

**BEFORE THE PROPOSED QUEENSTOWN LAKES DISTRICT PLAN
STAGE 3 HEARING PANEL**

In the matter of

the Resource Management Act 1991

and

**Stage 3 of the Queenstown Lakes Proposed
District Plan – Stream 16: Wāhi Tūpuna**

**Statement of Evidence of Ainsley Jean McLeod on behalf
of Transpower New Zealand Limited (submitter ref: 3080)
dated 19 June 2020**

Introduction

1. My full name is Ainsley Jean McLeod. I hold the qualifications of a Bachelor of Arts (Geography and Anthropology) and a Master of Regional and Resource Planning, both from the University of Otago. I am a full member of the New Zealand Planning Institute.
2. I am a self-employed planner, trading as Ainsley McLeod Consulting. I have over 20 years' experience in planning practice, primarily as a consultant planner based in Wellington and Christchurch, during which time I have undertaken consenting, designation, and policy planning work. I have provided professional planning advice to a range of clients including central and local government, and the private sector.
3. I have particular expertise in respect of infrastructure and network utilities, having provided planning advice in relation to power transmission, distribution and generation, water and waste, rail and roading, and telecommunications projects. I have acted as an expert witness on a number of occasions before hearings panels, boards of inquiry and the Environment Court.
4. More specifically, I have provided expert planning advice to Transpower New Zealand Limited ("Transpower") since 2001 in relation to new and upgraded National Grid transmission lines and substations, along with the relevant planning instruments including the National Policy Statement on Electricity Transmission 2008 ("NPSET") and the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 ("NESETA"). I am familiar with the ways in which plans and policy documents respond to these planning instruments, having advised Transpower in respect of a number of regional policy statement, regional plan and district plan reviews, including in respect of Stage 1 of the Queenstown Lakes Proposed District Plan.
5. I assisted with the preparation of Transpower's submission and further submission on Stage 3 of the Queenstown Lakes Proposed District Plan ("Proposed District Plan") and am now engaged to provide expert planning evidence in relation the following specific matters that have been raised in Transpower's submission:
 - a. Proposed Policy 39.2.1.3 and its relationship to the provisions in Chapter 30 of the Proposed District Plan; and
 - b. The inclusion of "utility activities" as a recognised threat to the values of the Kimiākau (Shotover River) wāhi tupuna area.

Code of conduct

6. Although this matter is not before the Environment Court, I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses as contained in the Court's 2014

Practice Note. I have complied with the Code of Conduct when preparing my written statement of evidence, and will do so when I give oral evidence before the Hearing Panel.

7. I have outlined my expert qualifications above. I confirm that the issues addressed in this statement of evidence are within my area of expertise. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of evidence

8. My evidence:
 - a. confirms Transpower's assets and interests in Queenstown;
 - b. briefly sets out the statutory requirements for the Proposed District Plan in relation to the NPSET and the partially operative Otago Regional Policy Statement 2019 ("ORPS");
 - c. describes Transpower's submission on the Proposed District Plan as it relates to Stream 16 Wāhi Tūpuna; and
 - d. responds to (as relevant to the relief sought by Transpower):
 - i the recommendations made in the 'Section 42A Report of Sarah Helene Picard on Behalf of Queenstown Lakes District Council Chapter 39 Wāhi Tūpuna – Text (Including Variations) And Mapping' dated 18 March 2020 ("Section 42A Report"); and
 - ii the evidence filed on behalf of Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki; Te Rūnanga o Ōtākou; Hokonui Rūnanga; Te Rūnanga o Waihōpai; Te Rūnanga o Awarua and Te Rūnanga o Ōraka-Aparima ("Kā Rūnaka").
9. In addition to the documents referred to above, in preparing this evidence I have also reviewed the following documents insofar as they relate to the relief sought in Transpower's submissions:
 - a. Iwi management plans 'Kāi Tahu ki Otago Natural Resource Management Plan 2005' and 'Te Tangi a Tauira 'The Cry of the People', Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008';
 - b. my evidence, and the evidence of **Mr Andrew Renton**, filed on behalf of Transpower in respect of Stream 5 Chapter 30 dated 2 September 2016 and Stream 1B Chapter 3 dated 29 February 2016 (in the case of Mr Renton);
 - c. the 'Queenstown Lakes District Proposed District Plan Section 32 Evaluation Stage 3 Components September 2019 for Wāhi Tūpuna 'Site of Significance to Māori' dated September 2019 ('Section 32 Evaluation'); and

- d. the 'Updated Joint Memorandum of Parties in Support of Consent Order Topic 1 Subtopic 4 (Regionally Significant Infrastructure)' dated September 2019 and included as **Attachment 1**.
10. My analysis and consideration of the relief sought by Transpower is informed by the statutory framework for decisions on the proposed District Plan set out in the Resource Management Act 1991 ("RMA") and the on-going guidance provided by the modified Long Bay test.¹ This statutory framework is generally set out in the Section 32 Evaluation and I will not repeat it here.
11. Where amendments to the provisions of the Proposed District Plan are suggested in, and supported by, my evidence, these amendments are shown in [blue](#).

The National Grid and Transpower's assets in Queenstown

12. Transpower is the owner and operator of the National Grid. The National Grid is an extensive linear electricity transmission network that operates at a regional and national level and shifts electricity from the point of generation to substations feeding the local networks that distribute electricity to home and businesses.
13. The National Grid has operational requirements and engineering constraints that dictate and constrain where it is located and the way in which it is operated, maintained, upgraded and developed.
14. Transpower's assets in Queenstown are as follows and as shown on the Map of National Grid assets within the Queenstown District at **Attachment 2**:
 - a. Cromwell – Frankton A (CML-FKN-A) 110kV overhead transmission line on double circuit steel towers; and
 - b. Frankton Substation, located at 93 Ladies Mile Highway (designated in the Proposed District Plan).
15. The Cromwell – Frankton A Transmission Line is the only transmission line that connects Queenstown to the National Grid, via the Frankton Substation, and supplies the vast majority of the electricity used in the town and surrounding area. As such, Transpower's assets are essential in terms of supporting Queenstown's economy and providing for the health and safety of people and communities in the District.
16. The existing Cromwell – Frankton A transmission line traverses the following wāhi tūpuna areas that are listed in 39.6 Schedule of Wāhi Tūpuna (the relevant parts of the Schedule are

¹ *Long Bay – Okura Great Park Society v North Shore City Council* EnvC A078/2008, 16 July 2008, at [34], *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387 and *Colonial Vineyard v Marlborough District Council* [2014] NZEnvC 55.

included in **Attachment 3** and the location of the National Grid relative to the wāhi tupuna areas is shown on the plans at **Attachment 4**):

- a. Haehaenui (Arrow River);
 - b. Kawarau River; and
 - c. Kimiākau (Shotover River).
17. The following photograph shown the Cromwell – Frankton A Transmission Line where it crosses the Kimiākau (Shotover River) wāhi tūpuna area:



The relevant statutory framework

National Policy Statement on Electricity Transmission 2008

18. The national significance of the National Grid is recognised, in the context of the RMA, by the NPSET.
19. Section 75(3) of the RMA requires district plans to “give effect to” the NPSET. The requirement to “give effect to” is a strong statutory directive compared to other directives in the RMA and was interpreted in the *EDS v New Zealand King Salmon* Supreme Court case as meaning “to implement”.²

² *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*, NZSC 38, 17 April.

20. The Preamble³ to the NPSET describes the rationale for the NPSET. It states that “the efficient transmission of electricity on the National Grid plays a vital role in the well-being of New Zealand, its people and the environment”. The Preamble notes that the National Grid has particular physical characteristics and operational/security requirements that have been challenging to manage under the RMA. It also acknowledges the potential significance of some effects of transmission lines (including the inability for these to be avoided or mitigated), along with the significant constraints that third party activities and development can place on the network. It notes that adverse effects are experienced at the local level, while benefits are regional or national, requiring a balanced consideration of effects and recognises the importance of consistent policy and regulatory approaches by local authorities.
21. The NPSET has a single Objective as follows:
- “To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:*
- *Managing the adverse environmental effects of the network; and*
 - *Managing the adverse effects of other activities on the network.”*
22. The Objective is supported by 14 Policies. The following Policies are relevant to obligations the NPSET places on decision-makers in the context of Transpower’s submission on Chapter 39 of the Proposed District Plan:
- a. *“... decision-makers must recognise and provide for the national, regional and local benefits of sustainable, secure and efficient electricity transmission. ...”* (Policy 1);
 - b. *“... decision-makers must recognise and provide for the effective operation, maintenance, upgrading and development of the electricity transmission network.”* (Policy 2);
 - c. *“When considering measures to avoid, remedy or mitigate adverse environmental effects of transmission activities, decision-makers must consider the constraints imposed on achieving those measures by the technical and operational requirements of the network.”* (Policy 3);
 - d. *“... decision-makers must have regard to the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection”* for new infrastructure or major upgrades (Policy 4);
 - e. *“... decision-makers must enable the reasonable operational, maintenance and minor upgrade requirements of established electricity transmission assets”* when considering environmental effects associated with transmission activities (Policy 5);

³ It is acknowledged that the Preamble is not part of the NPSET but includes the words: *“this preamble may assist interpretation of the national policy statement, where this is necessary to resolve uncertainty”*.

- f. *“should minimise adverse effects on urban amenity and avoid adverse effects on town centres and areas of high recreational value or amenity and existing sensitive activities”* (Policy 7); and
- g. *“should seek to avoid the adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreational value and amenity and existing sensitive activities”* (Policy 8).

The partially operative Otago Regional Policy Statement 2019

- 23. As for the NPSET, section 75(3) of the RMA requires the District Plan to give effect to the ORPS.
- 24. The National Grid is identified as nationally and regionally significant infrastructure in Policy 4.3.2 of the ORPS. The ORPS includes policies in respect of nationally and regionally significant infrastructure and also includes Policy 4.3.6 that specifically relates to the National Grid as follows:

“Policy 4.3.6 The National Grid

Provide for the National Grid by:

- a) *Managing activities to the extent reasonably possible to avoid reverse sensitivity effects on the National Grid; and*
- b) *Identifying corridors for the existing National Grid within which activities and development will be managed to the extent reasonably possible to ensure that the functional needs of the National Grid are not compromised; and*
- c) *Not allowing existing activities in the identified corridors to intensify in a way that increases their incompatibility with existing National Grid infrastructure.*
- d) *Manage the adverse effects of new National Grid infrastructure by all of the following:*
 - i. *recognising there may be some areas in the coastal environment where avoidance of adverse effects is required to protect the identified special values of those areas.*
 - ii. *seeking to avoid adverse effects on the values of the following:*
 - a. *Areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
 - b. *Outstanding natural features, landscapes and seascapes;*
 - c. *Areas of outstanding natural character;*
 - d. *Outstanding water bodies or wetlands;*
 - e. *Places or areas containing historic heritage of regional or national significance.*
 - iii. *Where it is not practicable to avoid adverse effects on the values of the areas listed in d) above because of the functional needs of the National Grid, remedy or mitigate adverse effects on those values;*
 - iv. *Avoiding, remedying or mitigating other adverse effects;*

- v. Consider offsetting for residual adverse effects on indigenous biological diversity.

Where there is a conflict, Policy 4.3.6 prevails over the policies under Objectives 3.1, 3.2, 4.3 and 5.2, and over policy 5.4.9.”

25. In respect of wāhi tūpuna, Policy 2.2.2 of the ORPS directs how sites of cultural significance are to be recognised as follows:

“Policy 2.2.2 Recognising sites of cultural significance

Recognise and provide for the protection of wāhi tūpuna, by all of the following:

- a) *Avoiding significant adverse effects on those values that contribute to the identified wāhi tūpuna being significant;*
- b) *Avoiding, remedying, or mitigating other adverse effects on the identified wāhi tūpuna;*
- c) *Managing the identified wāhi tūpuna sites in a culturally appropriate manner.”*

26. In my opinion, these policies are the most relevant and pivotal to the consideration of the relief sought by Transpower in its submission. The remainder of my evidence addresses this relief.

Policy 39.2.1.3 and its relationship to the provisions in Chapter 30 of the Proposed District Plan

27. The primary issue for Transpower is the relationship and conflict between the Section 42A Report recommended Policies 39.2.1.3 and 39.2.1.4 and the National Grid specific Policy 30.2.8.1 (currently within a draft consent order before the Environment Court).
28. Transpower’s submission⁴ supports the approach taken to the management of effects on the values within wāhi tūpuna areas in notified Policy 39.2.1.3 and related Policy 39.2.1.4 because the Policies provide for significant effects to be remedied or mitigated in situations where effects cannot be practically avoided in a manner that is consistent with the NPSET. Transpower’s submission is supported by the further submission made by Kāi Tahu and opposed by the further submission made by Lesley and Jerry Burdon.
29. The Section 42A Report does not address Transpower’s submission or record a ‘planner’s recommendation’ in Appendix 2 to the Report. The Section 42A Report recommends the following amendments to policies in Chapter 39:

“39.2.1.3 Recognise that certain activities, when undertaken in wāhi tūpuna areas, can have ~~such~~ significant adverse effects on manawhenua values that ~~they~~ are culturally inappropriate and ~~should~~ must be avoided.

39.2.1.4 ~~Avoid significant adverse effects on values within wāhi tūpuna areas and where significant adverse effects cannot be practically avoided, require them to be remedied or mitigated. Avoid, remedy or mitigate any other adverse effects on the on identified wāhi tūpuna areas.~~”

⁴ Submission reference 3080.5.

30. I consider that the recommended amendments to Policy 39.2.1.3 and replacement Policy 39.2.1.4 represent a significant shift in approach to the management of effects on wāhi tūpuna areas on the basis that the Policy now includes an absolute requirement to avoid significant adverse effects on manawhenua values and there is no avenue available to allow for situations where significant adverse effects cannot be avoided.
31. Insofar as Policies 39.2.1.3 and 39.2.1.4 relate to the development or upgrade of the National Grid, it is my opinion that these policies (as recommended for amendment by the Section 42A Report) do not give effect to the NPSET because the NPSET does not require the absolute avoidance of significant adverse effects. Conversely, I note that the preamble to the NPSET specifically acknowledges that the National Grid can have significant adverse effects and that technical, operational and security requirements of the National Grid can limit the extent to which it is feasible to avoid or mitigate all adverse effects.
32. Further, the amended policies (as they relate to the National Grid) conflict with policies that are included in a draft consent order currently before, but yet to be determined by, the Environment Court (resolving appeals in respect of Regionally Significant Infrastructure)⁵ as follows:

“30.2.8.1 Recognise the benefits of the National Grid by:

- a. enabling the operation and maintenance of the National Grid;
- b. providing for the upgrade and development of the National Grid, while managing its adverse effects by:
 - i. seeking to avoid adverse effects on the values and attributes of the following:
 - A. Scheduled Significant Natural Areas, and those other areas that meet the criteria in Policy 33.2.1.8;
 - B. Outstanding Natural Landscapes and Features;
 - C. Rural Character Landscapes and other amenity landscapes;
 - D. Wahi Tupuna identified in the District Plan maps.
 - ii. where avoiding adverse effects on the values and attributes of the areas listed in (b)(i) above is not practicable, remedying or mitigating the adverse effects on those values and attributes;
 - iii. Avoiding, remedying or mitigating other adverse effects;
- c. when consider the adverse effects on the upgrade and development of the National Grid, having regard to:
 - i. the extent to which measures to avoid, remedy or mitigate adverse effects may be constrained by functional needs;

⁵ Attached to 'Updated Joint Memorandum of Parties in Support of Consent Order Topic 1 Subtopic 4 (Regionally Significant Infrastructure)' dated September 2019.

- ii. the extent to which adverse effects have been addressed through site, route or method selection;
- iii. opportunities to reduce existing adverse effects;
- iv. offsetting for residual adverse effects on indigenous biological diversity.”

“30.2.8.2 In the event of any conflict with:

- a. the objectives and policies in Chapters 3, 6, 23, 24 and 33;
- b. objectives 7.2.6, 8.2.5 and 9.2.6; or
- c. Policies 30.2.6.1 and 30.2.7.1;

Policy 30.2.8.1 takes precedence. The Assessment Matters (Landscape) in chapters 21 and 23 I this plan are relevant when implementing the policy.”

33. These consent order provisions have the effect of:
- a. setting out a National Grid specific approach to managing adverse effects of the National Grid; and
 - b. ensuring there is no conflict with provisions elsewhere in the Proposed District Plan by being clear that the National Grid specific provisions prevail over other provisions.
34. In terms of wāhi tūpuna areas, it is clear that consent order Policy 30.2.8.1 provides a National Grid specific approach, however Policy 30.2.8.2 does not include a corresponding ‘takes precedence’ direction in respect of Chapter 39. I have discussed this matter with Ms Picard and consider that this situation has likely to have arisen because Chapter 39 was not notified at the time the consent order provisions were developed and agreed.
35. In order to give effect to the NPSET and to resolve conflict between Policies 39.2.1.3 and 39.2.1.4 and the consent order provisions, I support the inclusion of the following new policy in Chapter 39 that is drafted to mirror Policy 30.2.8.2 in the draft consent order provisions:

“39.2.1.4a In respect of the National Grid and in the event of any conflict, Policy 30.2.8.1 prevails over Policies 39.2.1.3 and 39.2.1.4.”

36. An alternative approach would be to amend the draft consent order Policy 30.2.8.2 as follows, however, I understand that there may be legal impediments to doing so:

“30.2.8.2 In the event of any conflict with:

- a. the objectives and policies in Chapters 3, 6, 23, 24, ~~and 33 and 39~~;
- b. objectives 7.2.6, 8.2.5 and 9.2.6; or
- c. Policies 30.2.6.1 and 30.2.7.1;

Policy 30.2.8.1 takes precedence. The Assessment Matters (Landscape) in chapters 21 and 23 I this plan are relevant when implementing the policy.”

37. I have discussed the issue of this conflict with Mr Michael Bathgate (who has provided evidence on behalf of Kā Rūnaka) and have provided him with a copy of the draft consent order.

38. It is my conclusion that the addition of a new Policy 39.2.1.4a, as set out above, is necessary to properly give effect to the NPSET and to ensure that potential conflict between the provisions of Chapters 30 and 39 is appropriately resolved.
39. As a final matter, I note that Mr Bathgate supports further amendments to Policies 39.2.1.3 and 39.2.1.4, as does Mr Farrell (for WayFare Limited). In this regard, provided a direction that Policy 30.2.8.1 takes precedence is included in the Proposed District Plan, such amendments are not relevant to Transpower's relief and do not need to give effect to the NPSET.

“Utility activities” as a recognised threat to the Kimiākau/Shotover River Wāhi Tūpuna

40. In its submission, Transpower sought deletion of reference to ‘utility activities’ within the list of recognised threats in Schedule 39.6. The primary issue for Transpower is ensuring the existing National Grid assets are recognised and their ongoing operation, maintenance and minor upgrade provided for. I consider the outcome sought by Transpower can be achieved through refinement of the references to refer to ‘new and upgraded network utilities’.
41. By way of background, Transpower's submission⁶ opposes the inclusion of “utility activities” in the list of recognised threats to the Kimiākau/Shotover River Wāhi Tūpuna (in 39.6 Schedule of Wāhi Tūpuna) and sought deletion, because, insofar as ‘utility activities’ relates to the Cromwell – Frankton A Transmission Line, the listing of ‘utility activity’ as a threat:
- a. fails to recognise the existing environment and the presence of the Cromwell – Frankton A Transmission Line within the wāhi tūpuna area;
 - b. is inconsistent with the approach taken to the Kawarau River wāhi tūpuna area;
 - c. may have the effect of constraining the maintenance and minor upgrade of the existing National Grid transmission line in a manner that is inconsistent with Policies 1, 2 and 5 of the NPSET; and
 - d. is not supported by the Section 32 Evaluation.
42. The Transpower submission is opposed by the further submission made by Kāi Tahu because *“Kāi Tahu has identified that all of the activities listed in the notified version of the Plan for this wāhi tūpuna area are possible threats to cultural values”*.
43. The Section 42A Report does not specifically address the relief sought by Transpower and recommends that the submission be rejected.
44. In my opinion the primary issue is to achieve a balance between competing matters of national significance and importance (through the NPSET and section 6(e) of the RMA) and meeting

⁶ Submission reference 3080.8.

the requirements of the statutory framework, including the implementation of draft consent order Policy 30.2.8.1.

45. Policy 30.2.8.1 directs that Transpower should seek to avoid the adverse effects of the **upgrade** and **development** of the National Grid on the values and attributes of wāhi tūpuna areas identified in the Proposed District Plan. This is consistent with my understanding of Transpower's practice in respect of the development of new National Grid assets, whereby a robust route and option assessment process identifies sites of cultural value as areas to be avoided where it is possible to do so.
46. That said, in giving effect to Policies 1, 2 and 5 of the NPSET, the same 'seek to avoid' direction in Policy 30.2.8.1 does not apply to the **operation** and **maintenance** of the National Grid, – which are enabled. In this regard, I am of the view that the NPSET and Policy 30.2.8.1 distinguish operation and maintenance of the National Grid from upgrade and development activities and that a similar distinction should be made in respect of the identification of recognised threats to the values of a wāhi tūpuna area.
47. Such an approach is not inconsistent with the following general rationale for the identification of recognised threats that implies a focus on new activities (as opposed to those that are already located within, or traversing, a wāhi tūpuna area):
 - a. the Section 32 Evaluation that states that *"the identification of recognised threats provides direction for activities that have potential to result in adverse effects on these sites and their identified values"*;
 - b. the Section 42A Report that notes that *"Aukaha, in conjunction with Te Ao Marama Incorporated (TAMI), provided the mapping overlay, list of values and recognised threats (activities) on behalf of Rūnaka. This information formed the notified overlay and Schedule 39.6"*; and
 - c. In his evidence, Mr Bathgate notes that *"these activity lists have been compiled, in conjunction with the recognised threats lists in Schedule 39.6, to give plan users some clarity and certainty as to the most common activities that may threaten values within wāhi tūpuna."*

48. On this basis, I support refinement to the relief sought by Transpower in terms of amendment to Schedule 39.6 as follows:

"Number	Name	Values	Description of sites included in this area	Recognised threats
29	<i>Kimiākau (Shotover River)</i>	<i>Ara tawhito, mahika Kai, nohoaka</i>	<i>Puahuru</i>	a. ... c. Energy and <u>new and upgraded</u> Utility activities. ..."

49. I acknowledge that the amendment I have proposed (set out above) applies to all utility activities, as opposed just the National Grid and is therefore more broad than necessary to give effect to the NPSET. Should this amendment have unintended consequences, an alternative, National Grid specific, amendment would achieve the same outcomes. For example:

"c. Energy and Utility activities (in the case of the National Grid, new and upgraded assets only)."

50. Further, for consistency purposes, I also support amending the 'utility activities' reference in respect of the Haehaenui (Arrow River) wāhi tupuna in the same manner.
51. I have discussed Transpower's relief with Mr Bathgate, for Kā Rūnaka, including distinguishing new and upgraded utilities from those that exist.
52. In all, it is my conclusion that either of the amendments set out above:
- better gives effect to Policies 1, 2 and 5 of the NPSET;
 - better gives effect to Policies 2.2.2 and 4.3.6 of the ORPS;
 - take into account the provisions of the iwi management plans;
 - implement the policies in Chapter 39 along with draft consent order Policy 30.2.8.1;
 - appropriately balances the competing requirements to recognise and provide for the matters of national importance in section 6(e) and to recognise the national significance of the National Grid by facilitating the operation, maintenance and upgrading of the existing National Grid, as set out in the Objective of the NPSET, and therefore achieves the sustainable management purpose of the RMA.



Ainsley Jean McLeod

19 June 2020

**Attachment 1: Updated Joint Memorandum of Parties in Support of Consent Order
Topic 1 Subtopic 4 (Regionally Significant Infrastructure)' dated September 2019**

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH
I MUA I TE KOOTI TAIAO O AOTEAROA**

**ENV-2018-331-000018
ENV-2019-CHC-027**

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of appeals under clause 14 of
Schedule 1 of the Act against
decisions of the Queenstown
Lakes District Council on Stage 1
of the Proposed Queenstown
Lakes District Plan

BETWEEN **QUEENSTOWN AIRPORT
CORPORATION**

AND **TRANSPower NEW ZEALAND
LIMITED**

Appellants

concerning Topic 1 Subtopic 4 of
Stage 1 of the Proposed
Queenstown Lakes District Plan

AND **AURORA ENERGY LTD
BOARD OF AIRLINE
REPRESENTATIVES NEW
ZEALAND INC
DARBY PLANNING
FEDERATED FARMERS
FII HOLDINGS LTD
HANSEN FAMILY
PARTNERSHIP
JACKS POINT AND OTHERS
REMARKABLES PARK LTD
ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF
NEW ZEALAND INC
SOHO SKI AREA LTD AND
BLACKMANS CREEK
SOUTHERN DISTRICT HEALTH
BOARD
TREBLE CONE INVESTMENTS
LTD
[cont]**

**UNIVERSAL DEVELOPMENTS
LTD
VODAFONE NEW ZEALAND
LTD, SPARK NEW ZEALAND
TRADING LTD, CHORUS NEW
ZEALAND LTD**

Section 274 Parties

**AND TRANSPOWER NEW ZEALAND
LIMITED**

Appellant

AND AURORA ENERGY LTD

Section 274 party

concerning Stage 2 of the
Proposed Queenstown Lakes
District Plan

**AND QUEENSTOWN LAKES
DISTRICT COUNCIL**

Respondent

**UPDATED JOINT MEMORANDUM OF PARTIES IN SUPPORT OF CONSENT
ORDER**

TOPIC 1 SUBTOPIC 4 (REGIONALLY SIGNIFICANT INFRASTRUCTURE)

September 2019

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MAY IT PLEASE THE COURT

1. This Updated Joint Memorandum replaces the Joint Memorandum filed by parties in support of consent order, dated 9 November 2018.
2. It also covers an additional appeal, being Transpower's appeal on Stage 2 of the PDP.
3. The parties respectfully request that the Court consider this Updated Joint Memorandum and the associated draft consent order, alongside the Memoranda and draft consent orders filed with the Court in relation to Topic 2, Subtopic 11, and Topic 17, Energy and Utilities. For the reasons set out in this memorandum in relation to 'other amenity landscapes', the parties consider the Court is best placed to issue any consent order, either at the same time as, or after the Court issues its Topic 2 decision on Rural Landscapes.

Stage 1 Appeal allocated to Topic 1, Subtopic 4

4. The Queenstown Lakes District Council (**Council**) notified its decisions on Stage 1 of the Proposed Queenstown Lakes District Plan (**PDP**) on 7 May 2018. Queenstown Airport Corporation (**QAC**)¹ and Transpower New Zealand Limited (**Transpower**)² appealed to the Environment Court. Parts of the appeals were allocated into Strategic Topic 1 Subtopic 4 "Regionally significant infrastructure".
5. Fourteen parties gave notice of their intention to be a party to the parts of the appeals in Topic 1 Subtopic 4³ and participated in Environment Court assisted mediation on 17 – 19 October 2018 (October 2018 mediation):
 - 5.1 Aurora Energy Ltd;
 - 5.2 Board of Airline Representatives New Zealand Inc;
 - 5.3 Darby Planning;
 - 5.4 Federated Farmers;
 - 5.5 FII Holdings Ltd;

¹ ENV-2018-CHC-093.

² ENV-2018-CHC-114.

³ In accordance with section 274 of the Resource Management Act 1991.

- 5.6 Hansen Family Partnership;
- 5.7 Jacks Point and Others;
- 5.8 Remarkables Park Ltd;
- 5.9 Royal Forest and Bird Protection Society of New Zealand Inc;
- 5.10 Soho Ski Area Limited and Blackmans Creek;
- 5.11 Southern District Health Board;
- 5.12 Treble Cone Investments Ltd;
- 5.13 Universal Developments Limited; and
- 5.14 Vodafone New Zealand Limited, Spark New Zealand Trading Limited, Chorus New Zealand Limited.

6. The PDP provisions directed to be mediated were as follows (new provisions sought to be added by QAC are in red text):

- 6.1 3.1 Purpose, Issue 1;
- 6.2 Strategic Objectives 3.2.1.9, 3.2.1.10 and Strategic Policies 3.3.36, 3.3.37;
- 6.3 Definition of "National Grid"; and
- 6.4 Objective 30.2.8 and Policy 30.2.8.1.

7. Following the October 2018 mediation the Council filed consent documentation (**2018 draft consent order**). On 28 March 2019 the Court issued a Minute (**Minute**) expressing some preliminary views on the 2018 draft consent order. The parties therefore resumed mediation on 8 and 9 August 2019.

8. During mediation in August 2019, the parties evaluated the 2018 draft consent order against the matters raised in the Minute. The parties were also informed by the Court's Topic 1 decision that was received just prior to the mediation. The parties have agreed to further amendments to address the matters raised by the Court in its Minute. The agreement includes:

- 8.1 Amendments to the matters listed in paragraph 6 above;
- 8.2 New provisions to be added to Chapters 3 and 30; and

8.3 Amendments and new provisions to be added to Chapter 30 provisions that are allocated to Topic 17, being the Energy and Utilities Chapter 30.

9. The 274 parties have agreed as far as they have an interest in the appeal points subject to this agreement. The provisions that the parties have agreed to are set out in the draft consent order attached to this memorandum. All parties agree that, together with changes to provisions allocated to Topic 17, as explained further below, the additional changes agreed to in the August 2019 mediation address the matters raised by the Court in its Minute.

Explanation of changes made compared to the 2018 draft consent order

Issue 1

10. In relation to 3.1. Purpose, Issue 1, the Court confirmed in its Topic 1 decision, the following:

Strategic Issue 1: Economic prosperity and equity, including strong and robust town centres, and the social and economic wellbeing and resilience of the District's communities may be challenged if the District's economic base lacks diversification.

11. The parties have considered the Court decision version of Issue 1. Consistent with the 2018 draft consent order, the parties agree that the words "and supporting infrastructure" should be added to the Court's decision version of Issue 1. Economic diversification and supporting infrastructure are both relevant to economic prosperity and equity.

SO 3.2.1.9

12. The Court in its Minute at [14] raised concerns that the phrase "managing adverse effects" in SO 3.2.1.9 would be ineffectual. The parties consider that the direction given as to how effects are to be managed, can in some situations appropriately be set out in the zone and district-wide chapters. This is returned to below in relation to SP 3.3.36 and SP 3.3.37.

13. The parties have agreed to amend SO 3.2.1.9 as follows (underlying text is decisions version):

Infrastructure in the District that is operated, maintained, developed and upgraded efficiently and effectively to meet community needs in a sustainable way ~~and to maintain the quality of the environment.~~ (also elaborates on SO 3.2.2 following).

14. The words “manage adverse effects”, a concern in the Court’s Minute, are removed from the objective. The parties note that SO 3.2.1.9 serves a broad purpose in so far as operating, maintaining and developing infrastructure. This approach is articulated by attendant strategic and other policies that both ‘provide for’ their functional needs (e.g. SP 3.3.36) while also seeking to manage their effects on the environment (refer in particular to suggested new Policy 30.2.7.A and existing Policy 30.2.7.1). The parties agreed amended wording is consistent with Objective 4.3 of the operative RPS 2019 which is “Infrastructure is managed and developed in a sustainable way” and the broad purpose of the PDP provisions.
15. The parties consider that utilising the words ‘in a sustainable way’ provides greater direction about the matters that need to be addressed in relation to infrastructure. How this is achieved with respect to RSI is then particularised through the other provisions in Chapter 3, 6 and in greater detail in Chapter 30. The provisions operate together as a package.

SP 3.3.36

16. SP 3.3.36 was agreed by the parties during the October 2018 mediation as an alternative to the new SO 3.2.1.10 sought in the QAC appeal.
17. In para [15] of the Minute the Court indicates that the drafting style used in the policy sits in contrast to the relatively clear focus in Policy 30.2.8.
18. To respond to the Court’s concerns, the parties have agreed to a new, more detailed policy for RSI to be located in Chapter 30 (**30.2.7.X, new RSI Policy**). This new RSI Policy will sit alongside the National Grid specific policies (**30.2.8.1, 30.2.8.2 and 30.2.8.3**), and a more general

Utilities policy (**30.2.7.1**) which is already in the decisions version of Chapter 30.

- 19.** Together, these policies give effect to the Otago Regional Policy Statement (**RPS**), in particular Policy 4.3.3 (which recognises the functional needs of nationally and regionally significant infrastructure), Policy 4.3.4, (which seeks to manage effects of nationally and regionally significant infrastructure) and the National Policy Statement for Electricity Transmission (**NPSET**) (where relevant), and set out in some detail how the adverse effects of the National Grid, RSI, and utilities more generally, are to be managed. The proposed Policy 30.2.7.X creates a cascade for managing effects of RSI. This cascade acknowledges that the functional needs of RSI may mean that adverse effects may be unable to be avoided in all cases due to the nature of the RSI. Where avoidance is not possible the policy directs operators to take other steps to remedy and mitigate the effects.
- 20.** In light of the new RSI Policy in Chapter 30, the parties have carefully considered the words “managing its adverse effects on the environment” in SP 3.3.36.
- 21.** In relation to section 6(b) and 7(c) landscapes, how adverse effects of RSI are to be managed is provided for in Policy 6.3.3A and Policies 6.3.35 to 6.3.38 (which are provisions allocated to Topic 2, Subtopic 11). The parties carefully considered whether landscapes should be covered in Chapter 6, or the new RSI policy in Chapter 30. The parties agreed that landscape should continue to be covered by the RSI specific policies in Chapter 6, to ensure consistency, and remove any risk that contradictions would be created within the policy direction for RSI and landscapes.
- 22.** In relation to other section 6 and 7 matters, how adverse effects are to be managed is provided for in new Policy 30.2.7.X, and decisions version Policy 30.2.7.1(a) to (e). A ‘hierarchy’ approach to management of effects has been agreed in the new RSI Policy, similar to the National Grid policy. However, it is important that the ‘take precedence’ policy that the parties have agreed to for the National Grid Policy 30.2.8.1, which was necessary in order to give effect to the NPSET, has not been applied to the new RSI Policy in Chapter 30.

23. Whilst the RPS provisions relevant to RSI do include a 'prevail in the event of conflict' (see Policy 4.3.4) clause the parties consider that this has been given effect to through Policy 30.2.7.X via the cascade for managing effects.
24. In addition, decisions version Policy 30.2.7.1(b) to (e), will continue to apply to the management of effects of RSI. It is only Policy 30.2.7.1(a), that is replaced by the new RSI Policy.
25. Although the new RSI Policy was considered and raised by the Court in its Minute on Topic 1, Subtopic 4, there is relief in Topic 17, Energy and Utilities, through a Queenstown Airport Corporation appeal point that asked for amendments to the utilities policy in chapter 30, which would in effect carve-out RSI. The effect of the Topic 17 QAC relief is very similar to the issues raised by the Court in relation to managing effects of RSI. Because the QAC relief is allocated to Topic 17, the agreed new RSI Policy is included in the consent order for Topic 17. Relevant objectives and policies in one place, for the Court's convenience, are as follows (**red text** = allocated to Topic 17, black text = allocated to Topic 1, Subtopic 4, **green text** = Stage 2 relief):

30.2.7 Objective - The adverse effects of utilities are managed having regard to functional needs and environmental values on the surrounding environments are avoided or minimised.

Policies

30.2.7.X Manage the adverse effects of regionally significant infrastructure by:

- a. seeking to avoid adverse effects on the values and attributes of the following:**
 - i. Scheduled Significant Natural Areas, and those other areas that meet the criteria in Policy 33.2.1.8;**
 - ii. Heritage features identified as Category 1 in the Schedule in Chapter 26;**
 - iii. Wahi tupuna identified in the District Plan maps;**
- b. seeking to avoid significant adverse effects on the values and attributes of the following:**
 - i. Special Character Areas identified on the District Plan maps including the Arrowtown Residential Historic Management Zone;**

- ii. Other Heritage features, settings, overlay areas or precincts that are not identified in (a.ii) above;
- c. where avoiding adverse effects on the values and attributes of (a), or avoiding significant adverse effects on the values and attributes of (b), is not practicable because of the functional needs of the infrastructure:
 - i. in relation to (a.i), ensure that the adverse effects on the values and attributes are avoided, remedied or mitigated so that the significant nature of the area is maintained;
 - ii. in relation to (b.ii), ensure that adverse effects on the values and attributes are remedied or mitigated, or where this is not practicable, consider the extent to which the activity implements the policies of Chapter 26.
 - ii. remedy or mitigate the adverse effects on the values and attributes;
- d. avoiding, remedying or mitigating other adverse effects.

Advice note: In relation to landscapes, Policies 6.3.3A and Policies 6.3.35 to 6.3.38 are relevant and apply to regionally significant infrastructure.

30.2.7.1 Manage the adverse effects of utilities on the environment by:

- a. for utilities other than regionally significant infrastructure, avoiding their location on sensitive sites, including heritage and special character areas, Outstanding Natural Landscapes and Outstanding Natural Features, and skylines and ridgelines and where avoidance is not practicable, avoid significant adverse effects and minimise other adverse effects on those sites, areas, landscapes or features;
- b. encouraging co-location or multiple use of network utilities where this is efficient and practicable in order to avoid, remedy or mitigate adverse effects on the environment;
- c. ensuring that redundant utilities are removed;
- d. using landscaping and or colours and finishes to reduce visual effects;
- e. integrating utilities with the surrounding environment; whether that is a rural environment or existing built form.

30.2.7.2 Require the undergrounding of new utilities servicing services- new areas of development, other than the National Grid, where technically feasible.

30.2.7.3 Encourage the replacement of existing overhead services other than the National Grid, with underground reticulation or the

upgrading of the existing overhead services, where technically feasible.

30.2.7.4 Take account of economic and operational needs in assessing the location and external appearance of utilities.

30.2.8 Objective - The national significance of the National Grid is recognised by the facilitation of the ongoing operation, maintenance, development and upgrading of the National Grid, while subject to the adverse environmental effects on the environment of the National Grid, and on the National Grid, are network being managed.

Policies

~~30.2.8.1 Enabling the use and development of the National Grid by managing its adverse effects by:-~~

- ~~a. only allowing buildings, structures and earthworks in the National Grid Yard where they will not compromise the operation, maintenance, upgrade and development of the National Grid;~~
- ~~b. avoiding Sensitive Activities within the National Grid Yard;~~
- ~~c. managing potential electrical hazards, and the adverse effects of buildings, structures and Sensitive Activities on the operation, maintenance, upgrade and development of the Frankton Substation;~~
- ~~d. managing subdivision within the National Grid corridor so as to facilitate good amenity and urban design outcomes.~~

Recognise the benefits of the National Grid by:

- a. enabling the operation and maintenance of the National Grid;
- b. providing for the upgrade and development of the National Grid, while managing its adverse effects by:
 - i. seeking to avoid adverse effects on the values and attributes of the following:
 - A. Scheduled Significant Natural Areas, and those other areas that meet the criteria in Policy 33.2.1.8;
 - B. Outstanding Natural Landscapes and Features;
 - C. Rural Character Landscapes and other amenity landscapes;
 - D. Wahi Tupuna identified in the District Plan maps.
 - ii. where avoiding adverse effects on the values and attributes of the areas listed in (b)(i) above is not practicable, remedying or mitigating the adverse effects on those values and attributes;

- iii. Avoiding, remedying or mitigating other adverse effects;
- c. when considering the adverse effects on the upgrade and development of the National Grid, having regard to:
 - i. the extent to which measures to avoid, remedy or mitigate adverse effects may be constrained by functional needs;
 - ii. the extent to which adverse effects have been addressed through site, route or method selection;
 - iii. opportunities to reduce existing adverse effects;
 - iv. offsetting for residual adverse effects on indigenous biological diversity.

30.2.8.2 In the event of any conflict with:

- a. the objectives and policies in chapters 3, 6, 23, 24 and 33;
- b. Objectives 7.2.6, 8.2.5 and 9.2.6; or
- c. Policies 30.2.6.1 and 30.2.7.1;

Policy 30.2.8.1 takes precedence. The Assessment Matters (Landscape) in chapters 21 and 23 in this plan are relevant when implementing the policy.

30.2.8.3 Managing adverse effects on the National Grid by:

- a. only allowing new or extended buildings, structures and earthworks in the National Grid Yard where they will not compromise the operation, maintenance, upgrade and development of the National Grid;
- b. avoiding National Grid Sensitive Activities within the National Grid Yard and, to the extent reasonably possible, managing activities to avoid reverse sensitivity effects on the National Grid;
- c. managing potential electrical hazards, and the adverse effects of buildings, structures and National Grid Sensitive Activities on the operation, maintenance, upgrade and development of the Frankton Substation;
- d. managing subdivision within the National Grid Subdivision Corridor to avoid reverse sensitivity effects and to ensure that the National Grid is not compromised.

SP 3.3.37

26. In relation to SP 3.3.37, Policy 4.3.5 of the operative RPS 2019 is relevant. It says:

Policy 4.3.5 – Protect infrastructure with national or regional significance, by all of the following:

- a) *Restricting the establishment of activities that may result in reverse sensitivity effects;*
- b) *Avoiding significant adverse effects on the functional needs of such infrastructure;*
- c) *Avoiding, remedying or mitigating other adverse effects on the functional needs of such infrastructure;*
- d) *Protecting infrastructure corridors from activities that are incompatible with the anticipated effects of that infrastructure, now and for the future.*

27. The PDP has the following definition of “reverse sensitivity”:

Means the potential for the operation of an existing lawfully established activity to be constrained or curtailed by the more recent establishment or intensification of other activities which are sensitive to the established activity.

28. The PDP also has definitions for “Activity Sensitive to Aircraft Noise (ASAN)”, “Activity Sensitive to Road Noise” (same definition as ASAN), and for “National Grid Sensitive Activities”.

29. The Court in its Minute at [18] asks whether the policy is intended to apply just to new incompatible activities, or as a restriction on existing activities. The Court also asks whether the management of effects is to apply to just their development, or to their continuance.

30. The parties agree that the policy is intended to apply to new incompatible activities, including the intensification of existing incompatible activities, not to existing incompatible activities. Incompatible activities can have *direct* effects (ie. traffic or pedestrian generation; glare from glasshouses; bird hazards from certain habitats/uses) as well as *reverse sensitivity* effects. The policy refers to “adverse effects of incompatible activities” so as to encompass all these potential effects (not just reverse sensitivity effects) and all incompatible activities (not just “sensitive activities”).

31. The parties consider that the drafting of the policy is appropriate, as it is further articulated in other PDP Chapters. For example, Objective 21.2.7 and Policies 21.2.7.1 to 20.2.7.4 (Rural Zone) address airports and activities sensitive to aircraft noise. Objective 7.2.2 and Policies 7.2.2.1 to 7.2.2.3 (Low Density Suburban Zone) also addressing this matter.
32. For new activities, the management spectrum for adverse effects could extend from avoidance to mitigation by design or location. It could extend beyond development to ongoing mitigation measures (ie. double glazing; mechanical ventilation; covenants etc).

Objective 30.2.8 and Policies 30.2.8.1, 30.2.8.2 and 30.2.8.3

33. The Minute does not express any concerns about these provisions. However, in assessing matters raised in the Minute on other provisions, the parties have agreed that the National Grid specific provisions could be better amended through the following:
- 33.1 Inclusion of “Wahi Tupuna identified in the District Plan maps” as a matter that Transpower must seek to avoid adverse effects on, in SP 30.2.8.1(b)(i)D. Wahi Tupuna are being notified on the Plan Maps, through Stage 3 of the PDP, in September 2019;
- 33.2 Addition of the words “values and attributes of the areas” and “values and attributes” in SP 30.2.8.1(b)(ii). This is considered to more clearly express that some of the resources listed in (b)(i) such as SNAs and wahi tapuna, are important because of their ‘attributes’, rather than ‘values’ which sits with ONL/Fs and section 7(c) landscapes;
- 33.3 Addition to SP 30.2.8.2, the National Grid ‘precedence policy’ of additional PDP provisions, which is necessary to give effect to the NPSET. The ‘precedence policy’ does not mean that the listed provisions do not apply, instead it means that Policy 30.2.8.1 takes precedence in the event of any conflict. The changes agreed at the August mediation are to include reference to:
- (a) Chapter 24, which is the Chapter 24 Wakatipu Basin Zone. Chapter 24 includes policies for section 7(c)

landscapes that may conflict with the National Grid Policy 30.2.8.1;

- (b) Objectives 7.2.6, 8.2.5 and 9.2.6. Transpower appealed these three policies, seeking changes to ensure that they gave effect to NPSET. This relief is allocated to Topic 17. Those three objectives (for example 7.2.6: Development efficiently utilises existing infrastructure and minimises impacts on infrastructure networks), apply to infrastructure beyond the National Grid. Therefore to avoid drafting a carve-out in each of the three residential zones, the parties agreed to include the three objectives into the 'precedence policy'.

Other amenity landscapes in Policy 30.2.8.1(b)(i)C

34. The parties note that they have agreed to the language "Rural Character Landscapes and other amenity landscapes" in both Policy 30.2.8.1(b)(i)C and Policy 6.3.37. Policy 6.3.37 is allocated to Topic 2, Subtopic 11.
35. Parts of the Rural Zone are identified on the Plan Maps by way of an overlay, as 'Rural Character Landscapes'. This reflects that they are section 7(c) landscapes. There are however other section 7(c) amenity landscapes within the District, that are not 'identified' on the plan maps by way of the Rural Character Landscape overlay. The intention is to capture those areas – for example, the Rural Residential Zone, the Wakatipu Basin Zone, parts of the Jacks Point Zone that are not ONL.
36. The parties respectfully note that the appropriateness of this language should be subject to consistency with the language, if any, adopted by the Court, in its Topic 2 decision. In issuing the attached draft consent order, the parties respectfully request that the Court consider whether the language "other amenity landscapes" remains appropriate, or some other terminology that appropriately captures all section 7(c) landscapes in the District.

Definition of “National Grid”

37. In the October 2018 mediation the parties agreed amendments to the definition of “National Grid”. These amendments were not queried by the Court in its Minute, and so no further changes are suggested.

Other matters

38. QAC have agreed to withdraw relief from its notice of appeal, and Transpower have agreed to withdraw relief from its notice of appeal and a number of section 274 interests. That relief is not required given the agreements reached as set out in the draft consent order.
39. All of the parties to this memorandum are satisfied that agreed provisions, proposed for the Court's endorsement, are within the scope of relief sought in the appellants' notices of appeal, fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Resource Management Act 1991, in particular Part 2.
40. The parties therefore respectfully request that the Court dispose of the appeal points allocated to Topic 1, Subtopic 4 by approving the provisions as set out in the attached draft consent order.

Stage 2 Appeal by Transpower

41. Transpower has filed an appeal on Stage 2 of the PDP. Aurora is the only section 274 party to this appeal.
42. The one appeal point in the Transpower Stage 2 appeal was agreed by way of an addition of “Chapter 24” into Policy 30.2.8.2, in the Energy and Utilities Chapter. This resolves all of Transpower's Stage 2 appeal.
43. Transpower, Aurora and the Council therefore respectfully request that the Court dispose of Transpower's Stage 2 appeal by approving the addition of Chapter 24, into Policy 30.2.8.2, as set out in the attached draft consent order. These three parties are satisfied that the agreed change to 30.2.8.2, proposed for the Court's endorsement, is within the scope of relief sought in the appellants' notices of appeal, fall within the Court's

jurisdiction, and conform to the relevant requirements and objectives of the Resource Management Act 1991, in particular Part 2.

Costs

44. No party has any issue as to costs.

DATED this day of September 2019

Counsel/representative for
Queenstown Airport Corporation
(Appellant)



Counsel/representative for
Transpower NZ Limited
(Appellant)

S J Scott/ H L Baillie
Counsel for Queenstown Lakes
District Council
(Respondent)

Counsel/representative for Aurora
Energy Ltd

Counsel/representative for Board
of Airline Representatives New
Zealand Inc

Counsel/representative for Darby
Planning

Counsel/representative for
Federated Farmers

Counsel/representative for FII
Holdings Ltd

Counsel/representative for Hansen
Family Partnership

Counsel/representative for Jacks
Point and Others

Counsel/representative for
Remarkables Park Ltd

Counsel/representative for Royal
Forest and Bird Protection Society
of New Zealand Inc

Counsel/representative for Soho
Ski Area Limited and Blackmans
Creek

Counsel/representative for
Southern District Health Board

Counsel/representative for Treble
Cone Investments Ltd

Counsel/representative for
Universal Developments Limited

Counsel/representative for
Vodafone New Zealand Limited,
Spark New Zealand Trading
Limited, Chorus New Zealand
Limited

Attachment: Draft consent order

BEFORE THE ENVIRONMENT COURT

**ENV-2018-331-000018
ENV-2019-CHC-027**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under clause 14 of Schedule 1 of the Act against decisions of the Queenstown Lakes District Council on Stage 1 of the Proposed Queenstown Lakes District Plan

BETWEEN **QUEENSTOWN AIRPORT CORPORATION**

AND **TRANSPower NEW ZEALAND LIMITED**

Appellants

concerning Topic 1 Subtopic 4 of Stage 1 of the Proposed Queenstown Lakes District Plan

AND **AURORA ENERGY LTD
BOARD OF AIRLINE REPRESENTATIVES NEW ZEALAND INC
DARBY PLANNING
FEDERATED FARMERS
FII HOLDINGS LTD
HANSEN FAMILY PARTNERSHIP
JACKS POINT AND OTHERS
REMARKABLES PARK LTD
ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INC
SOHO SKI AREA LTD AND BLACKMANS CREEK
SOUTHERN DISTRICT HEALTH BOARD
TREBLE CONE INVESTMENTS LTD
[cont]**

**UNIVERSAL
DEVELOPMENTS LTD
VODAFONE NEW ZEALAND
LTD, SPARK NEW ZEALAND
TRADING LTD, CHORUS
NEW ZEALAND LTD**

Section 274 Parties

AND

**TRANSPower NEW
ZEALAND LIMITED**

Appellant

AND

AURORA ENERGY LTD

Section 274 party

concerning Stage 2 of the
Proposed Queenstown Lakes
District Plan

AND

**QUEENSTOWN LAKES
DISTRICT COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge

sitting alone under section 279

of the Act **IN CHAMBERS** at

CONSENT ORDER

Introduction

1. The Court has read and considered the notices of appeal from Queenstown Airport Corporation (**QAC**)⁴ and Transpower New Zealand Limited (**Transpower**)⁵ against decisions by the Queenstown Lakes District Council (**Council**) on Stage 1 of the Proposed Queenstown Lakes District Plan (**PDP**), in particular the parts of those appeals

⁴ ENV-2018-CHC-093.

⁵ ENV-2018-CHC-114.

allocated into Strategic Topic 1 Subtopic 4 “Regionally significant infrastructure”.

- 2.** Fourteen parties gave notice of their intention to become parties to the appeals under section 274 and participated in Environment Court assisted mediation on 17 – 19 October 2018 and 8 August 2019:
 - 2.1** Aurora Energy Ltd;
 - 2.2** Board of Airline Representatives New Zealand Inc;
 - 2.3** Darby Planning;
 - 2.4** Federated Farmers;
 - 2.5** FII Holdings Ltd;
 - 2.6** Hansen Family Partnership;
 - 2.7** Jacks Point and Others;
 - 2.8** Remarkables Park Ltd;
 - 2.9** Royal Forest and Bird Protection Society of New Zealand Inc;
 - 2.10** Soho Ski Area Limited and Blackmans Creek;
 - 2.11** Southern District Health Board;
 - 2.12** Treble Cone Investments Ltd;
 - 2.13** Universal Developments Limited; and
 - 2.14** Vodafone New Zealand Limited, Spark New Zealand Trading Limited, Chorus New Zealand Limited.

- 3.** The Court has considered the memorandum of the parties dated [] September 2019 in which the parties respectfully requested that the Court approve the draft provisions attached to that memorandum.

- 4.** The Court is making this order under section 279(1)(b) of the Act, such an order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:
 - 4.1** all parties to the proceeding have executed the memorandum requesting this order; and

 - 4.2** all parties are satisfied that all matters proposed for the Court’s endorsement fall within the Court’s jurisdiction, and

conform to relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

Order

5. Therefore, the Court orders, by consent, that the provisions of Chapters 2, 3 and 30 of the Queenstown Lakes District Plan, as set out in **Appendix 1** are approved.
6. There is no order for costs.

DATED at this day of 2019

Environment Judge

APPENDIX 1

(amendments shown in underline and ~~strikethrough~~ text)

CHAPTER 2 - DEFINITIONS

Functional needs

Means the locational, operational, practical or technical needs of an activity, including development and upgrades.

National Grid

Means the network that transmits high-voltage electricity in New Zealand ~~and that is, at the notification of this Plan, was owned and operated by Transpower New Zealand Limited, including:~~

- a. transmission lines; and
- b. electricity substations.

CHAPTER 3 – STRATEGIC DIRECTIONS

Strategic Issue 1: Economic prosperity and equity, including strong and robust town centres, and the social and economic wellbeing and resilience of the District's communities may be challenged if the District's economic base lacks diversification and supporting infrastructure.

SO 3.2.1.9 Infrastructure in the District that is operated, maintained, developed and upgraded efficiently and effectively to meet community needs in a sustainable way. ~~and to maintain the quality of the environment.~~ (also elaborates on S.O. 3.2.2 following)

SP 3.3.36 Provide for the functional needs of regionally significant infrastructure while managing its adverse effects on the environment. (relevant to S.O. 3.2.1.9)

SP 3.3.37 Protect regionally significant infrastructure by managing the adverse effects of incompatible activities. (relevant to S.O. 3.2.1.9)

CHAPTER 30 – ENERGY AND UTILITIES

30.2.8 Objective - The national significance of the National Grid is recognised by the facilitation of the ongoing operation, maintenance, development and upgrading of the National Grid, while subject to the adverse environmental effects on the environment of the National Grid, and on the National Grid, are network being managed.

Policies

30.2.8.1 ~~Enabling the use and development of the National Grid by managing its adverse effects by:-~~

- ~~a. only allowing buildings, structures and earthworks in the National Grid Yard where they will not compromise the operation, maintenance, upgrade and development of the National Grid;~~
- ~~b. avoiding Sensitive Activities within the National Grid Yard;~~
- ~~c. managing potential electrical hazards, and the adverse effects of buildings, structures and Sensitive Activities on the operation, maintenance, upgrade and development of the Frankton Substation;~~
- ~~d. managing subdivision within the National Grid corridor so as to facilitate good amenity and urban design outcomes.~~

Recognise the benefits of the National Grid by:

- a. enabling the operation and maintenance of the National Grid;
- b. providing for the upgrade and development of the National Grid, while managing its adverse effects by:
 - i. seeking to avoid adverse effects on the values and attributes of the following:
 - A. Scheduled Significant Natural Areas, and those other areas that meet the criteria in Policy 33.2.1.8;
 - B. Outstanding Natural Landscapes and Features;

C. Rural Character Landscapes and other amenity landscapes;

D. Wahi Tupuna identified in the District Plan maps.

ii. where avoiding adverse effects on the values and attributes of the areas listed in (b)(i) above is not practicable, remedying or mitigating the adverse effects on those values and attributes;

iii. Avoiding, remedying or mitigating other adverse effects;

c. when considering the adverse effects on the upgrade and development of the National Grid, having regard to:

i. the extent to which measures to avoid, remedy or mitigate adverse effects may be constrained by functional needs;

ii. the extent to which adverse effects have been addressed through site, route or method selection;

iii. opportunities to reduce existing adverse effects;

iv. offsetting for residual adverse effects on indigenous biological diversity.

30.2.8.2

In the event of any conflict with:

a. the objectives and policies in Chapters 3, 6, 23, 24 and 33;

b. Objectives 7.2.6, 8.2.5 and 9.2.6; or

c. Policies 30.2.6.1 and 30.2.7.1;

Policy 30.2.8.1 takes precedence. The Assessment Matters (Landscape) in chapters 21 and 23 in this plan are relevant when implementing the policy.

30.2.8.3

Managing adverse effects on the National Grid by;

a. only allowing new or extended buildings, structures and earthworks in the National Grid Yard where they will not compromise the operation, maintenance, upgrade and development of the National Grid;

b. avoiding National Grid Sensitive Activities within the National Grid Yard and, to the extent reasonably possible, managing activities to avoid reverse sensitivity effects on the National Grid;

c. managing potential electrical hazards, and the adverse effects of buildings, structures and National

Grid Sensitive Activities on the operation, maintenance, upgrade and development of the Frankton Substation;

- d. managing subdivision within the National Grid Subdivision Corridor to avoid reverse sensitivity effects and to ensure that the National Grid is not compromised.

Attachment 2: Map of National Grid assets within the Queenstown District

Transpower Assets

Queenstown-Lakes District

Legend

- Territorial Land Authority
- Boundary
- NZ Roads
- Highways

Transpower Assets

- Cable Protection Zone
- Overhead Fibre Cable
- Underground Fibre Cables

Site

- MCSTN
- COMMS
- HWDC
- TEE

Transmission Line

- 0kV Overhead
- 11, 66kV Underground
- 11, 33, 66 kV Overhead
- 110kV Underground
- 110 kV Overhead
- 220kV Underground
- 220 kV Overhead
- 350 kV Overhead
- 350kV Submarine
- 400kV Overhead



TRANSPOWER
 Prepared by: Transpower Corporation
 Project: NZTM 2003 Scale: 1:634,000 Plan Size: A3L

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Attachment 3: Relevant Parts of 39.6 Schedule of Wāhi Tūpuna

PART 5

WĀHI TŪPUNA 39

Number	Name	Values	Description of sites included in this area	Recognised threats
				<ul style="list-style-type: none"> e. Exotic species including wilding pines f. Activities affecting the ridgeline and upper slopes g. Activities affecting natural character
23	Takerahaka	Settlement, mahika kai, archaeological	Takerehaka	<ul style="list-style-type: none"> a. Activities affecting water quality b. Subdivision and development c. Buildings and structures d. Energy and Utility activities e. Exotic species including wilding pines
24	Kawarau River	Ara tawhito, mahika kai, archaeological	Te Wai o Koroiko, Ōterotu - Ōterotu is the traditional Māori name for the Kawarau Falls. Ōterotu is located at the outlet of Whakatipu-wai-māori.	<ul style="list-style-type: none"> a. New roads or additions/alterations to existing roads, vehicle tracks and driveways b. Buildings and structures c. Earthworks d. Subdivision and development e. Damming, activities affecting water quality f. Exotic species including wilding pines g. Commercial and commercial recreational activities
25	Tarahaka whakatipu	Ara Tawhito, pounamu, nohoaka.		<ul style="list-style-type: none"> a. Activities affecting the ridgeline and upper slopes b. Exotic species including wilding pines c. Activities affecting natural character d. Buildings and structures e. Energy and Utility activities

PART 5

WĀHI TŪPUNA 39

Number	Name	Values	Description of sites included in this area	Recognised threats
26	Wye Creek	Mahika kai, nohoaka, wāhi taoka, archaeological values		<ul style="list-style-type: none"> a. Subdivision and development b. Energy and Utility activities c. Buildings and structures d. Earthworks e. Exotic species including wilding pines f. Commercial and commercial recreational activities
27	Te Taumata o Hakitekura	Wāhi taoka		<ul style="list-style-type: none"> a. Exotic species including wilding pines b. Buildings and structures, utilities c. New roads or additions/alterations to existing roads, vehicle tracks and driveways d. Activities affecting the ridgeline and upper slopes
28	Haehaenui (Arrow River)	Ara tawhito, mahika kai, nohoaka		<ul style="list-style-type: none"> a. Damming, activities affecting water quality b. Buildings and structures c. Energy and Utility activities d. Subdivision and development e. Earthworks f. Commercial and commercial recreational activities
29	Kimiākau (Shotover River)	Ara tawhito, mahika Kai, nohoaka	Puahuru	<ul style="list-style-type: none"> a. Damming, activities affecting water quality b. Buildings and structures c. Energy and Utility activities d. Subdivision and development e. Earthworks f. Exotic species including wilding pines

PART 5

WĀHI TŪPUNA 39

Number	Name	Values	Description of sites included in this area	Recognised threats
				g. Commercial and commercial recreational activities
30	Makarore (Makarora River)	Ara tawhito, mahika kai, nohoaka	Te Poutu Te Raki, Te Pari Kōau, Pōkeka Weka, Te Whare Manu, Waitoto, Te Whiti o Te Wahine	a. Damming, activities affecting water quality b. Buildings and structures c. Energy and Utility activities d. Subdivision and development e. Earthworks f. Commercial and commercial recreational activities
31	Mātakitaki (Matukituki River)	Ara tawhito, mahika kai, nohoaka		a. Damming, activities affecting water quality b. Buildings and structures, utilities c. Subdivision and development d. Earthworks e. Commercial and commercial recreational activities
32	Mata-Au (Clutha) River	Ara tawhito, mahika kai, nohoaka	Kahuika, Okai Tū, Te Rua Tūpāpaku	a. Damming, activities affecting water quality b. Buildings and structures, utilities c. Subdivision and development d. Earthworks e. Commercial and commercial recreational activities
33	Whakatipu-wai-Māori (Lake Whakatipu)	Wāhi taoka, mahika kai, ara tawhito	Whakatipu-wai-Māori	a. Damming, activities affecting water quality b. Buildings and structures, utilities c. Earthworks d. Subdivision and development e. New roads or additions/alterations to existing roads,

Attachment 4: Location of the National Grid relative to the Wāhi Tupuna Areas

Transpower Assets & Wāhi Tūpuna Areas

Queenstown - Lakes District

Overview

Legend

Transpower Assets

National Grid

District Plan/PDP Stage 3 & 3B*

* Data provided by Queenstown-Lakes District Council

- Landscape Classification Lines
- Landscape Classification Labels
- Landscape Classification
- Urban Growth Boundary
- Queenstown Waterfront Zone
- Commercial Precinct
- Building Restriction Area
- Water Transport Infrastructure Overlay
- Moderate - High Landscape Sensitivity Area
- High Landscape Sensitivity Area
- Visitor Accommodation Subzone

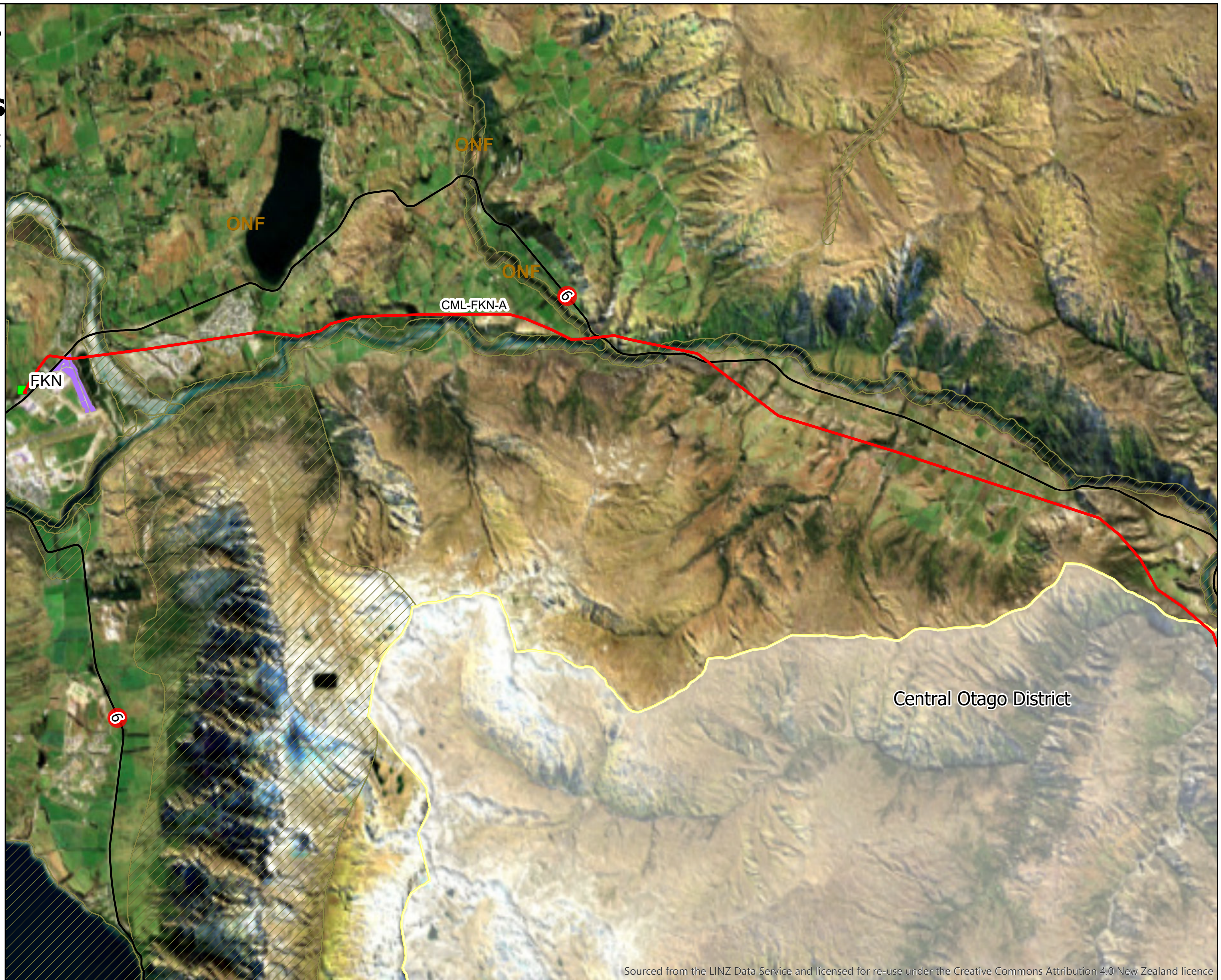
Stage 3b Zones

- Civic Space
- Medium Density Residential
- Rural
- Rural Visitor
- Settlements
- Historic Heritage

- Landscape Classification Lines
- Landscape Classification Labels
- Landscape Classification
- Urban Growth Boundary
- Specific Rules (Frankton)
- Wāhi Tupuna
- Designation
- Commercial Precinct
- Building Restriction Area
- Visitor Accommodation Subzone

Zones

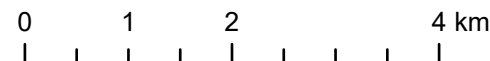
- Low Density Suburban Residential
- Medium Density Residential
- High Density Residential
- Business Mixed Use
- General Industrial
- Three Parks Commercial
- Settlements
- Active Sports and Recreation
- Community Purposes



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Projection: NZTM 2000 Scale: 1:73,000 Plan Size: A3L



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Transpower Assets & Wāhi Tūpuna Areas

Queenstown - Lakes District

Kimiākau
Grid River Crossing
Wāhi Tūpuna

Legend

Transpower Assets

National Grid

District Plan/PDP Stage 3 & 3B*

* Data provided by Queenstown-Lakes District Council

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- High Landscape Sensitivity Area
- Visitor Accommodation Subzone

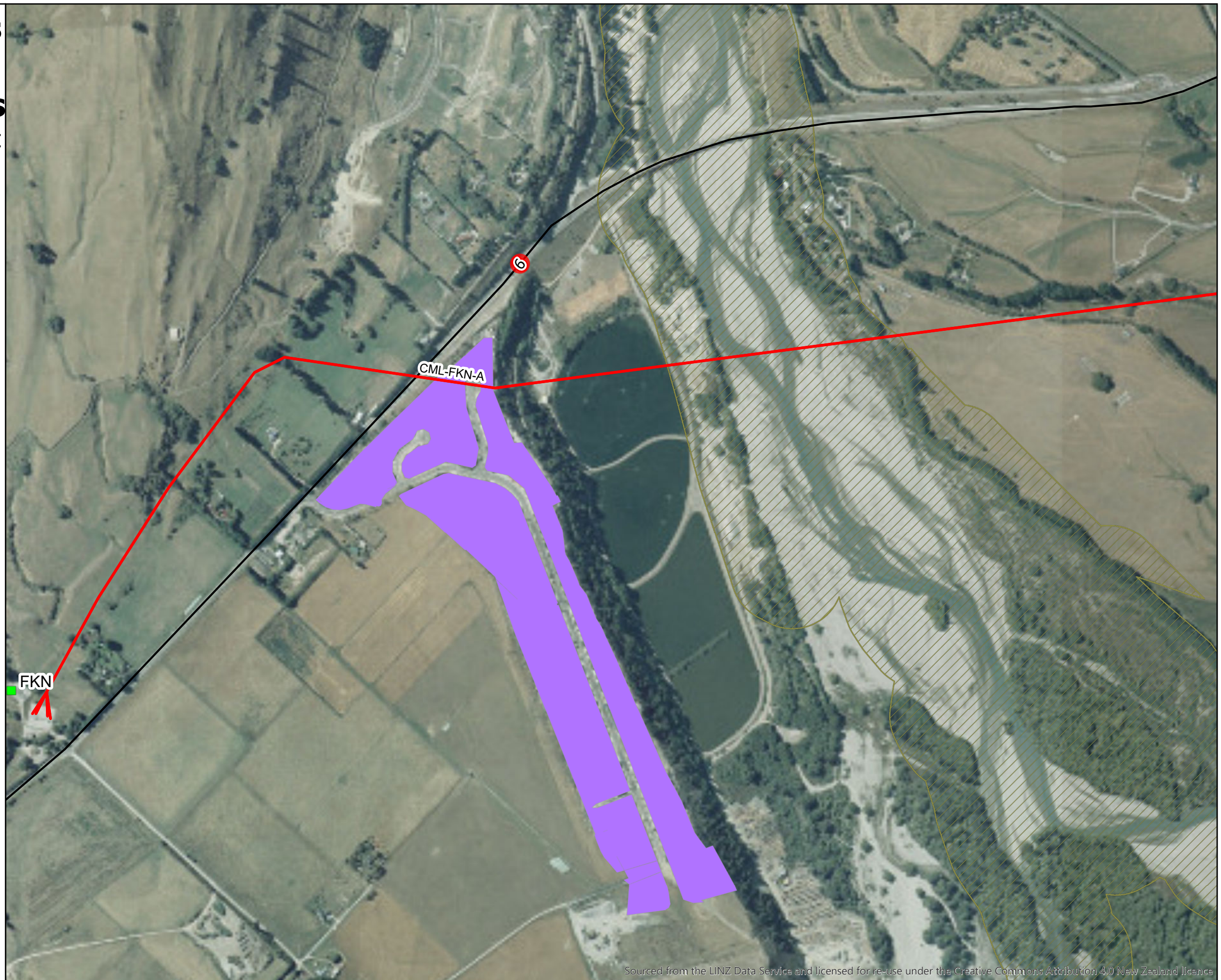
Stage 3b Zones

- Civic Space
- Medium Density Residential
- Rural
- Rural Visitor
- Settlements
- Historic Heritage

- Landscape Classification Lines
- Landscape Classification Labels
- Landscape Classification
- Urban Growth Boundary
- Specific Rules (Frankton)
- Wāhi Tupuna
- Designation
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- Building Restriction Area
- Visitor Accommodation Subzone

Zones

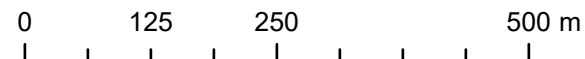
- Low Density Suburban Residential
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- High Density Residential
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Transpower Assets & Wāhi Tūpuna Areas

Queenstown - Lakes District

Kawarau River Wāhi Tūpuna

Legend

Transpower Assets

— National Grid

District Plan/PDP Stage 3 & 3B*

* Data provided by Queenstown-Lakes District Council

— Landscape Classification Lines

— Landscape Classification Labels

— Landscape Classification

— Urban Growth Boundary

— Queenstown Waterfront Zone

— Commercial Precinct

— Building Restriction Area

— Water Transport Infrastructure Overlay

— Moderate - High Landscape Sensitivity Area

— High Landscape Sensitivity Area

— Visitor Accommodation Subzone

Stage 3b Zones

— Civic Space

Civic Space

— Medium Density Residential

Medium Density Residential

— Rural

Rural

— Rural Visitor

Rural Visitor

— Settlements

Settlements

— Historic Heritage

— Landscape Classification Lines

— Landscape Classification Labels

— Landscape Classification

— Urban Growth Boundary

— Specific Rules (Frankton)

— Wāhi Tupuna

— Designation

— Commercial Precinct

— Building Restriction Area

— Visitor Accommodation Subzone

Zones

— Low Density Suburban Residential

Low Density Suburban Residential

— Medium Density Residential

Medium Density Residential

— High Density Residential

High Density Residential

— Business Mixed Use

Business Mixed Use

— General Industrial

General Industrial

— Three Parks Commercial

Three Parks Commercial

— Settlements

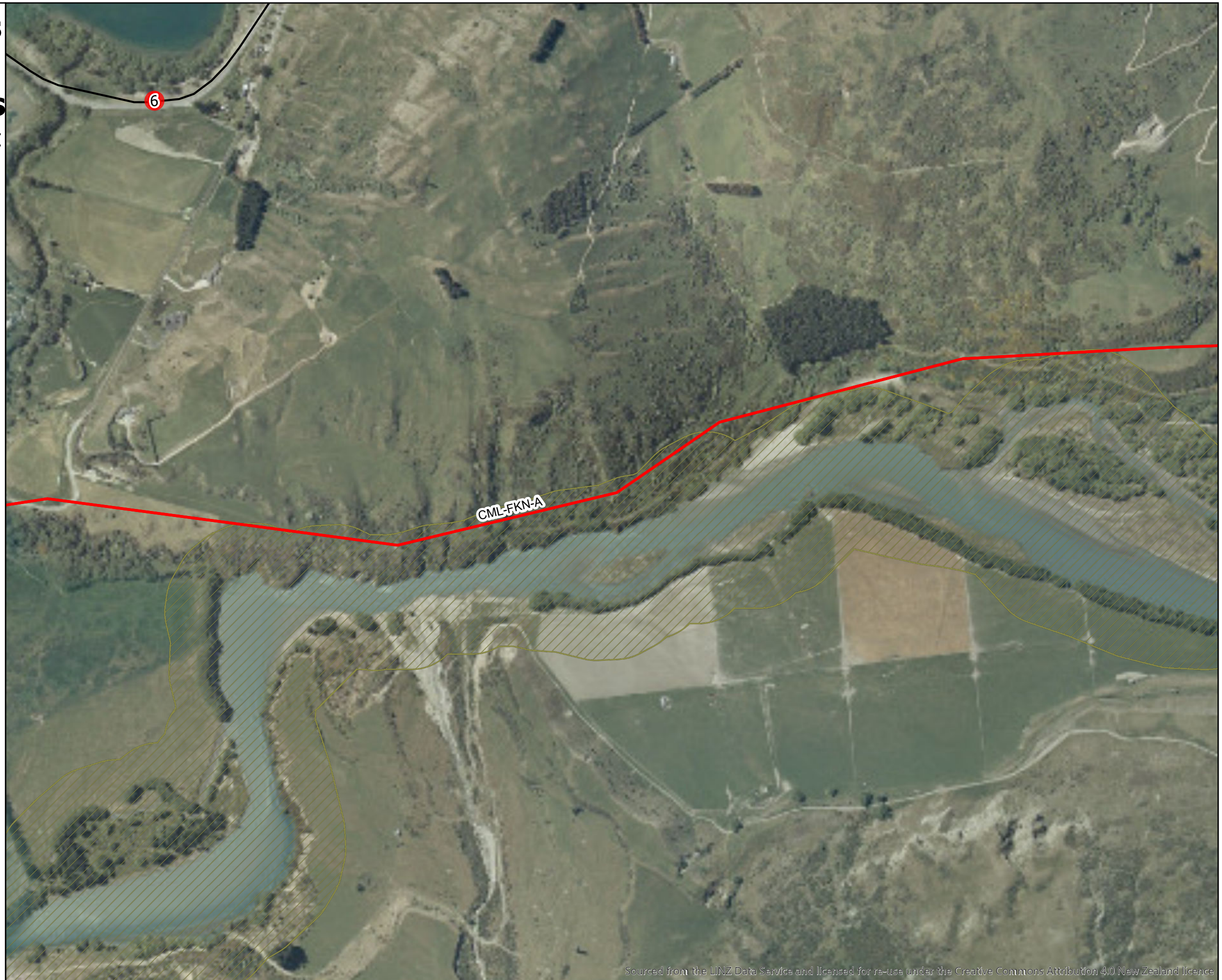
Settlements

— Active Sports and Recreation

Active Sports and Recreation

— Community Purposes

Community Purposes



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Transpower Assets & Wāhi Tūpuna Areas

Queenstown - Lakes District

Kawarau River Wāhi Tūpuna

Legend

Transpower Assets

— National Grid

District Plan/PDP Stage 3 & 3B*

* Data provided by Queenstown-Lakes District Council

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— High Landscape Sensitivity Area

— Visitor Accommodation Subzone

Stage 3b Zones

— Civic Space Civic Space

— Medium Density Residential Medium Density Residential

— Rural Rural

— Rural Visitor Rural Visitor

— Settlements Settlements

— Historic Heritage

— Landscape Classification Lines

— Landscape Classification Labels

— Landscape Classification

— Urban Growth Boundary

— Specific Rules (Frankton)

— Wāhi Tupuna

— Designation

— Commercial Precinct

— Building Restriction Area

— Visitor Accommodation Subzone

Zones

— Low Density Suburban Residential Low Density Suburban Residential

— Medium Density Residential Medium Density Residential

— High Density Residential High Density Residential

— Business Mixed Use Business Mixed Use

— General Industrial General Industrial

— Three Parks Commercial Three Parks Commercial

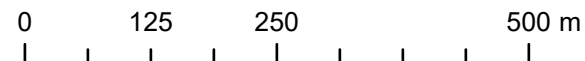
— Settlements Settlements

— Active Sports and Recreation Active Sports and Recreation

— Community Purposes Community Purposes



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Transpower Assets & Wāhi Tūpuna Areas

Queenstown - Lakes District

Kawarau River
Wāhi Tūpuna

Legend

Transpower Assets

— National Grid

District Plan/PDP Stage 3 & 3B*

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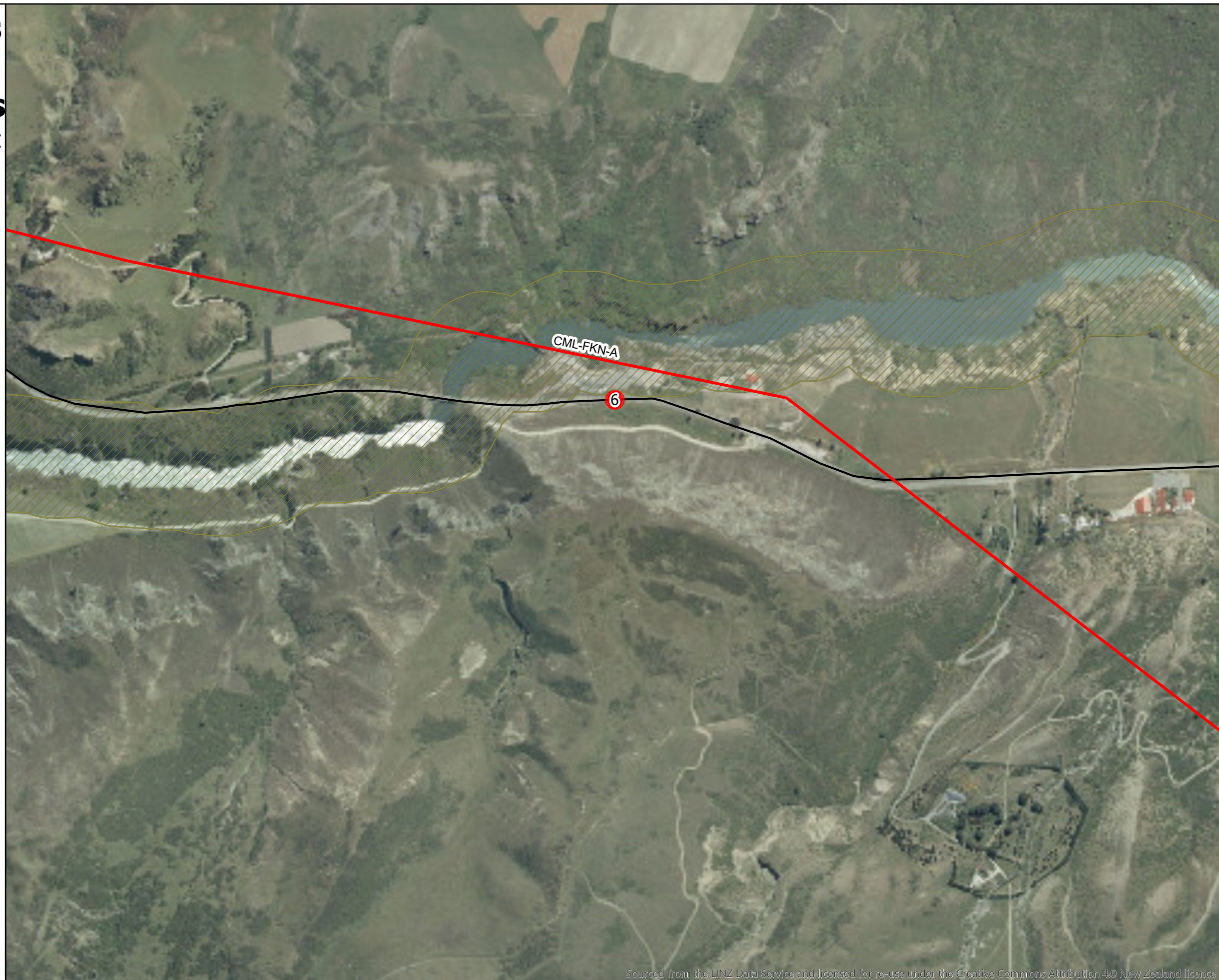
Stage 3b Zones

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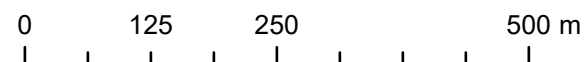
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Transpower Assets & Wāhi Tūpuna Areas

Queenstown - Lakes District

Kawarau River & Haehaenui (Arrow) River Wāhi Tūpuna

Legend

Transpower Assets

— National Grid

District Plan/PDP Stage 3 & 3B*

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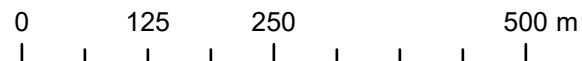
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