

**BEFORE INDEPENDENT COMMISSIONERS APPOINTED
BY THE QUEENSTOWN LAKES DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a submission by Gertrude's Saddlery Limited and Larchmont Developments Limited seeking rezoning of land at 111 and 163 Atley Road from Rural to both Lower Density Suburban Residential and Large Lot Residential

**SUMMARY EVIDENCE OF BRETT GIDDENS
DATED 3 FEBRUARY 2023**

Annexures:

A – Trails Plan

B – Wilding Conifer Control Group documentation

C – Gibbston Valley Resort Zone provisions and structure plan

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1. SUMMARY

1.1 At 9.7 of my EIC, I set out in general terms the overarching principles of section 32 that must be considered:

- (a) Are the objectives the *most appropriate* to achieve the purpose of the RMA?
- (b) Are the policies the *most appropriate* way to achieve the objectives?
- (c) Will the policies be an *effective and efficient* way to achieve the objectives?
- (d) Will there be a *risk* of acting or not acting if there is *uncertain or insufficient* information?

1.2 My planning evidence is that the Rural zone is the most appropriate zone for the Site. This zone provides the most appropriate protection to the section 6 landscape values, is effective and efficient, and best achieves the objectives and policies of the strategic chapters of the PDP and the purpose of the RMA overall.

1.3 I consider there is a risk of acting (i.e. adopting the LDSR zone extension and proposed LLR zoning of the Site and expanding the UGB) because of the effect on the ONL/ONF, and the high level of uncertainty surrounding many facets of the Proposal and its effects. The risk of not acting (i.e. retaining the Rural zoning and ONL classification) is low in my opinion and will result in the protection of the ONL.

ONL Status

1.4 To comment on the most appropriate planning response for the Site, it is essential to first understand whether or not the Site is properly overlaid with an ONL annotation.

1.5 What matters most is the identification of the values that lead to the ONL status, because it is those values that are sought to be *protected*.

1.6 Three of the four landscape architects have undertaken a first principles assessment of the values of the landscape, with Ms Pfluger providing a peer review of the findings of Mr Espie. Mr S Brown and Mr Espie have contrasting views. I have relied on the landscape evidence of Mr S Brown, which is more closely aligned with Ms Mellsop with the key difference being the area of land to contain the extended LDSR Zone. Mr S Brown has undertaken the type of assessment envisaged by the planning documents and has concluded the Site is at least an ONL, and possibly part of the ONF.

1.7 For completeness I note that Ms Mellsop's position on the ONL location is more palatable to me than that of Mr Espie. I understand the logic behind expanding an existing urban zone to an existing urban settlement (from a connectively perspective)

but I do not consider that the LDSR zone offers any landscape protection measures in what is a location sensitive to development.

Level of Protection Required for ONLs/ONFs

- 1.8 Once an ONL/ONF is identified, the PDP directs how these should be treated.
- 1.9 It is my opinion that the policy and planning aspirations for areas of ONL/ONF cannot be met with the urban residential zonings proposed. I understand from Mr J Brown's response to questioning that he finds that there would be "policy difficulty" if the Site was found to be an ONL (referencing the "Bridesdale" case) and I take from that we share similar views. I further add:
 - (a) The PDP planning and policy framework tolerates very little adverse effect on ONLs/ONFs – new subdivision, use and development is "inappropriate" unless the landscape values are protected (SO 3.2.5.2 and SO 3.2.5.3);
 - (b) While I understand the landscape evidence is that wilding conifer clearance has not adversely affected the landscape values, rather it has possibly enhanced natural character¹, the removal has highlighted the visibility of current development which, in turn:
 - (i) emphasises the degree of adverse effect additional development would have; and
 - (ii) highlights how important a thorough cumulative effect assessment is. Mr (S) Brown's opinion is clear as to the adverse effect existing development has already had and that this landscape does not have capacity to absorb any more. This is particularly so when there remains one area of urban zoning on the Site which is yet to be developed and the Proposal "package" offers no further controls on development within that area of zoning.
 - (c) Further development, even of a reduced scale, will create further adverse effects on the values of the landscape and these effects cannot be sustained without eroding (or least negatively affecting) the landscape within which it sits and the Shotover River.
- 1.10 I have reached the view that the only form of zoning which will appropriately manage the Site and protect its landscape values, is the Rural Zone.

¹ For example, at [13] of Ms Pfluger's summary "...I agree that the removal enhances the natural character rather than detract".

If the Site is not an ONL/ONF

- 1.11 I recognise the landscape witnesses for the Submitter have come to a different view on the status of the site as an ONL/ONF. I have therefore considered the appropriate planning outcome if the Commissioner's prefer the view of Mr Espie and supported by the peer review of Ms Pfluger.
- 1.12 Firstly, I note that even if the Site itself is not classified as ONL/ONF, it is bound by a wider ONL setting and it immediately adjoins (and located partly within) an ONF. What happens *within* the Site therefore matters because of the potential to affect the surrounding ONL and ONF.
- 1.13 It is my view that even without an ONL/ONF classification the most appropriate planning regime remains Rural. The urban zonings proposed have little to no regard for the setting of this Site and they will adversely affect the values that exist.

2. **FURTHER COMMENTS**

NPS-HPL

- 2.1 I am reluctant to agree with the position of the Council towards the NPS-HPL not being applicable. My approach is consistent with the recently released guidance note from the Ministry for the Environment and I have set out my reasoning in my EIC. I reiterate my view that I do not see soils as a significant issue in these proceedings.

DENSITY / YIELD

- 2.2 There has been no specific evidence on how large the existing and proposed LDSR zone is.² This, and the differing references to development yields throughout the evidence, has made it very difficult to review the development densities referred to by the various experts. For instance, Mr Powell considers that a yield of up to 30 lots can be serviced, Mr Smith has assessed the traffic from an additional 27 lots, the concept development plan from the submitter shows 41 lots (of which the landscape assessment have been based on), Mr McCartney assessed 27 lots (but referred to a cumulative total of 41) and Mr Foy referred to 41 lots.
- 2.3 I have conversed with Ms Evans who has confirmed she understands the various areas to have the following (approximate) land areas:
- (a) 16,000m² of existing LDSR zone;

² As per my enquiries with the QLDC and Submitter's legal team 2/2/23

- (b) 10,600m² of proposed LDSR zone (as per Ms Mellsop's boundary); and
- (c) 8,080m² of proposed LDSR zone (as per the Submitter's boundary).

2.4 Ms Evan's confirmed that she has adopted a 68% yield to calculate her densities (the other 32% is made up in roading and reserves). I have worked from a figure of 75% (which takes into account the narrow roading and the minimal area of reserve that would be provided). I arrive at the following yields:

	450m² minimum lot	300m² unit / lot³
Existing LDSR zone	26 lots (likely to be closer to 20 providing for a loss from access)	30 units and lots
Submitter's Proposed LDSR zone	17 lots	26 lots

2.5 Taking into account the 17 lots in the proposed LLR zone, I consider the maximum development yield on the entire Site that could eventuate is around 60 to 70 lots/units. This is what I consider should be assessed.

HOUSING AND BUSINESS CAPACITY ASSESSMENT

2.6 At 5.3 and 5.4 of Ms Evan's rebuttal, she discusses Mr Foy's comments about there being a shortfall of housing capacity in the medium term given the entire site was assumed to be LDSR zone at the time the assessment was undertaken⁴. Ms Evans accepts that there may be a shortfall over the medium term capacity at Arthurs Point, but not in the long term.

2.7 I am reluctant to agree that there could be a shortfall in the medium term capacity when the extent of upzonings of existing urban land as part of Stage 3 of the PDP has not been considered. I have seen no evidence from Mr Foy that considers the additional rezoning of land along Arthurs Point Road from RVZ to HDRZ under Stage 3 of the PDP.

2.8 If my calculations on the density (above) are correct, then I would consider that the Proposal could provide greater assistance to housing capacity than reported. I maintain my view that the Proposal will do little to contribute to housing capacity in the District.

TRAIL

³ Applying Rule 7.4.8, which shall not require written approval or be notified (7.6.1).

⁴ As the HBA was based on the decisions version of the PDP.

- 2.9 Ms Evans agrees with my reservation on the mechanics of how a public trail could be established in this location and considers that “caution should therefore be exercised with respect to how this positive effect will be realised”⁵.
- 2.10 I listened to the submission from Mr Williams of the Trails Trust where he spoke about the wider trail network and importance of providing links to that network.
- 2.11 I was involved in the consenting process for the trail network (RM200336) and I am familiar with what was consented. I have appended a copy of the overall site plan to my summary (**Annexure A**).
- 2.12 There is no trail consented in the location of the Site or adjoining DOC reserve, and any bridge that may be advanced as part of the wider network would also require resource consent – this was not part of RM200336. As far as I am aware, there has been no business case completed for a bridge in the location suggested by Mr Williams and at this stage is aspirational. None of these matters have any degree of planning certainty. Furthermore, the notified landscape schedules identify transport infrastructure in the Shotover River ONF as a risk and that there is no capacity for such infrastructure in landscape terms.
- 2.13 I do acknowledge and accept the importance of the trail network throughout the Wakatipu Basin. I also consider that there is the *potential* for the trail connection to be a positive trait of the Submitter’s proposal. For it to be considered as a benefit as part of the section 32 evaluation, it would need to have much higher certainty.
- 2.14 Mr Foy agrees with me that future links into the trail network are “uncertain”⁶ however considers that the links cannot occur if the Site is not rezoned. Mr Bartlett confirmed in questioning to Commissioner Taylor that a trail could be established separate to any subdivision of the land, and could be created on the adjoining DOC land entirely bypassing the Site. This is also my understanding from a review of the Structure Plan.
- 2.15 In my view, a trail in this location could be advanced with or without the proposed urban zoning and in any event, would require resource consent.

Landscape Priority Areas and Schedules

- 2.16 There has been a lot of discussion about the priority areas and their relevance to the proceedings. I have taken the opportunity last night to review again the original submissions made on the PDP that set the scope for the Submitter’s proposal.

⁵ [7.9] of Evans Rebuttal

⁶ Paragraph 9 of Foy Summary (1/2/23)

- 2.17 The priority area process (a variation to the PDP) is a completely separate process to these current proceedings (a submission on stage 1 of the PDP). The schedules are notified and they therefore need to be considered as part of a “proposed plan”. They are in the early stages of that process and no decision has been made on them.
- 2.18 The PDP does not provide priority area ONLs any more importance to non-priority area ONLs. This is specifically set out in SP 3.3.44. Furthermore, the methodology to assess section 6 landscapes are the same, as set out in SP 3.3.45.

CONIFER REMOVAL

- 2.19 Evidence has been provided by Mr Fairfax that DOC intend to remove the remainder of the wilding trees adjoining the Site. I am not aware that Ms Mellsop or Mr Espie have considered this in their landscape assessment.
- 2.20 I have appended to my summary the programme for wilding control and removal from the Wilding Conifer Control Group (**Annexure B**).
- 2.21 This confirms that it is intended to remove all of the trees in the DOC reserve and wider area around Big Beach. In my view this should be taken into account as part of the assessment of the Proposal.

PLAN PROVISIONS

- 2.22 I have reviewed the updated provisions prepared by Mr Brown and I have not changed my opinion as expressed in my EIC. I acknowledge that further refinements have been made in response to issues raised and that the provisions are an improvement.
- 2.23 In reading the provisions as a whole⁷, it is clear to me that the LLR zone is seeking to maintain and enhance residential character and amenity values, rather than landscape values. This fundamental issue is also highlighted by Ms Evan’s in her rebuttal at 7.4 where she highlights that none of the objectives of Chapter 11 focus on landscape outcomes. Even if the Site was not found to be an ONL, I would have strong reservations towards supporting a zone in this location that provides little landscape protection.
- 2.24 Much emphasis is placed in the LLR zone provisions on the Structure Plan being the tool to ensure that adverse effects on the values of the ONF are avoided and protected (proposed Objective 11.24 and its policies), yet there is no such policy or rule support relating to the proposed extension of the LDSR zone that sits above the proposed LLR zone. The LDSR also contains no landscape protection objectives, policies or rules.

⁷ I note that the provision set excludes Objectives 11.2.2 and 11.2.3, and their associated policies.

This is a reason why I am not supportive of Ms Mellsop's suggested extension of this zone further into the Site.

- 2.25 I agree with Ms Evans that there needs to be the ability to decline development in this setting⁸ and in my opinion, the most appropriate activity status would be at least discretionary. Only the Rural zoning under the PDP provides that level of protection.
- 2.26 There is some criticism that I have "misunderstood" or "misinterpreted" the proposed planning provisions and structure plan⁹, and in particular that I should know the benefits of structure plans given my endorsement for them for other zoning requests under the PDP.
- 2.27 To be clear, I do consider that Structure Plans can be an important method to couple with Plan provisions to manage/direct outcomes, and I have endorsed them in a number of small to large scale development proposal across a number of District Plans. A Structure Plan should be clearly linked to the Plan framework it seeks to implement. The effectiveness of a Structure Plan as a method is only as good as provisions that sit behind it. My comments on the Structure Plan in my EIC should not be seen as an attack on that method, rather my comments are Proposal specific and relate to what has been presented by the experts for the Submitter.
- 2.28 As an example, I provide with my summary a copy of the Gibbston Valley Resort Zone (GVRZ) chapter and Structure Plan that was referred to in legal submissions of Ms Hill [136] – See **Annexure C**.
- 2.29 Notably, before any of the defined "activity areas" in the GVRZ can be developed, there are requirements in the provisions to provide mitigation of adverse effects *in advance of development*. For example, before Activity Area 2 could be developed, around 9ha of grape vines needed to be planted, a large area of a creek needed to be ecologically enhanced, a defined landscape management area needed to be planted for visual mitigation alongside significant earth mounding, and an underpass constructed to provide for enhanced public access. This is tangible and certain mitigation, however if that mitigation happened to not be effective, then the provisions allow the effects to be further considered through land use consents with further controls placed.
- 2.30 There were clear rules and policies in the Gibbston Valley resort zone that were directive towards landscape outcomes. The zone adjoins the ONL and ONF (Kawarau River), there was strong direction in the provisions as to what outcome was expected

⁸ [7.8] of Evans Rebuttal

⁹ Anderson Lloyd legal submissions at [135]

and the 5.5m building height was “tested” to ensure that buildings would not be visible from the surface of the river.¹⁰

2.31 The zoning completely avoids the ONL/ONF¹¹. The Structure Plan also included a significant no build zone that covered a large area to avoid development on a terrace face (that was not ONL) with an associated directive policy¹² to maintain landscape values.

2.32 In my opinion, this Structure Plan is a useful, recent example. While it does not look too dissimilar to the Arthurs Point example, it is the provisions that sit behind it that provide the teeth.

Brett Giddens
3 February 2023

¹⁰ Policy 45.2.1.21 Where building heights within Activity Area 2 exceed 5.5 metres within that area shown on the Structure Plan, encourage buildings to not be visible from the Kawarau River, and where buildings may be visible, ensure that their visibility does not detract from the values of the Kawarau River Outstanding Natural Landscape.

¹¹ Contrary to [135] in the Anderson Lloyd legal submissions.

¹² Policy 45.2.1.10 - Avoid buildings within the No Build Area as shown on the Structure Plan so as to maintain landscape values.

General information and imagery:

<i>Prescription Reference</i>	Arthur's point
Grounds:	<p>The true left of the Shotover river, between Edith Cavell's Bridge to Big Beach 25ha – Public conservation land - Big Beach / Shotover River Conservation Area 5 ha – Private land - Gertrude's Saddlery Limited 5 ha – Private land - Worthington Trust Holdings Limited</p>
Situation:	<p>There is no doubt that Wilding conifers have been hugely damaging to the Wakatipu landscape, ecology and environment. Decades of control efforts have been invested into push back against these invasive pests and now with support from the National Wilding Conifer Program, substantial progress is being made. Most recently large areas of conifers have been cleared in Morningstar recreation reserve, McChesney's Creek area, Bowen peak, Mount Dewar, Queenstown hill and the lower Shotover river.</p> <p>In the centre of all this, at Arthurs point, lies a large hive of invasive Larch (and some other wilding species), the spread from this can be seen down Gorge road, across at Wattie's track, towards Littles road and down the banks of the Shotover. Images from less than 100 years ago show this area as clean and clear, but over time a Conifer invasion has surreptitiously developed into a dense stand of tall, but relatively young larch, which are of mixed age, twisted, multi-leading and of little timber value.</p> <p>Conifer seeds can be blown many kilometres by wind and have spread into areas such as farmland, the high country (including above the native bush line) and public conservation land. Seedlings quickly infest an area. If they are not removed, they can grow into dense, impenetrable wilding conifer forests. They often grow in mixed species groups, and their timber has either minimal or no value, or costs too much to remove because of access problems and density.</p> <p>The spread of wilding conifers threatens productive farmland, New Zealand lifestyles, iconic landscapes and native ecosystems, and our national economy. They also pose a significant threat as a fire hazard, especially close to residential areas.</p> <p>For the investment in controlling conifer spread across the Wakatipu to be effective, we must tackle these wild forests and eliminate the source of the problem. Hopes for ecosystem restoration and preservation of the Wakatipu's outstanding natural landscape, will always be at threat while these stands of wild trees remain.</p>
Mission:	<p>Remove all Wilding conifers from within prescribed block.</p> <ul style="list-style-type: none"> - Fell trees with machinery assistance. (Specialist tree falling near powerlines) - mulch/chip waste slash where practical, spread mulch over site. - extract and dispose of large timber. - Preserve tracks and trials where possible. - remove trees from Shotover gorge via aerial assistance. <p>This work will be carried out in stages and progress through them will largely depend on what can be effectively and practically achieved by the stretch of the budget.</p>
Time frame:	2 to 3 weeks during April/May 2021

Maps and Imagery

Arthurs point and Big Beach from watties track
– a dense smothering stand of trees which is spreading into neighbouring areas



Target area for Conifer removals



Neighbours and property boundaries at control block
(Conservation areas shown in grey, Target area shown in pink, property boundaries shown in blue and purple lines)



Arthurs point area – pre 1920



Arthurs point - post 1920's – naturally clear of Wilding Conifers

(date not known but is taken after construction of the Edith Cavell bridge which was completed in 1919)



Arthurs point 9th April 2021 – taken over by Wilding Conifers

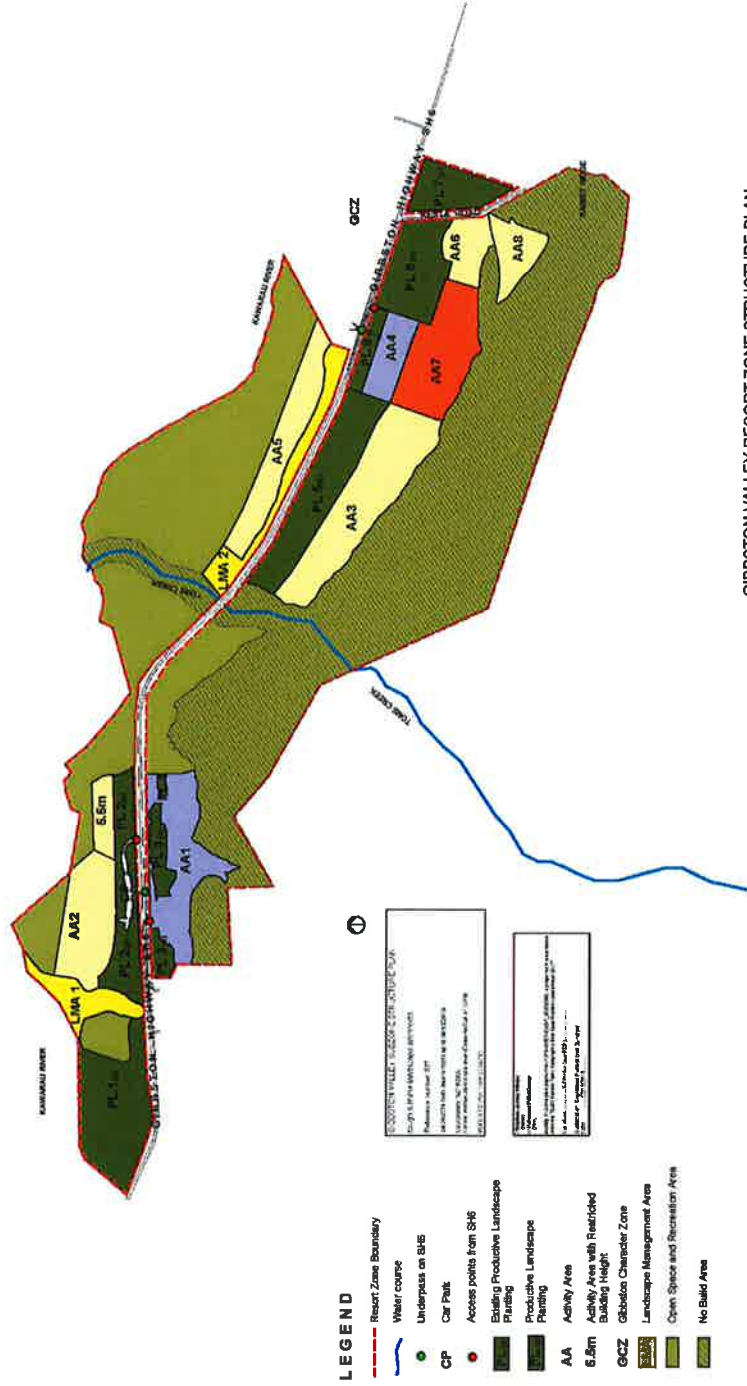


Technical information:

<p>Execution:</p>	<p>Eliminate all growing wilding conifer trees.</p> <ul style="list-style-type: none"> ● Fell trees with ground crews and machinery assistance, where practical, and mulch/chip all waste slash. Fell to waste where trees can be swallowed up by scrub. ● Stockpile or spread mulch over site as directed. ● remove trees from Shotover gorge via aerial assistance (separate plan) ● Delimb and extract heavy logs from site. ● Remove felled trees from bluff areas (or any other area) where there is a high risk of debris falling into gorge. ● Use Arborist to dismantle trees threatening buildings or power lines, where necessary ● Dispose of extracted logs via firewood merchant. ● Close access to site during felling operations, use temporary fencing where necessary. ● Use traffic management where felling affects road users. ● hand pull or use hand tools to remove saplings. ● Prevent damage to non-conifer vegetation as much as possible. ● Cut stumps must not be able to regrow and should be trimmed as close to the ground as possible. ● Apply Herbicide to stumps where necessary. ● Cut debris must be safely disposed of and must not be able to roll or move in typical weather events. ● Cut debris should not be able to enter the waterway or pose a risk of creek obstruction. ● Tracks must be left clear and felled trees should be trimmed back to at least: <ul style="list-style-type: none"> ○ 1m from the outer edge of tracks, for debris below waist level ○ 2m from the outer edge of tracks, if possible, for debris at eye level <p>Record waypoints of each tree controlled</p>
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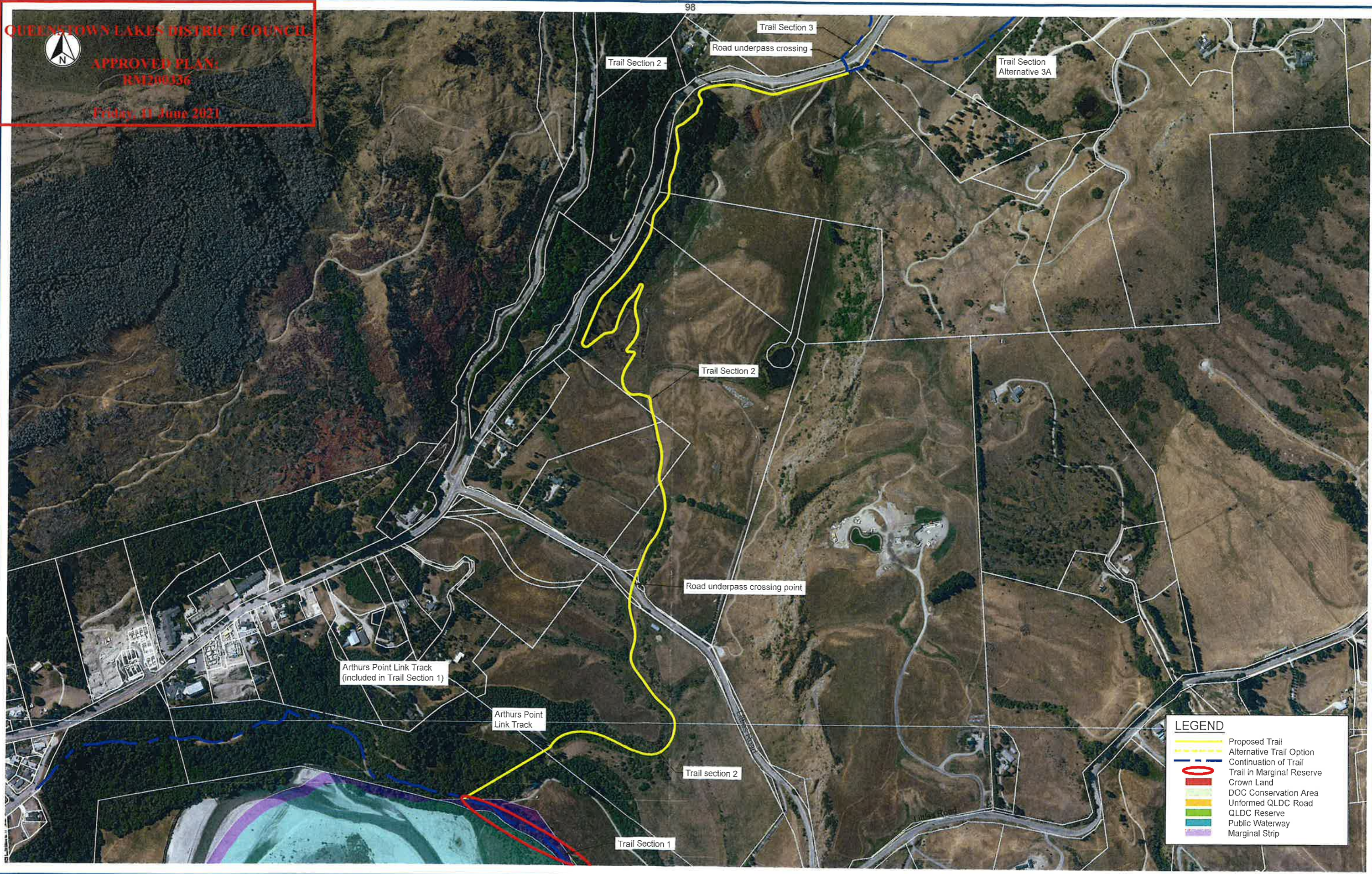
PART 5 SUBDIVISION & DEVELOPMENT 27

27.13.10 Gibbston Valley Resort Zone – Structure Plan



- 23.7.6.3 Any positive effects including environmental compensation, easements for public access to lakes, rivers or conservation areas.
- 23.7.6.4 Any opportunities to retire marginal farming land and revert it to indigenous vegetation.
- 23.7.6.5 Where adverse effects cannot avoided, mitigated or remedied, the merits of any compensation.
- 23.7.6.6 In the case of a proposed residential activity or specific development, whether a specific building design, rather than nominating a building platform, helps demonstrate the proposed development would maintain or enhance the character of the Gibbston Valley landscape.

QUEENSTOWN LAKES DISTRICT COUNCIL
 APPROVED PLAN:
 RM200136
 Friday, 11 June 2021

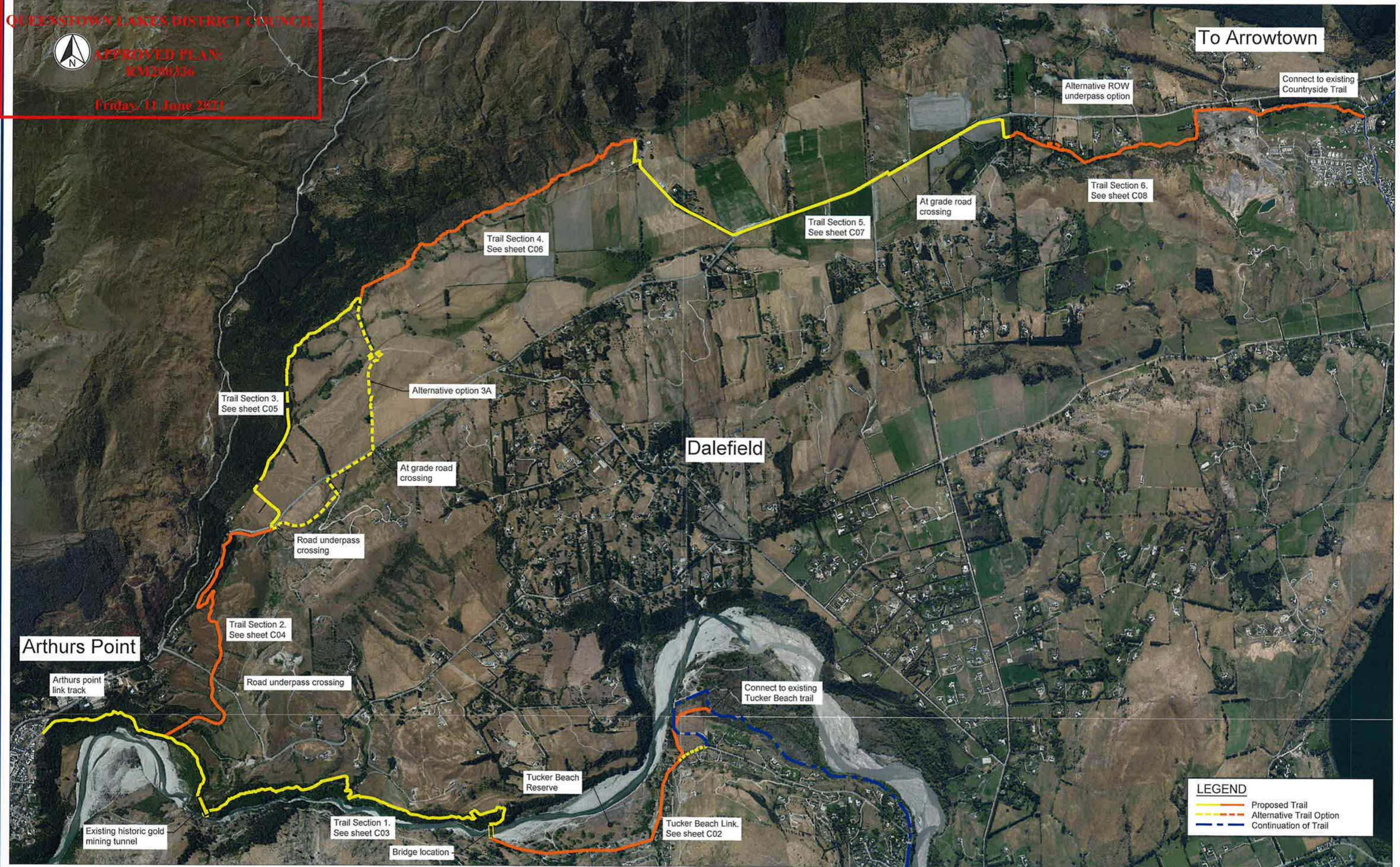


NOTES
 1. Do not scale off Drawings.
 2. Drawings to be read in conjunction with all other contract documents.
 3. Horizontal coordinates in terms of NZGD2000



DO NOT SCALE		Drawn FNH	Designer MW	Client	QUEENSTOWN TRAILS TRUST
		Drafting Check	Design Check	Project	TUCKER BEACH TO ARTHURS POINT
		Approved (Project Director)		Title	ARROWTOWN CYCLE TRAIL
		Date			TRAIL SECTION 2
		Scale 1:12500	This Drawing must not be used for Construction unless signed as Approved	Original Size	A1
				Drawing No:	C04
				Rev:	A

A	ISSUED FOR RESOURCE CONSENT	FNH	MW	12/03/20
No	Revision	Drawn	Job Manager	Project Director
				Date



A ISSUED FOR RESOURCE CONSENT		FNH	MW	12/03/20
No	Revision	Drawn	Job Manager	Project Director
Date		Date		

NOTES

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DO NOT SCALE	Drawn FNH	Designer MW	Client
	Drafting Check	Design Check	Project
	Approved (Project Director)		Title
	Date		QUEENSTOWN TRAILS TRUST TUCKER BEACH TO ARTHURS POINT ARROWTOWN CYCLE TRAIL TRAIL OVERVIEW
Scale 1:12500	This Drawing must not be used for Construction unless signed as Approved		Original Size A1 Drawing No: C01
			Rev: A