



DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	G Oudhoff and J Hennessy
RM reference:	RM180871
Location:	247 Kingston Road, Queenstown
Proposal:	Subdivision consent creating 3 lots with associated access and servicing Landuse consent to identify two new building platforms. Variation to conditions 2 and 3 of Consent Notice 52077432.1
Type of Consents:	Subdivision, Land Use and Variation to Consent Notice
Legal Description:	Lot 2 Deposited Plan 300643
Zoning:	Rural General (Operative District Plan Rural (Proposed District Plan Stage 1 decisions)
Activity Status:	Discretionary
Public Notification:	11 October 2018
Commissioners:	Robert Nixon and Wendy Baker
Date:	4 March 2019
Decision:	CONSENT IS REFUSED

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by G Oudhoff and J Hennessy to undertake a subdivision creating 3 lots, identify 2 residential building platforms and undertake associated earthworks, access and servicing; variation to associated consent notice conditions

Council File: RM180871

The Hearing and Appearances

Hearing Date:

8 February 2019 Queenstown

Appearances for the Applicant:

Ms Jayne Macdonald: Legal Counsel
Mr Benjamin Espie: Landscape Architect
Mr Simon Beale: Ecologist
Ms Jennifer Carter: Planner

Appearances for the Queenstown Lakes District Council:

Mr John Daly, Planner
Ms Renee Davies, Landscape Architect
Ms Keren Bennett, Ecologist
Mr Cameron Jones, Engineer

Appearances for Submitters:

None

Abbreviations

The following abbreviations are used in this decision:

G Oudhoff and J Hennessy	'Applicant'
Queenstown Lakes District Council	'Council'
Operative Queenstown Lakes District Plan	'ODP'
Proposed Queenstown Lakes District Plan	'PDP'
Outstanding Natural Landscape	'ONL'
Wakatipu Basin	'WB'
Assessment of Environmental Effects	'AEE'
Resource Management Act 1991	'RMA'
Hectare	'Ha'
The New Zealand Transport Agency	'NZTA'.

The land subject to this application is referred to as 'the site'.

The hearing was closed on 15 February 2019, following receipt of right of reply from the applicant.

**DECISION OF QUEENSTOWN LAKES DISTRICT COUNCIL HEARING
COMMISSIONERS ROBERT NIXON AND WENDY BAKER, APPOINTED PURSUANT TO SECTION
34A OF THE RMA**

INTRODUCTION, BACKGROUND, PRELIMINARY MATTERS AND PROPOSAL

1. We have been given delegated authority by the Council under s.34A of the RMA to hear and determine the application by G Oudhoff and J Hennessey ('the applicant'), to determine any procedural issues, and, if granted, to impose conditions of consent.
2. The application site is located at 247 Kingston Road, Queenstown. It has a legal description as Lot 2 Deposited Plan 300643 with an area of 20.5ha. The site is located to the east of State Highway 6, within the foothills of the Remarkables, to the north of the Remarkables ski field access road. The site has a long narrow shape extending relatively steeply up from the highway into the lower slopes of the Remarkables.
3. Consent is sought to undertake a three lot subdivision. The existing building platform is to be located on proposed Lot 2 and is referred to as 'AA'. New building platforms are to be identified on proposed Lots 1 and 3 with building platforms identified as 'BB' and 'CC' respectively. In general terms, Lots 1 and 2 are located within the lower portion of the site, with Lot 3 located on the higher area. The application includes extensive earthworks, an ecological planting plan, access tracks and the formation of a new vehicle crossing onto State Highway 6.
4. Post notification some modifications were made to the proposal, being:
 - The creation of a new vehicle crossing point for proposed Lots 1, 2 and 3 adjacent to the northern boundary of the site. The existing vehicle crossing will continue to access adjacent Lot 1 DP 300643;
 - A pine plantation replacement plan and associated amended structural landscape plan have been submitted;
 - The proposed area of indigenous revegetation of the prominent central gully within the site has been increased.
5. We visited the subject site accompanied by Ms Carter on 8 February 2019. We both independently visited viewpoints including the ski field road and Cherry Blossom Drive in Frankton. On site we observed the temporary dwelling located on the site pursuant to consent RM180712. We were assisted by height poles erected on the site demarcating the envelope of both proposed platforms and the earth mounding proposed on Lot 3.
6. The site and the surrounds have been set out within Ms Carter's AEE. There was no disagreement between the parties over the site, location and description, and therefore Ms Carter's description is adopted for this decision.

7. Mr Daly in his 42A report advised that a decision was required regarding acceptance or not of a late submission by Otago Regional Council (ORC). We considered this matter, and noted Ms Carter's comments in her evidence that this was not a submission and therefore no decision was required. We heard from Ms Macdonald and Mr Daly on this subject and ultimately Mr Daly confirmed to us that he was not sure whether it was a submission. We concur with Ms Carter and Ms Macdonald that this is not a submission as the email from Mr Hanley at ORC states *"..didn't identify any issue that warranted a formal submission from ORC."*
8. At the commencement of the hearing we were presented with a memorandum from Mr Daly. This was somewhat irregular as it was largely an amendment to his 42A report which could have been addressed at the time of his reply. However, with agreement from Ms Macdonald we accepted the memorandum. In essence it advised that:
- NZTA had provided a second page which should have been attached to its submission;
 - NZTA had advised they were aware of the breaches in respect of sight and separation distances and had no concerns with regards to the access proposed. On this basis Mr Daly and Mr Jones no longer had safety concerns relating to the State Highway;
 - Ms Bennett had reviewed Mr Beale's evidence and there was agreement between the ecologists on the revegetation proposals for part of the site, which accompanied the application.
9. The proposal requires both Subdivision Consent (s.11 of the RMA) and Land Use Consent (s.9 of the RMA). While we have considered these matters jointly throughout this decision, we note we are required to reach separate decisions on each of these matters.
10. In reaching this decision we have considered:
- (i) The application, its AEE and all its supporting document and plans;
 - (ii) The Council officer's s.42A report, with supporting reports attached to his s.42A report;
 - (iii) The pre-circulated evidence from the applicant;
 - (iv) The written submissions from the submitters to the application;
 - (v) The legal submissions and evidence provided at the hearing;
 - (vi) The responses to our questions during the hearing process;
 - (vii) The Applicant's right of reply, including amended visual simulation plans;
 - (viii) The site visit;
 - (ix) The relevant provisions of the Queenstown Lakes District Plans both Operative and Proposed; and
 - (x) The relevant provisions of the Otago Regional Policy Statement both Operative and Proposed.

NOTIFICATION AND SUBMISSIONS

11. The application was publicly notified on 11 October 2018 with submissions closing on 9 November 2018. There were two submissions in support, and a 'neutral' submission from the NZTA. A summary of submissions was set out in Mr Daly's s.42A report. The following issues were raised in these submissions:
- Smaller lots enables ecological restoration and makes pest control more realistic;
 - NZTA supports the 2nd access.

STATUTORY MATTERS

12. The site is zoned Rural General in the ODP and Rural in the PDP (Stage 1 decisions). The zoning of the site as determined in PDP has not been appealed. A broad ranging appeal regarding the location of ONL lines has been lodged with the Environment Court by the Upper Clutha Environmental Society, which however we were advised had no bearing on the position of the ONL line in this location. The purpose of the Rural Zone in the PDP is subject to appeal, but in general terms both the Rural General zone in the ODP and the Rural zone in the PDP seek to enable farming activities and protect the landscapes.
13. There was no disagreement between the parties with respect to the purpose of the Rural Zone, and this approach is adopted for our decision.
14. The reasons for consent were specified in detail within parts 5.2 and 5.3 of Mr Daly's 42A report, and amended by his memorandum circulated at the hearing. Ms Carter disagreed with the need to trigger Rule 15.2.21.1¹ in relation to earthworks as this was covered by the discretionary subdivision activity. Ms Macdonald in her reply concurred with Mr Daly and therefore we agree with Mr Daly that this rule is breached as it states it is for "*earthworks associated with any subdivision of land (..)*".
15. Mr Daly identified two rules in the PDP requiring resource consent. We questioned Mr Daly whether these were subdivision or land use rules, and he confirmed there was one of each.
16. Consent is therefore required as follows:

ODP

- A **controlled** activity subdivision resource consent pursuant to Rule 15.2.21.1 for earthworks associated with a subdivision. Council's control is with respect matters listed in Rule 22.3.2.2(a)(i)-(ix) in Section 22. These being:
 - (i) The nature and scale of the earthworks
 - (ii) Environmental protection measures
 - (iii) Remedial works and revegetation
 - (iv) The effects on landscape and visual amenity values
 - (v) The effects on land stability and flooding
 - (vi) The effects on water bodies
 - (vii) The effects on cultural and archaeological sites
 - (viii) Noise.
 - (ix) The effects of earthworks on the natural character of wetlands, lakes and rivers and their margins.
- A **restricted discretionary** activity pursuant to Rule 14.2.2.3(ii) as the proposed vehicle crossing breaches site standard as 14.2.4.2(iv) which requires an 170m sight distance for residential activities. The sight distance to the north of the access is only 100m approximately. Council's discretion is confined to this matter.

¹ Paragraph 8.2 Ms Carter's evidence

- A **restricted discretionary** activity resource consent pursuant to Rule 14.2.2.3(ii) as the proposed vehicle crossing breaches site standard as 14.2.4.2(vii) which requires a minimum distance of 200m between vehicle crossings onto State Highways. Council's discretion is confined to this matter.

PDP

- A **discretionary** activity resource consent pursuant to Rule 21.4.10 for the proposed identification of two building platforms not less than 70m² and not greater than 1000m². The proposed building platform (platform BB) on proposed Lot 1 is 800m², and the proposed building platform (platform CC) on proposed Lot 3 is 800m².
- A **discretionary** activity subdivision resource consent pursuant to Rule 27.5.6 as the proposed three lot subdivision that does not fall within any rule in this section 27.5.

LEGAL SUBMISSIONS AND EVIDENCE

17. Expert evidence from the applicant and submitters was precirculated and read before the hearing. We note that the following is a summary of the key issues raised and must be read in conjunction with the actual legal submissions, pre-circulated evidence and evidence presented at or after the hearing. To reduce repetition, we concentrate on matters relating to the areas of contention between the parties.
18. Mr Daly's s.42a report was circulated prior to the hearing and was taken as read. He recommended refusal based on adverse effects and contradiction with the relevant objectives and policies. He considered the relevant adverse effects to be: the landscape and visual amenity effects of the proposal on the foothills of the Remarkables and within the Outstanding Natural Landscape; the subdivision design not responding to its local context giving rise to effects on amenity; reverse sensitivity; and potentially unsafe traffic outcomes resulting from the reduced sight distances from the proposed access onto the State Highway.

For the Applicant

19. **Ms Macdonald** drew a number of issues to our attention. She stressed that the ecological package was offered only as part of the entire three lot subdivision as proposed. She pointed out to us that the ecological package in the applicant's evidence was not required to mitigate adverse effects, but was being offered as ecological compensation. She later clarified this as being 'enhancement' rather than compensation. This point was reinforced on the evidence of Mr Beale and Ms Carter as well.
20. Ms Macdonald opined that Mr Daly should revisit the issue of reverse sensitivity relating to the storage building on the adjacent site in proximity to the proposed building platform 'BB' as NZSki did not submit on the proposal, and any issues were addressed by planting and earthworks.
21. Ms Macdonald also submitted that Ms Davies should revisit her views on the visibility of a future building within platform 'CC' on Lot 3 based on Mr Espie's analysis. She pointed out to us the differences between Ms Davies' and Mr Espie's assessments in relation to the landscape character of the upper slopes and the degree of effect on landscape character, which we go on to discuss later in this decision.

22. In her legal submissions² she set out the issues which were not in contention. All parties concurred with these points, and we do not dwell further on them. In summary these points are:
- Lots 1 and 2 and associated building platforms can be absorbed into the lower part of the site and the lots are consistent with the ONL (WB) objectives and policies;
 - The ecological planting programme would have positive enhancement effects in terms of ecological values and landscape character;
 - All sites can be appropriately serviced.
23. Ms Macdonald pointed out to us that the positive and adverse effects of a proposal should not be weighed up to see if one set of effects outweighs the other, rather we are to have regard to the overall result of an activity including the benefits.
24. Ms Macdonald emphasised that the new built form will be reasonably difficult to see, and that granting this consent represented an opportunity to promote indigenous biodiversity protection and regeneration upon retirement of farmland. She references Ms Carter's opinion on the seeming conflict within the ODP where openness is promoted as are ecological and natural values; and submitted that Ms Carter provided a thoughtful and accurate insight with respect to this dilemma in her evidence³.
25. The legal submissions included a letter from Hokonui Runanga advising that the Ecological Plan will enhance the ecological and cultural values of the site.
26. **Ms Carter** presented a written summary of her evidence. She relies on the evidence of Mr Espie and concludes that the adverse landscape effects of the proposal are appropriately mitigated, stressing that future built form on platforms CC and BB will be 'reasonably difficult to see'.
27. She identifies the areas of difference between the Council and Applicant's evidence as being:
- Reverse sensitivity effects in relation to proposed Lot 1;
 - Potential adverse effects on landscape character;
 - the potential landscape effects of proposed platform CC.

We concur that these are the key matters that remain in contention.

28. Ms Carter concluded that the proposal is consistent with the relevant objectives and policies of both the ODP and the PDP.
29. A set of conditions was attached to Ms Carter's evidence and she added a condition requiring that works in the ephemeral stream are only undertaken whilst it is dry. We note that this ephemeral stream and the gully containing it is a significant physical feature within the application site.

² Legal submissions, paragraphs 17 – 22

³ Evidence J Carter, paragraph 9.2.10

30. **Mr Espie** also provided us with a written summary of his evidence. Mr Espie focussed on the areas of disagreement with Ms Davies, identifying them as the effects on the landscape character of the upper part of the site and the adverse visual effects as experienced by observers in the landscape. A major thrust of his evidence concentrated on the disagreement between himself and Ms Davies with respect to whether a dwelling on proposed platform CC and Lot 3 would be reasonably difficult to see.
31. Mr Espie considers that in terms of the perception of landscape character, the location of the Lot 3 building platform would not be perceived as being separated from the modified area to its immediate south⁴ which already contains a small number of approved dwellings. He opined that future activities associated with the Lot 3 platform will be linked to the revegetated gully and will visually form part of the treed and modified area that extends to the south. On this basis he considers that the perceived landscape character of the Remarkables and their foothills would not significantly change upon a grant of consent for the Lot 3 platform.
32. Mr Espie advised us that the Lot 3 building platform and its associated activities have been carefully designed such that each envelope within which built form and curtilage will be contained, is very well hidden such that it will be reasonably difficult to see, and not visible at all from a number of potential viewpoints. Mr Espie provided visual simulations of the area of the building platform that could be seen from various viewpoints and these were updated at the time of the applicant's reply to show the context of the entire envelope. He also noted that the Lot 3 building platform would only be distantly visible from public places, and was partly contained within a natural amphitheatre.
33. In his evidence, and by way of reference to digital modelling, Mr Espie discussed the visual impacts of the proposed earthworks⁵. He relies upon ecological advice from Mr Beale that the areas can be successfully revegetated so as to seamlessly blend with surrounding vegetation cover. (We add at this point that Ms Macdonald emphasised that this evidence was uncontested)⁶. He also stated that earthworks have been designed so that finished slopes would appear natural and would be absorbed into the existing natural landform in a subtle way that would not be visually discernible from outside the site. We questioned Mr Espie about the extent and quantity of earthworks, as this appeared to us to be substantially higher than that which would be typically anticipated for establishing a single residential building platform. Mr Espie responded that to ensure a natural and seamless appearance it was necessary to undertake earthworks over a significant area.
34. Mr Espie advised that the access track to Lot 3 would be visible, but would appear as a typical farm track once revegetation of the cuts had occurred.
35. **Mr Beale** opined that the ecological plan proposed represented an enhancement beyond what was needed for mitigation, and indeed beyond what could be expected of any landowner if not associated with a resource consent. He advised that he and Ms Bennett were now in complete agreement with regards to the ecological plan and the ecological benefits of the proposal.

⁴ Evidence B. Espie, paragraph 12

⁵ Evidence B. Espie, paragraphs 19 and 20

⁶ Legal submissions in reply, paragraph 12

For the Council

36. **Mr Jones** amended his recommendation to support the vehicle access location to the north of the site based on the additional details NZTA added to their submission. He advised that the rule breach in terms of sight distance remained in his opinion as NZTA had included views across open farmland which would not necessarily be retained if, for example, the landowner planted trees in that location. However, Mr Jones accepted that NZTA had considered the safety and efficiency consequences of the proposal and considered that the State Highway would not be adversely affected to an extent that the proposal could not be supported.
37. **Ms Davies** undertook a peer review of the Vivian+Espie landscape report submitted with the application (which was overseen by Mr Espie and on which Mr Espie's evidence was premised). Ms Davies identified that she generally concurred with the conclusions reached in respect of proposed Lot 1 and building platform BB.
38. She considered that the subject site contained five different character areas. We questioned her about the perception of these different areas, and she agreed with Mr Espie that in normal viewing the site would not be perceived as five different areas. She considered that only two character areas would be observed, these being a high natural character area to the north dominated by a strong pastoral character, and a modified area to the south dominated primarily by exotic scrub vegetation. In her opinion the boundary of these two character areas were delineated by the Remarkables ski road zigzagging up the adjoining site to the south. She concluded that Lot 3 sits within a distinct character area that has high natural character values and a lower visual absorption capability.
39. Ms Davies identified two further viewpoints of relevance, which were incorporated into Mr Espie's visual simulations.
40. Ms Davies advised that she did not consider that the presence of building platforms at similar altitudes on the southern side of the ski road meant that the location of platform CC was a continuation of this pattern. Rather she considers it will represent creep of built form into what is currently an open landscape with a strong character and relationship to the broader Remarkables mountain range.
41. Ms Davies disagrees with Mr Espie's assessment that a future dwelling on proposed Lot 3 will be reasonably difficult to see. Ms Davies considers that the location has capacity only to absorb minor topographical changes without impacting the natural character of the landform. She considers that earthworks and vegetation need to be limited in this location to ensure they do not detract from the existing character, and on that basis she concludes that the potential for mitigation screening in this location is limited.
42. She advised that a future dwelling in this location will be visible as a built and unnatural form within the wider landscape.
43. **Ms Bennett** concurred that she and Mr Beale were now in agreement and that the proposal would enhance the ecological values of the site.

44. **Mr Daly** concluded that based on Ms Davies' and Ms Bennett's advice, the landscape and visual amenity effects of the proposal on the foothills of the Remarkables within the ONL, combined with adverse amenity effects and reverse sensitivity, would result in effects that would be more than minor. Based on these findings, he concluded that the proposal is inconsistent with objectives and policies in the ODP, PDP and RPS. He also considered that the proposal did not promote sustainable management in accordance with the RMA.
45. Mr Daly concurred with Ms Carter in regard to other matters.

Right of Reply

46. **Ms Macdonald** provided us with her right of reply accompanied by:
- a plan showing the locations of the height poles we saw on our sited visit, confirming that we had correctly interpreted these;
 - updated visual simulations from Mr Espie now showing the entire envelope of the building platform; and
 - a final set of conditions.
47. The right of reply addressed the three areas of contention, leading her to submit reasons for preferring the applicant's evidence. As relevant we consider these in our assessment below.
48. Ms Macdonald also addressed some matters of detail that had arisen during the hearing. Some points have been mentioned earlier in this decision, and we do not repeat them. In summary she advised that:
- Chimneys must be within the height of the proposed building envelope;
 - The pine plantation on the site was planted in 1974, and for that reason Clause 21.21.1.2 did not have any relevance;
 - The Otago Pest Management Strategy does not identify Hawthorn or Sweet Briar as pests and therefore the landowner is not required to remove them;
 - Each stage of the removal of the pine plantation will be less than 5000m² in area, and therefore no rules in respect of forestry will be triggered;
 - It is appropriate for the Commission to rely upon NZTA's assessment and approval with regards to the vehicle crossing.

PRINCIPAL AREAS IN CONTENTION

49. Having read and heard the evidence and submissions presented, we find that the matters remaining in contention are:
- The landscape character and whether future development on proposed platform CC and associated earthworks will read as an extension of the modified area to the south;
 - The visual amenity effects of Lot 3, the earthworks proposed and a future dwelling on building platform CC;
 - The reverse sensitivity associated with the location of proposed building platform BB in close proximity to the storage shed on the adjoining land to the south.

EFFECTS

50. We note for completeness that where areas of disagreement or contention between the parties have been resolved, this did not fetter our consideration of the proposal in terms of the adverse effects, its positive effects and the relevant district and regional policy frameworks (objective and policies). In doing so, based on evidence, we find that other than two of the three areas remaining in contention, the adverse effects are minor or mitigated by proposed conditions, and that the proposal is consistent with District Plan objectives and policies. Moreover, we find that the proposal will have positive benefits in terms of enhancing ecological values. We now address the three issues in contention.

Reverse sensitivity

51. We concur with Ms Carter that the reverse sensitivity aspects of the storage shed located on NZSki land to the south will be insignificant and would be mitigated through planting and earthworks on the applicant's land. We also note that NZ Ski had been notified, but did not submit on the application.

Landscape character

52. Both landscape architects agreed that proposed building platform CC is located within an ONL.
53. We accept Mr Espie's opinion that the five landscape areas identified by Ms Davies are not perceived as such. However, we consider that there is clear change in character demarcated by the gully running through the site, with the area to the north being open and pastoral, and the area to the south being more modified and dominated by scrub vegetation. We consider that these are clearly perceived as two separate landscape character areas.
54. We take on board Ms Carter's contention that an open landscape is not necessarily natural or ecologically valuable. Ms Macdonald in her reply directed us to an Environment Court decision⁷ where it was found that the enhancement of natural character and nature conservation values can mean it may be appropriate to establish shrub or tree vegetation in a location where there is currently only grass cover or low vegetation, thus reducing 'openness'. In that case it was found that the establishment of such vegetation should follow natural patterns of hydrology and geology. We agree that this is in principle similar to the revegetation of the gully area proposed in this application, and do not see any particular tension with the various policies here.
55. Taking into consideration the proposed revegetation, we do not accept that proposed building platform CC on proposed Lot 3 is sufficiently proximate to the modified and vegetated landscape to the south to be associated with that landscape. We agree with Ms Davies that it is clearly located within the more open landscape character to the north.
56. We acknowledge that Mr Espie advised us that due to any future built form and curtilage activities being reasonably difficult to see, the adverse effects on the landscape character would in any event be minimal. In concluding this, Mr Espie placed significant reliance on the earthworks to be undertaken in a manner indiscernible from the existing natural landform, at least in the longer term. Ms Davies was not persuaded by this argument and considered that the extensive earthworks and vegetation were likely to change the character of the location.

⁷ Legal submissions in reply, paragraph 38, Environment Court Decisions *C129/2001 and C163/2001* (Roy's Bay, Wanaka)

57. Having considered this matter carefully we have reached the conclusion that based on the earthworks plan, the earthworks proposed are considerable, with cuts and fill of up to 4.5 meters being undertaken surrounding the platforms on proposed Lots 3 and 1. With regards to Lot 1, we do not consider this further as all experts are in agreement that any adverse visual effects will be insignificant. However we note that in the case of Lot 3, the area of earthworks involved is approximately 4000m²⁸, which to provide context, is a land area equivalent to 6-7 typical residential sections. We are not convinced that the seamless transition as described by Mr Espie will be achieved. We have not been provided with sufficient certainty pertaining to this matter and in reviewing the existing contour lines which are predominantly orientated north/south, this proposal appears to present as an anomaly which is not consistent with the prevailing topography. The height poles erected on our site visit demonstrated the significant height of mounding required to render built form on platform CC “reasonably difficult to see” and we consider that the earthworks proposed will change the character of the landscape significantly.

Adverse visual effects

58. We were assisted greatly by Mr Espie’s amended visual simulation demonstrating to us the portion of the building platform envelope that would be visible from any given point. It is our understanding from the evidence given by Ms Davies that there is no fundamental disagreement as to this. Ms Davies expressed concerns about the visibility of the earthworks. We are not assisted in this regard by Mr Espie’s simulations as these are based on the earthworks having been carried out and forming a natural part of the landscape.
59. As discussed above, whilst we accept the limited views to any future built form from the various viewpoints, we are not convinced that the earthworked area will view as natural. Considerable doubt remains in our minds in this regard, particularly as the site is emerging beyond the ‘leading edge’ of the more vegetated character area to the south and into the more pastoral open area to the north. To this extent, the proposed building platform on Lot 3 can be distinguished from other dwellings further to the south.
60. We respect the detailed attention that has been given to this application through the evidence of Mr Espie. Although finely balanced, we are not persuaded that the establishment of a building platform as proposed on Lot 3 is appropriate. We are distinctly uneasy about any invitation to treat the immediate vicinity as part of a “lower end of the ONL spectrum”⁹, particularly in combination with a perceived precedent having been established with other approved applications to the south. We consider that to do so would embark down a ‘slippery slope’ in planning terms.
61. In addition, it appeared to us that Mr Espie’s evidence was primarily directed at the potential visual impacts of a proposed residential building itself, rather than in combination with the earthworks associated with the establishment of a building platform to contain that building. While we appreciate that the site would not be visible from a number of vantage points, and that views from the north are distant views, we think it is significant that the proposed site is not (in our opinion) within the vegetated character area to the south containing the ski area road and a number of approved dwellings.

⁸ Evidence J Carter, paragraph 9.8.14

⁹ Legal submissions in reply, paragraph 8

62. We consider it is important that the potential visual effects of this proposal are acknowledged, bearing in mind that the area concerned forms part of the foreground to the Remarkables, which are arguably the most iconic physical feature in the Queenstown area.

Cumulative Effects

63. The proposal will add to the already modified area to the south of the site. We consider that this area is already at the threshold of overdevelopment such that the ONL will be significantly degraded by further development in this vicinity. Extending this area to the north, which is in essence what both landscape architects have advised us this proposal will result in, is likely to have significant cumulative effects on the ONL, the landscape character and the visual amenity of the location.

Conclusion on Effects

64. We consider that the earthworks, access and future development on proposed Lot 3 will have significant adverse effects on the landscape character and the visual amenity, and will result in significant cumulative effects in terms of these elements. All other effects are considered to be either minor or less than minor. We acknowledge the potential for positive ecological effects and we accept that these positive effects may not eventuate without development being granted consent, although we note here that they are not precluded either.

s106

65. As all proposed allotments will have physical and legal access, and the proposal will not exacerbate any hazards, there is no reason for this consent to be refused pursuant to s106.

OBJECTIVES AND POLICIES

66. Both Mr Daly and Ms Carter provided us with extensive analyses of the relevant proposals and for the most part they were in agreement. Both identified objectives and policies in Parts 4 – District Wide, 5 – Rural General, 14 – Transportation and 15 – Subdivision and Development in the ODP as relevant, and those in Chapters 3 – Strategic, 6 – Landscape and Rural Character, 21 – Rural, 27 Subdivision and Development and 29 – Transportation in the PDP as relevant. In addition, Ms Carter drew our attention to Chapter 33 – Indigenous biodiversity. All these are applicable in our opinion and we have considered them all.
67. We record here that we concur that the proposal is consistent with the relevant objectives and policies in both the ODP and the PDP relating to the provision of services, access to subdivisions, ecology and transportation.
68. Where there is disagreement between the parties, it is in relation to the objectives and policies which refer to landscape character and visual amenity in relation to the proposal for proposed Lot 3. Ms Carter in her evidence is critical of Mr Daly for not distinguishing clearly between the proposal for Lot 1 and for Lot 3 in his analysis of the relevant provisions. She concludes that the proposal for Lot 1 is consistent with objectives and policies in the ODP and the PDP in all regards. We concur with Ms Carter in this conclusion, however we note that we have not been asked to consider an option which includes only Lot 1 and not Lot 3. Therefore this is a somewhat moot point.

69. Based on our earlier findings, we prefer the assessment provided to us by Mr Daly as we consider that the landscape character and visual amenity will be detrimentally changed by this proposal having regard to proposed building platform CC and Lot 3. Overall, we consider this proposal is inconsistent with, or contrary to relevant objectives and policies in Chapters 4, 5 and 15 of the ODP and Chapters 3, 6 and 21 of the PDP. We concur with the conclusions of Mr Daly with respect to objectives and policies relating to landscape and amenity in particular:
ODP Part 4, Objective 4.2.5 and supporting Policies 1 and 3;
ODP Part 5, Objective 1 and supporting Policies 1.6 and 1.7
ODP Part 15, Objective 4 and supporting Policies 4.1 and 4.3
PDP Chapter 3, Objective 3.2.5 and supporting Objective 3.2.5.1
PDP Chapter 6, Policies 6.3.10, 6.3.12
70. The proposal does not achieve the outcomes sought by either the ODP or the PDP.
71. Mr Daly and Ms Carter have considered to the Operative and the Proposed Regional Policy Statements. Their opinions again differ based on their differing views on the effects on landscape character and visual amenity. Again, we concur with Mr Daly that this is proposal represents inappropriate subdivision and future development in this location and that the ONL would not be sufficiently protected by a grant of consent to a building platform on proposed Lot 3. We therefore consider that the proposal is inconsistent with key objectives and policies which seek this in both the Operative and the Proposed Regional Policy Statements.

PART 2 OF THE RMA

72. For the avoidance of doubt we have considered Part 2 in its entirety and comment as follows.
73. Of particular relevance to this proposal Section 6 of the RMA lists matters of national importance including subclause “(b) which requires that the consent authority recognise and provide for:

“The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development”.
74. Given our findings, we consider that this proposal does not protect the ONL in the vicinity of the application site from inappropriate subdivision or development. We therefore conclude that the proposal does not achieve this matter of national importance.

DECISION

75. In exercising our delegation under sections 34 and 34A of the RMA and having regard to sections 104, 104B, 106, 108 and 220 of the RMA, we determine that the applications for resource consent (both land use and subdivision) at 247 Kingston Road, Queenstown, be refused for the reasons set out above in this decision.



Robert Nixon

A handwritten signature in black ink, appearing to read 'Wendy Baker', written in a cursive style.

Wendy Baker

Date: 4 March 2019