

Lower Shotover Partnership Ltd
C/- Clark Fortune McDonald
P O Box 553
QUEENSTOWN

Dear Sir/Madam

DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

LOWER SHOTOVER PARTNERSHIP LTD - RM990450

I refer to your resource consent application lodged pursuant to Section 88 of the Resource Management Act 1991 for consent to subdivide Sections 93, 96 97, 98 and 99 and part Sections 68, 69, 94 and 95, Block III Shotover Survey District. The application was considered by the Planning Policy and Consents Committee under delegated authority pursuant to Section 34 of the Resource Management Act 1991 on 9 March 2000.

The subject site is located off State Highway 6, also known as the Frankton-Ladies Mile Road. The site is physically bounded by the Shotover River to the west and the confluence of the Shotover and Kawarau Rivers to the south..

The site is zoned Rural B in the Transitional District Plan and the proposal requires a non-complying activity consent pursuant to section 405(2)(a) of the Resource Management Act 1991.

Between 31 August and 14 September 1998 the decisions on submissions to the Proposed District Plan were progressively released. Section 88A of the Resource Management Act 1991 requires all applications received after notification of decisions to be assessed in terms of these decisions and any amendment thereto. Under these decisions the site is zoned and the proposed activity requires a discretionary activity consent pursuant to rule 15.2.3.3.

In light of unresolved references to the Proposed District Plan Rural General zone before the Environment Court, the application was publicly notified pursuant to sections 93 and 94 of the Resource Management Act 1991.

A total of 10 submissions were received during the 20 working day period that is provided under the Resource Management Act 1991.

Decision

Subdivision consent is granted pursuant to Sections 104 and 105 of the Act, subject to the following conditions imposed pursuant to Section 108 220 of the Act:

- 1 That the activity be undertaken in accordance with the application and revised plans dated 4 April 2000 1999, application plan job number 7431, with the exceptions of the amendments required by the following conditions of consent.
- 2 That the consent holder shall pay to Civic Corporation Limited all required administrative charges fixed by the Council pursuant to Section 36 of the Act in relation to:
 - a) the administration, monitoring and supervision of this consent; and
 - b) charges authorised by regulations.
- 3 All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:1981 with the amendments to that standard adopted on 1 June 1994.
- 4 The subdividing owner of the land shall provide a letter to the Council advising who their representative for the design and execution of the engineering works required in association with this subdivision and shall confirm that this representative will be responsible for all aspects of the works covered under section 104 of NZS4404:1981 "Code of Practice for Urban Land Subdivision", in relation to this development.
- 5 Prior to certification pursuant to Section 223 of the Resource Management Act 1991 and prior to the commencement of any works on the land being subdivided, the applicant shall provide to the Queenstown Lakes District Council for approval, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate to detail the following engineering works required:
 - a) The formation of the access road from State Highway 6 to a sealed carriageway width of 5.0 metres and water tables.
 - b) The formation of all 'right of way' access roads to a sealed carriageway width of 4.0 metres and water tables.
 - c) The nature, extent and detail of any earthworks proposed in relation to this subdivision.
 - d) Provision of a reticulated water supply system to service each of the resultant lots with a minimum of 1000 litres of potable water per day.
 - e) Provision of stormwater control and disposal within the site.

- 6 Prior to certification pursuant to Section 223 of the Resource Management Act 1991, the consent holder shall submit for the approval of the Principal: Resource Management-CivicCorp, an amended plan of subdivision identifying the following:
- a) The point of access to the site from State Highway 6 in accordance with 'option 2' as identified in Clark Fortune Mc Donald' plan-job reference 7431 and stamped with the Queenstown Lakes District Council approval on 4/4/00 and attached to this consent.
 - b) Identify areas included within the 'Airport Outer Control Boundary' that are to be excluded from any residential development.
 - c) Identify wetland areas to be excluded from development by way of a consent notice to be registered on future Certificates of Title.
- 7 Prior to certification pursuant to Section 224(c) and in accordance with Section 221 of the Resource Management Act 1991, the consent holder shall prepare and submit for the approval of the Principal: Resource Management – CivicCorp, consent notices to be registered on the new Certificates of Title for the performance of the following conditions on an ongoing basis:
- a) The area of wetland identified on the survey plan approved in accordance with condition 6(c) of Resource Consent RM 990450, shall be excluded from any further subdivision or development of buildings.
 - b) At such a time that a dwelling is to be erected, the owner for the time being shall submit for the approval of the Queenstown Lakes District Council, copies of the proposed location and design of the method of disposal of effluent on the lot.
 - c) That any dwelling shall be constructed within the building platform annotated to a copy of the title plan of subdivision, which shall accurately dimension and determine the position of the building platform on each lot. The copy of the title plan with the annotated building platforms shall be in accordance with the resource consent (subdivision) decision of Queenstown Lakes District Council and to the approval of the Principal: Resource Management.
 - d) At such a time that a dwelling is erected, the owner for the time being shall install a water tank of a capacity of 23,000 litres, of which 14,000 is to remain as a static reserve for fire fighting purposes. These tanks shall be buried beneath the ground.
 - e) No access to Old School Road shall be made from lots 1, 8, 9, 10, 11, 12, 13, 14, 15 and 16.
- 8 Prior to the certification pursuant to Section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:

- a) The submission of 'as-built' plans and information required to detail all engineering works completed in relation to or in association with this subdivision.
 - b) Provide a standard electricity supply to the new allotments, this supply shall be underground from any existing lines.
 - c) The completion of all works detailed in condition 5 above.
 - d) The provision of certification by a Registered Engineer experienced in soils investigations, in accordance with NZS4431 for all areas of fill within the proposed lots (if any).
 - e) Pay to the Council a reserve contribution of \$101.40 (incl GST) based on the market value of 130m² the land comprised in Certificates of Title 15B/739.
- 9 All adjoining access ways for proposed rear allotments are subject to Reciprocal – Rights of Way to be shown on the Certificate of Title.
- 10 All necessary easements are to be granted or reserved.

Reasons for the Decision

The application for consent to subdivide the 121.2954 hectare parcel contained within Certificate of Title 15B/739, was publicly notified pursuant to section 94 of the Resource Management Act 1991 due to unresolved references that relate to the sites Rural General zoning under the Proposed District Plan.

It was considered that the Council was unable to identify all potentially affected persons as the uncertainty surrounding the Rural General zone minimum lot size and any has a potential effect that is District wide.

As part of the proposed subdivision the applicants seek to create an access point to service the site from the State Highway and have not proposed any access to the site via Old School Road. However Transit New Zealand is opposed to such an access point and suggest that alternative access to the site be obtained via the existing Old School Road.

Submissions received during the public notification period identified adjoining neighbours concern in respect to the potential use of Old School Road to access the site. The Committee heard evidence from residents living in the vicinity of Old School Road, that the effects of the significant increase in traffic that could be anticipated as a result of the subdivision, would be major and would not be mitigated by upgrading the road.

The submitters identified traffic effects along Old School Road to be noise, privacy and a potential dust nuisance, which the Committee agreed with.

The Committee further agreed that the effects of an increase in traffic along Old School Road as a direct result of the subdivision would be considerable and that such effects would be more than minor. Further the Committee did not accept that the associated effects of such an increase could be mitigated through upgrading of the road.

Transit New Zealand were not present at the hearing of the application. Evidence presented to the Committee by the applicants Traffic Engineer, suggested that the proposed access point onto the State Highway is appropriate and that the intersection proposed would meet Transit New Zealand requirements.

The Committee accepted the evidence presented by the applicants Traffic Engineer and considered that access to the site from the State Highway could be achieved in a manner that does not jeopardise the safe and effective operation of the Highway.

It was the Committees decision that no access to the site be obtained via Old School Road and that the access point 'option 2' identified by the applicants Traffic Engineer, be adopted as the approved point of access to he site.

With access to the site available via the proposed road from the State Highway, the Committee decided that consent notices are the only practicable mechanism for ensuring that a through connection from the new lots to Old Scholl Road is not made. It is noted that the avoidance of traffic using Old School road was pivotal to the Committees decision to the granting of consent

The Committee considered evidence from representatives of the Queenstown/Milford Airport User Group and the Queenstown Airport Corporation. Concerns identified included issues of reverse sensitivity that may result from a residential use of the subject site. Other concerns included the compromising of operational procedure's and the potential safety hazard of allowing dwellings to be located under flight approach paths and paths identified as potential emergency landing areas as a result of engine failure.

The Committee considered that the area identified as the 'Airport Outer Control Boundary' was designed to control activities that occurred within the 'control' area so as to avoid conflict with the airports operation. The Committee was concerned that this area applied to a small southern section of the site and not the entire site.

The Committee acknowledged that the use of the part of the site identified as being within the 'Outer Control Boundary' would be restricted by the Provisions of the Proposed District Plan.

However the Committee was of the opinion that there were no other 'special' controls applicable to the site and therefore it would be difficult to justify the declining of the application based on the possible conflicts that could occur through a future residential use of the site. The Committee noted that if the use of the land was of concern, the restriction of the future use of the site should have been identified as part of the notified District Plan process.

It was noted that the 'Airport Outer Control boundary' relates to noise issues only and is not relevant to issues relating to safety. The Committee was of the opinion that the site was not subject to any specific safety concern and were not convinced that the potential effect of risk from aircraft was significantly greater than a number of other parts of the District.

While the Committee accepted that the site is within certain flight approach paths, the Committee made reference to the fact that a number of other areas within the vicinity of the airport were also within such proximity and were established with similar uses as that proposed for the subject site.

The Committee was concerned that an area of wetland located at the sites southern boundary should be protected against further development. A covenant offered by the applicants seeks to prevent any such further development of this area, a condition of consent to achieve this is to be imposed via a consent notice to be registered on the new Certificate of Title identifying the lot within which the wetland is located.

In respect to the potential effects associated with the subdivision of the site for creating allotments that are suitable for a rural residential/farming use, it was the Committees opinion that the topography of the site combined with the design of the proposed lots represented a minor effect.

The subdivision will create an opportunity for twenty dwellings to be established within building platforms approved by this consent, as a ‘controlled’ activity consent at a later stage. In anticipation of the potential visual effects associated with future use of the new allotments for a residential use, the Committee considered that such a use would alter the character of the site but would not represent an adverse effect on the visual amenity of the site.

The natural landscape units contained within the site were considered to represent logical boundaries that could absorb the anticipated future effects of further development.

After inspecting the subject site and making an assessment of the planning report, the Committee heard evidence from the applicant’s representatives and a number of submitters. It was the Committees decision that the granting of consent to subdivide the site for the purpose of creating 20 rural residential allotments would not result in any other than minor effects on the environment.

In terms of the Transitional District Plan the Committee considered the status of the activity in respect to the Wakatipu section of the Transitional Plan and section 405 of the Resource Management Act 1991.

The proposed subdivision activity is considered to conflict with the requirements of rule 6.05.06 – Subdivision for rural living in the Rural A and B zones and rule 6.05.02 subdivision for farming purposes. Therefore pursuant to Section 405(2)(a) of the Act, is a non-complying activity.

(2) *“Notwithstanding anything in section 374 (3) or (4), in respect of any district plan-*

(a) *Every subdivision of land that is contrary to the provisions of the district plan shall be a non-complying activity in respect of that plan;... ”*

While the Transitional District Plan must be considered when assessing the proposed subdivision, the Committee has acknowledged that significant weight can be afforded to the Proposed District Plan.

Although the Proposed District Plan rules relating to subdivision within the Rural General Zone are still subject to reference to be resolved by the Environment Court, the Committee

considers that the Proposed Plan better reflects the relevant controls for subdivision within the rural areas.

Under the rules of the Proposed District Plan the subdivision is a discretionary activity pursuant to rule 15.2.3.3. The area of the proposed allotments is less than the minimum 20 hectare Lot size which is a site subdivision standard, but are greater than the 4 hectare minimum, which is a zone subdivision standard. The plan states that:

“Any subdivision which complies with all Zone Subdivision Standards but does not comply with any one or more Site Subdivision Standards shall be a Discretionary Activity...”

The conditions of consent imposed by the Committee are considered appropriate and sufficient for avoiding, mitigating or remedying the potential adverse effects on the environment that may result from the activity proposed.

A reserve contribution has been levied in accordance with the Councils policy, as a component of the subdivision is considered to be for the purpose of providing residential land use opportunities.

Easements necessary to provide access to infrastructure and physical access to new allotments, are required to be granted or reserved as part of this consent.

Other Matters

The Committee acknowledges that planting of trees can have effects on adjoining neighbours and suggests that such planting be undertaken in consultation with neighbours.

The costs of processing the application are currently being assessed and you will be advised under separate cover whether further money is required or whether a refund is owing to you.

An appeal may be lodged with the Environment Court, Justice Department, P O Box 5027, Lambton Quay, Wellington not later than 15 working days from the date this decision is received.

This decision may be appealed by a submitter. You may check, after 15 working days if an appeal has been lodged by contacting the Environment Court, Justice Department on (04) 915 8300 or fax (04) 915 8303.

This resource consent must be exercised within two years from the date of this decision subject to the provisions of Section 125 of the Resource Management Act 1991.

If you have any enquiries please contact Andrew Eccleshall on phone (03) 442 4777.

Yours faithfully
CIVICCORP

J Edmonds

PRINCIPAL: RESOURCE MANAGEMENT

File: RM990450.127(b)
Valuation Number: 2907124000
Compliance

14 September 2004

Lower Shotover Partnership
C/- Clark Fortune McDonald
PO Box 553
QUEENSTOWN

Dear Sir/Madam,

DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

LOWER SHOTOVER PARTNERSHIP – RM990450.127(b)

I refer to your request for a variation to conditions pursuant to Section 127 of the Resource Management Act 1991 in respect of Condition 1 of resource consent RM990450 granted on 11 April 2000 in respect of Stage II of the subdivision. The decision provided for the subdivision of Sections 93, 96, 97 and 99 and part Sections 68, 69, 94 and 95 Block III Shotover Survey District into 20 rural allotments. Two subsequent variations have been granted dated 21 February 2003 and 25 June 2003 respectively.

This application was considered under delegated authority pursuant to Section 34 of the Resource Management Act 1991 on 14 September 2004. This decision was made and its issue authorised by Jane Sinclair, Independent Commissioner, as delegate for the Council.

The subject site is located off State Highway 6 and is legally described as Sections 93, 96, 97 and 99 and Part Sections 68, 69, 94 and 95 Block III Shotover Survey District.

The variation seeks to relocate building platforms, change boundaries, change the road layout, and undertake the consent in stages.

The variation seeks to provide for changes to the following condition:

1. Condition 1 is amended to the following: “that the activity be undertaken in accordance with the amended plans and specifications submitted with the application as approved on 25 June 2003 with the exception of the amendments required by the following conditions of consent.”

The development shall be carried out in two stages:

- Stage 1 - creates Lots 1, 2, 3, 4, 7, 8, and 9
- Stage 2 - creates Lots 5, 6, 10- 20 (Drawing number 7431_22)

Decision

The variation as requested is granted pursuant to Section 127 of the Resource Management Act 1991 such that the condition shall be amended and shall now read as follows:

- 1 *That the development be carried out in accordance with the plans (Approved Variation – Stage 2 Lower Shotover Partnership RM990450 drawn November 2003 – stamped as approved 6 September 2004 and plan Clark Fortune McDonald and Associates drawing reference 7413_16 in so far as it relates to stage one) and the application as submitted, with the exception of the amendments required by the following conditions of consent.*

Stage 2 as approved (Reference: RM990450.127(a)) shall now be carried out in the following stages:

- Stage 2a: creates Lots 5, 6, 18, 19, and 20*
- Stage 2b: creates Lots 10, 11 and 12*
- Stage 2c: creates Lots 13, 14 and 15*
- Stage 2d: creates Lots 16 and 17*

Advice Note:

All other conditions of the resource consent (RM990450 and subsequent variations RM990450.127 and RM990450.127(a)) granted on 11 April 2002, 21 February 2003 and 25 June 2003 respectively shall continue to apply.

Reasons for the Decision

Section 127 of the Resource Management Act and the Resource Management Amendment Act 2003 provides for a resource consent to be varied as follows;

- 1) *The holder of a resource consent may apply to the consent authority for the change or cancellation of any condition of that consent (other than any condition as to the duration of the consent)*

The applicant has requested a variation to the roading layout, the building platforms locations within Lots 5, 6, 14, 18, 19 and 20, the boundaries and lot sizes, and the staging of the consent. The overall density of the subdivision remains unchanged.

Section 224(c) has been approved for Stage 1 of the development, this variation relates to Stage 2 of the subdivision.

The applicant seeks consent to undertake Stage 2 of the development in a further four stages being; Stage 2a, 2b, 2c and 2d.

In order to undertake the subdivision in stages the applicant requires a decision that allows for staging. This variation is required as a result of a High Court Review of a decision being *Wilbrow Corporation (NZ) Ltd v North Shore City Council*. This High Court review requires that in a subdivision is to be staged then this must be reflected in the decision.

To achieve this and to be in line with the findings of the High Court in the decision *Wilbrow Corporation (NZ) Limited v North Shore City Council*, the original decision must be varied to include a condition allowing the subdivision to be staged and to outline each stage.

This variation seeks to amend the road as approved in RM990450. It is proposed to have a main axis running adjacent to the eastern side of the property and then a secondary axis is proposed off this to service Lots 10, 11 and 12.

This variation also considers changes to lot areas and residential building platforms as follows:

- Lot 5: Change in area from 4.02 ha to 5.02 ha and a movement of the building platform by 9.3m to the east.
- Lot 6: Change in area from 4.0 ha to 4.98 ha. Movement of the building platform by 45.8m and rotated by 27°.
- Lot 10: Change in area from 18 ha to 18.45 ha.
- Lot 11: Change in area from 7.5 ha to 7.99 ha.
- Lot 12: Change in area from 9.6 ha to 10.13 ha.
- Lot 13: Change in area from 11.2 to 11.94 ha
- Lot 14: Change in area from 8.2 ha to 7.85 ha and a movement of the building platform by 17.9m to the southwest.
- Lot 15: Change in area from 10.1 ha to 10.7 ha
- Lot 17: Change in area from 4.1 ha to 2.7 ha.
- Lot 18: Change in area from 4.12 ha to 1.74 ha and a movement of the building platform by 39.1m to the east and rotated by 34°.
- Lot 19: Change in area from 4.11 ha to 2.5 ha and a movement of the building platform by 203.9m to the south and rotated by 69°.
- Lot 20: Change in area from 4 ha to 4.46 ha and a movement of the building platform by 17.9m to the southwest and rotated by 33°.

Effects Consideration

Section 127 as amended by the Resource Management Act 2003 has the effect of a discretionary activity where only the effects of the change or cancellation are taken into account.

It is therefore considered that the subdivision consent (Reference: RM99450) is the permitted baseline and the effects relate to the changes to the lots rather than the effects of the original subdivision.

The change in the roading utilises existing farm tracks and vegetation. It is not considered that these will cause any adverse visual effects. The proposed roads follow existing tracks down the terraces, resulting in less earthworks being required to formalise the roads and less long term visual effects. The main access runs along a small terrace, which will help the absorb the road into the landscape. The original plan required a long radial access to access the lots in each direction from the road. This spanned the majority of the length of the subdivision. The proposed new roading provides access to most of the lots with only the requirement of three short right of ways to access Lots 10, 15 and 16. This is a more practical system and makes use of existing tracks instead of cutting a completely new track through the steep terrace resulting in a positive effect on the surrounding environment.

The changes in lot areas take into account two things as follows:

- Topography
- New roading layout

The original subdivision was undertaken at a time when the minimum lot area within the Rural General Zone was four hectares. Environment Court decision C75/2001 deleted the no minimum lot size within the Rural General Zone. This variation can now consider changes in topography and vegetation. The proposed boundaries between the lots on the upper and lower terrace are moved to follow the natural line along the top of the terrace. This affects Lots 10 – 12, 14 and 15 and the adjoining lots on the upper terrace, Lots 6, 17, 20. This will result in a positive effect as the boundaries can be absorbed into the environment more readily. Boundaries can become defined over time, however if the boundaries follow natural changes in topography or vegetation then the effects of these become less obvious.

Other boundary changes are a result of the new road layout with the new road dictating the boundary of the lots. The new roads are proposed to run between Lots 5, 6, 13, 14 and 17 – 20 (predominantly those lots on the upper terrace) and have hence resulted in some significant changes to the boundaries of these lots.

The changes in the road have necessitated the adjustments in lot areas and boundaries with some being decreased and some being increased. These changes are considered to be minor and are wholly contained within the site. Building platform movements and reorientation within Lots 5, 6, 14, 18 and 20 are a consequence of the changes to the road layout. The proposed change of the boundary of Lot 19 allows for the movement from the northern end of the site 203.9 metres to the southern end of the lot. The new positioning of the building platform will be screened to the east by a row of trees and results in a more clustered form of building platforms to the south.

Pursuant to section 127(3) of the Resource Management Act 1991, variations do not need to be notified if the adverse effect of the activity will continue to be minor, the degree of adverse effect is likely to be unchanged or decreased and that written approval has been obtained from every person, including submitters, who are deemed to be affected.

No submissions were received with regard to the visual effects of the building platforms. Therefore it is considered that the relocation of building platforms and boundaries will not adversely affect these submitters. The building platform within Lot 19 is being moved in a southerly direction 203.9 metres closer to the dwellings located on the property adjoining the eastern boundary of the subdivision. The movement of this building platform into a position that is closer to the adjoining neighbours may increase the dominance of any future dwelling on the platform, however written approval has been received from this adjoining neighbour and pursuant to section 104(3)(b) of the Resource Management Act 1991 any effect on those persons cannot be taken into account.

All of the remaining proposed alterations to the development are considered to be in keeping with the original consent. The changes are considered to be minor and will not result in any greater degree of adverse effect than anticipated in the original development. Accordingly, it is considered that no other persons are considered adversely affected by the alterations. Pursuant to Section 127(4) all those that made a submission on the original application and all those that maybe affected by the change must be considered. The submitters in opposition to the original proposal were principally relating to the airport, and access way issues.

The concerns relating to the access were with regard to the access off the State Highway and from Old School Road. The access to the State Highway has been established and there are no changes to the restriction of access from Old School Road. The roading changes are internal and consequently will not have an adverse effect on the neighbours.

There are no building platforms being moved within the Outer Boundary Control of the airport, hence it is considered that the changes will not adversely affect the airport.

Overall it is considered that the adverse effects of the subdivision will remain no more than minor and that all adversely affected persons have submitted their written approval to the variation.

Other Matters

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

Should you not be satisfied with the decision of the Council and objection may be lodged in writing to the Council setting out the reasons for the objection under Section 357 of the Resource Management Act 1991 no later than 15 working days from the date this decision is received.

If you have any enquiries please contact Bridget Allen on phone (03) 4429890.

Prepared by
CIVICCORP

Reviewed and Approved by
CIVICCORP

Bridget Allen
PLANNER

Kirsten Klitscher
PRINCIPAL: PLANNER QUEENSTOWN

File: RM060268 Variation to RM990450
Valuation Number: 2907461000

21 June 2006

Lower Shotover Partnership Limited
C/- Clark Fortune McDonald Limited
PO Box 553
QUEENSTOWN

Attn: Chris Ferguson

Dear Chris,

DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL
RESOURCE MANAGEMENT ACT 1991
LOWER SHOTOVER PARTNERSHIP LIMITED - RM060268

I refer to your application for a variation to condition one of resource consent RM990450 to adjust the boundaries and create one new parcel to be amalgamated, under Section 127 of the Resource Management Act 1991. RM990450 was granted by Council under delegated authority on 11 March 2000. This application was considered under delegated authority pursuant to Section 34 of the Resource Management Act 1991 on 21 June 2006. This decision was made and its issue authorised by Jane Sinclair, Independent Commissioner, as delegate for the Council.

The subject site is located at Stalker Road, off Frankton-Ladies Mile Highway, Queenstown and is legally described as Lot 101 Deposited Plan 325561 and Section 96-99 Block III Shotover Survey District.

Between 31 August and 14 September 1998 the decisions on submissions to the Proposed District Plan were progressively released. Section 88A of the Resource Management Act 1991 requires all applications received after notification of decisions to be assessed in terms of these decisions and any amendment thereto. Under these decisions the site is zoned Rural General and the proposed activity requires resource consent for the following reasons:

- A **discretionary activity** consent in accordance with Section 127(3)(a) of the Resource Management Act 1991 which specifies a variation to a resource consent shall be processed as if the application was for a discretionary activity.

Overall, the application is considered to be a **discretionary** activity.

The application was considered on a non-notified basis in terms of Section 127 (3) of the Act because the consent authority were satisfied that the degree of adverse effect of the activity is likely to be unchanged as a result of the boundary adjustment and subdivision of one lot to be amalgamated, and that no persons were considered affected by the proposal.

The variation seeks to provide for changes to the following condition:

- 1 *That the development be carried out in accordance with the plans (Approved Variation – Stage 2 Lower Shotover Partnership RM990450 drawn November 2003 – stamped as approved 6 September 2004 and plan Clark Fortune McDonald and Associates drawing reference 7413_16 in so far as it relates to stage one) and the application as submitted, with the exception of the amendments required by the following conditions of consent.*

Stage 2 as approved (Reference: RM990450.127(a)) shall now be carried out in the following stages:

- Stage 2a: creates Lots 5, 6, 18, 19, and 20*
- Stage 2b: creates Lots 10, 11 and 12*
- Stage 2c: creates Lots 13, 14 and 15*
- Stage 2d: creates Lots 16 and 17*

Decision

The variation to Condition 1 and addition of Condition 11 to RM990450 is **granted** pursuant to Section 127 of the Resource Management Act 1991 such that:

1. Condition 1 shall now read as follows:

- 1 That the development be carried out in accordance with the plans (Approved Variation – Stage 2 Lower Shotover Partnership RM990450 drawn November 2003 – stamped as approved 6 September 2004 and plan Clark Fortune McDonald and Associates drawing reference 7413_16 in so far as it relates to stage one **and “Variation of Resource Consent – Stage 2d Lower Shotover Partnership RM990450” plan dated 15 June 2006 and stamped as approved 20 June 2006**) and the application as submitted, with the exception of the amendments required by the following conditions of consent.

Stage 2 as approved (Reference: RM990450.127(a)) shall now be carried out in the following stages:

- Stage 2a: creates Lots 5, 6, 18, 19, and 20
- Stage 2b: creates Lots 10, 11 and 12
- Stage 2c: creates Lots 13, 14 and 15
- Stage 2d: creates Lots 16, **160** and 17

2. Condition 11 be added to state:

- 11 That Lot 16 and Lot 160 hereon be held in the same computer register (CSN Request 569808)

Advice Note

- (a) All other conditions of resource consent RM990450 are still valid and remain unchanged.
- (b) The Council may elect to exercise its functions and duties through the employment of independent consultants.

Reasons for the Decision

Section 127 of the Resource Management Act 1991 provides for a resource consent to be varied as follows;

- 1) *The holder of a resource consent may apply to a consent authority for a change or cancellation of a condition of the consent (other than any condition as to the duration of the consent).*

The consent holder seeks to vary the consent by way of an alteration of the sizes of lots within the subdivision RM990450. It is proposed to undertake boundary adjustments to:

- Increase the size of Lot 17 from 2.7ha to 2.78ha
- Decrease the size of Lot 16 from 7.54ha to 6.69ha
- Subdivide Lot 16 into 2 parcels (Lots 16 and Lot 160) to be amalgamated under the one title. This is because they are severed by a portion of legal road but are required to be amalgamated to remain together.
- Increase in the area labelled 'C' in the wetland area of the subdivision, being the balance of Lot 16's decrease.

The site is located on an undulating terraced site. Lot 16 is large in size with a mixture of pasture, scrubby vegetation and wetland. Lot 17 is pasture and scrub on a more elevated terrace. Area C is a wetland area covering a large flat space. The area is on terraces overlooking the confluence of the Shotover and Kawarau Rivers. The sites maintain bountiful views of the surrounding Remarkables Range and other outstanding natural features. The sites are located within the newly developed subdivision located on the new Stalker Road, off the Frankton-Ladies Mile Highway. This subdivision is being executed in 2 stages with sites closer to the highway being developed first.

Consent was granted for RM990450 on 11 March 2000 which was appealed by Transit NZ and Queenstown Airport Corporation Limited. This appeal went through a lengthy process before being withdrawn on 24 September 2002. Thus the consent commenced on 24 September 2002, in accordance with section 116 of the Resource Management Act and will thus expire (in accordance with section 125 of the Act) on 24 September 2007.

For these reasons the consent is considered still valid, and an amended subdivision plan is able to be approved by way of a variation, as survey plan approval can occur up until 24 September 2007.

Furthermore there have already been three variations to this consent dated 21 February 2003, 20 July 2004 and 14 September 2004.

Section 127 of the Resource Management Act provides for a resource consent to be varied as follows;

- “(3) Sections 88 to 121 shall apply, with all necessary modifications, as if –*
 - (a) the application were an application for a resource consent for a discretionary activity; and*
 - (b) the references to a resource consent and to the activity were references only to the change or cancellation of a condition and effects of the change or cancellation respectively.*
- (4) For the purposes of determining who is adversely affected by the change or cancellation, the local authority must consider, in particular, every person who –*
 - (a) made a submission on the original application; and*
 - (b) may be affected by the change or cancellation.”*

In determining affected parties, case law highlights that it is important to note that it is the effects of the change (not the activity itself), which are relevant. The appropriate comparison is between any adverse effects, which there may have been from the activity in its original form, and any adverse effects, which would arise from the proposal in its varied form. If the effects after variation are no greater than before, then there is no requirement for written approvals to be obtained from persons who may be affected by the activity, but not by the change to it.

No new lots or building platforms are proposed as part of this variation and existing building platforms on Lots 16 and 17 are retained in the same location. This will ensure no change to the overall intent of the development and no environmental effects are considered to arise from the proposal. Wetland C will increase in size which will have an added benefit to the rural amenity of the area, retaining more open space for potential habitat and ecology.

In particular, as requested by section 127 of the Act, the parties who made submissions on the original application have been considered to be unaffected by this proposal.

There are no persons considered to be adversely affected by the proposal. As this proposal has nil effects with regards to people and built form, infrastructure, nuisance or transport and the proposal relates to small alterations of the lot sizes without any physical work being undertaken, no parties are considered affected.

Other Matters

Local Government Act 2002: Development Contributions

In granting this resource consent reference was made to Part 8 Subpart 5 Schedule 13 of the Local Government Act 2002 and the Council's Policy on Development Contributions contained in Long Term Council Community Plan (adopted by the Council on 25 June 2004).

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

For the forgoing reasons a Development Contribution is not required.

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

Should you not be satisfied with the decision of the Council, or certain conditions, an objection may be lodged in writing to the Council setting out the reasons for the objection under Section 357 of the Resource Management Act 1991 not later than 15 working days from the date this decision is received.

You are responsible for ensuring compliance with the conditions of this resource consent. Council will contact you in due course to arrange the required monitoring. It is suggested that you contact the Council if you intend to delay implementation of this consent or reschedule its completion.

This resource consent is not a consent to build under the Building Act 1991. A consent under this Act must be obtained before construction can begin.

Please contact the Council when the conditions have been met or if you have any queries with regard to the monitoring of your consent.

If you have any enquiries please contact Nic Anderson on phone (03) 4500362.

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