



**DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL**

**RESOURCE MANAGEMENT ACT 1991**

<b>Applicant:</b>	Criffel Deer Limited
<b>RM reference:</b>	RM160559
<b>Location:</b>	Mount Barker Road, Wanaka
<b>Proposal:</b>	A four lot subdivision to create three rural residential sized parcels with areas between 1.8 and 2.5 ha (Lots 1-3) and a balance lot (Lot 4) of 46.7ha. Residential Building Platforms (RBP) with areas between 900-1000m <sup>2</sup> are proposed on each of Lots 1-3. Lot 4 will be amalgamated with adjoining land in a residual title being Lot 1 DP 423073.
<b>Type of Consent:</b>	Land Use and Subdivision
<b>Legal Description:</b>	Section 45 Block I Lower Wanaka Survey District and Lots 1 & 3 DP 42307 Section 47 Block I Lower Wanaka Survey District and Section 1 SO 411535 Section 57-58 Block I Lower Wanaka Survey District and Section 2 SO 12726 and Section 2-4 SO 411535 and Section 1 SO 423066 Part Section 49 Block I Lower Wanaka Survey District and Sections 1 & 3 Survey Office Plan 12726
<b>Zoning:</b>	Rural General
<b>Activity Status:</b>	Non-Complying
<b>Notification:</b>	Public
<b>Commissioners:</b>	Commissioners David Whitney (Chair) and Wendy Baker
<b>Date Issued:</b>	12 May 2017
<b>Decision:</b>	<b>Declined</b>

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 four lot subdivision and to identify three residential building platforms
BY	Criffel Deer Limited – RM160559

### **DECISION OF COMMISSIONERS DAVID WHITNEY AND WENDY BAKER**

#### **Introduction**

1. The applicant sought to undertake a four lot subdivision to create three rural residential sized parcels with areas between 1.8 and 2.5 ha (Lots 1-3) and a balance lot (Lot 4) of 46.7ha. Residential Building Platforms (RBP) with areas between 900-1000m<sup>2</sup> are proposed on each of Lots 1-3. Lot 4 will be amalgamated with adjoining land in a residual title being Lot 1 DP 423073.
2. The application site comprises four titles of between 3.3 and 29.5 ha that are legally described as
  - Section 45 Block I Lower Wanaka Survey District and Lots 1 & 3 DP 423073
  - Section 47 Block I Lower Wanaka Survey District and Section 1 SO 411535
  - Section 57-58 Block I Lower Wanaka Survey District and Section 2 SO 12726 and Section 2-4 SO 411535 and Section 1 SO 423066
  - Part Section 49 Block I Lower Wanaka Survey District and Sections 1 & 3 Survey Office Plan 12726
3. We have been delegated the Council's powers pursuant to Section 34A to hear and decide this application and decide on any procedural matters related to the hearing of it.

#### **Hearing and Site Visit**

4. We undertook a site visit on 20 April 2017 accompanied by Ms Erin Stagg, a Planner with the Queenstown Lakes Council (the Council). As part of the site visit we drove along Mount Barker Road viewing proposed Lots 1, 2 and 3. We walked down what appeared to be the unformed legal road (this became a matter of discussion at the hearing which we address

later) to the west of proposed Lot 1 towards the Cardrona River and viewed the allotments from here. We also visited the dwelling sites on the Ritchie and Powell properties. We then drove over the private bridge on Larches Station (with permission from the landowner) and viewed the proposed building platforms from Cardrona Valley Road.

5. The hearing was held in Wanaka on 20 and 21 April 2017.
6. The hearing concluded on 21 April 2017 having heard all evidence and the applicant's reply.

### **Abbreviations**

7. "ODP" – the Operative District Plan  
 "PDP" – the Proposed District Plan  
 "RPS" – the Regional Policy Statement  
 "PRPS" – the Proposed Regional Policy Statement  
 "the Applicant" – Criffel Deer Limited  
 "VAL" – Visual Amenity Landscape

### **Appearances**

8. For the applicant:  
 Mr P Page – Counsel  
 Mr M Garnham – Director of the applicant company  
 Mr D White – Planner  
 Ms A Stevens – Landscape Architect

#### Submitters

Mr J Howarth on behalf of the Upper Clutha Environmental Society  
 Mr C Powell  
 Ms K Powell

#### Council Officers

Ms E Stagg – Reporting Planner  
 Ms L Overton – Engineer  
 Dr M Read – Consultant Landscape Architect  
 Ms R Beer – Manager, Planning Support

9. Ms Staggs's section 42A report with appendices and the Applicant's evidence were pre-circulated in accordance with the requirements of the Act. We pre-read that material and took it as read. Attachment B and C to Ms Steven's landscape report submitted with the application were not included in the agenda. With agreement from all parties these were produced by Ms Steven during the hearing.

## The Application

10. Consent is sought to undertake a subdivision which will result in four allotments with three residential building platforms.

Allotment	Size (ha)	Platform (m <sup>2</sup> )
Lot 1	2.5	1000
Lot 2	2.4	900
Lot 3	1.8	945
Lot 4	46.7	none

11. The application is described in the Assessment of Effects on the Environment (AEE) lodged by the Applicant with the application. We do not repeat that material in detail and adopt it.

## Submissions

12. The application was publicly notified with submissions closing on 8 February 2017. Seven submissions were received, six in opposition and one neither in support or opposition.

## Reasons consent is required

13. The site is zoned Rural General in the ODP.
14. The Applicant and Ms Stagg agreed that the proposal falls to be considered as a non-complying activity under the Operative Queenstown Lakes District Plan pursuant to Rule 15.2.3.4(i) as Zone Subdivision Standard 15.2.6.3(iii)(b) is breached (no residential building platform is shown on Lot 4) and resource consent is also required for the following reasons:
- A discretionary subdivision activity consent pursuant to Rule 15.2.3.3(vi) for subdivision and location of residential building platforms in the Rural General zone.
  - A discretionary activity land use consent pursuant to Rule 5.3.3.3(i)(b) for the identification of 3 residential building platforms of between 900m<sup>2</sup> and 1000m<sup>2</sup>.
15. We questioned the need for a subdivision consent pursuant to Rule 15.2.3.3(vi) and also a land use consent pursuant to Rule 5.3.3.3(i)(b) for the establishment of residential building platforms. Mr Page advised us that in his view the land use consent was superfluous as the subdivision consent application provides for identification of residential building platforms. We understand that for many years now QLDC has triggered both rules whenever building platforms are identified. We agree with Mr Page that in this instance there is no reason to trigger the land use rule.

16. A memorandum from Lisa Bond, Senior Geo-Environmental Consultant 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 Stagg agreed with the Applicant that the NESC does not apply, and we concur.

### **Relevant Statutory Provisions**

17. 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. Pursuant to Section 104D we cannot grant consent if both of two 'gateway' tests are failed; i.e. if the adverse effects of the proposal are more than minor AND the proposal is contrary to the objectives and policies of the Plan and the Proposed Plan. 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**

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

### **RPS**

19. 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 provisions which are addressed 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 we consider it prudent to consider the RPS in this case. Firstly, the relevant caselaw 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.

20. Ms Stagg identifies Objectives 3.1, 5.3, 5.4.1 and 5.5.4 of the RPS as relevant with which we concur.

### **PRPS**

21. The PRPS was notified on 23 May 2015, and decisions were notified on 1 October 2016. Some 26 Notices of Appeal have been lodged. Relevant provisions include:

- 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**

22. The S42A report and the Applicant's AEE referred us to Parts 4, 5 and 15 of the ODP, which we agree are the relevant provisions to consider.
23. The AEE referred us to Chapters 3, 6 and 21 of the PDP. The Council's S42A report also referred us to Chapter 27. To the extent that the PDP has weight, we consider all these chapters are relevant.

### **The existing environment**

24. The site is sufficiently described in Section 2.1 of the AEE and we adopt this description. We particularly noticed the flat landscape where any visual screening was provided by vegetation as there is little topography to assist in this regard.

### **Permitted baseline**

25. Ms Stagg set out in her Section 42A report some activities that are permitted in the Rural General zone and we accept this. In addition planting with the exception of some wilding species, fencing under 2 metres high and earthworks of up to 1000m<sup>3</sup> within one consecutive 12 month period also comply with the relevant rules.

### **Legal Submissions and Evidence**

#### Council Planner

26. Erin Stagg, Council Planner prepared a report pursuant to Section 42A containing a landscape report and an engineering report upon which her report was based. She listed the following actual and potential effects on the environment as relevant:
- Landscape
  - Rural Character
  - Servicing and Access
  - Hazards
  - Earthworks
  - Subdivision
  - Positive Effects.
27. In her assessment, Ms Stagg considered that the adverse effects on rural character, landscape and cumulative effects would be more than minor. In her view the proposal was contrary to the objectives and policies of the ODP and PDP. She concludes that as a non-

complying activity consent is unable to be granted as the proposal fails both limbs of the Section 104D 'gateway test'.

#### Council Engineer

28. Lyn Overton, Council Engineer, prepared a report which generally concluded that any engineering related issues could be dealt with by conditions. During the hearing the width of Mount Barker Road and potential safety issues relating to a blind corner were raised. In response to this Ms Overton revised her view on the suitability of Mount Barker Road to accommodate the additional traffic that would be generated by the proposal. She recommended an additional condition of consent requiring the consent holder to undertake a traffic safety audit and act on the recommendations of the audit.

#### Consultant Landscape Architect

29. Marion Read, Consultant Landscape Architect, prepared a peer review report which addressed landscape aspects of the proposal. She concluded that the small size of the lots combined with the presence of dwellings and the mitigation planting would have a domesticating effect on the landscape of the vicinity.
30. She considered that the proposed development would have an adverse cumulative effect on the landscape that would breach the ability of the vicinity to absorb development. This would be a result of the further fragmentation of the landscape, the increased level of domestication, the visual effects on the users of the Cardrona Valley Road and the lack of containment of the development to the east.
31. Dr Read spent some time explaining the difference between 'rural character' and 'visual amenity' to us. In essence we understand that rural character is unrelated to who can see what from where; it is defined by the juxtaposition and nature of the various elements. Visual amenity is wholly dependent on what can be seen from where and by who. In particular she considered that visual amenity is less affected where the viewing point is less highly frequented – i.e. there are less people around.
32. In answer to our question about the extent of the landscape that she had considered in determining the effects on the character of the landscape, Dr Read advised that the study area should include the site and the full extent of the area around it which might be influenced by the proposal. Dr Read considered that she and Ms Steven were well aligned in terms of the area they considered to be the landscape in this case.
33. Of particular relevance, Dr Read states in paragraph 5.4 of her evidence *"I consider that one lot of approximately 6.7ha, one dwelling on proposed Lot 2, and a less domesticating plant palette could be appropriately absorbed by the landscape of the vicinity"*.

#### Legal Submissions

34. Phil Page presented legal submissions for the applicant. He particularly 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 submitted 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 to the character of the site and the vicinity rather than to the landscape. We questioned both Dr Read 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 area of the landscape which the landscape architects considered for their assessments and whilst we accept Mr Page's point, we do not consider it materially changes our assessment of any evidence before us in this regard.

35. Mr Page also drew our attention to the existing environment and two components he considered were missing from the Council's analysis. The first being the existing four titles which he contended would at some point in the future inevitably be the subject of consent applications to construct dwellings upon. Mr Page submitted that a better outcome could be achieved by restructuring the boundaries now as once they are individually sold this would no longer be an option.
36. The second existing environment matter that Mr Page drew to our attention was the existing development above Mount Barker Road. We can confirm that we viewed this area and the existing development during our site visit and that we are cognisant of it.
37. The final matter that Mr Page asked us to turn our minds to relates to the anticipated allotment sizes in the Rural General Zone. He reminded us that in a previous hearing Dr Read in fact encouraged smaller lots as this would limit the extent of domestication; whereas Ms Stagg appears to consider the allotments to be too small. Mr Page observed that there is no such policy position in the District Plan. We agree with Mr Page on this point and concur that there is no policy directly relating to lot size, although in our view lot size does contribute to effects on landscape, rural character and visual amenity.
38. In his reply Mr Page directed us to have regard to Section 3 of the RMA relating to the probability of effects in relation to the visual effects. Mr Page considers that Dr Read placed more emphasis on the visibility from Mount Barker Road whereas Ms Steven is more concerned with rural character.
39. In terms of the road, Mr Page submitted that the formation of Mount Barker Road is already substandard for the current usage.
40. In terms of the choice of site, Mr Page drew our attention to objectives and policies seeking to retain productive potential. It follows that if land is to be used for non-productive functions, this should be the area that has the least productive potential.
41. In terms of the Powells, Mr Page is of the view that their concern is that the proposal is 'the thin end of the wedge' as the more that gets granted, the more difficult it will be to refuse future applications in this locality. Mr Page submitted that granting consent to proposed Lots 1, 2 and 3 may make further subdivision and development more difficult and he noted Mr Haworth's concerns relating to cumulative effects in this context.



42. Mr Page addressed us on the reason for the non-complying status, being that no residential building platform is being identified on proposed Lot 4. He opined that in reaching a determination under Section 104D we need to bear this in mind.

Applicant Director

43. Michael Garnham is a director of the applicant company. He talked to us about his ambitions and intentions for the Criffel Deer farm, and that an important element of the proposal is releasing capital to fund the development of the deer farming operation.
44. He advised that there had been land swaps at the western end of the subject site, which involved the neighbouring Larches Station and the Council, with what he thought was the intention of creating public access to the river. Mr White later clarified that the result of the land swaps was two triangles of land providing public access which joined at the points. On balance we accepted that there is public access to the river, be it somewhat convoluted and complex. In any event our decision does not turn on this matter.
45. Mr Garnham offered to provide an area of land to improve the blind corner on Mount Barker Road, which Ms Overton advised would not be required to assist in resolving safety issues. For this reason we consider this offer no further.
46. Mr Garnham stressed to us that he was intending to provide allotments that are in demand in the market. He already had a waiting list of potential buyers.

Applicant Planner

47. Duncan White presented planning evidence for the Applicant. He considered that the proposed subdivision is consistent with the relevant objectives and policies and promotes sustainable management of the land as per the purpose and principles of the Act. Of particular relevance Mr White was of the opinion that the proposal passed the Section 104D gateway tests and that we have discretion under Section 104B to grant consent.

Applicant Landscape Architect

48. Anne Steven provided landscape evidence for the Applicant. She talked us through the earlier mentioned attachments that were omitted from the agenda papers. 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 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.
49. Ms Steven directed us to Fig 3A Landscape Context attached to her evidence on which she has indicated with dashed red the area what she considers to be 'landscape' for the purpose of applying the provisions of the ODP.

Submitter – Upper Clutha Environmental Society (UCES)

50. Julian Howarth, representing UCES, stated that in the Society's view the Applicant had not meaningfully avoided, remedied or mitigated adverse effects. Mr Howarth considered that Mr Page was 'indulging in speculation' when he suggested that ultimately dwellings would be sought on the current four allotments and that it would be preferable to rearrange them whilst they are in one ownership. As even a farm building is a discretionary activity on allotments of the size they are, Mr Howarth considered that the consent process would not have any certain outcome.
51. Mr Howarth pointed out that Mr Garnham had chosen the location of the residential building platforms and smaller lots because the land was less productive in this location rather than because the effects of development in this location would be less. He drew our attention to the fact that the Upper Clutha Basin has 380ha of Rural General zoned land, with 200 consented residential building platforms and an airport. He calculated this to be an average of 1 dwelling/1.9ha. Mr Howarth pointed out that there are no clustering provisions in the ODP although there are in the PDP.
52. Mr Howarth urged us to carefully consider cumulative effects as the Society is of the view that the threshold has been reached in terms of sites being dominated by domesticating elements. He opined that strong decisions and protection of the rural area were required exactly because, as Mr Garnham had advised, there are many keen buyers.

Submitter – Conway and Kathryn Powell

53. Mr & Mrs Powell addressed us jointly; Mr Powell read from a written statement and Mrs Powell spoke. They considered that the contention that the land was not economic for rural activity was not justified. They opposed the proposal for two reasons:
- Adverse effects on rural amenity landscape; and
  - Precedent for future subdivision and residential development
54. They expressed concerns that the proposal would set a precedent and would create an environment in which further subdivision and development would be difficult to refuse.

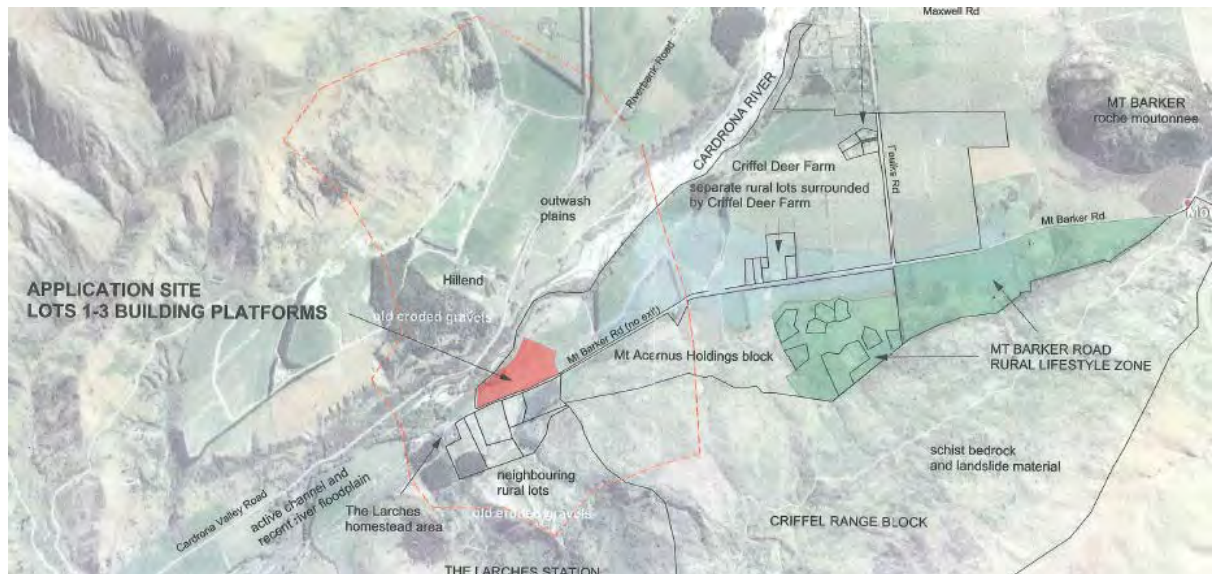
**Effects Assessment**

55. In various areas the Applicant, the Council and the submitters were in agreement and we do not address those matters further. The areas of contention at the hearing were:
- Effects on rural character
  - Effects on visual amenity;
  - Cumulative effects
  - The safety and efficiency of Mount Barker Road

**Rural Character**

56. We accept Dr Read and Ms Steven's determination that the landscape we are considering is a VAL and covers the wider area including at least the Cardrona River and the rural living

sized sites to the south. In the absence of another clear demarcation we adopt Ms Steven's area as the appropriate extent of the landscape as shown below (Fig 3A Landscape Context, dated April 2017). We note that the Rural Lifestyle zone further East on Mount Barker Road is not considered to be part of this landscape.



57. Both Landscape Architects advised us that this landscape is pastoral and we agree. The plains between Mount Barker Road and the Cardrona River are open with some shelterbelt and plantation planting which both have a rural character. Willows dominate the banks of the River presenting a natural character. On the other side of Mount Barker Road the land slopes upwards and is equally open. The allotments directly opposite the subject site across Mount Barker Road introduce an incongruent element of domestication into the landscape. This is a relatively small element in the wider landscape.
58. The introduction of a further three approximately 2ha allotments, each with a residential building platform, will increase the domestication of the landscape, spreading it across the road. Ms Steven is of the opinion that this can be absorbed without any significant effects on the landscape. We prefer the view of Dr Read that this would result in a level of domestication that would adversely affect the character of the landscape to a more than minor extent. We consider that the landscape is not capable of absorbing three additional dwellings in this location.

### Visual Amenity

59. We viewed the site from various locations and were struck by the lack of dwellings and buildings visible from Mount Barker Road. Immediately opposite the site we noted that the dense conifers fully screened the dwellings behind from Mount Barker Road and presented as an exotic plantation rather than domestic screening. A number of the dwellings further west to the south of Mount Barker Road were visible. The gates and driveways on the southern side of Mount Barker Road drew our attention to the dwellings located here.

60. The height poles erected on Lots 1-3 demonstrated that any buildings on the proposed building platforms would be clearly visible from Mount Barker Road and fleetingly in views from Cardrona Valley Road also. From our site visit we noted that skyline breaches will occur on Lot 1 (when viewed from Mount Barker Road and the partially formed legal road); and that some of the building platforms were also visible from the Ritchie and Powell properties.
61. It was put to us that Mount Barker Road is a little used no exit road and that the number of persons whose visual amenity would be affected is low. Both Landscape Architects confirmed to us that this was an appropriate consideration when assessing visual amenity. We therefore accept this. There was a general consensus among the parties that regardless of the current legal structure, public access from the end of Mount Barker Road to the river was a realistic possibility as were a recreational trail, a bridge across the river and even a road. Ms Steven advised that she had considered the increased use that this would bring, and remained of the opinion that the visual amenity effects from the proposal would be no more than minor.
62. We have a duty to consider effects on future generations. With the pressure on land, access to rural land, trails, tracks and rivers in close proximity to Wanaka Mount Barker Road is likely to become more important and more utilised as time goes on. It is likely that the number of persons using Mount Barker Road and the partially formed legal road to the west of Lot 1 will increase, possibly substantially. If this occurs, the visual amenity effects will also increase.
63. The building platforms are located in closer proximity to the road than the existing dwellings on the south side of Mount Barker Road. The landscape planting proposed will soften views of future dwellings but is unlikely to screen them fully. The combination of planting, building, curtilage, driveway, entrance and letterbox will present as a rural residential activity. Views in this location will therefore be substantially different from the current pastoral views albeit that these are interrupted by rural elements such as shelterbelts, riparian vegetation and forestry plantations.
64. The change in the views will in our opinion adversely affect the current visual amenity enjoyed from the Powell property to a more than minor extent. From the Ritchie property the views are mostly blocked by vegetation on a number of adjoining sites. Whilst we accept that this cannot be relied upon, we consider that it is fanciful to assume that all the vegetation would be removed, and we therefore reach the view that the effects on visual amenity from the Ritchie property are minor.
65. Views from Mount Barker Road are most affected, with the three building platforms providing for future dwellings and associated paraphernalia, planting and access that will be clearly visible. Even based on the current usage of the road we consider that the adverse effects of the changes to the visual amenity of the area will be more than minor. Considering our earlier comments and the potential for the use of the road to increase, the adverse effects are in our view significant.

### **The safety and efficiency of Mount Barker Road**

66. In the submissions and at the hearing the safety of the bend to the east of the subject site was raised. Solutions in terms of a traffic safety audit and potential upgrades were discussed and the Applicant advised that it would be agreeable to accepting of a condition to this effect. Mr Page noted that the width of the road carriageway in this location is already insufficient in terms of prevailing standards and the number of vehicle movements. We accept this. However, the introduction of a further three dwellings would further increase vehicle movements and on this basis if we were minded to grant consent we would include a condition requiring the applicant to upgrade the road if an audit showed this was needed.

### **Cumulative Effects**

67. We have already recorded that in combination with the rural living type sites to the south, the ability of the landscape to absorb this development is exceeded by this proposal. Cumulatively, the adverse effects on the character and the visual amenity are significant and in our view these cannot be mitigated by further planting, landscaping or other measures.

### **Overall Consideration of the Proposal on the Environment**

68. We consider that the adverse effects arising from the increase in traffic along Mount Barker Road can be mitigated.

69. We are not convinced that this location can absorb any development without incurring more than minor adverse effects in terms of the character and visual amenity of the VAL.

### **Objectives and Policies**

#### **Operative District Plan**

70. 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 remained consistent with natural character and would not change the current ecosystem. Some native planting is proposed closer to the river at the western end of the site in the event that the willows are removed. 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 most legible and important feature is the river and the associated plains. The vegetation to some extent already affects the legibility of this feature and the further planting proposed around the building platforms and along the road and driveway will further affect the legibility.

71. Part 4, Objective 4.2.5 seeks that any subdivision, use and development is undertaken in a manner which avoids, remedies or 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 Dr Read's opinion that one dwelling may be able to be absorbed, however we do not accept Ms Steven's view that three can be absorbed

without significantly affecting the landscape and visual amenity values. We consider that the proposal is inconsistent with this policy.

72. Policy 4 relates to Visual Amenity Landscapes (VAL) 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 the natural character by appropriate planting and landscaping. The three building platforms with associated curtilage and planting will be visible from both Mount Barker Road and Cardrona Valley Road. In our view the visibility from Cardrona Valley Road is fleeting and the dwellings are well set back. This is a highly frequented road which will likely get busier over time. However, once vegetation is established further, adverse effects on the VAL viewed from this direction will be minor.
73. Mount Barker Road is a less frequented location, however the dwellings are much closer to the road and the vegetation proposed will soften the built form but will at the same time draw attention to the dwellings and the elements of residential character. In this vista the adverse effects on the VAL will be significant regardless of the limited number of persons using the road and we consider the proposal to be contrary to this policy.
74. 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 adverse effects on landscape values and 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 locating them to preserve the visual coherence of VALs. 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 that the presence of three future dwellings in this location will cumulatively result in adverse effects on the character and visual amenity of the landscape.
75. 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 dwellings exceed the potential of the site to absorb the scale of the change proposed through this application.
76. Part 5, 5.2 Objective 2 deals with the retention of life supporting soils. We acknowledge that this is somewhat marginal land agriculturally and consider that the proposal is neutral in relation to this objective.
77. 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 not change as a result of this proposal with sufficient distance being achieved between this proposal and neighbouring properties to mitigate any reverse sensitivity issues. The proposal is consistent with this objective.

78. 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 or visual qualities. In light of our findings above we consider that the proposal is contrary to this policy. Policy 5.5 relates to the safe and efficient functioning of services and roads. We consider that there may be concerns in relation to the safety of Mount Barker Road, however we accept that there is a solution to this, and therefore find the proposal neutral in this regard.

### **Proposed District Plan**

79. 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**

80. 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 does not in our view support a grant of consent for development on the scale proposed.

### **Other matters**

81. We consider that precedent and confidence in the administration of the plan are relevant considerations for this proposal. This site does not have any particularly unique characteristics in terms of its location or topography that would distinguish the proposal from future applications. The community is entitled to expect that the outcomes sought by the District Plan will be achieved. Ms Stagg drew our attention to the Introduction chapter of the ODP where it is explained why activities are afforded certain status, of relevance to the identification of residential building platforms in the VAL:

*1.5.3 (iii) Discretionary activities require a resource consent, and may be subject to standards specified in the Plan. Activities have been afforded such status:*

*(iv) because in visual amenity landscapes the relevant activities are inappropriate in many locations;*

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

### **Overall Assessment**

82. 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. For these reasons we consider that we are unable pursuant to Section 104D to grant consent as the proposal does not pass through either gateway.

83. Mr Page raised two matters that we now address.

84. Firstly, he stated that the evidence before us is that either the proposal has only minor adverse effects (Ms Steven) or that it may be able to absorb a single building platform (Dr Read). Mr Page advised us in his closing submissions that the scope of the evidence before us did not allow us to decline the proposal but at minimum we were required to grant a single site. We do not agree. The applicant did not provide any details with respect to any such alternative proposal for us to consider, meaning we would be essentially 'making up our own proposal'. This is not appropriate.

85. Secondly, Mr Page considers that we should unbundle the application such that Section 104D only applies in respect of the non-identification of a residential building platform on proposed Lot 4. We do not agree. This is an application for subdivision consent for four allotments and one of them cannot be simply unbundled. The proposal cannot occur without proposed Lot 4.

86. In the event that we were not constrained by Section 104D (i.e. if one of the gateway tests were found to be satisfied), we would still refuse consent under Section 104B as the adverse effects are unacceptable and as the proposal does not achieve the objectives and policies of the District Plan. Granting consent to this proposal would change the character of the landscape, adversely affect visual amenity from public and private views, set a precedent for future applications and undermine public confidence in the administration of the ODP. For these reasons consent to the application is REFUSED.

12 May 2017



Wendy Baker



David Whitney