necessary to enable the proposed MIPRL.
- 19 On this issue I submit that the change from LLR to RL zoning:
- (a) Falls fairly and reasonably within the reality of what the Allenby Submission originally requested;
 - (b) Is a change which the Panel might well have made, as a consequential amendment (assuming the rezoning is confirmed), even if this change had not been raised by Allenby, simply because the RL zoning better fits the relief originally requested than does the LLR zoning;
 - (c) Requires no additional s32 evaluation to address this change in relief;
 - (d) Does not give rise to any reasonable basis to suggest that any potential submitter could be disadvantaged as a consequence in this change in relief;
 - (e) Is therefore within scope.

b Amendments to a different zone

- 20 Counsel received a query from the Panel which included a request to address the jurisdiction of "...seeking amendments to different parts of the PDP from those the subject of the Allenby Farms' submission..." Counsel assumes that

- point refers to the fact that the Allenby Submission requested relief relating to the LLR Zone whereas the Allenby Case now requests changes to the RL Zone.
- 21 On this point I first refer to, and repeat, the previous section of these submissions relating to the change from LLR to RL zoning. I submit that all of those factors apply to this point.
- 22 I note in particular that the Allenby case seeks no change to the notified RL zone provisions other than to insert a site specific suite of provisions applicable only to the MIPRL. No change is requested to the general RL zone provisions (noting that any such change to the general RL zone provisions might well have raised an issue as to whether any potential submitter was disadvantaged).
- 23 I submit that this amendment falls within the principle of 'realistic and workable fashion' and that any contrary interpretation would fall to be closer to 'legal nicety'. This amendment merely puts the proposed Mt Iron Rural Lifestyle zone into the chapter of the PDP where the Allenby Submission probably should have requested that it be placed in the first place. I submit that simply changing the location within the PDP of a new zone raises no issue of scope or jurisdiction of concern to the Panel.

c *Amended SNA*

- 24 The Allenby Submission sought to amend SNA E18C as shown in the plan contained in Appendix 1 to the Allenby Submission. That would (if confirmed) have resulted in an amended SNA containing 48.08 ha. The Allenby Case now seeks an 'alternate' SNA (to use Dr Lloyd's terminology), as shown on Sheet 4 attached to Mr White's primary evidence, containing an increased area of 53.9 ha. That 53.9 ha contains two separate areas which are hatched on a copy of part of Mr White's Sheet 4 contained in Appendix Two to these submissions. They are as follows:
- (a) An area of 3.1 ha at the northern end of the SNA.
 - (b) An area of 2.3 ha on the eastern side of the SNA.
- 25 I submit there can be no jurisdictional issue relating to the northern 3.1ha area. That area was included in SNA E18C as notified, was proposed to be excluded in the amended SNA requested in the Allenby Submission, and is now proposed to remain in the 'alternate' SNA as originally notified. That amendment clearly falls within the range between what was notified and what was requested by way of original submission.
- 26 The eastern 2.3 ha area is different. That area was outside SNA E18C as notified and was not included in the amended SNA E18C requested in the

Allenby Submission. That change to the SNA is the result of a recommendation of Dr Lloyd as a consequence of his more detailed site visits carried out in preparation for this hearing and following the close of submissions.

27 I submit that this amendment falls within the ambit of a 'consequential amendment' as authorised by Schedule 1 Clause 10, for the following reasons:

- (a) The Allenby Submission identified, in paragraph 9 on page 2, the reasons for amending the SNA boundary. This additional amendment is being made for precisely the same reasons following the recommendation of Dr Lloyd.
- (b) The Allenby Submission clearly relates to the whole of Lot 104 DP412843 containing 90ha, and clearly seeks to retain and enhance the ecological values of that land (I address this issue in more detail under the following heading so I will not repeat it here).
- (c) The amendment can reasonably be said to address a minor mapping anomaly.
- (d) The land affected belongs to the Submitter, so no other party can be adversely affected.
- (e) It cannot be reasonably said that any potential submitter would be disadvantaged by this minor increase in the area and location of SNA E18C.

28 I record for Allenby that this amendment is of minor significance, if any. If this 2.3 ha area cannot be included in SNA E18C because there is no jurisdiction, Allenby would request that it be included in the Mt Iron Protection Area shown in the Structure Plan. If that was also not possible, due to scope reasons, the area would remain zoned Rural (which no submission seeks to change) and would remain in the proposed new Building Restriction Area ('BRA') if that BRA is confirmed. If the BRA area is not confirmed, that area would remain part of a larger area of Rural zoned land located on Mt Iron below the SNA containing an area of ecological value which should properly be within the SNA but is not. That would be an unfortunate outcome, but not of any particular significance except that the ecological values of that small area would have a lesser degree of protection. None of those potential outcomes have any relevance to the proposed MIPRL now requested in the Allenby Case.

d Mt Iron Protection Area

29 The next issue is the Mt Iron Protection Area, containing 51ha as shown on the Mt Iron Park Structure Plan annexed to Mr White's evidence as Sheet 5, where

specific ecological controls are proposed to apply. It is acknowledged that this specific Protection Area was not identified in the Allenby Submission. However it is submitted that this amendment falls within the 'fairly and reasonably raised within the submission' principle, for the following reasons:

- (a) Paragraph 6 of the Allenby Submission records that the Submission seeks to amend relevant PDP provisions to enable the most effective and efficient use of its land, taking into account the particular characteristics of its land. The land owned by Allenby is legally identified. References are made to the parts of the land subject to the Submission being identified on the plans attached in Appendices 1-5 of the Allenby Submission. The Mt Iron Protection Area falls within the area of land identified in Paragraph 6 of the Allenby Submission.
- (b) Paragraph 9 of the Allenby Submission requests an amendment to the boundaries of the SNA. The Mt Iron Protection Area falls entirely within the 'alternate SNA' requested in the Allenby Submission, with the minor exception of the 2.3 ha area referred to above.
- (c) Paragraph 21 of the Allenby Submission requests provisions relating to the ongoing permanent management of the SNA, including provisions relating to protection of significant ecological values and habitats.
- (d) Appendix 6 of the Allenby Submission requests policies to provide for a management regime for SNA E18C comprising permanent management to retain the ecological values of that SNA, and the end of Appendix 6 requests *'Appropriate rules to implement the policies detailed above'*.
- (e) The rules and provisions relating to the Mt Iron Protection Area entirely relate to protecting the ecological values of the Mt Iron Protection Area (excluding public access issues which I deal with separately below).

30 Taking into account all of the factors detailed in the previous paragraph, I submit that the Mt Iron Protection Area does not give rise to any scope or jurisdiction issue for the Panel.

31 Counsel notes that consideration was given to extending the proposed MIPRL to include all of the land owned by Allenby subject to the Allenby Submission and intended to be protected for ecological reasons (essentially the Mt Iron Protection Area) because, in Counsel's opinion, such an amendment could reasonably have been considered an amendment consequential upon the relief requested as detailed above. Consideration of that possibility arose from consideration of whether or not the MIPRL zone could contain rules which, in order for a subdivision to be implemented, required inclusion of land (in the subdivision consent) located outside the zone.

32 Counsel concluded that such an amendment is not necessary for that reason (for reasons I address in the following section of these submissions). Having reached that conclusion, Counsel saw no need to extend the proposed zone to include the Mt Iron Protection Area, and considered that it might look rather strange to have an RL zoning extending over that wider area when no rural lifestyle development is proposed within that wider area.

33 However Counsel remains of the view that extension of the MIPRL to include the Mt Iron Protection Area would be a consequential amendment within scope if that was considered necessary to address any other jurisdictional issue which might arise, particularly in relation to the following point.

e Rules relating to land outside the zone

34 The Allenby Case proposes rules applicable within the proposed MIPRL which, in order to be implemented, require inclusion of land outside the zone (being the Mt Iron Protection Area and the Little Mt Iron Protection Area). Counsel has given some thought to whether that creates any legal problem and has been unable to find any legal impediment to this approach. The following factors are potentially relevant to consideration of this issue:

- (a) All of the relevant land is under the control of Allenby, so Allenby will be responsible for the consequences of implementation of this rule regime. No other party is adversely affected.
- (b) No change is proposed to any of the Rural zone plan provisions, and no such change is necessary.
- (c) An application intended to implement the zone provisions will have to include all of the land necessary to enable implementation of those provisions. Such application would therefore include both RL zoned land and Rural zoned land. Subdivision consent would be required under the Rural zone provisions to create the single title located within the Rural zone (to be amalgamated with an RL title containing a building platform). Otherwise no consents will be necessary under the Rural zone provisions because the only activities to be carried out will be ecological management activities and public access activities, none of which would require consent.
- (d) There is no legal rule or principle which Counsel is aware of which prevents the creation of a rule applicable within one zone which necessarily must result in a consent application which includes adjoining land outside that zone.

35 This issue falls into two separate parts:

- (a) The rule requiring the initial subdivision to result in a single certificate of title containing at least one residential building platform plus the Mt Iron Protection Area, plus the Little Mt Iron Protection Area;
 - (b) Rules relating to ecological and recreation management plans applicable to the two Protection Areas.
- 36 The rationale for the rule requiring a single large title as stated above is partially for management purposes and partially for future ownership purposes:
- (a) It is considered easier and simpler for one landowner to be responsible for the various management obligations, and then to account to the other landowners for their share of the cost, rather than having some form of committee structure.
 - (b) Should the Council ever be interested in taking over Mt Iron as a public park in the future, possibly including the land managed by DoC, that will be much easier to achieve if all of land intended to be accessible to the public is in a single ownership.
- 37 The critical legal consideration here is that this is purely a landownership issue which has no relation to or bearing on environmental rules or other controls applicable to the land. Allenby Farms Limited currently owns the Mt Iron title and the Little Mt Iron title. Allenby could amalgamate those titles tomorrow into a single title, without requiring any resource consent. This is not an issue which has any relevance to resource management matters, except to the extent of the purpose for which this rule is proposed.
- 38 Allenby is proposing this rule in order to provide the Council with assurance that this outcome will be achieved if the zone is confirmed. This is an essential element of the overall management regime being presented in the Allenby Case, and it is important that the Council can have assurance that the proposed management regime can and will be put in place.
- 39 Counsel sees no basis for any scope or jurisdictional concern on this point.
- 40 Before turning to the second part of this issue I repeat the point that Allenby is not requesting any amendments to the plan provisions applicable to land outside the proposed zone. The Rural zoning of the Mt Iron Protection Area and the Little Mt Iron Protection Area remains unchanged. Theoretically, applications could be made under the Rural zone provisions in respect of those two parcels of land unrelated to the proposed MIPRL zone. A consequence of any such theoretical application might be that the MIPRL zone provisions cannot be implemented. That is a matter which should only be of concern to the landowner and should not be of any concern to the Panel (putting to one side

the reality that no landowner with any common sense would ever consider making such an application).

- 41 I then turn to the rules applicable within the zone which relate to the Protection Areas outside the zone. Subject to the following paragraph (which addresses whether Little Mt Iron needs to be treated separately) I submit that there is no legal impediment to this course of action. If Allenby wants to propose rules, which might be considered restrictive and onerous, affecting its own land, then it is entitled to do so. It is difficult to see how that rule regime, which can only result in improved ecological outcomes, could possibly be of concern to anybody else such as a potential submitter. Subject to the following point I submit that this Panel need have no jurisdictional concern on this issue.
- 42 There is no doubt about the previous submission point in relation to the Mt Iron Protection Area, for the reasons detailed above relating to the scope of the Allenby Submission. I acknowledge there might be a questionmark about Little Mt Iron which was not owned by Allenby when the Allenby Submission was prepared and lodged and was not mentioned in the Allenby Submission. If the Panel has any concern on that point there may be a questionmark about whether Little Mt Iron can be included in this rule regime. That would not be a significant concern for reasons which I address separately below.

f Public Access

- 43 The first issue where Counsel acknowledges there may be a valid concern about scope and jurisdiction relates to the proposed provision for the public trails (as identified) and the general public access to the Protection Areas. I acknowledge that the Allenby Submission contains no specific reference to public trails, public access or recreational values. I address this issue under three separate headings: the Allenby Submission, other submissions not directly related to the Allenby land, and an alternative method to achieve the desired outcome which sits outside the District Plan.
- 44 Before addressing this jurisdictional issue I highlight the following points:
- (a) The significant extent of current unauthorised public access onto and across Allenby land located on Mt Iron (including the recently purchased Little Mt Iron) is detailed in the evidence of Mr Cleugh. Dr Galloway's evidence records data obtained from the Department of Conservation suggesting that approximately 140,000 visitors used the formalised DoC easement track up to the summit of Mt Iron in 2015/2016⁴. I understand that figure is based on counters placed by DoC on that trail. There is no

⁴ Dr Galloway's evidence at paragraph 39.

available measure of the extent of unauthorised enjoyment of Mt Iron. However it is apparent from Mr Cleugh's evidence that the public at large generally enjoy and use Mt Iron almost as if it were a public park with general and unrestricted public access.

- (b) The Panel can reasonably assume that those people who access and enjoy Mt Iron do so for reasons relating to their general wellbeing, whether the purpose of those various visitors is walking for pleasure, walking for exercise, enjoying ecological values, enjoying the expansive views of lands surrounding Wanaka from various parts of the summit of Mt Iron and Little Mt Iron, or other reasons.
- (c) I submit the Panel could also reasonable assume that it might come as a surprise to a number of those visitors that their use of, and access across, Mt Iron is unauthorised and could be terminated by the landowner at any time (excluding the DoC and Council easement trails).
- (d) Had the Allenby Submission included reference to provision of public access as is now proposed, I submit it can reasonably be assumed that it is very unlikely that that would have attracted adverse comment by way of submission. On the contrary, any such aspect of the Allenby Submission may well have attracted considerable support by way of public submission, particularly if awareness of the Allenby Submission had been widely circulated.
- (e) I submit that the Panel can reasonably conclude that including these public access provisions (if jurisdiction is available) would not potentially disadvantage any potential submitter.
- (f) There can be little doubt about the obvious desirability of the proposed public access being achieved.
- (g) Taking all of the above into account, there is no jurisdictional bar in the area of persons or the public being potentially adversely affected. The only potential jurisdictional bar is in the area of whether this issue is fairly and reasonably raised in the Allenby Submission or could reasonably be a consequential amendment or other matter arising from the Allenby Submission.

45 Taking into account all of the above, and the underlying premise which must be that it will be desirable to grant this relief if possible, I point to the following aspects of the Allenby Submission which the Panel might consider provide jurisdiction on this point:

- (a) Paragraph 6 states *'Allenby Farms Limited seeks to amend relevant Proposed Plan provisions to enable the most effective and efficient use of its land, taking into account the particular characteristics of its land...'* The wording of that sentence could be said to be broad enough to encompass public access, given the extensive current informal public access.
- (b) Paragraph 21 states: *'This Submission proposes particular rules and restrictions within this LLR Extension to form a subzone of the LLR in order to ensure ongoing permanent management of the SNA. Such provisions include the protection of significant ecological values and habitats, and future development restrictions,'* [underlining added]. Use of the word 'include' suggests that the permanent management of the SNA could include other aspects which must be other than ecological aspects.
- (c) In Appendix 6 the proposed objective reads: *'To provide for limited large lot residential development while providing ongoing permanent protection and management for indigenous vegetation and maintain the landscape character, visual amenity and nature conservation values of Mt Iron'* [underlining added]. Given that the Pigeon Bay criteria (which I address below) include associative and human experience values, and given that visual amenity values include recreational values, it could be arguable that this wording is broad enough to encompass public access.

46 If jurisdiction cannot be found within the Allenby Submission, jurisdiction may be available under other submissions lodged to the DPR on issues relating to public access. The following submissions lodged to the DPR support increased recognition in the Plan for the addition of trails to the Upper Clutha Trails network, and provide collective scope for the trails being proposed in the Allenby proposal:

- (a) John Wellington (Submission 640) seeks a number of amendments to the strategic direction chapter to facilitate public access, in particular the submission notes:

I believe that, given the obvious benefits of public access to the wellbeing of the community and the economic benefits to the local tourist industry, public access provisions should be strengthened.

I believe that there is more scope for creating a functional and well interconnected network of walking and cycling routes within both rural and urban areas.

- (b) Although Submission 640 proposes specific relief to provisions of the PDP, rather than seeking relief to amend the maps to create more trails, I

submit that the Submission's broad reasoning would give jurisdiction to address those matters in alternative ways.

- (c) The Upper Clutha Tracks Trust (Submission 625) and the Queenstown Trails Trust (Submission 671) both provide similar submissions in support of greater strategic recognition of the community benefit of public trails in the District. Both submissions state:

The Trust considers that it is important to recognise that the nature of the trail network is to allow members of the public to access scenically significant parts of the District, often areas that are otherwise unlikely to be developed.

- (d) A number of submitters sought relief that the Rural Zone be diversified beyond providing for productive farming, and include more policy support for matters including recreation (such as Queenstown Park, Submitter 806 and Darby Planning Limited, Submitter 608).

47 Provision for public access, as part of the Allenby Case, could be seen as part of an 'environmental compensation' package intended to offset the effects of the proposed twelve new dwellings. It is therefore arguable that inclusion of these public access aspects is merely an additional positive environmental outcome as part of that overall package, and therefore that it was not necessary to have mentioned this aspect in the Allenby Submission. On that basis this aspect of the Allenby Case could be argued to be consequential to the primary relief requested.

48 The previous point could be assisted by pointing to DPR objectives and policies relevant to public access, such as:

'3.2.4.7 Objective – facilitate public access to the natural environment'

'3.2.4.7.1 Opportunities to provide public access to the natural environment are sought at the time of plan change, subdivision or development'

49 I submit that it is arguable that this provision of public access is merely consequential relief intended to achieve higher level DPR objectives and policies relevant to the primary relief requested.

50 Fortunately this entire issue can be adequately and completely addressed by a method sitting outside the District Plan. Given the availability of that method (which I will explain shortly) the Panel may wonder why the above submissions have been made. The reason arises from the Environment Court case *Infinity*

Group and Others v QLDC.⁵ In that case (a private plan change case relating to land on Beacon Point Peninsula in Wanaka) there arose for determination an issue relating to a Draft Stakeholders Deed to be entered into between the plan change Applicant Infinity Group and the Queenstown Lakes District Council. A copy of that case accompanies these submissions.

51 This issue is addressed in paragraphs 98-104. The Court declined to place weight on the proposed Stakeholders Deed for two reasons, being firstly that the Deed had not been entered into and secondly that, as a private contract, there was nothing to prevent the parties to the Deed from resiling from or cancelling the Deed after the court hearing. The Court went on to say in paragraph 104:

'[104] Where a private promoter of a variation or plan change wishes that intended public facilities be taken into account as positive environmental outcomes, the better practice is for the obligation to provide them be imposed by rules or other implementation methods in the plan.'

52 The above quotation is therefore directly relevant to this case for the following reasons:

- (a) Interestingly, and directly on point in this case, the 'public facilities' referred to in the above quotation included a public park and revegetation.
- (b) While provision for such a public facility is to be preferably achieved through inclusion in the District Plan, as a 'better practice', provision of such a facility by way of a method outside the Plan is not discounted even though it may be less preferable.

53 Because of the 'better practice' point referred to above, it would be preferable if this Panel can find jurisdiction to include these public access provisions in the proposed MIPRL. However if that cannot be achieved, there is an alternative method available sitting outside the District Plan.

54 The alternative method now being proposed, to achieve these outcomes if they cannot be achieved through the District Plan, can be found in Appendix Three to these submissions. In Appendix Three the Panel will find a draft Agreement to Grant Easement. The essential elements of that draft Easement Agreement are:

⁵ Decision No: C010/2005

- (a) The Agreement is between Allenby Farms Limited as Grantor and JL Cleugh, LA Cleugh and ZM Cleugh (as Trustees of the Lynden and Zita Cleugh Family Trust) as Grantee.

Note: Allenby Farms Limited is the owner of all of the land subject to the Allenby Case with the exception of the small title adjoining the northern boundary containing proposed Building Platform 14 as shown on the Mt Iron Park Structure Plan. The Cleugh Family Trust owns that small title containing proposed Building Platform 14.

- (b) The easements to be granted comprise all of the public access easements required to implement the initial subdivision plan under the proposed zone rules.
- (c) The normal definition of 'invitees' of the Grantee under the easements is extended to include the public at large.
- (d) The Agreement contains a privity of contract clause under the Contracts (Privity) Act 1982, in favour of the Council.
- (e) The privity of contract provisions specifically include a provision that the Agreement cannot be cancelled without the consent of the Council.

Note: Council's consent is not required to achieve (d) and (e) above.

- (f) The Agreement is conditional upon the MIPRL being approved and a subdivision consent in accordance with the zone provisions being implemented.

55 The legal effect of this Agreement is that, once it is executed, this Panel need have no concern about the achievement of the public access outcomes envisaged and proposed in the Allenby Case. There will be in place a binding, legal obligation to create that full suite of public access rights if the proposed zone is confirmed and is implemented. That outcome will be binding, and guaranteed, regardless of whether or not this Panel finds jurisdiction to include the proposed provisions relating to public access.

56 This Agreement is currently being executed by the required parties. A copy of the fully executed Agreement will be presented at the hearing by Mr Cleugh when he presents his Evidence Summary.

57 Given the certainty that these public access provisions will be achieved, outside the District Plan if they cannot be implemented inside the District Plan, and given the Court's direction as to 'better practice' above, the Panel might

consider this to be a relevant consideration if the Panel is on the cusp (as it were) on the jurisdictional issue.

58 There might also be an argument based upon the scope of a full District Plan Review, and the need for the outcome of that Review to achieve the purpose and principles of the Act set out in Section 5 (absence specific guidance from higher instruments, as has been acknowledged by Counsel for the Council), which might support the Panel taking a slightly more relaxed approach to jurisdiction given the particular facts of this case. However as this issue can be completely addressed through an alternative method sitting outside the District Plan, I do not advance this proposition any further.

59 As a matter of interest I note that the Operative District Plan (**ODP**) specifically envisages objectives and policies of the District Plan being achieved through methods sitting outside the District Plan – refer copy pages 5-2 and 5-3 of the ODP contained in Appendix Four to these submissions. I have marked the provision I am referring to. One possible outcome to this jurisdictional debate could be that the Panel determines that it does not have jurisdiction to include the specific policies and rules relating to public access within the MIPRL but is comfortable that such public access will be provided through the alternative method described above. However that outcome could still be seen as achieving more general objectives and policies relating to public access contained in the DPR. Such a conclusion might justify a note of some sort recording this alternative method of achieving, within this zone, the more general objectives and policies relating to public access.

g Little Mt Iron

60 The final jurisdictional issue relates to the inclusion of Little Mt Iron in the MIPRL rules. Counsel acknowledges that there is no reference to Little Mt Iron in the Allenby Submission. That is hardly surprising, given that Allenby did not own that property when the Allenby Submission was prepared and lodged and had no intention to purchase it at that time (it came on the market subsequently). Consideration of Little Mt Iron raises two separate issues:

- (a) The public trails and public access provisions, insofar as they relate to Little Mt Iron;
- (b) The ecological and recreation management provisions relating to the Little Mt Iron Protection Area and Revegetation Area.

61 The public trails and public access issues have been addressed above, with specific reference to the alternative Easement Agreement method. As this issue can be resolved in that manner, I do not address it any further.

62 I cannot direct the Panel's attention to any specific statement within the Allenby Submission which could reasonably be argued to refer to Little Mt Iron, given that Little Mt Iron was not owned by Allenby Farms Limited when the Allenby Submission was prepared and therefore was not in the consideration of Allenby when the Allenby Submission was prepared.

63 I could point to the various statements in the Allenby Submission relating to protection of values within the SNA, given that there are notified SNA areas within Little Mt Iron. However I would have to acknowledge that the SNA referred to in the Allenby Submission is SNA E18C, whereas the Little Mt Iron SNAs have a different appellation. In addition, the Little Mt Iron SNAs do not extend to encompass all of the proposed Little Mt Iron Protection Area.

64 Once again, if jurisdiction cannot be found within the Allenby Submission, jurisdiction may be available through other submissions lodged to the DPR relating to biodiversity. The submission from Forest and Bird (706) seeks a number of amendments to the PDP to give greater support for protection and recognition of indigenous biodiversity. The Submission seeks protection beyond what is provided for in SNAs and gives collective scope in a number of areas for the concept of providing for increased indigenous vegetation protection measures:

Forest and Bird supports the Goal [3.2.4], however the objective will not enable the goal to be met. A key element of the districts natural environment and ecosystems is its indigenous biodiversity which the Council has a duty to maintain. This objective relates to significant nature conservation values but there is a need to include reference to the requirement to maintain indigenous biodiversity.

Forest and Bird supports the identification and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.(SNA) However confining SNA's to those identified and scheduled on the map will mean that many SNA's will not be identified or protected. The scheduled SNA's are likely to be a subset of areas that are nationally important to protect within the district.

65 This point is particularly important in respect of the Little Mt Iron land, where only E18G is identified as SNA, however as indicated in Dr Lloyd's report, the balance of the land also holds high ecological values which would benefit from enhanced protection.

66 The Submission also seeks to add a new policy to maintain indigenous biodiversity:

There is no policy to give effect to the requirement to maintain indigenous biodiversity

[Retain Pol 3.2.4.7.1] Opportunities to provide public access to the natural environment are sought at the time of plan change, subdivision or development.

67 In respect of diversification of rural land and the Rural Zone purpose:

Add paragraph to explain that a large part of the Rural Zone is in fact land managed for conservation and recreation purposes, and ecosystem servicing in our national park and conservation areas.

68 New policy sought:

Restoration is needed in places where biodiversity has been lost and habitats degraded, because this is required to restore viable populations of indigenous species across their natural ranges. Using eco sourced indigenous species that occur or once occurred will assist Councils to maintain indigenous biodiversity.

Facilitate and support restoration of degraded natural ecosystems and indigenous habitats using indigenous species that naturally occur and/or previously occurred in the area.

69 The Wakatipu Reforestation Trust (Submitter 281) also requested relief relating to general protection measures for biodiversity:

The addition of a policy encouraging native planting where appropriate as an alternative to planting exotic species.

I would like to have added a policy along the lines of 'Encourage the planting of native plants (that are or were once present in the District) in landscape plans, street plantings as appropriate, 'waste' areas presently covered in exotic weeds, etc.

70 I acknowledge that, despite the submissions above, there may be an issue of scope/jurisdiction in relation to the Little Mt Iron Protection Area. Fortunately, for the purposes of this hearing, if the Panel cannot find scope for the Little Mt Iron Protection Area, the Panel can be satisfied that the proposed ecological outcomes will not be adversely affected as they can be achieved in a different manner.

71 Sheet 1 annexed to Mr White's evidence shows an 'Approved Building Platform' located on the western part of Little Mt Iron. The proposed Structure Plan leaves an area surrounding that Approved Building Platform, intended for a

separate residential title, which is not part of the proposed Little Mt Iron Protection Area. That Approved Building Platform was approved under resource consent RM130177 dated 30 January 2014.

- 72 Condition 10 of RM130177 (copy attached in Appendix Five) requires the preparation of an Ecological Management Plan which applies to virtually the entire Little Mt Iron property. That Ecological Management Plan required by Condition 10 RM130177 has been prepared and has been approved by Council. That Ecological Management Plan must be implemented if and when the approved dwelling is built within the Approved Building Platform. A copy of the Ecological Management Plan approved under RM130177 accompanies these Submissions in Appendix Six.
- 73 Dr Kelvin Lloyd was the author of the Ecological Management Plan approved under RM130177. In his Evidence Summary to be presented at the hearing, Dr Lloyd will summarise the essential elements of this Ecological Management Plan and will confirm that the ecological outcomes which will be achieved under that Ecological Management Plan will be similar to the ecological outcomes which will be achieved under the rules relating to the Little Mt Iron Protection Area.
- 74 The requirement under the proposed zone to create a single title including one residential building platform plus the Mt Iron Protection Area plus the Little Mt Iron Protection Area would, if implemented, not have any effect on the consent requirements under RM130177. If and when the approved house is built on RM130177 that approved Ecological Management Plan must still be implemented, regardless of the ownership of the underlying land.
- 75 The only potentially different outcomes if jurisdiction cannot be found for the Little Mt Iron Protection Area are:
- (a) The Little Mt Iron property will be required to be ecologically managed under RM130177 rather than under the proposed zone rules applicable to the Little Mt Iron Protection Area;
 - (b) The timing of required ecological management of Little Mt Iron would be determined under RM130177 rather than under the proposed MIPRL zone rules.
 - (c) The Revegetation Area would not be implemented.
- 76 Mr Cleugh will confirm, in his Evidence Summary to be presented, that regardless of all the legal issues described above:

- (a) If the MIPRL is confirmed and implemented, the single title required by the zone rules will be created upon implementation of a subdivision plan under the zone rules;
 - (b) Even if not required by the zone rules, the Little Mt Iron Protection Area and Revegetation Area will be included in the management regime to be proposed and implemented under the zone rules.
- 77 On this issue the Panel accordingly has a choice (if it cannot find jurisdiction for the Little Mt Iron Protection Area):
- (a) The Panel could rely on Mr Cleugh's personal evidence to the effect summarised above;
 - (b) If the Panel has difficulty thus relying on Mr Cleugh's evidence, the Panel can have comfort that a house will eventually be built on the Approved Building Platform on Little Mt Iron, requiring compliance with the approved Ecological Management Plan, which will have ecological outcomes similar to those which would arise if there was jurisdiction to include the Little Mt Iron Protection Area in the proposed zone rules.
- 78 Accordingly I submit that, regardless of the outcome of this jurisdictional point, the overall ecological outcomes being proposed in the Allenby Case will be achieved, and the Panel can have confidence of that outcome.

Part 2 of the Act

- 79 The Opening Legal Submissions of Counsel for the Council, at paragraphs 2.19-2.21 on page 8, advise the Panel that '*...It is both permissible and appropriate that the Panel has regard to Part 2 in its evaluation of relief.*' I agree with, and adopt those Submissions, with particular reference to the discussion about the Proposed Otago Regional Policy Statement which remains under appeal.
- 80 I add one point to those Submissions, being the as yet undetermined status of the higher order DPR objectives and policies. This DPR review process has been structured in a way which involves sequential hearings of different issues, in part by differently constituted Panels. However it remains a single process. Decisions to be issued at the end of that process will all be issued at the same time, and all those decisions must have taken into account all submissions and evidence presented at all hearings. It therefore follows that, although the Panel will undoubtedly refer to, and give some weight to, the latest version recommended higher order objectives and policies, (or whatever version of those objectives and policies the Panel may currently have in mind which may

or may not be the same as the latest version recommended provisions), those provisions are not yet determined and are therefore not binding.

- 81 In the context described above, it must follow that it is at least '*permissible and appropriate*' for the Panel to have regard to Part 2. There may be circumstances, relating to particular submissions or cases, where the Panel must have regard to Part 2. I submit that this case is one such case.
- 82 It will be apparent to the Panel that this case gives rise to an inevitable degree of tension in terms of achievement of, or consistency with, DPR (and possibly regional) objectives and policies relevant to different considerations. The Allenby Case proposes to enable 12 new houses located on the Mt Iron ONF. That will result in visual effects which, to a greater or lesser degree, will be adverse. It must therefore follow that refusal of the MIPRL would better achieve some objectives and policies relating to visual effects. However there can be no doubt that confirmation of the MIPRL will result in better ecological outcomes than refusal of the zone. Therefore confirmation of the zone will better achieve objectives and policies relating to ecological outcomes. Confirmation of the zone must also better achieve objectives and policies relating to public access and recreational values. A degree of tension is therefore inevitable because neither decision will better achieve all relevant objectives and policies.
- 83 In this situation I submit that recourse to Part 2 is both inevitable and essential, for two reasons:
- (a) Sections 6 and 7 provide specific guidance on matters to be considered when resolving that tension;
 - (b) Section 5 enables the classic '*overall broad judgement*', being the weighing of competing aspects of sustainable management as particularised in 5.6-8, and being the judgement essential in this case, to be made.

Section 6(b)

- 84 Section 6(b) requires the protection of the Mt Iron ONF from inappropriate subdivision use and development. In this case it is particularly important, when applying section 6(b), to remember the wide range of relevant factors.
- 85 The 'Modified Pigeon Bay Criteria' have been cited numerous times in landscape cases before the Environment and appellate courts in the identification of section 6(b) landscapes and effects of activities on the same.
- 86 The Environment Court applied these factors in the recent Man o War litigation, usefully setting them out as follows:

[14] Factors for assessing the significance of landscapes were determined by the Environment Court in Pigeon Bay Aquaculture Ltd v Canterbury Regional Council and subsequently refined in Wakatipu Environmental Society v Queenstown Lakes District Council. As the factors played a significant part in our hearing we set them out:

(a) the natural science factors – the geological, topographical, ecological and dynamic components of the landscape;

(b) its aesthetic values including memorability and naturalness;

(c) its expressiveness (legibility): how obviously the landscape demonstrates the formative processes leading to it;

(d) transient values: occasional presence of wildlife; or its values at certain times of the day or year;

(e) whether the values are shared and recognised;

(f) its value to tangata whenua; and

(g) its historical associations.⁶

[Footnotes omitted]

87 On appeal to the High Court, the Appellants contended that, whilst the Environment Court had listed and identified all WESI factors, it did not actually evaluate whether the landscape was 'outstanding' by reference to those factors.⁷ The High Court rejected this appeal point, finding that the Environment Court had appropriately set out and applied the WESI criteria in determining outstandingness of landscapes. The same question was not brought on appeal to the Court of Appeal. The application of the WESI factors was not further challenged. It therefore follows that the WESI factors remain good law in the context of section 6(b) landscape cases.

88 It is particularly important to note that the Pigeon Bay Criteria are not limited to the visual aspects of landscape. They include ecological aspects (although that is covered separately by section 6(b)). They also include cultural aspects. In the WESI case, Judge Jackson analysed the cultural elements of the WESI criteria with reference to other definitions in the Act as follows:

[76] The definition of 'environment' - including the sub-definition of 'amenity values' states":

⁶ *Man O' War Station Limited v Auckland Council* [2014] NZEnvC 167 at [14].

⁷ *Ibid.*, at [29]

'Environment' includes-

(a) Ecosystems and their constituent parts, including people and communities; and

(b) All natural and physical resources; and

(c) Amenity values; and

(d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters.

'Amenity values' means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

[77] The most important aspects of these definitions in this context, is their comprehensiveness and their cross-referencing quality. We consider it is useful to consider 'landscape' as a large subset of the 'environment'. We have already observed that 'landscape' involves both natural and physical resources themselves⁷⁴ and also various factors relating to the viewer and their perception of the resources. These aspects seem to fit within 'amenity values' and into the category of "social ... and cultural conditions which affect the matters in paragraphs (a) to (c) or which are affected by those matters."⁸

89 Because of its significance to this case, I highlight the definition of 'amenity values' above, with particular reference to '*...recreational attributes*'.

90 It follows from the above that, because the Pigeon Bay criteria are the criteria relevant to identifying an ONF, the effects of any particular proposal on that ONF must be assessed by considering the effects on those different criteria which led to its identification as an ONF. A series of questions must be asked, with each question commencing '*What is the effect of this proposal on...*' and the second half of each such question being one of the Pigeon Bay criteria.

91 In this case the primary criteria which must be considered are the visual amenity aspects of landscape, the ecological aspects and the recreational aspects. Each Pigeon Bay criterion must be considered.

⁸ *Wakatipu Environmental Society Inc v The Queenstown-Lakes District Council* [2000] NZRMA 59 at [76] – [77].

92 Aesthetic values (WESI criteria 'b') are also considered as 'amenity values' (per WESI at [110]). Referencing the Act's definition of amenity values noted above, it is clear that this relates to people's appreciation of pleasantness, aesthetic coherence, and cultural and recreational attributes. In this case appropriate weight must be given to the proposed recreational outcomes which will result from the Allenby Case because those outcomes are directly relevant to s.6(b) considerations.

93 'Shared and recognised values' (WESI criteria 'e') is another associative attribute. The potential value of Mt Iron as a community public resource is assessed in Dr Galloway's evidence as being of significant benefit. That is directly relevant to the concept of shared and recognised values.

Section 6(c)

94 Section 6(c) requires the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. Dr Lloyd's detailed evidence is very clear about the ecological values present on Little Mt Iron. I submit that there is no question that s.6(c) is a relevant consideration.

95 The alternate E18C area as detailed in Sheet 4 attached to the evidence in chief of Mr White is the product of recommendations from Dr Lloyd as to the most appropriate delineation of the SNA which will achieve section 6(c) of the RMA, being the 'protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna'.

96 The alternate SNA E18C now proposed is reflected by the Mt Iron Protection Area proposed in the Structure Plan. In addition, SNAs E18 D1 and D2 on Little Mt Iron are subsumed within the proposed Little Mt Iron Protection Area and adjacent to the new 'Revegetation Area'. The only exception to this is the small 3.1 ha area of E18C within the MIPRL which is to be protected by the zone provisions.

97 The critical point of the Protection and Revegetation areas is to provide a positive environmental enhancement to these areas, rather than a passive or protective regime only which is what the Chapter 33 and DPR SNA provisions achieve. Those protective provisions in Chapter 33 are not proposed to be amended or overridden in any way. However they will be supplemented by the additional regulation of the Protection and Revegetation areas provided through the MIPRL provisions.

98 This approach is fundamentally based upon the evidence of Dr Lloyd as follows:

53 The alternate Mt Iron SNA C has much higher ecological value than the notified Mt Iron SNA C, and will deliver much better protection for the ecological features and values on the Mt Iron site.

54 A number of management actions should be undertaken within the alternate Mt Iron SNA C, including control of woody weeds, monitoring of pest animals and their effects, planting of ecologically valuable indigenous trees and shrubs, and encouraging less disturbance of rocky habitat. If these actions are undertaken they would represent a significant improvement under the rezoning proposal compared to under the reply version of Chapter 33, which would allow farming practices to continue and would require no ongoing management of ecological values.

55 These management actions would also be consistent with the management of SNAs that is required under the PDP, which primarily restrict clearance of indigenous vegetation from SNAs.

- 99 I highlight the evidence of Mr Cleugh to the effect that the only reason Mt Iron has not been overcome by pest plants, particularly wilding conifers, is the control of those plants carried out by Allenby over past decades. I highlight Dr Lloyd's evidence as to the potential consequences if control of wilding conifers in particular is not continued. I submit there can be no doubt that confirmation of the MIPRL will better achieve the direction of s.6(c) (in addition to all relevant regional and district plan objectives and policies relating to ecological values) than would refusal of the zone and retention of Rural zoning.

Section 7

- 100 I do not intend to address section 7 in any detail. It will be evident to the Panel which aspects of section 7 are directly relevant to the Allenby Case. However I do highlight the s7(aa) ethic of stewardship. Mr Cleugh has given evidence about Allenby's past stewardship of this land and vegetation resource. The Allenby Case is essentially all about a proposal for the ongoing stewardship of this land and vegetation resource. Section 7(aa) is directly relevant to this case.

Section 5

- 101 In this particular case it is section 5 which then enables the Panel to weigh and balance all of the considerations addressed above, in light of the evidence presented and the Panel's own site visits. The Allenby Case being presented to the Panel is essentially that the Wanaka community can better provide for its social, economic and cultural wellbeing by confirming the MIPRL than by refusing it.

Environmental Compensation

- 102 The Hearing Transcript records a query by the Panel (to Counsel for the Council) as to whether the Allenby '*environmental compensation approach*' is available in a plan review setting (as it is available in a resource consent setting). I query whether that question needs to be asked. I submit that the concept of 'environmental compensation' in this case is actually subsumed within my submissions above about Part 2 of the Act. This case is about the balancing of negative outcomes against positive outcomes and arriving at an overall conclusion as to which zoning outcome is more appropriate. If that concept is encompassed in the term 'environmental compensation' then it is my submission that it must be available in a plan review setting. In case this issue is of concern to the Panel I now address it in more detail, commencing with a discussion on the various meanings of the term 'biodiversity offsetting'.
- 103 The law on biodiversity offsetting is complex, and uses the term 'offsetting' in different ways. At one end of the 'offsetting' scale is the use of 'mitigation' and at the other is the employment of a positive effect or 'environmental compensation'. What is proposed in this case is not 'offset mitigation' but rather compensation / positive effects.
- 104 The distinction between the two concepts was considered by the High Court in *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council* which found that "mitigation" by definition must be to address the effects at the point of impact. It stated that the RMA distinguishes between mitigation of adverse effects caused by the activity for which resource consent is being sought, and positive effects offered by the applicant as an offset to adverse effects.⁹ It agreed with the Board of Inquiry's summation of the concepts in *Transmission Gully*:

*Offsetting relating to the values affected by an activity was in fact a form of remedy or mitigation of adverse effects, and should be regarded as such. Offsetting which did not relate to the values affected by an activity could more properly be described as environmental compensation*¹⁰.

- 105 The Court provided an example that if open cast mining will destroy the habitat of an important species of snails, an adverse effect, it cannot be said logically that enhancing the habitat of snails elsewhere in the environment mitigates that adverse effect, unless possibly the population that was on the environment that

⁹ *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council* [2013] NZRMA 293 at [72].

¹⁰ *Ibid* at [64] referring to Final decision of the Board of Inquiry into the New Zealand Transport Agency's Transmission Gully Plan Change Request (5 October 2011, EPA 0072).

is being destroyed was lifted and placed in the new environment.¹¹ The usual meaning of “mitigate” is to alleviate, or to abate, or to moderate the severity of something. The Court was of the view that positive effect offsets do not do that.

- 106 In this instance, it is acknowledged that there is not a 'no net loss' equation at hand for the Allenby Case, nor like for like mitigation offered at the point of impact. The effect of the clearance of indigenous vegetation required for access and the proposed building platforms is not intended to be offset by replanting elsewhere in the site, providing a 'like for like' remedy or mitigation. The effects of this removal are however considered in the context of the positive ecological effects also proposed in the rezoning, as recorded in Dr Lloyd's evidence as follows:

As noted above, Allenby Farms is considering options for residential development in the northern part of the notified Mt Iron SNA C, which we have annotated as 'discard from SNA in Figures 6 and 7. I understand that the proposed building platforms in this area would require clearance of 1.1 ha of kānuka woodland, out of a total of 10.9 ha of kānuka woodland within the proposed zone (and a much larger extent of kānuka woodland elsewhere on Mt Iron and Little Mt Iron). This level of clearance would have minimal effect on indigenous forest birds given the extent of forest bird habitat available locally (Attachment 8), and the effects of indigenous vegetation clearance could easily be dealt with through positive actions that would be of benefit to the SNAs on Mt Iron. The outcome of minor loss of kānuka would be more than offset by the ecological benefits of the proposed ecological management regime.¹²

- 107 What is essentially being proposed is the clearance of a small area of kānuka, which has been determined as having limited ecological values, in particular containing no Threatened or At Risk taxa (apart from one finding of one gecko)¹³ in exchange for the gain of the following (none of which is achievable through the District Plan):

- (a) A one-off near eradication of pest plant and animal species within the two proposed Protection Areas and the Revegetation Area;

¹¹ Ibid, at [72].

¹² Evidence in chief of Dr Kelvin Lloyd at para 56

¹³ Evidence in chief of Dr Kelvin Lloyd at para 50

- (b) Ongoing pest plant and animal species management of the two Protection Areas and the Revegetation Area in perpetuity, funded by the future MIPRL lot owners;
- (c) The requirement to undertake regenerative planting in the Revegetation Area which will ultimately provide a seed source for the colonisation of the planted tree species into kānuka woodland habitats elsewhere on Mt Iron and Little Mt Iron, including Mt Iron SNA C, Mt Iron SNA D, and Mt Iron SNA H;¹⁴
- (d) Permanent protection of native vegetation within the MIPRL (excluding the building platforms and accessways).

108 I submit that the ecological compensation package described above undoubtedly results in a net benefit in terms of ecological outcomes.

109 In respect of the appropriateness of pest control as part of an offset package, this has been considered by the Courts and is reflected in the BBOP 2012 Guidance¹⁵. In the Mt Cass windfarm case, the Environment Court considered that the offsetting proposed required the Environmental Management Plan to include a detailed pest animal control programme.¹⁶ The security of such future management is also considered in the BBOP 2012 Guidance (which has been relied upon by the courts), in particular principle 8 relating to long term outcomes, and criterion 8.1 which seeks that:

Mechanisms shall be in place to ensure that the measurable conservation outcomes from the offset will outlive the duration of the development project's impact.

110 The IMP proposed in the MIPRL provisions is entirely consistent with this guidance in that it ensures that future owners are legally bound to an ongoing management regime. This will be secured through registration of consent notices on the relevant titles following the first subdivision of land, as set out in the MIPRL rules.

111 In a resource consent context there is no doubt that positive effects can be taken into account as environmental compensation. They were held to be relevant to be taken into account in the *Forest and Bird v Buller District Council*

¹⁴ Evidence in chief of Dr Kelvin Lloyd at para 58

¹⁵ Business and Biodiversity Offsets Programme 2012

¹⁶ *MainPower NZ Ltd v Hurunui District Council* [2011] NZEnvC 384 at [252] and condition 86

case by virtue of section 104(1)a and (c) and section 5(2).¹⁷ I submit that, in the context of a plan review, positive environmental effects are equally relevant factors for the following reasons:

- (a) In determining the contents of a district plan, a territorial authority must employ its functions under section 31 and the provisions of Part 2 of the Act, and must accord with evaluation obligations of section 32 of the Act.¹⁸
- (b) 'Effects' as defined in section 3 includes 'positive effects'.¹⁹
- (c) Section 5 also includes positive elements of sustainable management, such that resources are managed in a way or at a rate which enables people and communities to provide for their social, economic, and cultural wellbeing²⁰.
- (d) As stated in the Council's opening legal submissions at para 2.18, the application of *King Salmon* in a plan review context means, that where there is no binding higher order planning instrument (such as the present Queenstown context), decision makers may, where appropriate, apply Part 2 in evaluating the PDP provisions.
- (e) A section 32 assessment clearly includes a requirement to assess the benefits and costs of the environmental, economic, social, and cultural effects anticipated from implementation of the provisions.²¹

112 In support of the above proposition, the case of *Infinity Group v Queenstown Lakes District Council* provides authority for the consideration of positive environmental effects in a plan change context. In this case, the private plan change proponent was offering public benefits in the form of public amenities (a park and revegetation). In that case, the Court found difficulty in placing weight upon the proponent's promised positive benefits because of the private nature in which they were offered, in particular:

Where a private promoter of a variation or plan change wishes that intended public facilities be taken into account as positive environmental outcomes, the better practice is for the obligation to

¹⁷ *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council* [2013] NZRMA at [78].

¹⁸ Section 74(1) RMA

¹⁹ Section 3(a)

²⁰ Section 5(2) RMA

²¹ Section 32(2)(a) RMA

*provide them be imposed by rules or other implementation methods in the plan.*²²

- 113 The plan change proponent in that case did however take the opportunity to remedy the issue of ensuring these positive benefits through the plan itself, noted by the court at [101] as follows:

*The Court invited further submissions from Infinity Group on the significance of the proposed deed. Infinity Group stated that it was content to leave the central facility (and the possibility of it containing a swimming pool) to be settled with the Council in future, and did not rely on its provision as a positive outcome that would necessarily result from confirmation of the variation. In respect of the proposed park and proposed re-vegetation of it by the developer, Infinity Group offered amendments to zone provisions to ensure that the park and re-vegetation would be implemented.*²³

- 114 The Court clearly did not discount the possibility of those positive effects being taken into account in the plan change context.
- 115 It follows that the positive effects promoted in the Allenby proposal are squarely matters relevant to be given weight to by the Commission in this plan review, through the application of section 5 and section 32 in particular. Furthermore, Allenby has directly addressed the difficulties raised by the Court in Infinity above, by ensuring the MIPRL provisions (possibly with the Easement Agreement if required) provide legal security to the Council and public that those public benefits will be realised.

Comments on Evidence for the Council

Traffic and Services Evidence

- 116 The s.42a Report contained evidence from Ms Banks in relation to traffic access and from Mr Glasner in relation to services. Those issues were addressed in the detailed evidence for the Allenby Case. No rebuttal evidence has been lodged by Council in respect of those issues. Allenby therefore assumes that those issues have been adequately addressed and that no further comment or evidence is required.

Recreational Evidence

²² *Infinity Group v Queenstown Lakes District, Environment Court, Christchurch, 26/01/2005, C010/2005 at [104].*

²³ *Ibid at [101].*

117 The detailed Allenby Case included evidence on recreational issues and values prepared by Dr Shayne Galloway. The Council has in-house personnel with expertise in those areas, or could have briefed a response. No rebuttal evidence in relation to that evidence has been tabled by Council. Accordingly I submit that Dr Galloway's evidence and conclusions are unchallenged and should be given full weight.

Ecological Evidence

118 I could address Mr Davis' ecological evidence at some length. Instead I highlight one example:

(a) I request the Panel to consider paragraph 3.20 on page 5 of Mr Davis' Rebuttal Evidence where he (effectively) concludes that the notified SNA is preferable to the proposed 'alternate' SNA. I ask the Panel to consider the stated rationale for that conclusion, including the preceding paragraphs to the extent that they purportedly support that conclusion.

(b) I then ask the Panel to refer to the '*Evaluation of a Proposed Significant Natural Area at Mt Iron, Wanaka*' contained as Attachment 10 of Dr Lloyd's primary evidence, and in particular to Sections 11 and 12 on pages 20-26 of that document. I request the Panel to consider which of those two assessments has the greater credibility and should be relied upon.

119 I also note, as a significant point, that Mr Davis has not read the evidence of Mr Cleugh. He may therefore be unaware of the ongoing efforts by Allenby Farms Limited to control and eradicate wilding conifers. This may explain why Mr Davis does not comment on, let alone place any weight on, the serious threat to existing ecological values on Mt Iron which would arise if those control efforts are discontinued.

120 In his paragraph 3.12 Mr Davis places some weight on illegal clearance of kanuka which occurred in May 2016. That was an unfortunate event which occurred, in part, due to a lack of understanding on Allenby's part of the effect of s.86B of the Act in respect of newly notified rules relating to indigenous vegetation. As Mr Davis has not read the evidence of Mr White, Mr Davis may not be aware that the Allenby Case is premised on the presumption that the cleared vegetation is still there. All aerial photographs, and all calculations, relate to the extent of kanuka vegetation prior to that clearance. This clearance issue has been dealt with separately. It has no relevance to this hearing.

121 I remind the Panel that the anticipated ecological outcomes arise from a combination of:

- (a) The preferable 'alternate' SNA compared to the notified SNA;
- (b) The active management of the SNA under the proposal compared to the passive protection provided to the SNA via the District Plan, including pest plant and animal control, with particular reference to ongoing control and eradication of wilding tree species which would otherwise eventually destroy the ecological values of the SNA;
- (c) The positive indigenous vegetation retention and protection within the proposed MIPRL, despite the proposed removal of most of that land from the notified SNA;
- (d) The possible (depending on jurisdiction) integrated management of Mt Iron and Little Mt Iron (although this benefit is at the lower end of the range of significant ecological benefits).

122 I submit that the qualitative and quantitative difference between the evidence of Dr Lloyd on the one hand and the evidence of Mr Davis on the other hand is so stark that no further comment is required, and that the only conclusion the Panel could reasonably come to is to prefer the evidence of Dr Lloyd over the evidence of Mr Davis.

123 I submit that that finding must then lead the Panel to prefer the evidence of Mr White over the evidence of Mr Barr when it comes to achievement of, or consistency with, desirable RMA outcomes (from the level of the Act down through regional instruments to the District Plan) relating to ecological considerations.

Landscape Evidence

124 There is clearly a significant difference of opinion between Mr Baxter and Ms Mellsop in relation to potential effects on landscape and visual amenity values. That is a matter which will almost certainly have to be determined by members of the Panel based upon their own site visits and judgement. Subject to the comments below, I leave that task to the Panel.

125 In her paragraph 3.21 Ms Mellsop correctly records that some controls recommended by Mr Baxter were not included in the detailed plan provisions attached to Mr White's evidence. That is correct. That was partly a formatting error, which has now been remedied. I address these issues later in these Submissions.

126 In her paragraph 3.22 Ms Mellsop criticises Mr Baxter for concentrating on aesthetic values and the amenity of views without also assessing the potential effects on the biophysical characteristics of the Mt Iron ONF, on its natural

character, or on experiential or associative values. That critique goes to the heart of the Allenby Case which involves (broadly) consideration of three significant and separate issues: landscape outcomes, ecological (being part of biophysical) outcomes and recreational (being experiential or associative) outcomes. Ms Mellsop takes the position that it is the role of the landscape architect to undertake the overall assessment of those potentially conflicting considerations. On the facts of this particular case, I submit that Ms Mellsop's position is incorrect.

- 127 The approach taken for Allenby in this case has been deliberate. Mr Baxter has been briefed to provide evidence on landscape and visual amenity outcomes. Dr Lloyd has been briefed to provide evidence on ecological outcomes. Dr Galloway has been briefed to provide evidence on recreational outcomes. Those are three distinct, and very different, specialities. In a case such as this I submit it is not the role, nor within the expertise, of the landscape witness to weigh the merits of those potentially competing outcomes and give an opinion on the overall merits of the case. I submit that that is the task of the planning witness at first instance, and then the task of the Hearings Panel at second instance.
- 128 In her paragraphs 3.23 and 3.24 Ms Mellsop addresses ecological outcomes. Not only is she stepping outside her expertise, she is purporting to rely on the evidence of Mr Davis (for the Council) without having even read the evidence briefs of Mr Cleugh and Dr Lloyd.²⁴ I submit that no reliance can be placed on any aspect of Ms Mellsop's evidence relating to ecological outcomes.
- 129 In her paragraph 3.26 Ms Mellsop correctly points out that there is no restriction on exotic planting within the Building Platform. That concern has now been addressed in the amended rules which I will address later.
- 130 In her paragraph 3.27 Ms Mellsop purports to balance adverse landscape effects against possible ecological effects to arrive at the conclusion expressed in her paragraph 3.28. For reasons expressed above I submit that no weight can be placed upon that conclusion.
- 131 In her paragraph 3.29 Ms Mellsop comments on the difficulty of accurately assessing the level of visibility of structures. That difficulty is acknowledged. Consideration was given to preparation of one or more photosimulations. However it is impossible to produce an accurate photosimulation without having the detailed design of every proposed house (and possibly details of proposed landscaping). Any attempted representation of a final outcome could be criticised on grounds of accuracy.

²⁴ Refers Ms Mellsop's paragraph 2.1 and 2.2 which record the evidence she has read.

- 132 There are realities here which can be assumed and understood, by means of direct reference with existing houses on Hidden Hills in particular. The proposed Allenby houses will be set amongst existing vegetation in a similar manner to the Hidden Hills houses which are at similar elevations on Mt Iron. However the Allenby height, external material and other controls are more stringent, so the outcomes in terms of an individual Allenby house is likely to be less visible and/or noticeable than an individual Hidden Hills house. That broad comparison can be made, and assessed, during site visits.
- 133 In her paragraph 3.30 Ms Mellsop comments on potential '*...distinct islands of contrasting vegetation...*' That is a visual assessment, which may or may not be correct to a greater or lesser degree, depending upon where vegetation is planted and how fast it grows. In his Summary, Dr Lloyd will express his view that this is a preferable outcome from an ecological perspective. That again raises the issue, at a small and particular scale, of the tension between landscape outcomes and ecological outcomes.
- 134 In her paragraph 3.31 Ms Mellsop purports to arrive at an overall conclusion, balancing ecological and recreation outcomes against landscape and visual effects outcomes. She makes a passing reference to '*...enhanced public access...*' without providing any assessment of the value of that outcome and without even reading Dr Galloway's evidence on the issue. For reasons stated above, I submit that no weight can or should be placed upon Ms Mellsop's overall merit conclusion.
- 135 Allenby does not dispute that the individual Allenby houses will be visible, in a greater or lesser number and to a greater or lesser degree, from different viewpoints. Allenby also does not dispute that, to the extent that viewers from those viewpoints see houses within that part of Mt Iron where houses are currently not visible and the vegetative cover is reasonably continuous, those effects will be adverse from a landscape and visual amenity perspective.
- 136 However that is just the starting point. The factors to be taken into account in determining the extent of those adverse effects include the overall range of viewpoints within and around Wanaka from which Mt Iron can be viewed, the limited number (in that overall range) of viewpoints affected, the number of houses that might be visible from any particular viewpoint, and the overall cumulative effect of those factors. I leave that to the Panel to determine, partially upon the evidence and partially upon the basis of its site visits. That landscape outcome, as determined, is then but one of a number of considerations to be taken into account.

Planning Evidence

- 137 To the extent that my comments on Mr Barr's evidence relate to or flow from my comments in relation to individual experts above, I make the point without repeating the detail.
- 138 In his paragraph 2.7(f) on page 4, Mr Barr curiously states that he has read '*for Allenby Farms Ltd (502) landscape evidence of Mr Paddy Baxter, submission from Mr Lynden Cleugh, recreation evidence of Dr Shayne Galloway....*' That choice of wording must be assumed to be deliberate. Why Mr Barr considers Mr Cleugh's Statement of Evidence to be a submission, rather than evidence as it clearly is, is not clear. However that may explain why Mr Barr does not comment on Mr Davis' failure to identify the ecological threat arising from uncontrolled wilding conifer spread as a relevant consideration.
- 139 In his paragraphs 12.8-12.11 Mr Barr places considerable reliance on Ms Mellsop's overall assessment of adverse environmental outcomes versus positive environmental outcomes. For reasons detailed above I submit that that weight is misplaced.
- 140 Mr Barr addresses ecological outcomes in his paragraphs 12.12-12.17 which comprise slightly over one page. Given the significance of this issue to this case, and given the significant contrasting opinions of the two ecological experts, I submit the Panel could reasonably expect Mr Barr to provide a reasoned assessment of the two contrasting opinions and to explain how he arrives at the conclusion he arrives at. However Mr Barr makes no reference at all to the content of Dr Lloyd's evidence. He merely restates Mr Davis's conclusions, and agrees with them, without explaining how or why he agrees with them. I submit that Mr Barr's conclusions in relation to ecological outcomes can be given very little, if any, weight.
- 141 More significantly, before commencing on his '**Analysis**' on page 49, Mr Barr does not comment on, or even refer to, Dr Galloway's evidence on recreational values and outcomes. Given the significance of that consideration to this case, that is surprising to say the least.
- 142 In his paragraphs 12.26-12.32 Mr Barr sets out his '*Evaluation of Objectives and Policies.*' As that Evaluation flows from the factual determinations I have commented on above, I do not comment further other than to make two points.
- 143 I note that Mr Barr's only attempt to make what might be considered to be some form of overall balancing of negatives against positives comes in the final sentence of his paragraph 12.26. While I accept that that sentence does contain a passing reference to '*...the formal provision of walkways throughout the site...*' I submit that it is not possible to conclude that Mr Barr has given appropriate weight to that consideration given his prior failure to reference, let alone consider and assess, Dr Galloway's evidence.

144 In his paragraph 12.24, and again in paragraph 12.33, Mr Barr expresses concerns about the legal obligation of the Council to enforce consent conditions. On that point I comment:

- (a) The primary obligation rests upon the consent holder to comply with consent conditions.
- (b) This Allenby Case involves the primary consent condition obligations being recorded in consent notices registered against titles, so there is no possibility of purchasers or landowners being unaware of them.
- (c) Numerous subdivision and land use consents are issued in this District containing consent conditions requiring ongoing compliance with various, often very detailed, consent obligations such as landscaping obligations. The outcome of a consent granted under this proposed zone will be no different, in that respect, to numerous other such consents.
- (d) Regardless of its legal obligations, this Council does not even pretend to monitor compliance with the numerous ongoing consent condition obligations arising from the numerous consents referred to in the previous paragraph. Should it decide to do so, the task will be no more difficult in relation to this proposal than it will be in relation to any of those other numerous consents.
- (e) To proffer this concern as a valid concern about this proposal lacks evidential support and credibility.

145 I submit that Mr Barr's evidence is significantly deficient. He fails to give any consideration to Dr Galloway's evidence. His preference for Ms Mellsop's landscape evidence over Mr Baxter's landscape evidence, and for Mr Davis' ecological evidence over Dr Lloyd's ecological evidence, is made without any assessment of the detail or merits of the relevant briefs of evidence. He appears to automatically prefer the evidence of the Council witnesses without providing any reasoned basis for those conclusions. Accordingly I submit that very little weight can or should be placed upon Mr Barr's conclusions.

146 In his paragraph 12.19 Mr Barr fairly acknowledge that: *'The detail and effort made in the requested provisions are to be commended, and overall they appear to be appropriate from a procedural/mechanical perspective...'* In his paragraph 12.33 Mr Barr identifies five specific concerns relating to requested provisions. Given that Mr Barr has identified only five specific concerns relating to a complex set of plan provisions, I submit that reflects the statement quoted above. I respond, using the same subparagraph lettering, but without necessarily repeating the detail of the concern expressed:

- (a) Policy 27.3.17: I do not agree with Mr Barr's comment. This policy leads directly to the rules which require retention of vegetation except within building platforms and access ways.
- (b) Rule 27.13.1(iv) – issue of detail about the level of rabbit pest control – putting to one side Dr Lloyd's expert evidence that rabbits on Mt Iron are broadly beneficial, and are not detrimental to the existing ecological values, this is a matter of minor detail which can be addressed at resource consent stage.
- (c) Ongoing obligations must filter through to consent notice obligations – that is what is proposed – no specific deficiency in the rule is identified by Mr Barr.
- (d) Concern expressed about the proposed prohibition of mustelids and cats because it is not reasonable for Council to enforce the rule and because there is no restriction on surrounding urban areas. I refer to my comments about Council enforcement of consent conditions. There is no reason not to take a step in the right direction just because it does not absolutely solve the problem. A prohibition on cats was considered appropriate by the Environment Court in the original *Hawthorn vs. QLDC*²⁵ Environment Court decision. These concerns are unfounded.
- (e) Rabbit fencing: rabbit protection of new indigenous planting within building platforms will probably be necessary to achieve the required outcome. Rabbit fencing of gardens is a matter of personal choice. I submit this is again a matter of detail, to be addressed at resource consent stage, which does not need to be addressed at the District Plan zoning stage.

Fire Protection

- 147 The issue of protection against fire was considered when drafting the suite of rules which form part of the Allenby Case. The ecological rebuttal evidence of Mr Davis and the planning rebuttal evidence of Mr Carr both included attachments relating to this issue which were very informative and which have enabled Allenby to further consider this issue and to refine the relevant rules.
- 148 It may seem somewhat ironic that there are other residential areas on the lower slopes of Mt Iron where Kanuka is a feature and where this does not appear to be a particular concern, at least as far as the District Plan is concerned. Interestingly, the LLR zone now applicable to Hidden Hills does contain a policy

²⁵ *Hawthorn v QLDC Environment Court, Christchurch, 23/6/2004, c 83/2004*

in relation to fire protection, but the latest version of the LLR zone rules does not contain any rules which implement the policy. Therefore, despite the Council's apparent intention to address this issue, it appears to be a permitted activity to build a dwelling within the LLR zone and the Council does not appear to have retained any control relating to issues such as the distance between mature kanuka stands and a residential building. However Allenby has resolved to take a conservative approach in order to fully address this issue.

- 149 As a consequence of the above, the proposed rules have been amended as follows:
- (a) No part of any building will be allowed within 10m of the building platform boundary.
 - (b) Native planting within 10m of the building platform boundary will be limited to broadleaf, which is the only low flammability species detailed in the defined Mt Iron Park Building platform Approved Species List.
 - (c) The other species detailed in that Species List may be planted beyond 10m from the building platform boundary.
 - (d) No non-native plants may be planted within the building platform if, on maturity, they would exceed 1m in height.
 - (e) Because the 10m building setback from the building platform boundary will significantly constrain the area of land on which a house can be built, the building platforms have been increased to 1700m² in area, except for building platforms 10,11 and 12 where the 1500m² area has been retained because that will enable the maximum permitted house size of 275m².

Consultation with Department of Conservation (DoC)

- 150 Allenby has been in consultation with DoC regarding the Allenby Case. That consultation has resulted in some of the detailed rule provisions pertaining to DoC easements and access for DoC vehicles. Allenby undertook to further consult with DoC once the Allenby Case proposed rules had been finalised. That further consultation could not occur until after the Allenby Case was lodged. That further consultation has now taken place.
- 151 DoC has since provided written confirmation that the matters raised by DoC have been adequately addressed in the Allenby Case. A copy of that letter from DoC dated 8 May 2017 is contained in Appendix Seven to these submissions.
- 152 DoC obviously cannot and will not express a view as to the appropriateness or otherwise of the proposed residential component of the Allenby Case. However

DoC tends to stick to its own affairs, and does not often get involved in matters outside its areas of interest as is the case here. I submit that the implicit support evident from the DoC letter should carry some weight in this hearing.

Building Restriction Areas

- 153 Allenby has proposed a new Building Restriction Area (**BRA**) located on the lower western part of Mt Iron owned by Allenby, between Allenby's western boundary at the bottom and the boundary of the SNA at the top.
- 154 This BRA is proposed to provide additional protection for the lower western slope of Mt Iron as that side of Mt Iron is viewed from a significant part of Wanaka. The purpose of the proposed BRA is to provide added protection, and to make it even more difficult than it otherwise might be under the DPR to obtain consent to erect buildings within that area.
- 155 Mr Barr for the Council opposes this new BRA on the basis that the DPR provisions already contain an adequate level of protection. I query whether that is in fact correct. However this issue is not of particular concern to Allenby. It was put forward as part of an overall package for Mt Iron as presented in the Allenby Case. If the Panel agrees with Mr Barr that it is not necessary or appropriate, that would have no effect on the balance of the Allenby Case.
- 156 Allenby is much more concerned about the BRA applicable to the 'tongue' of Allenby land which extends from the base of Mt Iron towards Wanaka alongside the road entry into Wanaka. That BRA appears to have been 'rolled over' from the existing ODP. Mr Cleugh has expressed his concerns about this BRA in his evidence, including the fact that it has not been possible for him to ascertain when this BRA was imposed or why it was imposed.
- 157 Allenby is concerned that this BRA approach appears to be unique to the Allenby land and has not been imposed on any other landowner with rural land adjoining road entries to urban areas. An obvious local example is the Cardona Valley entry into Wanaka. No BRA restrictions have been imposed on rural land adjoining that entry.
- 158 My legal submissions on this point are brief:
- (a) It is incumbent upon the Council to justify this BRA restriction;
 - (b) Part of that justification should include an s32 evaluation which (at least) should compare the level of protection afforded by the Rural zone provisions (to the values considered important) compared to the level of protection afforded by the BRA restriction;

- (c) In order to justify the BRA restriction the Council should show that the level of protection afforded by the Rural zone provisions is inadequate;
- (d) No such s32 evaluation has been carried out;
- (e) This area of land obviously has some sensitivities. No application for consent to build a building on this land could be considered a certainty, and any application for consent for buildings which would impinge upon important values would be publicly notified, subject to considerable scrutiny, and could be challenging.
- (f) The Council has not provided adequate justification for a BRA restriction which would probably have the effect of preventing Allenby from building anywhere on the western and lower part of the Allenby land;
- (g) As this BRA has not been properly justified, it should be removed.

Amendments to the MIPRL Provisions

- 159 Appendix Eight to these Submissions contains a copy of the MIPRL provisions lodged as part of the Allenby Case, with new proposed amendments highlighted by track change. Those amendments should be self-explanatory. They address the following issues. All amendments are amendments to the rules (there are no amendments to the objectives or policies).
- 160 Amendments have been made to address issues relating to fire protection as detailed above.
- 161 Paragraph 3.21 of Ms Mellsop's rebuttal evidence for Council identified five recommendations made in Mr Baxter's landscape evidence which had not been carried forward into the zone rules. I address those five points separately as follows:
- (a) The recommended control on roofing colour has been included.
 - (b) The required maximum roofing pitch for buildings on building platforms 10-12 has been included.
 - (c) No change has been made in respect of the recommendation relating to kerb and channel on accessways. Further discussion with Mr Baxter has revealed that this is an internal design issue and is not relevant to landscape and visual amenity effects experienced from outside the zone. This may not be a desirable recommendation anyway, because the alternative often involves swales which may result in additional earthworks to create accessways which is not desirable in this case.

- (d) No change has been made in relation to the recommendation to avoid large batters because the rules already contain a requirement that any road batters visible from outside the zone must be revegetated.
 - (e) The recommendation to limit the herb/vegetable planting to a maximum 20m² has not been adopted. Ms Mellsop raised a concern about the visual impact of possible exotic planting. Mr Baxter agrees with that concern. An additional rule has been included limiting the planting of any non-native plants to species which, upon maturity, will not exceed 1m in height.
- 162 A requirement for fire protection water storage on each building platform has been included.
- 163 The Mt Iron Park Structure Plan has been amended to reflect the increase in size of building platforms (except building platforms 10-12) from 1500m² to 1700m² (refer Appendix Nine).

Evidence

- 164 Summaries of Evidence will be presented by:
- (a) Mr Cleugh
 - (b) Mr Baxter
 - (c) Dr Galloway
 - (d) Dr Lloyd
 - (e) Mr White
- 165 Mr Peter Joyce will not be presenting any Summary in relation to services and infrastructure, as no concerns have been raised in the Council rebuttal evidence, but he will be available to answer any questions.

Dated 25 May 2017



Warwick Goldsmith/Rosie Hill

Counsel/Solicitor for Allenby Farms Limited

Appendix 1

Scope and jurisdiction

- 166 The general and relevant principles of leading authority on scope on a plan review are summarised from the High Court in *Countdown Properties (Northlands) Limited v Dunedin City Council*, that as long as solutions presented by submitters are within scope of all the submissions lodged and the matters generally raised in a submission, a submitter may address the Panel, seek relief on those matters, and the Panel shall consider such matters as being in the scope of its decision:

*The local authority or Tribunal must consider whether any amendment made to the plan change as notified **goes beyond what is reasonably and fairly raised** in submissions on the plan change... It will usually be a question of degree to be judged by the terms of the proposed change and of the content of the submissions.²⁶*

- 167 The High Court observed that councils need scope to deal with the realities of the situation where there may be multiple and often conflicting submissions prepared by persons without professional help. In such circumstances, to take a legalistic view that a council could only accept or reject the relief sought would be unreal.

- 168 As observed in an oft-repeated dictum in *Royal Forest & Bird Protection Society Inc v Southland District Council*:

...it is important that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions should be approached in a realistic workable fashion rather than from the perspective of legal nicety.²⁷

- 169 The Environment Court decision in *Vivid Holdings Ltd (re an application)* is also of assistance for the proposition that relief can be pursued in the general scope between that which is notified and an original submission:

...any decision of the Council, or requested of the Environment Court in a reference, must be:

(a) fairly and reasonably within the general scope of:

²⁶ *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at page 41.

²⁷ *Royal Forest & Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 at 413.

(i) an original submission; or

(ii) the proposed plan as notified; or

(iii) somewhere in between provided that:

(b) the summary of the relevant submissions was fair and accurate and not misleading.²⁸

[footnotes omitted]

170 The local authority (and the Environment Court on appeal) also has the power expressly provided within the legislation to make consequential changes as per clause 10(2)(b) of Schedule 1:

10(2) The decision-

...

(b) may include—

(i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and

(ii) any other matter relevant to the proposed statement or plan arising from the submissions.

171 It is submitted that the wealth of case law on the concept of scope comes down, essentially, to questions of procedural fairness, and ensuring that the process of the plan review in dealing with amendments is fair to the parties submitting and public.

172 The consideration of procedural fairness was discussed in the recent high Court case of *Motor Machinists Ltd v Palmerston North City Council*²⁹ That case was principally concerned with the related issue of whether a submission was 'on' a plan change, but Kós J examined that question in its context of the scope for amendments to plan changes as a result of submissions by reference to the bipartite approach taken in *Clearwater*, namely:

That approach requires analysis as to whether, first, the submission addresses the change to the status quo advanced by the proposed plan change and, secondly, there is a real risk that persons potentially

²⁸ *Re an application by Vivid Holdings Limited* Environment Court, Christchurch, 17/5/1999, C086/99, Judge Jackson at [19].

²⁹ *Motor Machinists Ltd v Palmerston North City Council* [2013] NZHC 1290.

*affected by such a change have been denied an effective opportunity to participate in the plan change process*³⁰

- 173 In particular, his Honour noted that a core purpose of the statutory plan change process is to ensure that persons potentially affected by the proposed plan change are adequately informed of what is proposed. He observed:

[77] . . . It would be a remarkable proposition that a plan change might so morph that a person not directly affected at one stage (so as not to have received notification initially under clause 5(1A)) might then find themselves directly affected but speechless at a later stage by dint of a third party submission not directly notified as it would have been had it been included in the original instrument. It is that unfairness that militates the second limb of the Clearwater test.

- 174 However, this approach does not set any absolute limit:

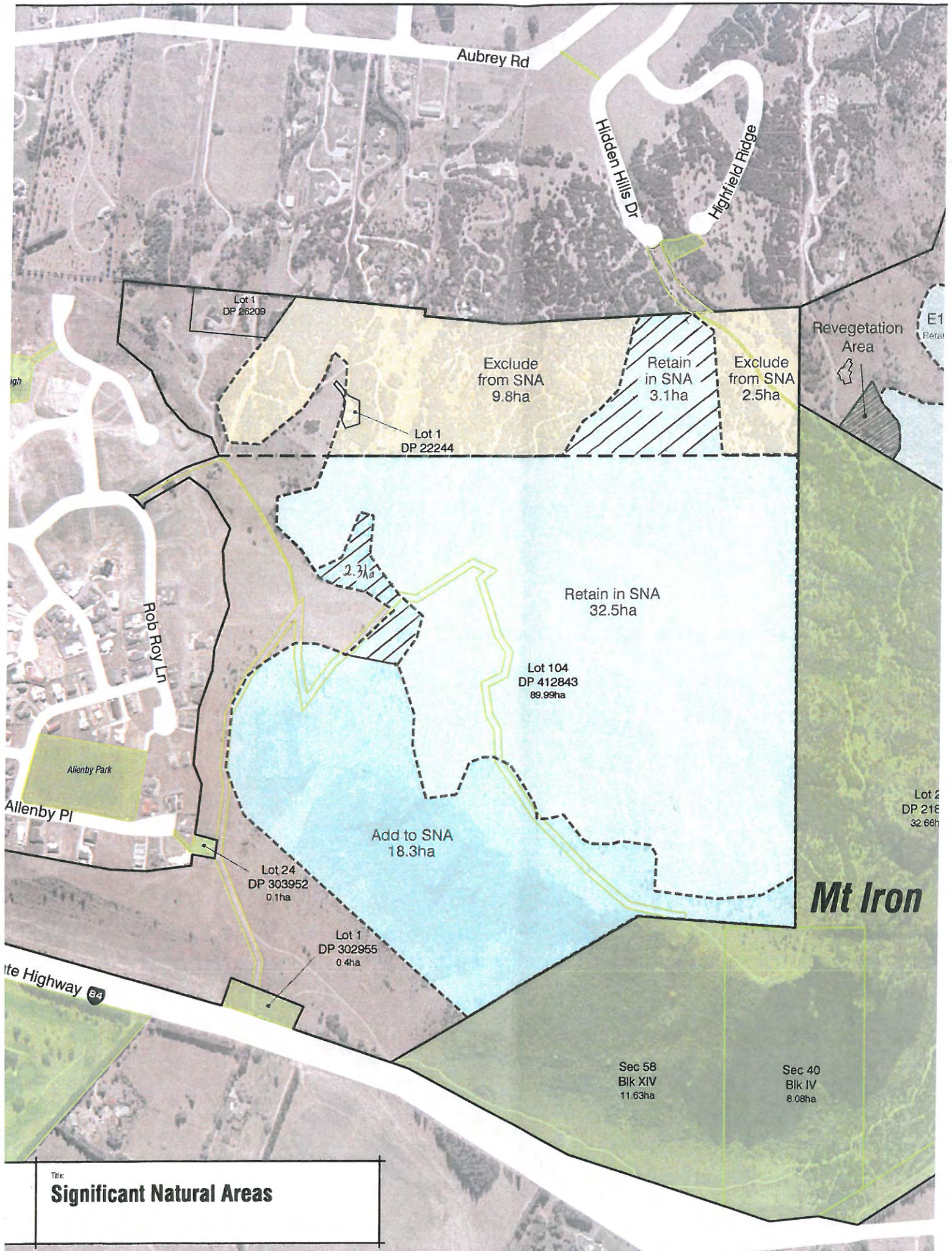
[81] . . . Yet the Clearwater approach does not exclude altogether zoning extension by submission. Incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change. Such consequential modifications are permitted to be made by decision makers under schedule 1, clause 10(2). Logically they may also be the subject of submission.

- 175 It is submitted that much of the relevant case law on scope, including the extracts cited above, related to changes to parts of operative plans rather than a review of an entire plan. The guidance on the limits of consequential amendments needs to be considered carefully in light of the scale of the planning exercise, and it is considered that the review of a plan is necessarily broader for such considerations of scope and consequential amendments. This is also consistent with the Environment Court's commentary in *Motiti Rohe Moana Trust v Bay of Plenty Regional Council*.³¹

³⁰ Ibid, at [91] with reference to *Clearwater Resort Ltd v Christchurch City Council HC Christchurch AP34/02, 14 March 2003*.

³¹ *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2016] NZEnvC 190 at [42] – [45].

Appendix 2
Amended SNA



Title:
Significant Natural Areas

Appendix 3
Draft Easement Agreement

Agreement to Grant Easement

Allenby Farms Limited

Jeffrey Lawrence Cleugh, Lynden Andrew Cleugh & Zita Mary
Cleugh as trustees of The Lynden & Zita Cleugh Family Trust

DRAFT

Parties

- (1) Allenby Farms Limited (**AFL**)
- (2) Jeffery Lawrence Cleugh, Lynden Andrew Cleugh and Zita Mary Cleugh as trustees of The Lynden & Zita Cleugh Family Trust (**Cleughs**)

Agreement

1. Easement

1.1 AFL shall grant the following easements in favour of the Cleughs on the terms and conditions detailed in this clause¹, subject to the satisfaction or waiver of the conditions set out in clause 2:

- (a) a right of way easement (the **Right of Way**) over the following trails (**Trails**) shown on the plan attached at Schedule 1 (**Structure Plan**):
 - (i) Alpha;
 - (ii) Charlie;
 - (iii) Delta
 - (iv) Echo;
 - (v) Foxtrot;
 - (vi) Golf; and
- (b) a right to roam easement (the **Right to Roam**) over the "Protection Areas" shown on the plan attached at Schedule 2 (the **Protection Areas**),

in each case, for the purpose of a walking trail, and shall exclude use by cycles, horses or motorbikes or other motorised transport (other than vehicles required for maintenance purposes which are permitted) (the Right of Way and the Right to Roam each an **Easement** and together, the **Easements**).

1.2 With respect to the Right to Roam, AFL shall retain the right, from time to time, to restrict access to specific parts of the Protection Areas for the purposes of:

- (a) managing health and safety;
- (b) protecting flora and fauna;
- (c) general maintenance.

1.3 The Easements shall:

- (a) be in favour of land owned by the Cleughs legally described as Lot 1 DP 26209 contained in Computer Freehold Register OT18B/176 and any additional land that may be amalgamated with that land into the same title;
- (b) run through that land owned by AFL legally described as Lot 104 DP 412843 contained in Computer Freehold Register 471461 (excluding that part of that land contained within the

Mt Iron Park Rural Lifestyle Zone shown on the Structure Plan) and Lot 4 DP 471320 contained in Computer Freehold Register 7505103 (**AFL Land**);

- (c) allow the public at large (as deemed invitees of the Cleughs) to use the Easements; and
 - (d) require AFL to repair and maintain the Trails to standard "Walking Tracks" under SNZ HB 8630:2004 notwithstanding that the public will be users.
- 1.4 AFL shall meet all costs in respect of the survey and registration of the Easements.
- 1.5 Following this Agreement becoming unconditional, AFL will procure its solicitors to prepare the Easement instruments for registration, with such instruments to be provided to the Cleughs for their approval (such approval not to be withheld provided the terms of the instruments are as set out in, and anticipated by, this Agreement).
- 1.6 The term (**Term**) of this Agreement shall run from the date of this Agreement until the earlier of the:
- (a) date that this Agreement is terminated (either by way of lack of satisfaction of conditions or otherwise); or
 - (b) date that the Easements are registered.
- 1.7 The Easements shall otherwise be on the standard terms and conditions applicable to public walkway easements (pursuant to the Land Transfer Regulations 2002 and otherwise) as approved by the solicitors acting for AFL (acting reasonably).

2. Condition

- 2.1 This Agreement is subject to and conditional upon:
- (a) AFL's proposed Mt Iron Park Rural Lifestyle Zone being confirmed and inserted into the District Plan as a consequence of District Plan Review hearings held during 2015 - 2017; and
 - (b) Subdivision consent being obtained and being implemented (in full or in part) under the provisions of that zone.

These conditions are inserted for the benefit of AFL and may be waived at any time by notice in writing by AFL.

3. Privity

- 3.1 For the purposes of the Contracts (Privity) Act 1982, Queenstown Lakes District Council is entitled to enforce against AFL and the Cleughs each provision of this Agreement. However, the consent of Queenstown Lakes District Council does not need to be obtained for any amendment made to this Agreement which does not undermine the fundamental public right to:
- (a) use the Trails under the Right of Way; and
 - (b) roam under the Right to Roam,
- as broadly set out in this Agreement.
- 3.2 This Agreement cannot be cancelled without the written consent of Queenstown Lakes District Council.

4. Miscellaneous

- 4.1 The terms and conditions of this Agreement shall not merge upon the registration of the Easements except where stated in this Agreement.
- 4.2 In the event that any part of this Agreement or the Easements become void, invalid or unenforceable at any time, that will not affect the validity of the rest of this Agreement or the Easements.
- 4.3 Each party will, from time to time sign, execute, and procure all such further documents, and shall undertake all such acts, matters and things as shall be required to effect the provisions of this Agreement.
- 4.4 Any dispute arising between the parties to this Agreement which touches the construction, meaning or effect of this Agreement or the rights or liabilities of the parties to this Agreement shall unless otherwise specifically agreed in writing between the parties be resolved pursuant to the dispute resolution procedure for easements contained in Schedule 4 of the Land Transfer Regulations 2002.
- 4.5 The Cleughs agree that, notwithstanding any rights pursuant to the Land Transfer Act 1952, the Cleughs may not register a caveat against the title to the AFL Land.
- 4.6 AFL will obtain the consent to the registration of the Easements of any chargeholders, mortgagees and encumbrance holders of any type which have or may acquire an interest in the AFL Land (at its cost).

5. Transfer of rights and obligations

- 5.1 At any time during the Term, each of the parties will notify any other third party (**Third Party**) acquiring or intending to acquire an interest in any part its land (including any potential mortgagee) of the terms and conditions of this Agreement.
- 5.2 Neither party will dispose of the whole or any part of its interest in its land (including granting any mortgage or other encumbrance) during the Term except with the prior written consent of the other party which will not be withheld where the Third Party acquiring the interest or estate enters into a Deed of Covenant (prepared by the transferring party's solicitors at the transferring party's cost) where the Third Party undertakes and agrees that it:
- (a) will be bound by and comply with the term of this Agreement;
 - (b) will not assign or transfer or in any way dispose of the whole or part of its estate or interest in the relevant land without first obtaining a like Deed of Covenant from any part acquiring the estate or interest; and
 - (c) is not entitled to any payment from the other party in respect of this Agreement or the Easements.

6. Notices

- 6.1 A notice to be given under this Agreement shall be in writing and delivered to the addresses listed below or to such other address as either party may notify to the other in writing, and in any event shall be sufficiently given or served if actually received by the party.

For AFL

Name: Allenby Farms Limited

Address: C/- Anderson Lloyd, Te Ahi House, Level 2, 13 Camp Street, Queenstown 9300

For the Cleughs

Name: Jeffrey Lawrence Cleugh, Lynden Andrew Cleugh and Zita Mary Cleugh

Address: C/- Anderson Lloyd, Te Ahi House, Level 2, 13 Camp Street, Queenstown 9300

7. Limitation of liability

7.1 The liability of Jeffrey Lawrence Cleugh under this Agreement shall be limited to the assets that he holds in his capacity as independent trustee of The Lynden & Zita Cleugh Family Trust from time to time so that he shall not be personally liable hereunder.

Attestations

Signed on behalf of **Allenby Farms Limited** by its Managing Director in the presence of:

Lynden Andrew Cleugh

Signature of witness

Name of witness

Occupation

Address

Signed by **Jeffrey Lawrence Cleugh** as trustee of The Lynden & Zita Cleugh Family Trust in the presence of:

Jeffrey Lawrence Cleugh

Signature of witness

Name of witness

Occupation

Address

Signed by **Lynden Andrew Cleugh** as trustee of The Lynden & Zita Cleugh Family Trust in the presence of:

Lynden Andrew Cleugh

Signature of witness

Name of witness

Occupation

Address

Signed by **Zita Mary Cleugh** as trustee of The Lynden & Zita Cleugh Family Trust in the presence of:

Zita Mary Cleugh

Signature of witness

Name of witness

Occupation

Address

Schedule 1 – Mt Iron Park Rural Lifestyle Zone Structure Plan

DRAFT

Appendix 4
Pages 5-2 and 5-3 ODP

vi **The Management of Surface of Waterbodies**

Surface of water rules are generally aimed at the protection of the natural, recreational and amenity characteristics of the different waterbodies of the District and the surrounding environment.

Controls over water-based activities are considered to be necessary to ensure that any adverse effects on the wildlife, natural, recreational, visual, amenity values and safety values of the District's lakes and rivers are kept at a minor level.

Commercial boating activities are to be subject to assessment through the resource consent process. Controls have differentiated between private and commercial operations in terms of their environmental effects, because commercial activities have the potential to be more regular, concentrated, numerous and continuous throughout much of the year, compared with private recreation; and because many of the craft used in commercial operations are larger and more capable of greater impacts upon the environment. Frequent and regular use of waterbodies by commercial activities have the potential to conflict with other users or values of the waterbody or adjoining land – intruding into the experience sought by other users of affecting wildlife, amenity or natural conservation values. Public safety may also be compromised by a number of boating operators and/or boats using the same waterbody, where it is confined or has visibility limitations. Fishing guiding has been exempt from this requirement for resource consents for commercial boating activities because it has no more than a minor effect on its environment, it is dispersed across the waterbodies of the District, and does not result in concentrated effects in any one locality.

All structures or moorings on waterbodies are considered to require resource consent assessment, because of their ability to impact upon landscape, recreational safety and conservation values associated with a shoreline or shore waters. Use of all moored boats for permanent or long-term residence is of concern in relation to other lake and lakeshore users. Such concerns relate to visual impacts, effluent disposal and loss of public enjoyment of the adjoining lakeshore and waters, to the extent it is considered that such uses should be excluded.

Refer also to Section 4.6 Surface of Waterbodies for reasons for policies and implementation methods.

5.2 Rural General and Ski Area Sub-Zone - Objectives and Policies

Additional relevant objectives and policies relating to the following matters are found in the corresponding Parts of the District Plan:

Natural Environment	- Part 4.1
Landscape and Visual Amenity	- Part 4.2
Open Space and Recreation	- Part 4.4
Surface of Lakes and Rivers	- Part 4.6
Waste Management	- Part 4.7
Natural Hazards	- Part 4.8
Heritage	- Part 13
Hazardous Substances	- Part 16

Objective 1 - Character and Landscape Value

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

Policies:

- 1.1 Consider fully the district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.
- 1.2 Allow for the establishment of a range of activities, which utilise the soil resource of the rural area in a sustainable manner.
- 1.3 Ensure land with potential value for rural productive activities is not compromised by the inappropriate location of other developments and buildings.

- 1.4 Ensure activities not based on the rural resources of the area occur only where the character of the rural area will not be adversely impacted.
- 1.5 Provide for a range of buildings allied to rural productive activity and worker accommodation.
- 1.6 Avoid, remedy or mitigate adverse effects of development on the landscape values of the District.
- 1.7 Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.
- 1.8 Avoid remedy or mitigate the adverse effects of the location of structures and water tanks on skylines, ridges, hills and prominent slopes.
- 1.9 Ensure adverse effects of new commercial Ski Area activities on the landscape and amenity values are avoided or mitigated.

Implementation Methods

The objective and associated policies will be implemented through a number of methods including:

(i) District Plan

- (a) The identification of Rural General, Rural Lifestyle, Rural Residential, Ski Area Sub-Zones objectives, policies and methods in the District Plan.
- (b) The provision of rules relating to subdivision, activities and the erection of buildings in the Rural General Zone.
- (c) To encourage the Regional Council in the preparation of Regional Plans and guidelines.
- (d) Provision of rules to control subdivision and the provision of controls and performance standards to protect the amenity and environmental quality of rural areas.

- (e) Advise and give information to local community groups, landholders and organisations.

(ii) Other Methods

To encourage appropriate organisations and people to:

- (a) Monitor intensive farming and factory farming operations and disseminate information and guidelines regarding acceptable management practice.
- (b) Do further research into identifying trends between the state of the environment and changes in land use patterns or practices.

Explanation and Principal Reasons for Adoption

There is a need to promote the integrated management of the diversity of resources in the rural area, including existing and potential land use activities. A wide range of activities are anticipated and allowed for in the rural areas. Standards are included and may be monitored, to ensure the management regimes undertaken are sustainable.

New commercial Ski Area activities have the potential to adversely affect amenity and landscape values of the District and can represent an inefficient use of infrastructure.

Objective 2 - Life Supporting Capacity of Soils

Retention of the life supporting capacity of soils and/or vegetation in the rural area so that they are safeguarded to meet the reasonably foreseeable needs of future generations.

Policies:

- 2.1 Avoid, remedy or mitigate adverse effects of subdivision and development on the life-supporting capacity of the soils.

Appendix 5
Condition 10 RM130177



DECISIONS OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

CHANGE/CANCELLATION OF CONDITIONS – SECTION 127

NOTIFICATION UNDER s95 AND DETERMINATION UNDER s104

RESOURCE MANAGEMENT ACT 1991

Applicant:	C and P Martin
RM reference:	RM150202
Application:	Application under section 127 of the Resource Management Act 1991 (RMA) to change Condition 10 of resource consent RM130177 to increase the time allowed to submit an ecological management plan to Council.
Location:	Aubrey Road, Wanaka
Legal Description:	Lot 4 Deposited Plan 471320 held in Certificate of Title 639353
Zoning:	Rural General
Activity Status:	Discretionary
Decision Date:	20 April 2015

SUMMARY OF DECISIONS

1. Pursuant to sections 95A-95F of the RMA the application will be processed on a **non-notified** basis given the findings of Section 6.0 of this report. This decision is made by Anita Vanstone, Senior Planner, on 20 April 2015 under delegated authority pursuant to Section 34A of the RMA.
2. Pursuant to Section 127 of the RMA, consent is **GRANTED** subject to the change to conditions outlined in Section 7.4 of this decision. An updated set of conditions of RM130177 is provided in Appendix 1 of this decision. The consent only applies if the conditions outlined are met. To reach the decision to grant consent the application was considered (including the full and complete records available in Council's electronic file and responses to any queries) by Anita Vanstone, Senior Planner, as delegate for the Council.

The land use consent approved under resource consent RM130177 was found to be generally aligned with the relevant objectives and policies of the zone which seek to protect and enhance the landscape and avoid or mitigate adverse effects. The proposed changes to conditions do not cause any additional effects beyond those assessed in the consented proposal.

The changes do not affect the consistency of the proposal in terms of the objectives and policies of the District Plan.

7.3 PART 2 OF THE RMA

Future development will promote sustainable management of natural and physical resources within the site, whilst ensuring that social, economic, and cultural well-being is provided for. The proposal will avoid, remedy, and mitigate adverse effects of activities on the environment. Overall, the proposal is in keeping with the purpose and principles of the RMA.

7.4 DECISION ON VARIATION PURSUANT TO SECTION 127 OF THE RMA

Consent is **granted** for the application by Catherine and Peter Martin to change Condition 10 of resource consent RM130177, such that:

- 1 Condition 10 of resource consent RM130177 is amended to read as follows (deleted text struck-through, added text underlined):
10. *An Ecological Management Plan for the on-going maintenance of the site shall be submitted to Council for approval within ~~six~~ 21 months of the issue date of this resource consent (being 16 October 2015). The purpose of the Ecological Management Plan shall be to implement ecological restoration, ensure reduction in fire safety hazard, implement wilding pine control and pest management strategies to enhance the natural character and amenity values of the site. All works approved within the Ecological Management Plan shall be implemented within timeframes specified therein, with the intention that work shall commence within one year or less from the completion of the construction of the dwelling approved by this resource consent (except where specified in condition 10a). The Ecological Management Plan shall set out methods and timeframes of work in order to:*
 - *Remove or kill all wilding exotic trees and broom from the site and prevent any future infestation.*
 - *Foster the continued growth of native vegetation within the site such that the area of the site currently covered in this vegetation (as shown on Appendix 3 of the Landscape and Visual Effects Assessment Report prepared by Vivian+Espie and dated 29 March 2013) incrementally increases in density, biodiversity and self-sustainability of native species over time. This shall include the on-going management of plant and animal pests.*
 - *Maintain the area of the site currently covered in exotic grass (as shown on Appendix 3 of the Landscape and Visual Effects Assessment Report prepared by Vivian+Espie and dated 29 March 2013) either in its current state with no further invasion by exotic species, or in a state that incrementally converts it to a native vegetation cover over time.*
 - *Plant the areas shown as "proposed vegetation" on the Local Site Plan and Landscape/Section Key and Earthworks Plan prepared by Eliska Lewis Architects Ltd and RM130177 K and P Martin dated 27/11/2013 so as to create areas of dense, self-sustaining kanuka-dominated native bush. The only exception to this is the areas marked 'A' adjoining the dwelling planted which shall be planted in native species of low flammability. All planting shall be completed within one year or less from the completion of the construction of the dwelling approved by this resource consent.*

As a minimum, the submitted Ecological Management Plan shall include details of the following:

- *Methods proposed to remove or kill existing wilding exotic trees and broom from the site and to exclude these from the site on a year to year basis.*
- *Methods to exclude and/or suitably manage pests within the site in order to foster growth of native vegetation within the site.*

- A programme or list of maintenance work to be carried out on a year to year basis in order to bring about the goals set out above.
- Details of species and plant densities to be planted in the areas of "proposed vegetation".

Advice note

- All other conditions of RM130177 including Condition 10a shall continue to apply.

8. OTHER MATTERS

Local Government Act 2002: Development Contributions

This proposal is not considered a "Development" in terms of the Local Government Act 2002 as it will not generate a demand for network infrastructure and reserves and community facilities.

For the forgoing reasons a Development Contribution is not required.

Administrative Matters

The costs of processing the application are currently being assessed and you will be advised under separate cover whether further costs have been incurred.

This resource consent is not a consent to build under the Building Act 2004. A consent under this Act must be obtained before construction can begin.

The Council will contact you in due course to arrange the required monitoring. It is suggested that you contact the Council if you intend to delay implementation of this consent or reschedule its completion.

If you have any enquiries please contact Quinn McIntyre on phone (03) 441 0499 or email quinn.mcintyre@qldc.govt.nz.

Report prepared by



Quinn McIntyre
SENIOR PLANNER

Decision made by



Anita Vanstone
SENIOR PLANNER

APPENDIX 1 – Updated conditions of resource consent RM130177

APPENDIX 2 - Applicant's AEE

Appendix 6

RM 130177 Ecological Management Plan

**ENVIRONMENTAL MANAGEMENT PLAN
FOR LITTLE MT IRON, AUBREY ROAD,
CENTRAL OTAGO**



providing
outstanding
ecological
services to
sustain
and improve our
environments



ENVIRONMENTAL MANAGEMENT PLAN FOR LITTLE MT IRON, AUBREY ROAD, CENTRAL OTAGO



Partly controlled radiata pine on the steep eastern slopes of Little Mt Iron

Contract Report No. 3722

October 2016

Project Team:

Kelvin Lloyd - Report author

Prepared for:

Kate and Peter Martin
Wanaka

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1. INTRODUCTION

Kate and Peter Martin have obtained a resource consent (RM130177) to construct a residential development on a property (28.5 ha) adjacent to Aubrey Road, Little Mt Iron, Wanaka. Condition 10 of the resource consent requires submission of an ecological management plan (EMP) to the District Council for approval, addressing ecological restoration, fire safety, wilding pine control, and pest management strategies to enhance the natural character and amenity values of the site. Specifically, the EMP needs to set out methods and timeframes of work in order to:

- Remove or kill all wilding exotic trees and Scotch broom (*Cytisus scoparius*) at the site and prevent any future infestations.
- Foster the continued growth of indigenous vegetation within the site such that the area of the site currently covered in this vegetation incrementally increases in density, biodiversity, and self-sustainability of indigenous species over time. This shall include the ongoing management of pest plants and animals.
- Maintain the area of the site currently covered in exotic grass either in its current state with no further invasion by exotic species, or in a state that incrementally converts it to an indigenous vegetation cover over time.
- Plant the areas shown as ‘proposed vegetation’ so as to create areas of dense, self-sustaining, kānuka (*Kunzea serotina*)-dominated indigenous bush. The only exception to this is the areas marked ‘A’ adjoining to the dwelling which shall be planted in indigenous species of low flammability. All planting shall be completed within one year or less from the completion of the construction of the dwelling.

As a minimum, the EMP shall include details of the following:

- Methods proposed to remove or kill existing wilding exotic trees and broom from the site and to exclude these from the site on a year to year basis.
- Methods to exclude and/or suitably manage pests within the site in order to foster growth of indigenous vegetation within the site.
- A programme or list of maintenance work to be carried out on a year-to-year basis in order to bring about the goals set out above.
- Details of species and plant densities to be planted in the areas of ‘proposed vegetation’.

This report addresses the above matters.

2. METHODS

Relevant information on the site was reviewed, followed by a site visit on 10 June 2015. Western slopes and the upper slopes on the east of the site were traversed on foot, with the steep eastern slopes viewed from vantage points.

Vascular plants observed during the site visit were recorded, but due to the winter season, many summer-green species - such as orchids and annual herbs and grasses - would not have been observed. Approximately two hours were spent at the site.

3. SITE CONTEXT

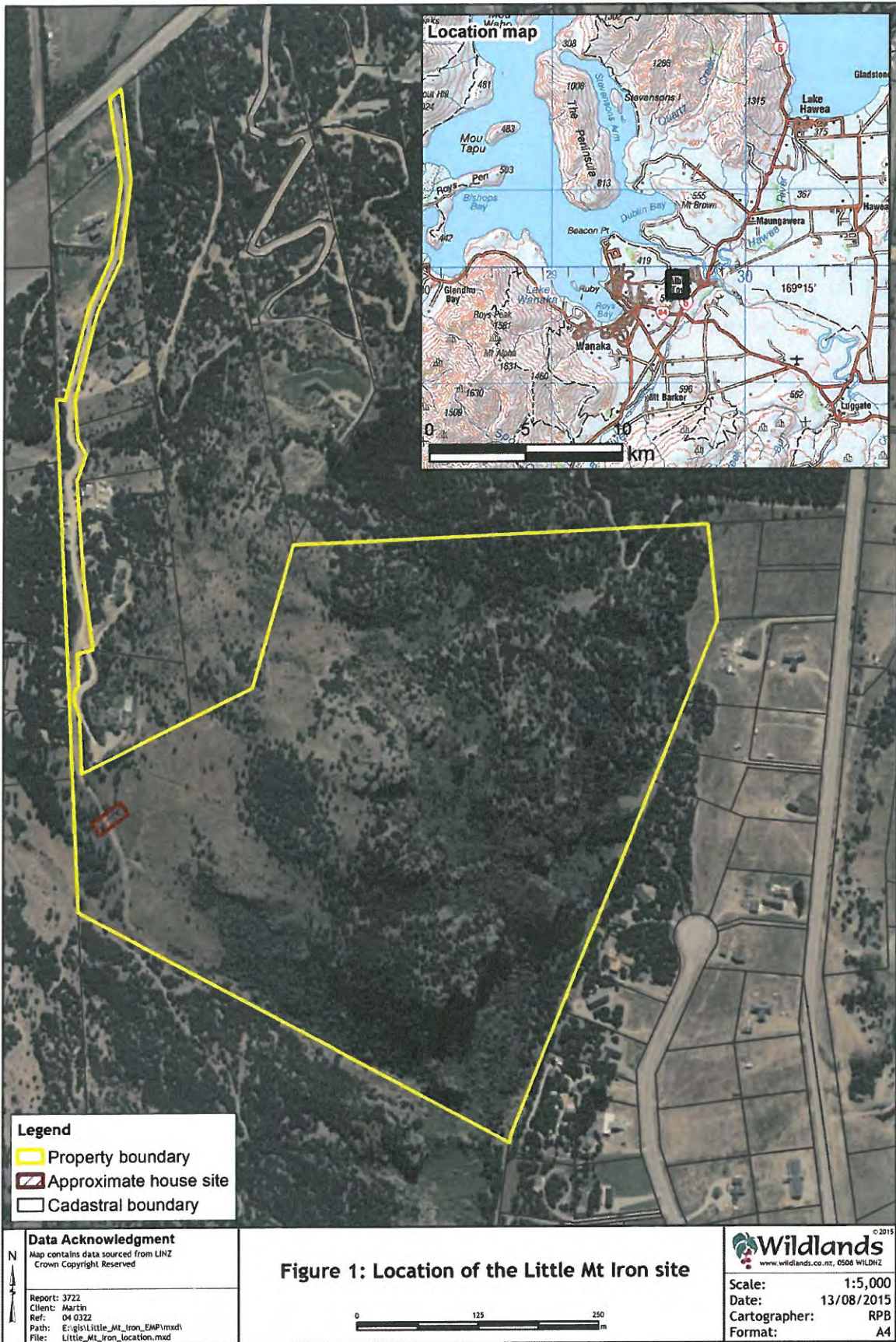
Mount Iron comprises a 'roche moutonnée' landform, surrounded by glacial outwash gravels, caused by glacial ice flowing from the north, which smoothed the north-western slopes and steepened the south-eastern slopes. "Little Mount Iron" is not a gazetted name, but denotes the north-western summit (507 m above sea level; a.s.l.) of Mount Iron, which is separated from the southern summit (548 m a.s.l.) by a saddle at approximately 390 m a.s.l.

The site lies in the Pisa Ecological District, but is very close to the boundary of the Lindis Ecological District. Both of these districts lie in the Central Otago Ecological Region. The Pisa Ecological District has a generally dry sub-continental climate with prevailing north-west winds, and an annual rainfall of 380-1,500 mm that varies over a strong altitudinal gradient (McEwen 1987).

The c.27 ha Little Mount Iron site is located on Aubrey Road, Wanaka (Figure 1). Residential housing on the lower slopes of Little Mount Iron is mostly embedded in kānuka forest, which appears to have developed into the dominant vegetation cover relatively recently. Mt Iron Scenic Reserve bounds the site to the south, while residential development is present to the east, west, and north (Figure 1). The Hikuwai Conservation Area, comprising kānuka shrubland on outwash terraces, is on the other side of Aubrey Road to the north.

4. INDIGENOUS VEGETATION AND HABITATS

Currently the site is dominated by swathes of kānuka scrub and shrubland, interspersed with areas of rank exotic grassland and fernland. Rock outcrops and rocky fellfield are prominent on the summit and steep eastern faces of Little Mount Iron and gaps in shrubland on the eastern side are mostly occupied by bracken (*Pteridium esculentum*) fernland. These vegetation and habitat types are described in more detail below.



4.1 Kānuka scrub and shrubland

Dense areas of kānuka form a closed-canopy scrub with bare ground and litter underneath, or sometimes with bryophyte mats (Plate 1). Occasional *Coprosma crassifolia* shrubs are also present. In more open kānuka shrubland stands, matagouri (*Discaria toumatou*), *Coprosma crassifolia*, and sweet brier (*Rosa rubiginosa*) are common, and patches of exotic grassland occur (Plate 2). Radiata pine (*Pinus radiata*) and Douglas fir (*Pseudotsuga menziesii*) trees are emergent from this vegetation in places.



Plate 1: Ground layer dominated by bryophytes beneath kānuka scrub.



Plate 2: Scattered kānuka in exotic grassland on the lower western slopes of Little Mount Iron, with kānuka scrub visible at the top of the photograph. The wooden pegs mark part of the proposed house site.

4.2 Exotic grassland

Rank exotic grassland is principally found on the west-facing slopes of Little Mount Iron. This grassland comprises scattered hard tussock (*Festuca novae-zelandiae*) and pātītī taranui (*Anthosachne solandri*) in a matrix of browntop (*Agrostis capillaris*), with frequent lichens and scattered catsear (*Hypochaeris radicata*). Scattered mature and regenerating kānuka and occasional sweet brier (*Rosa rubiginosa*) are present in these grassland areas (Plate 2).

4.3 Bracken fernland

Patches of bracken fernland occur on the rocky northern and eastern aspects of site, typically on colluvial deposits below rock outcrops. Shrubs of Scotch broom, sweet brier, porcupine shrub (*Melicytus alpinus*), matagouri, and mingimingi (*Coprosma propinqua*) typically emerge from these areas of fernland, and sweet vernal (*Anthoxanthum odoratum*) occurs in gaps.

4.4 Fellfield

Areas of fellfield, mostly comprising lichen-covered rocks, are present on the summit of Little Mount Iron. Browntop, scarlet pimpernel (*Anagallis arvensis*), rock fern (*Cheilanthes sieberi*), and sweet brier occur sparsely among the rocks.

4.5 Ephemeral wetland

An artificially-created ephemeral wetland is located in the saddle between Mt Iron and Little Mt Iron, just inside the property. The ephemeral wetland has formed in a drainage channel and a small depression at the end of it. Turf vegetation growing in and on the margins of the channel and depression include typical ephemeral wetland species such as *Epilobium komarovianum*, *Galium perpusillum*, and *Euchiton traversii*, as well as other indigenous species of damp sites (*Acaena fissistipula*, *Hydrocotyle novae-zelandiae*), and exotic species including scarlet pimpernel, Scotch thistle (*Cirsium vulgare*), and centaury (*Centaurium erythraeum*).



Plate 3: Ephemeral wetland turf lines this drainage channel and sump area.

5. RESTORATION APPROACH

5.1 Woody weed control

Several woody weed species are present on the site (Table 1). Recent control of woody weeds was observed at the site on the day of the site visit, with several radiata pine trees having been felled or poisoned, and Scotch broom controlled by spraying with herbicide. Larger radiata pine trees on the western slopes await control, and patches of emergent radiata pine and Douglas fir trees are present on the steep east-facing slopes (Plate 4). Some of these trees are dying due to basal bark application of herbicide or ringbarking (Plate 5). Control techniques for these species are described in more detail below.

Table 1: Woody weed species present at the Little Mt Iron site and their potential control targets and control methods.

Species	Common Name	Control Target	Method
<i>Crataegus monogyna</i>	Hawthorn	Control to zero density	Fell, treat stump with herbicide.
<i>Cytisus scoparius</i>	Scotch broom	Control in open habitats	Foliar spray with herbicide in open habitats.
<i>Cotoneaster simonsii</i>	Khasia berry	Control to zero density	Foliar spray with herbicide in open habitats.
<i>Pseudotsuga menziesii</i>	Douglas fir	Control to zero density	Fell.
<i>Pinus radiata</i>	Radiata pine	Control to zero density	Fell or ringbark large trees, basal bark spray smaller trees.



Plate 4: Douglas fir (foreground) and radiata pine trees on the eastern slopes of Little Mt Iron.



Plate 5: Dying and healthy radiata pine trees on the eastern slopes of Little Mt Iron.

5.1.1 Conifers

Wilding conifer trees can be felled or killed by basal bark application of herbicide (for example X-tree basal bark herbicide). Basal bark spraying must be undertaken in dry weather, as wet conditions result in an emulsion on the bark surface that prevents uptake of herbicide. Large trees that are not easily felled or treated with basal bark herbicide can be ringbarked, making sure that cuts into the wood completely girdle the tree.

5.1.2 Hawthorn

Hawthorn trees can be killed either by felling and treating the stump with appropriate herbicide to stop resprouting, or by application of an appropriate basal bark herbicide. As discussed above, basal bark spraying needs to be undertaken in dry weather. Only two hawthorn trees were observed during the site visit, both of which were mature trees located close to the southern boundary of the site, near the ephemeral wetland described above (Plate 3). Additional hawthorn trees are likely to have established in places on the steep eastern slopes, which were not visited.

5.1.3 Scotch broom and khasia berry

Spraying with herbicide is appropriate for the control of Scotch broom and khasia berry (*Cotoneaster simonsii*). Care should be taken to avoid accidentally spraying adjacent kānuka shrubs and trees, as kānuka is very susceptible to herbicide. Where khasia berry and Scotch broom occur within a matrix of mature and regenerating kānuka, there is no need to control these species, as ongoing development of kānuka

scrub will see them excluded due to shading. Where Scotch broom and khasia berry occur as discrete individuals or patches away from areas of kānuka, they can be controlled by spraying with herbicide. Where these shrubs occur directly adjacent to kānuka, alternative techniques, such as application of basal bark herbicide, or application of herbicide to cut stumps, should be used to reduce non-target effects of herbicide on kānuka.

5.2 Fostering natural succession

As described above, on the east-facing slopes of Little Mt Iron, natural succession is the best approach to control shrub weeds such as Scotch broom and khasia berry. These species do not persist beneath a shady tree canopy, so allowing kānuka-dominant vegetation to increase in density through natural succession is the easiest method of controlling them, and reduces the potential for non-target effects of herbicide application. Natural succession to more diverse and ecologically important vegetation and habitats can also be fostered by planting additional, ecologically-appropriate indigenous tree species (Table 2), and by controlling rabbits (*Oryctolagus cuniculus*) and hares (*Lepus europaeus occidentalis*) on an ongoing basis.

5.3 Rabbit and hare control

Rabbit and hare control is essential if natural colonisation by any species other than kānuka is to be fostered across the site. Rabbits and hares are typically controlled by a combination of poisoning and night shooting in rural Otago. A suitably-qualified and fully-licensed rabbit and hare control contractor should be engaged to undertake ongoing control such that rabbit densities are maintained at low levels. Otago Regional Council rules require that all land occupiers maintain rabbit densities at a level below Modified McLean Scale 3. At this level, rabbit pellet heaps are 10 m or more apart, and rabbits are occasionally seen.

5.4 Grassland management

Areas of open grassland on the western slopes are currently being managed by controlling Scotch broom and wilding conifers. This type of control is all that is needed to maintain these areas as grassland. Scattered regeneration of kānuka is present in these grasslands and natural succession processes will allow the extent and density of kānuka to increase slowly in these areas over time.

5.5 Planting to increase biodiversity across the wider site

Kānuka shrubland occurs naturally at the site because it is tolerant of grazing and regenerates after fire, but it may not have been the dominant species historically. A range of other indigenous tree and shrub species could therefore also be planted on the site. Indigenous trees that would have potentially occurred at the site, and which could be planted, include kowhai (*Sophora microphylla*), cabbage tree (*Cordyline australis*), kohuhu (*Pittosporum tenuifolium*), lowland ribbonwood (*Plagianthus regius*), matai (*Prumnopitys taxifolia*), Hall's totara (*Podocarpus laetus*), fierce lancewood (*Pseudopanax ferox*), and broadleaf (*Griselinia littoralis*) (Table 2). Kowhai, cabbage tree, Hall's totara, kohuhu, and broadleaf are naturally present elsewhere in the area, but lowland ribbonwood, matai, and fierce lancewood are

species that would very likely have been present historically in appropriate habitats. Thus the Little Mt Iron site would provide an opportunity to reintroduce these species to a semi-natural inland Otago environment. The advantage of including a range of different species is that if some perform poorly at the site, this can be compensated for by the better performance of other species.

Table 2: Indigenous tree species suitable for planting at the Little Mount Iron site.

Species	Common Name	Notes
<i>Cordyline australis</i>	Cabbage tree	Fast initial height growth, food source for indigenous birds, will grow in most locations within the site.
<i>Pittosporum tenuifolium</i>	Kohuhu	Moderate growth rate, hardy, will grow in most locations within the site.
<i>Prumnopitys taxifolia</i>	Matai	Slow-growing, long-lived, fruit source for indigenous birds when mature. Best planted in sheltered microhabitat in deeper soils.
<i>Pseudopanax ferox</i>	Fierce lancewood	Moderate growth rate, fruit source for indigenous birds when mature. Best planted on deeper soils.
<i>Griselinia littoralis</i>	Broadleaf	Hardy, exposure tolerant, will grow in most locations within the site
<i>Plagianthus regius</i>	Lowland ribbonwood	Fast growth on fertile soils, better planted in deeper soils.
<i>Podocarpus laetus</i>	Hall's totara	Slow growing but hardy, fruit source for indigenous birds when mature, will grow in most locations within the site.
<i>Sophora microphylla</i>	Kowhai	Slow growth, can grow on stony sites, important food source for indigenous birds.

The species listed in Table 2 can be planted in scattered areas around the site so long as these areas provide suitable habitat (suitable habitat is indicated in Table 2). The aim of these plantings would be to establish indigenous species historically present at the site and to provide future seed sources for natural colonisation of the site by these species. If 20 individuals of each of the species listed in Table 2 were established across the site, this should provide a meaningful seed source once these trees are mature.

5.6 Planting of low-flammability species in area 'A'

5.6.1 Qualities of low-flammability and flammable plant species

Plantings close to the proposed residence should be made up of fire-tolerant or fire-resistant species. The following types of plants are less likely to catch alight and burn (Fogarty 2001):

- Plants with high mineral or salt content.
- Plants with fleshy or watery leaves.
- Plants with thick insulating bark.
- Plants which have their lowest branches clear of the ground.

- Plants with dense crowns.

Plants which are more likely to burn include:

- Those with fibrous, loose bark.
- Those with volatile oils in their leaves.
- Those with volatile, resinous foliage.
- Those with dry foliage.
- Those which retain or accumulate dead branches, leaves and twigs.

Plants that shed copious quantities of dry leaf or twig litter can also assist the spread of grass fires by leaving abundant dry fuel at ground level, which may be sufficient for fire to climb into the tree canopy. For example, cabbage trees are typically associated with an abundant litter of dry leaves that burn readily. These leaves are readily moved by wind over open ground and if partially alight, could potentially be responsible for establishment of spot fires in advance of the fire front.

Flammability of a selection of indigenous plant species is reported on by Fogarty (2001), who surveyed fire managers and asked them to classify plant species on the basis of flammability. Appendix 2 summarises the findings of Fogarty (2001).

5.6.2 Low-flammability plant selection

Many of the species that are ecologically-suited to the site have high flammability (see Appendix 2), which precludes their use close to the proposed residence due to their contribution to fire danger. Suitable indigenous plant species that are likely to have relatively low flammability and which could be used close to the proposed residence in areas 'A' are listed in Table 3. These species include a range of creeping herbs, shrubs, and tree species.

Table 3: Low-flammability indigenous species suitable for planting close to the proposed residence.

Species	Common Name	Notes
<i>Acaena juvenca</i>		Partially shade tolerant creeping herb.
<i>Carmichaelia petriei</i>	Native broom	Shrub of dry habitats.
<i>Coprosma crassifolia</i>		Shrub of dry habitats.
<i>Hebe rakaiensis</i>		Bushy, rounded shrub.
<i>Melicytus alpinus</i>	Porcupine shrub	Low shrub.
<i>Muehlenbeckia axillaris</i>		Ground cover herb of gravelly habitat.
<i>Pseudopanax ferox</i>	Fierce lancewood	Moderate growth rate, fruit source for indigenous birds when mature.
<i>Griselinia littoralis</i>	Broadleaf	Hardy, exposure tolerant, tree.
<i>Plagianthus regius</i>	Lowland ribbonwood	Fast growing tree on fertile soils, better planted in deeper soils.
<i>Discaria toumatou</i>	Matagouri	Prickly shrub.
<i>Sophora microphylla</i>	Kowhai	Slow growing tree of dry habitats.

5.6.3 Planting matrix

The matrix in which these species are planted in areas 'A' should also be considered. A matrix of gravel or bark chips would have low-flammability. Ideally, no substrate

colonisable by exotic grasses should be left between plants, as dead grass foliage is highly flammable. Any dead material accumulating in the planted areas should be periodically removed so as to prevent the build up of fuel at ground level.

5.7 Planting guidelines

The primary risk to plantings at this dry site is moisture deficit during establishment. Newly-planted trees often suffer from water deficiency because their root systems are constrained and not capable of accessing more distant water resources. Access to water in the early stages of growth can help them to get through this phase until their root systems spread more widely. Other threats include pest animals and weeds. The following strategies should be adopted to increase the success of plantings at the site.

5.7.1 Ecosourcing

Propagation of the above species should be from populations found in the Pisa Ecological District, or from other populations in Otago for species that are no longer naturally found in this district. Ecosourcing helps to ensure that plants are locally adapted to the site, and prevents genetic mixing of populations from different sources, which may dilute the effectiveness of any local adaptations.

5.7.2 Plant size

Trees grown in PB3 bags or smaller should be used at this site, as larger trees are likely to suffer greater water stress, and be more exposed to wind. In this dry habitat, competition for light from exotic grasses is less important, so larger initial plant sizes are not required.

5.7.3 Planting densities

Where dense kānuka-dominant indigenous forest is to be restored in the areas adjacent to the proposed residence, the species listed in Table 2 should be planted at 1 m spacing. To achieve kānuka dominance, kānuka saplings should make up at least 70% of the plantings. The plant species listed in Table 3 should be densely planted (no more than 1 m spacing) in area 'A' to establish a fire-resistant buffer against any grass fires spreading across the site. Dense planting will reduce colonisation by weeds, reducing maintenance requirements in the long-term. In other areas, the plant species listed in Table 2 can be planted singly or in small clusters, because their primary purpose is to add ecological diversity to the site and act as seed sources for natural colonisation of the site in the longer term.

5.7.4 Hardening off

Plants need to be hardened off - i.e. exposed to ambient conditions for at least one to two months - before planting. This ensures that foliage and buds have developed sufficient protection to cope with site conditions (wind, temperature) after planting. Tree shelters can help to ameliorate these effects.

5.7.5 Timing of planting

Factors to take into account when considering the timing of tree planting are soil moisture (which needs to be relatively high, unless supplementary water is available), temperature (neither too hot, nor too frosty), and the prevailing winds and their strength (frequent north-west winds are very drying). These factors mean that planting in the autumn is usually the best scenario. Use of tree shelters can reduce the effects of early frosts.

5.7.6 Protection of plantings from rabbit and hare browse

It is essential that all planted trees are protected from rabbit and hare browse until their basal stems are sufficiently large enough (*c.*1 cm diameter) to withstand this. A shelter that surrounds the newly-planted tree and prevents access by rabbits and hares would also protect the newly-planted trees from exposure, water loss, and frost. Tree shelters need to be approximately 50 cm high to deter rabbit and hare browse, and firmly fixed to the ground to avoid being blown away. Even if rabbits are at low densities, some damage to new plantings is likely. Rabbit control should therefore be carried out in addition to protecting new plantings with tree shelters.

5.7.7 Use of mulches and water crystals

The use of a mulch at the base of a planted tree can help to conserve soil moisture around the tree, and also help to prevent weed growth from competing with the tree for light. Squares of woollen carpet are often useful in this respect, as loose mulches may get excavated and scattered by rabbits and birds. Water 'crystals' ('hydrogel' polymers that can be added to the soil matrix) should be placed in the base of the planting hole, or in the potting mix the tree seedling is grown in, to help retain water.

5.7.8 Planting and woody weed control

Tree felling operations and Scotch broom control should take place prior to planting so that plantings are not damaged by tree fall or herbicide spray. A benefit of pine tree felling is that pine trees are heavy water users, and their control will mean less competition for soil moisture.

5.7.9 Contingency strategies

Survival of planted tree species should be monitored, and if there is significant mortality of planted trees in the first year, the planting methods should be reviewed, taking into consideration the causes of mortality and the factors described in the sections above. If only a small amount of mortality is observed, then the dead plantings should be replaced. If mortality is confined to just one or two species, then those species should not be replanted; instead, planting should be of species that have established successfully.

6. IMPLEMENTATION STRATEGY

Factors discussed above indicate that the following ecological restoration strategy would be most worthwhile at the Little Mt Iron site:

- Undertake control of exotic trees, and spraying of Scotch broom, prior to planting of indigenous tree species.
- Use cabbage tree, kowhai, matai, Hall's totara, kohuhu, fierce lancewood, broadleaf, and lowland ribbonwood to enrich the kānuka-dominant vegetation at the site. Other indigenous tree and shrub species that would be naturally found at the site could be planted in subsequent years if this selection of species failed to establish, or if more ecological diversity is required for the site.
- Source propagation material for these species from within the Pisa Ecological District for species which are still naturally found there, or from elsewhere in Otago for species which are no longer found in Central Otago.
- Use PB3 or smaller tree seedlings for planting.
- 'Harden off' propagated seedlings by growing them in a similar environment to the planting site for the last few months before planting.
- Plant in mid-autumn, or late autumn, when soil moisture has recovered, and temperature extremes are less likely.
- Plant seedlings in sites with deeper soils, and utilise 'water crystals' in the base of the planting hole, or in the potting mix the tree seedling is grown in, to help retain water.
- Choose microsites for planting carefully, including within or adjacent to existing kānuka shrubland or in the shelter of felled pine trees.
- Place a long-lasting mulch around the base of each plant.
- Surround seedlings with robust tree shelters approximately 50 cm high, and ensure that tree shelters are firmly fixed to the ground and will not be blown away. These shelters are essential to prevent browse from rabbits and hares, and will also protect the plants from exposure.
- Monitor survival of plantings, and if necessary, replace any plants that die. Monitoring of survival should be more frequent in the early stages after planting.
- Monitor the distribution and abundance of woody weeds by annual walk-through surveys, to assess weed control priorities. Undertake control as required.

7. WORK PROGRAMME AND TIMELINE

An indicative five-year work programme and timeline is set out below.

Year 1

Task	Timing
1. Order indigenous tree species from plant nursery, if required	ASAP, to allow time for collection and propagation
2. Implement rabbit and hare control	Before end of year
4. Control remaining radiata pine, Douglas fir, and hawthorn trees	Before end of year
5. Control Scotch broom and khasia berry on an ongoing basis in areas of open habitat	Commence before end of year

Year 2

Task	Timing
1. Maintain rabbit and hare control	Throughout year
2. Obtain tree shelters	January - February
3. Begin planting, if suitable stock is available	April - May
4. Monitor after two weeks, and three months	May - September
5. Control Scotch broom and khasia berry, if this is required	October - December

Year 3

Task	Timing
1. Surveillance and control of woody weeds and other pest plants	January - May
2. Assess survival of planted trees	March - April
3. Continue planting, if suitable stock is available	April - May
4. Monitor plantings after two weeks, and three months	May - September
5. Maintain rabbit and hare control	Throughout year

Year 4)

Task	Timing
1. Surveillance and control of woody weeds and other pest plants	January - May
2. Monitor survival of plantings	March - April
3. Replace dead plantings, if this is required	April - May
4. Monitor plantings after two weeks and three months	May - September
5. Consider removing tree shelters for any plantings that are sufficiently large	May 8
6. Maintain rabbit and hare control	Throughout year

Year 5

Task	Timing
1. Surveillance and control of woody weeds and other pest plants	January - May
2. Monitor survival of plantings	March - April
3. Consider removing tree shelters for any plantings	May

that are sufficiently large	
4. Maintain rabbit and hare control	Throughout year

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Kate Martin provided project liaison. Tim Wardell provided guidance at the site and discussion on the woody weed control programme undertaken to date.

REFERENCES

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VASCULAR PLANT SPECIES RECORDED AT THE LITTLE MT IRON SITE DURING THE SURVEY

Exotic species are denoted by asterisks.

Species	Common Name	Plant Type
<i>Acaena agnipila</i> *	Australian sheep's bur	Dicot herb
<i>Acaena fissistipula</i>	Bidibidi	Dicot herb
<i>Agrostis capillaris</i> *	Browntop	Grass
<i>Anagallis arvensis</i> *	Scarlet pimpernel	Dicot herb
<i>Anthoxanthum odoratum</i> *	Sweet vernal	Grass
<i>Asplenium flabellifolium</i>	Necklace fern	Fern
<i>Brachyglottis southlandica</i>		Dicot herb
<i>Carex breviculmis</i>		Sedge
<i>Centaurium erythraea</i> *	Centaury	Dicot herb
<i>Cheilanthes sieberi</i>	Rock fern	Fern
<i>Cirsium vulgare</i> *	Scotch thistle	Dicot herb
<i>Coprosma crassifolia</i>		Shrub
<i>Coprosma dumosa</i>		Shrub
<i>Coprosma propinqua</i>	Mingimingi	Shrub
<i>Cotoneaster simonsii</i> *	Khasia berry	Shrub
<i>Crataegus monogyna</i> *	Hawthorn	Tree
<i>Cytisus scoparius</i> *	Scotch broom	Shrub
<i>Dichondra repens</i>	Mercury Bay weed	Dicot herb
<i>Discaria toumatou</i>	Matagouri	Tree
<i>Echium vulgare</i> *	Vipers bugloss	Dicot herb
<i>Elymus solandri</i>		Grass
<i>Epilobium komarovianum</i>	Creeping willow herb	Dicot herb
<i>Erodium cicutarium</i> *	Storksbill	Dicot herb
<i>Euchiton traversii</i>	Native cudweed	Dicot herb
<i>Festuca novae-zelandiae</i>	Hard tussock	Grass
<i>Galium perpusillum</i>	Dwarf bedstraw	Dicot herb
<i>Gaultheria antipoda</i>	Bush snowberry	Shrub
<i>Geranium microphyllum</i>	Geranium	Dicot herb
<i>Hieracium lepidulum</i> *	Tussock hawkweed	Dicot herb
<i>Holcus lanatus</i> *	Yorkshire fog	Grass
<i>Hydrocotyle novae-zeelandiae</i>		Dicot herb
<i>Hypericum perforatum</i> *	St John's wort	Dicot herb
<i>Hypochaeris radicata</i> *	Catsear	Dicot herb
<i>Juniperus sp.</i> *	Creeping juniper	Shrub
<i>Kunzea serotina</i>	Kānuka	Tree
<i>Leptinella sp.</i>		Dicot herb
<i>Leucopogon fraseri</i>	Patotara	Shrub
<i>Lupinus arboreus</i> *	Tree lupin	Shrub
<i>Luzula sp.</i>	Woodrush	Rush
<i>Marrubium vulgare</i> *	Horehound	Dicot herb
<i>Melicytus alpinus</i>	Porcupine shrub	Shrub
<i>Muehlenbeckia complexa</i>	Scrub pohuehue	Vine
<i>Olearia odorata</i>	Scented tree daisy	Shrub
<i>Pilosella officinarum</i> *	Mouse-ear hawkweed	Dicot herb
<i>Pinus radiata</i> *	Radiata pine	Tree
<i>Poa colensoi</i>	Blue tussock	Grass
<i>Polystichum vestitum</i>	Shield fern	Fern
<i>Pseudotsuga menziesii</i> *	Douglas fir	Tree

Species	Common Name	Plant Type
<i>Pteridium esculentum</i>	Bracken	Fern
<i>Ranunculus</i> sp.		Dicot herb
<i>Raoulia australis</i>	Common mat daisy	Dicot herb
<i>Raoulia subsericea</i>	Scabweed	Dicot herb
<i>Raoulia tenuicaulis</i>	Scabweed	Dicot herb
<i>Ribes sanguineum</i> *	Flowering currant	Shrub
<i>Rosa rubiginosa</i> *	Sweet briar	Shrub
<i>Rumex acetosella</i> *	Sheep's sorrel	Dicot herb
<i>Vittadinia australis</i>	White fuzzweed	Dicot herb

FLAMMABILITY OF INDIGENOUS PLANT SPECIES

The flammability of a selection of indigenous plant species is reported by Fogarty (2001), who surveyed fire managers and asked them to classify plant species on the basis of flammability.

Respondents were asked to 'isolate' particular species from the vegetation communities in which they occur, and to remember the fire behaviour of individual species as they were being burned, and whether they remained partially-burned or unburned after experiencing a high intensity fire. Some respondents found the proposed categories too broad, so Fogarty (2001) devised a finer classification with seven categories, based on the general consensus of responses from the fire managers, ranked species scores from these categories, and undertook statistical analysis of category boundaries. Seven flammability categories were ultimately defined for the 42 indigenous species identified by fire managers that had sufficient replication among responses (Table 4). Flammability categories were related to the forest fire danger classification that is used in New Zealand:

- Not flammable - dense stands will not burn even in Extreme forest fire danger conditions. Suitable for green breaks or defensible space.
- Not flammable/Low flammability - dense stands will partially burn in Extreme forest fire danger conditions, especially during drought. Suitable for green breaks or defensible space, but when in the immediate vicinity of structures, a distance greater than 3 m between crowns is needed to reduce continuity and prevent crown fires under Extreme fire danger conditions.
- Low flammability - dense stands established as green breaks on moist or fertile soils will usually reduce a crown fire in adjacent forest or scrub to a surface fire under High to Very High forest fire danger conditions, but will burn readily in Extreme conditions. Suitable for green breaks or defensible space, but when in the immediate vicinity of structures, a distance greater than 3 m between is needed to reduce continuity and prevent crown fires under Extreme fire danger conditions.
- Low/Moderate flammability - dense stands will burn readily in Very High to Extreme fire danger conditions, especially on dry and/or infertile sites. Surface fires will be sustained in Moderate to High fire danger conditions. Not recommended for green breaks. If present in defensible spaces, elevated dead material and litter should be removed regularly. Crowns should be more than 4 m apart and a minimum of 10 m from any structure.
- Moderate flammability - dense stands will partially ignite under Moderate forest fire danger conditions, and burn readily in High to Very High fire danger conditions. Species may have flammable green foliage, or produce heavy accumulations of litter or elevated dead material. Not recommended for green breaks or defensible space.
- Moderate/High flammability - dense stands will burn readily in Moderate to High forest fire danger conditions, and partially ignite in Moderate conditions. Species may have

flammable green foliage, or produce heavy accumulations of litter or elevated dead material. Not recommended for green breaks or defensible space.

- High flammability - burns readily in Low to Moderate forest fire danger conditions. Not recommended for green breaks or defensible space.

A significant feature of the indigenous plant species ranked in the assessment, is that none were ranked in the Not flammable or Low/Not flammable categories. However Fogarty (2001) noted that the classification could not be regarded as being definitive in all situations, as the assessments by respondents contained considerable variability. Future testing, observation, and comparison would be likely to result in revisions to the classification. The other important feature of the study is that only 42 indigenous plant species have currently been assessed within the classification.

Table 4: Flammability of 42 indigenous plant species, based on Fogarty (2001). Bold font indicates ecologically-appropriate, low flammability species that could be suitable close to the proposed residence at the Little Mount Iron site.

Species	Common Name	Rank	Flammability Class	Flammability Notes	Ecological Appropriateness at the Little Mt Iron Site
<i>Griselinia littoralis</i>	Broadleaf, kapuka	1	Low	Broad succulent leaves do not ignite easily. Flaky bark may burn and provide embers for spot fires under Extreme fire danger conditions.	Ecologically-appropriate.
<i>Corynocarpus laevigatus</i>	Karaka	2	Low	Flaky bark is flammable. Deciduous. Litter may need to be removed in spring, but the surface litter is often damp and difficult to ignite on favourable sites.	Not found naturally in Central Otago.
<i>Fuchsia excorticata</i>	Fuchsia	3	Low		May be difficult to establish due to frost and drought susceptibility.
<i>Solanum aviculare</i>	Poroporo	4	Low		<i>Solanum laciniatum</i> is likely to have a similar ranking. Susceptible to frost so not suitable for Central Otago.
<i>Griselinia lucida</i>	Puka	5	Low	Broad succulent leaves do not ignite easily. Flaky bark may burn and provide embers for spot fires under Extreme fire danger conditions.	Similar to broadleaf but normally establishes as an epiphyte, thus requires mature forest for establishment, which the Little Mt Iron site lacks.
<i>Pseudopanax crassifolius</i>	Lancewood	6	Low		Ecologically-appropriate.
<i>Pseudopanax arboreus</i>	Five finger	7	Low	Will carry a fire if planted on dry infertile sites, or in mixed scrub.	Too susceptible to frost to grow in Central Otago.
<i>Macropiper excelsum</i>	Kawakawa	8	Low		Not naturally found in Central Otago and susceptible to frost.
<i>Coprosma robusta</i>	Karamu	9	Low	Can produce large amounts of surface litter.	Not naturally found in Central Otago.
<i>Coprosma grandifolia</i>	Kanono	10	Low		Not naturally found on in Central Otago.
<i>Geniostoma ligustrifolium</i>	Hangehange	11	Low		Not found naturally in Canterbury.
<i>Coprosma repens</i>	Taupata	12	Low		A coastal species, not ecologically-appropriate at WMR.
<i>Carpodetus serratus</i>	Putaputaweta	13	Low		Ecologically-appropriate, requires initial shelter from frost.
<i>Hebe salicifolia</i>	Koromiko	14	Low/Moderate	Must be planted densely to maintain moisture in surface litter layers. Will burn readily at Moderate to High fire danger conditions on dry sites or when more sparsely mixed with more flammable scrub.	Susceptible to drought stress, many not survive well at Little Mt Iron.
<i>Meliclytus lanceolatus</i>	Mahoe wao	15	Low/Moderate		Not naturally found in Central Otago.
<i>Meliclytus ramiflorus</i>	Mahoe	16	Low/Moderate	Becomes more flammable with age.	Ecologically-appropriate in sheltered sites.

Species	Common Name	Rank	Flammability Class	Flammability Notes	Ecological Appropriateness at the Little Mt Iron Site
<i>Aristotelia serrata</i>	Wineberry	17	Low/Moderate	Produces elevated dead material that should be removed annually near homes and structures. Partially deciduous in cold climates. Litter may need to be removed in spring.	Susceptible to drought stress, many not survive well at Little Mt Iron.
<i>Coriaria arborea</i>	Tutu	18	Low/Moderate	Surface litter accumulation can be heavy. Old plants may have Moderate to High flammability.	Not naturally found in Central Otago.
<i>Myoporum laetum</i>	Ngalo	19	Low/Moderate		A coastal species, not ecologically-appropriate at Little Mt Iron.
<i>Pittosporum crassifolium</i>	Karo	20	Low/Moderate		Not found naturally in Central Otago.
<i>Pittosporum eugenioides</i>	Tarata	21	Low/Moderate	Old plants may have Moderate flammability.	Susceptible to frost and generally requires moist forest conditions.
<i>Plagianthus regius</i>	Ribbonwood	22	Low/Moderate	Deciduous. Litter may need to be removed in spring.	Ecologically-appropriate.
<i>Hoheria</i> spp.	Houhere/facebark	23	Low/Moderate		Narrow-leaved facebark is tolerant of dry conditions and may once have occurred in Central Otago.
<i>Nothofagus menziesii</i>	Silver beech	24	Low/Moderate	More flammable when immature. Mature trees often have dead branches that ignite easily and provide embers for spot fires.	Requires more rainfall than occurs at Little Mt Iron.
<i>Weinmannia racemosa</i>	Kamahi	25	Low/Moderate		Not naturally found in Central Otago.
<i>Phyllocladus glaucus</i>	Toatoa	26	Low/Moderate		Not found naturally in Central Otago, mountain toatoa would be an ecologically-appropriate analogue.
<i>Knightia excelsa</i>	Rewarewa	27	Low/Moderate	Large quantities of litter (leaves and twigs) often accumulate. Near houses or in 'green breaks' this material must be removed.	Not found naturally in Central Otago.
<i>Cordyline australis</i>	Ti kouka	28	Low/Moderate	Flammability increases with age due to elevated dead material. Old trees have High flammability. Near houses or in 'green breaks', flammable material must be removed.	Ecologically-appropriate.
<i>Pittosporum tenuifolium</i>	Kohuhu	29	Moderate		Ecologically-appropriate.
<i>Dacrycarpus dacrydioides</i>	Kahikatea	30	Moderate	Flammability may decrease with age. Mature trees often have dead branches that ignite easily and provide embers for spot fires.	A tree of lowland sites, not ecologically appropriate at Little Mt Iron site.

Species	Common Name	Rank	Flammability Class	Flammability Notes	Ecological Appropriateness at the Little Mt Iron Site
<i>Dacrydium cupressinum</i>	Rimu	31	Moderate	Flammability changes to Low/Moderate when mature. Dead stem and branch material in over-mature trees is susceptible to ignition from airborne embers.	Little Mt Iron site is too dry and not ecologically-appropriate for this species.
<i>Agathis australis</i>	Kauri	32	Moderate		Not found naturally in Central Otago.
<i>Metrosideros umbellata</i>	Southern rata	33	Moderate		Not found naturally in Central Otago.
<i>Weinmannia silvicola</i>	Tawhero	34	Moderate		Not found naturally in Central Otago.
<i>Beilschmiedia tawa</i>	Tawa	35	Moderate	Large quantities of litter often accumulate. Near houses of in 'green breaks' this material must be removed.	Not found naturally in Central Otago.
<i>Phormium cookianum</i> and <i>P. tenax</i>	Harakeke	36	Moderate/High	Becomes more flammable in drought conditions, and with age due to build up of dead material. Has been observed to 'explode' when burnt in Very High and Extreme fire danger conditions.	Requires moister conditions than at the Little Mt Iron site.
<i>Podocarpus totara</i>	Totara	37	Moderate/High	Flammability changes to Low/Moderate when mature. Dead stem and branch material in over-mature trees is susceptible to ignition from airborne embers.	Not found naturally in Central Otago, but Hall's totara (<i>Podocarpus laetus</i>) is.
<i>Cyathea</i> and <i>Dicksonia</i> spp.	Tree ferns	38	Moderate/High	Carry elevated dead material that assists fire spread and increases fire intensity.	Susceptible to drought stress at the Little Mt Iron site.
<i>Dodonea viscosa</i>	Ake ake	39	Moderate/High	Flaky bark and flammable foliage.	Not found naturally in Central Otago.
<i>Cyathodes fasciculata</i>	Mingimingi	40	Moderate/High		Not found naturally in Central Otago.
<i>Kunzea ericoides</i>	Kanuka	41	High	Flammability changes to Moderate when mature, unless having a flammable understory.	Now split into several taxa, the one at Little Mt Iron is <i>K. serotina</i> .
<i>Leptospermum scoparium</i>	Manuka	42	High	Flammability changes to Moderate when older.	Not likely to thrive at Little Mt Iron, where kanuka is more tolerant of dry conditions.



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Appendix 7

DoC Letter 8 May 2017

8 May 2017

Rosie Hill
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Dear Rosie

Allenby Farms Rezoning Proposal for Mt Iron

Thank you for the memorandum dated 12 April 2017 provided to the Department of Conservation (the Department) for a Mt Iron Proposal with specific reference to those aspects of the proposal relevant to the Department's interests, as discussed between the parties on the 2 February 2017 and again on 16 March 2017. The main objectives of the proposal relevant for the Department are:

- To achieve ecological restoration and ongoing management on lands adjacent to the Mt Iron Scenic Reserve to protect and enhance the biodiversity values across the greater Mt Iron.
- To secure additional public rights of access and provide for the upgrading and realignment of the walking track on the existing easement through the Mt Iron Proposal land.
- Provision for a recreation management plan to be established in conjunction with the Department to enable the coordinated management of recreational facilities on lands adjoining the Mt Iron Scenic Reserve.
- The provision for ongoing management and costs on the Mt Iron Proposal land to be met by the adjacent landowners, excluding the Department.
- Formalisation of the current informal DOC management access through a binding agreement.

The Department is satisfied that all these objectives have been addressed in the memorandum.

I confirm that the Department agrees in principle to the establishment of the Mt Iron Protection Areas and the Revegetation Area. This approval in principle is subject to the following:

1. The outcome of the public notification process.
2. That agreement is reached to ensure the 'single ownership' provision is workable and in the best interest of the ongoing management of the land.
3. That the Recreation Management Plan is established between the parties within an agreed timeframe.

This approval is limited to the likely effects of the proposal on the Department's interests and should not be construed as approval to any effects on the environment generally or the associated Allenby's residential development proposal.

I acknowledge that a formal agreement will be prepared pending the outcome of the District Plan Review.

Yours sincerely



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Appendix 8
Amended MIPRL Provisions

Mt Iron Park Rural Lifestyle – Proposed Objectives, Policies and Rules

27 Subdivision and Development

27.3 Location-specific objectives and policies

27.3.17 Objective – Mt Iron Park Rural Lifestyle Zone – A rural lifestyle development is comprehensively planned within a setting of native vegetation.

Policies

27.3. 17.1 Enable up to 15 rural lifestyle dwellings while maintaining and enhancing nature conservation values and minimising adverse effects on landscape values.

27.3. 17.2 Ensure that all development is undertaken in accordance with a Structure Plan so that development is located where it can best be absorbed into the landscape.

27.3. 17.3 Minimise the removal of existing native vegetation to that required for buildings, curtilage, fire protection and access in order to maximise enclosing vegetation.

27.3. 17.4 Limit fencing to zone and curtilage boundaries in order to maintain and enhance natural vegetation patterns.

27.4. 18 Objective – Mt Iron Rural Lifestyle zone – The resource values of Mt Iron are protected, enhanced, and made accessible to the community.

Policies

27. 3. 18.1 Ensure that development within the Mt Iron Park Rural Lifestyle zone results in appropriate management of the resource values of those undeveloped parts of Mt Iron which adjoin the zone.

27. 3. 18.2 Maintain and enhance the ecological values of Mt Iron, including but not limited to the Significant Natural Areas on Mt. Iron.

27. 3. 18.3 Protect and maintain the legibility of Mt Iron through control or eradication of wilding tree species.

27. 3. 18.4 Facilitate increased practical and permanent public access to different parts of Mt Iron.

27. 3. 18.5 Facilitate the integrated management of public recreation opportunities on those parts of Mt Iron which are accessible to the general public, including land managed by the Department of Conservation.

27. 3. 18.6 Put in place legal methods to ensure the achievement of this objective and related policies on an ongoing, permanent basis at no cost to the wider community.

27.6 Rules - Standards for Subdivision Activities

No lots to be created by subdivision, including balance lots, shall have a net site area or where specified, average, less than the minimum specified.

Zone		Minimum Lot Area
Rural Lifestyle	Mt Iron Park Rural Lifestyle	No minimum

	Zone Specific Standards	Activity Status
27.7.7	<p>In addition to those matters of control listed under Rule 27.7.1 when assessing any subdivision in the Mt Iron Park Rural Lifestyle Zone, the following additional matters of control shall be had regard to:</p> <ul style="list-style-type: none"> • Consistency with the Mt Iron Park Structure Plan • The Mt Iron Park Implementation Management Plan and Recreation Management Plan 	C

	Zone Specific Standards	Activity Status
27.7.13	Mt Iron Park Rural Lifestyle Zone	
27.7.13.1	<p>Activities that do not meet the following standards:</p> <p>Initial subdivision</p> <ol style="list-style-type: none"> i. The first subdivision of land within the zone shall create 15 building platforms within the zone located generally as shown on the Mt Iron Park Structure Plan. <u>Building platforms 10, 11 and 12 may not be larger than 1500m². No other building platform may be larger than 15700m².</u> ii. The first subdivision of land within the zone shall result in a single title, subject to amalgamation conditions if required, comprising: <ol style="list-style-type: none"> a. One lot within the zone containing at least one building platform; b. A separate lot or lots containing all of the Protection Areas and the Revegetation Area identified on the Mt Iron Park Structure Plan. iii. The first subdivision of land within the zone shall result in: <ol style="list-style-type: none"> a. Any appropriate enlargement or realignment of 	NC

	<p>existing easements in favour of the Department of Conservation or the Queenstown Lakes District Council to ensure practical access for walking and maintenance;</p> <p>b. Creation of new permanent public trails generally in the location of the Recreation Trails identified on the Mt Iron Park Structure Plan;</p> <p>c. Creation of permanent public access to and within the Protection Areas and the Revegetation Area identified on the Mt Iron Park Structure Plan, subject to conditions or restrictions necessary to implement the Mt Iron Park IMP;</p> <p>d. Creation of rights of vehicular access, in favour of Lot 2 DP 21892 and Secs 58, 66 Block XIV Lower Wanaka SD (managed by the Department of Conservation), for the purposes of trail maintenance and for emergency services, from Hidden Hills Drive:</p> <ul style="list-style-type: none"> • Along the existing QLDC Trail which runs through the zone as identified on the Mt Iron Park Structure Plan • To and through the Protection Area identified on the Mt Iron Park Structure Plan which contains the existing public (DOC) Trail from the State Highway to the summit of Mt Iron. <p>Mt Iron Park IMP:</p> <p>iv. The application for the first subdivision of land within the zone shall be accompanied by a draft Mt Iron Park Implementation and Management Plan ("Mt Iron Park IMP"), which shall address objectives and implementation methods relating to the matters detailed below, for approval by the Queenstown Lakes District Council and implementation through the subdivision consent:</p> <p>For the Protection Areas:</p> <p>a. Initial eradication of pest plant and animal species</p> <ul style="list-style-type: none"> (i) An initial requirement to eradicate, to a reasonably practicable extent, pest plant species including wilding conifers, wilding plums and cherries, eucalypts, hawthorn, elder (<i>Sambucus nigra</i>), and sycamore. (ii) An initial requirement to eradicate, to a reasonable practicable extent, pest animal species including possums, mustelids, and rodents. (iii) These initial requirements shall be implemented 	
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Draft Objectives and policies – Mt Iron Park Rural Lifestyle Zone

	<p>as a subdivision consent requirement in order to obtain s.224(c) Certification.</p> <p>b. Ongoing animal and plant pest control</p> <p>(i) The methods for effective control and ongoing management of animal and plant pests including measures to minimise reinvasion by animal and plant pests.</p> <p>c. Stock control</p> <p>(i) The prohibition of grazing of livestock.</p> <p>For the Revegetation Area:</p> <p>d. A requirement that all of the Revegetation Area is subject to the same provisions of the IMP as applies to the Protection Areas.</p> <p>e. Planting Program</p> <p>(i) A planting program for the Revegetation Area comprising species from the Mt Iron Park Revegetation Area Approved Species List (as defined below).</p> <p>(ii) The planting program shall be designed to achieve full revegetation of the Revegetation Area over a reasonable period of time through a combination of planting and natural regeneration.</p> <p>(iii) A monitoring and reporting requirement for the outcomes of the implementation of the planting program (under vi.(j) below).</p> <p>(iv) Mt Iron Park Revegetation Area Approved Species List (Definition): kānuka, broadleaf, kohuhu, kowhai, ti kōuka/cabbage tree, lowland ribbonwood, narrow-leaved lacebark, fierce lancewood, matai, and Hall's totara.</p> <p>For the Recreation Trails</p> <p>f. Formation of the Recreation Trails identified on the Mt Iron Park Structure Plan to standard 'Walking Tracks' under SNZ HB 8630:2004.</p> <p>g. Maintenance of the Recreation Trails identified on the Mt Iron Park Structure Plan at standard 'Walking Tracks' under SNZ HB 8630:2004.</p> <p>Legal mechanisms to ensure (a)-(g) above</p>	
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	<p>(i) Identification of:</p> <ul style="list-style-type: none"> o Those works to be implemented as a subdivision consent requirement in order to obtain s.224(c) Certification; o Those works to be implemented on an ongoing basis by lot owners following deposit of the first subdivision plan. <p>(ii) The draft wording of the Consent Notice and / or covenant to be registered against the title(s) to the relevant land, to achieve the ongoing implementation of the Mt Iron Park IMP.</p> <p>Recreation Management Plan:</p> <p>v. The first subdivision of land within the zone shall be accompanied by a Recreation Management Plan which shall address objectives and implementation methods relating to the matters detailed below:</p> <ul style="list-style-type: none"> a. Analysis of the environmental and recreation values of the Protection Areas and Revegetation Area together with the adjoining Lot 2 DP 21892 and Secs 58 66 Blk XIV Lower Wanaka SD presently administered by the Department of Conservation ("Mt Iron Public Accessible Land"). b. Objectives for, and controls over, the recreational use of the Protection Areas and the Recreation Area (in association with the Mt Iron Public Accessible Land). c. Details of the outcome of consultation between the owner of the Protection Areas and the Revegetation Area and the owner of the Mt Iron Public Accessible Land and, if achieved, any agreement reached between those two landowners. d. A review mechanism which will enable review of the Recreation Management Plan to adapt to changing circumstances from time to time. <p>Consent Notice Restrictions and Obligations:</p> <p>vi. The first subdivision of land within the zone shall provide for the following restrictions and obligations to be implemented on an ongoing basis, following deposit of the first subdivision plan, through consent notice conditions registered against the titles to all of the land within the zone:</p> <ul style="list-style-type: none"> a. The maximum total ground floor area of all buildings within building platforms 1-9, and 13-15 shall be 500m². The maximum total ground floor area of all buildings within building platforms 10, 11 and 12 	
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	<p>shall be 275m².</p> <p>b. No more than one residential unit may be built within each building platform.</p> <p>c. The maximum building height shall be 4.5m within building platforms 1-9 and 13-15. The maximum height shall be 3.8m within building platforms 10, 11, 12. Chimney and ventilation structures may be up to 6m high within building platforms 1-9 and 13-15.</p> <p><u>d. No part of any building shall be located within 10m of the boundary of the building platform.</u></p> <p><u>e. No non-native plants which, upon maturity, will exceed 1m in height shall be planted or allowed to grow within a building platform.</u></p> <p><u>e.f.</u> At least 400m² within each building platform must be planted in native vegetation. That planting shall:</p> <ul style="list-style-type: none"> (i) comprise species from, <u>located as specified in,</u> the Mt Iron Park Building Platform Approved Species List (as defined below); (ii) be planted at a density sufficient that, upon maturity, the planting can reasonably be expected to achieve 100% canopy coverage of the 400m² area; (iii) be completed within 12 months after the Code of Compliance Certificate under the Building Act 2004 is issued for a residential unit built within the building platform; (iv) be maintained permanently, including replacement of any plants which die. <p><u>e.g.</u> No native vegetation located within a lot outside a building platform shall be removed, and no steps shall be taken to prevent natural native revegetation of land within a lot outside a building platform. For the purposes of this rule 'building platform' includes land required for vehicular access to the building platform.</p> <p><u>f.h.</u> Pest plant species including wilding conifers, wilding plums and cherries, eucalypts, hawthorn, elder and sycamore, shall be eradicated to a reasonably practicable extent within 12 months after the Code of Compliance Certificate under the Building Act 2004 is issued for a residential unit built within the building platform. Thereafter the property shall be kept clear of those species.</p> <p><u>g.i.</u> Any batters created in the formation of access to a building platform which are visible from any public</p>	
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	<p>road must be planted in indigenous species cover.</p> <p><u>h.i.</u> All works required by the Mt Iron Park IMP shall be carried out in accordance with the Mt Iron Park IMP.</p> <p><u>i.k.</u> A legal obligation to make an equal contribution to the ongoing costs of implementation of the Mt Iron Park IMP shall be imposed. For the purposes of this rule:</p> <ul style="list-style-type: none">(i) It is anticipated that those costs will be divided into 16 equal shares, with one share payable by the owner of each building platform approved within the zone and one share payable by the owner of a residential lot created around the dwelling consented under RM130177 on Lot 4 DP 471320.(ii) Those 16 shares shall be determined and the costs will be payable from deposit of the first subdivision plan, regardless of the number of lots created at that time, so that if one lot contains more than one building platform the owner of that lot shall pay the cost share applicable to each building platform.(iii) The owner of the title to the lot(s) which also includes the Protection Areas and the Revegetation Area will be responsible for the implementation of the Mt Iron Park IMP and shall account to, and obtain payment from, the other lot owners liable to contribute in accordance with this rule. <p><u>j.l.</u> Ongoing monitoring and reporting on the implementation of the Mt Iron Park IMP shall be undertaken as follows:</p> <ul style="list-style-type: none">(i) For the first three years after deposit of the first subdivision plan, the owner of the lot(s) containing the Protection and Revegetation Areas shall submit a report annually to the Queenstown Lakes District Council detailing the works undertaken in that year in accordance with the Mt Iron Park IMP.(ii) After the first three years of reporting in accordance with (i) above, the owner of the lot(s) containing the Protection and Revegetation Areas shall submit a report once every 5 years to the Queenstown Lakes District Council detailing the works undertaken in that period in accordance with the Mt Iron Park IMP.	
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Draft Objectives and policies – Mt Iron Park Rural Lifestyle Zone

	<p>k.m. Cats and mustelids shall not be kept on or brought onto any lot at any time.</p> <p><u>n.</u> Mt Iron Park Building Platform Approved Species List (Definition):</p> <p style="padding-left: 40px;"><u>(i) Within 10m from the boundary of a building platform – broadleaf.</u></p> <p style="padding-left: 40px;">l.</p> <p style="padding-left: 40px;"><u>(ii) Beyond 10m from the boundary of a building platform - Broadleaf, fierce lancewood, lowland ribbonwood, narrow-leaved lacebark, and other similar native vegetation which has relatively low flammability.</u></p> <p style="padding-left: 40px;"><u>o. When a residential unit is constructed within a building platform a 20,000 litre water tank must be installed as part of the water reticulation system to provide water storage for the residential unit and to provide water for fire fighting purposes.</u></p> <p>Subsequent subdivision</p> <p>vii. The land within the zone (excluding the Council Lot 1 DP 22244) may be subdivided into up to 15 lots in one or more stages.</p>	
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27.7.12.1 In the following zones, every allotment created for the purposes of containing residential activity shall identify one building platform of not less than 70m² in area and not greater than 1000m² in area.

a Rural Zone.

b. Gibbston Character Zone.

c Rural Lifestyle Zone.

27.7.12.2 Rule 27.12.1 shall not apply to the Mt Iron Park Rural Lifestyle Zone.

27.9.5 Controlled Subdivision Activities – Structure Plan spatial layout plan, or concept development plan In considering whether or not to impose conditions in respect to subdivision activities undertaken in accordance with a structure plan, spatial layout plan, or concept development plan under Rules 27.7.1, 27.7.2, 27.7.3, 27.7.4, 27.7.7, the Council shall have regard to, but not be limited by, the following assessment criteria:

	27.7.7.1 Assessment Matters
	<ul style="list-style-type: none">• The assessment criteria identified under Rules 27.7.1 and 27.7.7.• The adequacy and effectiveness of the Mt Iron Park IMP and the Recreation Management Plan in achieving the objectives and implementation methods relating to the matters detailed in Rule 27.7.13.1• Refer Policies 27.3. 17.1- 27.3.18.6

27.14.3 Mt Iron Park Structure Plan

[See Sheet 5 Appendix A, note this reference will require amendment]

Chapter 22 - Rural Residential and Lifestyle – Proposed Objectives, Policies and Rules

- 22.2.8 Objective – Mt Iron Park Rural Lifestyle Zone – Rural lifestyle development is comprehensively planned with particular regard for the ecological and landscape values of the setting.**
- 22.2.8.1 Ensure that design of buildings is subservient to, and reflects, the local character and the ecological and landscape values of the setting.
- 22.2.8.2 Provide for the maintenance and enhancement of local indigenous vegetation values of the setting through the ongoing protection and enhancement of indigenous vegetation in an integrated manner.
- 22.2.8.3 Ensure that vegetation within building platforms mitigates risk from spread of fire.

Draft Rules and other provisions- Chapter 22

22.4.1 Any other activity not listed in Tables 1-7-8.

22.4.3.3 The identification of a building platform for the purposes of a residential unit except where identified by Rule 27.5.1.1 and Rule 27.7.13.1

22.5.12.3 On sites equal to or greater than 2 hectares there shall be no more than one residential unit per two hectares on average. For the purpose of calculating any average, any allotment greater than 4 hectares, including the balance, is deemed to be 4 hectares. This rule does not apply to the Mt Iron Park Rural Lifestyle Zone.

22.3.2.10 In addition to Tables 1 and 2, the following standards apply to the areas specified:

Table 3: Rural Lifestyle Deferred and Buffer Zones

Table 4: Rural Residential Zone at Forest Hill.

Table 5: Rural Residential Bob's Cove and Sub Zone .

Table 6: Ferry Hill Rural Residential Sub Zone.

Table 7: Wyuna Station Rural Lifestyle Zone

Table 8: Mt Iron Park Rural Lifestyle Zone

Table 8	Mt Iron Park Rural Lifestyle Zone	Non-compliance Status
22.5.39	<p>Building Height</p> <p>The maximum building height shall be 4.5m within building platforms 1-9 and 13-15. The maximum height shall be 3.8m within building platforms 10, 11, 12.</p> <p>Chimney and ventilation structures may be up to 6m high within building platforms 1-9 and 13-15.</p>	NC
22.5.40	<p>Building Coverage</p> <p>The maximum total ground floor area of all buildings within building platforms 1-9 and 13-15 shall be 500m². The maximum total ground floor area of all buildings within building platforms 10, 11, and 12 shall be 275m².</p>	D









22.5.41	<p>Design Standards</p> <p>All buildings, including any structure larger than 5m², new, relocated, altered, reclad, or repainted, are subject to the following in order to ensure they are visually recessive within the surrounding landscape:</p> <ul style="list-style-type: none"> • <u>All exterior surfaces (other than roofs) shall be coloured in the range black, dark green or dark grey. Claddings may vary and include timber, steel, and concrete. All claddings shall be finished in a similar range of colours.</u> • <u>All roofing shall be in Coloursteel 'Ironsand' (or similar dark grey colour) or black.</u> • All downpipes, gutters and exterior joinery shall be painted to match the dwelling. • Wall glazing shall not exceed 2.7 metres in height. All glazing over 2 metres in height shall have a corresponding eave or verandah directly over that glazing with a minimum width of 1.2 metres. • <u>Roofs of buildings within building platforms 10-, 11 and 12 shall have a pitch of no more than 15 degrees.</u> 	D
22.5.42	<p>Lighting</p> <ul style="list-style-type: none"> • All exterior lighting shall be directed downwards and shall be no higher than 1.2 metres above ground level. • No lighting shall be allowed outside the building platforms. 	NC

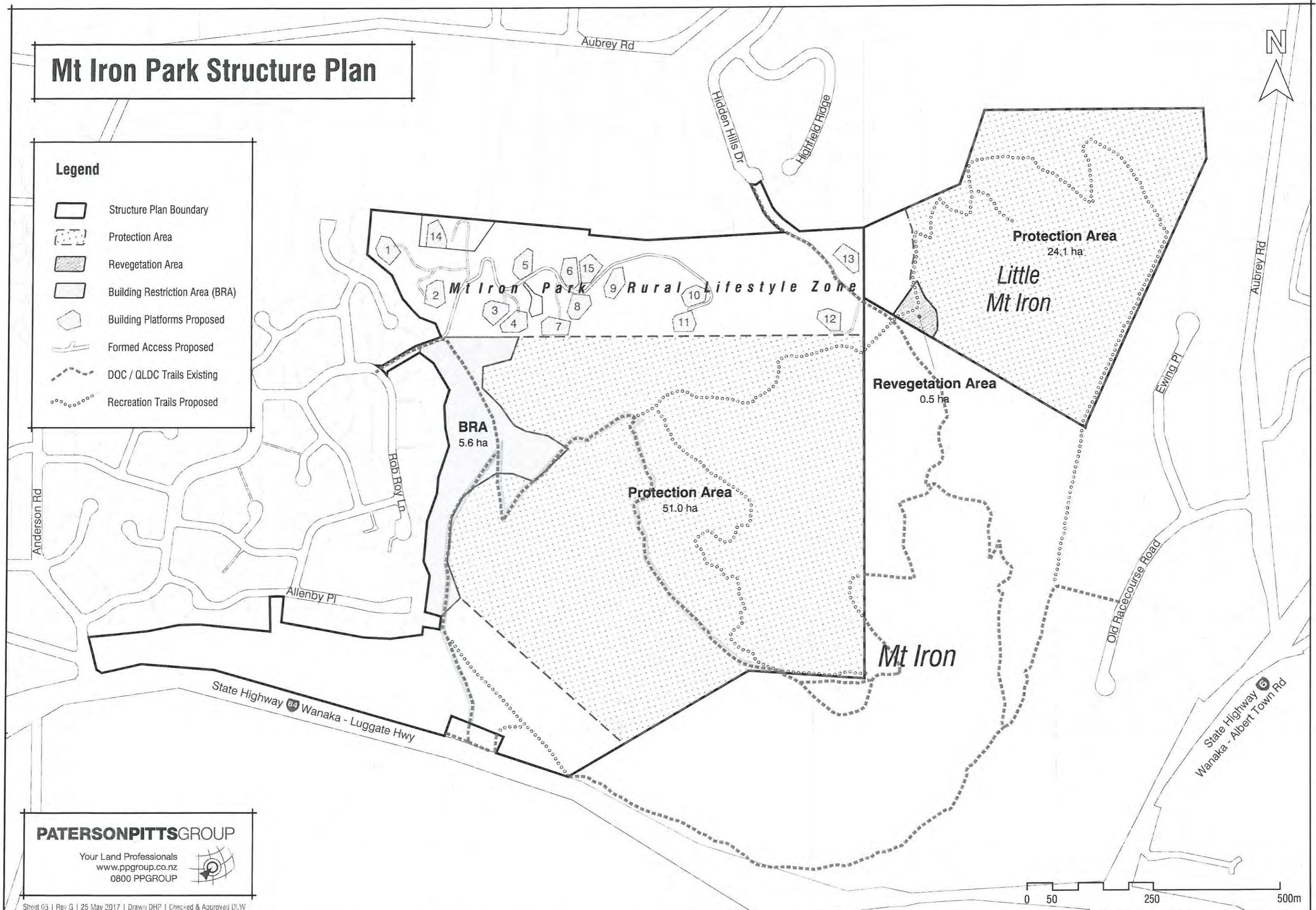
22.5.43	<p>Indigenous Vegetation</p> <p>22.5.43.1 At least 400m² within each building platform must be planted in native vegetation. That planting shall:</p> <ul style="list-style-type: none"> (i) comprise species from <u>located as specified in</u>, the Mt Iron Park Building Platform Approved Species List; (ii) be planted at a density sufficient that, upon maturity, the planting can reasonably be expected to achieve 100% canopy coverage of the 400m² area; (iii) be completed within 12 months after the Code of Compliance Certificate under the Building Act 2004 is issued for a residential unit built within the building platform; (iv) be maintained permanently, including replacement of any plants which die. <p>22.5.43.2 Mt Iron Park Building Platform Approved Species List (Definition):</p> <ul style="list-style-type: none"> (i) <u>Within 10m from the boundary of a building platform – broadleaf.</u> a- (ii) <u>Beyond 10m from the boundary of a building platform – broadleaf, fierce lancewood, lowland ribbonwood, narrow-leaved lacebark, and other similar native vegetation which has relatively low flammability.</u> <p>22.5.43.3 <u>No non-native plants which, upon maturity, will exceed 1m in height shall be planted or allowed to grow within a building platform.</u></p> <p>22.5.42.34 No fencing shall be erected outside of a building platform</p>	D
22.5.45	<p>Animal Control</p> <p>Cats and mustelids shall not be kept on or brought onto any lot at any time.</p>	NC
22.5.46	<p>Fencing</p> <p>Fencing shall be traditional wire post / wire fencing (including rabbit proofing if required) and of no more than 1m height. Fencing is not permitted outside a building platform other than along a zone boundary.</p>	D

Appendix 9
Amended MIPRL Structure Plan

Mt Iron Park Structure Plan

Legend

-  Structure Plan Boundary
-  Protection Area
-  Revegetation Area
-  Building Restriction Area (BRA)
-  Building Platforms Proposed
-  Formed Access Proposed
-  DOC / QLDC Trails Existing
-  Recreation Trails Proposed



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