

DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	Ballantyne Barker Holdings Limited
RM reference:	RM160814
Location:	Ballantyne Road, Wanaka
Proposal:	undertake a ten lot subdivision and identify residential building platforms on each allotment
Type of Consent:	Subdivision
Legal Description:	Lot 8 Deposited Plan 27696 held in Computer Freehold Register OT19B/219
Zoning:	Rural General
Activity Status:	Discretionary
Notification:	Public
Commissioner:	Commissioners Wendy Baker and David Whitney
Date Issued:	23 May 2017
Decision:	REFUSED

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of the Queenstown Lakes District Plan
IN THE MATTER	of an application for resource consent to undertake a ten lot subdivision and identify residential building platforms on each allotment
BY	Ballantyne Barker Holdings Limited – RM160814

DECISION OF COMMISSIONERS DAVID WHITNEY AND WENDY BAKER

Introduction

1. The applicant sought to undertake a ten lot subdivision and associated earthworks on Lot 8 DP 27696 comprising nine rural living allotments of 0.8 – 1.06ha and a balance allotment of 39.88ha. Residential Building Platforms (RBPs) are to be identified on each site.
2. We have been delegated the Queenstown Lakes District Council's powers pursuant to Section 34A of the Resource Management Act 1991 (the Act/RMA) to hear and decide this application and decide on any procedural matters related to the hearing of it.

Hearing and Site Visit

3. We undertook a site visit on 19 April 2017 accompanied by Ms Sarah Gathercole, Queenstown Lakes District Council Senior Planner. We drove across the subject site and visited all the proposed RBPs. We also viewed the site from Ballantyne Road, Riverbank Road and Morris Road, and from Black Peak Road (being a private road off Morris Road).
4. The hearing was held in Wanaka on 19 April 2017.
5. We concluded the hearing on 19 April 2017 having heard all evidence and closing submissions.

Abbreviations

6. “ODP” – the Operative District Plan
 “PDP” – the Proposed District Plan
 “RPS” – the Regional Policy Statement
 “PRPS” – the Proposed Regional Policy Statement
 “the Applicant” – Ballantyne Barker Holdings Limited
 “VAL” – Visual Amenity Landscape
 “RBP” – Residential building platform /building platform

Appearances

7. For the applicant:
 Mr P Page – Counsel
 Mr M Garnham – Director of the applicant company
 Mr D White – Planner
 Ms A Steven – Landscape Architect
 Mr M Botting – Surveyor

Submitters

Mr J Howarth on behalf of the Upper Clutha Environmental Society
 Mr D Pickard
 Ms D Morshuis
 Ms J Caunter – Counsel for Mr & Ms Le Brun
 Mr R Le Brun
 Ms M Snodgrass – Landscape Architect for Mr & Ms Le Brun
 Mr T Hazeldine (it is noted that Professor Hazeldine chose to be referred to as ‘Mr Hazeldine’ for the purposes of this hearing)

Council Officers

Ms S Gathercole – Reporting Planner
 Ms L Overton – Engineer
 Dr M Read – Consultant Landscape Architect
 Ms R Beer – Manager Planning Support

8. The Council’s Section 42A report and the Applicant’s evidence and Submitters’ expert evidence were pre-circulated in accordance with the requirements of the Act. We pre-read that material and took it as read

The Application

9. Consent is sought to undertake a subdivision which will result in ten allotments with ten RBPs.
10. The application is described in the Assessment of Effects on the Environment (AEE) lodged by the Applicant with the application. A number of changes were made post-notification by the

Applicant which are set out in Mr White's email to Ms Gathercole dated 15 March 2017 and attached as appendix 4 to the Section 42A report. We do not repeat that material in detail and adopt it.

11. At the start of the hearing the Applicant wished to have both the original and the amended site for the building platform for the Farm Manager's House on Lot 10 considered. However, in closing, Mr Page withdrew the original location in recognition of Mr Hazeldine's concerns. In this decision we consider only the more southerly location of the building platform. In closing Mr Page also deleted Lot 8 and the associated building platform; and offered a condition, to be subject to a consent notice, to the effect that there be no further subdivision or development of Lot 10 until such time as there is a change of zoning. These changes, along with others volunteered by the Applicant are presented in further detail in paragraph 43 of this decision.

Submissions

12. The Application was publicly notified with submissions closing on 8 February 2017. Eight submissions were received, seven in opposition and one in support:

	Name	Location of Submitters' Property
1	Beth Campbell	420 Ballantyne Road, Wanaka
2	John Barlow	106 Warren Street, Wanaka
3	Upper Clutha Environmental Society Inc	245 Hawea Back Road, Wanaka
4	Rockbourne Trust, Phillip Thomson & Daphne Morshuis	80 Morris Road, Wanaka
5	David Pickard	382 Ballantyne Road, Wanaka
6	Robert & Sharynne Le Brun	81 Black Peak Road, Wanaka
7	Tim Hazeldine	319 Ballantyne Road, Wanaka
8	Grant Cochrane	444 Ballantyne Road, Wanaka

13. Six parties provided written approvals in respect of the proposal :

	Person (owner/occupier)	Address (location in respect of subject site)
1	Ken and June Bagley	286 Ballantyne Road
2	Benjamin and Janette Bagley	279 Ballantyne Road
3	Nicholas and <u>Reika</u> Fellows	239 Riverbank Road
4	Graeme Hawker – Hawker Deer Ltd	Sundance Properties Ltd, Ballantyne Road (Lot 5 DP 321501)
5	John Wellington and Julie Jones	272 Ballantyne Road
6	Dominic Peter Stayne and Lisa Francis Dean	272B Ballantyne Road

Reasons consent is required

14. The site is zoned Rural General in the ODP.
15. The Applicant and Ms Gathercole agreed that the proposal falls to be considered as a **discretionary** activity under the Operative Queenstown Lakes District Plan and that resource consent is required for the following reasons:

- A **restricted discretionary** activity resource consent pursuant to Rule 5.3.3.3xi as the proposal breaches Site Standard 5.3.5.1vi in regard to the minimum setback from internal boundaries. It is proposed that future buildings on the proposed building platforms infringe the internal setbacks as follows:
 - Lot 3 being 7.6 metres from the southern boundary with Lot 10
 - Lot 4 being 12.7 metres from the boundary with right of way D and 7.8 metres from the boundary of right of way A
 - Lot 6 being 12.4 metres from the northern boundary with Lot 10 and 6.5 metres from the boundary of right of way F
 - Lot 9 being 14.3 metres from right of way H.
 Council's discretion is restricted to this matter in terms of Rule 5.3.3.3xi.

- A **discretionary** activity resource consent pursuant to Rule 15.2.3.3(vi) for a 10 lot subdivision in the Rural General zone and for the location of residential building platforms on each lot.

16. Mr White also identified land use Rule 5.3.3.3i(b) which provides for the identification of residential building platforms as a discretionary activity. Whether or not this rule is breached was not discussed at the hearing. It has for some time been customary within the Queenstown Lakes District Council (Council) to identify both the land use and subdivision rules when considering subdivision consents for residential building platforms. However, there does not seem to be any basis for this other than if the Applicant seeks the option of identifying the building platforms separately from the subdivision. This is not the case here, and we do not consider that consent is required under Rule 5.3.3.3i(b).

17. A memorandum from Rob Bond, Senior Geotechnical Engineer at Opus, was presented at the hearing which clarified matters in relation to The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESC). As a result Ms Gathercole agreed with the Applicant that the NESC does not apply, and we concur.

Relevant Statutory Provisions

18. Section 104 sets out the matters to be considered in determining an application for resource consent. Under Section 104B we may grant or refuse consent; and under Section 106 we may refuse subdivision consent or impose conditions relating to the provision of access and effects of natural hazards. If we grant consent we may impose conditions under Sections 108 and 220.

Relevant Regional Policy Statement Provisions

19. Both the Operative and Proposed Regional Policy Statements are relevant to this application.

RPS

20. The AEE lodged with the application advised us that the District Plan cannot be inconsistent with the RPS. It goes on to state that an assessment against the relevant objectives and policies relating to land, water quality and natural hazards is given effect to by the District Plan the relevant provisions of which are presented in other sections of the AEE. We accept this point of view and consider that it is generally in line with the recent High Court

Decision R J Davidson Family Trust v Marlborough District Council [2017] NZHC 52. There are two reasons, however, why we consider it prudent to consider the RPS in this case. Firstly, the caselaw established relates directly to the application of Part 2 of the RMA although it can likely be extrapolated to apply to the RPS. Secondly, without an assessment we are not certain how to establish whether the PDP and ODP are invalid, have incomplete coverage or are uncertain in relation to giving effect to the RPS.

21. Ms Gathercole identifies Objective 5.4.3 and Policy 9.5.4 as relevant with which we concur, but we also consider Objectives and Policies 3.1, 5.3, 5.4.1 and 5.5.4 are relevant in this case.

PRPS

22. The PRPS was notified on 23 May 2015, and decisions were notified on 1 October 2016. Some 26 Notices of Appeal have been lodged. Ms Gathercole identified as relevant Policy 3.2.5 and Objective 5.3. We concur, but consider further objectives and policies are of relevance:

- Objective 1.1 Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago.
- Policy 1.1.1 Integrated Resource Management
- Policy 1.1.2 Economic Wellbeing
- Objective 3.1 The values of Otago's natural resources are recognised, maintained and enhanced.
- Policy 3.1.10 Natural features, landscapes and seascapes
- Policy 3.1.12 Environmental Enhancement
- Policy 4.3.1 Managing Infrastructure activities
- Objective 5.4 Adverse effects of using and enjoying Otago's natural and physical resources are minimised

Relevant District Plan Provisions

23. The Section 42A report and the Applicant's AEE referred us to Parts 4, 5, 15 and 22 of the ODP, which we agree are the relevant provisions to consider.
24. The AEE referred us to Chapters 3, 6 and 21 of the PDP. Ms Gathercole's Section 42A report also referred us to Chapter 27. To the extent that this has weight, we consider all these are relevant.

The existing environment

25. The site is described in Section 2.1 of the AEE and we adopt this description. We note that the upper terrace containing proposed Lots 8 and 9 is distinctly separated from the lower terrace that contains proposed Lots 6 and 7.

Permitted baseline

26. Ms Gathercole set out in her Section 42A report at paragraph 7.2.1 some activities that are permitted in the Rural General zone and we accept this, but add planting with the exception of some wilding species.

Legal Submissions and Evidence

Council Planner

27. Sarah Gathercole, Council Senior Planner, prepared a report pursuant to Section 42A containing a landscape report and an engineering report upon which it was based. She listed the following actual and potential effects on the environment as relevant:

- Effects on rural character
- Landscape and visual amenity effects
- Cumulative effects
- Contaminated Land
- Access and traffic
- Reverse sensitivity
- Natural hazards
- Earthworks
- Services
- Positive effects

28. In her assessment, Ms Gathercole considered that the adverse effects on visual amenity would be significant, and that cumulative effects on landscape would be inappropriate. In her view the proposal was inconsistent with the objectives and policies of the ODP and PDP. She recommends that consent be refused for these reasons.

Council Engineer

29. Lyn Overton, Council Engineer, prepared a report which generally found that any engineering related issues could be dealt with by conditions. During the hearing there was discussion about the access to the building platform on Lot 10, with Mr Hazeldine preferring that access to the building platform on Lot 10 is achieved directly from Ballantyne Road. Ms Overton expressed significant concerns in terms of sight distances with that option. Ms Overton also confirmed that following her consideration of the further information provided by Mr Botting, that she no longer has concerns about any erosion hazard along the Cardrona River, water quality or the geotechnical information in relation to Lot 10.

30. Ms Overton also advised us that the upgrade and sealing of Ballantyne Road has been budgeted to occur within the next two years in the Council's Long Term Plan.

Consultant Landscape Architect

31. Marion Read, Consultant Landscape Architect, prepared a peer review report on the landscape aspects of the proposal. She concluded that the proposal would domesticate the character of the landscape resulting in a moderately adverse effect. She considered that the development had in the main been designed to utilise the natural topography to minimise effects, however in her view it exceeded the capacity of the site and the landscape to absorb the development.

32. Dr Read considered that the adverse effects on visual amenity would be moderately insignificant from public places and moderate from the Rockbourne (Ms Morshuis) and

Gibson properties. She had concluded that the adverse visual amenity effects on the Hazeldine property would be significant; however she considered that the amended building platform location for Lot 10 reduced the effects from that platform to an acceptable level in terms of both public and private views.

33. In answer to our question as to what the extent of the landscape was that she had considered in determining the effects on the character of the landscape, Dr Read advised that proposals must be assessed at the scale at which they are experienced. She advised that the landscape she had assessed was similar to that assessed by Ms Steven and as discussed further in paragraph 76 of this decision.
34. With regards to the planting of natives versus exotics, Dr Read commented that putting a lot of indigenous vegetation into this site would be out of character. She considered the planting proposed to be domesticating, particularly the amenity planting along laneways and avenues, which Dr Read noted does occur in rural areas, but only around or in association with dwellings.
35. Dr Read also alerted us to the proposed indigenous vegetation not being located on the subject site but on a Council Local Purpose Reserve (being Lot 3 DP 23644) adjacent the river.

Legal Submissions

36. Phil Page presented legal submissions for the Applicant. He noted that whilst changes had been made to the application, no party had raised concerns with the scope of the proposal changing. We concur that none of the changes proposed are out of scope.
37. Mr Page drew our attention to the definition of 'landscape' and how this is to be applied when considering the VAL provisions in the District Plan. He explained to us that in order to apply any provisions referring to landscape, it is necessary to define the area of the landscape. In his view, Dr Read applied an incorrect emphasis upon the character of the site and the vicinity, rather than the landscape. We questioned Dr Read, Ms Snodgrass and Ms Steven on this matter, and have recorded their responses elsewhere in this decision. In the event, it transpired that there was little difference between the Landscape Architects on the landscape area that they had considered for their assessments and whilst we have noted Mr Page's point, we do not consider it materially changes any evidence before us in this regard.
38. With regards to Ms Gathercole's assessment, Mr Page submitted that she had based her planning opinion on propositions that did not arise from the policy or assessment framework of the ODP. Mr Page submitted that Ms Gathercole had focussed on the lots needing to be large enough for farming purposes; and that she had considered it would not be appropriate to create lots that were predominantly for residential use. Mr Page directed us to policies which recognise that rural living lots can be appropriate in certain circumstances.
39. In his reply Mr Page addressed us on a number of matters that arose during the hearing. He put to us that the distinction between the Rural Living Zone and this proposal is that the

balance Lot 10 will ensure the pastoral character is retained. He stressed to us that this is not Rural Living by stealth.

40. Ms Snodgrass had raised concerns with proposed Lots 1 and 2 which Mr Page considered did not affect the Le Bruns. He agreed with Ms Morshuis that views from her property boundaries of the future dwellings will be significant; but that such views are not seen from her dwelling or curtilage. He questioned whether this would be detrimental to the amenity enjoyed from Ms Morshuis' property.
41. In relation to the period required for vegetation to grow sufficiently to provide mitigation, Mr Page pointed out that some mitigation will commence from the time of planting, and that this will increase over time.
42. Mr Page noted that the residential capacity model for Wanaka indicates that there is sufficient urban land available to provide for future dwellings. Mr Page informed us that in the recent Environment Court decision Appealing Wanaka Incorporated v. Queenstown Lakes District Council ENV-2014-CHC-46, the Court was critical about the type of product being supplied not meeting demand. Mr Page submitted in this instance that Mr Garnham had given evidence that there are large numbers of buyers lined up for these allotments. Mr Page submitted that we should give due consideration to the lack of allotments available to meet this demand.
43. In his reply, Mr Page volunteered a number of changes to the application which we were invited to consider to mitigate or avoid adverse effects that had been raised during the hearing. As this came at the end of the hearing, these changes were not addressed by the other witnesses, and we have no evidence on those changes. The changes volunteered were as follows:
 - a. It would be possible to have no letterboxes at all if this is a concern.
 - b. The indigenous vegetation proposed on the adjacent reserve could be located on the subject site if required.
 - c. Lot 10: A condition subject to a consent notice is volunteered restricting further subdivision or development of Lot 10 in perpetuity unless the zoning is changed. The amended location of the residential building platform on Lot 10 is the only one sought. The access to the future dwelling on Lot 10 is preferred to be aligned as per Ms Steven's evidence branching off approximately opposite the boundary of proposed Lots 4 and 5, following the northern boundary of Lot 10 and curving south in relatively close proximity to the Hazeldine property. However, the Applicant is happy to agree to an alternate alignment which commences from a similar spot and bisects proposed Lot 10 with no fencing or plantings along the driveway.
 - d. Lot 7 could be moved to the other side of Lot 6 although it was noted that this would then intrude into the viewshaft which Ms Steven is seeking to preserve.

- e. Lot 8 and the residential building platform on Lot 8 to be deleted, with proposed Lots 8 and 9 becoming one allotment.

44. In determining this application we found we were unable to consider the amended location of Lot 7 (point d. above) as we had no evidence on the effects of that proposal on which to base our assessment.

Applicant Director

45. Michael Garnham is a director of the Applicant company. He talked to us about the history of the site since his company purchased it. He stressed to us that the block would not be economically viable as a stand-alone operation; and that most of the money invested into the subject site comes from the Applicant's other company Criffel Deer Ltd. The proposed subdivision will generate capital to fund the development of the deer farming operation.

46. We questioned the effects on the deer of having additional persons, vehicles and activities in close proximity. Mr Garnham advised that Ballantyne Barker handle their deer frequently to ensure that they are more manageable and in his view additional activity would assist in quietening the stock. The extra neighbours would be additional eyes and ears which he considered would provide added security.

47. Mr Garnham stressed to us that he was intending to provide for allotments that were in demand in the market.

Applicant Planner

48. Duncan White presented planning evidence for the applicant. He drew our attention to a number of subdivisions in the vicinity that he considered had similar characteristics and which had been granted consent. We raised concerns with this approach given each proposal must be considered on its own merits. Whilst we accept that there is an expectation that like be treated as like, we are not convinced that any of the examples were near identical to this proposal. The principal similarity we discerned was that the subdivisions referred to by Mr White all involved creating rural living sized allotments with a rural (usually pastoral) balance lot protected in perpetuity by consent notice against further subdivision or development. On this basis, if we were minded to grant the consent, we would, for reasons of consistent administration, impose a condition to be subject to a consent notice in respect to Lot 10 as was volunteered at the end of the hearing by the Applicant.

49. Mr White concludes that the character of the landscape would change from a purely farmed landscape to one that is a mix of a working deer farm and rural living with a strong rural and pastoral character. He stresses that the proposal is designed around the existing laneways and plantings and considers that any adverse environmental effects of the proposal will be avoided or mitigated such that they are no more than minor.

50. In the final paragraph of his evidence (12.6) he states that it is suggested that the application could be considered for approval subject to appropriate conditions. We concur with Mr White that there is no legal impediment to approval of this consent; and that we have discretion pursuant to Section 104B to approve or refuse it.

Applicant Landscape Architect

51. Anne Steven provided landscape evidence for the applicant. Ms Steven prepared a two page summary of key issues which was circulated and which she read out. Ms Steven identifies the key issues as being whether the visual amenity landscape can absorb the development and whether the development results in over domestication. She, Ms Snodgrass and Dr Read agree on many points. The areas of disagreement between them are whether the proposed development exceeds the threshold for residential development in this landscape. Ms Steven maintains that the landscape can absorb this development with no more than minor effects on the pastoral and natural landscape character and the visual amenity enjoyed in public and private views.
52. Ms Steven considers that the original location of the residential building platform on proposed Lot 10 is preferable, which is consistent with Ms Snodgrass's view.
53. In relation to allotment sizes, Ms Steven is of the opinion that clustering small lots separated by large areas of open space creates a landscape outcome that better maintains a rural and pastoral or sufficiently open character, and a higher aesthetic quality. Larger lots, she states, often result in large unused areas which are either not maintained or leased to another person. We tend to agree with Ms Steven in terms of lot sizes and the resultant use of surplus land, as we understand does Dr Read.
54. Ms Steven disagrees with Dr Read that the existing and proposed planting is domesticating. She considers it rural in nature.

Applicant Surveyor

55. Mike Botting provided engineering evidence for the applicant. Generally, he and Ms Overton were in agreement. He talked us through the Fluent report which addressed the erosion hazard along the Cardrona River. In essence that report concludes that the flow of the river has changed such that erosion in this location is now unlikely. Regardless, if erosion did start to occur, then there would be sufficient time to implement protection measures in respect of the proposed development. Ms Overton accepted this report, and we therefore conclude that this potential hazard is not of concern.
56. Mr Botting estimated that the driveway location for access to the now proposed residential building platform on proposed Lot 10 would require some 100-200m³ of earthworks which would not be significant.
57. In terms of the location of letterboxes, Mr Botting did not know whether the proposed location within the site would be acceptable to NZ Post. He advised that the Hidden Hills

development has a similar arrangement where the postie pulls completely off the road, although that is on public land.

Submitter – Tim Hazeldine

58. Tim Hazeldine owns and resides in a property to the south and east of the subject site, adjacent to proposed Lot 10. His concerns related to the location of the residential building platform on Lot 10. He is not sure if the amended location of the platform allays all of his concerns, but he is a lot more comfortable with it. He commented that it was difficult to think on the hoof and provide responses to the amendments being made by the applicant. He advised that he would prefer an access to the building platform on Lot 10 directly off Ballantyne Road, but he could accept one that swept across the paddock providing it avoided headlights being directed at his property.
59. Mr Hazeldine accepted Mr Garnham's explanation that the high value of the stock justified a full time on site manager and that more persons in and around the location would mean potential rustlers would be more easily spotted.

Submitter – Daphne Morshuis

60. Daphne Morshuis resides in the Rockbourne Trust property to the northeast of proposed Lots 8 and 9. She submitted that her property would be overlooked by future dwellings in these locations. We questioned whether she meant overlooked or looked at as from our site visit the properties appeared to all be at a similar level. Ms Morshuis confirmed that her property was lower and would be overlooked.
61. She also raised concerns that having residential neighbours in close proximity may result in complaints in respect of rural activities such as target shooting and motorbike riding.
62. Finally she pointed out that no pedestrian access to the river is being provided through Lot 10, which will result in a heavy reliance on vehicles to achieve access via the roading network.

Upper Clutha Environmental Society (UCES)

63. Julian Howarth, representing UCES, stated that in the Society's view the applicant had not meaningfully avoided, remedied or mitigated adverse effects. He directed us to review the objectives and policies carefully as the proposal created allotments of a Rural Living/Rural Residential size in the Rural General Zone. He considered that mitigating effects with planting was futile as that would be domesticating in itself. In his opinion this proposal would be more appropriately promoted as a plan change for rezoning.
64. He drew our attention to the fact that in the Upper Clutha Basin east and south of Wanaka there is 3800ha of Rural General zoned land, with 200 consented residential building platforms and an airport. He considered this to be sufficient provision and posed the question of where do we stop? Mr Howarth pointed out that there are no clustering provisions in the ODP although there are in the PDP.

65. Mr Howarth opined that the written approvals provided by the neighbours are self-serving as some of those parties are seeking subdivisions of their own. The RMA does not mandate us to have a view on this matter and it is not considered of any relevance.
66. Given there is ample capacity for dwellings in the urban area, Mr Howarth does not deem it necessary to sprawl into the Rural General Zone.

Submitter – Robert and Sharynne Le Brun ; Legal Submissions

67. Jan Caunter presented legal submissions on behalf of Mr & Mrs Le Brun. The Le Bruns own the property directly north of the subject site, adjacent to proposed Lot 7.
68. Ms Caunter advised that we should be considering the Rural Residential and Rural Living Zone provisions as this is where the proposed activities are anticipated. She submitted that looking at the Assessment Matters and the Objectives and Policies of the Rural General Zone, they are not simply about visibility, but are about the integrity of the entire landscape. The level of development proposed could, in her submission, not be read into these provisions. She advised that she considered that the comparisons put forward by the Applicant with other subdivisions that had been granted were unhelpful.
69. The Le Bruns are also concerned about reverse sensitivity in terms of complaints about their legitimate activities such as using motorbikes. Ms Caunter submitted that the Le Bruns had discussed a no-complaints covenant with the Applicant, but that she now understood from Mr White's evidence that any such agreement would be between the ten lots to be created only, and would not assist in mitigating the Le Bruns' concerns.

Submitter – Robert Le Brun

70. Robert Le Brun advised that his current closest neighbour is 170m away from his property and that the proposal would reduce this to 100m. The proposed 10m planting strip would offset some effects, but the residential activity within close proximity would remain. Mr Le Brun advised that he is reasonably relaxed about Lot 6.

Submitter – Robert and Sharynne Le Brun ; Landscape Architect

71. Michelle Snodgrass presented landscape evidence in respect of Mr & Mrs Le Brun's submission. She was reasonably comfortable with Ms Steven's identification of the landscape. Ms Snodgrass considers that the farm buildings and the planting proposed are part of the Arcadian character of the landscape. In her opinion the adverse effects of this proposal result from the density proposed, with tight clusters of a number of houses being close together. Ms Snodgrass considers that the residential character will dominate the pastoral character; and that the number of houses and the number of clusters exceed the capacity of the site to absorb development. She refers us to Figure 8 of Ms Steven's evidence which shows that the distances between the majority of dwellings in the surrounding vicinity is greater than the distances between clusters in this proposal.

72. Ms Snodgrass expressed concern about the level of management that will be required for the proposed planting to succeed and also observed that there is no protection for the trees on the scarp between proposed Lots 6/7 and Lots 8/9.
73. She concludes by stating that Lots 1, 2 and 7-10 should be deleted from the proposal; and that three to four building platforms located on the lower terrace would be acceptable. This would include 2-3 building platforms at approximately the location of Lots 3, 4 and 5 and a single lot/platform at the revised location of Lot 6.

Submitter – David Pickard

74. David Pickard resides further along Ballantyne Road. He considers that the application may set a precedent for future applications and could seriously alter the rural nature of the area. He also expressed concern about the quality of the bore being affected by effluent disposal.

Effects Assessment

75. In most areas the Applicant and Ms Gathercole were in agreement and no concerns were raised by Submitters with respect to several matters which we do not address further. The areas of contention at the hearing were:
- Effects on rural character
 - Effects on visual amenity;
 - Cumulative effects; and
 - Reverse Sensitivity.

Rural Character

76. We accept Ms Snodgrass, Dr Read and Ms Steven's determination that the landscape we are considering covers a wider area than the site itself. In the absence of another clear demarcation we adopt Ms Steven's area as the appropriate extent of the landscape under consideration as shown below. We note that this includes the industrial use area to the west of the Cardrona River and some Rural Lifestyle zoned land.



77. All landscape architects advised us that this landscape was pastoral and we agree. The topography of the landscape with the terracing down to the river is a dominant natural characteristic in this location.
78. It was accepted among the parties that the introduction of a further ten additional future dwellings into this landscape will change the character of the landscape. The disagreement arose in respect of the extent to which the character would be changed and the effects of the mitigating planting. Ms Steven is of the opinion that the additional future dwellings can be absorbed without any significant effects on the landscape. We prefer the view of Dr Read and Ms Snodgrass that the proposal will result in a level of domestication that would adversely affect the character of the entire landscape to a more than minor extent. We consider that the landscape is not capable of absorbing ten additional future dwellings in this location. For the avoidance of doubt we confirm that we have also reached this conclusion on the basis of nine future dwellings, having regard to the Applicant's offer to delete Lot 8 and the associated RBP.

Visual Amenity

79. We viewed the site from various locations and observed that from Black Peak Road the poles indicating the RBPs on proposed Lots 8 and 9 were prominent. None of the landscape architects had provided evidence on these views, however upon questioning Ms Morshuis confirmed that our observation was correct. Black Peak Road is a private road which appears to service a number of sites. It is likely that this status reduces the potential number of viewers which will in turn reduce the effects on visual amenity. However those persons who do use Black Peak Road will be adversely affected by these future dwellings to a significant extent. We do not consider that the proposed landscaping will provide substantial mitigation.
80. From Ballantyne Road the poles erected on Lots 1 and 2 are clearly visible. Ballantyne Road is a heavily used road and, taking into consideration the Council's intention to seal and upgrade this road in the near future, it is likely to become a route for through traffic, significantly increasing its use. The visual amenity from the road across the site will be adversely affected by future dwellings on Lots 1 and 2. Whilst the wider landscape includes the industrialised area and Rural Living Zone across the river, views from Ballantyne Road across the site will not include these non-rural elements. The current views are pastoral and arcadian. Constructing dwellings on Lots 1 and 2, and further into the site on Lots 3, 4 and 5, will change these views. Whilst landscaping will ultimately screen these dwellings to a significant extent, we consider that this will take a considerable time to be effective, and is likely to equally change the visual amenity by changing views such that they are less pastoral and more residential. In our opinion views from Ballantyne Road will be adversely affected to a more than minor extent.
81. Views from the Le Brun property will incorporate the dwelling on proposed Lot 7 and possibly also the dwelling on proposed Lot 6 to the rear. The RBP on Lot 7 is located some 100m from the Le Brun's boundary. The volunteered 10m planting strip along the Le Brun boundary will substantially block views into the property and we consider that the effects of Lot 6 on the Le Brun property may be reduced to be less than minor. However, the effects of the RBP on Lot 7 on the views from the Le Brun property will remain more than minor.
82. In terms of the Rockbourne Trust property; the dwelling on that site is well screened by surrounding vegetation. However in views from other parts of the property the future dwellings on Lots 8 and 9 will be dominant. Whilst we take Mr Page's point that visual amenity is less affected in this case as the RBPs will not be visible from the dwelling or immediate curtilage, we observe that this is due to the vegetation on the Rockbourne Trust property. Whilst we are comfortable placing some weight on this as the current and future owners could choose to retain this vegetation, we are conscious of the quite dominant effect that the future dwellings on Lot 8 and/or Lot 9 would have, should even only some of the vegetation be cleared. We note here the Applicant's offer to remove the RBP on Lot 8 but we are not convinced that this is sufficient to mitigate the adverse effects on the Rockbourne Trust property or Black Peak Road. A future dwelling on a combined Lot 8/Lot 9 will remain a prominent feature which will adversely affect visual amenity from these locations.

83. The height poles erected on the subject sites demonstrated that any buildings on the proposed building platforms would be clearly and prominently visible from public and private viewpoints and we consider that the adverse effects on visual amenity would be more than minor.

Cumulative Effects

84. Cumulatively, the adverse effects on the character and the visual amenity are significant and in our view these cumulative effects cannot be mitigated by further planting, landscaping or other measures.

Reverse Sensitivity

85. Both the Le Bruns and the Rockbourne Trust raised concerns that their rural activities may be sought to be curtailed by future residents. In particular motorbike riding and shooting (for both target and pest control purposes) were raised as activities that may cause nuisance to residential neighbours in close proximity. We accept that this may be the case given the relatively close proximity of the proposed RBPs to the boundaries with neighbouring sites.

Overall Consideration of the Proposal on the Environment

86. We are not convinced that this location can absorb development of the proposed density, or close to this density, without causing significant adverse effects in terms of the character and visual amenity of the VAL and without resulting in reverse sensitivity effects in terms of curtailing neighbours' activities.

Objectives and Policies

Operative District Plan

87. Part 4, 4.1.4 Objective 1 seeks the protection and enhancement of indigenous ecosystem function. Both landscape architects concluded that whilst the planting that had been undertaken and was proposed consisted largely of exotics, this retained a natural character and would not change the current ecosystem. Some native planting is proposed closer to the river at the southwestern side of the site and whilst this is currently shown on the adjacent property, it could be moved to the subject site. In our view the proposal is therefore neutral in terms of this objective in relation to the proposed planting. Associated Policies 1.1 and 1.4 encourage the long term protection of geological and geomorphological features. The terracing is the most dominant feature. Although the vegetation to some extent already affects the legibility of these features and the further planting proposed will further affect the legibility, this is not considered significant.
88. Part 4, Objective 4.2.5 promotes that any subdivision, use and development is undertaken in a manner which avoids, remedies and mitigates adverse effects on landscape and visual amenity values. Policy 1 encourages development to occur in those areas with greater potential to absorb change. We accept that this site may be able to absorb some development, particularly we see potential for Lots 4, 5, 6 and 10, however we do not accept

Ms Steven's view that ten further dwellings can be absorbed without significantly affecting the landscape and visual amenity values; or that nine further dwellings could be absorbed (in terms of the deletion of the RBP on Lot 8). We consider the proposal is inconsistent with this policy.

89. Policy 4 relates to VALs and seeks to avoid, remedy or mitigate the adverse effects on VALs which are highly visible from public places and visible from roads; and also to mitigate the loss of or enhance natural character by appropriate planting and landscaping. We consider that at least for some time Lots 1 and 2 will be highly visible from Ballantyne Road. Once landscaping is established they will likely remain visible. The planting proposed is primarily domesticating rather than enhancing natural character. We consider the proposal contrary to this policy.
90. Policy 8 seeks to avoid cumulative degradation resulting in densities of subdivision and development where the benefits of further planting and building are outweighed by the adverse effect on landscape values of over domestication of the landscape. This proposal exceeds the threshold of development that is able to be absorbed by the receiving environment, is not sympathetic to the area, and we consider it would be contrary to this policy. Policy 9 relates to structures and screening them to preserve the visual coherence of VALs.
91. We acknowledge the effort that has been put into the proposal by the Applicant and its advisors, including the use of colours, materials and height controls and planting to limit the visibility of the dwellings. However, we consider the location of ten (or nine) future dwellings in this location will result in significant adverse effects on the open character and visual coherence of the landscape and accordingly that the proposal is contrary to Policy 17.
92. Part 5, 5.2 Objective 1 seeks to protect the character and landscape value of the rural area, with Policy 1.7 aiming to preserve the visual coherence of the landscape, and Policy 1.8 aiming to avoid the location of structures in prominent locations. We find that the proposed future dwellings being provided for on the RBPs exceed the potential of the site to absorb the scale of the change proposed through this application.
93. Part 5, 5.2 Objective 2 deals with the retention of life supporting soils. We acknowledge that a large pastoral balance lot (Lot 10) is proposed which will be protected from further subdivision and development (unless re-zoned). The land removed for residential use will be relatively small in area and this will not have significant adverse effects on the life supporting capacity of soil. We consider that the proposal is neutral in relation to this objective.
94. Part 5, 5.2 Objective 3 relates to rural amenity. We consider that the rural amenity of the area, in terms of affecting rural land practices and uses, will change as a result of this proposal as there is insufficient distance between the proposed RBPs and neighbouring properties to mitigate any reverse sensitivity issues. The proposal is inconsistent with this objective.

95. The proposal is largely consistent with the objectives and policies in Part 15, Subdivision, as they relate to ensuring the subdivision is appropriately serviced. Objective 5 seeks to maintain or enhance the amenities of the built environment through the subdivision and development process. Policy 5.2 refers to not adversely affecting landscape, visual or amenity values. In light of our findings we consider the proposal to be contrary to this policy. Policy 5.5 relates to the safe and efficient functioning of services and roads. There are no concerns in this regard, and therefore we find the proposal neutral in this regard.

Proposed District Plan

96. To the limited extent that the PDP has weight, we conclude that the scale of development proposed through this application would be inconsistent with or contrary to its objectives and policies.

RPS and PRPS

97. The Regional Policy Statements (Operative and Proposed) are given effect to through the District Plan and Proposed District Plan. Suffice to record here that we have considered the objectives and policies as set out earlier and conclude that the conclusions reached in terms of the District Plans are applicable also to the Regional Policy Statements. Although expressed in much more general terms, the policy framework in these policy statements do not in our view support a grant of consent for development on the scale proposed.

Other matters

98. We consider that precedent and confidence in plan administration are relevant considerations for this proposal. The Environment Court found in John Scurr v Queenstown Lakes District Council ENV C060/2005 that the grant of consent to a discretionary activity raises issues of precedent in the Queenstown Lakes District. This site does not have any particularly unique characteristics in terms of its location or topography. The community is entitled to expect that the outcomes sought by the District Plan will be achieved. This is a location where in our view the activities proposed are inappropriate and granting consent would set a precedent and undermine confidence in the administration of the ODP.
99. We noted in paragraph 88 that this site may be able to absorb some development/ with some potential for Lots 4, 5, 6 and 10. There is no information before us, however, to confirm whether such a reduced subdivision would be subject to a restriction on further subdivision on the balance allotment, as proposed in the context of the current proposal. In such circumstances, and given the fundamental change to the proposal reflected by such a reduction in RBPs/lots, we do not consider it appropriate to consent to such a reduced proposal in this decision on RM160814.

Overall Assessment

100. We have concluded that the proposal is contrary to key objectives and policies relating to landscape character and visual amenity. The changes to the landscape character and visual amenity will have significant adverse effects.
101. Granting this proposal would change the character of the landscape, adversely affect visual amenity from public and private views, affect the rural amenity of the neighbours, set a precedent for future applications and undermine the integrity of the ODP. For these reasons the application is REFUSED.

23 May 2017

A handwritten signature in black ink, appearing to read 'Wendy Baker', with a stylized, cursive script.

Wendy Baker

A handwritten signature in black ink, appearing to read 'David Whitney', with a stylized, cursive script.

David Whitney