

**BEFORE THE QUEENSTOWN LAKES**  
**DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act  
1991

**AND** in the matter of the Queenstown Lakes  
Proposed District Plan

**AND** in the matter of Hearing Stream 14 – Wakatipu  
Basin

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**LEGAL SUBMISSIONS FOR MIDDLETON FAMILY TRUST**  
**(#2332)**

**Dated this 11<sup>th</sup> day of July 2018**

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MAY IT PLEASE THE COMMISSIONERS

### **Introduction and High Level Summary**

- [1] These legal submissions are presented on behalf of Middleton Family Trust in respect of Hearing Stream 14, Wakatipu Basin of the Queenstown Lakes District Council Proposed District Plan (“PDP”).
- [2] The Submitter owns land legally described as Sections 21, 24, 40, 41, 44, 61 Block XXI Shotover Survey District and Section 93 Block II, Shotover Survey District. A map identifying the submitters landholding is attached to these legal submissions.
- [3] The focus of the evidence and submissions for this hearing stream is the proposed relief sought in the submission – namely a form of low density residential zoning over part of the land, and a form of rural residential zoning over the balance<sup>1</sup>. The urban growth boundary is sought to be extended to include the land with the lower density residential zoning. The evidence for the submitter is that the location and physical attributes of the land make it a suitable location for the type of land use promoted, and in the zone provisions that have been proposed<sup>2</sup>.
- [4] The landscape values of the locality have been carefully considered in the expert analysis and evidence for the Submitter. Avoiding inappropriate development and impacts on landscape values has been a key driver in the development of the land sought to be “upzoned”, and in the identification of specific development areas<sup>3</sup>. Development of the residential zoned land will take place in accordance with a structure plan.
- [5] The benefits of the zoning are significant from both an environmental and economic perspective as borne out by the evidence.

### **Overview – the Tucker Beach Residential Precinct (“TBRP”) and Rural Living Precinct**

- [6] The TBRP has its origins in the Low Density Residential (“LDR”) Zone<sup>4</sup>. As discussed below, LDR Zone was sought for this land, during the course of the Stage 1 submission process. LDR zoning remains an option, as does the TBRP, which Mr Geddes crafted

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<sup>1</sup> Referred to in Mr Geddes evidence as Tucker Beach Residential Precinct and Lifestyle Precinct

<sup>2</sup> Zone provisions are set out in Mr Geddes evidence at Appendix 3 TBRP, with the alternative Low Density zone provisions at appendix 4

<sup>3</sup> Including the areas to be excluded from development being the Escarpment Protection Areas (EPA’s)

<sup>4</sup> Geddes at paragraph 3.10

to “fit” within and remain suitably benign<sup>5</sup> to the main thrust of Chapter 24. No matter the “label” the submission seeks a zoning to provide for a low density residential environment, consistent with character and amenity to other land zoned for low density residential living in the District.

- [7] The residential zone is confined to two level paddock spaces, which are discrete pockets within the existing landscape setting. A maximum height limit of 6m is proposed with one lot per 600m<sup>2</sup>. Setback are specified at 4.5m – road, and 2m, internal. 34% (or 11.4ha) of the zone is identified as Escarpment Protection Area, where no development is permitted.
- [8] A walkway/cycle route – “the Tucker Beach Trail” through the eastern portion of the site linking from the DOC Reserve to Lake Johnson is proposed. This route is supported by the Queenstown Trails Trust<sup>6</sup> who describe it as *a key part of the Queenstown Trail and QLDC’s Active Transport Network, linking Arthurs Point to Frankton.*
- [9] No specific changes are sought to objectives, policies or rules proposed for that part of the site in respect of which a rezoning to Rural Living Precinct is sought.
- [10] Access is to be provided from Tucker Beach Road, joining State Highway 6 via the new proposed underpass.

### **Context and background**

- [11] As recorded in the evidence, the land the subject of this submission was included in the submission to Stage 1 of the PDP<sup>7</sup>. For ease of reference, the Stage 1 submission map is attached to these legal submissions, which shows the total extent of rezoning sought under submission 338. The land to which submission #2332 applies identified two areas labelled “proposed rural residential zone” and “proposed low density residential” (outside the Outstanding Natural Landscape (“ONL”) boundary).
- [12] Prior to recommendations being made and released on Stage 1 submissions, the land the subject of submission #2332 was included within the Wakatipu Basin Variation,

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<sup>5</sup> Geddes at paragraph 3.9

<sup>6</sup> See letter to N Geddes dated 12 June, appended to his evidence

<sup>7</sup> Submission number 338

with the effect that thereafter, zoning proposals were to be considered as part of the variation process.

[13] While the variation process has resulted in a new zone with associated objective and policy framework and methods, it is timely to revisit where Council staff/ experts ended up on Stage 1 recommendations for the land now addressed in submission #2332.

[14] The officers reply is appended to Mr Geddes' evidence. Notably the whole area was recommended to be zoned Rural Lifestyle<sup>8</sup>.

[15] With respect to servicing, the evidence for the submitter to be presented at this hearing, is to the effect that servicing issues – potentially to a low density residential scale were not in issue between the submitters advisors and the Councils expert (Mr Glasner).

### **Specific Legal Issues**

[16] The Submitter has no particular issue with the zoning principles derived from the Stage 1 hearing process<sup>9</sup>, and notes Mr Geddes has applied these in his assessment of the rezoning proposal. How these principles are applied in the context of the land covered in the submission is to all intents and purposes an evidence based exercise. To that end, I have, in the main, restricted my legal submissions to addressing matters of law or interpretation where particular differences or issues have arisen.

### **Further submissions – must be a “person” - Tucker Beach Residents**

[17] Section 2 RMA “a person”. Includes a body corporate or unincorporate. No statutory definition of “unincorporate”.

[18] Submitter is not incorporated.

[19] To be an unincorporated body which is a separate legal person under the Act there must be two or more persons who have a similar or related purpose in relation to some function or proceedings under the RMA, and who have agreed to move in concert<sup>10</sup>.  
Unincorporated group – must have members – a group of people with a common

<sup>8</sup> Mr Langman's rebuttal evidence at paragraph 7.9, incorrectly records that the relief sought (LDR) was rejected

<sup>9</sup> Report and Recommendations of Independent Commissioners Regarding Queenstown (other than Wakatipu Basin) Planning Maps, No. 17.1, from paragraph 5.1

<sup>10</sup> *Gold Mine Action Incorporated v Otago Regional Council* (2002) 8 ELRNZ 129 at [37]

purpose<sup>11</sup>. Submission names no individuals – prima facie it’s not a group with a common purpose.

[20] Whether “Tucker Beach Residents” are a group with a common purpose is a question of fact. Case law suggests that the group must have had at least one meeting to discuss any opposition (or support), and reached agreement on a common purpose **prior** to lodgement of any submission. Without the names of members of the group, there will be no way to assess whether there is a common purpose prior to filing submissions. This leads to query whether there is the requisite common purpose or intent to act in concert.

[21] Section 2A – Successor – rights of succession, for example to an incorporated person require evidence of members of the unincorporated group.<sup>12</sup>

[22] Section 41C – Directions and requests before or at hearings

*[17] Before or at the hearing, the authority may direct that the whole, or a part, of a submission **be struck out** if the authority considers...*

*[18] That it would otherwise be an abuse of the hearing process to allow the whole submission, or the part to be taken further.*

[23] Section 41C, is contained in that part of the Act prescribing powers and duties in relation to hearings. There is nothing in sections 39 to 42 to suggest those powers do not apply to hearings in relation to a proposed district plan. To the contrary, s39(1)(a) lists hearings in relation to a proposed plan, as a type of hearing within the ambit of s39 (hearing to be public without unnecessary formality).

[24] The elements of s41C (7)

- *Before or at a hearing*
  - The request is made at a hearing. This element is satisfied.
- *Would otherwise be an abuse of hearing process*

<sup>11</sup> *Appealing Wanaka v Queenstown Lakes District Council* [2015] NZEnvC, 23

<sup>12</sup> In addition to percentage of membership of the latter from the former.

- In order to file a submission or further submissions must be a “person” as defined.
- No members or persons are listed in the submission. No idea who they are, who they might have included at the time of lodgement, and whether there was the requisite element of common purpose. No evidential basis to found any s2A right to succession should they ever be sought.
- Underlying premise of the law – need to be a legal person to commence any sort of action, claim, exercise a right. Can’t commence an action, even the making of a submission if not a legal person. Furthermore, no rights to pursue in Court if not properly instigated at first instance.
- Not lay submitter – represented by experienced RM lawyer.

[25] As matters stand, and particularly given the lack of evidence to constitute the further submitter as a “person”, there is no jurisdiction to accept and consider the further submission and it should be struck out.

### **Issues that remain outstanding**

#### ***Servicing***

[26] The submitters evidence is that development pursuant to the zoning proposed can be adequately serviced. Counsel notes the zoning principles with respect to servicing. Servicing need not be immediately available. Zone changes are rather not to be inconsistent with long term planning for the provision of infrastructure and its capacity. This will be further discussed at the hearing in addition to the possible location of a water reservoir within an ONL.

[27] With respect to the siting of infrastructure in an ONL, such as a water reservoir, the consenting regime is not prohibitive<sup>13</sup>. Such infrastructure is required to be sited at higher elevations, and siting within ONLs’ is not uncommon.

[28] The evidence for the Submitter is that there is sufficient servicing information available to support the rezoning, and it is appropriate to leave further detailed investigation until a later consenting stage (as it the case with roading, which appears undisputed).

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<sup>13</sup> See Chapter 30 – Energy and Utilities. Consent is required as a Discretionary Activity Rule 30.5.1.7

### *Extension of UGB*

[29] The tool of UGB's are discussed in summary form in Report 17-1. The reports records that UGB's are to be applied around the urban areas in the Wakatipu Basin (including Jacks Point)<sup>14</sup>. Counsel notes the UGB was extended to take in the Coneburn Industrial Zone, located at the base of the Remarkables Ski Field access road, between Henley Downs and Frankton, as part of the Stage 1 recommendations, subsequently adopted by the Council.

[30] Mr Langman does not support the placement of an UGB around the extent of the TBRP. He reasons that the policy framework does not support UGBs other than for managing the growth of larger urban areas, of which the TBRP is not one.

[31] The submitter disagrees with Mr Langman's interpretation and application of the policy framework. This will be discussed further by Mr Geddes, but in summary:

- Objective 4.2.1 needs to be read with the associated 7 policies
- The policy framework contemplates UGBs to accommodate areas which are not adjacent to large urban areas.<sup>15</sup>

### *Suitability of land for urban development – visual effects*

[32] Limited agreement – changes to Schedule 24.8 LCU4 western end, capability to absorb development. Site's flat topography makes it relatively well suited to absorb additional development – confinement of the TBRP is sympathetic thereby avoiding adverse effects on adjacent ONL.

[33] Remains fundamental differences between the evidence of Mr Espie on the one hand and Ms Gilbert on the other. It will be for the Panel to assess and weigh competing evidence.

[34] It is submitted that the evidence of Mr Espie is to be preferred for the following reasons:

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<sup>14</sup> At paragraph 100

<sup>15</sup> Policies 4.2.1.5 – 4.2.1.7

[a] Local knowledge, experience and expertise. Mr Espie has practised and honed his craft in the Lakes District. The evidence he produces has the benefit of local and institutional knowledge, coupled with an acute understanding and awareness of the settlement patterns and style and form of development within the southern lakes district. With respect, his evidence is well grounded and approached from a real world perspective.

[b] In contrast, Ms Gilbert’s evidence takes more of a textbook approach, applying theory without necessarily having the benefit of local knowledge and understanding of the constraints of our landscape – particularly its topography as borne out by established settlement patterns.

[35] Topography affects settlement patterns and connectivity. Approval of submitter relief would be relatively well connected to Frankton via a logical settlement, and more so, than Lake Hayes Estate, Shotover Country and Bridesdale for example. Urban Design effects are acceptable.

[36] Visual effects of a low degree, when assessed against existing development, and that zoning yet to be built on.

[37] Development will read as a logical and reasonably well mitigated extension to existing zoning and will be obviously distinct from the ONL.

***National Policy Statement on Urban Development***

[38] Rezoning the submission land is not inconsistent with NPS – UDC – Council can choose to provide capacity on greenfield land outside the confines of the current urban environment.

[39] If greenfield land is rezoned for urban development, then dependent on location, it may be absorbed into a newly defined “urban environment.”



*Witnesses*

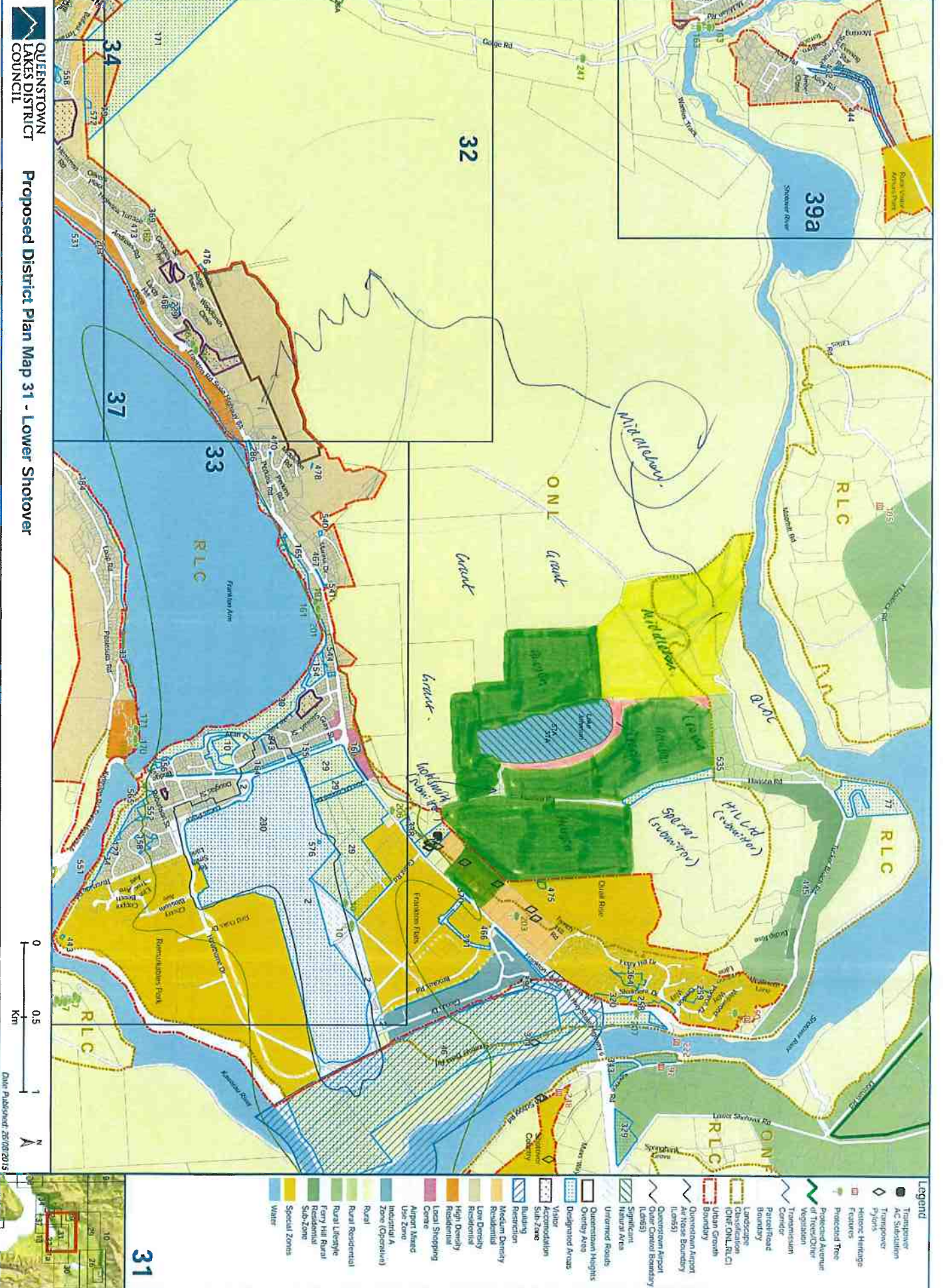
[40] The Submitter will call the following expert evidence:

- [1] Ben Espie – Landscape
- [2] Chris Hansen/Neil McDonald – Servicing
- [3] M Copeland – Economic
- [4] J Bartlett – Traffic
- [5] N Geddes - Planning



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Jayne Elizabeth Macdonald  
Counsel for Middleton Family Trust



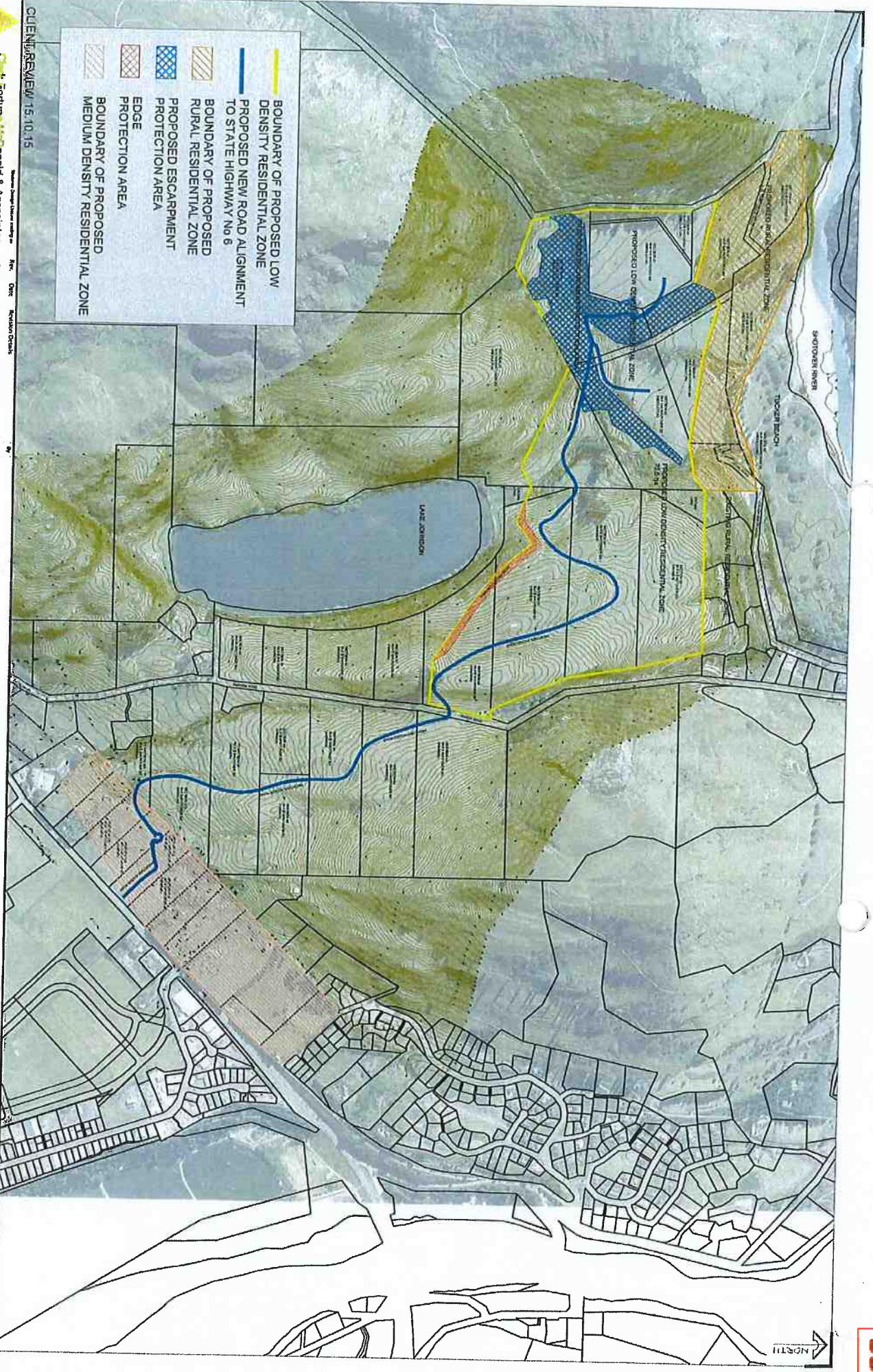
**Legend**

- Transmission AC Substation
- ◆ Tramstop
- Parks
- Historic Heritage Features
- Protected Tree
- Proposed Avenue of Trees/Orchard Vegetation
- Transmission Centre
- Peri-urban Boundary
- Landowner Consent (ONE/ONE/RLC/CI)
- Urban Growth Boundary
- Queenstown Airport Air Nees Boundary (LOR2)
- Queenstown Airport (LOR3)
- Queen Control Boundary (LOR4)
- Significant Natural Area
- Unimproved Roads
- Queensland Heights
- Quantity Area
- Designated Areas
- Water
- Salt Zone
- Building Restriction
- Medium Density Residential
- Low Density Residential
- High Density Residential
- Local Shopping Centre
- Airport Mixed Use Zone
- Industrial A Zone (Openplan)
- Rural
- Rural Residential
- Rural Lifestyle
- Ferry Hill Rural Sub-Zone
- Special Zones
- Water



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- BOUNDARY OF PROPOSED LOW DENSITY RESIDENTIAL ZONE
- PROPOSED NEW ROAD ALIGNMENT TO STATE HIGHWAY No 6
- BOUNDARY OF PROPOSED RURAL RESIDENTIAL ZONE
- PROPOSED ESCARPMENT PROTECTION AREA
- EDGE PROTECTION AREA
- BOUNDARY OF PROPOSED MEDIUM DENSITY RESIDENTIAL ZONE

CLIENT REVIEW 15.10.15

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 1st, 10th & 11th Fls, 425 Mervyn Place, P.O. Box 5960

**PLAN OF PROPOSED LOW DENSITY RESIDENTIAL ZONE AND RURAL RESIDENTIAL ZONE, AND NEW ACCESS ROADING**

Step 2, Stage Home 425 Mervyn Place, P.O. Box 5960  
 1st, 10th & 11th Fls, 425 Mervyn Place, P.O. Box 5960

Client:		MIDDLETON FAMILY TRUST	
Project No.	11439	Sheet No.	01
Date	15.10.15	Scale	1:5000 @ A1 1:10000 @ A3
Author	MM	Drawn	MM
Checked	MM	Date	15.10.15
15.10.15 348-NR-2000 & MSL A			

# ATTACHMENT A

