



DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	L Topp
RM reference:	RM150125
Location:	111 Alec Robins Road, Wakatipu Basin
Proposal:	Subdivide Lot 2 DP 476278 into two allotments; identify a residential building platform on the new lot; undertake a boundary adjustment between Lots 1 and 2 DP 476278, and vary conditions of a consent notice.
Type of Consent:	Land use and subdivision
Zoning:	Rural General
Activity Status:	Non Complying
Notification:	Publicly Notified
Commissioner:	Commissioner D Mead
Date Issued:	22 November 2016
Decision:	<p>Resource consent for the subdivision of Lot 2 DP 476278, the identification of a residential building platform and variation of consent notices is DECLINED.</p> <p>Resource consent for the boundary adjustment between Lots 1 and 2 DP 472678 is GRANTED.</p>

Decision following the hearing of an application for resource consent under the Resource Management Act 1991

Proposal

L Topp has sought resource consent to subdivide Lot 2 DP 476278 into two allotments; identify a residential building platform on the new lot; undertake a boundary adjustment between Lots 1 and 2 DP 476278, and vary conditions of a consent notice.

Resource consent for the subdivision of Lot 2 DP 476278, the identification of a residential building platform and variation of consent notices is **REFUSED**.

Resource consent for the boundary adjustment between Lots 1 and 2 DP 476278 is **GRANTED**.

The reasons are set out below.

Application number:	RM150125
Site address:	111 Alec Robins Road, Wakatipu Basin
Applicant:	L Topp
Hearing commenced:	19 October 2016
Hearing panel:	David Mead (Independent Commissioner)
Appearances:	<u>For the Applicant:</u> Jayne Macdonald - Counsel Nick Geddes - Planning Consultant Michelle Snodgrass - Landscape Architect Lindsey Topp - Applicant <u>For the Council:</u> Jane Sinclair – Reporting Officer Helen Mellsop - Landscape Architect Lyn Overton - Engineer
Hearing adjourned:	19 October 2016
Commissioner's site visit	19 October 2016
Hearing closed:	2 November 2016

Introduction

1. I have been given delegated authority to hear and determine this application by the Queenstown Lakes District Council ("Council") under section 34 of the Resource Management Act 1991 ("the Act") and, if granted, to impose conditions of consent.
2. This decision contains the findings on the application for resource consent and has been prepared in accordance with section 113 of the Act.

Summary of proposal

3. The application (RM150125) has been made by L Topp to:
 - (a) carry out a boundary adjustment between existing Lots 1 and 2 DP476278. The adjusted boundaries will result in an infringement to a 15m internal boundary setback for the dwelling located on Lot 1.
 - (b) subdivide Lot 2 DP476278 into two allotments, comprising Lot 2 of 0.84ha containing an existing residential building platform (RBP) and proposed Lot 3 of 8.25ha containing a proposed new 208m² RBP.
 - (c) construct a residential dwelling within the new RBP in proposed Lot 3, and to carry out associated earthworks, access and infrastructure works.
 - (d) vary existing condition a) of Consent Notice 9747673.3 to set the height of a dwelling within the proposed RBP on Lot 3, and introduce various restrictions on the design of the dwelling to be built on the Lot 3 RBP and the use of the associated curtilage area.
 - (e) remove condition 1) of Consent Notice 5191027.2 in regard to locating any future dwelling within the existing approved RBPs on Lots 1 to 4 DP 304263.
4. A detailed description of the proposal was provided in Section 1.3 of the resource consent application prepared by Clark Fortune MacDonald and Associates.
5. The site is located at 111 Alec Robins Road, Queenstown. A description of the site and receiving environment within which the application site is located can be found in Section 1 of the resource consent application. No parties disputed the description of the site or receiving environment, and I am therefore content to rely upon them.
6. I visited the site and the environs before the hearing, accompanied by Ms Sinclair. I am satisfied that I obtained a good understanding of the subject site and the receiving environment.
7. In terms of the site, of note the landscape experts are in agreement that:
 - (a) Lot 1 containing the existing dwelling, and proposed Lot 3 containing the proposed RBP are located within the Wakatipu Basin Outstanding Natural Landscape (ONL-WB)

- (b) Parts of proposed Lot 2, including an existing RBP, are located within the Visual Amenity Landscape (VAL).
8. The RBP and dwelling on proposed Lot 3 are located in a position previously granted consent for a farm building. The dwelling is designed to be consistent with the approved dimensions of the farm building. The site of the RBP is on Morven Hill, a prominent feature in the Lake Hayes area. The hill is considered to have high natural character, although it is grazed. The RBP is located in a natural depression that is to be augmented by earthworks that will deepen the depression. The effect of the landform will be to largely visually contain the dwelling. The dwelling would be visible from The Remarkables ski field road, Coronet Peak and a small portion of the roof line and chimney would be visible from the pond by Howards Drive at the southern end of Lake Hayes Estate.
 9. Lot 3 involves a subdivision of Lot 2 DP 476278. When Lot 2 was created, a RBP was identified close to Alec Robins Road and a consent notice limits the lot to one residential dwelling, with that dwelling and any associated accessory buildings located in the RBP.

Planning and assessment framework

10. The subject site is zoned Rural General. The purpose of the Rural General zone is to manage activities so they can be carried out in a way that:¹
 - (a) protects and enhances natural conservation and landscape values;
 - (b) sustains the life supporting capacity of the soil and vegetation;
 - (c) maintains acceptable living and working conditions and amenity for residents of and visitors to the zone; and
 - (d) ensures a wide range of outdoor recreational opportunities remain viable within the zone.
11. The zone is characterised by farming activities and a diversification to activities such as horticulture and viticulture. The zone includes the majority of rural lands in the district, including alpine ski areas and national parks.
12. Full details of the resource consents required and the status of the activity are set out in the Council's section 42A report, and the applicant accepted the analysis set out as to the consent triggers, as follows:
 - (a) A discretionary activity resource consent pursuant to Rule 15.2.3.3vi for all subdivision and the identification of a Residential Building Platform within proposed Lot 3.
 - (b) A restricted discretionary activity resource consent pursuant to Rule 5.3.3.3xi as the proposal does not comply with Site Standard 5.3.5.1vi (a) minimum setback from internal boundaries, where a 15m set back is required from internal boundaries. The

¹ Part 8.2 of the District Plan.

proposed boundary adjustment will result in the existing dwelling on Lot 1 being located 9 metres from the new boundary.

- (c) A non-complying activity resource consent pursuant to Rule 15.2.4(i) as the subdivision does not comply with Zone Standard Rule 15.2.6.3(bb)(vi). The adjusted boundary creates a non compliance with the Part 5 Rural General Site Standard Rule 5.3.5.1vi(a) relating to minimum set backs from an internal boundary.
 - (d) A discretionary activity resource consent pursuant to Rule 15.2.3.3(i) for the construction of any building and any physical activity associated with any building such as roading, landscaping and earthworks that is not contained within an approved building platform.
13. Variations to consent notices are also required.
 14. Overall, the application was considered by the Council's reporting officer to require assessment as a **non-complying** activity. However the applicant's planner questioned whether bundling was appropriate, in that the effects of the boundary adjustment between Lots 1 and 2 were distinct from and did not overlap with the effects associated with the subdivision to create a new lot and the identification of a residential building platform on this lot. This is a matter I consider below.
 15. The provisions of the Resource Management Act 1991 relevant to the assessment of this application are sections 104, 104D, 104B, 106, 108, 220 and Part 2 of the Act.
 16. In accordance with section 104(1)(b)(i) to (v) of the Act, there are no relevant national environmental standards, other regulations or national policy statements applicable to the proposed development.
 17. In terms of 104(1) (b) (vi) a proposed district plan has been notified and is subject to submissions. The plan is currently in the hearings process. Both Mr Geddes and Ms Sinclair placed little weight on the objectives and policies of this plan, due to the stage of its development.
 18. Relevant operative plan provisions are identified in the section 42A report. The objectives and policies relevant to this application are contained within Part 4 of the District Plan (*District wide Issues*), Part 8 (*Rural Living Areas*) and Part 15 (*Subdivision, Development and Financial Contributions*), which require assessment under sections 104 and 104D of the Act.

Notification, submissions and affected party approvals

19. Written approval was received from the following parties:
 - i. W B Ho and R L Mai, 51 Alec Robins Road, Lake Hayes
 - ii. MJ Turner and R Thompson, 61 Alec Robins Road, Wakatipu basin (Lot 3 DP 304263)
 - iii. AK Robins, Part Section 28, Block IX Shotover Survey District Lot 8 DP 468905
 - iv. M and G Smith, 64 Alec Robins Road, Lake Hayes.

20. Accordingly, any effects on the above parties have been disregarded in accordance with section 95D(e) of the Act.
21. Notification of the application on 2 March 2016 drew one submission.
22. An opposing submission by Ben Ho and Mary Mai (Rui Lan) owners of 51 Alec Robins Road was received on 4 April 2016, one working day after the close of submissions. Under Section 37 of the RMA I waive the requirement to make a submission within the required time period, having taken into account the provisions of Section 37A(1). The applicant did not oppose this waiver.
23. It is noted that the submitter also signed an affected party approval form for the application, and that this approval has not been withdrawn. The opposing submission seeks the removal or the uplifting of the Council's landscape classification line and changing the zoning of the property. The submission states that if this was to occur, the submitter would be in agreement with the application.
24. I record that the matters raised in the submission are outside the matters that can be addressed in this decision, and as a result I have not taken into account the submission in making my decision.

The Hearing

25. A hearing to consider the application was convened on 19 October 2016 in Queenstown.
26. I had the benefit of the applicant's Assessment of Environmental Effects and the section 42A report prepared by Council's planner, Ms Jane Sinclair. Based upon her assessment of the application, Ms Sinclair recommended that the application be refused. Evidence for the applicant was pre circulated. The submitter in opposition did not attend.
27. The Hearing was adjourned on 19 October 2016 to allow for the applicant's right of reply to be prepared and an amended set of proposed conditions circulated to Council staff for comment. The right of reply was received on Monday 31 October and amended conditions on 1 November 2016. The Hearing was closed on 2 November 2016.

Summary of the evidence heard

28. As evidence for this hearing was pre-circulated, the applicant's experts all provided a summary of their evidence at the hearing. I have read all of the material, and the following is a brief outline of the submissions and evidence presented. This summary does not detail everything that was advanced at the hearing, but captures the key elements of what I was told.

Evidence for the applicant

29. The applicant's case was presented by Ms Macdonald. She first addressed the need for the bundling of the consents and how the current environment might be interpreted. In her view, there was a basis for unbundling of the boundary adjustment from the other aspects of the application, due to the different set of effects involved. The existence of the consented farm

building was important, as any landscape effects generated by that consent form part of the current environment. The effects of the dwelling needed to be considered in that context.

30. She went on to address precedent and integrity issues. In her opinion, as the application would effectively mitigate its effects, there were no precedent or integrity issues that might be generated by granting consent.
31. Ms Snodgrass, a Landscape Architect, provided an analysis of landscape and visual effects. Her opinion was that the visual effects of the residential building would be slight. The effects on views from The Remarkable Ski field would not be significant, in that the new building will be only a minor component of the wider view and be similar to the consented farm building. Visual effects as experienced from the pond by Howards Drive would be minor, given the small area of roofline that will be seen, and the use of recessive cladding materials.
32. In terms of landscape effects, she identified that these were a different set of effects from visual effects. Signs of the domestication of the landscape from residential use were relevant. However in this case, any signs of residential activity would be marginal, given that the dwelling would be obscured from views from most public places. Domestic planting around the house would be controlled by way of conditions of consent, vehicle movements would be limited and outdoor lighting controlled. Gas would be used to heat the house, so no wood or coal smoke would be visible.
33. Mr Geddes, consultant planner, addressed planning issues. In addition to his pre-circulated statement, he presented a short supplementary statement clarifying some matters relating to the existing consent notices and proposed conditions of consent. An updated set of recommended conditions were presented.
34. In his opinion, the adverse effects on landscape, natural character, and rural amenity values will be less than minor, and as such the application satisfies the objectives and policies of the district plan. The dwelling would be barely visible from most places, while conditions were proposed to ensure that more than minor effects would not be generated. These related to no building outside the approved RBP, maximum height and exterior materials to be visually recessive.
35. In response to concerns about signs of domestication, he stated that the number of vehicle trips generated by the dwelling would likely be no more than 10 a day, with only some of these during hours of darkness. In terms of lighting, it is proposed that exterior lighting be low level, down lighting only. Further conditions are proposed that would not allow amenity trees or garden planting within the curtilage area of Lot 3, while any structures like swings and trampolines would be contained within the curtilage area, with this area being within the depression.
36. He clarified issues relating to water supply, fire fighting and driveway gradients. Some reshaping of the access way may be needed to comply with relevant standards. This would not be a large exercise.

Council response

37. The reporting officer, Ms Sinclair started by acknowledging that the boundary adjustment could be unbundled from the new lot and associated residential building platform. Her view remained that consent should not be granted to the new lot and associated residential building platform.
38. Ms Mellsop provided comments in relation to landscape. She reiterated that in her view, there would be adverse effects on the landscape that would be more than minor. She agreed that the visual effects of the dwelling would not be great. In terms of landscape effects, perceptions were important and that even small scale signs of occupation and domestication would alter people's perceptions of the naturalness and openness of the landscape of Morven Hill. These changes would be on top of the changes to the landscape that have already occurred from the housing, buildings and planting around the base of Morven Hill.

Applicant's right of reply

39. Ms Macdonald provided a written right of reply. The reply states² that the core issue is:

"whether the effects associated with residential use – essentially the perception of someone living in a building as a result of light spill and vehicle movements (day and night) tip the balance such that effects are more than minor. In this respect the applicant submits that one's perception of the change in use from farm building to residential use becomes more relevant and useful as an assessment tool".

40. The reply goes on to emphasise that it is the case of the applicant that while there are may be "intangible" effects on the landscape from the dwelling, such as effects on open space values and the naturalness of the landscape, these effects are to a great extent already generated by the consented farm building.
41. The reply also provides commentary on how the operative district plan provisions may be interpreted; particularly the wording associated with the assessment criteria for buildings in ONLs.
42. Amended conditions were attached. These clarify and add a number of conditions relating to no exterior lights, that the lot be used as a farm and no planting along boundary lines.

Preliminary matters: bundling

43. As noted above, the section 42A report stated that the applications should be bundled. Ms Macdonald took issue with this, as did Mr Geddes.
44. Mr Geddes considered that if unbundled, and the subdivision of Lot 3 and residential building platform treated as a discretionary activity, then precedent and integrity issues would not come into play. However, Ms Macdonald noted that this would not necessarily be the case. Plan integrity issues can be a matter considered under section 104 (1) (c).

² Para 13, Submissions in reply for Lindsey Topp.

45. After hearing from the applicant, Council's reporting planner agreed that the boundary adjustment could be unbundled from the other aspects of the application. This is on the basis that there were two different sets of effects which did not overlap.
46. I agree with this approach. Consequently the following two sets of consents are considered:
- (a) boundary adjustment non complying -
 - (b) new lot, residential building platform, dwelling and variation to consent notices - discretionary.
47. At this point, I note that the boundary adjustment was not a matter in contention. The section 42A report recommended that the boundary adjustment be granted. I accept the evidence from the applicant and the Council's reporting officer that the boundary adjustment does not create any adverse effects in terms of landscape or amenity issues, and therefore meets the requirements of section 104D. As such I do not address this particular aspect any further. I concentrate on the creation of a new lot and residential building platform and associated modification of consent notices.

The principal issues in contention

48. After analysis of the application and supporting evidence (including proposed mitigation measures and volunteered conditions) and the section 42A report I have determined that the proposed activity raises the following issues:
- (i) Defining the existing environment;
 - (j) The effects of the subdivision and RBP that are in addition to or different from those associated with the consented farm building;
 - (ii) Whether or not these 'additional' effects are more than minor, given the objectives and policies of the operative district plan.

Main findings on the principal issues in contention

49. My main findings on the principal issues in contention, and the reasons for my findings, are as follows.

Existing Environment

50. An issue in this case is how to interpret the existing environment. A farm building is consented for the site of the new RBP, but this farm building has not been built. In terms of the existing environment as usually conceived (existing features plus lawfully consented activities), the farm building is part of the environment.
51. The applicant placed some importance on this interpretation, as the effects of the dwelling need to be seen within the context of the consented farm building.
52. The section 42A report identified as relevant to the consideration of effects of the dwelling Rule 5.3.5.1xi(b) of the operative District Plan. This rule states that the existence of a farm

building approved under Rule 5.3.3.2(i)(d) shall not be considered the permitted baseline for development in the rural general zone. The implication being that the effects generated by the farm building should not be taken into account when considering the effects of the dwelling.

53. Ms Macdonald for the applicant pointed out two things. Firstly, consent to the farm building had been granted under a different section of the district plan than that stated in the rule, while the fact that consent had been granted meant that the farm building effectively becomes part of the existing environment, rather an element of how that environment may change in the future, given the activities and developments permitted by the plan. That is, upon consent, the farm building shifts from being within the permitted baseline to the existing environment.
54. I agree that Rule 5.3.51xi(b) is not engaged.
55. Due to the district plan rule quoted in the section 42A report, Ms Mellsop assumed that the farm building should not be taken into account in the assessment of landscape effects. However this interpretation is incorrect, as the consented farm building forms part of the existing environment, not a future environment allowed for by the plan.
56. However, the farm building is subject to conditions. The farm building is an open fronted 'shed' and there may be no lights (inside or outside).
57. At the end of the day, the presence or not of the farm building is not of great relevance to the consideration of effects of the dwelling. The presence of the shed would be more relevant if it was in a visually prominent location, but it is not. The visual effects of the barn are minimal as it is largely hidden from view. This is due to the nature of the landform.
58. The section 42A report also identified a number of issues with the original consent for the farm building (in that at the time the consent was assessed, it was assumed that the land was VAL rather than ONL), implying that the consent underestimated the landscape impact. I cannot overturn or reassess that consent, and accept that the consent for the shed is lawful.

Effect of subdivision and RBP

59. It was generally agreed that the site of the RBP is in an area of high natural character. Morven Hill is a broadly visible, open landscape, with housing on its lower and northern flanks, but the mid to upper slopes of the western face of the hill (the site of the RBP) retain an open, natural character. This flank overlooks Lake Hayes Estate.
60. In terms of the visual effects of the built form of the proposed dwelling, height poles were erected on the building platform site. Observation of these poles by both landscape experts suggest that there will be a small sliver of roof line and a chimney visible from the road leading into Lake Hayes Estate, while the dwelling would be fully visible from the road to The Remarkables ski field and Coronet Peak. Both landscape architects agreed that as a result, the visual effects of the dwelling are largely minor in nature. However it is still an effect that may be in addition to the farm building. That building was considered to be unlikely to be visible from public places³ and if visible, clearly had a 'farm shed' form that fitted with the rural landscape character.

³ Page 6, RM 150250

61. The main issue is whether there were effects on landscape values from a dwelling rather than a farm building. Both experts agreed that effects might arise from additional vehicle activity on the accessway, lights at night time and outdoor activities associated with the dwelling, like gardens, play equipment and the like.
62. The applicant pointed out that vehicle movements would be infrequent (especially at night time), any lights from the dwelling at night time would be contained by the landform; a gas fireplace rather than wood burner is proposed, while domestic landscaping and outdoor features would be contained to the defined curtilage area (i.e. within the depression and associated bund).
63. A range of conditions are proposed to ensure that landscape effects remain minor. These include:
 - Maximum building height and dimensions
 - Low reflectivity of exterior materials
 - No outdoor lighting
 - No landscaping within the curtilage
 - Outbuildings, swings, trampolines located within the curtilage.
 - Gas fire place
 - Lot 3 remains a farm
 - No planting along boundary lines.
64. On a cumulative basis, the outcome of these conditions on the sense of openness and naturalness of the landscape would be minor. These conditions would be set by a consent notice and as a result future modification of the dwelling, such as a larger or more visible structure would require resource consent. This would ensure that the Council could control future 'planning creep'.
65. It was noted by the Council staff that not all effects would be avoided. Vehicle movements would be visible, interior lights at night time may not be contained by the landform, while future earthworks may modify the landform (bund) that contains the dwelling. Monitoring and enforcing the above conditions is also likely to be a challenge, given the propensity of people, once occupying a site, to landscape around their homes, and add small scale structures and other outdoor equipment.
66. Ms Mellsop referred to the perceptual issues involved from these effects. Ms Mellsop was of the view that on a cumulative basis, the above effects would have the outcome that there would be a perceptible, if subtle, change to the landscape. Domestication of the landscape and a reduction in its sense of naturalness would be perceived to occur.
67. Ms Snodgrass was more of the opinion that as the effects were largely contained by the landform, actual effects would be minor. People will not directly experience the building, and such perceptual issues would not be large.

68. Ms Sinclair referred in her section 42A report to future changes that might occur, such as an application for a larger dwelling or changes to consent conditions relating to use of the curtilage area. She noted that construction of a dwelling on an approved RBP is a controlled activity. Mr Geddes contended that future changes could be controlled by appropriate conditions of consent.
69. My findings on this issue are that there will be perceptible change to the landscape. Domestic, rather than farm-orientated vehicle movements along the accessway are likely to be visible, lights at night time are likely, and a chimney and a small part of the roof line will be visible. I also find that once established as a dwelling site, it is a fair possibility that further changes to the landscape will occur through landscaping and landform modification. While subject to conditions of consent, conditions relating to the absence of landscaping and outdoor activities outside the 'bund' will be hard to enforce. More complex is how the current landform can be maintained in perpetuity. It is readily foreseeable how a number of small incremental changes could occur to the landscape and landform around the dwelling that will change its sense of naturalness and openness and possibly reduce the landform's screening effect. Having said that, I accept that changes to the dwelling itself could be effectively managed by way of conditions (consent notices).
70. The issue then becomes as to whether these actual and potential effects are more than minor, given the focus on perceptual changes.

Relevant objectives and policies of the District Plan

71. Both Mr Geddes and Ms Sinclair set out very comprehensive discussions of the relevant objectives and policies of both the operative and the proposed district plan. They noted that there are three sections of the operative district plan that are relevant as follows:
- (i) Section 4 – *District Wide Issues*;
 - (ii) Section 8 – *Rural Living Areas*; and
 - (iii) Section 15 – *Subdivision Development and Financial Contributions*.
72. While both experts broadly agree on the relevant provision, there are differences of opinion as to how the provisions should be interpreted. Ms Sinclair noted various explanatory text that indicate the need for what I would term a 'cautious' approach to defining minor effects. On the other hand, Mr Geddes relied upon assessment matters which relate to the direct changes to the landscape, for example whether new buildings are 'barely visible'; a test that the application would meet.
73. The operative district plan states that the key resource management issues within outstanding natural landscapes are their protection from inappropriate subdivision, use and development, particularly where activity may threaten the landscapes openness and naturalness.
74. Policy 3 of 4.2.5 Outstanding Natural Landscapes (Wakatipu Basin) goes on to set out the following:
- (a) *To avoid subdivision and development on the outstanding natural landscapes and features of the Wakatipu Basin unless the subdivision and/or development will not result in adverse effects which will be more than minor on:*

- (i) *Landscape values and natural character; and*
 - (ii) *Visual amenity values - recognising and providing for:*
 - (iii) *The desirability of ensuring that buildings and structures and associated roading plans and boundary developments have a visual impact which will be no more than minor, which in the context of the landscapes of the Wakatipu basin means reasonably difficult to see;*
 - (iv) *The need to avoid further cumulative deterioration of the Wakatipu basin's outstanding natural landscapes;*
 - (v) *The importance of protecting the naturalness and enhancing the amenity values of views from public places and public roads.*
 - (vi) *The essential importance in this area of protecting and enhancing the naturalness of the landscape.*
 - (b) *To maintain the openness of those outstanding natural landscapes and features which have an open character at present.*
 - (c) *To remedy or mitigate the continuing effects of past inappropriate subdivision and/or development*
75. In applying the above policy, the plan identifies, at 5.4.2.1 (Landscape Assessment Criteria - Process) the need to follow a three-step process of determining the landscape category of the site (steps 1 and 2) and then undertaking the relevant assessment (step 3). In this case, the landscape experts agree that the site is within an ONL, and so steps 1 and 2 are not needed. In terms of the assessment required by step 3, the plan notes:
- Step 3 - Application of the Assessment Matters. Once the Council has determined which landscape category the proposed development falls within, each resource consent application will then be considered: First, with respect to the prescribed assessment criteria set out in Rule 5.4.2.2 of this section; Secondly, recognising and providing for the reasons for making the activity discretionary (see para 1.5.3(iii) of the plan [p1/3]) and a general assessment of the frequency with which appropriate sites for development will be found in the locality.*
76. Dealing first with the assessment matters in 5.4.2.2, these assessment matters are preceded by the following statement:
- These assessment matters should be read in the light of two further guiding principles. First that they are to be stringently applied to the effect that successful applications for resource consent will be exceptional cases.*
77. Ms Macdonald in her closing statement clarified that these two guiding principles were to be seen in the context of the assessment matters that follow. The assessment matters can be seen as a series of 'tests'. If a proposal passes the tests, then it can be assumed that the application is an exceptional case.
78. Relevant assessment matters are grouped under the following headings:
- (a) Effects on the openness of landscape

- (b) Visibility of development
- (c) Visual coherence and integrity of landscape
- (d) Nature Conservation Values
- (e) Cumulative effects of development on the landscape
- (f) Positive Effects
- (g) Other matters.

79. Not all of these categories are relevant. Nature conservation matters are not at play, while the other matters listed under (g) relate to esplanade reserves. In this case, positive effects are also not relevant.
80. Of most relevance are matters (a), (b), (c) and (e).
81. Effects on openness of landscape (assessment matter (a)) relate to factors such as the visibility of the wider landscape, whether the site may contain topography or vegetation which may contain any adverse landscape effects and where not contained, the effects on the sense of openness.
82. Visibility of development (item (b)) is relevant to an extent, in that a small part of the residential dwelling will be visible from part of Lake Hayes (Howard's Pond). On its own, this effect is minor in extent.
83. Assessment matter (c) - visual coherence and integrity of landscape - covers matters like whether structures will break the line and form of any ridges, hills and prominent slopes; whether any proposed roads, earthworks and landscaping will affect the naturalness of the landscape; and any proposed new boundaries will give rise to artificial or unnatural lines or otherwise adversely (such as planting and fence lines) affect the natural form of the landscape.
84. Cumulative effects of development on the landscape are addressed by assessment matter (e). These matters reference both existing and potential, future development. Matters listed include:
 - (iii) whether, and to what extent the proposed development will result in the introduction of elements which are inconsistent with the natural character of the site and surrounding landscape;*
 - (v) where development has occurred or there is potential for development to occur (i.e. existing resource consent or zoning), whether further development is likely to lead to further degradation of natural values or domestication of the landscape or feature*
85. My interpretation is that cumulative effects are relevant in terms of the combined effects of minor building visibility, limited vehicle movements, light spill from interior lights and possible on going small scale changes to landforms and landscapes from domestication. In turn, these effects need to be looked at in terms of the existing modification to the landscape resulting from the housing developments on the lower slopes of Morven Hill.

86. The 'second step' listed in 5.4.2.1 refers to 1.5.3(iii). The following relevant text is listed in the section 42a report, in reference to discretionary activities:

(iii) because in or on outstanding natural landscapes and features the relevant activities are inappropriate in almost all locations within the zone, particularly within the Wakatipu basin or in the Inner Upper Clutha area.

87. The objectives and policies in Part 5 Rural Areas and Part15 - Subdivision refer back to district wide provisions and so I do not traverse these provisions in any detail.
88. My finding on this matter is that the plan provisions, taken as a whole, can be said to impose a high threshold on development for it be considered appropriate in areas identified as ONL-WB. As a result, the lines between the current environment and what is a minor effect and what is more than a minor effect need to be tightly drawn.
89. While the application passes a number of the above 'tests'; in that the dwelling will not break a skyline, visual effects of the dwelling will largely be contained by landform, an existing accessway will be used, not all effects are addressed. There will be signs of occupation from lights (vehicles at night and from the building), for example.
90. Other signs of domestication from occupation of the land are possible. A wide range of conditions are proposed to control these effects on the existing landscape, such as retaining farming activities, controlling the location of domestic landscaping and 'curtilage' activities; while the whole activity relies upon the maintenance of the current landform.
91. The wide range of proposed (and possible) consent conditions to mitigate effects and their reference to various non-building matters like landscaping and landform raise concerns that some effects will not, over time, be able to be effectively mitigated. For example, a condition could be imposed relating to the maintenance of the current landform that screens the house, but that would be a complex condition to administer.
92. The conditions proposed significantly limit how the RBP and lot may be used and start to undermine the clear intent of the subdivision to create a rural-residential type lot. This generates an uneasy tension between what may be expected to be normal use of a site and the Council having to enforce restrictive conditions. The risks of non-compliance with conditions of consent must be considered, given the high value of the landscape present.
93. Furthermore, my interpretation is that perception of changes to the landscape is as relevant as the extent of actual change. The reference to landscape and amenity values in Policy 3 of Chapter 4 brings into play the matters listed in the definition of amenity in the RMA; that is peoples and communities appreciation of natural or physical qualities and characteristics. The district plan notes that the outstanding natural landscapes are the romantic landscapes - the mountains and the lakes - landscapes to which Section 6 of the Act applies. The use of term 'romantic' landscapes directly references people's perceptions of the landscape. So even if the changes to the landscape are not large changes, the perception of change is important.

Section 104 of the Act

94. I now consider the extent to which the proposal meets the tests for a discretionary activity as set out in section 104 of the Act.

95. I have concluded that the residential building platform will generate additional effects to that of the consented farm building. These effects will likely have adverse effects on the openness and natural character of the landscape. Visual effects will be present, but of a minimal extent. Effects on the appreciation of the openness and natural character of the landscape will likely be apparent as the result of residentially-orientated activity generated by the dwelling and associated domestication of the landscape.
96. My reading of the plan's provisions (and of the evidence presented) is that visual effects of the dwelling itself (the structure), over and above the consented farm shed, will not be more than minor. However these effects will nevertheless be cumulative to other effects. Effects (actual and potential) from the residential use of the dwelling and surrounding area on landscape values should be classified as being more than minor. Furthermore, these effects may not be able to be effectively mitigated, over time, to the extent that they are reduced to being less than minor on a permanent basis.
97. Turning to section 104 (1)(b), the operative district plan puts in place stringent tests as to whether development is appropriate in ONLs. As covered above, I do not consider that the application can pass these tests, when taken in the context of the plan as a whole, and when effects are considered on a cumulative basis. The parent policy (Policy 3) states that subdivision and development should be avoided, unless effects are no more than minor. I do not have sufficient confidence that the conditions proposed will be able to effectively manage the range of effects identified, to this level.
98. No matters under section 104(1) (c) were raised. I note that in coming to my conclusion I have not relied upon a permitted baseline type argument.
99. In relation to Part 2 of the Act, whilst I accept that the proposal would provide for the economic well-being of the applicant and the proposed purchaser of Lot 3, these benefits are not of a scale or significance to outweigh the adverse effects on ONL landscape values. Section 6 of the RMA is relevant, and as translated by the provisions of the operative district plan, the requirement to avoid inappropriate subdivision, use and development must be recognised and provided for. Overall, the development would not support the sustainable management of the natural and physical resources of either the site or the immediate environs for the reasons set out above.

Decision

100. In exercising my delegation under sections 34 and 34A of the Act, and having regard to the matters discussed above under sections 104D, 104 and Part 2 of the Act, I have determined that:
 - (c) consent to the discretionary activity application for subdivision of Lot 2 DP 476278, 111 Alec Robins Road, and the creation of a residential building platform be **refused** for the reasons given.
 - (d) consent to the non-complying activity application for the boundary adjustment between Lot 1 and 2 DP 476278, 111 Alec Robins Road, be **granted** subject to the conditions set out below, for the reasons given.

Reasons for the decision

101. The boundary adjustment between Lots 1 and 2 DP 476278 will not generate any adverse effects and is consistent with the objectives and policies of the operative district plan.
102. The subdivision of Lot 2, the creation of a residential building platform and the erection of a dwelling on that platform will likely cause adverse effects on the openness and natural character of the Outstanding Natural Landscape that are more than minor.
103. These effects arise from the subtle, but perceptible signs of domestication that are likely to arise, overtime, from the occupation of the proposed building and site as a residential dwelling, even if that dwelling is barely visible. These effects are 'over and above' effects generated by a consented farm building.
104. In terms of Part 2 of the Act, the development would not achieve the sustainable management of the natural and physical resources of either the site or the immediate environs.



D MEAD

Independent Hearings Commissioner

22 November 2016

Conditions

Boundary adjustment between Lot 1 and 2 DP 476278, 111 Alec Robins Road

1. An updated Subdivision Plan is to be submitted that only shows the boundary adjustment. The subdivision shall be carried out in accordance with this plan.
2. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full:

all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.
3. Prior to the Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, the consent holder shall complete the following:
 - a) All necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved.