



DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	P Dunstan
RM reference:	RM150550
Location:	113 Slopehill Road, Wakatipu Basin
Proposal:	To establish a residential unit and accessory building outside of an identified building platform, including earthworks
Type of Consent:	Land use
Legal Description:	Lot 3 Deposited Plan 407786 held in Computer Freehold Register 427401
Zoning:	Operative Plan – Rural General; Proposed Plan - Rural
Activity Status:	Discretionary
Notification:	Publicly notified
Commissioner:	Commissioner T D Nugent
Date Issued:	23 November 2015
Decision:	Consent Refused

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of the Queenstown Lakes
Operative and Proposed
District Plans

AND

IN THE MATTER

of an Application for
Resource Consent to
Establish a Residential Unit
at 113 Slopehill Road,
Wakatipu Basin

BY

Mr P Dunstan
RM150550

DECISION OF COMMISSIONER DENIS NUGENT

Introduction

1. Mr Dunstan has sought consent to establish a residential unit near the southeast corner of 113 Slopehill Road, Wakatipu Basin, outside of an existing building platform. This site is owned by Slopehill Properties Limited. It was apparent from the applicant's submissions and evidence that he had a close relationship with the property owner but this was not explained. For that reason I will refer to the site as "the application site" rather than "the applicant's site".
2. I have been delegated the Council's powers under s.34A of the Act to hear and decide this application.

Hearing and Site Visit

3. I undertook a site visit on Monday 9th November 2015 accompanied by Ms Fyfe. We inspected the area of the proposed dwelling, the RBP and the area in the northeast corner of the site containing two large barns. I also took the opportunity to familiarise myself with development along the remainder of Slopehill Road.
4. The hearing was held in Queenstown on Tuesday 10th November 2015. I heard from:

For the Applicant

- Mr P Dunstan – Applicant
- Mr S Skelton – Landscape Architect
- Mr B Farrell – Planner

Submitters in Opposition

- Mr G Todd, on behalf of himself, J Troon and J Todd, and also on behalf of Mr L Gdanitz
- Dr V Miller on her own behalf

Council Officers/Advisers

- Ms J Fyfe – Team Leader Resource Consents – Queenstown¹
- Mr R Denney – Consultant Landscape Architect
- Ms M Banhidi – Committee Secretary

The Application

5. The proposal involves the erection of a dwelling of 118m² along with a garage of 48m² on Lot 3 DP 407786 (CFR 427401) at 113 Slopehill Road, Wakatipu Basin. In addition, approximately 1,170m³ of earthworks over 1,800m² was proposed as notified.² This was increased at the hearing as a result of increasing the height of proposed mounds³, but the new quantities were not provided and cannot be readily determined from the revised plans provided by Mr Skelton. Little turns on that.
6. The proposed buildings would have a maximum height of 4.8m above a proposed ground level of 438 masl which was to be achieved by reducing the height of the building site. They would be clad in timber weatherboards with a natural stain, with a dark coloured steel roof.⁴

¹ Ms A Standish was the planner responsible for the s.42A Report. She was unable to attend the hearing so Ms Fyfe provided advice in Ms Standish's absence.

² John Edmonds & Associates Ltd, AEE, paragraph 18

³ S Skelton, Evidence, Attachment C

⁴ ibid, paragraph 16, p.4

Reasons Consent Required

7. The site is zoned Rural General in the Operative District Plan (ODP). Ms Standish set out the following reasons consent is required under the ODP:
 - a) A **discretionary activity** consent for the construction of any building outside of a identified residential building platform (RBP) and associated physical activity including roading, landscaping and earthworks;
 - b) A **restricted discretionary activity** consent as the proposal breached the earthworks rules relating to maximum volumes and maximum height of fill; and
 - c) A **discretionary activity** consent to amend a consent notice to amend the approved landscape plan.
8. The site is zoned Rural under the Proposed District Plan (PDP). The only relevant rule that has legal effect under that Plan is Rule 21.5.4 relating to setbacks from waterbodies. As the proposed building site is within 20m of a waterbody a **restricted discretionary activity** consent is required.
9. No consent is required under the NES for Assessing and Managing Contaminants in Soil to Protect Human Health.
10. I agree with Ms Standish's conclusion that overall consent is required for a discretionary activity.

Relevant Statutory Provisions

11. The relevant provisions of section 104 are:
 - (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
 - (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (b) *any relevant provisions of—*

...
 - (v) *a regional policy statement or proposed regional policy statement:*
 - (vi) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*

...

- (3) *A consent authority must not,—*

- (a) *when considering an application, have regard to—*

...

- (ii) *any effect on a person who has given written approval to the application:*

...

12. Under s.104B I may grant or refuse consent. If I grant consent I may impose conditions under s.108.

Regional Policy Statement and Proposed Regional Policy Statement

13. I have considered these two documents. They provide little assistance in assessing this proposal as they contain no directly relevant policies.

Existing Environment

Application Site

14. Lot 3 DP 407786 contains 4.274 ha. It is located on the north side of Slopehill Road near the highest point of the road. It is roughly rectangular, having the long axis running from east of north to west of south, with two protrusions. The first is a roughly triangular area on the western side near the road. The second is a small rectangle attached to the northeast corner.
15. The site is almost completely manicured with ponds and mounding, along with clusters and avenues of trees, creating a park-like appearance. A sealed driveway runs from the road to the rear of the site approximately in the centre of the site frontage. This driveway runs roughly parallel to the eastern boundary. Approximately 90 m from the entry a second sealed driveway runs off to the east to a pair of large barns and associated sealed parking area in the northeast corner of the site. Two ponds are located between this driveway and the eastern boundary. The southern extent of the southern pond is some 40 m from the road boundary. A stacked schist stonewall delineates the southern edge of the site, although I was told this wall is some 2m inside the site boundary.⁵ Mr Denney's

⁵

P Dunstan, Evidence, paragraph 11, p.2

assessment provides a more complete description of the site characteristics.⁶ I adopt that description.

16. A 1,000m² (40m x 25m) RBP has been identified some 150 m north of the road boundary roughly centred on the driveway alignment. At present an easement runs along the driveway alignment providing access to Lot 2 DP 407786. This easement bisects the RBP, although a consent notice on the certificate of title requires the cancellation of that easement when a dwelling is erected on Lot 3. If I were to grant consent to this application that easement would need to be cancelled.
17. Arrowtown Irrigation Company Ltd has a right to convey water over part of the northeast corner of the site. That does not affect this application.
18. Ms Standish's s.42A Report noted that one of the barns on the property had been found to contain a kitchen, suggesting it was or had been used for residential use when no such use had been consented for the site. Mr Dunstan advised that he had briefly resided in the barn but when advised he was not authorised to do so, he ceased residing there.⁷ At the hearing Ms Fyfe advised that the issue of residential use of the barn was not fully resolved. Documentation attached to Mr Dunstan's submissions suggested he was claiming existing use rights for the kitchen, but accepted that residential use was not permitted. It is not necessary for me to resolve this issue and I set it to one side.

Surrounding Environment

19. Slopehill Road is a narrow, Otta-seal road running east from Lower Shotover Road. For the most part it is single lane and the vertical alignment is such as to create blind areas where oncoming traffic cannot be seen. Some 270 m east of the application site there is a cul-de-sac head and the legal road turns northeast and runs downhill as a cycle trail (part of the Queenstown Trails). My references to the road refer to the portion from Lower Shotover Road to the cul-de-sac head.
20. Mr Denney described the area in some detail in his assessment.⁸ I adopt that description and additionally comment as follows. In large part the land along Slopehill Road is in pasture. There is a level of built development comprising generally large houses, not all of which are well set back or screened from the road. It appears from the plan included in the s.42A Report⁹ that at present some 28 existing houses or RBPs gain access from this 1,500m section of Slopehill

⁶ R Denney, Landscape Assessment, 7 September 2015, paragraph 6

⁷ P Dunstan, Evidence, Footnote 1, p.3

⁸ R Denney, Landscape Assessment, 7 September 2015, paragraph 5.

⁹ Figure 4

Road. Of these, it appears from the same map that 19 of that 28 are within 500 m of the application site.

Submissions and Evidence

21. Mr Dunstan presented a submission on his own behalf. He told me that he presently lives in Nelson but visits Queenstown for about a week each month. He said that he wanted to build the dwelling so he could gift this lot, and Lot 2 to the rear, to his two children. He outlined the design basis of the dwelling and then discussed each of the submissions received. Mr Dunstan offered a condition imposing a restrictive covenant on the site allowing no further subdivision.
22. Mr Skelton is the landscape architect who prepared the landscape assessment attached to the application. It was Mr Skelton's evidence that the landscape in the vicinity of the application site has a highly modified appearance with a generally limited natural character. I understood him to be saying that mounding, planting and wetlands on the application site provided the strongest presence of natural character.
23. Mr Skelton outlined amendments that had been made to the application since receipt of the s.42A Report. This included changing the colours of the buildings, increasing the height of mounding, identifying a curtilage area around the building and clarifying the landscape planting proposed. He assessed the proposal in the context of the relevant assessment matters from the ODP. In summary, his conclusions were:
 - a) Overall, the public visibility of the buildings, the extension of the driveway and other domestic elements would be very low;
 - b) The proposed mounding and planting to screen the buildings would have very low adverse effects on the openness of the landscape and would make a significant contribution to the landscape's natural character;
 - c) When a future building is erected on the RBP, the proposed buildings, if perceived at all, would be seen as small character buildings set within the rural and natural site elements;
 - d) The proposal would not have significant cumulative effects and would not represent over domestication of the landscape.

24. Mr Farrell is a planning consultant based in Queenstown. He prepared the application and accompanying assessment of effects on the environment (“AEE”). He listed the following overall conclusion of the AEE that the proposal:¹⁰
- *Will result in minor positive effects on the environment;*
 - *Will result in no more than minor and acceptable adverse effects on the environment;*
 - *Will not be contrary to the provisions of the RPS, PRPS, and QLDC District Plan; and*
 - *Will not offend any aspect of Part 2 of the RMA and is consistent with the concept of sustainable management.*
25. Mr Farrell outlined the changes made to the application following receipt of the s.42A Report. I understood it to be his opinion that the amendments to the proposal to make it more acceptable in a landscape sense meant the environmental effects would be satisfactorily avoided, remedied or mitigated, and would be acceptable. In considering the proposal against the ODP he concluded in his written evidence that the proposal was not contrary to the objectives and policies. When I queried whether this was the correct test for a discretionary activity he altered his conclusion to state that the proposal was not inconsistent with the objectives and policies.
26. Mr Farrell considered that little weight should be given to the provisions of the PDP given its recent notification. He did not think the fact that the PDP proposed to make the erection of dwellings on a RBP a permitted activity altered the case-by-case management regime for dwellings in the rural area. Considering the issue of precedent, Mr Farrell considered this applied more to non-complying activities than discretionary activities. He also stated that there was no need for exceptional circumstances, but the following matters differentiated this proposal from others:
- The allotment size;
 - Slopehill Road is no exit and most residents had no objection; and
 - The visibility of the proposal from the road would be very limited.
27. Mr Farrell considered the key issue to be the extent to which the proposal would result in appropriate cumulative effects on landscape and amenity values. He did agree that the proposal could result in cumulative adverse effects, but considered these to be localised, sufficiently avoided, remedied or mitigated, and acceptable.

¹⁰

B Farrell, Evidence, paragraph 16, p.3

When asked about the point at which activities cease to be rural, he considered it was more about rural character being maintained and rural activities being protected. He considered there was rural character in the existing vegetation and wetlands on site, and asserted that duck shooting occurred on-site, reinforcing the rural character.

28. Mr Todd appeared on behalf of the Trust of which he is a trustee and for Mr Gdanitz. Mr Todd's Trust owns a property on the south side of Slopehill Road with access off the road east of the applicant's site. He advised that he considered Mr Dunstan had made a "great job" of the site and the subdivision which created it. He considered the major issue to be over-domestication and cumulative effects, with his major concern being the location of both a dwelling and RBP on the site leading to over-development on Slopehill Road. It was his submission that I was entitled to consider the effect granting this consent would have on future applications. He also noted the value of the 'no subdivision' covenant, but did not consider that affected the issue of over-domestication.
29. Dr Miller resides at 32 Slopehill Road. She told me she farmed that property and that of her neighbours totalling some 20 ha. In her estimation, some 50% of the land adjoining Slopehill Road is farmed. Dr Miller questioned why Mr Dunstan did not build his cottage on one of the consented building platforms adjacent to the future home of his children. She queried whether the separation between the RBP and the proposed dwelling disclosed an intention to subdivide the site in the future. As with Mr Todd, Dr Miller was concerned that granting this application would create a precedent encouraging all property owners on the road to seek consent for a second dwelling, leading to twice the development along the road. She also noted the potential traffic issues given the use of the road as part of the Queenstown Trails, which brings cyclists, runners and horse-riders along the road.
30. Mr Denney is a consultant landscape architect based in Queenstown. He prepared the landscape assessment in the s.42A Report. In this he concluded that the proposal would marginally cross a threshold for the surrounding landscape to absorb further change. He suggested how the extent of domestication and presence of built form could be reduced.
31. At the hearing I was provided with a copy of a Memo from Mr Denney to Ms Standish dated 30 October 2015. In this Mr Denney discussed the amendments made to the proposal. He concluded that, as amended, *"the proposed development would be close to, but not over the threshold for this landscape to absorb development."*

32. In her s.42A Report, Ms Standish recommended that consent be refused, based largely on the landscape effects of the proposal, as well as precedent effects. Ms Fyfe had had the opportunity to consider all the material available and come to her own conclusion. In her view, while the visual amenity and landscape issues had been resolved, she agreed with Mr Todd that the proposal represented over-domestication and she had concerns with precedent effects. She remained of the opinion that consent should be refused.
33. In reply Mr Farrell referred me to the evidence of the two landscape architects who had looked at the question of over-domestication of the landscape. He noted that with 50% of the land on Slopehill Road being farmed, that meant the other 50% was not. He opined that this proposal would not alter that ratio. He considered there was no issue of precedent as the landscape architects concluded the proposal was satisfactory.

Major Issues in Contention

34. The major issue to consider in this application is the effect of the proposal, both in its direct effects and the cumulative and precedent effects, on the rural character of Slopehill Road and the wider Wakatipu Basin. There is a subsidiary issue as to whether the grant of consent would affect the integrity and purpose of the District Plan regime of identifying RBPs on Rural General sites.
35. The resolution of these issues is found largely in the objectives, policies and other provisions of the operative and proposed District Plans.
36. I accept the evidence of the landscape architects that in purely landscape terms, the adverse effects, after application of recommended conditions, are acceptable. I also note the lack of any evidence suggesting adverse effects on infrastructure or any other matter.
37. Ms Fyfe had reviewed the matters to which my discretion is limited under the PDP rule requiring setbacks from waterbodies and concluded the proposal would satisfy those criteria. I accept that advice.
38. Thus, other than potential effects on rural character, I had no evidence of adverse effects on the environment that could not be managed to an acceptable level by recommended conditions. I also note that Mr Farrell accepted that any positive effects of the proposal, beyond those on the applicant, would be very minor.¹¹ I do not disregard them, but consider that they would be insufficient to outweigh a

¹¹ B Farrell, Evidence, paragraphs 52 & 53, p.9

more than minor adverse effect on rural character. I will therefore limit my consideration of effects to effects on rural character.

Relevant Provisions of Operative District Plan

39. The site and surrounding land is zoned Rural General. There was agreement among the experts that the site was within a Visual Amenity Landscape. In discussing the resource management issues in the zone, the Plan states the following:

It is desirable to create conditions where beneficial effects (such as productive effects, enhancement of the amenity/visual values, development of pleasant built form and soil retention) are maintained, developed and enhanced.¹²

All Rural Zones have particular amenity and environmental values, which are important to rural people. These include privacy, rural outlook, spaciousness, ease of access, clean air and, at times, quietness. However, because of the range of activities that necessarily occur in a rural area, there are levels of noise, dust, traffic generation and smell that are an integral part of rural amenity values.¹³

40. The purpose of the zone is expressed, relevantly as

... to manage activities so they can be carried out in a way that:

- Protects and enhances nature conservation and landscape values;*
- Sustains the life supporting capacity of the soil and vegetation;*
- Maintains acceptable living and working conditions and amenity for residential of and visitors to the Zone; and ...¹⁴*

41. The purpose then states:

The zone is characterised by farming activities and a diversification to activities such as horticulture and viticulture.¹⁵

42. Objective 1 is to protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities. The relevant policies to give effect to this objective are:

¹² ODP Section 5.1(i)
¹³ ODP Section 5.1(iii)
¹⁴ ODP Section 5.3.1.1
¹⁵ ibid

- 1.1 *Consider fully the district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.*
- 1.2 *Allow for the establishment of a range of activities, which utilise the soil resource of the rural area in a sustainable manner.*
- 1.3 *Ensure land with potential value for rural productive activities is not compromised by the inappropriate location of other developments and buildings.*
- 1.4 *Ensure activities not based on the rural resources of the area occur only where the character of the rural area will not be adversely impacted.*
- 1.5 *Provide for a range of buildings allied to rural productive activity and worker accommodation.*
- 1.6 *Avoid, remedy or mitigate adverse effects of development on the landscape values of the District.*
- 1.7 *Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.*

43. Looked at as a whole, these policies separate management of landscape effects (Policies 1.1, 1.6 and 1.7) from effects on rural character (Policy 1.4). In addition they give preference to rural productive activities (Policies 1.2, 1.3 and 1.5). This preference is reinforced by the policies giving effect to Objective 3. The relevant policies are:

- 3.1 *Recognise permitted activities in rural areas may result in effects such as noise, dust and traffic generation, which will be noticeable to residents in the rural areas.*
- 3.2 *Ensure a wide range of rural land uses and land management practices can be undertaken in the rural areas without increased potential for the loss of rural amenity values.*
- 3.3 *To avoid, remedy or mitigate adverse effects of activities located in rural areas.*
- 3.5 *Ensure residential dwellings are setback from property boundaries, so as to avoid or mitigate adverse effects of activities on neighbouring properties.*

44. The Explanation and Principal Reasons for Adoption of Objective 3 and its policies lists the rural amenity values quoted above from Section 5.1(iii) and then explains that permitted activities will impact on these in relation to some residents. There is a suggestion, although it is not explicit, that the objective is as concerned about reverse sensitivity effects as it is about direct amenity effects.
45. I have considered the objectives, policies and other provisions in Chapter 22 that relate to earthworks, but these provide no assistance in determining how the Plan deals with rural character.
46. It is also relevant that the ODP provides rural living zones (Rural Lifestyle and Rural Residential Zones) that are separate from the rural zones, and the issue statement for them states that “[u]nmanaged residential living in rural areas can give rise to adverse effects on rural amenity and rural activities.”¹⁶
47. The relevant rules that give effect to the objectives and policies of the Rural General Zone provide that the erection of any new building within an approved RBP is a controlled activity. Any other new buildings, other than new farm buildings on a property of at least 100 ha or a residential flat, requires consent as a discretionary activity. In addition, the identification/approval of a (residential)¹⁷ building platform of between 70m² and 1,000m² requires consent as a discretionary activity. A wide variety of other activities are listed as discretionary activities.
48. Finally, the reasons given in the Plan for why activities are listed as discretionary, Section 1.5.3(iii), lists the following relevant reasons:
- (i) *where there is a potential that they may not be suitable in all locations in a zone; or*
 - (ii) *where the effects of the activity on the environment are so variable that it is not possible to prescribe appropriate standards to cover all circumstances in advance of an application; or ...*
 - (iv) *because in visual amenity landscapes the relevant activities are inappropriate in many locations; ...*
49. When all these provisions are looked at in the round, it is my conclusion that, in terms of the Operative District Plan:
- a) Rural character is different from visual amenity values or landscape values;

¹⁶

ODP Section 8.1.1(iv)

¹⁷

I place “residential” in brackets as Rule 5.3.3.3(i)(b) does not specify residential as part of its description, whereas Rule 5.3.3.2(i)(b) (which is the controlled activity rule) does specify residential building platform.

- b) Residential use of a property in the Rural General Zone unrelated to rural productive use is not a preferred activity in the zone, but it is not excluded;
- c) Where a RBP has been identified on a site, the zone provisions give preference to locating residential buildings within the RBP;
- d) Notwithstanding the location of a RBP on a site, an applicant can seek consent for a residential building elsewhere on the site.

Proposed District Plan

50. The Proposed District Plan (PDP) is at a particularly early stage of its development. Few of the rules in it have legal effect and I agree with Mr Farrell that the objectives and policies must be given limited weight.
51. The site is zoned Rural and located within the Rural Landscape Category. The purpose of the Rural Zone is “*to enable farming activities while protecting, maintaining and enhancing landscape values, nature conservation values, the soil and water resource and rural amenity.*”¹⁸ The statement on zone purpose goes on to say:
- ... because the majority of the District’s distinctive landscapes comprising open space, lakes and rivers with high visual quality and cultural value are located in the Rural Zone, there also exists the desire for rural living, recreation, commercial and tourism activities.*
52. Objective 1¹⁹ is to enable farming, permitted and established activities. The policies include requiring setbacks from boundaries and considering lighting issues. Objective 2²⁰ seeks to sustain the life supporting capacities of soils. Objective 4²¹ seeks to manage situations where sensitive activities conflict with existing and anticipated activities in the zone. Policy 21.2.4.2 states –
- Control the location and type of non-farming activities in the Rural Zone, to minimise or avoid conflict with activities that may not be compatible with permitted or established activities.*
53. Although they do not have legal effect yet, it is relevant to note that a similar regime to that applying in the ODP is proposed in respect of residential buildings in the zone, with two exceptions. First, the erection and use of a residential unit within an approved RBP would be permitted subject to the application of specified

¹⁸ PDP, Section 21.1
¹⁹ PDP Objective 21.2.1
²⁰ PDP Objective 21.2.2
²¹ PDP objective 21.2.4

standards. Second, the permitted activity status for residential flats is limited to the use. Buildings for residential flats would require the same form of consent as other residential buildings.

54. When the provisions of Chapter 3 Strategic Directions are considered, it is apparent that the PDP sees effects on landscapes to be the primary concern when considering residential buildings and activities in the Rural Zone. Under Goal 3.2.5, which relates to landscapes, Objective 3.2.5.4 states –

Recognise there is a finite capacity for residential activity in rural areas if the qualities of our landscape are to be maintained.

55. The two policies to give effect to this objective are:

3.2.5.4.1 Give careful consideration to cumulative effects in terms of character and environmental impact when considering residential activity in rural areas.

3.2.5.4.2 Provide for rural living opportunities in appropriate locations.

56. I take Policy 3.2.5.4.2 to be providing the policy basis for the Rural Residential and Rural Lifestyle Zones which are expressed as expecting development.
57. Overall, in its present form, the PDP contains no provisions which distinguish rural character from visual amenity or landscape values.

Effects on Rural Character

Permitted Baseline

58. The use of rural land for productive purposes is permitted, along with fencing and planting, although not forestry. Limited earthworks are also permitted. I do not consider that disregarding the effects of these activities assists in determining this application.

Consideration of Effects

59. The relevant definition of rural is²²

Of, pertaining to, or characteristic of the country or country life; existing or performed in the country; agricultural, pastoral.

²²

The New Shorter Oxford English Dictionary, Clarendon Press, Oxford, 1993

60. In my view the rural character of Slopehill Road derives from the openness of the pastoral landscape, the grazing of animals, the rural post and wire fencing, and the narrow carriageway of the road with rough grass verges. As it is, I consider the application site does not display a high level of rural character notwithstanding its park-like appearance. The highly manicured nature of the site, with mown grass areas, including the road verges, rather than grazed areas, is not typical of the New Zealand rural environment.
61. While the landscape architects agreed that the proposed dwelling could be located on the site without exceeding the capacity of the landscape to absorb development, that was conditional upon remoulding the landscape and planting to hide the building from the road. That remoulding would accentuate the manicured nature of the site reducing rural character further. I note also the Environment Court's determination that the effects of planting of shelter and trees to screen dwellings on rural character can be considered even though similar planting accessory to rural-based activities on the site would be permitted.²³
62. The existing environment includes a 1,000m² RBP, unimpeded by the existing easement, within which a dwelling can be erected. It also includes a node of development, comprising two large buildings and sealed area, in the northeast corner of the site that is unrelated to any rural activity. This site is, therefore, essentially a rural property used for residential purposes. Adding a further dwelling in a third location would create a density of development on the site similar to that provided for in the Rural Lifestyle Zone. That would effectively change the site from a rural site to a rural living site.
63. I also note that although Mr Dunstan volunteered a restrictive covenant prohibiting further subdivision of the site, such a covenant can be removed as a discretionary activity. Once an additional dwelling is established on the site with the resultant domestic activity such an application and a subdivision application, would be very difficult for the Council to refuse.
64. Overall, I conclude that to grant consent to this application would alter the character of the site and immediate environment such that it would amount to a more than minor adverse effect on the area's rural character.

²³
Hughes Prassinis Family Trust v Queenstown Lakes DC A86/2003, paragraph [97], p.20

Other Matters

Precedent Effect

65. Ms Standish, Mr Todd and Dr Miller all raised the potential for the granting of this application to set a precedent whereby others may expect a similar outcome to similar applications on their sites.
66. While the ODP does provide for both the identification of building platforms and erection of dwellings as discretionary activities, once a building platform is identified on a site, the management preference, as expressed in the activity status categories, is for dwellings to be erected within the identified building platform. As I noted above, there are some 28 building platforms located on sites gaining access off Slopehill Road. I am not aware of how many remain undeveloped, but it was apparent from my site visit that there are several that are undeveloped. It is possible that, if I were to grant this application, it would create an expectation in other applicants that, notwithstanding the existence of a RBP on their rural property, they could obtain consent for another dwelling, provided it was screened from public views.
67. While this effect could occur, I do not consider that taken alone it is sufficient grounds to refuse consent given the discretionary activity status.

Integrity of the District Plan

68. This is a matter that is more normally associated with non-complying activities. However, I consider in the context of residential development of the Rural General Zone, this is a relevant matter.
69. The ODP establishes a management regime to deal with residential development in this zone. Residential building platforms can be approved for a site and registered on the CFR (certificate of title). That approval requires a discretionary activity consent and can occur either in isolation or in conjunction with a subdivision application. Once approved, the erection of a dwelling on the RBP is a controlled activity with control limited to external appearance, earthworks, access, landscaping and the provision of infrastructure, although those matters are often subject to conditions applied to the RBP consent.
70. Alternatively, an application can be made for a dwelling outside of a RBP as a discretionary activity. There is no limitation on the number of dwellings on a site, but the policies suggest that the reason for that is related to providing for buildings associated with productive use of the land.

71. When questioned as to what he considered the purpose of a RBP to be, Mr Farrell responded that it was to manage development. He then went on to say that density in the Rural General Zone should be considered on a case-by-case basis provided the effects of buildings are managed.
72. In my view, where potential development on a site has been appropriately managed by the approval of an RBP, the possibility arises that if one or more other buildings are to be erected on the site outside of that RBP there is a significant risk of ad hoc development and incremental change, notwithstanding the discretionary activity classification of the activity. This site already has a substantial node of built development in the northeast corner, along with a 1,000m² RBP near the centre of the site. Granting consent to a third node of development on the site would challenge the management regime designed to give effect to the objectives and policies of the Plan. To that extent it would undermine the integrity of the Plan provisions designed to achieve the purpose of the Act.

Discussion

Operative District Plan

73. The objectives, policies and methods of the ODP suggest residential use of the Rural General Zone should be subsidiary to the rural productive use of the land in the zone. That is not to say that residential activities cannot occur, but they are to occur within a framework that does not disrupt, in this case, the values of the Visual Amenity Landscape nor disrupt the rural character of the area.
74. The present use of the application site can best be described as a park with large storage facilities in one corner. Although I was told that grazing does occur on the site, I saw no evidence of it. I was also told that duck shooting occurs on the site. While those are activities which one expects on a rural property and contribute to rural character, neither rely on the addition of a dwelling outside of the approved RBP. In addition, the location of an additional dwelling in the location proposed would reduce the ability of the site to contribute to the rural character of the area.
75. There is a point at which development alters the character of an area from rural to rural-residential. To grant consent to this proposal would have that effect on the immediate vicinity. There is also the potential for that change to enable similar successful applications on nearby sites both as a result of the change in rural character and, potentially, the application of consistent decision-making in relation to other landowners seeking like-for-like decisions. Thus, it is a

combination of the direct and cumulative effects of the proposal on rural character, along with the potential precedent effect and the effect on the integrity of the ODP which count against this application.

Proposed District Plan

76. The PDP proposes a similar regulatory regime to the ODP and has a similar preference for productive rural activities in the Rural Zone and similarly separates the Rural Zone from the two rural-residential zones. However, the objectives and policies are such that an assessment under that Plan as it stands would relate solely to landscape effects. On the basis of the evidence, I must conclude the proposal is consistent with the objectives and policies of the PDP. However, this Plan is at such an early stage in the submission process that I cannot give it more weight than the operative plan. In addition, as the rules have no legal effect (in the main), it would be improper to compare the proposed rules for the various zones.

Part 2

77. Part 2 of the Act requires me to recognise and provide for certain matters of national importance under s.6 and to have particular regard to other matters under s.7. I agree with the planners that there are no relevant s.6 matters. In terms of s.7, I consider the following are relevant:

- (c) *the maintenance and enhancement of amenity values:*
- (f) *maintenance and enhancement of the quality of the environment:*
- (g) *any finite characteristics of natural and physical resources:*

78. Rural character comprises a bundle of amenity values and relates to the quality of the environment. While rural land is a finite resource, particularly in the Wakatipu Basin, this proposal would not diminish that resource.
79. At present the resource management approach of both the ODP and PDP in this area is to enable rural productive use of the land in preference to rural-residential use. While the decision is finely balanced, to grant consent to this proposal would be contrary to that approach and would therefore not amount to sustainable management of natural and physical resources.

Decision

80. Pursuant to section 104B of the Resource Management Act 1991 application RM150550 by P Dunstan for a residential unit and associated buildings outside of an approved building platform along with associated earthworks is refused consent.

Dated 23 November 2015

A handwritten signature in blue ink, appearing to read 'Nugent', is written over a faint circular stamp.

Denis Nugent
Hearing Commissioner