QUEENSTOWN LAKES DISTRICT COUNCIL

www.qldc.govt.nz

DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	**Crown Range Holdings Limited**
RM reference:	RM161179
Location:	Eastburn Road, Crown Terrace
Proposal:	Consent is sought to undertake a subdivision to create eight lots, each with a residential building platform and 'farm building platforms' on Lots 5 and 8. Consent is also sought to relocate a farm building and to undertake earthworks on a HAIL site.
Type of Consent:	Subdivision
Legal Description:	Lot 3 Deposited Plan 321835 held in Computer Freehold Register 8721
Zoning:	Rural General (Operative District Plan) Rural (Proposed District Plan)
Activity Status:	Discretionary Activity
Notification:	8 February 2017
Commissioners:	Commissioners Wendy Baker and Rachel Dimery
Date Issued:	**20 October 2017**
Decision:	**Consent is REFUSED**

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by Crown Range Holdings Limited to undertake a subdivision to create eight lots, each with a residential building platform and farm building platforms on Lots 5 and 8. Consent is also sought to relocate a farm building and to undertake earthworks on a HAIL site.

Council File: RM161179

DECISION OF QUEENSTOWN LAKES DISTRICT COUNCIL HEARING COMMISSIONERS W BAKER AND R DIMERY, APPOINTED PURSUANT TO SECTION 34A OF THE ACT

THE PROPOSAL

1. We have been given delegated authority by the Queenstown Lakes District Council ("Council") under section 34A of the Resource Management Act 1991 ("the Act") to hear and determine the application by Crown Range Holdings Limited ("the Applicant") and, if granted, to impose conditions of consent.

2. The applicants seek resource consent to subdivide land at Eastburn Road, Crown Terrace into eight allotments, to establish residential building platforms ("RBP") on each allotment and two farm building platforms ("FBP"), to relocate an existing tunnel house to one of the farm building platforms and to undertake associated planting and earthworks.

3. Design controls are proposed including restrictions on built form, materials, colours and landscape treatment. Planting is also proposed in areas identified as ecological gullies and for Indigenous Vegetation Enhancement ("IVE").

4. The table below provides a summary of the proposal.

Proposed Lot	**Area**	**Residential Building Platform Area**	**Other identified areas**	**Earthworks**
Lot 1	22ha	800m^2	Ecological Gully area	Formation of private access.
Lot 2	3.2ha	1000m^2		Cut to lower building platform by 4m and contouring to reuse fill. Maximum cut depth 5.3m and maximum fill depth 4.3m.

				Formation of private access.
Lot 3	2.6ha	1000m^2		Cut to lower building platform by 2m and contouring to reuse fill. Maximum cut depth 5.3m and maximum fill depth 4.3m. Formation of right of way and private access.
Lot 4	3ha	685m^2	IVE area	Formation of private access.
Lot 5	23ha	1000m^2	Ecological Gully area Shelterbelt to be retained FBP	Formation of right of way and private access.
Lot 6	3ha	1000m^2	IVE area Proposed replacement planting	Formation of bund for natural hazard mitigation. Formation of right of way and private access.
Lot 7	2.9ha	1000m^2	Proposed replacement planting	Formation of bund for natural hazard mitigation. Formation of right of way and private access.
Lot 8	24ha	1000m^2	Extension of existing shelterbelt	Formation of private access.

ABBREVIATIONS

5. The following abbreviations are used in this decision:

Queenstown Lakes District Council	"the Council"
Crown Range Holdings Limited	"the Applicant"
Resource Management Act 1991	"the Act"
Assessment of Environmental Effects	"AEE"
Farm Building Platform	"FBP"
Residential Building Platform	"RBP"
Queenstown Lakes Operative District Plan	"ODP"

Queenstown Lakes Proposed District Plan	"PDP"
Otago Regional Policy Statement	"ORPS"

SITE DESCRIPTION

6. A detailed description of the site and receiving environment within which the application sits can be found in Section 2.1 of the Applicant's Assessment of Environmental Effects ("AEE"). We have set out below the changes to the receiving environment that have occurred since the application was lodged.

NOTIFICATION AND SUBMISSIONS

7. The application was publicly notified on 7 December 2016 with submissions closing on 8 March 2017. One submission was received from Mr T Edney.

8. Written approval from the owners of Lot 3 DP 321835 (Mr and Ms Lawn) was provided at the hearing. Details of consultation with Mr Edney and with the Department of Conservation were provided as part of the application.

THE HEARING

9. A hearing to consider the application was convened on 15 September 2017 in Queenstown. In attendance were:

   (a) The Applicant, represented by Mr Joshua Leckie (legal counsel), Ms Bridget Allen (planner), Mr Stephen Skelton (landscape architect), Mr Alan Hopkins (engineer) and Mr Melvin Jones (a director of Crown Range Holdings Limited (the Applicant));

   (b) Council's reporting officers, Ms Erin Stagg (planner), Mr Ben Espie (landscape architect), Mr Michael Wardill (engineer);

   (c) Council's Planning Support, Ms Charlotte Evans; and

   (d) Submitter: Mr Timothy Edney

10. We had the benefit of a section 42A report prepared by Council's reporting planner, Ms Erin Stagg. Based upon her assessment of the application, Ms Stagg recommended that the application be granted. The Applicant's evidence was pre-circulated in accordance with the requirements of the Act. We pre-read all material and took it as read.

PROCEDRUAL MATTERS

11. At the opening of the hearing Commissioner Baker declared a potential conflict of interest. Commissioner Baker advised the parties that she had had a conversation some time ago about the sealing of the road relating to the application with Ms Lawn, the present owner of Lot 2 DP 321835 (proposed Lot 20 of approved consent RM160880). Commissioner Baker invited the parties to advise if they had any objection to her sitting on the Commission. No objections were raised by any of the parties present.

12. As noted in the section 42A report, two of Council's reporting officers, Mr Smith a consultant landscape architect and Mr Parnell a consultant engineer, were not available to attend the hearing. Mr Espie, a consultant landscape architect and Mr

Wardill, Council's engineer attended the hearing. Both broadly agreed with the previous reports prepared and appended to the section 42A report, in that they supported the application subject to some amendments to the proposed conditions, which we discuss below.

SITE VISIT

13. We undertook a site visit on the afternoon of 14 September, before the hearing commenced. We were accompanied by Ms Stagg. We drove over the site and inspected each of the RBPs on foot. Following this, we drove to viewpoint 1, as identified in the Landscape Assessment Report prepared by Mr Skelton. We viewed the site from the small knoll at this location and then descended the Crown Range Road, stopping to view the site at locations where it was possible to pull in to laybys.

THE DISTRICT PLAN AND RESOURCE CONSENTS REQUIRED

14. The Applicant and the Council were in agreement that resource consents are required for:

- A discretionary activity resource consent pursuant to Rule 15.2.3.3(vi) of the Queenstown Lakes Operative District Plan ("ODP") for any subdivision and identification of building platforms;
- A controlled activity resource consent pursuant to Rule 5.3.3.2(i)(d), to relocate a farm building on the site to one of the proposed Farm Building Platforms ("FBP").
- A restricted discretionary activity resource consent pursuant to Rule 5.3.3.3(xi) that does not comply with Site Standard 5.3.5.1(xi)(i). It is proposed to relocate a farm building on a property smaller than 100 hectares.

In addition we consider that the following consent is also required:

- A controlled activity resource consent pursuant to Rule 15.2.21.1 for earthworks associated with subdivision. The matters of control are set out in 22.3.2.2(a)(i)- (ix).

15. We note that Ms Stagg's report also identified that a restricted discretionary activity resource consents are required pursuant to Rule 5.3.3.3(xi) to breach Site Standard 5.3.5.1(xi)(iii) to relocate a farm building onto a property located above 600 masl and to breach Site Standard 5.3.5.1(xi)(i) to relocate a farm building onto a property less than 100 hectares. Ms Allen's evidence clarified that the two new locations are at less than 600 masl, being at 588 and 593 masl. Ms Allen was of the opinion that resource consent is therefore not required under Rule 5.3.3.3(xi). We concur with Ms Stagg's assessment, as while the location is below 600 masl, the property is less than 100 hectares and consent is therefore required.

16. Consent is required under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ("NES") as the proposal is an activity under regulation 5(4) and (5) and the site is land covered under regulation 5(7) and (8) and it is not exempted under regulation 5(9). A Preliminary and Detailed Site Investigation (PSI and DSI) has been undertaken, which concludes it is highly unlikely there will be a risk to human health if the proposed activity occurs on the land. No distinctions have been made within the report regarding conclusions reached following the PSI and those which follow from the DSI. Out of an abundance of caution we

therefore assume them all to be a result of the DSI. Similarly, the report does not unequivocally state that the soil contamination does not exceed the standard in regulation 7. It follows that a restricted discretionary consent is required under regulation 10.

17. We note here that the that the report does conclude that it is highly unlikely that concentrations of contaminants within the soil would be present at concentrations that will exceed the contaminant standards for a rural residential land use scenario and that no remediation or management is recommended.

18. Overall, the application is assessed as a discretionary activity.

RELEVANT STATUTORY PROVISIONS

19. This application must be considered in terms of Sections 104, 104B, 106, 108 and 220 of the Resource Management Act 1991 ("the Act").

20. Subject to Part 2 of the Act, Section 104 sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

(a) any actual and potential effects on the environment of allowing the activity; and

(b) any relevant provisions of:

(i) a national environmental standard:

(ii) other regulations:

(iii) a national policy statement:

(iv) a New Zealand coastal policy statement:

(v) a regional policy statement or proposed regional policy statement:

(vi) a plan or proposed plan; and

(c) any other matters the consent authority considers relevant and reasonably necessary to determine the application.

21. Following assessment under Section 104, the application must be considered under Section 104B of the Act. Section 104B states:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority –

(a) may grant or refuse the application; and

(b) if it grants the application, may impose conditions under section 108.

22. Section 104(3)(b) requires that we have no regard to effects on people who have given written approvals to the application. This is relevant in this case as written approval has been obtained from the owners of Lot 2 DP 321835 (also described as Lot 20 (RM160880) on the scheme plan submitted with the application).

23. Section 106 of the Act provides that a consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it

considers that the land is or is likely to be subject to, or is likely to accelerate material damage from natural hazards, or where sufficient provision for legal and physical access to each allotment has not been made.

24. Sections 108 and 220 empower us to impose conditions on resource consents.

25. We note that the Applicant's reply confirmed that the waterbody in the ecological gully area is narrower than 3 metres and that the esplanade provisions in section 230 are not triggered.

SUMMARY OF EVIDENCE HEARD

26. Evidence for this hearing was pre-circulated. The Applicant's experts provided summaries of their evidence at the hearing. We have read the application, the evidence and the section 42A report. The following is a brief outline of the submissions and evidence/ reports presented. This summary does not detail everything that was advanced at the hearing, but captures the key elements of what we were told.

Applicant

27. **Mr Leckie** presented written legal submissions for the Applicant. Mr Leckie submitted that landscape effects were the key consideration for our decision. He provided a summary of the other effects, the relevant statutory considerations and the Applicant's response to the points in Mr Edney's submission.

28. Mr Leckie outlined the mitigation proposed and the changes made in response to feedback from Mr Smith and Mr Espie for the Council. These changes include the retention of all shelterbelts to a height of 8m, a proposed condition of consent restricting amenity planting outside the curtilage areas and additional design restrictions in relation to the farm building platforms. He referred us to the evidence of Mr Skelton that no more than three of the eight building platforms will ever be seen at once from a public place.

29. Mr Leckie devoted some attention to the two key areas where there were differences between the experts for Council and the Applicant. These areas related to water supply and the Eastburn Road surface.

30. In relation to water supply, Mr Leckie referred us to the evidence of Mr Hopkins that on-site water buffering storage will adequately assure potable water supply. He submitted that this solution would avoid over engineering that is not justified from the perspective of managing effects. Mr Leckie directed us to the evidence of Mr Hopkins that a gravel road is appropriate. He noted Mr Skelton supports the retention of a gravel surface from a landscape perspective. He submitted that Council's Code of Practice should be used as a guide and that we were required to consider the effects arising from the subdivision and further, that there was no evidence before us to require sealing Eastburn Road.

31. **Mr Jones** discussed the vision for the subdivision and his desire to achieve a high-quality outcome. He advised us that consultation was undertaken with the Department of Conservation, Royalburn Station, the Queenstown Trail Trust and Mr Edney. He noted that refinements had been made to the proposal and referred us to the evidence of Mr Skelton and Ms Allen in this regard.

32. **Mr Skelton** presented landscape evidence. He advised us that Lot 1 is within the Outstanding Natural Landscape ("ONL"), Lots 2-4 are near the ONL boundary and the balance of the lots are within the Visual Amenity Landscape ("VAL"). He concluded that

development within Lot 1 would have very low to negligible adverse effects on the ONL. He also concluded that development within the VAL would have very low to negligible adverse effects on landscape and visual amenity. He emphasised that a lot of effort had been put into to mitigation, particularly in relation to Lots 3 and 4 and that the IVE areas would assist in the built development being visually absorbed. He also emphasised the importance of the shelterbelts on Lots 5, 6, 7 and 8 to provide mitigation. Mr Skelton outlined the amendments made to address Council's concerns, including restrictions to require the land outside the curtilages to be maintained in open pasture. He stated that in his view, retention of the gravel surface of Eastburn Road would contribute to maintaining the rural amenity of the landscape. Mr Skelton noted that it was proposed to undertake a staged succession planting to replace the wilding conifer shelterbelt east of Lots 6 and 7 and that this was supported by the Department of Conservation.

33. **Mr Hopkins**, a consulting engineer, addressed infrastructure issues. He confirmed his opinion that the subdivision can be appropriately serviced and accessed. He focused on the variation from Council's code of practice in respect of water supply and vehicle access. Mr Hopkins was satisfied adequate water can be supplied from the bore with onsite buffering. He advised 12 days of buffering storage could be provided to meet the code of practice 2,100l/day or 33 days of buffering to cater for the 750l/day irrigation shortfall. He was of the opinion that it was highly unlikely all eight lots would exhaust the storage buffer and noted the site has an existing alternative irrigation supply that currently feeds stock tanks. He advised that there was the potential to put down another bore and told us it was his understanding that this would need to be established before titles were issued.

34. Mr Hopkins agreed that Eastburn Road should be widened to meet the minimum requirements in Figure E2 of the Council's code of practice. He disagreed however that the finished surface should be chip seal. He was concerned that this would place an added maintenance cost on Council and advised that chip seal roads close to the snowline are notorious for potholing. He also considered the cost of sealing the road would be disproportionate for the Applicant.

35. **Ms Allen** is a planning consultant and prepared the AEE. Ms Allen's primary evidence helpfully focussed on the key areas of disagreement with the section 42A report, of which there were few. As we have noted below, Ms Allen advised us of a change to the receiving environment. She also advised us of a correction to her evidence at paragraph 12 and clarified that the boundaries between Lots 3 and 4 have been changed to follow the existing fence lines.

36. Ms Allen attached to her primary evidence a set of conditions for us to consider and the written approval to the application of Martin and Suzanne Lawn, owners of Lot 2 DP 321835 (new Lot 20 under the boundary adjustment consent). Ms Allen relied on the evidence of Mr Skelton that the proposal will have a very low to negligible adverse effect on the ONL and VAL, as well as enhancing natural character through the planting in the ecological gully and IVE areas. In response to our questions about the shelterbelt being on the adjoining property (new Lot 20), Ms Allen considered that this could be addressed by the wording of the covenant associated with the underlying boundary adjustment. Ms Allen relied on the evidence of Mr Hopkins that the sealing of Eastburn Road is not required and that the water supply is sufficient to service the site. She emphasised that the only residential dwelling in close proximity to Eastburn Road is the Lawn property from whom written approval had been obtained. It was her opinion that the retention of the gravel surface of Eastburn Road would best retain the rural character of the area.

Submitters

37. **Mr Edney** spoke to his submission. Mr Edney owns the farm on the eastern side of Eastburn Road. He told us that the resource consent for the alternative homestead on his property had lapsed and that he was not intending to progress this. In terms of the proposal, Mr Edney advised us that he supports the subdivision in principle, but had some concerns relating to dust, water supply, power supply and the retention of the shelterbelts. He also requested that the proposed lots be subject to a no objection clause in respect of Eastburn Station farming and development activities.

38. Mr Edney advised us that the existing water supply is on an as favour basis and is provided by a deemed permit from Otago Regional Council that will expire in 2021. He went on to tell us that in his experience, stock require a considerable amount of water during dry spells and lambing. Mr Edney said that the prevailing wind is from the west and that shelterbelts are always therefore placed to the west. It was his desire to see dust minimised, as his property is to the east. He further noted that stock find foliage with dust to be more unpalatable. His submission noted that the visual effects mitigation partly relies on existing trees, some of which are not on the Applicant's property. He advised us that if control of Lot 20 (RM160880) lies with the Applicant, he would like to see the trees on the western side of the access retained.

Council Officers

39. **Mr Ben Espie** advised us that in his opinion, the retention of the shelterbelts and open pasture were the two key issues from a landscape perspective which informed his opinion. Mr Espie outlined the discussions undertaken with the Applicant and the key changes made following the second report by Council's previous consultant Landscape Architect, Mr Smith. He went on to explain the need for some further amendments to the conditions and plans. He acknowledged that the revised master plan states that the shelterbelts are to be a minimum height of 8m. However, he considered however that some clarity was required in relation to succession planting, as it could not just be left until such time as trees die. He noted that if irrigated, shelterbelts would take 5 – 10 years to establish. He advised us that succession planting needs to be on the leeward site of the shelter belt, which in terms of the shelterbelt on Lot 20 (RM 160880) would be on the adjoining site to the east (Lot 20). He stated that the covenant needs to also state that the minimum height of shelterbelts is 8m and to provide for succession planting to ensure ongoing visual mitigation. He was of the view that Council needed to be a party to the covenant. Mr Espie noted that irrigation would be required for the IVE area, but was not likely to be needed in the ecological gully area. He saw pest management as an important component to the successful establishment of the ecological gully and IVE areas.

40. Mr Espie considered that the curtilages were a reasonable size and that he was content with the size and arrangement of the lots. He advised us that he was satisfied that the conditions would require pastoral use, which would in turn maintain the rural character of the Crown Terrace.

41. **Mr Michael Wardill** addressed engineering matters. He told us that with the exception of the recommendations on water supply, he agreed with Mr Parnell's report, which was appended to the s42A report. Mr Wardill did not consider it appropriate to accept the proposed buffering storage within the water supply system. He advised us that the Code of Practice requirement of 2,100 litres/day is for potable demand and irrigation. He considered there was a risk that water would run out and advised that water supply needed to be determined up front and was not a matter that could be left for future owners to resolve. He advised us that he did not accept the Applicant's argument that

the Code of Practice requirements for water supply is based on the requirements for urban lots. He considered large rural lots would have a much greater water demand than urban lots as they typically had larger gardens and the ability to keep livestock.

42. Mr Wardill advised us that Council's Chief Engineer has requested the surface formation of Eastburn Road to be sealed in chip seal. He advised us that in his experience, potholing of chip seal was not an issue at altitude. Mr Wardill considered that future maintenance costs of Eastburn Road as an unsealed road would be an issue, as increased usage would mean grading would be required every 4-5 weeks. He went on to advise that at this elevation there is occasional snow fall and that an unbound gravel surface would present an issue when snow ploughed.

43. Mr Wardill drew our attention to the Maintenance of Accesses to Private Property Policy which was adopted by the Utilities Committee on 3 April 2002. The entire policy reads as follows:

The Queenstown Lakes District Council will accept responsibility for the ongoing maintenance for any access formed over road reserve which meets the following criteria.

1. Provides access to more than four (4) dwelling units.
2. The access is formed or upgraded to comply with the Council's subdivision standards.
3. That the costs of formation of the access road are met by the properties served.

The access is formed over road reserve that is either under the control of the Queenstown Lakes District Council by right, or through delegated authority by another roading authority.

44. Mr Wardill advised us that this policy meant that as the proposal would take the number of dwelling units accessed off Eastburn Road over four, the Council would be obligated to take on the maintenance whereas it currently does not maintain this road. We questioned Mr Wardill on whether this would be the case even if points 2 and 3 were not met, as would be the case if the road were not sealed. He confirmed that Council would still have to take on the maintenance under this policy.

45. **Ms Erin Stagg** confirmed the activity status as discretionary. She accepted the opinions of the two landscape experts, Mr Espie and Mr Skelton, that the site could absorb the additional development with suitable landscape and design control measures. However, she noted that the landscape assessments rely on the retention of the shelterbelt on Lot 20, which is outside of the control of the Applicant and is not on the application site. She advised that this presented an issue as there was a lack of certainty that this shelterbelt could be maintained and that succession planting could be undertaken. She further advised that Council need to agree to the wording of a covenant and that any succession planting would not be able to be undertaken on the leeward site as this would be on Lot 20. She agreed with Mr Espie that succession planting should be undertaken and that planting of ecological gully and IVE areas should be a section 224(c) conditions. Ms Stagg recommended that Eastburn Road was sealed for reasons of traffic safety and maintenance. In relation to water supply, Ms Stagg commented that certainty was needed and that stock would also need water to drink. Ms Stagg concluded that addressing the landscape matters is central to her support of the proposal and that the ecological areas and screening are vital.

APPLICANTS' RIGHT OF REPLY

46. We received the applicants' right of reply on 25 September 2017. Having reviewed that information, we were satisfied that we required no further information is required.

47. Mr Leckie's legal submissions addressed a range of matters, including the ability to include a condition precedent in relation to the shelterbelt covenanted area over the adjoining site (new Lot 20), as shown on the approved boundary adjustment resource consent (RM160880). The amended set out conditions attached to the reply set out a requirement for the wording of the encumbrance to be submitted to Council for certification prior to section 223 certification and to require the registration of the instrument prior to section 224(c) certification. Mr Leckie submitted that an encumbrance instrument, to which Council is party, is the most appropriate method to ensure the mitigation provided by the existing shelterbelt on new Lot 20 (as approved under RM160880).

48. A final set of conditions was attached to the reply, together with updated plans (Master Plan and Ecological Management Plan). The amendments addressed matters including the height of succession planting, planting quantities and timing, potable water supply, easements to convey water and power.

RELEVANT PLAN PROVISIONS

The Operative District Plan

49. The subject site is zoned Rural General under the ODP.

50. The relevant provisions of the ODP that require consideration can be found in Chapter 4 (District Wide), Chapter 5 (Rural Areas), Chapter 15 (Subdivision, Development and Financial Contributions) and Chapter 22 (Earthworks).

The Proposed District Plan

51. The relevant provisions of the Proposed District Plan ("PDP") that require consideration are Chapters 6 (Landscapes), 21 (Rural zone) and 27 (Subdivision and Development). The site is zoned Rural under the PDP.

52. Section 86[b](1) of the Act states a rule in a proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified. An exemption to this is section 86[b](3) in which case a rule has immediate legal effect in certain circumstances including if the rule protects or relates to water, air or soil.

53. The PDP was notified on 26 August 2015. Pursuant to Section 86[b](3) of the Act, a number of rules that protect or relate to water have immediate legal effect. None of these rules are relevant to this application. To date only one decision has been made on the PDP which relates to the Millbrook zone and is not relevant to this application. By extension we therefore conclude that there are no rules in the PDP that are relevant to our consideration of this application.

Operative Regional Policy Statement

54. The relevant objectives and policies are in Part 5 Land and Part 9 Built Form.

Proposed Regional Policy Statement

55. The Proposed Regional Policy Statement was notified on 23 May 2015 and decisions were notified on 1 October 2016. Appeals have been lodged with the Environment Court, covering a wide range of topics.

56. The relevant objectives and policies are found in Chapters 2, 3 and 5. These generally align with the Operative Regional Policy Statement.

Summary – relevant plan provisions

57. The applicant and the Council largely agreed on the relevant plan provisions, with the s42A report including the additional provisions in Chapter 22 (Earthworks). We concur with Ms Stagg that the provisions in Chapter 22 are of relevance. These are set out in the application as notified and the section 42A report and we adopt them.

PERMITTED BASELINE, EXISTING ENVIRONMENT AND RECEIVING ENVIRONMENT

58. All subdivision and new buildings require resource consent in the Rural General Zone. As identified in the section 42A report, permitted activities in the Rural General zone include farming, horticulture and viticulture activities. Planting is also permitted, although there is a restriction in the ODP as to the date from which that may be considered as part of the permitted baseline. All subdivision and all buildings require resource consent. We agree with Ms Stagg that the permitted baseline is of limited assistance for this application.

59. The existing environment includes all development and activity currently on site and in the surrounding environment which has been lawfully established. The subject site is currently farmed and contains farm structures, including a tunnel house, sheep yard and cattle yard. There is no dwelling on the site. There is an unimplemented resource consent for this site (RM160880), which is for a subdivision consent to undertake boundary adjustment to include land from the adjoining lots to the east (shown as Lot 19 and 20 on the scheme plan). The subdivision consent would also create a right of way to north of the existing access leg.

60. The receiving environment comprises a number of rural living and farm properties. Ms Stagg and Ms Allen were in agreement that the receiving environment includes an 11 lot subdivision to the north of the site (referred to as the Royalburn subdivision RM081447)). The resource consent for the Royalburn subdivision lapses on 24 November 2020.

61. Ms Allen noted that the receiving environment as described in the AEE has changed. This change is due to the lapse of resource consent (RM061094) for a building platform on Waitipu Station (to the east of the site). Ms Allen advised us that this consent cannot be considered part of the receiving environment. She further advised us she observed to two new buildings on Waitipu Station on a recent site visit and that correspondence with Council confirms that no resource consents have been lodged for these buildings.

62. We agree with Ms Allen's assessment of the receiving environment.

ASSESSMENT OF ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

Landscape effects

63. As we have noted, there was agreement that Lot 1 lies within an ONL and Lots 2-8 are located within the VAL.

64. We agree with Mr Skelton that there will be positive landscape effects through the proposed planting in the IVE and ecological gully areas. Mr Skelton described how this planting will increase the natural character of the gully. Mr Espie also supported the planting in these areas, subject to certainty around an overall minimum number of plants being provided in each area. This was addressed in the Applicant's reply and we are satisfied with the response.

65. It was common ground that the shelterbelts were crucial to the mitigation of potential landscape effects. Mr Skelton stated:

> *Shelterbelts which are subject to legal retention or staged replacement provide a high level of screening and absorption capacity of platforms 5-8 while landform screens Lots 1-4.*[1]

66. Mr Skelton confirmed his opinion that it would not be possible for all eight of the proposed building platforms to be seen at once and at most, three building platforms would be visible from any public place.

67. Mr Espie told us that in his opinion the retention of the shelterbelts and open pasture were the two key issues.

68. Ms Allen set out the changes proposed that had come about through discussions between Messrs Skelton and Espie as follows[2]:

- *Further clarification and a condition of consent has been provided regarding the management of the land, in particular the pastoral land outside the curtilage areas and that planting other than for genuine agricultural purposes, is not allowed.*
- *A fencing plan was submitted showing fencing of the lot boundaries and existing fencing. The fences which are rural in natural generally follow the lines of the ecological areas and existing fence lines or the Indigenous Vegetation Enhancement Area (IVE).*
- *Two farm building platforms have been identified on the largest lots being Lot 5 and Lot 8 and the existing tunnel shed is now proposed to be relocated to one of these platforms (previously it was proposed to remain where it was). A condition of consent was offered to ensure that these platforms will only be used for farm buildings and that residential activity would be prohibited.*
- *Clarification has been provided regarding the ownership of the IVE areas. These will be owned by adjoining Lots 4 and 6 to ensure that they have a vested interest in maintaining these areas. The ecological gully areas will be owned by Lot 1 and Lot 5.*

[1] Primary evidence, Stephen Skelton, at paragraph 13
[2] Primary evidence, Bridget Allen, at paragraph 11

- *Further information has been provided on the Ecological Management Plan in regard to planting and plant densities.*

- *A condition of consent was offered to ensure that a minimum of two rows of trees are retained within the shelterbelts, that if any successive planting occurs only one row will be planted at a time to ensure continued mitigation. And that these will be maintained to a minimum of 8m in height.*

69. As we have noted, a subdivision consent has been approved to undertake a boundary adjustment. This would result in the shelterbelt adjacent to Lot 8 being within the application site. The shelterbelt adjacent to Lots 6 and 7 would remain on the neighbouring property to the north (referred to as Lot 20 in the application and on the scheme plan). A private covenant is proposed over the shelterbelt on Lot 20 and is shown on the approved scheme plan (RM160880). We were offered different views on the effectiveness of a covenant from the experts and counsel.

70. Ms Allen was confident that although one shelterbelt was not on the application site, this could be addressed by the appropriate wording of a covenant to maintain the shelterbelt. In response to questions, Mr Leckie conceded that a covenant could be cancelled with agreement of the parties and advised us that as the covenant documents had not yet been prepared, it would be possible to include Council as a party to the covenant. Ms Stagg believed Council would need to be a party to any such covenant and would need to consider the wording. She advised us that as the shelterbelt is on Lot 20, there was no certainty it would be maintained or that succession planting could occur.

71. In his reply, Mr Leckie proposed changes to the proposed conditions to address matters raised during the hearing in relation to the shelterbelts. The changes include:

- The addition of one row of shelterbelt planting on Lots 6 and 7 adjacent to the existing shelterbelt;

- A new condition requiring the Applicant to submit wording to Council for certification for an encumbrance instrument prior to approval of the survey plan. Certification relates to ensuring Council is a party to the instrument and that a minimum of two rows of trees are retained until replacement trees reach 8m in height; and

- A new condition requiring the registration of the encumbrance instrument prior to section 224(c) certification.

72. The proposed conditions offered up by the applicant require an encumbrance and that the Council shall be a party to this encumbrance. We have considerable unease about relying on mitigation in the form of the retention of a shelterbelt on land outside the Applicant's control (and outside the control of the future owners of Lots 6 and 7).

73. The applicant has volunteered to plant a row of trees on Lots 6 and 7 in the conditions supplied with the reply. We heard evidence from Mr Espie that for succession planting to be effective, it should occur on the leeward site of existing shelterbelts, in this case, to the east. This would require planting to occur on Lot 20 (RM160880). Even if the planting as proposed in the right of reply could be assured to achieve the same outcome, we are uncertain how long this would take to establish. The only evidence we have to rely on is that of Mr Espie, which was that with irrigation and when planted on the leeward side, the shelterbelt would take 5-10 years to attain a height of 8m. Under the normal course of things, unless a section 125 application is made, a subdivision

has a maximum of eight years for the survey plan to deposit (five years for survey plan approval under section 223 and a further three years to deposit the survey plan under section 224(h)). This raises a question in our minds as to whether the desired level of mitigation can be achieved prior to section 224(c) certification.

74. We also note the concerns raised Council's Landscape and Visual Effects Assessment – Addendum Report, prepared by Mr Smith. In this report Mr Smith concludes that "*the shelterbelts that are heavily relied upon for screening purposes will provide little screening of proposed building platforms 5 – 8 due to their potential low height".* We understand that this comment was in relation to the shelterbelts being trimmed to 5m in height and that the applicant agrees to maintain these shelterbelts at a minimum of 8m. We conclude that for the mitigation provided by the shelterbelts (and succession planting) to be effective, it must attain a minimum height of 8m and be maintained in perpetuity.

75. If the proposal cannot not rely on the mitigation provided by the shelterbelt on Lot 20, it is unclear to us whether the one row of trees on Lots 6 and 7 would be adequate, once established to achieve the same level of mitigation as we were told the shelterbelt on Lot 20 provides. We note the advice of the landscape experts that a minimum of two rows is required, yet the amended conditions attached to the Applicant's reply only propose one row trees on Lots 6 and 7.

76. Lastly, we record the variables that could influence the retention of the shelterbelt. These variables include a change in ownership, the need for agreement by multiple parties regarding the timing and nature of succession planting and the wording of the proposed encumbrance instrument. In our view much is outside the control of the Applicant and future owners of the proposed lots.

77. On balance, we have determined that we do not have sufficient comfort that the shelterbelt on Lot 20, which is required for mitigation will be maintained in perpetuity. This issue is fundamental and relies on mitigation on land outside the control of the applicant and the registration of an instrument that requires the agreement of third parties.

Water supply

78. As we have already noted, the engineering report appended to the section 42A report was prepared by Mr Parnell, who was not available to attend the hearing. We had the benefit of Council's Resource Management Engineer, Mr Wardill's, advice at the hearing.

79. Mr Wardill advised us that he did not agree that the level of water supply proposed was sufficient to meet the demands of the anticipated land uses. He quite rightly pointed out water supply is an essential requirement that needs to be determined now and cannot be left to a later stage. As we have set out in our summary of the evidence, Mr Wardill advised us that the code of practice sets out the water supply requirements for both potable water supply and irrigation and general use and that in his opinion, the proposal ran the risk of not being able to meet demand.

80. In contrast, Mr Hopkins was satisfied that the onsite buffering proposed was adequate to meet the needs. The conditions appended to the Applicant's reply offered up a new condition to require water restrictors for each lot to ensure the relevant minimum potable water supply is provided.

81. We agree with Mr Hopkins that the potable water supply is sufficient, but we prefer the opinion of Mr Wardill that water supply for both potable use and irrigation should be required to be established now. We conclude that the applicant has not established that the water supply will be adequate for the anticipated land uses.

Other effects

82. We are content that the evidence of Ms Stagg and Ms Allen has considered other effects arising from the proposal. We agree that the effects arising from natural hazards, earthworks, contaminated soils and servicing (with the exception of water supply, which we have discussed above) can be adequately mitigated or avoided through the imposition of conditions.

83. We are cognisant that the proposal will have positive effects in term of the provision of rural residential sites for future residents, economic benefits to the applicant and ecological benefits.

Summary of actual and potential effects

84. Overall, having considered the evidence pre-circulated and presented at the hearing, the application and supporting reports, the submissions and the Council's reports, we consider that the actual and potential effects will be significant in two areas.

a. We do not have sufficient confidence that the shelterbelts will provide an enduring form of mitigation, particularly in relation to Lots 6 and 7; and

b. We are also not satisfied that the water supply will be adequate to meet the needs of the anticipated land uses on the proposed lots.

OBJECTIVES AND POLICIES OF THE RELEVANT DISTRICT PLANS

85. We have considered the detailed assessments of the objectives and policies of the relevant district plans as set out in the Application, the section 42A report and the evidence of the planning experts.

86. The ODP and PDP apply. Other than the one decision mentioned earlier, decisions on the PDP have not yet been released. We agree with Ms Stagg and Ms Allen that little weight can be placed on the PDP given its stage in the process.

87. The AEE identifies some of the relevant provisions of the ODP in Section 4 (District Wide) and Section 5 (Rural Areas). Ms Stagg's s42A report similarly set out the relevant provisions in Sections 4 and 5 of the ODP. She also set out the relevant provisions in Section 15 (Subdivision and Development) and Section 22 (Earthworks).

88. This section makes reference to those provisions of direct relevance to the proposal.

<u>Section 4 – Nature Conservation Values</u>

89. The objectives seek to protect and enhance indigenous ecosystems within the District, as well as preserving the natural character of waterbodies. The policies promote and encourage long-term protection of indigenous ecosystems. The policies also direct that the establishment of introduced vegetation is avoided or managed where appropriate and that vegetation with a propensity to spread is to be removed or managed.

90. The proposal incorporates significant areas of enhancement in the ecological gully and IVE areas, comprising native planting, weed control and pest protection. The will both enhance the indigenous ecosystem and protect the natural character of the gully, which includes a waterbody flowing through the gully. We note that the amended lot boundaries and covenants would also facilitate ongoing management and protection of these areas. We agree with Ms Stagg and Ms Allen that the proposal satisfies and is in keeping with the relevant objectives and policies for nature conservation values.

Section 4 – Landscape and Visual Amenity

91. The sole objective (4.2.5) is to undertake subdivision, use and development in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values.

92. Policies 1(a)-(c) relate to future development. The policies seek to avoid, remedy or mitigate adverse effects where landscape and visual amenity values are vulnerable to degradation. Subdivision and development is encouraged in areas with greater potential to absorb change. The policies also seek to ensure subdivision and development harmonises with local topography, ecosystems and nature conservation values.

93. As we have set out earlier in our decision, the proposal relies on several existing shelterbelts to avoid effects on landscape and visual amenity values. One shelterbelt is on land outside the Applicant's control (new Lot 20 (RM160880)). In relation to this, we are concerned that the ability for the landscape to visually absorb development on Lots 6 and 7 is uncertain and therefore, is inconsistent with policy 1(b).

94. The AEE states that the maximum cut depth is 5.3m and the maximum fill depth is 4.3m[3]. The most extensive cuts are proposed on lots 2 and 3 to lower the RBP to conceal the future dwellings. Mr Skelton's assessment asserts the earthworks will "*mimic the existing lay of the land and not detract from existing landform patterns'.*[4] We do not consider the proposal to be entirely consistent with policy 1(b). While the earthworks of the extent proposed may not detract from the local topography, we do not think it can be said to harmonise with local topography. However, we agree that the layout of the subdivision and covenants proposed will ensure the subdivision harmonises with the ecological and nature conservation values present on the site.

95. Policy 2 relates to ONLs and we are satisfied that the creation of Lot 1 and a future dwelling on the identified RBP will be consistent with this policy. The RBP will be screened by existing topography and the covenant over the ecological gully and proposed native planting will protect and enhance the naturalness of this part of the site.

96. Policy 4 relates to VALs. This policy is focused on avoiding, remedying or mitigating the adverse effects of subdivision and development which is highly visible from public places and visible from roads; and also, to mitigate the loss of or enhance natural character. As we have outlined, we are not satisfied that the mitigation proposed for Lots 6 and 7 will be effective. Unlike the shelterbelts on Lots 5 and 8, which are entirely within the Applicant's control, the shelterbelt adjacent to Lots 6 and 7 will be on adjacent land (new Lot 20).

[3] AEE, January 2017, p13
[4] Landscape Assessment Report, January 2017, paragraph 34

97. With reference to Policy 8, which relates to avoiding cumulative degradation, we accept the Applicant has offered significant concessions to address concerns regarding the fragmentation of the landscape. These concessions include restricting land uses outside the curtilage areas and design controls for future buildings. However, without certainty around the mitigation in respect of Lots 6 and 7, we have concluded that over domestication of the landscape cannot be assured.

98. Policy 9 relates to structures and screening them to preserve the visual coherence of VALs. Policy 17 relates to encouraging land use to minimise adverse effects on the open character and visual coherence of the landscape. Again, we are not satisfied that the proposal will be consistent with these policies in respect of Lots 6 and 7.

Section 15

99. Section 15 concerns subdivision and the provision of services. We are satisfied on the evidence that access, stormwater disposal, electricity reticulation and communication facilities can be achieved and that the proposal is consistent with the relevant policies.

100. Policy 1.5 states:

To ensure water supplies are of sufficient capacity, including fire fighting requirements, and of a potable standard, for the anticipated land uses on each lot or development.

101. There is potential that there will be insufficient water supply. At best a minimum of 33 days' supply of 2,100 litres per lot would be achieved. We have addressed this earlier in our decision. We therefore find the proposal to be inconsistent with this policy.

Section 22

102. We have commented earlier on the extent of the earthworks, particularly in relation to Lot 2. We do not consider that the extent of cut and fill can be said to be sympathetic to natural topography. We conclude that the proposal is not entirely consistent with Policy 1.1.

Proposed District Plan

103. The site retains a rural zoning under the PDP but has changed the landscape classification for part of the site from VAL to ONL. Lots 1 – 4 are within the ONL identified in the PDP. We were told that the Applicant had submitted in opposition to this.

104. The starting point in Policy 6.3.1.3 is that subdivision and development is inappropriate in almost all locations within ONLs. The policy then requires applications to be assessed against the assessment matters in 21.7.1. We were not provided with an assessment of these matters and therefore, have not made a conclusion on the consistency or otherwise of the proposal in relation to the objectives and policies relating to ONLs.

105. In any event, little weight can be placed on the PDP given its stage in the statutory process, as no decisions have been released in relation to the provisions of most relevance to this proposal.

Conclusion

106. The Commission is not satisfied that the proposal will be entirely consistent with the relevant objectives and policies.

107. The proposal can only be absorbed into this landscape if the existing shelter belt on the adjoining site (new Lot 20) is maintained in perpetuity. This would require succession planting to be actively undertaken. The shelter belt on Lot 20 is outside the control of the Applicant. As we have set out earlier in our decision, we do not have confidence that the effects will be effectively mitigated, given the variables that could influence the retention of the shelterbelt. These variables include a change in ownership, the need for agreement by multiple parties regarding the timing and nature of succession planting and the wording of the proposed encumbrance instrument. In our view much is outside the control of the Applicant and future owners.

108. Insufficient water will be available to service the lots.

OBJECTIVES AND POLICIES OF THE RELEVANT REGIONAL PLANS

109. We are required to take account of the Otago Regional Policy Statement ("ORPS") in our assessment. As noted earlier in this decision, there is both an operative and proposed ORPS. We consider that less weight may be accorded to the proposed ORPS given the breadth of appeals.

110. Ms Allen considered that the most relevant objectives are 5.4.2 and 5.4.3 in the ORPS. We agree. Objective 5.4.2 seeks that degradation of Otago's natural and physical resources resulting from activities using the land resource be avoided, remedied or mitigated. Objective 5.4.3 seeks to protect outstanding natural features and landscapes from inappropriate subdivision.

111. We consider that the proposal generally meets the relevant objectives and policies. The landscape experts agreed that Lot 1, which is within an ONL, would have very low to negligible adverse effects on the ONL. We accept Mr Skelton's evidence that the Lots 2-4 are near, but not within the ONL and that the existing and modified landform will screen these lots.

OTHER MATTERS

Subdivision (section 106)

112. A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that the land is or is likely to be subject to, or is likely to accelerate material damage from natural hazards, or where sufficient provision for legal and physical access to each allotment has not been made. We are satisfied that the amended conditions will appropriately mitigate the potential risks associated with the alluvial fan hazard and risk of flooding. Suitable legal and physical access has been proposed for each lot. Consent can therefore be granted under section 106 of the Act.

PART 2 MATTERS

113. We are grateful to Mr Leckie for his concise submissions on the application of Part 2 in a line of recent decisions by the High Court.[5] For completeness, given the inconsistent

[5] Legal submissions, paragraphs 16-19.

approach of the High Court at the time of writing this decision, we have considered Part 2.

114. We acknowledge that the proposal will provide social and economic benefits to the Applicant through the creation of additional lots that would enable housing. Turning to section 6(b), we also accept that Lot 1 will not represent inappropriate subdivision within an ONL. Further, we consider that the combination of the screening provided by the existing landform, together with the proposed design controls for future buildings will ensure the integrity of the ONL is adversely affected to a very low to negligible extent. We therefore consider that the proposal will appropriately provide for the protection of the ONL.

115. The proposal will partially enable the efficient use and development of natural and physical resources under section 7(b). We conclude that the proposal strikes an appropriate balance between providing for opportunities for rural living, while maintaining the efficient use of land for grazing and cropping. However, we do not accept that the water supply proposal will enable the efficient use and development of the land. There is potential that the level of water supply will not be adequate and will hinder the ability of the anticipated land uses to meet demand for both potable water supply and irrigation.

116. We have determined that the proposal will not maintain and enhance amenity values under section 7(c). Nor will maintain and enhance the quality of the environment under section 7(f). As we have set out earlier in our decision, the proposed encumbrance instrument does not provide sufficient certainty that the visual mitigation provided by the shelterbelt on the neighbouring property (Lot 20) will be maintained in perpetuity.

117. There are no section 8 matters of relevance.

118. We conclude that the purpose of the Act is not achieved through this proposal.

DETERMINATION

119. Consent is sought to subdivide land at Eastburn Road, Crown Terrace into eight allotments, to establish residential building platforms on each allotment and two farm building platforms, to relocate an existing tunnel house to one of the farm building platforms and to undertake associated planting and earthworks.

120. Overall, the activity was assessed as a discretionary activity under sections 104 and 104B of the Act.

121. For the reasons set out in this decision, consent is REFUSED.

Dated this 20th day of October 2017

Wendy Baker Rachel Dimery