

Before the Queenstown Lakes District Council Hearing Panel

Under the Resource Management Act 1991 (**Act**)

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

Legal Submissions for Gertrude's Saddlery Limited and Larchmont Enterprises Limited

26 January 2023

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Outline of Submissions

- 1 These legal submissions are presented on behalf of Gertrude's Saddlery Limited (**GSL**) and Larchmont Enterprises Limited (**LEL**) (**Submitters**) pursuant to submissions on stage 1 of the Queenstown Lakes District Council (**QLDC** or **Council**) Proposed District Plan (**PDP**) stage 1, relevant to the Submitters' landholdings within Arthur's Point (111 and 163 Atley Road (**Site**)).
- 2 The following attachments to these submissions are relied on and discussed throughout:
 - (a) **Appendix A** – a neutral summary of the litigation history under the District Plan Review (**DPR**) relevant to this Site;
 - (b) **Appendix B** – the QLDC rezoning principles enunciated through Independent Hearing Panel (**IHP**) recommendations on the PDP;
 - (c) **Appendix C** – extracts from relevant legal principles under section 32 and already tabled by Counsel in the context of PDP rezoning hearings;
 - (d) **Appendix D** – revised masterplan set updated following receipt of Council rebuttal evidence, including visual simulations showing only the Operative Low Density Suburban Residential (**LDSR**) Zoning 'layer'.
 - (e) **Appendix E** – revised zone provisions proposed by the Submitters in response to points made by Council and Further Submitters' evidence.
 - (f) **Appendix F** – Plan showing QLDC Landscape Schedules Variation priority areas color-coded per landscape (Boffa Miskell, 25.01.23).
- 3 It is submitted that there are no remaining matters of evidential dispute in respect of servicing and infrastructure, geotech / natural hazards, and highly productive land. Furthermore, QLDC and the Submitters' traffic experts have significantly narrowed any remaining areas of disagreement, such that the only residual traffic issues relate to matters of detail that can be resolved at the consenting / detailed design stage¹. Additionally, the Submitters have called uncontested evidence as to the positive economic and ecological effects of the proposed rezoning.

¹ It is noted however that Ms Evans' rebuttal evidence confirms she no longer 'considers traffic effects to be a reason to oppose the rezoning.' [5.6]

- 4 Council's position is now in support of part of the relief sought by the Submitters, being the LDSR Zone extension over the Site. The issues of debate therefore between Submitters and Council are significantly narrowed, and now only relate to the appropriateness of the Large Lot Residential B Zoning (**LLRB**) around the periphery of the Site, enabling 17 master-planned lots, revegetation and public access.
- 5 This case is therefore now very focussed to, first the determination of the landscape classification, and then the appropriate zone and use of the Site. Effectively, Council's rebuttal proposition supports an extension of residential zoning into the Site, but this would not secure any of the positive benefits associated with the more fulsome rezoning of the LLRB component. To the contrary, that position from Council would leave behind an illogical and indefensible urban / ONL boundary and greater potential for future ad-hoc subdivision of the Site, or otherwise reversion of the Site into degraded a pest plant and seed source.
- 6 By contrast, confirming the Submitters' relief as now sought will ensure:
 - (a) The long-term certainty and master-planning of the Site in a way that protects landscape values of the Shotover River Outstanding Natural Feature (**ONF**);
 - (b) Protection against future incremental and ad-hoc subdivision and design outcomes;
 - (c) Delivery of housing choice and supply to a constrained market within Arthurs Point;
 - (d) A logical and cohesive urban form of development entirely connected to an existing urban area and fully and readily serviceable by Council infrastructure;
 - (e) Significant community benefits in the form of increased recreational and public access through the Site, and potentially beyond it in the future;
 - (f) Enhanced ecological outcomes for the Site itself and consequently, broader landscapes,
 - (g) Creating greater landscape protection than could currently occur under the permitted baseline of the operative LDSRZ portion of the Site.
- 7 The above all support the finding that the rezoning proposal is the most appropriate zoning for the Site in section 32 terms, has no inappropriate

adverse effects, net positive ecological, landscape, and economic effects, and is entirely consistent with the IHP rezoning principles, including by giving effect to higher order provisions of the PDP, higher order planning instruments, and Part 2 of the Act itself.

Preface

- 8 The critical subject of this (re)hearing is a first-principles question of what is the correct and most appropriate landscape categorisation and zoning to apply to the Site. That is an exercise previously completed by a differently constituted IHP, but a question again being debated here. As with numerous other submissions and hearings held on the PDP since notification in 2015, in answering these foundational questions, there is no presumption that the Council's proposed zoning is the most appropriate², and the Commission will be approaching this Site as a 'clean sheet of paper'.³
- 9 There appears to be a significant misunderstanding on the part of some further submitters that the Site is (and therefore always will remain) part of an Outstanding Natural Landscape (**ONL**) and therefore any form of rezoning or development is, and always will be, inappropriate. To the contrary, the very purpose of the PDP review and this hearing is to inquire into, and make findings on, what is the correct and appropriate landscape categorisation of the Site.
- 10 This fine-grained inquiry for the Site has never been undertaken since the inception of the Act, save for the IHP Recommendation on rezoning of the Site in 2018, which considered extensive landscape evidence and decided that the Site is not ONL and is suitable for rezoning⁴. The Environment Court's series of landscape decisions in respect of the 1995 Operative Plan (**ODP**) stopped east of Arthurs Point in considering any ONL boundaries towards the Dalefield area⁵. However, since those decisions, and since stage 1 of the PDP was notified, landscape categorisation has moved on and stage 3 of the PDP has now confirmed the 'inner ring' of an Arthurs Point ONL, as currently depicted around the urban zoning of the operative

² *Hibbit v Auckland City Council* 39/96, [1996] NZRMA 529 at 533.

³ *Golf (2012) Limited v Thames-Coromandel District Council* [2019] NZEnvC 112, at [131].

⁴ IHP Report 17.4.

⁵ In particular, *Wakatipu Environmental Society Inv v Queenstown Lakes District Council*, ENC Christchurch C003/02, 22 January 2002. As referenced in Mr Espie's evidence, and in contradiction to that of Mr S Brown, that decision never assessed values of the Arthurs Point urban area nor for the Site.

Arthurs Point residential zones⁶. This hearing is effectively completing the last piece of the southernmost point of that inner ring.

- 11 The Commissioners may be aware of the long litigation history of this Site under the PDP review since 2015. A neutral summary of the litigation relevant to this hearing is provided in **Appendix A**. Although the various avenues of litigation pursued by the Arthurs Point Outstanding Natural Landscape Society (**APONLS**) have been exhausted, the only binding decisions from the Courts on this Commission is that the Council's summary of submissions notification process under stage 1, for the GSL and LEL submissions, was found to be deficient.⁷ There has been no decision, and there is no binding authority, on the merits of the previous Council-approved reclassification of landscape and rezoning of the Site. Decisions and litigation to date have only been procedural in nature, not substantive.
- 12 The effect of having to re-notify submissions some four years after Council approved rezoning of the Site has resulted in a change from zero further submitters in 2015, to 99⁸ further submitters in 2022. No doubt the jump in opposition is attributed not just to this notification accuracy, but rather, to the high-profile litigation and associated campaigns⁹ that have surrounded the Site over the past 7 years.
- 13 Despite 99 further submitters on the record, it is notable that:
 - (a) Of the 70 in opposition, 46 of those are copied 'pro forma' submissions based upon a template circulated by APONLS encouraging Arthurs Point residents to submit in opposition¹⁰. As recounted in Mr Fairfax's evidence, one submitter inadvertently served the pro forma template on GSL without completing any personal information specific to reasons of opposition. The Commission should place limited weighting on the reasons of opposition in those pro forma submissions, and on the legitimacy of

⁶ IHP Report 20.9 – Arthurs Point North mapping

⁷ *APONLS v QLDC* [2019] NZEnvC 150, also upheld on appeal by [2021] NZHC 147.

⁸ According to QLDC's notification website, 100 further submissions were received, however from review of those, it appears one opposing submission is a duplicate (FS #42 and #69 are both by Celia Karen Mitchell following the APONLS' pro forma template).

⁹ For example, as referenced in Mr Fairfax's evidence in chief at [24] – [26].

¹⁰ Which contained material inaccuracies as to the potential relief available in submissions, as noted in Appendix B to Mr Fairfax's evidence, for example the pro forma submission was entirely incorrect with respect to enabled density.

concerns spread across the total numbers of opposing further submitters.

- (b) Out of those further submitters, only a small portion have requested to be heard. While that is not necessarily evidence of a change of position, when those submissions were lodged, the rezoning proposal sought was significantly different to what has been proposed subsequently in evidence, including a reduction to less than a third of original potential yield.
 - (c) Only APONLS as a further submitter has called any expert evidence in aid of their opposition campaign and there are significant questions as to the breadth of interests that group represents in the Arthurs Point community.
- 14 Council unanimously voted to approve the rezoning of the Site and uphold the IHP recommendation in 2018, and then expended significant resources and costs in defending its notification process that provided for that decision to be made¹¹.
- 15 Despite such previous expense and intentions, Council has somewhat inexplicably taken a different tack in this hearing and now only supports a portion of the LDSR rezoning sought over the Site, and a portion of amended ONL landscape categorisation for the same area. For the Council to now take this stance is essentially saying that, after hearing all the evidence at first instance, the IHP (chaired by Commissioner Nugent) got the decision wrong.
- 16 The change of position would perhaps be more readily understandable if, in the intervening period since its 2018 decision, there were different environmental or policy considerations lending weight to a different Council decision, however the only relevant such changes are:
- (a) A new roundabout has been constructed off Arthurs Point Road (which has now been modelled and assessed by Council and Submitter experts, and confirmed to be no issue for the rezoning);
 - (b) Wilding trees have been lawfully felled on the site;

¹¹ As set out in Appendix A Council pursued appeals to the High Court defending the notification decision (in effect thus also defending the merits decision consequently).

- (c) The inner ring of the ONLs surrounding Arthur's Point and Urban Growth Boundary (**UGB**) has been set around the rest of Arthurs Point urban area through PDP decisions on Stage 3;
 - (d) New policy considerations are in play through the National Policy Statement Urban Development 2020 (**NPS-UD**), the partially operative Otago RPS 2019 (**PORPS**), confirmed decisions on Chapters 3, 4, and 6 of the PDP, the QLDC Spatial Strategy 2019; and the notification of the Shotover River / Kimiakau Priority Area over the Site in the recent Landscape Schedules Variation.
- 17 All of these new factors are either neutral, or in support of, the rezoning proposal.

Landscape Schedules Variation - Priority Areas weighting

- 18 One recent potential plan related change for the Site is notification of the Landscape Schedules Variation to include schedules of values for 'priority areas'. This variation was notified by QLDC as directed by the Environment Court's decisions on Topic 2 of the PDP, requiring schedules of values for the identified ONLs and ONFs of the District. The first areas for such scheduling are 'priority areas' which were defined (including mapping / spatial extent of those) through a series of decisions from Judge Hassan's division of the Environment Court (Decisions 2.1 – 2.12).
- 19 GSL has lodged separate proceedings in the Environment Court seeking a declaration that the Council did not follow requisite decisions from the Environment Court, including to notify the Shotover River ONF Priority Area in the previously agreed / determined location, and which would have excluded the (**GSL Site**).¹²
- 20 Those proceedings are ongoing, and in combination with the fact that the notified variation is at an early stage of the Schedule 1 process¹³, means in my submission that no weight can be applied to the notified priority area

¹² The reasons for the declaration are extensive, but the most critical position from the Submitters is that the previous Court Topic 2 decisions determined, through expert conferencing, that the Shotover River ONF boundary for notification in the variation did not include any of the Site (it instead followed the boundary depicted in green as included in Appendix 7 of Mr Espie's evidence, which provides for just two small incursions into the Site.

¹³ Referring to the jurisprudence that the closer the proposed plan comes to its final content, the more regard is had to it: *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 815.

maps, in particular any consideration that the Site is part of the Shotover River ONF Priority Area.

- 21 It follows, that there are no environmental or policy changes since Council's positive rezoning decision in 2018 that now exist as a new reason for Council to change tack on its previous decision. To the contrary, there are significant policy changes now that provide additional support in favour of the (now revised) rezoning proposed.

Overview of proposal and key changes in response to evidence

- 22 Ms Mellisop and Ms Evans for Council partially support the relief proposed by Submitters, being an extension of the LDSR Zone into the Site. They continue to oppose the LLRB Zone component of the rezoning of the Site, however provide suggested revisions for that portion of the rezoning, should the Commission be minded to grant that part of the relief.
- 23 These submissions carefully analyse the ONL argument for this Site, and in particular the illogicality of determining the Site to be part of a broader ONL, yet supporting partial urban rezoning / extension into it. However first I detail below the key design and planning responses taken on board by the Submitters in response to the Council's suggested zone revisions:

Design response

- (a) A number of amendments have been made to building platform locations in the LLRB Zone component of the Site to address Ms Mellisop's rebuttal and ensure the siting of all platforms are in the most recessive and appropriate locations for the Site. All of these 'tweaks' now ensure that internal setbacks of 6m can be achieved between platforms¹⁴, and that a 5m buffer planting area is provided in the intervening land between any building platform frontage and the edge of the Site boundary.
- (b) In reviewing the 'plan set' it was noted that the Submitter's proposed ONF Boundary followed, in part, the edge of the Site boundary. This has now been amended to reflect the agreed topographical gorge boundary of the ONF (as between Mr Espie, Ms Mellisop and Ms Pfluger), while the Zone and UGB boundary remain at the edge of the Site, providing effectively a setback or buffer from much of the ONF boundary.

¹⁴ Save for Lot 35.

Revisions to mitigation and planting controls

- (c) A number of rules have been tightened or amended to reflect rebuttal from Ms Evans and Ms Mellsop, including:
 - (i) Ensuring the 2m average height of 30% of planting per future LLRB allotment is achieved before building construction; and
 - (ii) Amended Structural Planting Areas in some locations and platform siting to better integrate planting adjacent to the ONF gorge setback.
- (d) The Submitters have not adopted Ms Mellsop's recommendation of 60% taller species planted on S, SE, and SW slopes for the reasons outlined in Mr Espie's summary¹⁵. In particular, the proposed mitigation will essentially screen out views and sunlight to these properties, while the purpose of the proposed planting is mitigation and softening, not complete and eventual screening of any built form on the Site.
- (e) The Submitters maintain the appropriateness of a 7m height for buildings given the modelling and visual simulations have been prepared on this basis; the Commission can readily discern what exact (and worst case) visual effects consequently will accrue. As defended by Mr Espie¹⁶, there are no viewpoints which are affected by additional breaches of skyline or ridgeline that are not already influenced by a breach from the operative permitted baseline already applicable to part of the Site, and Ms Mellsop has not identified which platforms she is particularly concerned about in terms of this height effect (other than a broad reference to lots 34 and 35 being 'high'). If the Commission has particular concerns as to specific lots due to this height effect, it is within scope and jurisdiction to make a finding as to specific height limits applying to those.

Policy amendments

- (f) Almost all policy changes have been accepted by Mr J Brown and are explained further in his summary. These include a stronger policy framework relating to landscape objectives for the LLRB Zone, and in respect of the interface with the Shotover River ONF.

¹⁵ Summary of Evidence of Mr Espie, at [24a].

¹⁶ Summary of Evidence of Mr Espie, at [20].

- (g) Clearer methods of control in the subdivision provisions are prescribed to ensure the long term and ongoing benefits of the proposal are achieved and binding on future owners. This extends to matters such as retention and maintenance of planting and pest control, provisions of cycle and walkway access, and restriction of built form to certain locations.
- (h) The Submitters do not support an RD subdivision regime as opposed to a controlled activity status. The controlled activity status is common for a structure plan approach in chapter 27 and reflects the fine-grained site analysis of the structure plan approach, which delivers highly prescriptive outcomes in terms of final layout and built form. The statutory processing times and method for activity status should not be a reason to determine the most appropriate status, and as referred to in **Appendix C** of these submissions, a less restrictive approach to provisions should be preferred where possible¹⁷.
- 24 One of the recommendations from Council rebuttal which has not been adopted by the Submitters is the proposition of a reduction in density to 4000m². This recommendation would essentially halve the LLRB yield proposed and there is no specific evidence provided by Ms Mellsop or Ms Evans as to why it would more appropriate. In particular, Ms Mellsop's recommendation appears to be a response to visual effects of platforms, however the recommendation is only a response in terms of density and is not effects based.
- 25 It is unclear from Ms Mellsop's recommendation as to whether the dropping of density to 4000m² average would continue to require a structure plan approach or revert to the 'standard' LLRB Zone provisions. If the intent is the former then Ms Mellsop and Ms Evans have provided no indication as to which platforms would be dropped out to achieve the most appropriate siting under a new 4000m² regime, and what consequence that would have for revegetation and for environmental outcomes. If the intent is the latter, then there is no certainty as to the mitigations and other positive aspects that would accrue from rezoning of the Site according to a structure plan.
- 26 The average density of allotments in the LLRB Zone portion of the Site (as sought by the Submitters) is approximately 2,700m², although a number of them, in particular those closer to the boundary of the ONF, are much larger and nearing 4000m² (5 out of 9 lots bordering the ONF range from 3204m² – 4044m²). The Submitters' proposal of a structure plan approach is more

¹⁷ *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council*, [2017] NZEnvC 051, at [59].

appropriate for the Site than blanket zoning at a lower density, as it ensures specific mitigation and revegetation outcomes, carefully sited platforms, and a highly prescriptive ongoing land management regime binding future owners.

- 27 Should the Commission be inclined to favour the Council's preferred zoning of just the LDSR extension of the Site, I submit this would result in the following undesirable outcomes:
- (a) An illogical and consequently indefensible ONL and UGB boundary not based upon topography and landform (as discussed in Mr Espie's summary)¹⁸;
 - (b) None of the potential positive benefits including enhanced public access, revegetation and enhanced nature conservation values, and addition of desirable housing supply and choice to Arthurs Point.
- 28 Consequently, I urge the Commission to think realistically about what would be the future for the remainder of the Site if just the LDSR component were extended. As discussed in Dr Lloyd's ecology evidence, without rezoning and proposed required revegetation, the Site is likely to revert into wilding and invasive pest species cover¹⁹, in turn becoming an ongoing seed source with economic consequences of continued maintenance for the wider community. As Ms Pfluger points out, the other consequence is that there may be future consent applications for ad-hoc development of the Site which may not deliver the same comprehensive consideration of effects as proffered in the current structure plan approach²⁰, and in my submission almost certainly, will not accrue the same community benefits.
- 29 Further Submitters seem to be under the misapprehension that identifying the Site as ONL / Rural Zone means a prohibition or moratorium on any future development. To the contrary, one only needs to look at the recent example of the Mt Dewar (Treescape) consent – providing for subdivision and development of parts of the ONL backdrop to Arthurs Point. With over 97% of the District categorised as ONL or ONF, it is common and entirely possible, for future consent applications to be pursued for development on this Site.
- 30 It is submitted the Commissioners now have the opportunity to provide certainty, finality, and assurance to the community for the long-term destiny

¹⁸ Summary of evidence of Mr Espie, at [12].

¹⁹ Evidence in Chief of Kelvin Lloyd, at 24.

²⁰ Evidence in Chief of Ms Pfluger, at 75.

of this Site by confirming the revised rezoning relief sought by the Submitters.

Section 32 and rezoning principles

- 31 The key legal elements for the Commission's decision-making framework have been traversed by Counsel (although before differently constituted hearing panels) numerous times.
- 32 Those key legal principles have been copied to **Appendix C** in these submissions for the Commissioners' reference.
- 33 The one key different defining factor in this hearing is that, in addition to those principles, the previous Council decision and IHP recommendation to rezone this Site, are further relevant matters to be had regard to by this Commission. In my submission the weight to be given to Council's previous rezoning decision and the IHP recommendation is significant for the following reasons:
- (a) The determination by the Environment Court²¹ to 'suspend' the Council decision on the ONL boundary and rezoning did not overturn that decision or make any findings as to its appropriateness on the merits;
 - (b) No intervening policy changes or evidential changes have occurred since the IHP recommendation was made that would undermine it;
 - (c) A highly skilled inquiry was undertaken into the evidence by the IHP, including relevantly, findings that the Site is not ONL (or part of one) preferring Mr Espie's evidence over that of Dr Read.
- 34 The previously constituted IHP consisted of three well regarded and respected Commissioners (Denis Nugent, Jan Crawford, and David Mountfort) who carefully weighed and evaluated the competing landscape evidence, ultimately determining that:

[66] We have considered carefully the competing views of Mr Espie and Dr Read. We accept that there is little to distinguish most of the submission site from adjoining land already zoned LDR. Views of the site from within the LDRZ would be possible, but would read as part of the urban area. Views into the site would be significant from the Watties Track area, but again would appear as part of the wider settlement. From all other viewpoints, adverse visual effects

²¹ *APONLS v QLDC* [2019] NZEnvC 150

would be insignificant to minor. From everywhere, the most outstanding characteristics of the landscape, being the high peaks and the Shotover Gorge would remain predominant²².

- 35 I submit the evidence does not support a departure from that previously reasoned decision, and again, Mr Espie's approach (now supported by Ms Pfluger) can continue to be preferred. The IHP's determination to use clause 16(2) to determine the ONL boundary around the rest of Arthurs Point was following the advice of Ms Scott for Council²³. Their following of that advice, and the issues of Council's notification of its summary of decisions in submissions, was the subject of the Environment Court enforcement order decision²⁴ – not the above findings as to landscape classification and zoning.
- 36 The Commission will also be familiar with well traversed case law under section 32, which includes the principle that the Council's proposed plan is not to be assumed to be the most preferred or appropriate. The Commission here are to use a 'clean sheet of paper' approach to the rezoning of the Site.
- 37 In *Golf v Thames Coromandel District Council*, the Court considered²⁵:

[131] ... previous plan provisions do not affect the assessment of appropriate provisions in a proposed plan, so that the evaluation of a proposed plan under s 32 RMA is not based on the operative plan. Although it is possible that the provisions of an earlier plan may have some value in the consideration of alternatives (in terms now of s 32(1)(b)(i) and the identification of other reasonably practicable options for achieving the objectives of the proposed plan), that is not assured. In preparing a district plan, a council is required to start with a clean sheet and focus on the purpose of the RMA. While that conclusion in Leith was in the context of a proposed plan notified shortly after the RMA came in to force and highlighted the differences between that Act and

²² IHP Report 17.4 at [66].

²³ Para 68 of the IHP 17.4 Report notes that: all the landscape and planning witnesses accepted that it would be appropriate to draw an ONL line around the whole Arthurs Point Settlement. Legal counsel for the Council, Ms Scott, advised in her Reply submissions that it would be legally possible to make this change using the powers in clause 16(2) to make minor corrections to the PDP, because this change would be essentially neutral in effect,

²⁴ *APONLS v QLDC* [2019] NZEnvC 150.

²⁵ *Golf (2012) Limited v Thames-Coromandel District Council* [2019] NZEnvC 112

the Town and Country Planning Act 1977, the principles remain the same now.

[132] Notwithstanding the prospective view that needs to be taken both when preparing plans and when assessing applications for resource consent, one must also bear in mind that the environment in which plans and applications are considered exists as a result of what has happened in the past. The assessment of effects on the environment of allowing an activity must be in terms of the existing environment. Certainly, a plan must be forward-looking, but it must also be based on the existing environment. As a result, a planning or resource management assessment is never fully zero-based.

An ONL or ONF should, in most cases, be obvious to the reasonable viewer

- 38 The key and most relevant matter in this hearing is determining whether or not the Site is an ONL or an ONF landscape (or otherwise part of one). The Commissioners must make a finding on this essential question in the first instance²⁶.
- 39 The Council's case, supported by Ms Mellsop's evidence, is that the Site is part of the broader Western Wakatipu ONL but that it is not within the Shotover River / Kimiākau ONF²⁷.
- 40 The Commission has before it two opposing views of the landscape classification of the Site, assisted by four expert landscape architect briefs. Before reading the following sections on the relevant case law to guide this section 6 determination, and an evaluation of the evidence for each side, it is important to step back and look at this question with a degree of realism and real-world analysis.
- 41 Putting aside the extensive technical evidence on this topic in this case, Judge Jackson's seminal decision, *WESI v QLDC*²⁸ considered that what is or is not an ONL or ONF in most cases should be a finding of fact that is actually reasonably obvious to the ordinary, non-expert viewer:

²⁶ Referring to *APONLS v QLDC* [2019] NZEnvC 150, at [33] and [108], as to the appropriateness of landscape categorization being carried out prior to decisions on zoning.

²⁷ Rebuttal evidence of Ms Mellsop at [3.15].

²⁸ *Wakatipu Environmental Society Inc v The Queenstown-Lakes District Council* [2000] NZRMA 59 at [99].

[99] ... ascertaining an area of outstanding natural landscape should not (normally) require experts²⁹. Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis. The question of what is appropriate development is another issue, and one which might require an expert's opinion. Just because an area is or contains an outstanding natural landscape does not mean that development is automatically inappropriate.

- 42 That observation has been relied on subsequently in numerous Court decisions determining categorisation of landscapes, often citing this realistic 'step back' approach, separate from the various modifications of landscape identification criteria developed through Court and policy decisions (to which these submissions will refer to next). For example, in *Waiareka Valley Preservation Soc Inc & ors v Waitaki DC & anor*³⁰ the concepts as to the 'lay person' analysis were repeated:

[135] In considering whether or not landscapes or features are outstanding, it has been customary over the past decade for landscape architects and the Court to consider various elements of the landscape under a series of heads identified in *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council*, and sometimes referred to as the modified Pigeon Bay criteria or factors. We indicate that we consider the term factors much more appropriate. They are a series of elements which help to ensure a full understanding of the landscape the Court is dealing with, not a series of criteria according to which some rating in one or more results in a landscape becoming outstanding. It is still necessary to stand back and ask the question "does this landscape or feature stand out among the other landscapes and features of the district?" We refer to the salutary comments of the Court in Unison v Hastings District Council, warning against a mathematical or mechanical approach to applying the modified Pigeon Bay factors. This appeared to be the view of all the landscape architects in this case.

...

²⁹ There may be exceptions where a landscape is flatter or such a large geological unit that an uninformed observer may have difficulty conceiving of it as outstanding, in the first case, or as a single landscape in the second

³⁰ *Waiareka Valley Preservation Soc Inc & ors v Waitaki DC & anor* Decision C 058/2009

- 43 In *Western Bay of Plenty District Council v Bay of Plenty Regional Council*³¹ again, the Environment Court again re-iterated this:

[136] ... case law which clearly states that any of the range of factors may be so significant in relation to a particular landscape or feature as to justify a finding that it is outstanding³² and that an ONFL should be so obvious (in general terms) that there is no need for expert analysis³³ This is plainly the basis for the approach in a number of the cases of standing back, looking at the whole landscape or feature and asking: does this landscape or feature stand out among the other landscapes and features of the district or region?³⁴

[137] The admonition to stand back begs the question of the most appropriate point of view. This is an issue not only of a viewpoint in space but also in time or over a period of time, given the four-dimensional existence of a landscape. Just as a viewer can see a landscape from close up, or in the fore- or middle ground or from a long distance, so the time dimension may be fleeting, or last for few years, or the life of the relevant plan, or for a generation, or over a much longer term: the process elements of a landscape or feature may be appropriately considered over geological epochs. It seems unlikely that there will ever be a single viewpoint or viewing time: that would simply be to adopt a snapshot approach which we understand is not supported by expert opinion (although it seems to be integral to the analysis of preferences using the Q-Sort methodology). So one must stand back conceptually and bring together in one's mind the full range of views, along with whatever one may know of relevant processes and associations which can inform one's understanding of those views.³⁵

- 44 And in the Environment Court decision in *Man o War Station Limited v Auckland Council* (upheld on appeal):

[83] ... We need not cite all the specific tests identified. It suffices to record that they all require a landscape to be remarkable, exceptional or notable

³¹ *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147.

³² *Upper Clutha Tracks Trust & ors v Queenstown Lakes DC* [2010] NZEnvC 432 at [64].

³³ *Wakatipu Environmental Society Inc v Queenstown-Lakes DC* [2000] NZRMA 59 at para 99.

³⁴ *Waiareka Valley Preservation Soc Inc & ors v Waitaki DC & anor* Environment Court Decision C 058/2009 at [135].

³⁵ *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147 at [136] – [137].

at the relevant scale, or similar. Perhaps the most prosaic test given is that ONLs "*should be so obvious (in general terms) that there is no need for expert analysis*", a sentiment we can readily subscribe to. We offer the passing observation that readers could be forgiven for feeling exhausted after reading the extensive debates about landscape reported in this decision (as we ourselves did in assimilating the enormous quantities of evidence). We are bound to agree with previous Court decisions that a principled approach is required, but at what point does an enquiry become needlessly complex?³⁶

- 45 For the specific purposes of plan provisions included to recognise and provide for the values in s 6(b), and combining the approaches taken before in several cases, the 'real world / lay analysis' approach is also encapsulated in the broad question of whether a particular feature or landscape, when all its attributes are considered, stands out so obviously from others in the district or region that there is no need for expert debate about its status.
- 46 While the determination of landscape category is generally based upon the facts on the ground at the time of determination, one relevant factor is the changeability of vegetation and another potentially relevant factor is relevant historical context or association.³⁷ I refer to the historic photograph in Appendix 5 of Mr Espies attachments inset below. In the 1960s much of the land now under debate was pastoral land being actively farmed. This image clearly shows that pastoral land going right to the edge of the deeply incised gorge.

³⁶ *Man O' War Station Limited v Auckland Council* [2014] NZEnvC 167, at [83].

³⁷ *Man O' War Station Limited v Auckland Council* [2014] NZEnvC 167 at [14] referring to *Wakatipu Environmental Society Inc v The Queenstown-Lakes District Council* [2000] NZRMA 59 at [76] – [77]. As well as the Proposed Otago Regional Council Policy Statement (Decisions Version) Schedule 3 including 'associative attributes'.



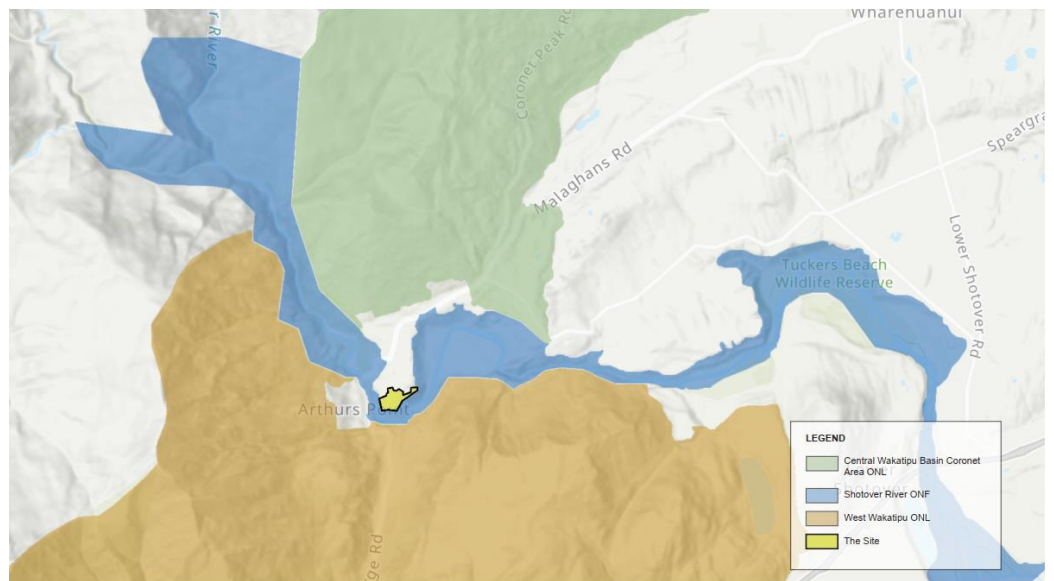
- 47 The further overlay image prepared by Boffa Miskell below (see Appendix D) also denotes this obvious landform change, which can be seen to some degree, although the mature wilding forest that has grown on the escarpment on DOC land in recent decades obscures that somewhat more:



- 48 We are therefore debating an area of land which was largely pastoral at one point in time, clearly is similar in landform to the rest of Arthurs Point

urban area now developed, and which is distinct from the adjacent upper edge of the Shotover Gorge. Removal of wilding trees over the Site recently once again reinforces that aerial view which demonstrates the obviousness to the reasonable viewer, that the Site is not of an outstanding character or any different in geographical and topographical terms from the rest of Arthurs Point urban area. That combination of factors specific to the Site contributes to tilting the evaluation away from ONL categorisation (either in its own right or connected to a broader landscape). Furthermore, in my submission this aerial imagery demonstrates how the Site cannot be considered logically to be part of (let alone an integral part of) the Western Whakatipu Basin ONL which sits to the south of the Site (albeit including the Shotover River ONF), and by contrast evidence much more definitively outstanding mountainous landscapes. Put simply, if the Site is not considered to be within the enclosing riverine escarpment of the ONF (and it is agreed not to be) then how can it logically be a leftover piece of the disconnected western ONL?

- 49 Appendix 7 of Mr Espie's evidence sets out the landscape priority areas (using the spatial layer on Council's website with the Shotover River Gorge ONF as determined through Environment Court Topic 2 decisions). This shows the three landscapes / features in contention, and that even if the Shotover River ONF is nested in the Western Whakatipu Basin ONL, the Site is still entirely disconnected from that ONL:
- 50 See also **Appendix F** and snip below which identifies Mr Espie's Appendix 7, but denoting the Site and the three landscapes / features in separate colour.



- 51 The northern flanks and top of the knoll within the Site have already been developed. We are therefore debating the southern remaining half of a small knoll, which is a degraded Site of felled wilding species, of similar character and values to already developed Arthurs Point, and likely to regenerate into a pest seed source again if the Site is not rezoned. The Western Whakatipu Basin ONL to the south and west of Arthurs Point urban area is expansive and magnificent and will remain as such under not only what has previously been approved for rezoning by Council on this Site, but indefinitely by the current proposal now proffered by the Submitters.³⁸
- 52 In my submission, Ms Mellsop's support of the LDSR Zone extension into part of the Site presents an inherent contradiction and further suggests that the Site is not clearly or obviously part of a preeminent ONL landscape within the District, as required by the above case law.

***Hawthenden* landscape criteria – topography should in most cases give the answer**

- 53 If the obvious answer cannot determine the relevant ONL boundary (and in my submission it readily can), then it is submitted topographical and geomorphic considerations support the conclusion in any event.
- 54 The most relevant guidance as to the determination of a landscape in this District is set out in Judge Hassan's first landscape decision on the stage PDP appeals (*Hawthenden v QLDC*), which provides a succinct summary of extensive higher court landscape caselaw and applies this in the QLDC PDP context. That case also followed the JWS as to landscape classification referenced in Mr Espie's summary. The Court in that case commented on similar themes as to the realistic judgement approach discussed above:

[58] We find the following observations in the Landscape Methodology JWS, as to judgment, properly reflective of Man O'War and we accept and apply them (our emphasis):

(b) It is recognised that in many cases it will be obvious if a landscape or feature is outstanding. However, in some cases, expert assessment will be needed (e.g. where associative values or less obvious biophysical values are present). The expert

³⁸ Evidence in Chief of Ms Pfluger at [63] concludes that: 'the broader urban context of Arthurs Point will be seen together with this rezoning, and the visual effects of the additional buildings would not detract from the wider mountainous context of the landscapes surrounding Arthurs Point, which will remain dominant.'

assessment may require identification and analysis by other disciplines.

(c) The method generally employed involves describing the attributes and values and rating them. However an overall judgement is made of the significance of the landscape or feature, and its outstandingness.³⁹

55 His Honour went on to set out the steps of primary and secondary enquiry in landscape determination, with the first and primary question being one of whether the land in question belongs with the landform that defines the boundaries of an ONL:

[62] We also accept QLDC's submission, supported by the Landscape Methodology JWS and Ms Mellsop, that the primary enquiry should be as to whether the area of land in question belongs within the landform that properly defines the boundaries of the ONF or ONL. Once that is determined, attention turns to the degree of naturalness of the land in question. Contextual evaluation then guides the judgment. The judgment called for is as to whether the area of land in issue is too modified or inappropriately developed such that including it in the ONF or ONL would detract from, or undermine, the values of the ONL or ONF when considered as a whole.

[63] The fact that a landscape or feature is classed as an ONF or ONL on the basis of expert opinion that it has 'moderately high' or even 'high' naturalness does not necessarily dictate that the same threshold must be passed for land to be added to, or excluded from it. Rather, an overriding consideration must be to ensure the overall legibility of the ONL or ONF is maintained. Again, that question is one for properly informed judgment⁴⁰.

56 And further:

[80(b)] we agree that ONF and ONL boundaries should be legible and coherent to the community. That is a factor against which we evaluate the expert evidence. Related to that, we also accept the consensus opinion in the Landscape Methodology JWS that:

³⁹ *Hawthenden Ltd v Queenstown Lakes District Council* [2019] NZEnvC 160, at [58].

⁴⁰ *Ibid*, at [62] – [63].

(i) geomorphological boundaries are a desirable first preference for determining appropriate ONL and ONF boundaries;

(ii) acceptable alternative boundaries, if geomorphology does not so assist, include marked changes in land cover or use patterns (and, potentially, road corridors); and

(iii) localised cut-outs from ONL or ONF boundaries, for example for developments, are not generally appropriate where evaluation demonstrates that, with the development included, the landscape or feature remains an ONL or ONF (eg by reason of its scale or character).

- 57 In this instance, the geomorphological boundary of the Shotover River Gorge ONF provides a clear and legible landscape boundary, which coincides with the 'obvious' answer to the categorisation of this Site as discussed above, and evidenced in the 'sharp edge' of the Gorge depicted in Mr Espie's appendix 2 and 5.
- 58 Mr Espie's assessment of the Shotover River ONF Gorge upper extent and the underlying geomorphology of the Site as distinct from that provides this foundational assessment⁴¹.
- 59 Mr S Brown in contrast appears to start from the proposition that the Site (and rest of urban Arthurs Point) is part of the Western Whakatipu ONL due to the PDP mapping and that this is a fact or a 'done deal' (for example para 60). This of course is not only incorrect because the current urban zoning is surrounded by the inner ring of the broader ONL (perhaps he cannot clearly discern the brown dashed line on this map), but also because this hearing is a first principles (re)determination on where landscape lines need to be drawn, while giving weight to the first instance IHP Decision.
- 60 In my submission, the geomorphological answer in this case is clear and conclusive, and there is no landscape reason to include the Site as part of the disconnected Western Wakatipu ONL.

⁴¹ Including in particular, Mr Espie's EIC at 34 where, with reference to the above 1960s photograph he notes: a clear edge to the improved paddocks is evident. As would be expected, this edge relates closely to landform, the terrace lands being used as pasture and the gorge being left unmanaged. The evidence of Mr Paul Faulkner includes a site plan prepared from a geotechnical perspective. It shows a line marking the edge of the bluffs or steep slopes that descend to the Shotover. This line corresponds with the edge of the improved paddocks that can be seen on the Appendix 5 photograph and also corresponds with a line of landform that can be seen in the contours of Appendix 2.

- 61 In the *Hawthenden* case, his Honour considered that there were interplays in underlying geomorphology on the lower flanks of Mt Iron which in that case meant that a geomorphological distinction did not give a clear answer to the determining ONF boundary (see para [226]). In this instance, no such interplay exists. As discussed by Mr Espie, there is a clear distinction in geomorphology of the Site, compared to the sheer edge of the Shotover Gorge ONF to the South⁴².
- 62 In contradistinction to other recent cases that consider an ONF river nested within a wider ONL, this case does not purport to create a common ONF/L boundary that is enclosed by the ONF riverine extent. For example, in *Bridesdale Farm Developments v QLDC*⁴³ the Kawarau River corridor was considered to also coincide its boundary on the true left bank (adjacent to Bridesdale SHA area) with that of the wider ONL to the South (including the Remarkables range). The difference in that case is that the extent of the ONF/L common boundary towards the edge of urban development was defined as the edge of the riverine corridor associated with the Kawarau River and which defined its enclosing escarpment:

[41]... As we have explained, the ONF/L boundary runs along a lower escarpment of an embankment of that terrace. While the embankment appears as a singular feature when viewed at a distance, it is comprised of several small escarpments and intervening terraces that become more evident at closer, viewpoints. Ms Mellsop explained that these were formed at various stages and courses of the river. Although neither expert offered evidence on when the lower escarpment would have last served as a containing riverine embankment, we accept it to have that historical geomorphological relationship to the Kawarau River and the intervening floodplain

[42] For our evaluative purposes, we treat the Landscape Unit as encompassing the embankment in its entirety (whilst acknowledging that the ONF /L boundary is along its lower esca1pment). The Landscape Unit, therefore, extends outside the ONF/L boundary back into land of Lake Hayes Estate and Bridesdale that is already developed for residential purposes.

⁴² Evidence in Chief of Mr Espie at 60 concludes: The line marking the upper extent of the gorge that I show on Appendix 2 is not a line of altitude, it is a line of landform. It marks a gradient change where the rolling topography changes to a falling escarpment landform

⁴³ *Bridesdale Farm Developments v QLDC* [2021] NZEnvC 189,

- 63 The difference in this case is that the Ms Mellsop and Mr S Brown have not proposed a common ONF/L boundary based upon the edge of the riverine escarpment. No expert proposes that the Site is part of the enclosing escarpment of the Shotover River ONF Gorge, nor associated with its geomorphological formation. Again, this case law further supports the proposition that absorbing the Site within a disconnected ONL is illogical where there is a distinct and intervening geomorphological edge to the river escarpment.
- 64 Similar to Bridesdale (and other locations of urban zoning abutting an ONF or ONL that Mr Espie has cited in evidence) the landscape 'unit' (as opposed to boundary) often extends beyond the feature and into urban zoning. This precedent is a logical product of most of this District being in ONF/L, and in the case of Arthurs Point, being a village within an alpine setting. That does not mean an urban zone within the landscape unit or abutting the feature itself is automatically inappropriate. The ability to protect those adjacent values comes down to the particular zone provisions. The Submitters' case is that the Arthurs Point LLRB Zone structure plan provides a finer grained and more certain outcome with respect to revegetation and building form adjacent to the River corridor that will protect its values, more so than potential future ad-hoc subdivision and development⁴⁴.

Sufficient size to be ONL or ONF in its own right or part of a broader landscape?

- 65 The proposition of the Site as part of a broader ONL is not only illogical on evidential terms, but has no supporting basis in case law as to when a Site may be considered part of an ONL, despite not qualifying in its own right.
- 66 Counsel has found no supporting case law examples of where a Site disconnected geographically and distinct in terms of values could be considered to be part of a broader landscape. However, two cases, being *Upper Clutha Tracks Trust v Queenstown lakes District Council*⁴⁵ and *WESI v QLDC*⁴⁶ provide examples of where a smaller site (not a landscape in its

⁴⁴ Evidence in Chief of Mr Espie at [21] explains the context of structure planned relief noting that 'the approach is to ensure that any adverse effect on the Shotover River Gorge is avoided through significant setbacks and the specific location of buildings and structural planting'

⁴⁵ *Upper Clutha Tracks Trust v Queenstown Lakes District Council* [2010] NZEnvC 432. (first Parkins Bay decision).

⁴⁶ *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*, ENC Christchurch C003/02, 22 January 2002.

own right) is surrounded at least on three sides by ONL, could be considered to be perceived as one landscape.

- 67 Ms Mellsop's opinion that the Site is part of the broader ONL might make sense, **if** the Site were in fact subsumed within or surrounded by a broader ONL and / or intervening ONF - however it is not. To the North it is abutted by urban Arthurs Point zoning and to the South it is abutted by the legible and distinct Shotover Gorge ONF escarpment. Beyond that agreed ONF gorge is the disconnected Western Whakatipu ONL. Her approach, and that of Mr S Brown, appear to look at a 2D map of the landscapes and fill in the gaps – that makes entirely no sense on the ground.
- 68 In considering whether the Site could potentially be 'part of' a broader landscape (rather than qualifying as a section 6 landscape in itself) I submit the Commission should be guided by:
- (a) To what extent it is geographically or geomorphologically connected to or coherent with that purported landscape for it to be part of? (Dissimilar to the *Upper Clutha Tracks Trust* case above, the Site is not within, or surrounded by, let alone connected to, the Western Whakatipu ONL broader landscape);
 - (b) To what extent does the Site share the same values as identified for that broader landscape? Following Mr Espie's assessment, the Site shares none of the values of that broader landscape;⁴⁷
 - (c) To what extent does the Site otherwise contribute to the naturalness of that broader landscape?⁴⁸ In my submission this is currently a degraded landscape⁴⁹, less visually prominent⁵⁰ in the context of significant mountainous landscapes surrounding urban Arthurs Point, and provides currently no ecological, indigenous, or public access benefits to the community.
- 69 Mr Espie convincingly sets out the respective issues with this 'nested' argument by following the above *Hawthenden* and *Man o War* approaches, including:

⁴⁷ Evidence in Chief of Mr Espie at 54-55

⁴⁸ This would follow the *Hawthenden* approach to those lower flanks of Mt Iron which may not be ONF in themselves but nevertheless contribute to the outstanding values of that feature

⁴⁹ Evidence in Chief of Mr Espie at [44].

⁵⁰ Ibid, at [48]

- (a) While Priority Areas as notified in the Landscape Schedules Variation are not landscapes, and are to be given limited weighting given their early notification status, the notified schedules set out a number of proposed attributes and values of the Central Whakatipu Coronet ONL and the Western Whakatipu ONL. If one looks at the attributes and values as set out in those schedules, they are describing mountainous, natural landscapes that are cohesive and whole as large areas of mountain slopes and peaks. The Site is not akin to those at all, whereas it is entirely akin to the land that sits under the suburbs of Arthurs Point.
- (b) Reading Schedule 21.22.12 (West Whakatipu), it is clear that that ONL is encompassing Ben Lomond, Bowen Peak, Ferry Hill, Queenstown Hill and Sugarloaf. The Site or its values quite clearly do not fit into the Schedule 21.22.12 description.
- (c) None of Council's proposed Schedule maps identify the Site as part of the wider ONLs.⁵¹
- (d) The Site is a continuation of what is already the operative zoned through it. The southern boundary of the existing zoning within the Site is entirely arbitrary (as confirmed by Ms Mellsop and Mr Espie) and realistically could have (and probably should have) always been drawn so as to take in all of the Site.
- (e) The Site is part of the rolling terrace (Mathias Terrace) on which the suburbs of Arthurs Point have been built. It is not akin to the surrounding mountain slopes that form the ONLs beyond the Shotover Gorge and Arthurs Point urban extents.

70 In any event, Ms Mellsop's position of the Site as 'nested' within the broader ONL is then completely undermined by her support to extend the proposed LDSR zoning extension further into the Site, again continuing a historical reinforcing of an illogically placed landscape boundary.

If the Site is not ONL or ONF, is it appropriate for rezoning? Visual amenity and visibility

71 Having demonstrated that the Site cannot reasonably be considered part of an ONL (and is agreed to not be part of an ONF), this of course does not

⁵¹ Although notified mapping does depict the Site as part of the Shotover River Gorge ONF, this is the subject of separate declaratory proceedings and considered by the Submitters to be an invalid notification decision, as discussed above, and as already agreed between Council and Submitter experts, the Site is not within the Gorge ONF.

necessarily mean the Site is automatically appropriate for urban rezoning. Such an assessment is appropriately guided by the IHP's rezoning criteria / principles developed through the PDP process, and in particular set out in IHP Report 20.1 (a full list of such provisions is included in Appendix B to these submissions).

- 72 Before moving away from landscape considerations and an analysis of that evidence, it is helpful to look at effects on visibility, amenity and character as a consequence of the rezoning, whether or not the Site is ONL⁵². Mr Espie and Mr S Brown in particular differ in opinion as to the extent and degree of those effects. That is a matter of conflicting evidence for the Panel to determine. I remind the Commission that this is just one factor in a range of factors to be considered when determining the appropriateness of this proposed rezoning.
- 73 Firstly, an overarching theme of the APONLS evidential case is the effects on private viewpoints and amenity.
- 74 The Environment Court in *Re Meridian Energy Limited*⁵³ summarised the salient points of law relevant to such issues:

[112] When dealing with landscape and visual amenity issues several basic legal principles need to be remembered. The first is that there is no right to a view.⁵⁴ Even though we must have particular regard to the maintenance and enhancement of amenity values, this is not the same thing as saying there is a right to a view.⁵⁵ The second is that a landowner is permitted to use their land as they see fit, providing that the use of it does not breach any legal requirement. It follows that the use of land by a neighbour in some circumstances can lawfully change an existing view.

[113] The significance of a particular landscape to people who live near it and are thereby affected by any change to it (and the interrelated effect on visual amenity) require us to carefully consider both local and expert views...⁵⁶

⁵² This is also particularly relevant in terms of policy assessment in determining placement of UGB boundaries, according to where those will protect section 6b landscape or feature values. (PDP 4.2.1.5, 4.2.2B)

⁵³ *Re Meridian Energy Limited* [2013] NZEnvC 59.

⁵⁴ *Anderson v East Coast Bays City Council* (1981) 8 NZTPA 35, page 37 (HC)

⁵⁵ W73/98, 2 September 1998, Kenderdine EJ, paragraph [104]

⁵⁶ *Re Meridian Energy Limited* [2013] NZEnvC 59, at [112] – [113] citations included.

75 While Watties Track may be a public place (although infrequently used by public⁵⁷), the residences (also enjoying their positioning within an ONL) are not. Perhaps unsurprisingly, following such established case law and debates on private views, the Natural and Built Environment Bill proposes to ensure that private views and views from roads are no longer a relevant consideration:

108 Matters that must be disregarded when preparing or changing plans

In preparing or changing a plan, a regional planning committee must disregard the following:

- (a) trade competition or the effects of trade competition (*see sections 147 to 151*); or
- (b) any effect on scenic views from private properties or land transport assets that are not stopping places; or
- (c) any effect on the visibility of commercial signage or advertising; or
- (d) any adverse effect arising from the use of the land by—
 - (i) people on low incomes; or
 - (ii) people with special housing needs; or
 - (iii) people whose disabilities mean that they need support or supervision in their housing.

76 While amenity related to private views is not precluded from assessment currently under the RMA, this intended legislative change reflects and reinforces the case law referred to above.

77 In the meantime, and before such legislation is progressed further, while Ms Mellsop is entitled consider amenity values related to private views, in my submission, such amenity values should be given limited weighting. Additionally, Ms Mellsop's rebuttal evidence singles out one residence only in particular, being 13 Watties track (beneficially owned by Mr Semple, a founding member of APONLS), there are a range of urban viewpoints from residents of Arthurs Points to consider, most of which are affected to a low degree according to Mr Espie's evidence.

78 Moving on from private views, it is difficult to ascertain how Mr S Brown has arrived at his relative effects assessment so different to that of Ms Pfluger and Mr Espie. In particular, his evidence in chief provides no clarity as to whether he has assessed effects of particular viewpoints based upon Mr Espie's modelling / visual simulations and attachments, or made some broad guesses based upon his photos of the Site, without the assistance of visual simulations.

79 The Submitters have gone to significant expense in obtaining high quality evidence demonstrating the detailed and anticipated visual effects of the proposed rezoning in preparing the visual simulations. These can be relied on with confidence as to expected outcomes.

⁵⁷ Summary evidence of Mr Espie at [11].

80 As stated by Mr Espie, most of the viewpoints towards the Site are affected to a very low degree and the rezoning is within a relatively confined visual catchment where urban development is already readily observable.

81 It is submitted that community perceptions as to visual amenity and visibility effects of the proposal should be considered with the following in mind:

- (a) Private views to the Site should be treated with caution in light of the above case law and given limited weighting;
- (b) Other views towards the Site are within an urban setting or context, and often fleeting, for example views from Gorge Road and within existing urban Arthurs Point;
- (c) These views also are affected by the urban backdrop of the Site, including in many viewpoints which encompass existing urban Arthurs Point, as well as the permitted baseline from the operative LDSRZ portion (let alone the proposed extension supported by Council);
- (d) Community perceptions as to views of the Site appear to have been misled by the incorrect advertising 'postage stamp' campaign, as noted in Mr Fairfax's evidence, and are quite likely to have been softened in light of the revised proposal now put forward by Submitters;
- (e) Out of all the viewpoints assessed by Mr Espie, the only one considered to have a high degree of change is that from Watties Track, (while Ms Pfluger arrives at a different opinion that such effects are only moderate)⁵⁸, this being a relatively infrequently used and partially formed legal road, servicing a handful of dwellings, and in any event, framed by a current backdrop of urban Arthurs Point.

82 As stated in the *Re Meridian* case:

[140] ... the degree of change to a landscape is a factor to be taken into account when assessing the effect on visual amenity. The degree to which that change has occurred (a matter for the Court to assess), may or may not result in a finding that the

⁵⁸ Ms Pfluger concludes at para 59, 'I agree that the Site forms a smaller component of the overall panoramic view from the high-lying parts of Arthurs Point West, but consider that the proposed planting will more effectively reduce the visual effects from Watties Track in the longer term, leading to an overall moderate visual effect from both of these viewpoints once planting is sufficiently established'

effect is adverse, depending on the facts of the case⁵⁹

- 83 In conclusion, just because there are changes in visual amenity and visibility of development within the Site proposed, does not make those inappropriate. In this instance, the proposal does clearly accord with the provisions in Chapter 3 and 6 of the PDP and rezoning principles.

[11.11] The statutory test under section 32(1)(a) is the extent to which the objectives are the most appropriate to achieve the purpose of the Act. From the assessment above I conclude that Option B overall is superior to Option A principally because it has better outcomes for peoples' and the community's wellbeing and it manages, adequately in my view, effects on landscape and amenity values. Although Option A represents little change to the localised landscape values or amenity values, I do not consider that this factor alone outweighs the advantages of Option B.⁶⁰

Permitted baseline/ future receiving environment

- 84 Ms Mellsop and Mr S Brown appear to have misunderstood the permitted baseline relative to the Site in a number of critical respects. The following section of legal submissions address where this permitted environment is located, and what that means for character and visual effects.

- 85 The IHP rezoning principles (set out in **Appendix B**) establish that:

(f) Changes should take into account the location and environmental features of the site (e.g. the existing and consented environment, existing buildings, significant features and infrastructure); and

...

(k) Zoning is not determined by existing resource consents and existing use rights, but these will be taken into account.

- 86 In my submission that is now further clarified by the subsequent *Golf case* which incorporated the *Hawthorn* concept of the future environment in the context of a plan change decision:

[127] A fuller discussion of the consideration of the future under the RMA was undertaken by the Court

⁵⁹ Re *Meridian Energy Limited* [2013] NZEnvC 59, at [140]

⁶⁰ Referring to Mr J Brown evidence in chief at [11.11].

of Appeal in *Queenstown-Lakes District Council v Hawthorn Estate Ltd & Anor*. That discussion, describing as artificial an approach that would limit enquiries to a fixed point in time, refers to other provisions in the RMA which entail considerations of what has occurred in the past. Notably, the term environment is found throughout the RMA. The definition of that term in s 2 RMA includes a range of things that do not just exist in the present but have come into existence over time, such as ecosystems and communities, natural and physical resources (as further defined, notably to include structures), amenity values (also further defined to mean the qualities and characteristics of an area that contribute to people's appreciation of its various attributes) and the broad range of human conditions which affect or are affected by those aspects of the environment. This broad sense of the environment plainly requires an appreciation of how the environment has come to be in the form it is.⁶¹

- 87 The references to *Hawthorn* in that case also have been addressed (in consenting decisions) which provide for a realistic and factual⁶² assessment to be made to determine the capability of an environment to absorb development.
- 88 In this case, the operative (but yet unbuilt) LDSR Zone portion of the Site is important in terms of character and visibility of development which will change the future environment of the Site and how it is perceived from a number of viewpoints.
- 89 As depicted in the visual simulations and modelling prepared by the Submitters, the blue blocks depicted in the revised plan set (**Appendix D** to these submissions), show at least the permitted buildable extent of the operative LDSR zoned land when viewed from a number of Arthurs Point locations.
- 90 As addressed in Mr Espie's summary, it is these blue buildings which will, as permitted activities, affect the ridgeline of the knoll of the Site when viewed from southern viewpoints. Any extension of this rezoning is in the foreground, and less elevated than, that operative baseline of development. Similarly, for the views from urban Arthurs Point to the north – it is views to this elevated knoll that are already operative and of most consequence, to visual amenity.

⁶¹ *Golf (2012) Limited v Thames-Coromandel District Council* [2019] NZEnvC 112, at [127].

⁶² See also *Arrigato Investments Ltd v Auckland Regional Council* [2002] 1 NZLR 323, at [36].

91 The updated plan set in **Appendix D** shows the blue layer of operative development on its own. This supports Mr Espie's proposition that the proposed LLRB component of the zoning will not be visually prominent in the Site, and contradicts Ms Mellso's broad rebuttal assertion, that a number of buildings breach the skyline.⁶³

- (a) In response to that assertion, Ms Mellso has not identified which particular platforms provide any skyline breach, and from which viewpoint locations;
- (b) She has potentially misinterpreted the digital model images, which do not include distant backdrop topography;
- (c) In my submission, with the green layer of proposed development turned off, it more easily depicts the true extent of the buildable area of the knoll that will (as a permitted right) frame this Site in the future.

92 An important aspect for the Commission to note when viewing this receiving environment is that, if anything, the effects depicted in the modelling likely underrepresent the true extent of permitted development in the following ways:

- (a) The blue platforms identified in the pole location plan (Figure 4 of Appendix 1) in of Mr Espie's evidence, are larger than the operative LDSR Zone lot size, and conceptually an additional platform could be sited onto those higher elevated areas in the location of lots 14 – 13 below:



⁶³ Ms Mellso's rebuttal evidence at 3.6d

- (b) Those blue platforms have been sited in less elevated portions of the knoll to account for:
 - (i) A sensitively designed and realistic permitted baseline for this portion of the Site; and
 - (ii) The GSL proposed BRA (discussed further below). The BRA in this operative portion cannot exist without this rezoning, and thus it is possible that (subject to geotechnical constraints) a building platform could be even more elevated towards the knoll than what has been depicted, noting that setbacks are of only 2m from the boundary in this zone;
 - (c) The blue poles have been identified in the center of these platforms, rather than on the corners or front edge (in contrast to what has been modelled for the proposed green / LLRB Zone platforms), thus the visibility modelling shows them in slightly more recessive locations when viewed from the south in particular.
- 93 All of the above, in summary, supports giving significant weight to the operative permitted baseline depicted. The existing LDSR Zone boundary may not make sense as a legible boundary, or be a defensible one, but that is what the Commission are required (in my submission) in this instance to rely on.
- 94 By contrast, para 68 of Mr S Brown's evidence discusses views from Littles Rd (photos 1 and 2), and suggests that the hill area of the Site remains intact. This plainly does not recognise the existing LDSR Zone that climbs up it. He applies the same misconception in his photo 3 in the context of views from Atley Road and at paras 72 – 74 in the context of Nugget Point views. At para 101 – 103 he opines that the *“largely harmonious relationship between the residential development on the Shotover Loop and the largely natural river fairway ‘next door’ would be appreciably compromised”*. Again – the reference here to a harmonious residential development on this land infers that is the current extent of development, not what is permitted under operative zoning, cutting right through the most elevated part of the Site.
- 95 Where the Site is visible the development will be absorbed into the surrounding urban development, which is dominated by the vast natural

landscape surrounding it.⁶⁴ This is the same conclusion as that reached in the first instance IHP recommendation to rezone the Site, prior to significant modification of the relief sought.

- 96 In respect of the proposed BRA / potential future reserve location:
- (a) This is identified on the highest and most sensitive knoll within the Site;
 - (b) It partly includes an operative portion of LDRZ land which GSL is the owner of, and without any planning restrictions, would quite possibly be built on by future owners as a permitted activity⁶⁵;
 - (c) As a consequence of this hearing, and the rezoning proposal if successful, GSL is willing to subject this area to a BRA so as to ensure it remains free of built form in the future and retains open space and visual amenity qualities. Without this rezoning, there is no possibility of ensuring that outcome through future permitted development of the operative LDRZ portion of the Site. This aspect of the proposal is a significant commercial concession and important positive landscape benefit.
- 97 Initially, the best approach to achieve this was considered to be by way of deed of covenant (as referred to in Mr Fairfax's evidence) however upon further consideration, there is scope to achieve this outcome through an amendment to the PDP maps resulting from the hearing of GSL and LEL submissions, namely:
- (a) The High Court decision of *Motor machinists* provides authority for consequential and connected mapping amendments in schedule 1 submissions;⁶⁶ in particular Kos J stated in that decision that incidental or consequential extensions of zoning changes proposed are permissible, and logically may be the subject of submission;

⁶⁴ Evidence in Chief of Ms Pfluger at [63] concludes the broader urban context of Arthurs Point will be seen together with this rezoning, and the visual effects of the additional buildings would not detract from the wider mountainous context of the landscapes surrounding Arthurs Point, which will remain dominant.

⁶⁵ While Ms Mellsop queries the siting of these lots according to subdivision matters of control, subdivision to compliant lot sizes in this location would unlikely be turned down based upon landscape effects if no built form were proposed. Any subsequent land use application to build a residential unit would be a permitted activity subject to standards such as height and setbacks.

⁶⁶ [2013] NZHC 129 at [10]

- (b) This was also discussed in the IHP Report 20.1 which addressed changes to PDP planning maps from early stages in the rolling review, with the ability to amend planning maps from prior stages:

[153] We do not find Mr Nolan's submissions suggesting that the Council is functus officio to be persuasive. Clearly, land has been rezoned in successive stages of the PDP. The fact that an earlier stage has addressed the zoning of the land does not, therefore, mean that a subsequent stage cannot reconsider that zoning. The question is whether it does so in this case⁶⁷.

- (c) The change to include the BRA, while not specifically raised in the initial submissions would have less (and more protective) environmental effects therefore not increasing the scope other than by technicality;
- (d) The only party directly affected is GSL, as the BRA area in question is solely on the GSL Site;
- (e) Para 5 of the original LEL Submission (527) specifically sought consequential, additional, or alternative relief, which could logically encompass necessary planning alterations to better protect the Site.
- 98 Even if the Commission is not minded to consider there is scope for this slight mapping amendment in the LDRZ portion of the Site, there are other options to achieve this outcome (such as an agreement to covenant the land with QLDC, or more complicated zone provisions restricting subdivision unless and until such instruments are registered). The clear preference and simplest way to achieve these outcomes are simply through existing planning methods in the PDP.
- 99 As to the future destiny of this area as reserve or not – this would be a matter for negotiation between developer and Council at the time of subdivision. Whether or not Council wishes to achieve the vesting of the land as reserve area will be a matter of discussion between those parties. Irrespective of that outcome, the Commission are assured that the landscape effects are the same and the building restriction area / structural planting will provide ongoing and long-term preservation and improvement of this area.

⁶⁷ IHP Report at [153].

The LEL Site within the permitted baseline / future receiving environment

- 100 RM980348, being resource consent for a second house on Lot 2 DP398656 (LEL Site), was granted by Environment Court Consent Order dated 26 February 2001. This consent was partially implemented but it is possible the partially built house may be unable to be completed without further consent, if the consent has in fact lapsed. The extent to which any future consent might be sought to complete that house, and whether that would require any replacement revegetation of the now (partly) felled trees,⁶⁸ is a future matter for determination should it be pursued.
- 101 RM070524, provided consent to establish a residential building platform around the original house on Lot 2 DP398656.⁶⁹ No vegetation retention, planting, clearance or landscaping was proposed as part of the application or required in the consent conditions. The boundary of the approved building platform extends to include part of the partially built second house.
- 102 There is potential for future development to occur within this platform, such as a residential flat next to the existing house. I suggest the Commissioners take a realistic approach to the receiving environment here (per *Arrigato* and *Golf* as cited above), in that any future replacement consent for the second dwelling (if needed) is highly likely to obtain consent, and rightly so, is relevant to the effects assessment undertaken by Mr Espie.
- 103 Recently, the High Court in *Frost v QLDC* upheld the approach of the Environment Court in considering not just a 'purely permitted or consented' future receiving environment, but also one that was reasonably anticipated:

[68] I do not consider the Council treated the site standard as a permitted baseline and ignored its effects. What it has done is used the Zone objectives, and the site standards to give some context to the assessment of effects. In my view, this is sensible. Effects must be assessed in context, and in light of what exists, and is anticipated in the zone. For example, leaving aside any permitted baseline considerations, the erection of a concrete tilt slab building would have different effects in a commercial

⁶⁸ It is noted that not all wilding trees have been removed on the LEL Property, a number remaining around the existing dwelling.

⁶⁹ RM070524 also granted consent to subdivide Lot 1 DP 307630 and Lot 1 306701 (now Lot 2 DP398656) (previously contained in one Record of Title 26152) into two allotments.

zone from what it would have in a low density residential area, or in an outstanding natural landscape. **It would be entirely artificial to assess effects without considering what exists and what is anticipated in the zone. In my view, that is all the Council has done here⁷⁰.**

- 104 Although that was not in the context of a plan change or review, it is a further reasonable basis upon which Commissioners should realistically assess the likely future developed nature of the Site, including the LEL Site.

QLDC PDP Rezoning principles

- 105 The Independent Hearings Panel, in Report 20.1,⁷¹ set out a number of principles for the determination of what the most appropriate zone is for a given area of land. These have been relied on in all subsequent rezoning decisions of the Council under stages 1 – 3 of the PDP. These are cited in Appendix B.

- 106 In my submission the most relevant principles in this case are:

(b) Whether the change is consistent with PDP Strategic Directions Chapters (Chapters 3- 6);

(e) Changes to zone boundaries are consistent/considered alongside PDP maps that indicate additional overlays or constraints (e.g. Airport obstacle limitation surfaces, SNAs, BRAs, ONFs and ONLs);

(f) Changes should take into account the location and environmental features of the site (e.g. the existing and consented environment, existing buildings, significant features and infrastructure);

(g) Zone changes recognise the availability or lack of major infrastructure (e.g. water, wastewater, roads), and that changes to zoning does not result in unmeetable expectations from landowners to the Council for provision of infrastructure and/or management of natural hazards;

(h) Zone changes take into account effects on the wider network water, wastewater and roading capacity, and are not just limited to the matter of providing infrastructure to that particular site;

⁷⁰ *Frost v Queenstown Lakes District Council* [2021] NZHC 1474, at [68].

⁷¹ QLDC PDP Stage 3 Report 20.1 (Introduction), Section 2.9: <https://www.qldc.govt.nz/your-council/districtplan/proposed-district-plan/decisions-of-council#independent-panel>.

- 107 As addressed in the comments on specific evidential points below, the rezoning proposal is entirely aligned with these principles. In particular, there are few locations of non-ONL / ONF land adjacent to existing urban development, readily serviceable by Council infrastructure, and which will ensure coherent and confined urban form without bleeding out of urban areas.
- 108 This is exactly one of those locations which meets those criteria.

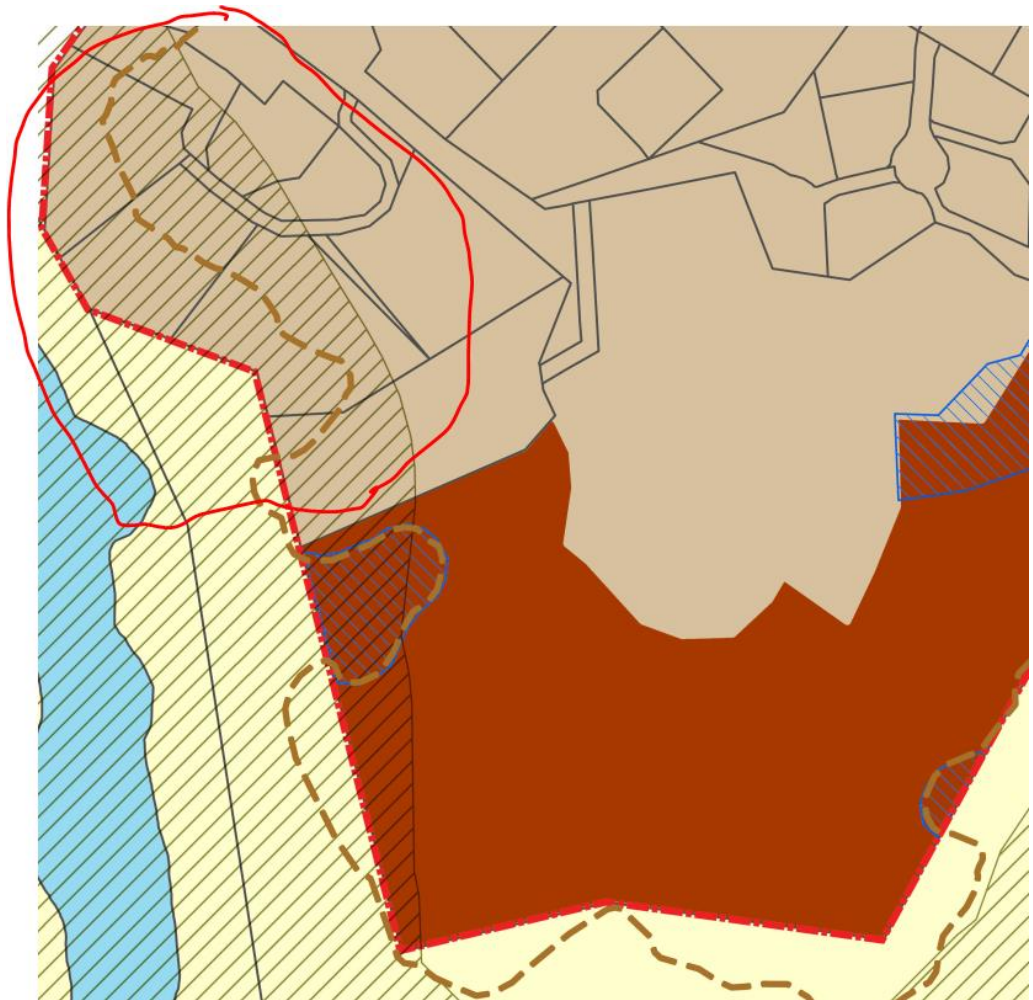
Consistency with Arthurs Point North zoning and landscape

- 109 Through stage 3 of the District Plan, Council notified (and later confirmed) the UGB and ONL boundaries around urban Arthurs Point. Specific hearings and determinations were made on the Arthurs Point North area, including notified MDRZ and RVZ. In this context, urban zoning has been provided right up to the edge of an ONL / ONF boundary in a number of locations, and in some places, also crosses into that landscape and is protected by zoning provisions, such as BRAs.
- 110 This approach of having urban zoning interfacing with section 6 landscapes is therefore common, and in particular in this location. In those Arthurs Point North hearings, QLDC planning evidence supported this approach, noting that 'the location of the MDRZ adjacent to an ONL is appropriate in the context of an alpine village'⁷²
- 111 This is consistent with Mr Espie and Ms Pfluger's findings that, in this location, it is entirely appropriate for the urban zoning to extend to the edge of the Site boundary, and for the ONF to be defined around (but close to, and with some incursions, into) the Site. It is not zoning boundaries themselves which provided the desired set back or 'breathing space' to valuable landscapes and features, but rather the specific plan provisions within those zones, which achieve this. In this instance, the internal zone rules provide a high level of prescription and policy guidance to ensure the setback and mitigations from the Shotover Gorge ONF avoid adverse effects on its identified values.
- 112 At para 3.11 of her rebuttal evidence, Ms Mellsop notes that development beside the ONF will adversely affect its attributes to a moderate-high degree. As with Mr S Brown's similar conclusions, this assumes zoning boundaries are in all cases coincident with development extent, and these

⁷² Stage 3 (Arthurs Point North) Section 42A Report of Ms Turner, at [3.11].

opinions ignore the realities of the rest of developed Arthurs Point which has urban zonings immediately abutting (or within) the ONF⁷³.

113 Stepping back and looking at the rezoning practically, the rezoning makes sense in the context of the operative LDSR Zoning immediately north / west of the Site. If one overlays the agreed ONF Gorge boundary on the PDP Decisions version planning map, to the west of the Site it can immediately be seen that operative zoning extends well into the Gorge and down to a reasonably low contour within it, in a number of places. This zoning therefore does not represent an anomaly or unusual outcome in terms of zoning in Arthurs Point with the interface of the River Gorge, but is rather a continuation of that existing pattern⁷⁴ (albeit with much more significant mitigation and built form control proposed in this particular Site):



⁷³ Evidence in Chief of Mr Brown at 4.25 provides a similar example of this zone mapping at Arthurs Point North where the urban zoning runs up against the ONF boundary (and has incursions into it).

⁷⁴ See also Mr Espie's evidence in chief at para 80, the Site sits at a similar elevation from Watties Track

Note that the above graphic is not proposed for rezoning in terms of continuing the Gorge ONF boundary into those operative portions of zoning to the west of the Site – this image is illustrative only.

- 114 Even if the Commission were minded to agree with the evidence of Ms Mellsop and Mr S Brown that the Site is part of a wider Western Whakatipu ONL (and the Submitters' case remains that is not a supportable proposition) it is open to the Panel to adopt a pragmatic landscape line that differs. This precedent has been established throughout decisions on PDP rezoning, including relevantly and recently, in the IHP Report 20.9 (Arthurs Point North mapping under stage 3). In that IHP report, the Panel determined to partly apply a 'pragmatic' boundary line for the Arthurs Point ONL by excluding a property from the ONL that was subject to an unimplemented resource consent for urban type development:

[28] In our view, it would be a futile exercise to base the location of the ONL boundary on the character of the land as it currently is, as opposed to the landscape character which will shortly exist with development of the Arthurs Point Woods subdivision.⁷⁵

- 115 In this case, the Panel should keep in mind the future visibility effects of the operative LDSR Zoning through the Site, along with the partly developed nature of the LEL Property (163 Atley Road), which is in all reality, likely to be the subject of future and replacement consent applications to finish or replace current structures on that property. Together, these built form elements essentially lead to development along the crest of the knoll. The highest and most sensitive parts being affected by this development will have a consequence for the future character of the southern slopes of the Site, and supports a further determination that the Site is not connected to/ contributing to/ nested within, a broader ONL. The below context from Mr Espie provides an evidential proposition to draw a pragmatic ONF boundary (if need be) similar to the Arthurs Point North determinations, considering the developed extent of the Site.

[57] The site comprises 7.3ha and contains four existing dwellings, a number of accessory buildings, an additional partly finished dwelling (consented to be 8m high and in a prominent location), a number of private access tracks, and has recently been cleared

⁷⁵ QLDC PDP IHP Report 2.9, at [28]. See also supporting case law for this proposition in *Milford Centre v Auckland Council* [2014] NZEnvC 23 at [120]; *Shotover Park Limited v Queenstown Lakes District Council* [2013] NZHC 1712.

of wilding larch and Douglas fir forest. It is sandwiched between the Shotover Gorge ONF and the operative LDRZ of Central Arthur's Point⁷⁶

Traffic issues remaining

116 As set out in Ms Evans' rebuttal assessment at para 5.6 she notes:

[5.6] As set out in his rebuttal evidence Mr Smith's concerns have been resolved from a traffic perspective, and consequently, I no longer consider traffic effects to be a reason to oppose the rezoning.

117 In his rebuttal evidence for QLDC Mr Smith identifies that evidence as to the proposed access to the requested rezoning provides insufficient information to assess if a compliant access can be constructed to serve 94-108 Atley Road. Although, Mr Smith does note that this may be addressed in a future resource consent / engineering acceptance stage.⁷⁷

118 Mr Bartlett is currently preparing a summary statement which addresses Mr Smith's remaining concerns. In his summary evidence Mr Bartlett will present a slightly revised access design. This design includes details of a revised vehicle crossing to serve 94-108 Atley Road. This design provides a compliant access design to these existing lots and which can be constructed fully within the available GSL land. Mr Bartlett identifies that there is some flexibility in the design and concurs with Mr Smith that any access design would be addressed in a future resource consent / engineering acceptance stage.

Servicing – resolved

119 As discussed in the evidence of Mr Powell, Mr McCartney, and confirmed by Ms Evans (at para 3.3 of her s42A report) the Submitters' refined proposal can be adequately and appropriately serviced with respect to water, wastewater, and stormwater.

120 As noted below in respect of positive effects of the proposal, approval of the rezoning of the Site will result in necessary upgrades for a number of residents to surety of safe and reliable three waters supply that will not otherwise accrue under the status-quo zoning. One further submitter, Mr Gousmett, in particular has detailed in his submission the extent of necessary upgrading to serve and future proof supply to existing Arthurs

⁷⁶ Evidence in Chief of Mr Espie, at [57]

⁷⁷ Rebuttal evidence of Mr Smith, at [6.12]

Points residents. Further development in this Site will provide the necessary economic feasibility to trigger upgrading of roading infrastructure.

Geotechnical and natural hazards issues – resolved

- 121 As confirmed between the evidence of Mr Powell, Mr Faulkner, and Ms Evans (at para 3.2 of her s42A report), there are no geotechnical or natural hazards risks associated with the relief proposed by the Submitters.

NPS – Highly Productive Land issues – resolved

- 122 As confirmed in the evidence of Dr Hill, and confirmed by Mr Lynn in peer review for Council, and agreed to by Ms Evans' reply evidence, the Site is not considered to be Highly Productive Land within the definition of the policy statement, and based upon a more detailed assessment of the subject site, as anticipated in the definition of "LUC 1,2, or 3 category".
- 123 Mr Giddens' has made unqualified assertions that Dr Hill has not undertaken a sufficiently detailed further assessment of the Site so as to confirm its LUC category. Dr Hill and Mr Lynne both maintain the opposite to be true, and that his assessment is appropriate and meets the requisite definitions of the policy statement. It is submitted that the evidence of those experts qualified in such matters should be preferred over that of Mr Giddens.

Controlled activity regime

- 124 As addressed above under 'amendments to the proposal' the Submitters have not accepted Council rebuttal changes as to an RD regime for subdivision. The objective of retaining the ability to prevent substandard design is supported, however it is submitted this can be addressed in a controlled activity framework, rather than requiring the ability to refuse consent. The Council would still have broad powers to apply conditions of consent and have good subdivision design outcomes in a controlled activity framework with suitable matters of control. Controlled activities are assessed in accordance with section 104A. Council must grant consent, unless it has insufficient information or if section 106 applies, and may impose conditions under s108 (or s220 for a subdivision) in respect of matters to which it has reserved itself control in the plan. A Council's ability to apply conditions on a controlled activity consent is limited by section 87A (conditions may only be applied in respect of matters to which Council has reserved control in its plan); and through common law principles developed on section 108.

- 125 Counsel presented significant submissions in the topic 04 hearing which discussed case law on the extent of controlled activity 'control' (attached as **Appendix 2** to these submissions). The associated case books relied on can also be found at: [Case book 1](#) and [Supplementary casebook](#).
- 126 In summary, the wealth of case law on the subject establishes that conditions imposed in a controlled activity context can be significant, broad, and control adverse effects of a proposal. Failing meeting the *Newbury* tests (of reasonableness and connection to the proposal), and the principle of conditions not having the effect of nullifying a consent, discretion is largely unfettered.
- 127 Such case law traversed in those earlier submissions specifically included examples of where changes to layouts and reconfiguration of subdivision proposals was not tantamount to refusal of consent.
- 128 In this instance, a highly prescriptive structure plan is proposed and has been modelled in visual assessments. Essentially, when you know what you are going to achieve, there is little value in requiring an RD as opposed to controlled regime. There are only four structure plans with an RD regime in chapter 27 and by contrast, this proposal is significantly more detailed in terms of future build form and mitigation required to occur than those examples.

Economic benefits

- 129 In the *Golf* case cited above, the Court noted at [148] that:

There must always be at least a general regard to economic well-being as an element of the sustainable management of natural and physical resources.⁷⁸

- 130 Section 32(2)(a)(i) and (ii) requires that the opportunities for economic growth and employment that are anticipated to be provided or reduced are assessed. This recognises that Part 2 of the Act includes economic wellbeing of individuals as well as the wider community, and the use and development of natural and physical resources invariably involves economic activity. The reference to "economic growth" in subsection (i) must include the economic growth resulting from the increase in realisable land value which benefits a subdividing landowner, and the reference to "employment" in subsection (ii) must include specific employment

⁷⁸ *Golf (2012) Limited v Thames-Coromandel District Council* [2019] NZEnvC 112, at [148].

opportunities which arise from rural living, both short term in terms of house construction and long term in terms of ongoing property maintenance.

- 131 It is submitted that as per the *Golf* case and the Courts' interpretations of s32 as traversed in Counsel's submissions at **Appendix B**, these economic benefits are relevant as to:
- (a) What is the most 'appropriate' zoning of the land, taking into account efficiency and effectiveness;
 - (b) What are the alternatives of zoning outcomes.
- 132 The Council has not presented economic evidence, despite the Council's evidential position in this rehearing representing a significant departure from what it approved in 2018. It also does not acknowledge the significant departure of its position in terms of consequence on its Spatial Plan, and the misrepresentation in that Plan and its development capacity assessments that assume development of the Site to a full LDSR Zone potential, as previously approved by Council.
- 133 The Commission has before it no opposing economics evidence, and therefore it is uncontested that there are benefits in the form of internal economic development through implementation of the zoning enabled subdivision, provision of consequent trail and recreational benefits, additional housing supply and choice.
- 134 In considering these positive benefits, it is important to remember that the relevant part of the purpose of the Act in s5 is not just about avoiding or mitigating adverse effects of activities on the environment; it includes reference to remedying them. Bringing access to the DOC reserve in close proximity to Queenstown, by allowing people onto and through a private property landholding they could not otherwise access, is an aspect of remedying adverse effects on the environment resulting from existing private land ownership⁷⁹.

Response to Mr Giddens and Mr S Brown – specific comments

- 135 Mr Giddens' evidence appears to have misunderstood or misinterpreted a number of planning provisions proposed by the Submitters. In particular he does not seem to understand the requirements of structural planting and delivery of this at the stage of subdivision, so as to ensure a homogenous mitigation outcome for the Site. A large amount of his criticism of the

⁷⁹ *Per OB Holdings Ltd v Whangarei District Council* [2010] NZEnvC 391, at [77].

proposed zoning falls away when considering carefully the proposed zoning provisions, including the requirements for registration of instruments on new titles to have ongoing and binding requirements on lot owners as to maintenance of planting and pest control obligations.

- 136 His further assertion that such mitigations proposed by the Submitters generally suggest the Site is not appropriate for development is broad brush and unfounded. The Commission will be well versed in planning proposals in this District which come with a high degree of obligations on developers to comprehensively masterplan, mitigate, and carry out large scale development (in a range of settings and landscapes) to provide a high-quality design outcome. Indeed, Mr Giddens has provided planning support to a number of such proposals including the Gibbston Valley Resort Zone development, which evidences a significant degree of subdivision mitigation (in the Gibbston Valley ONL) and in order to mitigate views from the State Highway in the form of extensive roadside planting and bunding. A number of the structure plans in chapter 27 of the PDP take a similar approach to identification of areas for development and areas for mitigation – that is an accepted precedent of zoning in this PDP.
- 137 Much of Mr S Brown's assessment appears to be based upon the original relief proposed by Submitters. He seems to have assessed “*conventional residential development across the proposed master plan lots*” when coming to his conclusions, rather than providing any detailed analysis or assessment of specific provisions proffered by Submitters, such as Structural Planting areas and platform locations⁸⁰.

APONLS campaign – private and public interests

- 138 It is submitted that the Commission should consider whether this group is in fact an effective community-watchdog as to Arthurs Point landscapes, or a group of individually-minded opponents to this particular Proposal.
- 139 The Society was formed in 2018 (consequent upon the successful rezoning of this Site under stage of the PDP), and although it has broad stated objectives, it has focused its campaign largely on the development of this Site since inception⁸¹.
- 140 No membership list of APONLS has been provided on the record or in evidence to date, however it is noted that their founding membership in 2018 consisted of 19 members, of which 10 were recorded as having

⁸⁰ See for example. Mr S Brown's evidence in chief at [21].

⁸¹ Including, as accounted in Mr Fairfax's evidence, obstruction of permitted uses of the Site [23]

addresses in Australia or the UK. Interestingly, at that time, over 40% of the membership appears to be the Semple family (most of whom live overseas it is understood)⁸².

- 141 Potentially the Society has increased its membership over the past years since inception, however the Commission should consider exactly who is represented by the views of APONLS evidence and legal Counsel in this case. It would also be useful for opposing submitters presenting in this hearing to declare whether they are also members of APONLS or not, and therefore help to understand the level of representation and / or overlap being presented.
- 142 It is submitted that the accounts of Arthurs Point 'community' meetings in Mr Fairfax's evidence is compelling and indicative of the strength of the APONLS campaigning in this case to influence a faction of the community towards a certain viewpoint. Notably, the Arthurs Point Community Association has not called evidence aligned with the views of APONLS. Given the account of Mr Fairfax not being provided with the same platform at APCA community meetings as APONLS was⁸³ it is reasonable to infer that more neutral or even supportive members of the community not necessarily opposed the rezoning would be tentative about expressing their views in this hearing or in those community meetings.
- 143 Finally, as accounted in Mr Fairfax's evidence at paras 24- 26, there are multiple examples of misrepresentations made by APONLS members as to the process and substance of the rezoning of this Site proposed.

Conclusion

- 144 This case is highly unusual in that it is effectively a re-hearing into a previously confirmed decision to comprehensively rezone this Site for urban development and confirm *again* that it is not part of any broader ONL. Most re-hearing cases are in the instance of new evidence coming to light, or a change in circumstances on the ground. Neither of those instances occur here, the only change being the number of further submitters now in the room, and policy changes which are either neutral or in support of the relief sought. The first instance IHP recommendation in my submission is a relevant and weighty factor to this case. Despite that, the Submitter has

⁸² Publicly available, particulars of new incorporated society, dated 19 June 2018 on the New Zealand Companies office website.

⁸³ Evidence in Chief of Mr Fairfax at [26 - 28]

volunteered a significantly different proposal to structure plan the Site and reduce yield to a third of what has been already approved by the Council.

- 145 In my submission, the Commission can be confident that the Site is not considered to be within or part of any section 6b landscape, and can focus attention on effects of the adjacent Shotover Gorge ONF values. The Submitters' case is that its proposal entirely protects those values, and better so, than leaving future subdivision and development to chance.
- 146 This then requires an evaluation primarily against the District Plan provisions as to visual amenity values and effects, and guided by the Council's rezoning principles enunciated through the PDP review to date. These provisions and principles all support the relief for rezoning proposed by Submitters.
- 147 The Panel must make a finding, upon the evidence before it, as to the most appropriate zoning for the Site. That finding is assisted by the matters assessed under section 32.
- 148 The inclusion of a structure plan for this Site is the most effective method that can be included in the PDP to clearly demonstrate where development will be located, which in turn, will increase efficiencies when it comes to consenting development through the guidance of a comprehensible 'plan' and accompanying policy and rule framework.
- 149 As provided in the evidence of Mr Foy, the Site is significantly constrained for any hope of productive farming (both practically and economically). However there are a number of significant economic and community benefits to accrue from the rezoning, and there are no economic downsides⁸⁴.



Maree Baker-Galloway / Rosie Hill

Counsel for the Submitters

⁸⁴ Benefits as traversed in Submitter evidence include consequent economic advantages, ecological enhancement, landscape enhancement (though including a BRA within operative zoned land), and necessary infrastructure upgrading

Appendix A – summary of litigation history

- 1 In August 2015 as part of Stage 1 of the Queenstown Lakes Proposed District Plan Review (**PDP**) Lot 1 DP 518803 (**GSL Land**) and Lot 2 DP398656 (**LEL Land**) (collectively, **Site**) were notified as being split zoned, as follows:
 - (a) The north western part of the Site was zoned Low Density Residential Zone (**LDSRZ**), within the Urban Growth Boundary (**UGB**)
 - (b) The southern and eastern parts of the Site, were zoned Rural, outside of the UGB. This part of the properties is the subject of the Court proceedings and the rest of this summary.
- 2 In October 2015 Larchmont Developments Limited (now LEL) lodged a submission seeking that the area of land identified in Appendix 1 to the submission (the full GSL Land) be rezoned as LDSR Z and included within the UGB. The then owner of the GSL Land, Swan, lodged a similar submission seeking that part of rural part of the GSL Land be rezoned to LDSRZ, included in the UGB and excluded from the ONL.
- 3 In July 2017 GSL, now the owner of the GSL Land, and Larchmont Developments Limited presented evidence at the Council hearing in support of the relief sought in the Swan and LEL submissions. The Council decision was issued in May 2018 and made the requested changes to the zoning of the Site, and the UGB and ONL locations. There were no submitters in opposition. There were no appeals to the Environment Court against the Council's decision.
- 4 The Arthurs Point Outstanding Natural Landscape Society (**APONLS**) formed in June 2018. APONLS had not made a submission on the PDP so with no standing to make an appeal (and being out of time to do so), APONLS sought to have the Council's decision overturned through two different avenues:
 - (a) By relying on the scope of an appeal on the PDP by Upper Clutha Environmental Society Inc. (**UCESI**) seeking to amend the location of the ONL back to its previous location (to include the property) and to rezone the property back to Rural (**Jurisdictional Challenge**).
 - (b) By applying to the Environment Court for an enforcement order challenging the validity of the way in which the Council had notified Swan's submission on the PDP, arguing that the Council's summary of the decisions sought by the submission (**Summary**) was not 'fair, accurate and not misleading' and so the Council had not met its requirements under the RMA Schedule 1, and seeking that the Court order that the summary be re-notified, effectively restarting the entire process (**Enforcement Order**).

Jurisdictional Challenge

- 5 APONLS sought to rely on an appeal by UCESI to amend the location of the ONL at Arthurs Point and to rezone the property back to Rural. The Council and GSL argued there was no scope in the UCESI appeal to do so i.e. the UCESI appeal did not cover that subject matter.
- 6 The issue of the scope of the UCESI appeal was heard in three Environment Court proceedings: [2019] NZEnvC 14; [2019] NZEnvC 78; [2019] NZEnvC 176. The Environment Court determined the UCESI appeal did give scope for APONLS to seek to amend the ONL location, and directly or consequentially rezone the property to Rural if the ONL was amended to once again include the property.
- 7 GSL appealed the Environment Court decision to the High Court. The Council joined as an interested party in support of GSL. Justice Dunningham overturned the Environment Court decision and found that the UCESI appeal did not raise those issues, meaning APONLS could not rely on the appeal to seek that relief: [2020] NZHC 3387.
- 8 APONLS subsequently sought leave to appeal the High Court decision to the Court of Appeal. GSL opposed the application for leave. The Council adopted a neutral position. The Court of Appeal declined the application on 24 August 2021: [2021] NZCA 398.

Enforcement Order

- 9 APONLS filed an enforcement order application with the Environment Court on 25 March 2019 arguing that the Council failed to meet its obligations under the RMA because its summary of the Swan/Gertrude submission was not 'fair, accurate and not misleading' (the legal requirement). If successful on this argument the outcome would be that the process would effectively start again; the Council would have to re-notify the Swan/Gertrude submission and APONLS would have the opportunity to further submit in opposition. The Council would then hold another hearing on the merits on the ONL location and zoning of the property and make a decision which could be appealed to the Environment Court.
- 10 The Environment Court determined that the Council had failed to meet its obligations under the RMA because the Summary was unreasonable and misleading on 11 September 2019. The Environment Court ordered that the Council re-notify an amended version of the Summary, and that the Council's original decision to amend the ONL boundary and zone the property LDSRZ was **suspended**: [2019] NZEnvC 150.
- 11 GSL and the Council both appealed the Environment Court decision to the High Court. Justice Clark upheld the Environment Court decision for the same reasons: [2021] NZHC 147.

- 12 GSL sought leave to appeal the High Court decision to the Court of Appeal. APONLS opposed the leave application. Council supported the appeal but did not itself appeal. The Court of Appeal declined the application on 24 August 2021: [2021] NZCA 398 Decision dated 24 August 2021.
- 13 As directed by the Environment Court, the Council was required to re-notify its Summary of the LEL/Gertrude submissions.

Appendix B – Extracts on legal framework for rezoning and plan making decisions

- (a) When preparing or changing a district plan the Council must have regard to the matters listed in section 74 which include any proposed regional policy statement, a proposed regional plan and management plans and strategies prepared under other Acts;
- (b) Given the unsettled nature of higher order provisions of the PDP and RPS in this instance, the Commission must still look beyond those documents and apply Part 2 of the Act in order to determine whether a proposed zoning or specific provision is most appropriate in accordance with section 32;
- (c) There is no presumption as to the most appropriate zone, rule, policy or objective for decision makers when embarking on a section 32 analysis⁸⁵.
- (d) A section 32 analysis seeks to provide for the optimum planning solution ultimately within the scope of submissions.⁸⁶ Such an analysis should be an effects-based decision, rather than based upon a desired outcome or directive planning purpose⁸⁷ and should take into account the existing consented and developed environment on the ground rather than providing a zone which makes that existing environment and development incongruous within the proposed DPR zone.⁸⁸
- (e) Section 32 requires a value judgment as to what, on balance, is the ‘most appropriate’ when measured against the relevant objectives. ‘Appropriate’ means ‘suitable’; there is no need to place any gloss upon that word by incorporating that is to be superior⁸⁹

⁸⁵ *Eldamos Investments Limited v Gisborne District Council* W47/05, affirmed by the High Court in *Gisborne District Council v Eldamos Investments Ltd*, CIV-2005-548-1241, Harrison J, High Court, Gisborne, 26/10/2005. See also *Sloan and Ors v Christchurch City Council* C3/2008; *Briggs v Christchurch City Council* C45/08, and *Land Equity Group v Napier City Council* W25/08.

⁸⁶ *Eldamos* paragraph [129]

⁸⁷ *Cerebos Greggs Ltd v Dunedin City Council*, Environment Court, Judge Smith, C169/2001, at [21].

⁸⁸ *Millford Centre v Auckland Council* [2014] NZEnvC 23 at para 120; *Shotover Park Limited v Queenstown Lakes District Council* [2013] NZHC 1712; *Cerebos*.

⁸⁹ *Rational Transport Society Inc v NZTA* [2012] NZRMW 298 (HC) at [45].

- (f) In considering what rule may be the most appropriate in the context of the *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*⁹⁰ namely where the purpose of the Act and the objectives of the Plan can be met by a less restrictive regime then that regime should be adopted. Such an approach reflects the requirement in s32(1)(b)(ii) to examine the efficiency of the provision by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by enabling so that people can provide for their well-being while addressing the effects of their activities.⁹¹

⁹⁰ *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* Decision C153/2004 at [56].

⁹¹ *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council*, [2017] NZEnvC 051, at [59], and *Hodge v CCC C1A/96*, at page 22..

Appendix C – Council's re-zoning principles:

IP Report 20.1 - 2.9 Zoning Principles

135. In previous PDP stages, the relevant Hearing Panels have found it useful to apply a set of assessment principles to assist in answer the question as to what the most appropriate zoning is for a given area of land.

136. As Mr Barr observed, the purpose of the zoning principles is not to replace the guidance provided in the *Colonial Vineyards* decision already noted, but rather to elaborate on the relevant statutory tests in a manner that focuses attention on the particular issues zoning questions give rise to.

137. The zoning principles previously applied need to be adapted a little, among other things to reflect progress in development of the RPS, but we are satisfied that they remain broadly applicable.

138. We concur with previous Hearing Panels that as amended, these principles are of assistance and we have used them as a touchstone in the zoning issues addressed in our subsequent reports.

The principles are:

- (a) Whether the change is consistent with the objectives and policies of the proposed zone. This applies to both the type of zone in addition to the location of the zone boundary;
- (b) Whether the change is consistent with PDP Strategic Directions Chapters (Chapters 3- 6);
- (c) The overall impact of the rezoning gives effect to the RPS;
- (d) Relevant issues debated in recent Plan changes are considered;
- (e) Changes to zone boundaries are consistent/considered alongside PDP maps that indicate additional overlays or constraints (e.g. Airport obstacle limitation surfaces, SNAs, BRAs, ONFs and ONLs);
- (f) Changes should take into account the location and environmental features of the site (e.g. the existing and consented environment, existing buildings, significant features and infrastructure);
- (g) Zone changes recognise the availability or lack of major infrastructure (e.g. water, wastewater, roads), and that changes to zoning does not result in unmeetable expectations from landowners to the Council for provision of infrastructure and/or management of natural hazards;
- (h) Zone changes take into account effects on the wider network water, wastewater and roading capacity, and are not just limited to the matter of providing infrastructure to that particular site;
- (i) There is adequate separation and/or management between incompatible land uses;
- (j) Rezoning in lieu of resource consent approvals, where a portion of a site has capacity to absorb development does not necessarily mean another zone is more appropriate; and
- (k) Zoning is not determined by existing resource consents and existing use rights, but these will be taken into account.

Appendix D – revised plan set and graphic attachments

ATLEY ROAD REZONING

ZONING OF LAND AT ARTHUR'S POINT BY GERTRUDE'S
SADDLERY LIMITED AND LARCHMONT ENTERPRISES LIMITED

26 JANUARY 2023



Contents

PLANS / MAPS

- FIGURE 1: Concept Masterplan *Updated*
- FIGURE 2: Arthurs Point LLR B Structure Plan *Updated*
- FIGURE 3: Zoning Plan *Updated*
- FIGURE 4: Pole Location Plan
- FIGURE 5: Structural Planting Palette
- FIGURE 6: Viewpoint Map

VIEWPOINTS, MODELS & VISUAL SIMULATIONS

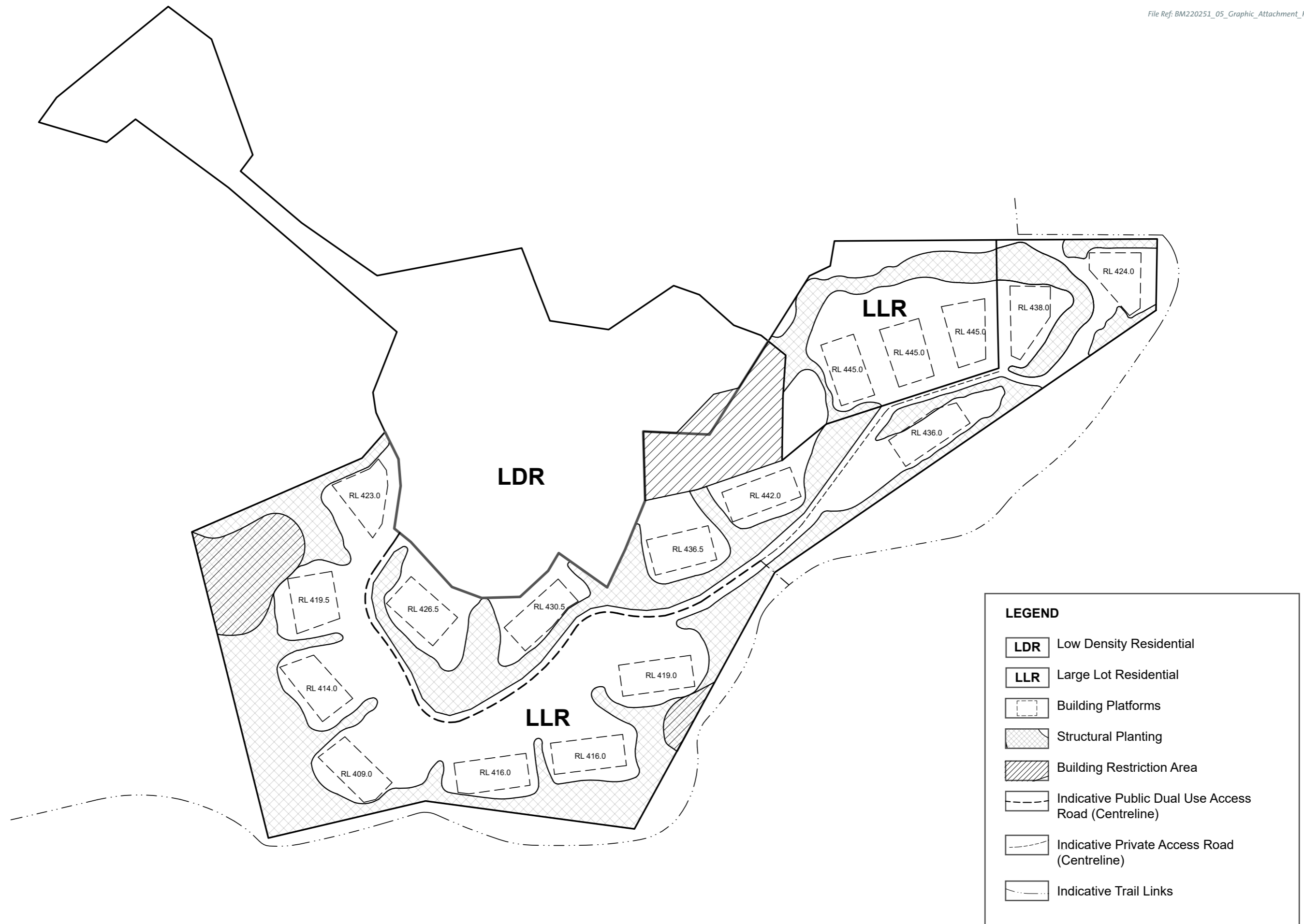
- FIGURE 7: Viewpoint 1 - Larchmont Close - Existing View & Model View
- FIGURE 8: Viewpoint 2 - Mathias Terrace - Existing View & Model View
- FIGURE 9: Viewpoint 2 - Mathias Terrace - Visual Simulation
- FIGURE 10: Viewpoint 3 - Edith Cavell Bridge - Existing View & Model View
- FIGURE 11: Viewpoint 4 - McMillan Rd - Existing View & Model View
- FIGURE 12: Viewpoint 5 - Gorge Road - Existing View & Model View
- FIGURE 13: Viewpoint 6 - Gorge Road - Existing View & Model View
- FIGURE 14: Viewpoint 7 - Gorge Road Bus Stop - Existing View & Model View
- FIGURE 15: Viewpoint 7 - Gorge Road Bus Stop - Visual Simulation
- FIGURE 16: Viewpoint 9 - Gorge Road - Existing View & Model View
- FIGURE 17: Viewpoint 8 - Lot 1 DP 15778 & Viewpoint 10 - Lot 2 DP 27686 Model Views (private properties)
- FIGURE 18: Viewpoint 11 - Lot 1 DP 26548 Model View (private property)
- FIGURE 19: Viewpoint 12 - McChesney Rd - Existing View & Model View
- FIGURE 20: Viewpoint 12 - McChesney Rd - Visual Simulation
- FIGURE 21: Viewpoint 13 - Watties Track - Existing View & Model View
- FIGURE 22: Viewpoint 13 - Watties Track - Visual Simulation
- FIGURE 23: Viewpoint 14 - Powder Terrace - Existing View & Model View
- FIGURE 24: Viewpoint 15 - Arthurs Point Road - Existing View & Model View

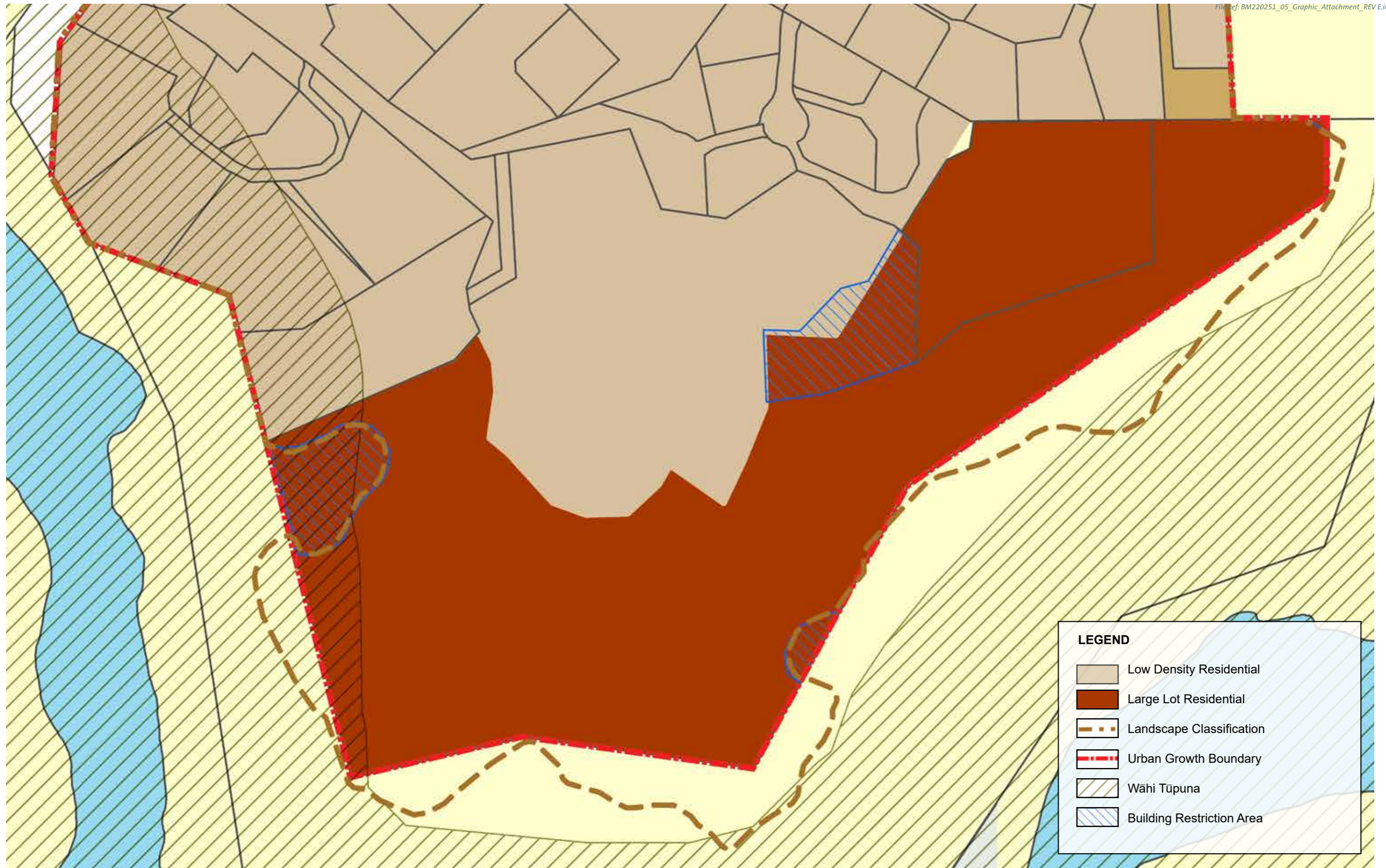
ADDITIONAL INFORMATION

- FIGURE 25: Viewpoint 1 - Larchmont Close - Permitted Baseline & Proposed Model View
- FIGURE 26: Viewpoint 2 - Mathias Terrace - Permitted Baseline & Proposed Model View
- FIGURE 27: Viewpoint 3 - Edith Cavell Bridge - Permitted Baseline & Proposed Model View
- FIGURE 28: Viewpoint 4 - McMillan Rd - Permitted Baseline & Proposed Model View
- FIGURE 29: Viewpoint 5 - Gorge Road - Permitted Baseline & Proposed Model View
- FIGURE 30: Viewpoint 6 - Gorge Road - Permitted Baseline & Proposed Model View

- FIGURE 31: Viewpoint 7 - Gorge Road Bus Stop - Permitted Baseline & Proposed Model View
- FIGURE 32: Viewpoint 8 - Lot 1 DP 15778 - Permitted Baseline & Proposed Model View
- FIGURE 33: Viewpoint 9 - Gorge Road - Permitted Baseline & Proposed Model View
- FIGURE 34: Viewpoint 10 - Lot 2 DP 27686 - Permitted Baseline & Proposed Model View
- FIGURE 35: Viewpoint 11 - Lot 1 DP 26548 Permitted Baseline & Proposed Model View
- FIGURE 36: Viewpoint 12 - McChesney Rd - Permitted Baseline & Proposed Model View
- FIGURE 37: Viewpoint 13 - Watties Track - Permitted Baseline & Proposed Model View
- FIGURE 38: Viewpoint 14 - Powder Terrace - Permitted Baseline & Proposed Model View
- FIGURE 39: Viewpoint 15 - Arthurs Point Road - Permitted Baseline & Proposed Model View
- FIGURE 40: LDR Planning Zones Overlay





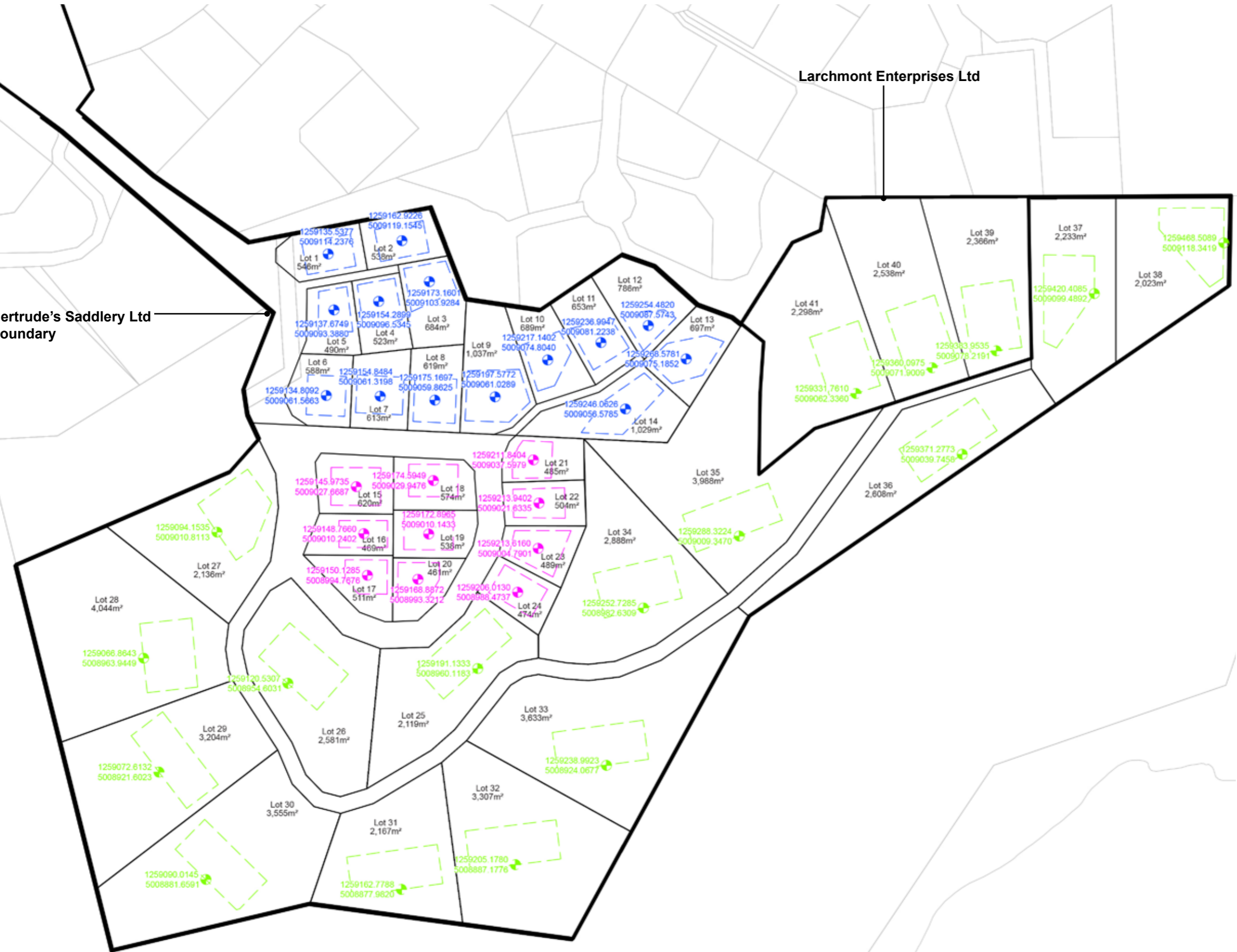


LEGEND

- Low Density Residential
- Large Lot Residential
- Landscape Classification
- Urban Growth Boundary
- Wahi Tūpuna
- Building Restriction Area

Gertrude's Saddlery Ltd Boundary

Larchmont Enterprises Ltd



Gertrude Saddlery Ltd			
Lot #	Zoning	RL	Top of Pole (7m)
Lot 1	Existing LDR	426	433
Lot 2	Existing LDR	426	433
Lot 3	Existing LDR	427	434
Lot 4	Existing LDR	426	433
Lot 5	Existing LDR	426	433
Lot 6	Existing LDR	428	435
Lot 7	Existing LDR	430	437
Lot 8	Existing LDR	430	437
Lot 9	Existing LDR	431.5	438.5
Lot 10	Existing LDR	435	442
Lot 11	Existing LDR	438	445
Lot 12	Existing LDR	438	445
Lot 13	Existing LDR	444	451
Lot 14	Existing LDR	446	453
Lot 15	Proposed LDR	428	435
Lot 16	Proposed LDR	433	440
Lot 17	Proposed LDR	432.5	439.5
Lot 18	Proposed LDR	435	442
Lot 19	Proposed LDR	434	441
Lot 20	Proposed LDR	433	440
Lot 21	Proposed LDR	437	444
Lot 22	Proposed LDR	436.5	443.5
Lot 23	Proposed LDR	435	442
Lot 24	Proposed LDR	432	439
Lot 25	Proposed LLR	430.5	437.5
Lot 26	Proposed LLR	426.5	433.5
Lot 27	Proposed LLR	423	430
Lot 28	Proposed LLR	419.5	426.5
Lot 29	Proposed LLR	414	421
Lot 30	Proposed LLR	409	416
Lot 31	Proposed LLR	416	423
Lot 32	Proposed LLR	416	423
Lot 33	Proposed LLR	419	426
Lot 34	Proposed LLR	436.5	443.5
Lot 35	Proposed LLR	442	449
Lot 36	Proposed LLR	436	443
Lot 37	Proposed LLR	438	445
Lot 38	Proposed LLR	424	431

Larchmont Enterprises Ltd			
Lot #	Zoning	RL	Top of Pole (7m)
Lot 39	Proposed LLR	445	452
Lot 40	Proposed LLR	445	452
Lot 41	Proposed LLR	445	452

This plan has been prepared by Boffa Miskell Limited on the specific instructions of our Client. It is solely for our Client's use in accordance with the agreed scope of work. Any use or reliance by a third party is at that party's own risk. Where information has been supplied by the Client or obtained from other external sources, it has been assumed that it is accurate. No liability or responsibility is accepted by Boffa Miskell Limited for any errors or omissions to the extent that they arise from inaccurate information provided by the Client or any external source.

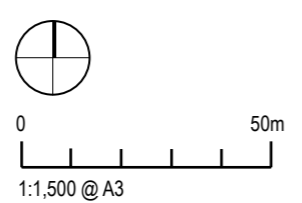


Figure 4

LOW TIER



Snow tussock
Chionochloa rigida



Red tussock
Chionochloa rubra



Koromiko
Hebe salicifolia 'Snowdrift'



Wharariki - Mountain Flax
Phormium cookianum



Ornamental Kowhai
Sophora molloyii 'Dragons Gold'



NZ Olearia
Olearia x oleifolia

MID TIER



Kōhūhū - Black Matipo
Pittosporum tenuifolium



Mingimingi
Coprosma propinqua



Harakeke - NZ Flax
Phormium tenax



South Island Toetoe
Austroderia richardii



Mikimiki
Coprosma virescens



Akiraho - Golden Ake Ake
Olearia paniculata

TALL TIER



Mānuka
Leptospermum scoparium



Tawhai Rauriki - Mountain beech
Fuscospora cliffortioides



Kōwhai
Sophora microphylla



Tī Kōuka - Cabbage tree
Cordyline australis



Houhi Puruhi - Narrow-leaved Lacebark
Hoheria angustifolia

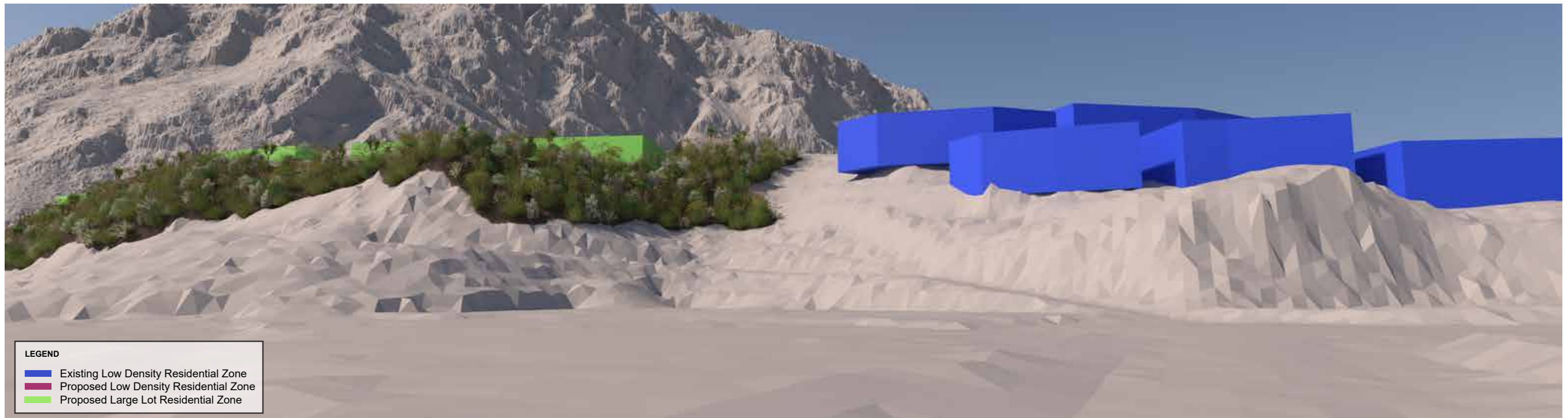


Tarata - Lemonwood
Pittosporum eugenoides





Viewpoint 1: Existing View



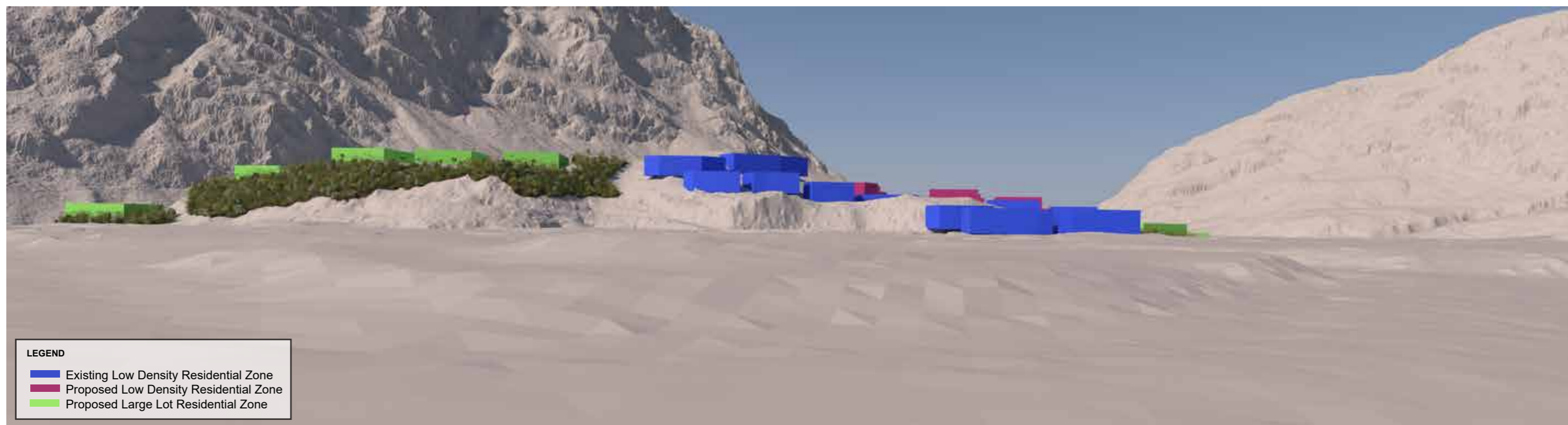
LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone

Viewpoint 1: Model View



Viewpoint 2: Existing View



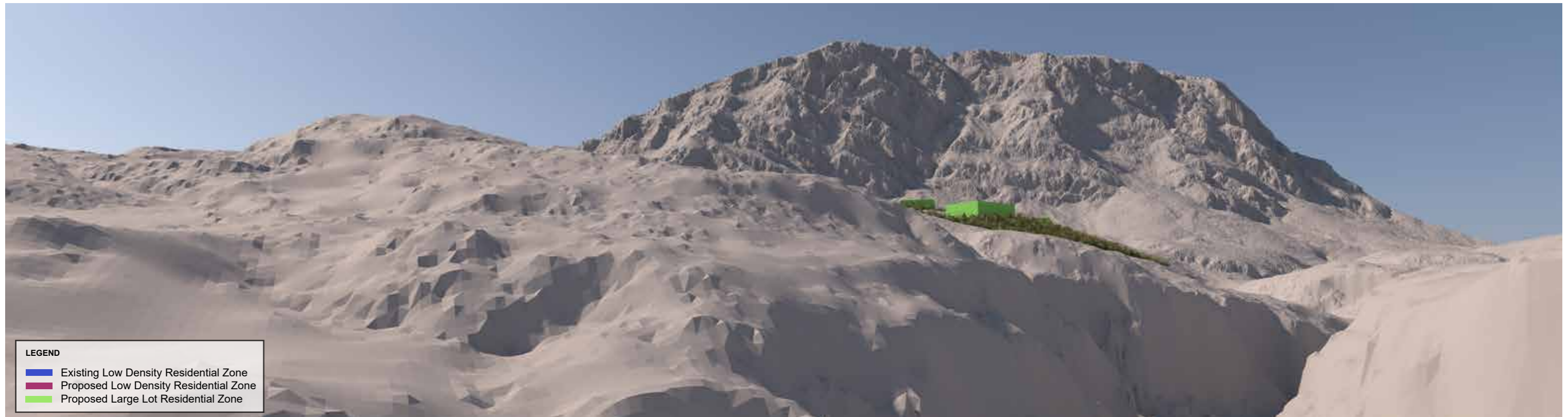
Viewpoint 2: Model View



Viewpoint 2: Visual Simulation



Viewpoint 3: Existing View

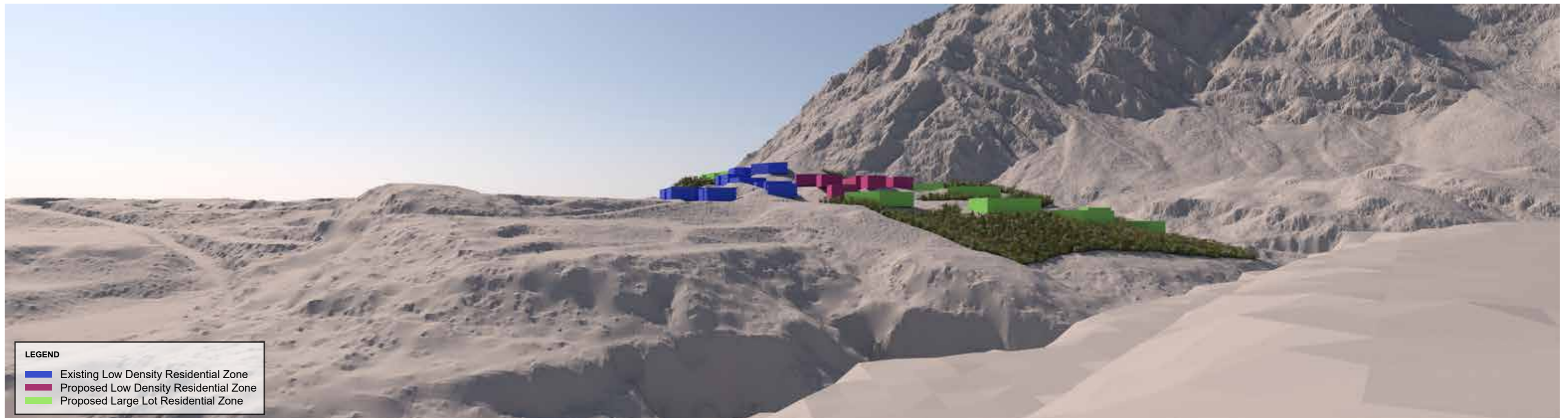


Viewpoint 3: Model View

LEGEND
 Existing Low Density Residential Zone
 Proposed Low Density Residential Zone
 Proposed Large Lot Residential Zone



Viewpoint 4: Existing View



LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone

Viewpoint 4: Model View



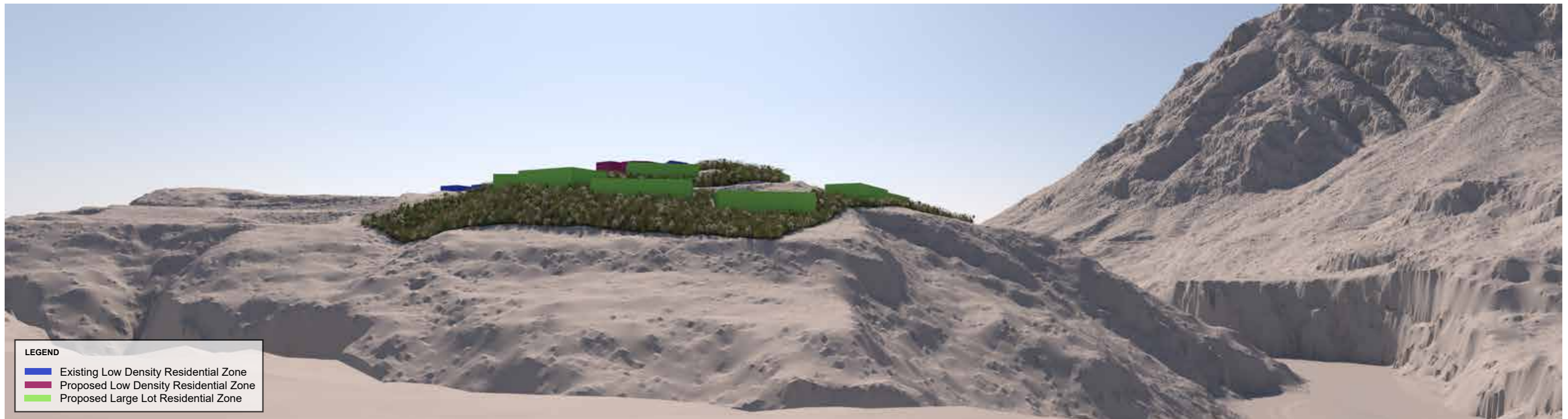
Viewpoint 5: Existing View



Viewpoint 5: Model View



Viewpoint 6: Existing View

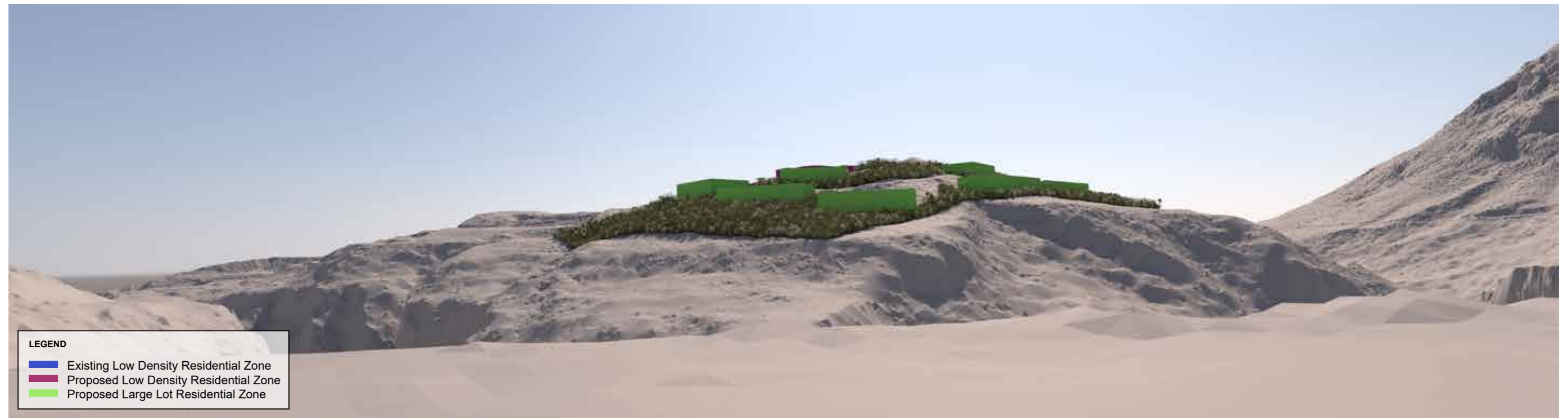


Viewpoint 6: Model View

Visual Simulation Extent (Figure 14)



Viewpoint 7: Existing View



Viewpoint 7: Model View



Viewpoint 7: Visual Simulation



Viewpoint 9: Existing View



LEGEND
■ Existing Low Density Residential Zone
■ Proposed Low Density Residential Zone
■ Proposed Large Lot Residential Zone

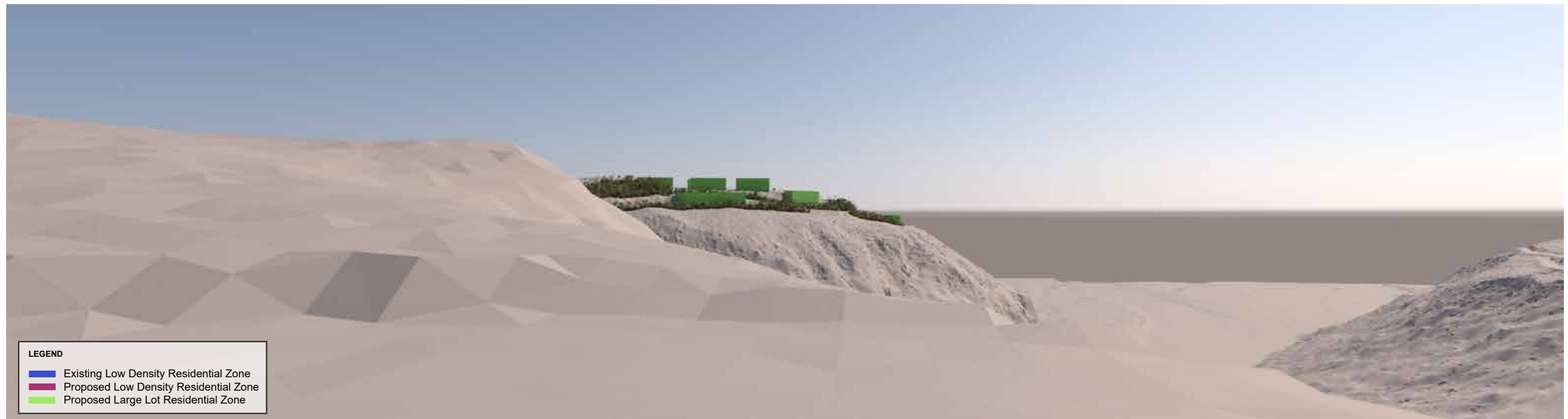
Viewpoint 9: Model View



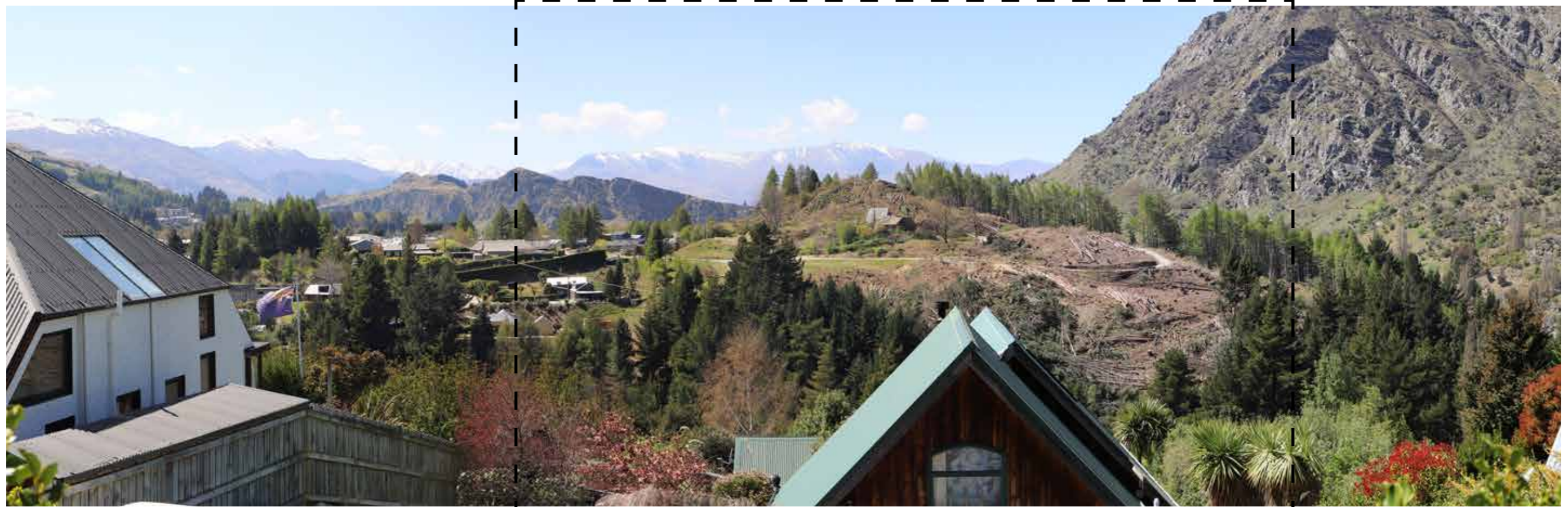
Viewpoint 8 - Model View



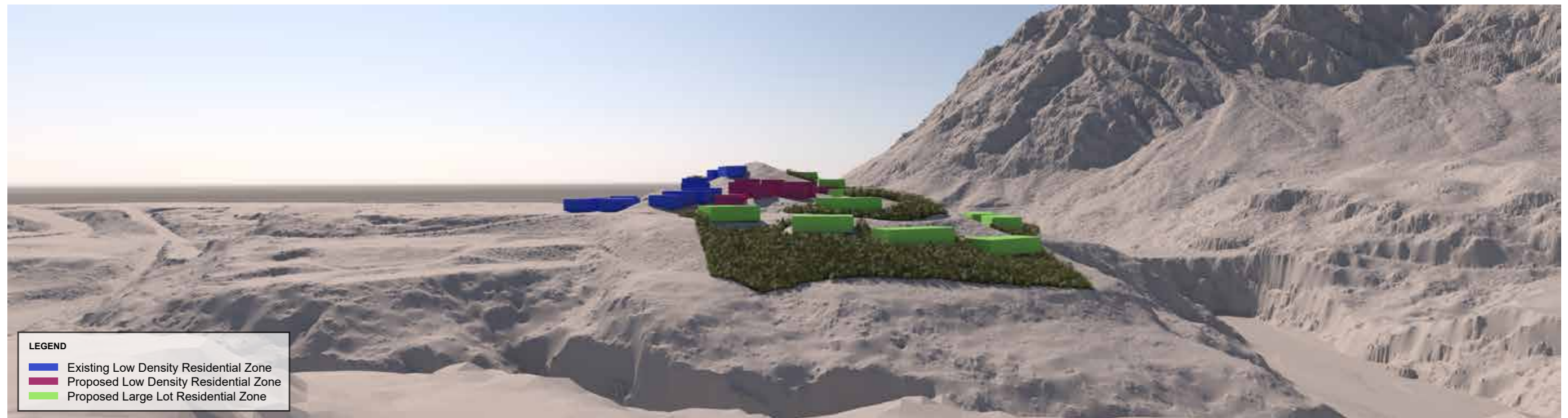
Viewpoint 10 - Model View



Viewpoint 11: Model View



Viewpoint 12: Existing View



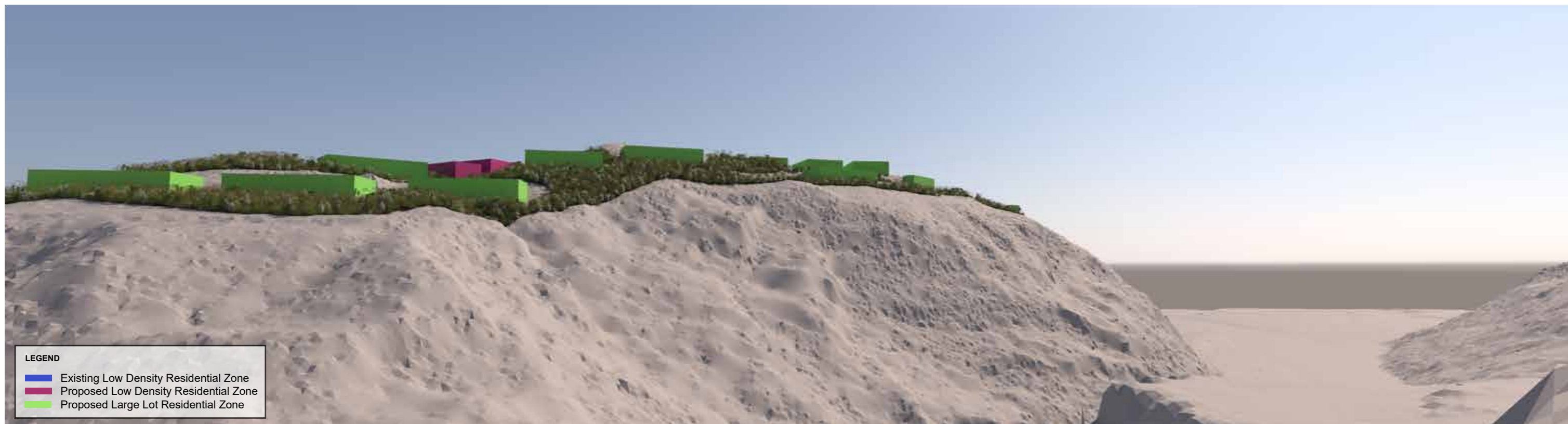
Viewpoint 12: Model View



Viewpoint 12: Visual Simulation



Viewpoint 13: Existing View



LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone

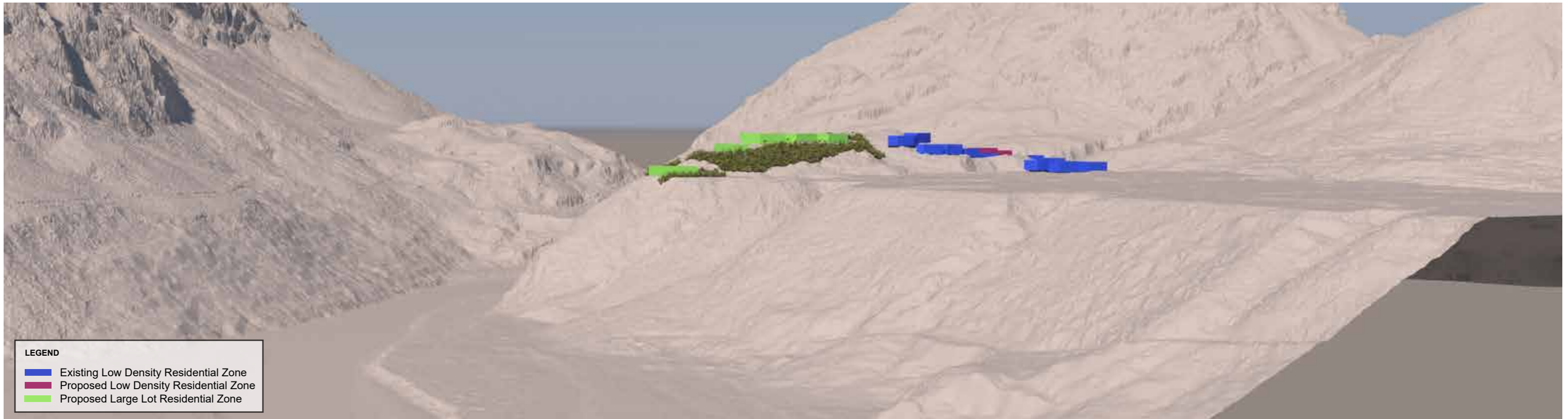
Viewpoint 13: Model View



Viewpoint 13: Visual Simulation



Viewpoint 14: Existing View from Powder Terrace, Arthurs Point



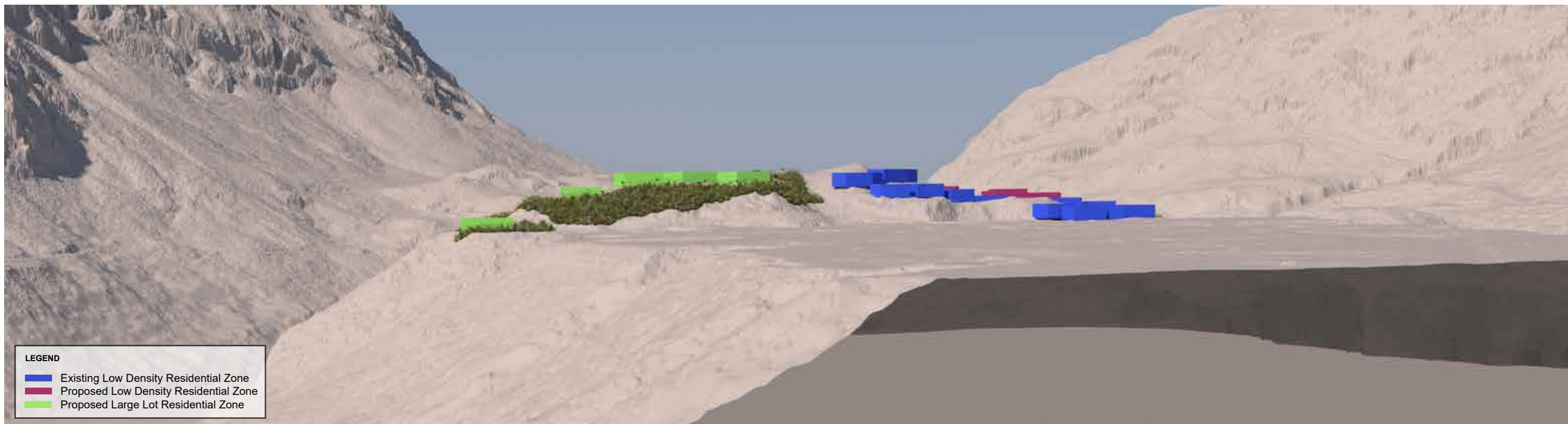
LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone

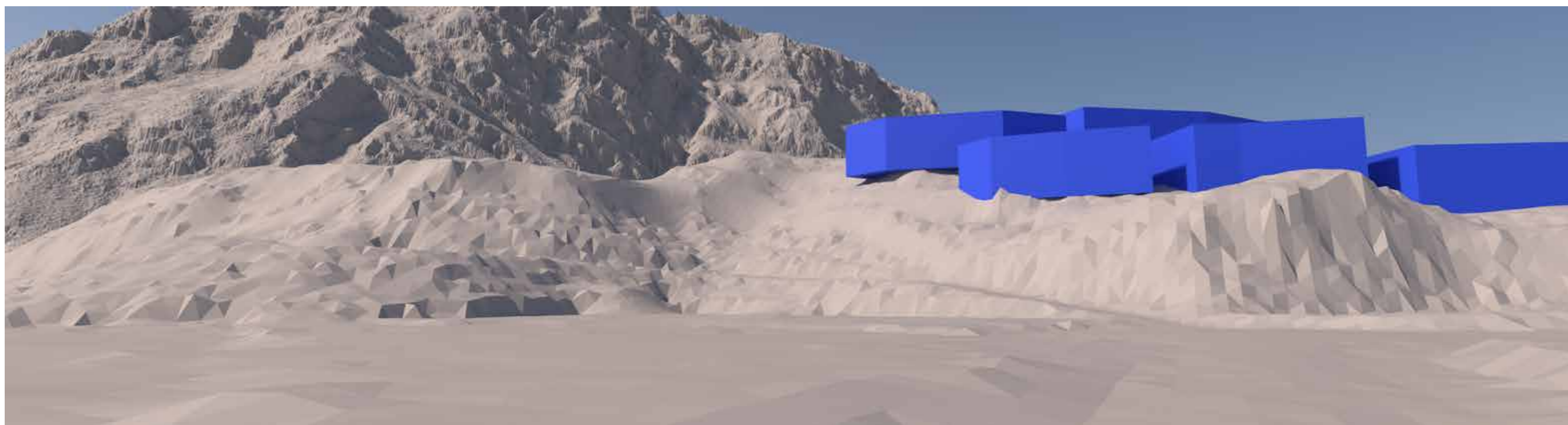
Viewpoint 14: Model View



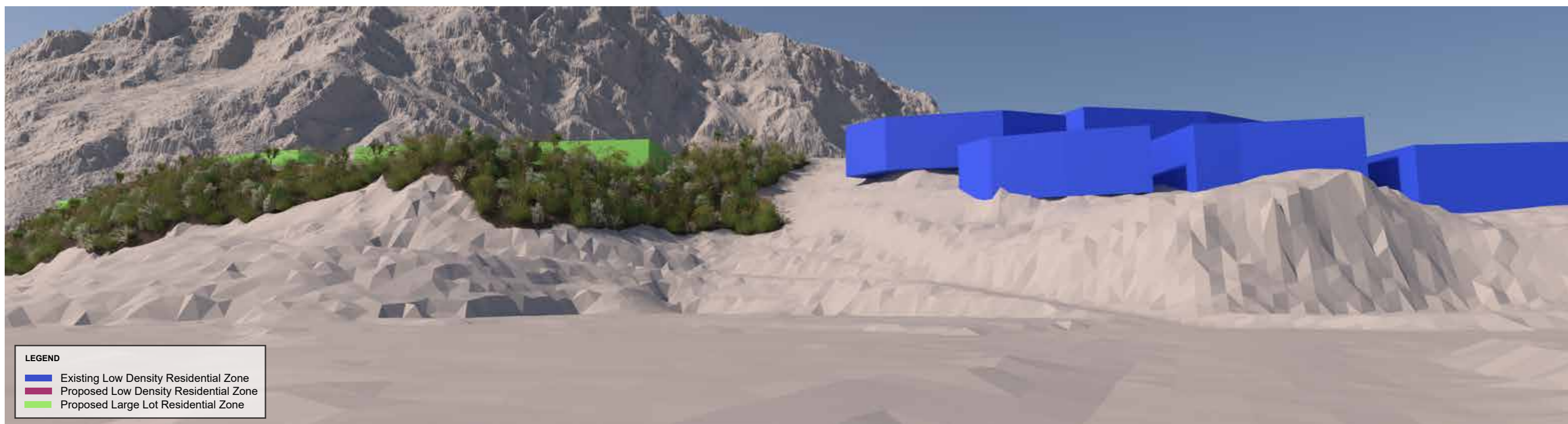
Viewpoint 15: Existing View from Arthurs Point Road



Viewpoint 15: Model View



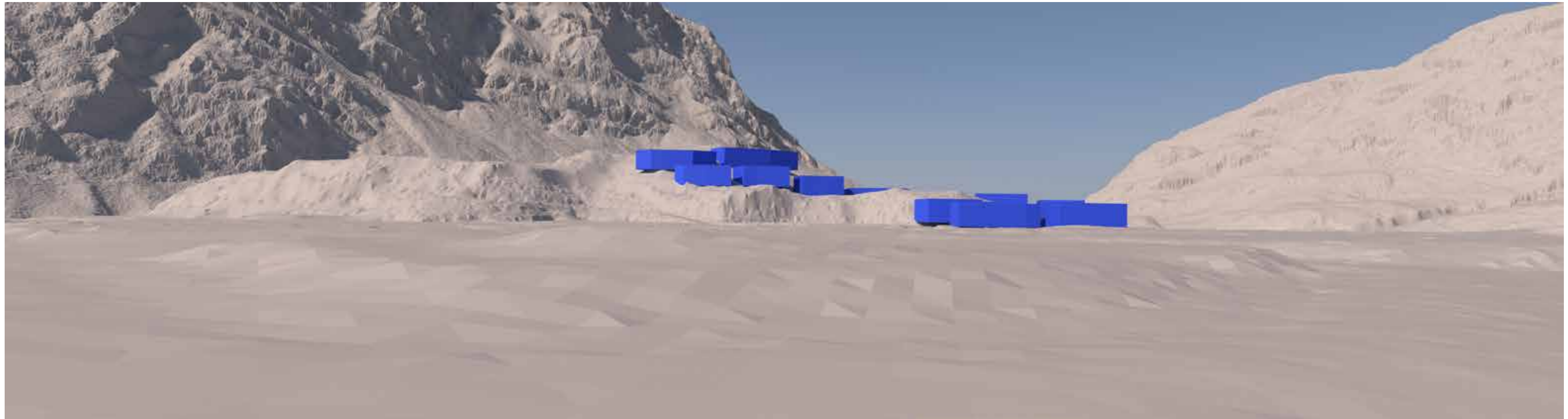
Viewpoint 1: Model View - Permitted Baseline



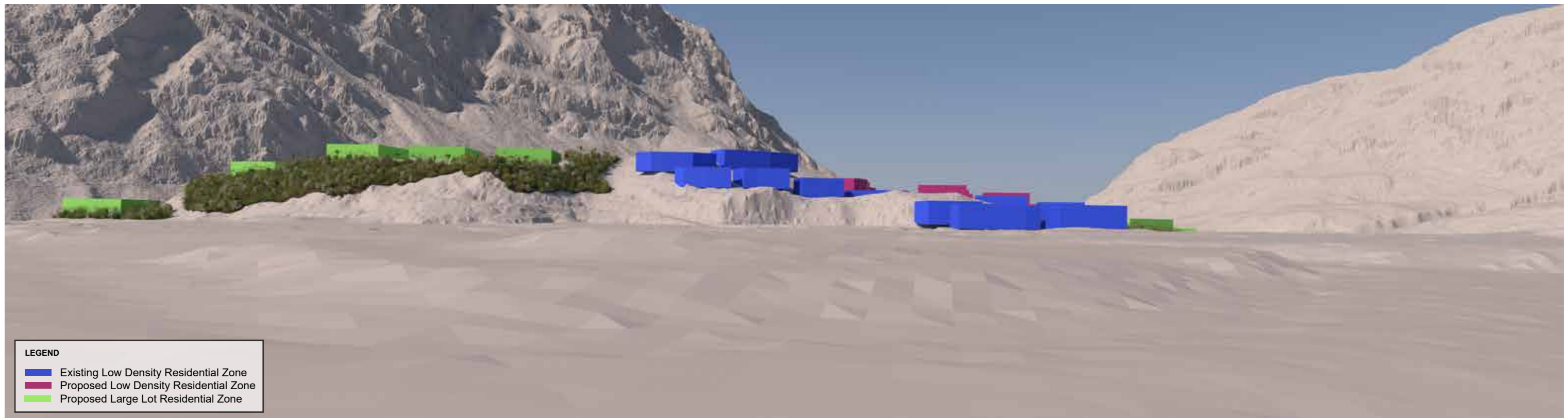
LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone

Viewpoint 1: Model View- Proposal



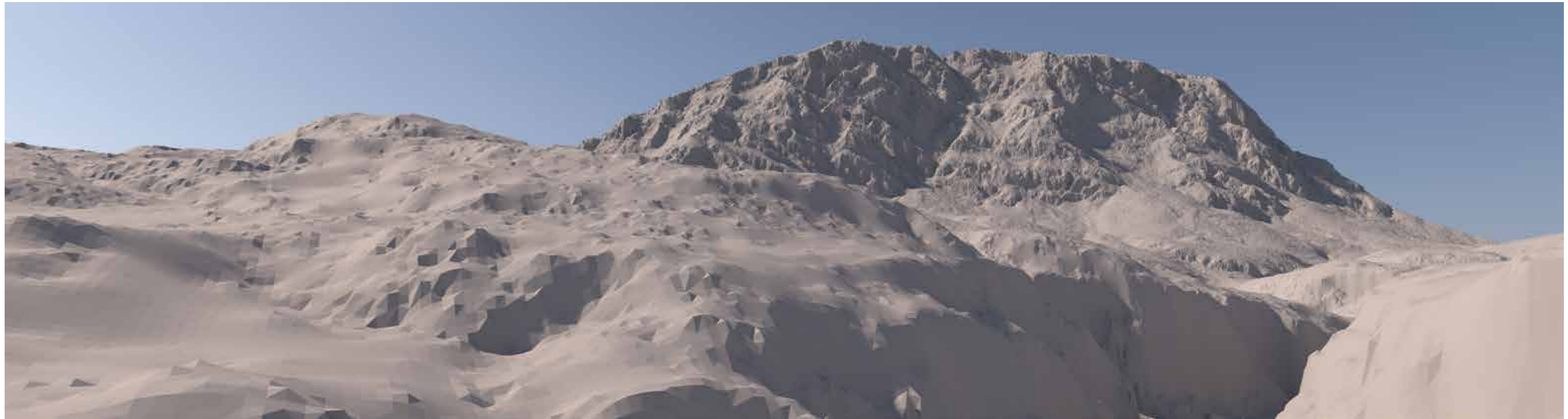
Viewpoint 2: Model View- Permitted Baseline



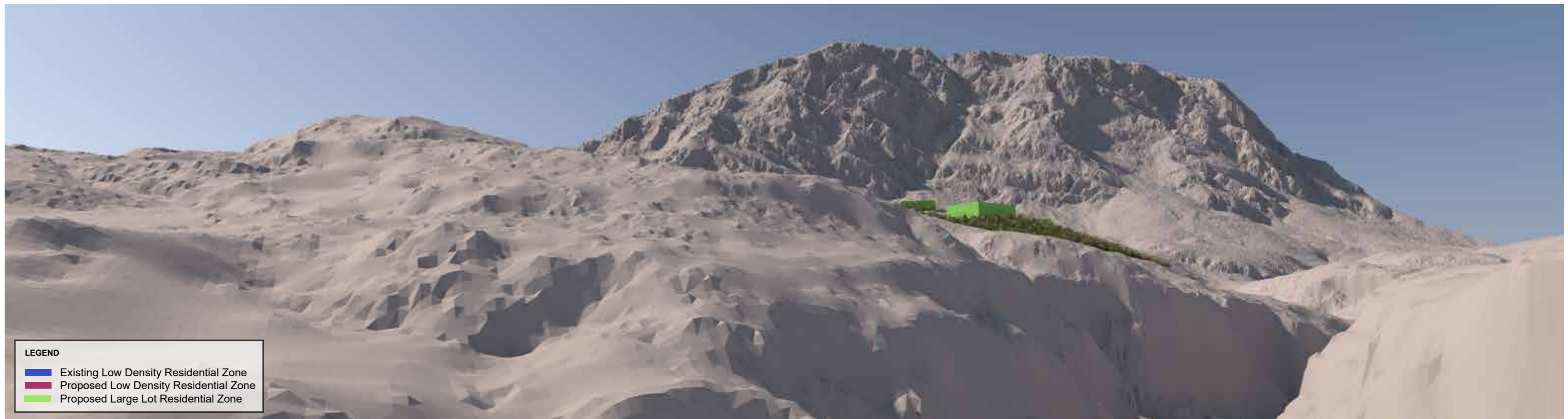
LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone

Viewpoint 2: Model View- Proposal



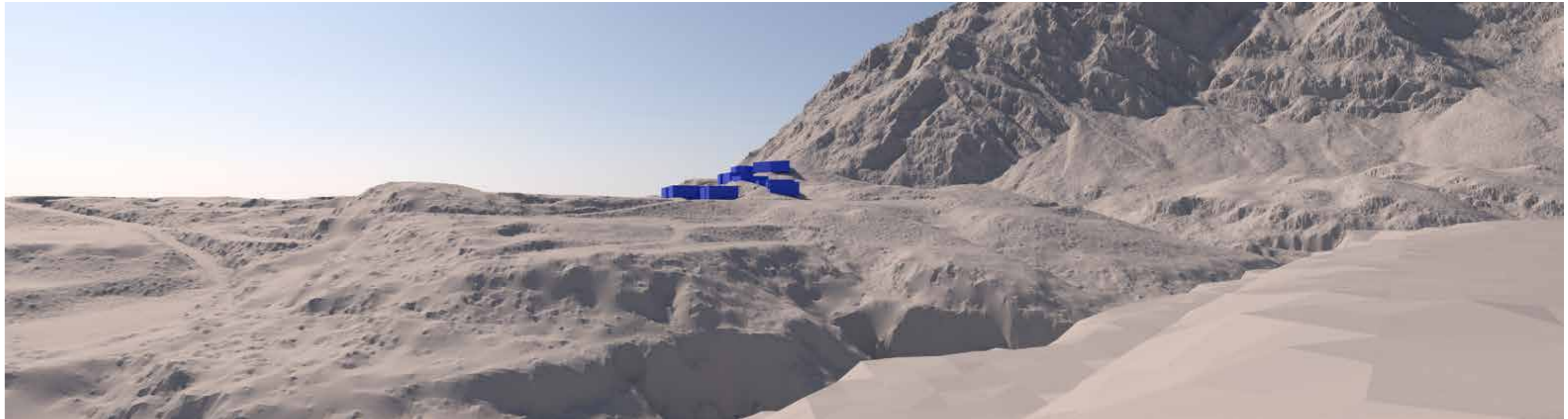
Viewpoint 3: Model View- Permitted Baseline



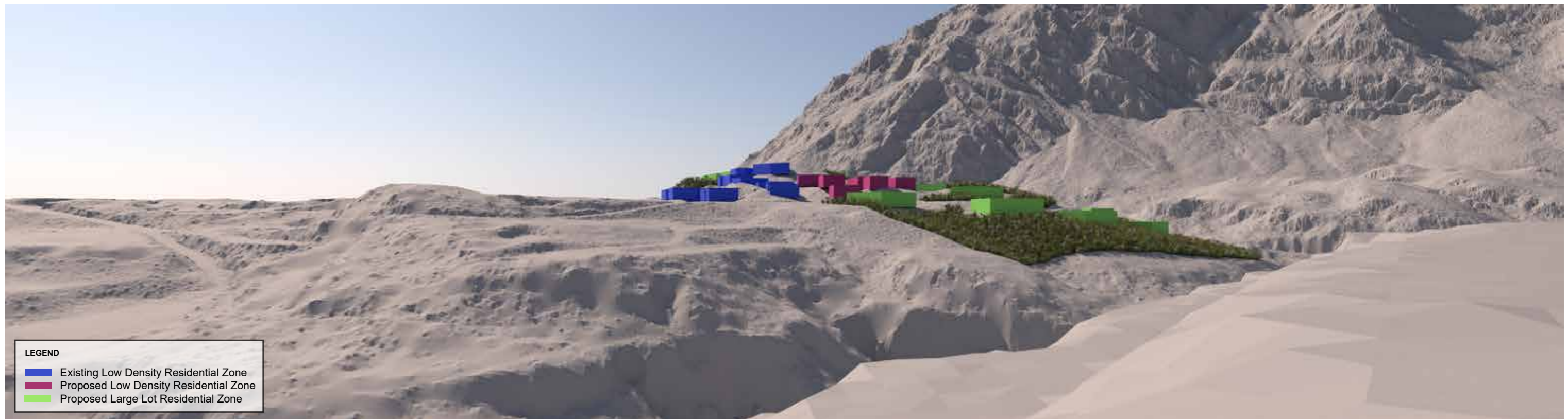
Viewpoint 3: Model View- Proposal

LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone



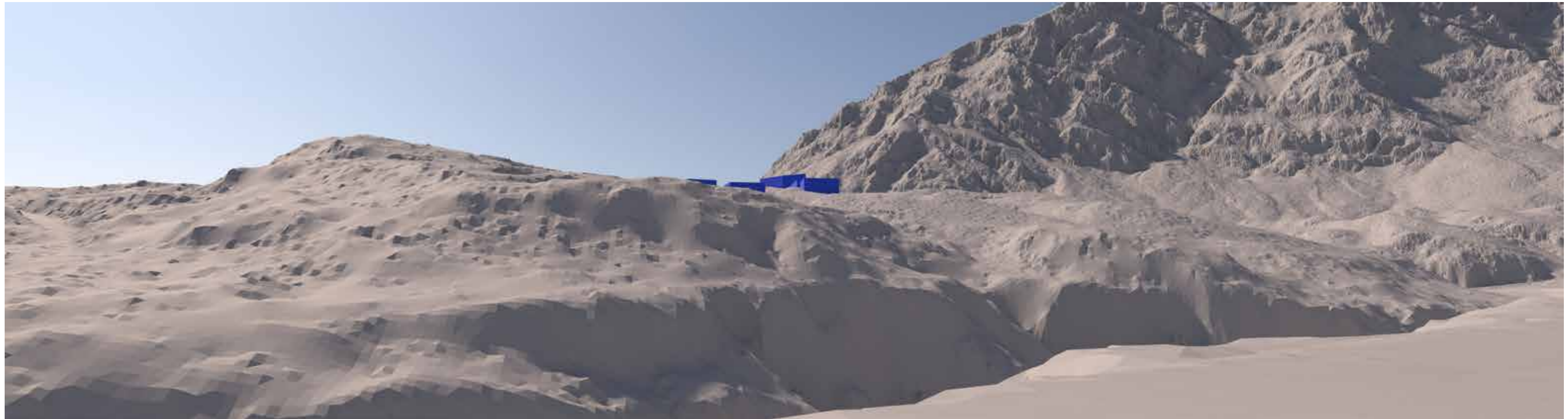
Viewpoint 4: Model View- Permitted Baseline



LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone

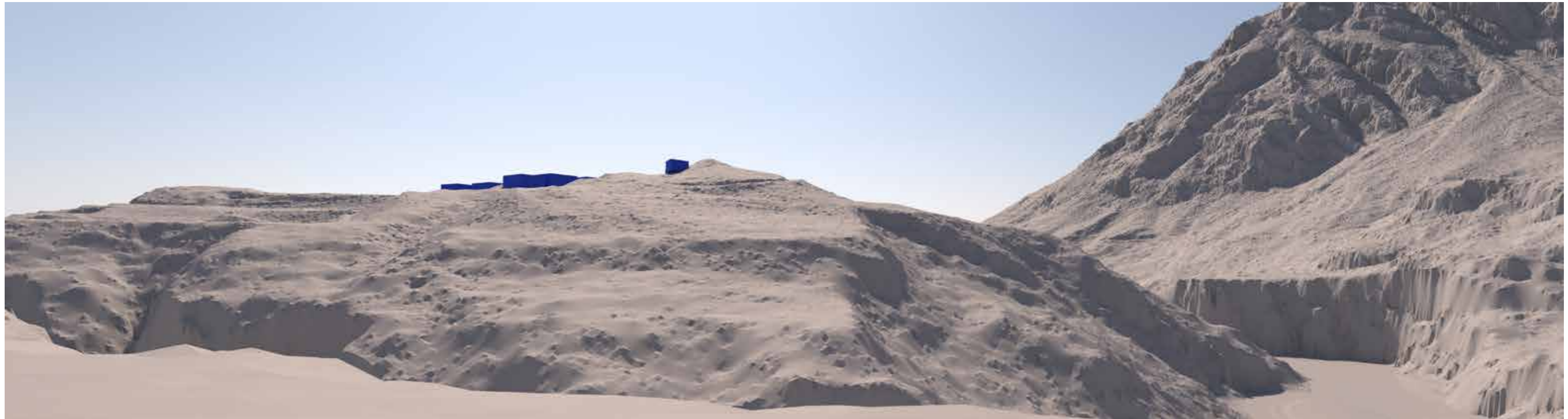
Viewpoint 4: Model View- Proposal



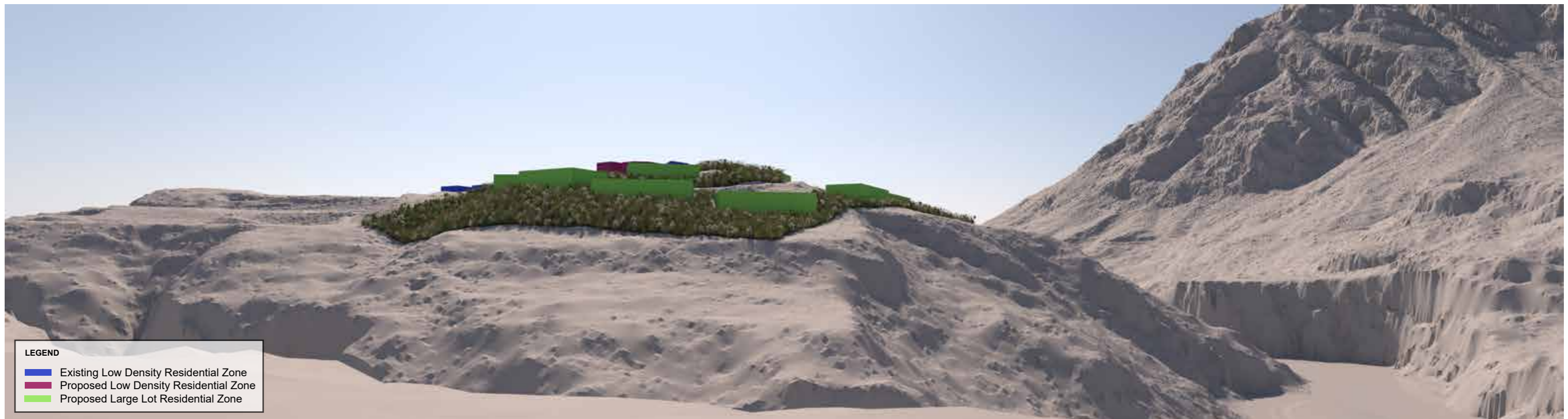
Viewpoint 5: Model View- Permitted Baseline



Viewpoint 5: Model View- Proposal



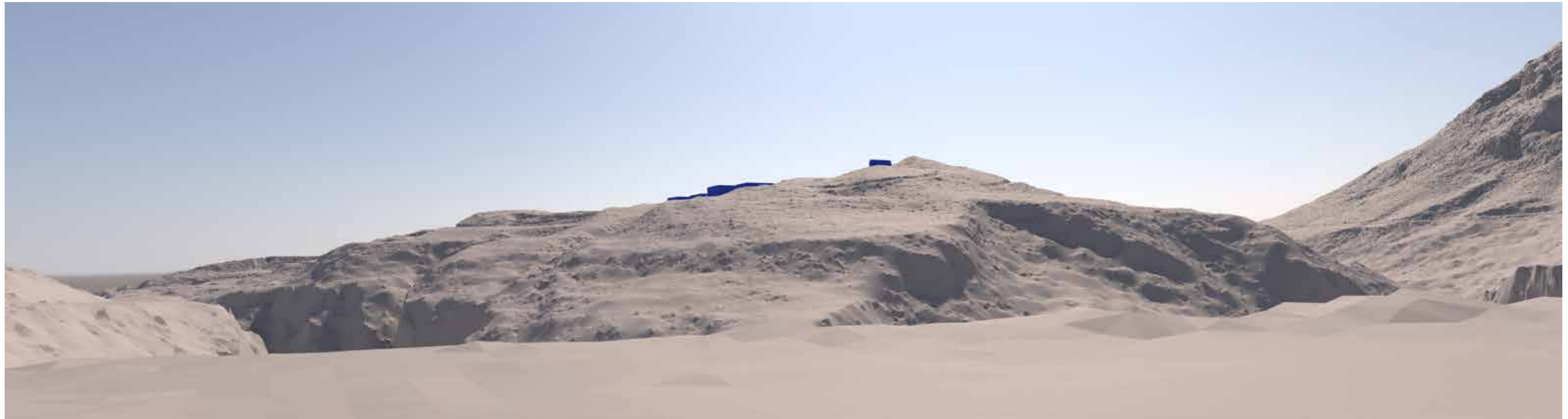
Viewpoint 6: Model View- Permitted Baseline



LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone

Viewpoint 6: Model View- Proposal



Viewpoint 7: Model View- Permitted Baseline



Viewpoint 7: Model View- Proposal

LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone



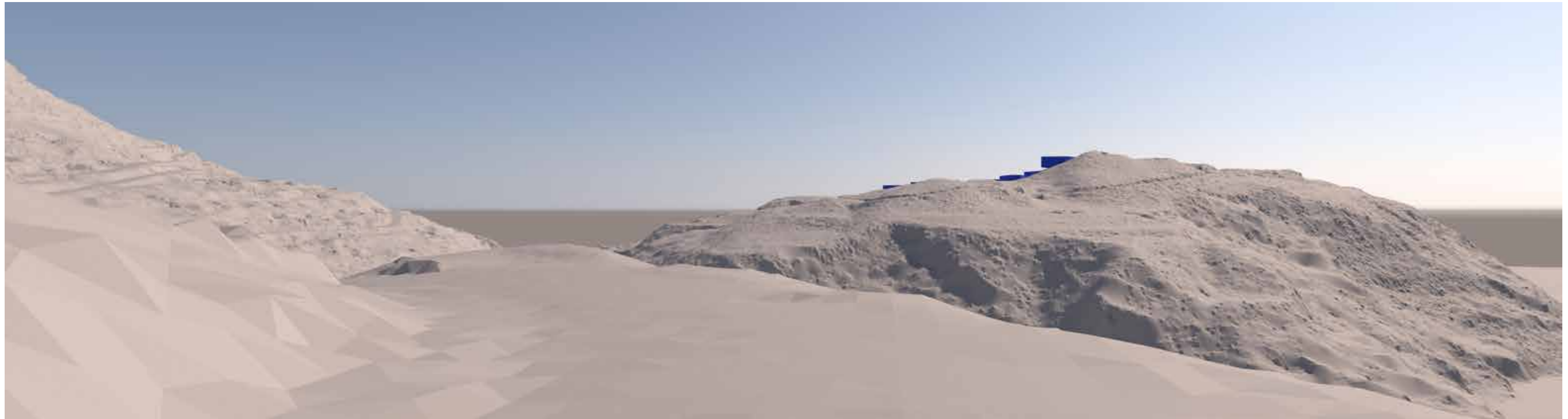
Viewpoint 8 - Model View- Permitted Baseline



Viewpoint 8 - Model View- Proposal

LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone



Viewpoint 9: Model View- Permitted Baseline



Viewpoint 9: Model View- Proposal

LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone



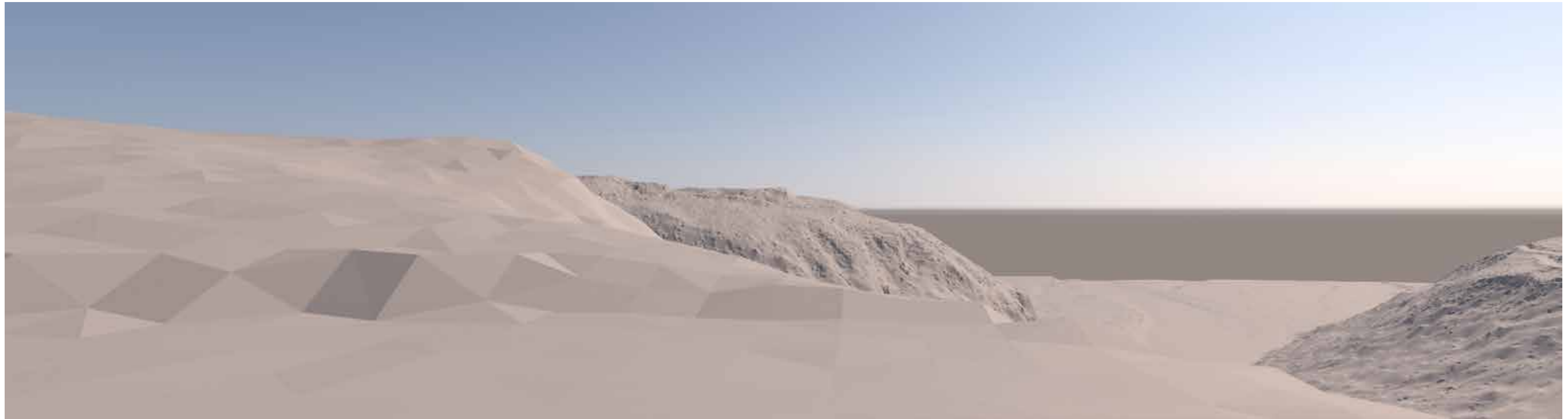
Viewpoint 10 - Model View- Permitted Baseline



Viewpoint 10 - Model View- Proposal

LEGEND

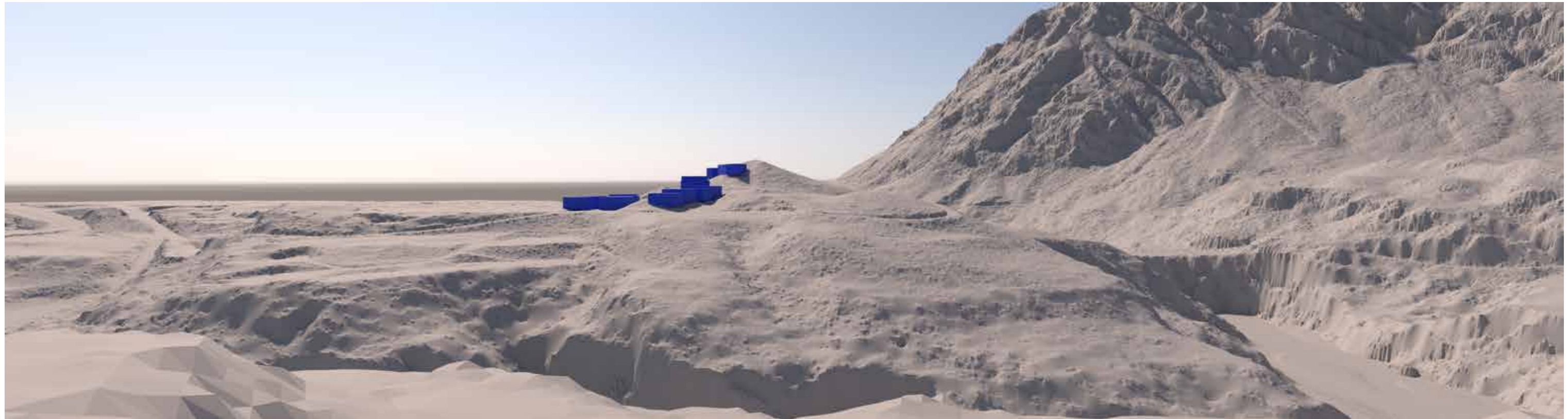
- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone



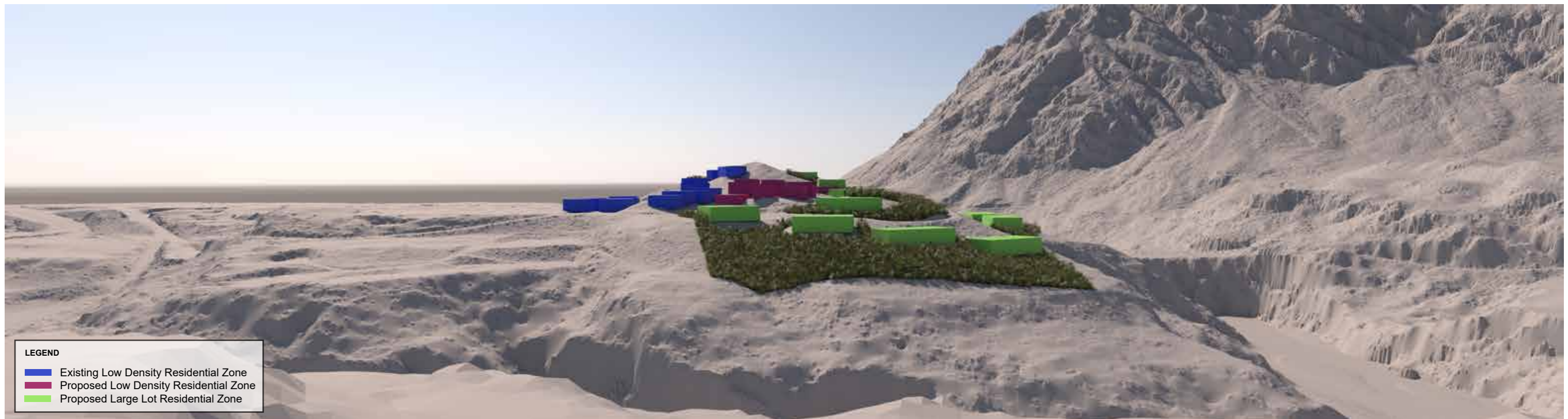
Viewpoint 11: Model View- Permitted Baseline



Viewpoint 11: Model View- Proposal



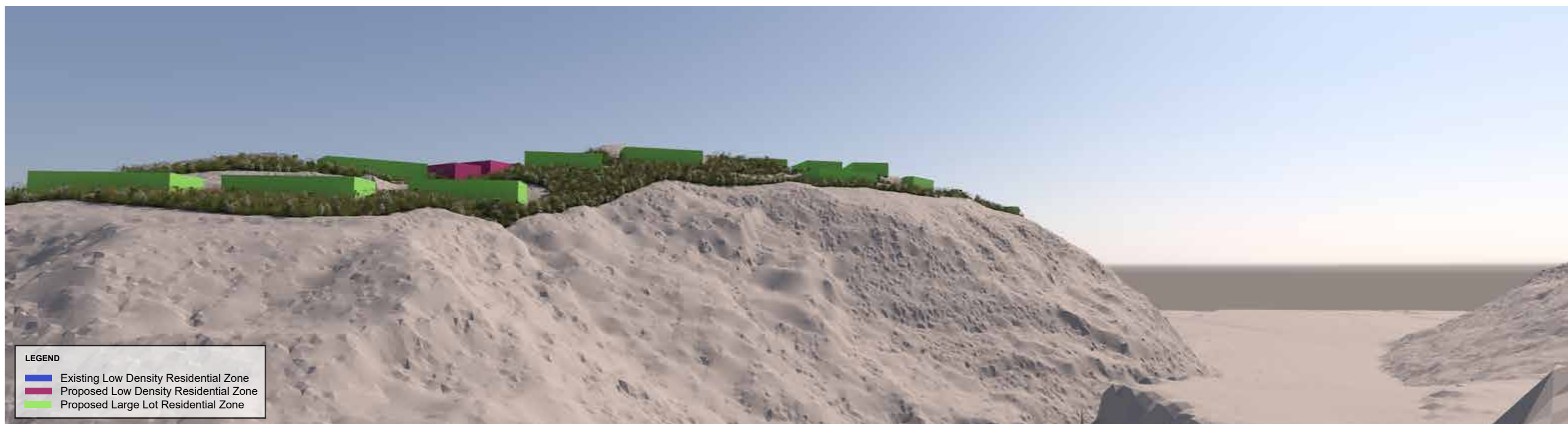
Viewpoint 12: Model View- Permitted Baseline



Viewpoint 12: Model View- Proposal



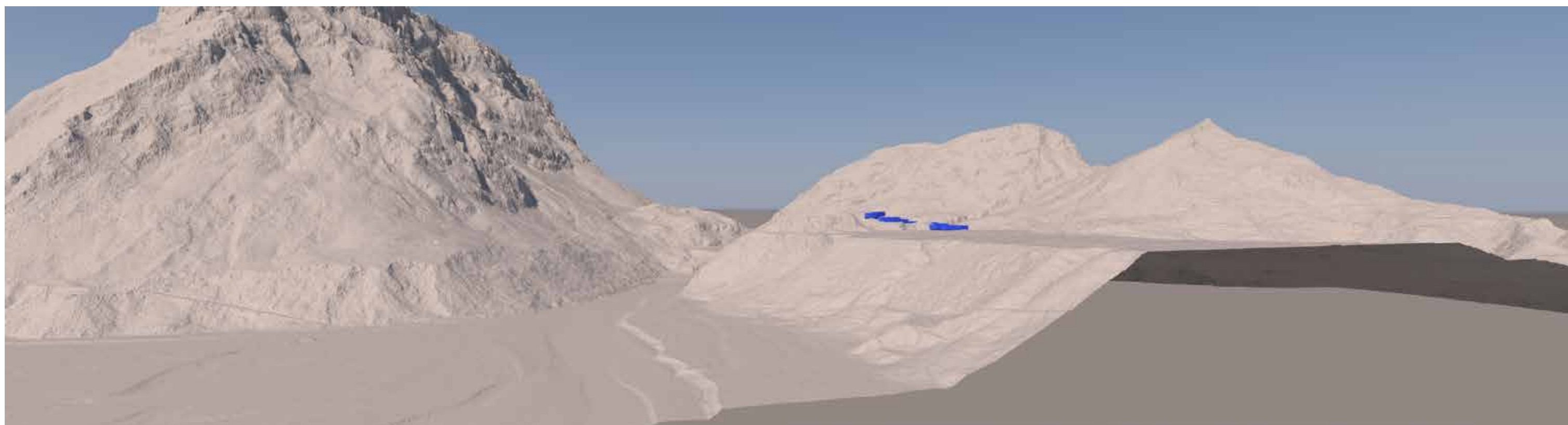
Viewpoint 13: Model View- Permitted Baseline



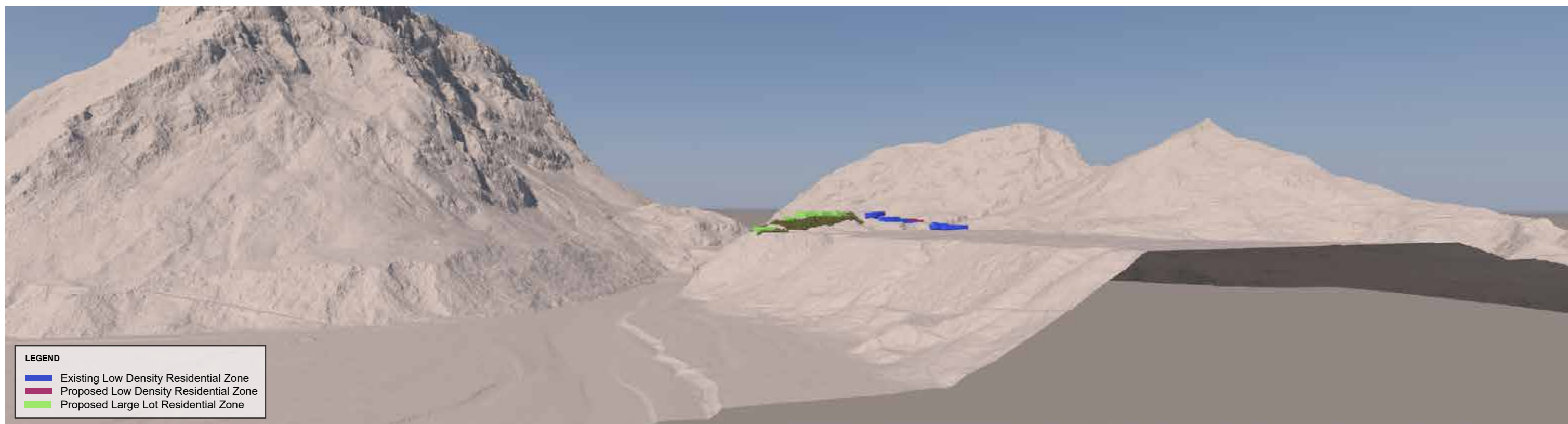
LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone

Viewpoint 13: Model View- Proposal



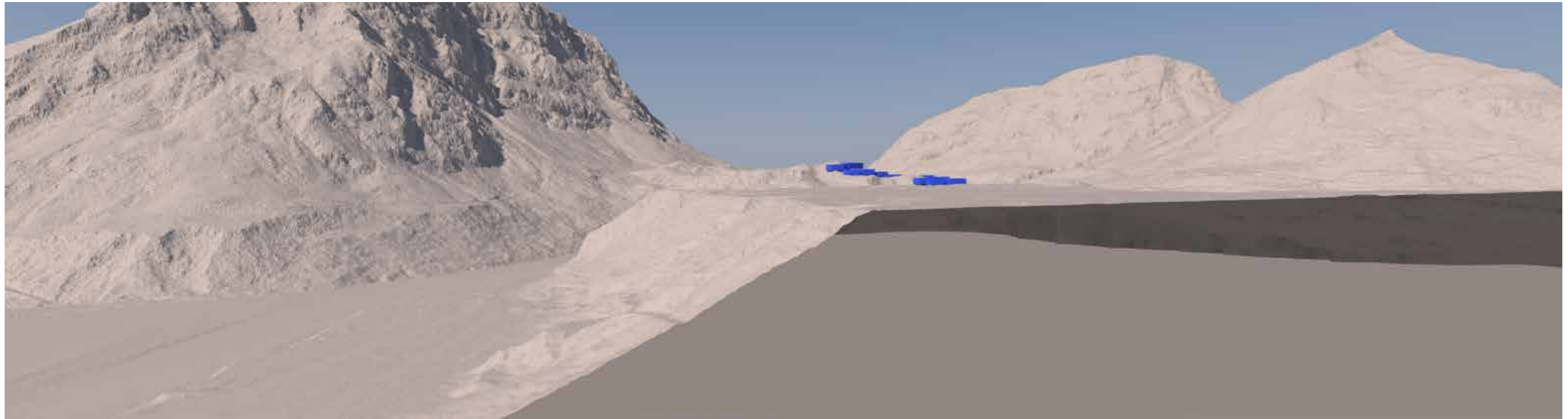
Viewpoint 14: Model View - Permitted Baseline



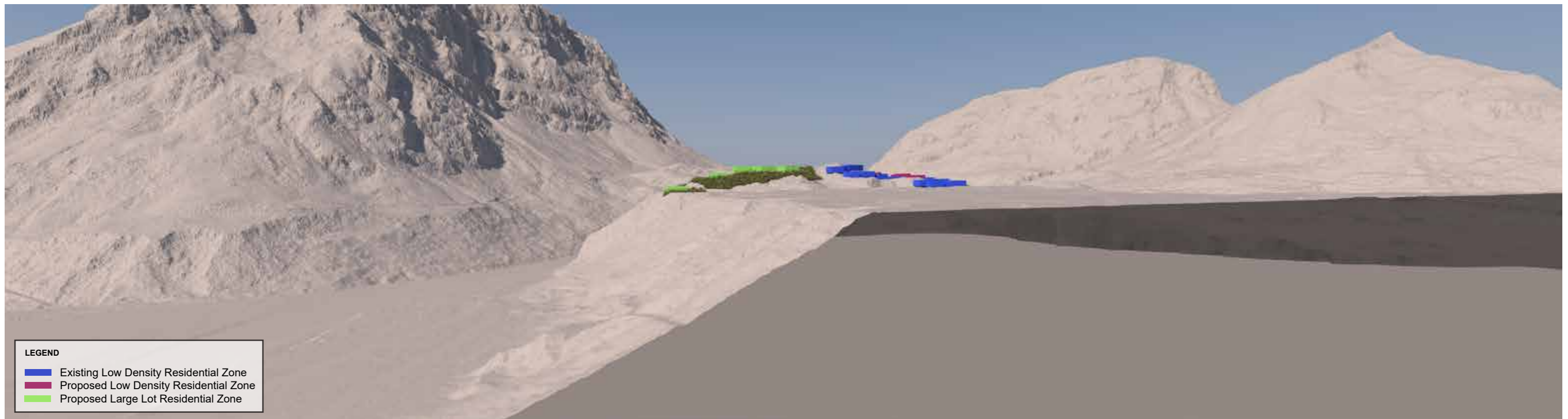
LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone

Viewpoint 14: Model View - Proposal



Viewpoint 15: Model View - Permitted Baseline







LEGEND

- Existing Low Density Residential Zone
- Proposed Low Density Residential Zone
- Proposed Large Lot Residential Zone

Viewpoint 15: Model View - Proposal



- KEY:
-  Site Boundary
 -  Operative Low Density Residential (LDR)
 -  QLDC Proposed LDR (as approved by Ms Mellisop)
 -  Gertrude Saddlery Proposed LDR

Appendix E – revised zone provisions

Proposed Provisions – Large Lot Residential B Zone at Arthurs Point, including Zoning map and Arthurs Point Structure Plan

[Underlined text shows additions and ~~strikethrough~~ text shows deletions]

Modifications in black: Edits as proposed in Jeff Brown's Evidence in Chief

Modifications in red: As proposed by Ruth Evans for QLDC and accepted by submitter

Modifications in blue: Further edits by submitter (additional, as well as modifications to those edits made by Ruth Evans for QLDC)

A. Modify Chapter 11 – Large Lot Residential as follows:

11.1 Zone Purpose

The Large Lot Residential Zone provides low density living opportunities within defined urban growth Boundaries. The zone also serves as a buffer between higher density residential areas and rural areas that are located outside of urban growth Boundaries.

The zone generally provides for a density of one residence every 2000m² to provide for a more efficient development pattern to utilise the Council's water and wastewater services while maintaining opportunities for a variety of housing options, landscaping and open space. Identified areas have a residential density of one residence every 4000m² reflecting landscape or topographical constraints such as around Mt Iron in Wanaka, and 2000m² at Arthurs Point.

The potential adverse effects of buildings are controlled by bulk and location, colour and lighting standards and in respect of the lower density (4,000m²) part of the zone, design and landscaping controls imposed at the time of subdivision.

...

11.2 Objectives and Policies

11.2.1 Objective - A high quality of residential amenity values are maintained within the Large Lot Residential Zone.

Policies

11.2.1.1 Maintain low density residential character and amenity through minimum allotment sizes that efficiently utilize the land resource and infrastructure (Area A), and require larger allotment sizes in those parts of the zone that are subject to significant landscape and/or topographical constraints (Area B).

11.2.1.2 Maintain or enhance residential character and high amenity values by controlling the scale, location and height of buildings and in addition within Area B by requiring landscaping, colour and vegetation controls.

11.2.1.3 Control lighting to avoid glare to other properties, roads, public places and views of the night sky.

11.2.1.4 Have regard to hazards and human safety, including fire risk from vegetation and the potential risk to people and buildings, when assessing subdivision, development and landscaping in Area B.

...

11.2.4 Objective – Implement a structure plan for the LLRB at Arthurs Point to ensure adverse effects on the values of the Kīmiākau Shotover River ONF are avoided.

11.2.1.5 Require subdivision, land use and development in accordance with a structure plan within the LLRB Zone at Arthurs Point to:

~~(a) avoid adverse effects on values of the Kimitiākau Shotover River Gorge ONF; and~~

~~(b) ensure development integrates with underlying topography and revegetation.~~

11.2.4.21 Require subdivision, land use and development in accordance with the structure plan for the LLRB Zone at Arthurs Point to:

(a) mitigate the visibility of buildings and development when viewed from outside the zone;

(b) integrate with underlying topography and revegetation; and

(c) protect the values of the adjoining Kimitiākau Shotover River Gorge ONF.

...

11.4 Rules – Activities

Table 1	Activities located in the Large Lot Residential Zone	Activity status
11.4.1	Residential Unit	P
...
<u>11.4.12</u>	Residential domestic elements outside of <u>approved</u> Building Platforms shown on in the Arthurs Point LLRB <u>Structure Plan</u> . For the purpose of this rule, residential domestic elements include clotheslines, play equipment, water tanks, external lighting, and carparking areas (but exclude boundary fencing and permitted planting). Discretion is restricted to: a. <u>The location and scale of the residential domestic elements;</u> b. <u>Landscape and visual effects;</u> c. <u>Mitigation landscaping.</u>	<u>RD</u>
<u>11.4.13</u>	Buildings outside <u>approved</u> Building Platforms shown on in the Arthurs Point LLRB <u>Structure Plan</u>	<u>D</u>

11.5 Rules - Standards for Activities

Table 2	Standards for Activities	Non-compliance status
11.5.1	Building Height	
	11.5.1.1 Except where limited by Rules 11.5.1.2 to 11.5.1.4 a maximum height limit of 8 metres.	NC
	11.5.1.2 A maximum height of 7 metres: a. on sites located between Beacon Point Road and the margins of Lake Wanaka; and b. on sites located between Studholme Road and Meadowstone Drive. c. <u>Above the RL of building platforms identified on the Arthurs Point LLRB Structure Plan</u>	NC
	11.5.1.3 A maximum height of 6 metres: a. on sites located at Mt Iron West (as identified on the District Plan web mapping application)	NC
	11.5.1.4 A maximum height of 5.5 metres	

Table 2	Standards for Activities	Non-compliance status
	<p>above a floor level of 283 masl:</p> <p>a. on the site(s) located at the northern end of Beacon Point Road (as identified on the District Plan web mapping application).</p>	
11.5.2	<p>Building Coverage</p> <p>11.5.2.1 The maximum building coverage shall be 15% of the net site area.</p> <p>11.5.2.2 The maximum building coverage at Mt Iron West (as identified on the District Plan web mapping application) shall be 500m² net site area.</p> <p>11.5.2.3 <u>The maximum building coverage at LLRB Zone at Arthurs Point (as identified on the District Plan web mapping application) shall be 500m² net site area.</u></p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. the effect on openness and spaciousness;</p> <p>b. effects on views and outlook from neighbouring properties;</p> <p>c. visual dominance of buildings;</p> <p>d. landscaping.</p>
11.5.3	<p>Setback from internal boundaries</p> <p>11.5.3.1 Large Lot Residential Area A: the minimum setback of any building from internal boundaries shall be 4 metres.</p> <p>11.5.3.2 Large Lot Residential Area B: the minimum setback of any building from internal boundaries shall be 6 metres.</p> <p>Rule 11.5.3.2 does not apply to a building located within a building platform shown on the Arthurs Point LLRB Structure Plan.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. the effect on openness and spaciousness;</p> <p>b. effects on privacy, views and outlook from neighbouring properties;</p> <p>c. visual dominance of buildings;</p> <p>d. landscaping.</p>
11.5.4	<p>Setback from roads</p> <p>The minimum setback of any building from a road boundary shall be 10m.</p> <p>This rule does not apply within the Arthurs Point LLRB Zone.</p>	NC
11.5.5	<p>Setback of buildings from water bodies</p> <p>The minimum setback of any building from the bed of a river, lake or wetland shall be 20m.</p>	<p>RD</p> <p>Discretion is restricted to:</p> <p>a. any indigenous biodiversity values;</p> <p>b. visual amenity values;</p> <p>c. landscape character;</p>

Table 2	Standards for Activities	Non-compliance status
		<p>d. open space including public access;</p> <p>e. whether the waterbody is subject to flooding or natural hazards and any mitigation to manage the location of the building.</p>
11.5.6	<p>Building Length</p> <p>The length of any facade above the ground floor level shall not exceed 20m.</p>	<p>RD</p> <p>Discretion shall be restricted to:</p> <p>a. external appearance, location and visual dominance of the building(s) as viewed from the street(s) and adjacent properties.</p>
11.5.7	<p>Home Occupation</p> <p>Home occupation activities shall comply with the following:</p> <p>11.5.7.1 No more than 1 full time equivalent person from outside the household shall be employed in the home occupation activity.</p> <p>11.5.7.2 The maximum number of vehicle trips shall be:</p> <p style="padding-left: 20px;">a. heavy vehicles: 2 per week;</p> <p style="padding-left: 20px;">b. other vehicles: 10 per day.</p> <p>11.5.7.3 Maximum net floor area of not more than 60m².</p> <p>11.5.7.4 Activities and the storage of materials shall be indoors.</p>	D
11.5.8	<p>Glare</p> <p>a. All exterior lighting shall be directed away from the adjacent sites and roads and downward to limit effects on the night sky.</p> <p>b. No activity on any site shall result in greater than a 3.0 lux spill (horizontal or vertical) of lights onto any other site measured at any point inside the boundary of the other site.</p>	D
11.5.9	<p>Residential Density</p> <p>11.5.9.1 Large Lot Residential Area A:</p> <p style="padding-left: 20px;">(a) a maximum of one residential unit per site;</p> <p style="padding-left: 40px;">or</p> <p style="padding-left: 20px;">(b) a maximum of one residential unit per</p>	D

Table 2	Standards for Activities	Non-compliance status
	<p>2000m² (total area).</p> <p>11.5.9.2 Large Lot Residential Area B: a maximum of one residential unit per 4000m² net site area, <u>except in the Arthurs Point LLRB Zone.</u></p> <p>11.5.9.3 In addition to Rule 11.5.9.2, at Mt Iron West (as identified on the District Plan web mapping application), a maximum of four residential units.</p> <p>11.5.9.4 <u>In the Arthurs Point LLRB Zone, a maximum of one residential unit per site.</u></p>	
11.5.10	<p>Building Materials and Colours</p> <p>For sites within Large Lot Residential Area B:</p> <ol style="list-style-type: none"> all exterior surfaces shall be coloured in the range of black, browns, greens or greys; pre-painted steel, and all roofs shall have a reflectance value not greater than 20%; surface finishes shall have a reflectance value of not greater than 30%. 	<p>RD</p> <p>Discretion is restricted to:</p> <ol style="list-style-type: none"> landscape and visual effects, including the extent to which the physical scale of the building(s) make a proposed building's materials and colours more or less visually prominent.
11.5.11	<p>Recession plane</p> <p>The following applies to all sites with a net site area less than 4000m².</p> <p>11.5.11.1 Northern boundary: 2.5m and 55 degrees.</p> <p>11.5.11.2 Western and eastern boundaries: 2.5m and 45 degrees.</p> <p>11.5.11.3 Southern boundary: 2.5m and 35 degrees.</p> <p>Exemptions:</p> <ol style="list-style-type: none"> gable end roofs may penetrate the building recession plane by no more than one third of the gable height. recession planes do not apply to site boundaries fronting a road or a reserve. 	NC
11.5.12	<p>Building Restriction Area</p> <p>No building shall be located within a building restriction area as identified on the District Plan web mapping application.</p>	NC
11.5.13

...

B. Modify Chapter 27 – Subdivision and Development as follows:

...

27.3 Location-specific objectives and policies

In addition to the district wide objectives and policies in Part 27.2, the following objectives and policies relate to subdivision in specific locations.

...

Arthurs Point Large Lot Residential B

27.3.XX **Objective – Subdivision and development that avoids adverse effects on the values of the Kimiäkau Shotover River ONF and mitigates visibility of buildings from beyond the zone through appropriate siting and landscaping.**

Policies

27.3.XX.1 ~~Enable~~ **Require that subdivision within the Arthurs Point LLRB Zone which is in accordance consistent with the Arthurs Point LLRB Structure Plan located within Section 27.13.**

27.3.XX.2 **Require that structural planting areas shown on the Structure Plan are established prior to construction of residential units and are maintained to ensure the long-term effectiveness in protecting the values of the Shotover River ONF.**

27.3.XX.3 **Avoid buildings within the Building Restriction Areas shown on the Structure Plan and planning maps.**

27.3.XX.4 **Require the provision of walkway and cycleway access through the Zone and to the adjoining Lower Density Suburban Residential Zone, and to adjacent public land in the location generally shown on the Structure Plan contained in Section 27.13**

27.3.XX.5 **Require siting of buildings and associated earthworks, accessways and landscaping to occur in a way that mitigates the visual effects of buildings from beyond the zone.**

...

27.6 Rules – Standards for Minimum Lot Areas

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

Zone		Minimum Lot Area
...		
Residential	High Density	450m ²

	Large Lot Residential A	1500m ² providing that the average lot size is not less than 2000m ² (total area)
	Large Lot Residential B	4000m ² , <u>except within the LLRB Zone at Arthurs Point where the</u>

		minimum lot area is 2000m ²

27.7 Zone – Location Specific Rules

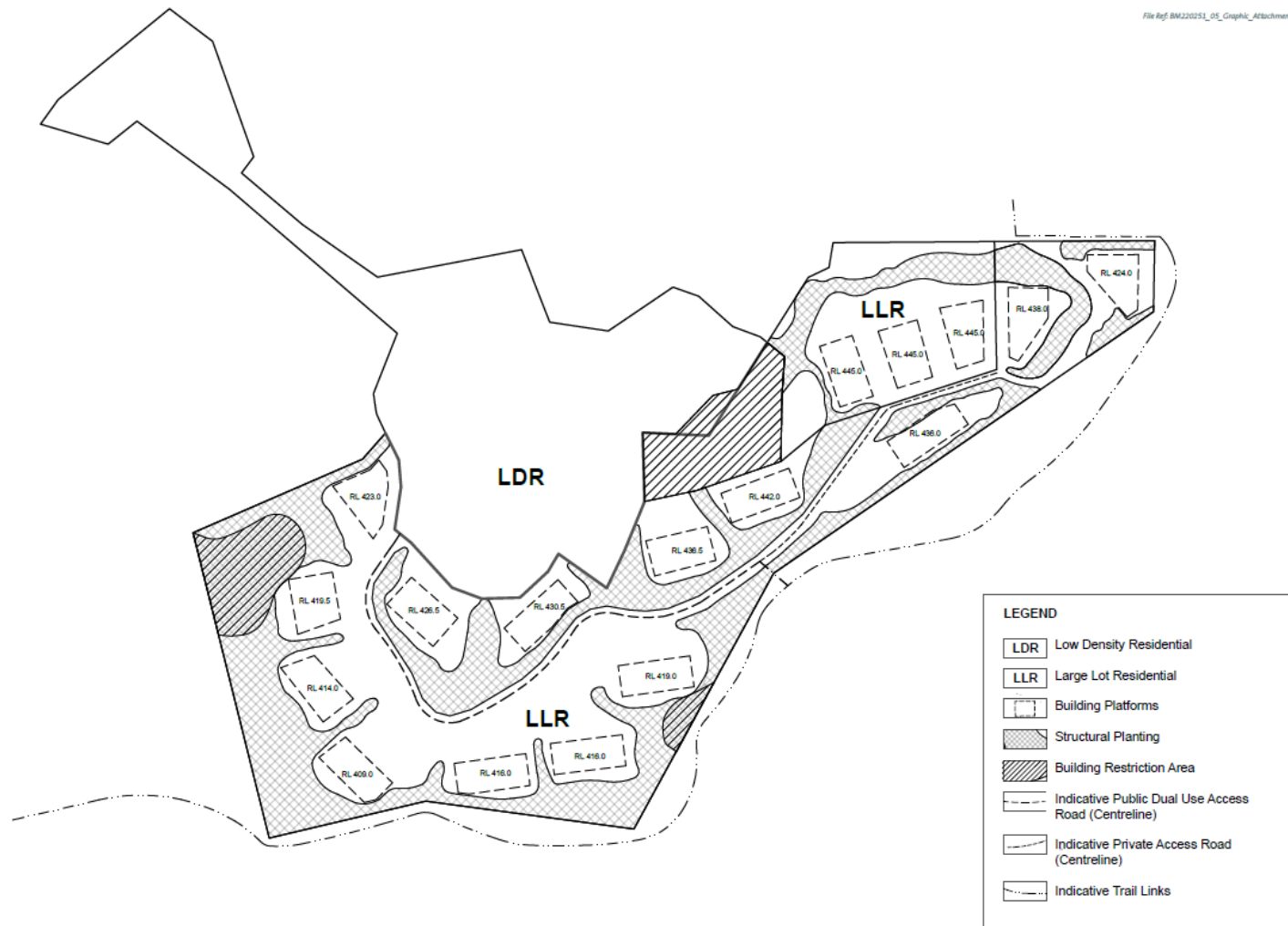
<p><u>27.7.XX</u></p>	<p><u>Arthurs Point Large Lot Residential B</u></p> <p>27.7.XX.1 <u>Subdivision in the Arthurs Point LLRB Zone</u> consistent in accordance with the Structure Plan provided that the road may vary from the location shown on the Structure Plan by + / - 2010m.</p> <p>Control is reserved to:</p> <p>(a) <u>The matters listed under Rule 27.7.1;</u></p> <p>(b) <u>The content of a <i>Structural Planting Areas Plan</i> for the Structural Planting Areas shown on the Structure Plan;</u></p> <p>(c) <u>The methods to ensure that the planting required by the <i>Structural Planting Areas Plan</i> will be established prior to the issue of Section 224(c) certification;</u></p> <p>(d) <u>The methods to ensure that the <i>Structural Planting Areas Plan</i> will be complied with on an ongoing basis;</u></p> <p>(e) <u>The methods to ensure public walking and cycling access through the Zone and to the adjoining Lower Density Suburban Residential Zone connecting to public land to the south; and</u></p> <p>(f) <u>The methods to ensure the ongoing maintenance of any private roading;</u></p> <p>(g) <u>The methods to ensure that at least 30% of the planting implemented in accordance with the <i>Structural Planting Areas Plan</i> within each lot are an average of 2m in height prior to the construction of any buildings.</u></p> <p>Information requirements:</p> <p>1. <u>Any application for subdivision shall include a <i>Structural Planting Areas Plan</i> for the Structural Planting Areas shown on the Structure Plan. The purpose of the <i>Structural Planting Areas Plan</i> is to integrate built development with the landscape, enhance nature conservation values, and protect the landscape values of the adjacent <i>Kimiākau</i> Shotover River ONF. The <i>Structural Planting Areas Plan</i> shall:</u></p> <p>(a) <u>Be prepared by a suitably qualified landscape architect;</u></p> <p>(b) <u>include Identify details of planting including:</u></p> <p>i. <u>The species to be used, based on the species list at Schedule 1 to the Structure Plan, to achieving indigenous ecological restoration of the planting areas and visual integration of future development into the site and surrounding landscape. At least 30% 60% 30% of plants used shall be of species within the “Tall Tier” list in Schedule 1 to that achieve more than 5m height at maturity on the southern, south-western and south-eastern slopes, and at least 30% of plants used shall be of species that achieve more than 5m height at maturity on the northern slopes;</u></p>	<p>C</p>
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	<p>ii. <u>Grades of plants to be used:</u></p> <p>iii. <u>Spacings of plants to achieve at least one plant per 1.5m² on average over the total area of the Structural Planting Areas shown on the Structure Plan:</u></p> <p>iv. <u>At least 60% of plants used on the southern, south-western and south-eastern slopes, and at least 30% of plants used on the northern slopes shall be of taller species that reach an average height of 2m prior to building construction.</u></p> <p>(c) <u>Identify locations of accesses to residential lots and any planting required to visually soften soften or screen or and integrate these from views outside of the Zone:</u></p> <p>(d) <u>Specify ongoing maintenance and monitoring requirements, including irrigation and methods to control animal and plant pest species on an ongoing basis, and the replacement of any dead, diseased or dying specimen.</u></p> <p><u>27.7.XX.2 Any subdivision which does not comply with Rule 27.7.XX.1</u></p>	<p><u>NC</u></p>
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27.13 Structure Plans

...

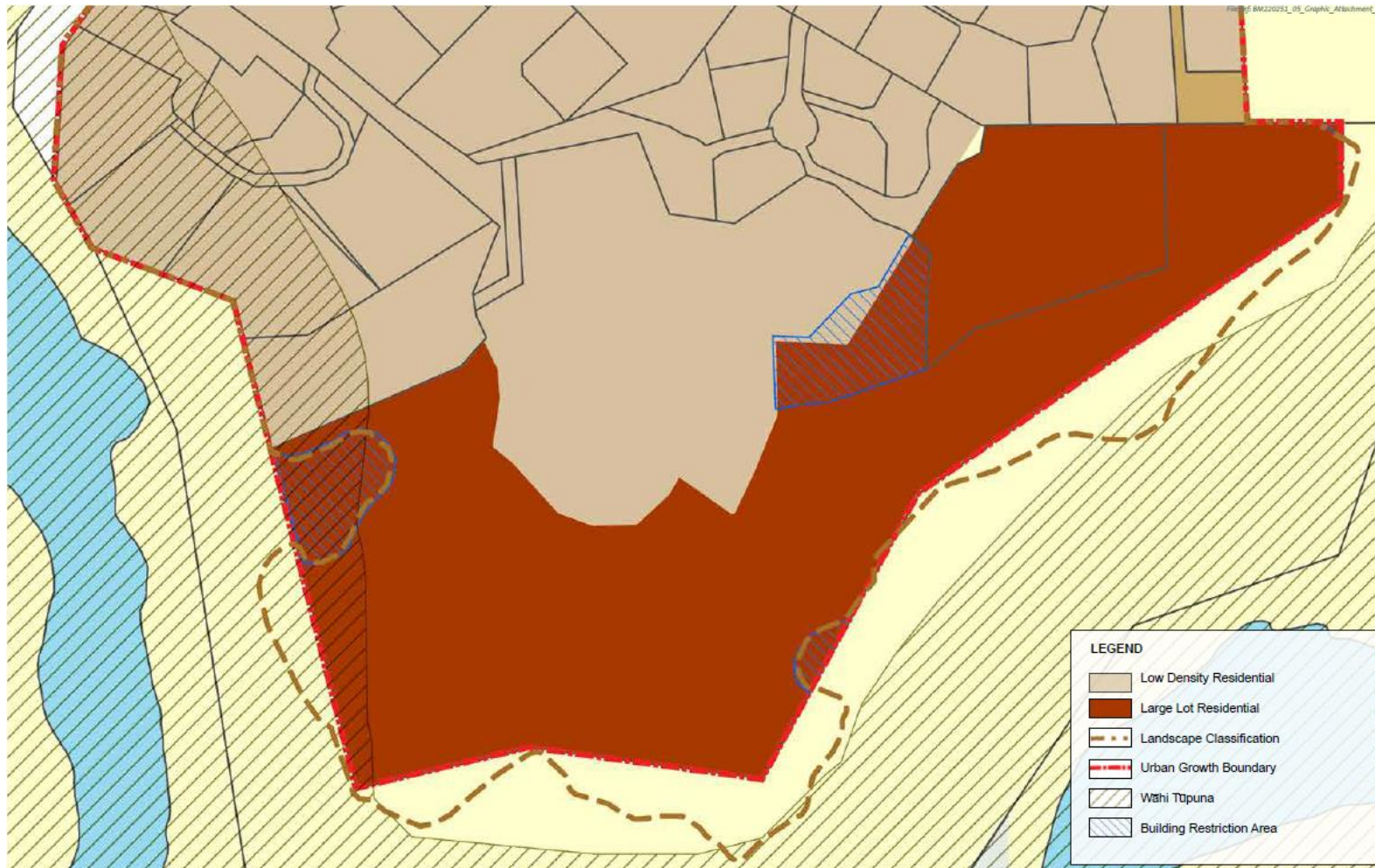
27.13.XX Arthurs Point (Large Lot Residential B Zone)



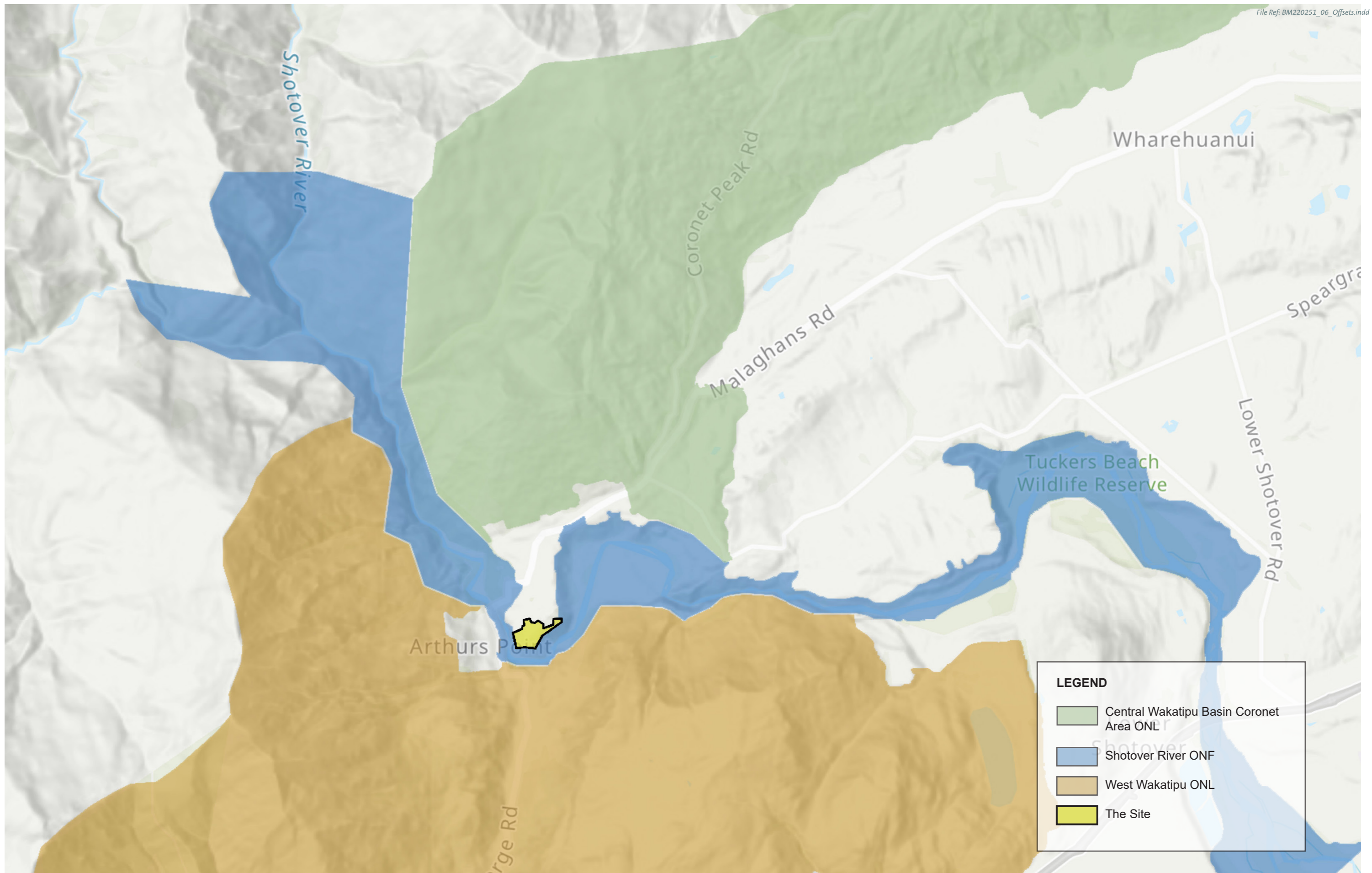
Schedule 1:

<u>Stature of species</u>	<u>English species name</u>	<u>Latin species name</u>
Low Tier	Snow tussock	<i>Chionochloa rigida</i>
	Red tussock	<i>Chionochloa rubra</i>
	Koromiko	<i>Hebe salicifolia</i> 'Snowdrift'
	Wharariki - Mountain Flax	<i>Phormium cookianum</i>
	Ornamental Kowhai	<i>Sophora molloyii</i> 'Dragons Gold'
	NZ Olearia	<i>Olearia x oleifolia</i>
Mid Tier	Kōhūhū - Black Matipo	<i>Pittosporum tenuifolium</i>
	Mingimingi	<i>Coprosma propinqua</i>
	Harakeke - NZ Flax	<i>Phormium tenax</i>
	South Island Toetoe	<i>Austroderia richardii</i>
	Mikimiki	<i>Coprosma virescens</i>
	Akiraho - Golden Ake Ake	<i>Olearia paniculata</i>
Tall Tier	Mānuka	<i>Leptospermum scoparium</i>
	Tawhai Rauriki - Mountain beech	<i>Fuscospora cliffortioides</i>
	Kōwhai	<i>Sophora microphylla</i>
	Ti Kōuka - Cabbage tree	<i>Cordyline australis</i>
	Houhi Puruhi - Narrow-leaved Lacebark	<i>Hoheria angustifolia</i>
	Tarata - Lemonwood	<i>Pittosporum eugenoides</i>

C. Modify planning maps by adding LLRBZ on Site as follows:



Appendix F – Landscape Priority Area map denoting the Site (for illustrative purposes only)



LEGEND

- Central Wakatipu Basin Coronet Area ONL
- Shotover River ONF
- West Wakatipu ONL
- The Site

