

**DECISION OF THE QUEENSTOWN LAKES DISTRICT COUNCIL**

**RESOURCE MANAGEMENT ACT 1991**

<b>Applicant:</b>	<b>Hogan's Gully Farming Limited</b>
<b>RM reference:</b>	RM180497
<b>Location:</b>	The 158.8 hectares property is located west of McDonnell Road, north of State Highway 6, east of the Bendemeer Special Zone, and south of Hogan's Gully Road, near Arrowtown
<b>Proposal:</b>	Subdivision and land use consent is sought to establish an 18-hole championship golf course with associated clubhouse, driving range and maintenance facilities, and 96 residential (and associated residential building platforms) and visitor accommodation units, and land use consent to undertake over 50,000m <sup>3</sup> to construct the golf course
<b>Type of Consent:</b>	Land Use Consent and Subdivision Consent
<b>Legal Description:</b>	Lots 1-2 DP 356270, Lot 3 DP 18290 and Lot 3-4 DP 356270, Section 2 Survey Office Plan 440817, Section 25B and Section 25C Block VII Shotover Survey District, Section 99-100 Block VII Shotover Survey District, Lot 2 DP 18290, Lot 4 DP 1829, Lot 1 DP 25533, Lot 1 DP 1829, Lot 5 DP 18290
<b>Zoning:</b>	Rural General Zone: Operative District Plan Wakatipu Basin Rural Amenity Zone: Proposed District Plan
<b>Activity Status:</b>	Discretionary Activity
<b>Notification:</b>	23 August 2019
<b>Commissioners:</b>	Gina Sweetman, Calum MacLeod and Dr Lee Beattie
<b>Date Issued:</b>	<b>15 May 2019</b>
<b>Decision:</b>	<b>CONSENT REFUSED</b>

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

Of an Application to **QUEENSTOWN LAKES  
DISTRICT COUNCIL** by **HOGAN'S GULLY  
FARMING LIMITED (RM180497)**

**DECISION OF COMMISSIONERS GINA SWEETMAN, CALUM MACLEOD AND DR LEE BEATTIE  
APPOINTED BY QUEENSTOWN LAKES DISTRICT COUNCIL**

## The Proposal

1. We 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.
3. Hogan's Gully Farming Limited has sought consent to establish and operate an 18-hole championship golf course with associated clubhouse, driving range and maintenance facilities, and to establish 96 residential (and associated residential building platforms) and visitor accommodation units, and to undertake over 50,000m<sup>3</sup> of earthworks to construct the golf course.
4. Section 1 of the AEE includes a detailed description of the proposal and further information was also obtained through a series of further information subsequently provided in response to a section 92 request. Section 2.1 of Council's s42A report includes an accurate summary of the proposal as follows:

*In summary, the application seeks to establish an 18-hole golf course on the site, with associative golf facilities, and pockets of residential clusters. The development comprises: subdivision, including earthworks and related works; the golf course construction and use, and related facilities and activities including the club house, driving range, the golf maintenance facilities; and units for residential and visitor accommodation use.*

5. Mr Brown, planning consultant for the applicant, advised that the residential units would all be owned by individual owners who may live in the units permanently or temporarily, and/or may lease the unit to a visitor accommodation management company<sup>1</sup>.
6. The applicant presented updated information and amended plans as part of their evidence provided in advance of the hearing. The applicant also presented additional controls amended plans after the hearing was adjourned, showing further amendments. These amendments are summarised below:

(a) Residential cluster 8

- Lots 801 and 803 relocated further away from the Bendemeer boundary
- Access driveway to Lots 801, 802 and 803 relocated to the east of the dwellings and existing hillocks
- Tree planting for further screening in gullies east of Bendemeer Lots 15 and 16.

(b) In respect of Bendemeer Lot 17:

- Closest edge of proposed access road relocated out to 10m from north-western corner
- Access road to be cut down into the land to reduce visibility from Lot 17
- Existing mounding in north-eastern corner of Lot 17 to be extended into site
- Lot 17 boundary fencing extended around mound

---

<sup>1</sup> Paragraph 3.9 of Mr Brown's evidence in chief.

- Fairway 12 tees moved further from boundary and down slope
- (c) In respect to Bendemeer Lot 18:
  - Relocation of 7 lots in R9.
- (d) In respect to Bendemeer Lots 17 – 23:
  - Second fence line directly north of lots 17 and 18 removed; existing fence slid down 3 to 4m to the north
  - Young conifer shelterbelt and potentially part of poplar shelterbelt on western site boundary removed
  - 7 lots in R9 and Fairway 13 relocated to the east
  - Additional mounding to the east of Lots 22 and 23
  - Access road to R9 moved east away from boundary.
- (e) Residential Cluster 2:
  - Lots 209 and 211 lowered by 1m
  - Lots 212 – 218 lowered by 2m
  - Additional mitigation mounding and planting to north of Lot 212
  - Pond water levels changed
- (f) Road link between R10 and R2 to be the only access for R10.
- (g) Maintenance compound:
  - Defined hours of operation, being 6:00am to 8:00pm daily
  - Changes to landform and screening, to be completed prior to operation of the compound
  - Compound available for maintenance of golf course and resort grounds only
- (h) Golf course and driving range hours of operation being 7:00am to 9:30pm
- (i) Clubhouse hours of operation being 6:30am to 7:00, except for functions or events, when 12am would apply.

## The Site

7. A description of the site and receiving environment within which the application will operate can be found within section 1.2 of the applicant's AEE. This description accords with our impressions from our visits to the site and surrounding area, and this is therefore adopted for this decision.
8. We undertook two site visits; one before the hearing, and one after hearing from submitters. During these site visits we visited the site, the nearby Hills golf course, sites in the adjacent Bendemeer Zone and the Sturt property. We also observed the site from the surrounding road network and from the lookout on the Crown Range zigzag and Tobins Track. We noted that the two outlooks provided different experiences. The outlook from the Crown Range zigzag was more rural and open in nature, with the site in the forefront of the view; while the outlook from Tobins Track included more of Arrowtown, the Arrowtown and Hills golf courses,

Millbrook, with Frankton and Lake Wakatipu beyond, with the site located within the foreground of Morvern Hill. From both vistas, the mountains frame the Wakatipu Basin.

9. We note that the site is traversed by the Arrow Irrigation Company race and is also in part bisected by a paper road.

### **Notification, Submissions and Affected Party Approvals**

10. The application was publicly notified on 23 August 2018 and 28 submissions were received.
11. Of these submissions, 10 opposed the application, three supported the application, and 15 neither opposed nor supported the application. Of the 28 submissions received, one was received following the close of the submissions period.
12. The applicant provided written approval from Roger Norman Macassey and Douglas James Harvie as trustees of the W R Jackson Family Trust, who are the landowners of the property comprising Lot 1 and Lot 2 DP 356270.
13. The Council's section 42A report provided a comprehensive summary of the submissions, which we have not repeated. The main points raised through the submissions can be summarised as:
  - (a) Adverse traffic effects, including safety and capacity, including on Hogan's Gully Road, the McDonnell Road and Centennial Avenue intersection, the SH6 and McDonnell Road intersection.
  - (b) Insufficient transport information, including traffic generation and impacts on cycling and walking.
  - (c) Provides an opportunity for a new trail, to benefit the wider community.
  - (d) The development does not address effects on the unformed legal road
  - (e) A positive contribution to protecting rural values of the area, by ensuring there is not high density development in the future
  - (f) A logical extension of the golf course development in Arrowtown and will strengthen Queenstown and Arrowtown as a golf tourism operation.
  - (g) Preferable form of development to potential alternatives.
  - (h) Development is well suited to the site topography, is well designed, will be of excellent quality and the ecological framework will have ecological benefits.
  - (i) Unacceptable construction and operation effects from the golf course layout, including adverse noise, privacy and amenity effects
  - (j) Adverse visual amenity effects from the residential development, including roof line visibility and light pollution, and from the driving range.
  - (k) Overall scale of the development is adverse.
  - (l) Safety issues arising from the operation of the golf course
  - (m) The AEE doesn't adequately address effects arising from the earthworks, golf course operation, location of cart paths or landscaping

- (n) Significant adverse effects on the values and amenities of residents in the Bendemeer Zone.
- (o) Impacts on water supply (conservation); Potential impact on the existing Arrowtown water supply scheme.
- (p) Impacts on SH6 from any increased use of the two existing authorised crossing places
- (q) Adverse visual amenity, noise, light, glare and dust effects from the proposed compound
- (r) Potential impacts on rural activities, such as rabbit control
- (s) Potential impact on irrigation water available for future residential or lifestyle development if the Otago Regional Council consents irrigation allocation for the golf course.
- (t) No clear demonstration the Arrow Irrigation supply is adequate to serve the golf course; concern about the burying and piping of some of the race; impacts on the continued operation of the race.
- (u) Potential adverse quantity and quality effects on the Morvern aquifer.
- (v) The ecological enhancement package is unambitious and certification under the Audubon scheme should be required.
- (w) The proposal does not promote sustainable management; the area is already well served by golf courses.
- (x) No need for a further loss of rural character in the Wakatipu Basin.
- (y) Uncertainty about the length of the construction period.
- (z) A thorough and extensive professional product.
- (aa) Will retain rural character and sit comfortably within the surroundings.

14. In the right of reply, the applicant also provided written approvals from:

- (a) Kenneth Edkins, Linda McBride and Peter McBride, Title 767706
- (b) Shire Arrowtown Ltd, Michael Almquist and Sook Mee Hahm Almquist, Titles 767709, 767710 and 767711<sup>2</sup>
- (c) Edwin Murray Richard Lamont and Carol Mary Lamont, Titles 767707 and 767708.

15. None of these parties were submitters on the application.

### **The Hearing**

16. A hearing to consider the application was convened on 25 February 2019, in Queenstown. The Commission undertook two site visits; one on the morning of the 25<sup>th</sup> February 2019 prior to the hearing and the second mid-morning on the 26<sup>th</sup> February 2019, after hearing from submitters.

---

<sup>2</sup> This included a note "bound by covenant to sign".

17. The Council's consultant planner, Nigel Bryce, who had prepared a section 42A report was in attendance. Also appearing for the Queenstown Lakes District Council were:
  - (a) Helen Mellsop, Consultant Landscape Architect
  - (b) Alan Hopkins, Consultant Engineer
  - (c) Keren Bennett, Consultant Ecologist
18. The applicant was represented by Graeme Todd and Ben Gresson, Counsel for Hogans Gully Farming Ltd. Attendances for the applicant included:
  - (a) Michael Davies, for the applicant
  - (b) Jason Blair, visual simulations
  - (c) Paddy Baxter, Landscape Architect
  - (d) Andrew Patterson, Architect
  - (e) Greg Turner, Golf Course Designer
  - (f) Ryan Brandeburg, Golf Tourism
  - (g) Chris Hansen, Engineer
  - (h) Glenn Davis, Ecologist
  - (i) Adam Vail, Infrastructure
  - (j) Jason Bartlett, Transport
  - (k) Paul Faulkner, Geotechnical Engineering
  - (l) Jeff Brown, Planner.
19. Several submitters were in attendance including:
  - (a) Warwick Goldsmith, trustee for the Queenstown Trails Trust
  - (b) Sheralyn Sturt, and Counsel, Maree Baker-Galloway and Roisin Giles
  - (c) Maggie Drummond
  - (d) Edward Guy
  - (e) Stan Jones
  - (f) Dave Gibson
20. We also received tabled emails and correspondence, before and during the hearing, from:

- (a) M & J Halliday, T Miles and J Jeffries, A Jeffery, M Harris and W Bailey, D Gribble, R and S Berry, C Thompson and M Wood, C Strang, L, L and J Lockwood, P and R Ireland, N Thomson, R and G Harp and T McLeod, C Rhodes, through Morgan Slyfield, Counsel
  - (b) Rita Teele, who attended the hearing on the first day
  - (c) Jonathan Gurnsey
  - (d) The New Zealand Transport Agency (NZTA)
  - (e) The Arrow Irrigation Company Ltd (AIC)
21. The hearing was adjourned on 26 February 2019 to allow for points of clarification to be addressed, revised conditions to be circulated and for the applicant to provide its right of reply. These were received on 17 April 2019 and the hearing was closed on 26 April 2019.

### **The District Plan and Resource Consents Required**

22. Full details of the resource consents required, and the status of the activity are set out in the application and Council's section 42A report.

#### *Queenstown Lakes Operative District Plan*

23. The application relates to a 158.8-hectare property zoned Rural General in the Queenstown Lakes Operative District Plan (the ODP):
- (a) A discretionary activity resource consent is required for:
    - the proposed subdivision and location of residential building platforms, pursuant to Rule 15.2.3.3(vi);
    - the proposed earthworks, pursuant to Rule 22.3.2.4(b);
    - the proposed earthworks within 7m of the bed of any waterway, pursuant to Rule 22.3.3(v);<sup>3</sup>
    - the proposed clubhouse, golf maintenance buildings and the driving range buildings, under Rule 5.3.3.3(i)(a);
    - the proposed Commercial Activity being on the same site as a Recreational Activity, under Rule 5.3.3.3(ii);
    - the construction of a single residential unit within each of the residential lots, pursuant to Rule 5.3.3.3(i)(a); and
    - the use of each residential unit for visitor accommodation purposes, under Rule 5.3.3.3(iii).

---

<sup>3</sup> Paragraph 3.15 of Mr Brown's evidence in chief.



(b) A restricted discretionary activity resource consent, pursuant to Rule 5.3.3.3(xi), is also required for breaches to site standards 5.3.4.i(iii) and 5.3.3.3(xi) relating to:

- The collective ground floor area of the clubhouse, driving range and maintenance facilities exceeding 100m<sup>2</sup>;
- The residential buildings being located closer than 15m from proposed internal boundaries; and
- The commercial recreation activity (golf) being partially undertaken indoors (within the clubhouse).

24. Overall, the application is a discretionary activity under the ODP.

*Queenstown Lakes Proposed District Plan*

25. The site is zoned Wakatipu Basin Rural Amenity zone under Stage 2 of the Queenstown Lakes Proposed District Plan (or the PDP). At the time of the hearing, decisions on Stage 2 of the PDP had not yet been made and the rules did not have legal effect.

26. On the 19 February 2019 the Panel hearing submissions on Stage 2 of the Proposed District Plan released their recommendations. These were to be taken to full Council on 7 March 2019 for ratification and subsequently the Council's decision was publicly notified on 21 March 2019. The release of the Council's decisions on submissions means that the rules contained in Stage 2 will have legal effect. It also means that some further weight needs to be given the PDP provisions, however, until the appeal period is over, any Stage 2 provisions that have not been appealed cannot be deemed operative.

27. The recommendations have two implications for this decision, should they be adopted and subsequently notified by the Council.

28. The first is that the site would remain zoned Wakatipu Basin Rural Amenity Zone, rather than Hogans Gully Zone as sought through submission by the applicant. The second is that a non-complying activity consent is required under Rule 24.5.1.5 for more than one dwelling per 80 hectares net site area.

*National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (the NESCS)*

29. We concur with the reporting officer's assessment that the proposal is a permitted activity pursuant to Clause 8(4) of the NESCS, and do not address it further.

*Overall consent status*

30. The overall activity status is a discretionary activity. We note that while a non-complying activity status applies under the PDP, the overall status as a discretionary activity remains, pursuant to s.88A of the Act.

## **Summary of the Evidence Heard**

31. As evidence for this hearing was pre-circulated, the applicant's witnesses generally provided a summary of their evidence and responded to questions. The Council officers provided us an

update on their advice and recommendations after we had heard from the applicant and submitters. The following is a brief outline of the submissions and evidence presented and the material tabled at the hearing. This summary does not detail everything that was advanced at the hearing but captures key elements.

*Tabled correspondence*

32. The NZTA tabled a letter advising that they were satisfied that the conditions of consent offered by the applicant in a letter from Jason Bartlett dated 14 February 2019 met their concerns and that the revised access arrangements were acceptable.
33. The AIC confirmed by email that they were happy with a marked-up plan provided to them by Shane Muir, to be referenced in condition 10(s).
34. Mr Gurnsey's tabled correspondence set out that he had altered his view of the proposal and was excited about the development proceeding, subject to specific matters being addressed in the masterplanning. He sought that:
  - (a) no stormwater runoff be allowed to discharge into the race;
  - (b) the golf course meets Audubon Cooperative Sanctuary for golf standards, with associated ecological, water quality and pest management benefits;
  - (c) there be a sinking maintenance fund that ensures long term maintenance/plantings of the course;
  - (d) the paper road exchange be completed before giving effect to the consent;
  - (e) the applicant and Queenstown Trails Trust agree to a pedestrian and cycle trail within the site, to get both off the road and improve safety; and
  - (f) construction traffic and heavy vehicles/people moving vans once the golf course is operating be absolutely restricted from using Hogans Gully Road.
35. Ms Teele's tabled statement expressed that a golf resort was preferable to multiple small house lots. She:
  - (a) supported the potable water supply being from the Arrowtown bore rather than the Morvern aquifer;
  - (b) sought assurance that she would not lose her connection to the Arrow Irrigation Scheme race and that the development would not result in the scheme not being able to meet demand;
  - (c) considered that lawns for each residential unit was an unnecessary extravagance, when ecologic concerns are paramount; and
  - (d) sought that the access be from Hogan's Gully Road, that any traffic that can avoid the SH6/McDonnell Road intersection should be encouraged and further options should be considered in respect of access.

36. Mr Slyfield submitted a statement on behalf of a number of Bendemeer submitters, setting out their support for proposed changes, including the reorganisation of clusters R8 and R9 and the realignment of golf holes 11 and 13 as being a significant improvement. However, they advised that they still could not support the application as there remained uncertainty over details of some of the components of the proposal and legal mechanisms to address submitter concerns.

*Evidence for the applicant*

37. As evidence for this hearing was pre-circulated and pre-read, for the most part the applicant's witnesses responded to questions.
38. Mr Todd, legal counsel, provided submission in support of the proposal, covering the following matters:
- (a) The amendments made to the application in response to submissions.
  - (b) The applicability of the permitted baseline
  - (c) The different views in respect to landscape and visual amenity effects
  - (d) The requirement to consider positive effects and environmental offsets
  - (e) Provisions of the ODP, PDP and Stage 2 PDP
  - (f) Part 2.
39. In respect of (a), he submitted that submitters concerns had been addressed; with the exception of Mr Guy, Mr Jones and Ms Teele's concerns about the location of the main entrance and the Sturt's concerns about the maintenance compound. He noted the statement filed by some of the Bendemeer residents and advised they had been unable to clarify the uncertainties expressed in that statement.
40. In terms of (b), Mr Todd submitted that ecological restoration forms part of the baseline. He disagreed with Mr Bryce in his non-inclusion of viticulture as part of the permitted baseline, on the basis that there was no expert evidence that demonstrated viticulture would not be able to be carried out on the site nor that other non-permitted activities such as earthworks would be required to carry out viticulture. He also accepted that there was no expert evidence that demonstrated it could be. Irrespective, he submitted that even if viticulture was not part of the permitted baseline, granting consent is justified.
41. In terms of (c), Mr Todd submitted that the visibility of the development must be looked at in the context of the wider, expansive views of the majority of the Wakatipu Basin and the surrounding outstanding natural landscapes and features. For a proposal to have an adverse visual effect in terms of views from elevated areas of the district, it must be more than simply visible from such areas.
42. In terms of (d), his view that s104(1)(ab) now specifically requires decision makers to consider positive effects and weigh them against potential adverse effects, rather than only as a mitigation measure. He cited the ecological enhancement programme and golf tourism as being positive effects.

43. In terms of (e), he submitted that regardless of whether or not the proposal constitutes urban development under the ODP, the proposal is consistent with the relevant urban development objectives and policies and that the definition of urban development under the PDP is now beyond challenge and can be given full weight. In terms of the PDP, he submitted that the proposal is consistent with the strategic directions chapter of the PDP and that the proposal is a 'resort' and not 'urban development' as defined under the PDP.
44. Mr Todd also talked through the Hearing Panel for Stage 2's recommendations on submissions to the Council. This included recommending rejecting the proposed Hogans Gully Resort Zone on the basis of adverse effects of the landscape and the visibility of the residential dwellings. He was of the view that the Panel had given undue weight to the visual effects from the Crown Range Road and disagreed with their interpretation that the proposal does not meet the definition of resort. However, at this point, it is appropriate to say that on our reading of the relevant definition of resort we agree with the Hearing Panel determination on the matter and find that the proposal, as proposed would not meet this definition either. A point we shall expand in greater detail below in our decision.
45. He submitted the proposal is consistent with Part 2.
46. During the hearing and after hearing from submitters, Mr Todd presented additional submissions, which included providing more details on the construction, management and use of the golf course. He also provided a plan showing where the Arrow Irrigation Race was proposed to be piped.
47. In response to questions, Mr Todd submitted that:
  - (a) The residential units would be available for visitor accommodation when not used for residential purposes.
  - (b) The landscape protection areas would be available for continued farming activities. The golf course and driving range would be open to the public, with the private road access by invitation only.
  - (c) The earthworks for the golf course was included within the application.
  - (d) While we should adopt the PDP definitions for urban development and resort, little to no weight should be given to the PDP.
  - (e) Any noise effects can be internalised.
  - (f) Construction of dwellings would not commence until planting had occurred around housing clusters.
  - (g) Any bonding condition should cover maintenance only.
  - (h) That it was not intended that there would be a link between R2A and R10 and that bores would provide irrigation.
  - (i) A 10-year consent was sought.

48. In response to questions we raised after adjourning the hearing, Mr Todd<sup>4</sup> submitted:

- (a) That once the recommendations of the hearings panel for Stage 2 are adopted, the rules will have legal effect upon public notification of the Council's decision<sup>5</sup>. The proposal would be non-complying under the rules in Stage 2; however, it still needs to be assessed as a discretionary activity pursuant to s 88A of the Act. There are no additional matters of control or discretion not already addressed under the ODP. It is likely that there will be a number of appeals to the Council's decisions. The ODP should be afforded more weight.
- (b) A suggested route for a future trail to be constructed within the application site.
- (c) That the road stopping cannot be concluded until a Council resolution has been passed, and the applicant has yet to request such a resolution and will not do so until if and when consent is granted. A suitable condition has been recommended.
- (d) The condition recommended by Mr Bryce is sufficient to address the proposed golf course earthworks.
- (e) The applicant does not propose to remove the Douglas Fir and replant it with evergreen planting. There is minimal risk of wilding pines spreading.
- (f) Additional controls would be placed on the maintenance compound, which would include hours of operation, minimum distance from the Sturt water supply bore, requiring mounding and landscaping to be in place before operation commences, restrictions on vehicles from accessing the compound other than for maintenance of the course and resort grounds, restricting use to course and resort only.
- (g) An updated plan showing the ecological planting staging.
- (h) The only access from Lots R10 would be from the road link between R10 and R2, with no access being provided from the existing access off McDonnell Road to the homestead. The access would be closed if the homestead is no longer in existence.
- (i) Updated plans showing access to the driving range.
- (j) Advice that Mr Hopkins had relied on Mr Faulkner's expertise on geotechnical testing, and no further testing was required.
- (k) That there is scope to relocate the maintenance compound as sought by the Sturt's, as it would be in response to the relief sought by them. No other would-be submitters would be prejudiced as no other properties are directly affected and no submitters potentially affected<sup>6</sup> raised any issues on the position sought by the Sturt's. No other persons submitted the location of the compound (or development) in terms of views from SH6A, the Crown Range or Tobins Track.

49. At this point we believe it is appropriate for us to address the relocation of the maintenance compound and we find that such amendments to the application would be out of scope of the

---

<sup>4</sup> Memorandum of Counsel dated 8 March 2019

<sup>5</sup> Pursuant to s86B of the RMA

<sup>6</sup> Mr Guy, Mr Jones and Ms Teele

application. In particular, the movement of the maintenance compound areas, as suggested by Mr Todd, to a new location could generate effects on persons beyond the Sturt's, who have not had the opportunity to review or provide comment on the proposal based on the amended location.

50. Mr Davies talked about his long association with both the Queenstown District and the site itself. The site is family owned and he has lived on it since 2006. It has been previously used to farm deer and was also previously part of what is now the Bendemeer land. In his opinion, it is now uneconomic to remain farmed and it is overrun with rabbits. It is the right time to convert it to a golf-course and it would blend in favourably to the area. He explained that the residential and visitor accommodation is necessary to cover the costs of running a golf course. Mr Davies thought there were two working farms left in the Basin, noting there are only five remaining woolsheds.
51. Mr Blair explained how the photo simulations had been prepared.
52. Mr Baxter presented supplementary evidence. He provided an overview of the development. He reiterated his views in respect of the impact of the proposed development from the Brown Range Lookout, that there is no comparable development within the District, that the residential clusters would be recessive forms, any earthworks effects would be temporary, the site would not have a manicured appearance and that fairways are indistinguishable from rural open space when viewed from a distance. Mr Baxter then talked through the amendments made to the proposal in response to the application, and how these addressed submitter concerns.
53. Mr Baxter responded to several questions from the Panel, as follows:
  - (a) That the Bendemeer residents had sought an access be provided through to the site, which is shown on the plans;
  - (b) Lot 801 would be located within the 75m setback shown;
  - (c) That the landowners would need to ensure ongoing adherence to the design controls after construction; which would be reinforced through a covenant on the title. Jacks Point have a residents Committee who do this. He sits on the Millbrook design committee who oversees new development in that area;
  - (d) The development once constructed would look like big baches in a planted ecological setting, but with an urban density;
  - (e) That the newer areas of Millbrook are still raw; but the original Millbrook is now well established;
  - (f) That the most contentious block is R3. He considers it will have an urban feel to it, but it is not urban as compared to Sunshine Bay or Shotover Country;
  - (g) It is difficult to compare the development to any residential development;
  - (h) No trampolines would be allowed;
  - (i) The driving range would not be fenced, and its location some 75 to 80m from the road conforms with industry separation standards.

54. Mr Patterson talked through how he saw the clubhouse as setting an example for future development in the area. He supported Mr Baxter's opinion that this is unlike any other residential development. It would be a unique concept in the Valley, of a deeply rural nature, not domesticated and low key, especially with the 3.8m height limits. There would be no lawns, no fencing and no curtilage areas. They would appear as small cribs or baches set into the property, clustered like cribs are. He said that old New Zealand has landscapes like this. He mentioned Hatipi, Mahia and Kawhia which he was familiar with. It would be the least dense development in the Valley.
55. Mr Patterson advised us that he is an owner within Bendemeer, but his property would not be affected by this development given its location. He talked of the comparisons between Bendemeer and this proposal. Bendemeer is a giant scale subdivision with quite a different concept. Submitters to this application enjoy views over the site, while other properties have lesser views.
56. In terms of the wider landscape, Mr Patterson disagreed that it is a rural, natural and pastoral one; considering it rather to be a rural picturesque one. He considered that there is a changing planning environment and this proposal is a perfect opportunity to lock in a tourism and recreational use on the site. The target market would be a younger more environmentally-focused one, with solar energy and rainwater collection encouraged.
57. Mr Turner presented a summary of his evidence. He talked about his long association with the development, since 2007. He explained that the application philosophy is to take a minimalist approach and retain and use the natural terrain, with minimal earthworks for modifying the natural terrain. Earthworks information for the golf course itself was not yet available so that the course can be used for excess material from the civil works on the site. Turf grasses will have low inputs and provide a natural tawny environment, with inputs being lower than a normal agricultural operation. The fescue grass being used, and the approach taken, would mean there was no change between tees, the fairways and the greens. The drainage system will capture and recirculate runoff. Buffer zones will be used for where the course interacts with wetlands or ponds. Cart paths will be kept to a minimum, with a focus on attracting and serving the travelling golfer. He explained that the course routing had been amended to take into account submitter concerns. The course would be a public facility, unlike the Hills which is private.
58. Mr Brandenburg presented on the topic of golf, golf tourism and its place within New Zealand. He advised us that golf is the highest participation sport in New Zealand and has the second highest number of golf courses per capita in the world. He articulated that there are many benefits from golf, from individual health benefits, to family benefits, to socio-economic benefits. Mr Brandenburg also talked about the golf course design; that it would blend with its rugged rural site, use fescue grasses with lesser inputs than other species, and present a firm, fast and less verdant course. He explained the slower growing fescue grasses occur naturally on the site. Sprays would not be used around water edges. There would be targeted, controllable water meters used, including moisture level monitoring. He noted that the golf carts to be used rely more on battery technology.
59. Mr Brandenburg was of the view that the course would become an important tourism asset for Queenstown and New Zealand. He spoke of golf as providing a significant impact to our economy. He expects the course to join a group of 14 Marquee courses, which includes The Hills, Jack's Point and Millbrook courses. He said that the growth in golf tourism in Queenstown, coupled with the reduction in tee time available at The Hills has put pressure on

tee times available for the visitor market. Mr Brandeburg was of the view there was not enough supply currently.

60. When questioned on the issue of financial viability, and why The Hills had not yet constructed any of the consented residential accommodation, Mr Brandeburg said that The Hills is a private project. He questioned the financial viability of The Hills as a standalone golf courses, noting the reduction in tee times and the \$1,000 green fee. He talked about the Kauri Cliffs and Cape Kidnappers courses, which he described as vanity projects and require residential development to back them up. In his view, there is a demand for a new course, and that clusters of golf courses in proximity to each other works well.
61. Mr Hansen explained that the paper road process was underway. He was satisfied with the recommended conditions. He explained that the maintenance compound would be established first, with mounding and landscaping happening at the same time. He was confident that sediment could be contained on site.
62. Mr Davis presented a summary of his evidence. He advised that a lizard study undertaken in January 2019 identified habitat for two lizard species; and that there would be significant benefits to the skinks present through the new vegetation cover and a large increase in food supply. In his view, all the remaining native vegetation on site is highly degraded, isolated, small in scale and there are unlikely to be threatened species on site; however, it is highly likely to be utilised by the At-Risk eastern falcon and the South Island pied oystercatcher. Mr Davis agreed with the Council's recommendation of nesting bird surveys and an environmental management and operational plan, which would formalise measures to mitigate wider environmental golf course effects.
63. Mr Davis talked of the ecological restoration proposed, and how this would occur over a three-year period. He estimated that the cost of the restoration, including maintenance and irrigation, would come to over \$2million, and we asked him whether we should set the Bond as this value, if we granted consent. The estimated cost of forming the golf course would be between \$9 and \$12million. The planting maintenance plan would cover a period of 12 years, with the level of maintenance required being dependent on how restoration progresses. He considered that it would take around 10 years to establish.
64. Mr Vail presented a summary of his evidence. He confirmed the applicant proposed to use a low-pressure wastewater system discharging to the Council's network during off-peak times. Stormwater would be managed on site, with no runoff into the Arrow Irrigation Race. The domestic and firefighting water supply would be from the Arrowtown Water Supply scheme. Domestic water supply for the maintenance compound would be from a new bore and its firefighting supply would be from the irrigation pond. A second bore would also be installed to ensure pond volume is maintained. Irrigation demands would be provided from the Arrow Irrigation Race. Irrigation demand would coincide with the typical seasonal operations of the Race. The development can be serviced by utilities. Mr Vail acknowledged that the applicant would need to pay development contributions for connections to the network. He advised that the applicant had not explored using more green techniques, as the Council had put barriers up for this type of innovation.
65. Mr Bartlett presented a summary of evidence, which included addressing matters arising since preparing his evidence in chief. He advised that he had gained agreement with NZTA over the existing State Highway accesses, which included agreement to conditions included in the conditions presented by Mr Brown. He also advised he had met with Mr Hopkins to discuss



outstanding concerns. He was of the view that these outstanding matters could be addressed through the master plan or by specific consent conditions. Mr Bartlett expected that the proposed main intersection capacity would be significantly greater than that required to accommodate construction works.

66. Mr Bartlett advised that golf is more likely to result in a pm rather than am peak. The speed limits within the site may need to be changed once operational, but a 30km/hr speed limit was likely in the smaller cluster areas. He confirmed that the SH6/McDonnell Road intersection does not have a good safety record, but the proposal would only result in an increased delay of 1 second and it could accommodate 500 more vehicle movements per day. In terms of Hogans Gully Road, an upgrade would increase speed and safety. However, the development in itself would not require the upgrading of Hogans Gully Road. He maintained that it would generally not be used to access the site and was comfortable in preventing heavy vehicles from using it.
67. Mr Faulkner appeared but we had no questions of him.
68. Mr Brown presented a summary and supplementary statement. This included supplementary evidence on Objective 3.1 and policies 3.2.6 and 3.2.16 of the Proposed Regional Policy Statement and an updated suite of conditions. He addressed the Hearing Panel's recommendation on Stage 2 of the PDP, stating he maintained his views expressed to the Panel that:
  - (a) The potential adverse effects are adequately avoided or mitigated, and positive environmental outcomes are achieved;
  - (b) The proposal is consistent with all relevant objectives and policies of the relevant planning instruments; and
  - (c) The proposal is consistent with and achieves the relevant principles of sections 6 and 7 and achieves the purpose of the Act.
69. Mr Brown was of the view that the proposed mitigation of the maintenance compound would significantly mitigate the perceived effects; noting that he would like to see this mitigation to be in place before the buildings were constructed.
70. Mr Brown supported Mr Todd's opinion that the proposal falls into the definition of 'resort'. The availability of the residential units for visitor accommodation when not used by residents would be reinforced by a covenant to be registered on top of the consent notice. When asked about the difference between a residential development and a resort development, he was of the view that there may be more traffic movements if all the units were permanently owned, but that visitors may not arrive so much by car. His view on the applicability of Part 2 was, given the status of the ODP and PDP, that it needed to be considered.

#### *Submitters*

71. Mr Goldsmith appeared in his role as trustee of the Queenstown Trails Trust (Trust). The Trust neither supported or opposed the proposal but sought the opportunity for and potential of off-road trail links. Mr Goldsmith advised that the Trust and the applicant had so far had unsuccessful discussions on a potential route. He was of the view that a public trail link would achieve a number of relevant ODP, PDP and Partially Operative Regional Policy Statement

objectives and policies. However, the Trust did not seek a condition be imposed requiring a trail to be provided, and rather that the Trust remained open to discussions with the applicant and the paper road closure may be a means to achieve its objectives.

72. Mrs Sturt talked through her appreciation of her rural property and its surroundings and her concerns about the impact the proposed maintenance compound would have. She was concerned that her drinking water, sourced from a bore located close to the maintenance compound, would become unsafe to drink, as a result of activities occurring on and around the compound. She was also concerned that the compound would rely on a bore that may affect her water take. In terms of the operation of the compound, her concerns included the hours of operation and whether trucks would access the site overnight, where heavy machinery would be stored and repaired, that the field surrounding the block might be used for 100 to 200 vehicles and of the future use of the site.
73. Mrs Sturt considered that her amenity would be affected through the impact on her view, noise and lights from vehicles, dust, odour and water quality and quantity. The mitigation bank and planting would take years to grow and would still not hide it or replace what was being lost. In her view, the development would impact on the peacefulness she enjoys, and that extra traffic would exacerbate existing traffic delays. There was no need for another golf course development in the area, in such close proximity to other courses; and that there was no need for one, only want.
74. Ms Baker-Galloway provided legal submissions for Mrs Sturt. She summarised her client's position as being opposed to the proposal in its entirety, but particularly in respect of the maintenance compound. She submitted that the adverse effects arising from the compound, being landscape and visual amenity, nuisance, reverse sensitivity and water quality, on her client's property as not being effectively avoided, remedied or mitigated. In particular:
  - (a) The existing rural character of the site would be significantly altered.
  - (b) The compound would not resemble farm buildings, but would rather create an industrial character, with no clear constraints on hours of operation and the storage of vehicles.
  - (c) The compound would dominate an otherwise rural piece of land.
  - (d) The mitigation proposed may not be sufficient due to the length of time it would take for plants to grow, lack of specificity of vegetation type, no requirement for ongoing maintenance, the existing poplars may not be retained, views from the second storey of the dwelling not being considered, the unnatural clustering of mounds, and other effects not being addressed.
  - (e) The use and disposal of the three-waters may impact on the viability of the Sturt bore.
  - (f) The road to the compound would also impact on rural amenity and may impact on safety and traffic along McDonnell Road.
  - (g) The existing access off SH6 may be used by construction vehicles, which would impact on rural land and may affect water quality, ecology and the Sturt's amenity.

- (h) Nuisance effects, such as noise, lights, dust and vibration may arise.
75. In terms of the planning framework, Ms Baker-Galloway submitted that the proposal is contrary to the ODP and PDP, including the recommendations of the Independent Commission on PDP Stage 2 and Part 2 of the RMA, including for the reasons that:
- (a) Landscape and rural character and amenity values would not be maintained and enhanced;
  - (b) The proposal is not consistent with the direction of the Independent Commission given it involves subdivision well below the 80ha minimum lot density and significant modification of the landscape from rural character; and
  - (c) Impacts on the Sturt's amenity from the compound.
76. Ms Baker-Galloway also submitted that approving the proposal would be contrary to the recommendations and reasons of the Independent Commission to not rezone the site to a bespoke Hogan's Gully Resort Zone or Wakatipu Basin Lifestyle Precinct, as sought by the applicant. She submitted that granting consent would raise concerns regarding the precedent for future subdivision and development in this part of the Wakatipu Basin, particularly where the proposal is contrary to the planning framework and may also result in cumulative adverse effects on rural character and landscape and amenity values. Finally, she also submitted that the applicant had failed to consider alternative locations to the compound, given that significant adverse effects may arise.

#### *Council response*

77. Mr Hopkins advised that all irrigation proposed for the site would be from the Arrow Irrigation supply. He noted that the ORC recommending report appended to Mr Vail's report was for the formation of 10 bores and did not approve any water takes. The applicant would just be relying on the permitted take. In his opinion, the baseline testing sought by Mr Guy was outside of the jurisdiction of the Council. In respect to the Sturt's concerns about contamination, he considered that correctly constructed bore holes should be safe. He agreed a minimum separation distance of 50 metres would be appropriate. He considered that the stormwater and wastewater collection for the maintenance compound would be treated appropriately, noting it would be disposed to the Council's network rather than to ground. Mr Hopkins still had outstanding concerns about irrigation sustainability. He noted that a condition could be imposed to limit bore take volume but agreed this would need to be volunteered by the applicant.
78. In respect to transport, he noted that R10 and R2 would be linked by a minor road. He also identified that there were outstanding matters set out in section 11 of the s.42A report that had not been addressed. In respect of the SH6 intersection, he noted that NZTA had not raised any safety concerns in their submission and that there is no increased risk through delay. He advised we had to deal with what is in front of us. In terms of the split of traffic direction, he said there was not a significant difference in result irrespective of which split was used. In terms of the request for a roundabout at Hogan's Gully Road, he considered that this was not a suitable location and may result in increased use of the Road itself. Also, in terms of Hogan's Gully Road, the Council had no plans to widen it, but the widening would provide options. The access which My Guy was concerned about meets best practice.

79. Mr Hopkins advised he had some concerns that the geotechnical investigations had not included any pit drilling meaning there was still unknowns. He also sought greater information and controls around the proposed earthworks, particularly if there would be limits on open space. The site could accommodate a cut/fill balance and the ideal would be no material would leave the site. Most of his concerns about the earthworks could be dealt with through conditions. He noted that the finished lot levels of Lots 212-215 did not meet required freeboard.
80. Ms Mellsop addressed the applicant's amendments to R2, R8, R9 and the maintenance compound. In respect of R2, she advised that these would be screened but that will take some time. She noted the proposed planting of mountain beech within 5 metres of the dwellings for screening would result in shading effects. In respect of R8, it would address the visual effects for adjacent properties, but there would be no benefit on the overall effect of the development. Similarly, the changes to R9 would reduce effects on the Bendemeer properties but those properties would still have views of more distant development, including R3 and R4, roads, fairways and lighting. She considered that there would be a moderate adverse effect on rural character.
81. In terms of the maintenance compound, Ms Mellsop advised that if it was used for construction prior to the mounding and screening and buildings, it could have significant high adverse effects. She was of the view that even with the screening, most of the buildings would remain visible; this reducing as planting matures. She noted that this would be over 7 to 10 years. She also noted that the landscaping proposed had spread the compound over a broader area. The alternative location mooted by the applicant would interrupt the open pastoral view which is an important part of the SH6 experience. In her view, it would be better located on McDonnell Road where there is more visual absorption capacity.
82. In respect of planting overall, Ms Mellsop sought provision of a separate plan showing the planting required for visual mitigation and that this should be implemented in the first year, including planting for buffering in between the golf course and residential areas. She queried whether the Douglas Fir plantation next to the compound would be retained.
83. Ms Mellsop considered the amendments proposed by the applicant did not change the Crown Range view. The pattern of revegetation around the entry road would emphasise it. In terms of Mr Baxter's evidence, she advised:
- (a) She disagreed with his opinion in 1.2.6 and considers that the ODP and PDP do encourage clustering; but the clusters proposed are out of scale. The larger clusters of up to 29 dwellings are more an urban style of development and closely located. The clusters merge together when viewed from the Crown Range.
  - (b) She remained of the view that the proposal would result in cumulative adverse effects. Her understanding of the study that resulted in Chapter 24 changes was commissioned as the Basin was seen as being at capacity and could not absorb more change.
  - (c) The development is more than what is envisaged in the Rural Lifestyle Zone; however, she acknowledged it is a better outcome than 1 dwelling per 2 hectares.
  - (d) There was not sufficient information on how R5 around the 17<sup>th</sup> fairway would be addressed.

84. Ms Bennett considered that the proposal would result in a positive outcome from the ecological enhancement. She was generally satisfied with the amendments proposed by the applicant. However, there were some remaining areas of concern:
- (a) How earthworks near intermittent watercourses and wetlands would be managed.
  - (b) Drainage under the fairways.
  - (c) Insufficient detail of the impact of access tracks and golf carts, particularly on fairway 17.
  - (d) There needed to be stricter control on ensuring that the planting around dwellings occurs.
85. Ms Bennett sought more information on staging and noted her preference that the Douglas Fir plantation be replaced.
86. Mr Bryce remained of the view that consent should be refused on landscape and visual amenity reasons. Mr Bryce responded to a number of matters that had arisen during the hearing.
87. In the matter of scope to make amendments, he was satisfied that the amendments to the maintenance compound and Residential clusters 2, 8 and 9 were within the scope of the application. However, he was of the view that re-siting the maintenance compound to further away from the Sturt property was not.
88. He advised that the objectives, policies and rules to be considered were those applicable at the time of lodgement and determination of the application. He differed in opinion to Mr Todd and Mr Brown on the relevance of Policy 6 of the Objective 4.2.5 of the ODP, and considered it is relevant as it discourages urban subdivision and development in visual amenity landscapes. He considered that the ODP policy framework remains relevant to the proposal and should be given more weight than that of the PDP, given the extent of appeals to PDP Chapters 3 and 4. He disagreed with Mr Brown that the development is not 'urban development' in the context of the PDP Stage 1 definition. This was because he did not consider the development fell into the definition of a 'resort' and while in a rural zone, still proposed residential development to an 'urban type development'; noting that both landscape witnesses concurred that parts of the development introduce urban type densities.
89. In respect of the 'resort' definition under the PDP, his view was that while it does provide for an integrated and planned development involving low densities overall; he disagreed that the development is principally providing visitor accommodation that form parts of an overall development focused on onsite visitor activities. He considered that the proposal is clearly for a residential led golf course, with an ability for the units to be used for visitor accommodation. He considered that there was no compelling evidence that the residential units would not be utilised for residential purposes the majority of the time. He also noted that there is no rule or specific policy construct under either Stages 1 or 2 relevant to 'resort' developments. He also disagreed with Mr Todd's interpretation that the definition of 'urban development' replaces the policy context of 'urban development' under the ODP (that is, the PDP definition should be used to interpret the ODP policy framework). While he agreed both the 'urban development' and 'resort' definitions are beyond appeal, the PDP policy context is not.

90. In respect to landscaping and ecology, he considered these could be broken down into three components:
  - (a) Structure planting to mitigate the visual effects.
  - (b) Ecological enhancement planting.
  - (c) Curtilage planting of residential dwellings.
91. He recommended amendments to conditions to address this, and that all mitigation landscaping needed to be integrated into the land use consents; including the need for curtilage landscaping of each unit. He also sought clarity on the staging of planting.
92. In respect of Council officers' ongoing concerns about earthworks for the golf course, he recommended a condition to ensure that protection of intermittently flowing watercourses and wetland features.
93. He agreed that section 104(1)(ab) was a relevant consideration and noted he had considered positive effects. He remained of the review that the positive effects of the proposal do not outweigh the adverse effects on landscape and visual amenity values of this part of the Wakatipu Basin.
94. In terms of the Sturt's concerns, he considered that:
  - (a) The applicant should provide more information on the operational matters;
  - (b) The bore concern could be addressed through a setback; and
  - (c) While the visual amenity considerations had been addressed, it would still result in a moderate visual impact for approximately 7 to 10 years.
95. Mr Bryce also advised that while he thought the proposed changes to draft conditions proposed by the applicant were acceptable, there remained a number of areas where he thought further amendments were necessary. He also noted that he could not see any reference to a 10 year lapse period, as mentioned by Mr Todd.
96. In responding to questions, he advised:
  - (a) That farm buildings are a controlled activity under the ODP, limited to one building per 50 hectares. He noted that there is already a farm building on site, meaning any additional farm buildings are a restricted discretionary activity.
  - (b) That he is satisfied that temporary events on site can be addressed through a separate resource consent application.
  - (c) That little weight overall should be given to the PDP, noting that there are some policies that may not be under appeal.
  - (d) Our determination needs to be the application before us, rather than requiring removal of particular units or clusters.

- (e) If the density of clusters was reduced, the proposal may be looked at more favourably.
- (f) He agreed that there was scope to move the compound, but it raised the issue of whether other parties would then be affected and had not had the opportunity to submit on it.
- (g) That s104(6) could be considered in respect of earthwork matters; however, it would be preferable to address this with the applicant. While he could understand why the applicant did not want to be constrained around volume, to not provide information at this stage does not reflect good planning practice.

#### *Commissioners Minutes*

- 97. On the 1 March 2019 we issued a minute seeking further information from the applicant to address a number of issues we had raised at the hearing and to ensure we had sufficient and reliable information to base our decision upon. This included details of the earthworks required for the golf course and information regarding the access to the golf driving range.
- 98. To this we received responses from both the applicant and the Council. In essence the Council still had concerns of these matters and the potential traffic implications of residents' vehicles using the link between R1 and R2 as a potential 'rat run'. The applicant was of the view that these issues could be addressed through the appropriate conditions of consent, a view not shared by the Council.
- 99. To give the applicant the opportunity to address these matters we issued another minute on 19 March 2019. In essence, we received a similar response from the applicant. To which we directed that the applicant be given the opportunity to address these and any other matters they wanted to address through their right of reply.

#### *Applicant's right of reply*

- 100. Mr Todd's reply was received on 17 April 2019 and addressed:
  - The outstanding matters raised by the Council officers;
  - Matters raised by the submitters, including those in Bendemeer;
  - Views from the Crown range;
  - The SH6/McDonnell Road corner;
  - The definition of resort and Stage 2 of the Proposed District Plan; and
  - His client's overall assessment of the proposal.
- 101. With regards to the Council officers outstanding concerns, which included their view that the applicant had not provided adequate information to address the levels of earthwork required for the golf course, vehicle access to the proposed driving range and the access arrangements to Lot R10 from Mc Donnell Road, Mr Todd submitted that his client did not agree with this position. Mr Todd was of the view that these issues had been addressed through the conditions process and that the potential adverse effects could appropriately

avoided, mitigated or remedied through the draft set of conditions of consent proposed. This included a suite of conditions offered by the applicant. He noted that the applicant (as we have outlined above) had amended their proposal through the application and hearing process to address the Officers' concerns. His response included email correspondence with the Council dated 9 April 2019, which stated general acceptance of the applicant's offered condition. This condition would require more detailed information particularly in respect to the more sensitive fairways, as part of a pre-commencement condition.

102. In doing so, Mr Todd acknowledged that the applicant had not provided the same level of details regarding the earthworks required for the golf course as they had for the residential elements of the proposal. In essence though, he submitted this could not be provided at this stage until the actual golf course design had been formalised. However, he submitted that the location and extent of the earthworks was known and that any adverse effects, including the earthworks surrounding hole 17 and its impacts on the adjacent wetland area could be addressed with the draft conditions proposed by the applicant. Finally, on this matter Mr Todd stated that no fill will either be exported or imported to/from the site.
103. In terms of the vehicle access to the driving range, again Mr Todd did not agree with the Council officers over this issue and was of the view that it was not appropriate to enforce a speed limit on this road. However, in any event the applicant had agreed to amend the proposal to limit access to 30km/h limit.
104. With regards to the issue of linking Lot 10 (the existing homestead) and R1 with the rest of the development. Mr Todd submitted that this was not the case and that access, via the existing homestead accessway would only provide access to R1 and the Homestead and the link between these and the rest of the development would only be constructed when the existing homestead was removed and that accessway was closed.
105. With regards to the submitters, dealing with the Sturt's firstly, Mr Todd offered two responses. Firstly, if we agreed a relocation of maintenance compound was within scope, the applicant was willing to relocate this as discussed above. However, as we have found this would not be within the scope of the application. In this event, Mr Todd submitted that the effects associated with the maintenance compound would be no greater than that the Sturt's currently face in terms of noise and light effects associated from SH6. At this point in time, we would like to note that we find this proposition very difficult to accept and that we had no expert evidence from the applicant specifically addressing what any difference would be.
106. In terms of the submissions, beginning with McDonnell Road Residents, Mr Todd reinforced his submission that these residents would not be affected by the proposal. With regards to the Hogans Gully residents, Mr Todd submitted that the applicant has offered conditions of consent which could address their concerns, including road widening conditions. In terms of the Queenstown Trails Trust, the applicant was willing to offer a trail around the edge of the site, which would provide a suitable cycle trail which could form part of their network.
107. Finally, in terms of the Bendemeer residents, Mr Todd advised that discussions had been ongoing, and a number of these issues have been addressed and were reflected in the amended plans. Moreover, some of the other issues of concern could be addressed through private covenant between the parties. The reply included a letter from Counsel for the Bendemeer submitters referred to earlier, advising that the outstanding matters would be possible to resolve through further discussions.



108. Mr Todd submitted that the applicant's evidence has shown that the development would not result in adverse effects from the elevated positions along the Crown Range. He submitted, based on Mr Turner's view that the golf course fairways will almost be indeterminable from the elevated views due to the use of fescue grass.
109. We note that the issue of resort definition has been considered above, while noting Mr Todd's submission on this matter and his submissions on the relevance of the PDP.
110. Overall Mr Todd submitted, based on the evidence, amendments undertaken through the hearing process and the proposed conditions of consent offered by the applicant that the proposal was appropriate in effects and district plan policy terms, noting the positive benefits, the proposal would bring to the district.

### **The Principal Issues in Contention**

111. Section 113 of the RMA requires the Commissioner's to identify the principal issues in contention and to record their findings on these matters.
112. After analysis of the application, the legal submissions and supporting evidence (including proposed mitigation measures and volunteered conditions offered by the applicant), the submissions on the application and a full review of the section 42A report and responses to minutes, the proposed activity raises the following issues in contention:
  - (a) Nature of the activity;
  - (b) Landscape and visual effects, including cumulative effects;
  - (c) Ecological effects;
  - (d) Earthworks effects;
  - (e) Transport and traffic effects, including the paper road;
  - (f) Productive use of the land; and
  - (g) Positive effects.

### **Main Findings on the Principal Issues in Contention**

113. We record that matters relating to geotechnical, natural hazards and infrastructure, including the water race effects, were not in contention between the parties and could be addressed through the appropriate use of conditions of consent. We agree and will concentrate on the matters in contention between the parties below.
114. Finally, before considering the matters in contention we would like to note that in terms of the architecture of the club house and the residential units, we agree with Mr Patterson on this matter, save for his views on the urban versus rural nature of the overall subdivision, where we do not accept his position on that matter.

#### *Nature of the activity*

115. One of the primary matters in contention was the nature of the activity. In particular, whether it constituted urban development and whether it fell into the definition of a resort. If it fell into the definition of a resort, it was the applicant's position that the urban growth and urban development related provisions in the ODP<sup>7</sup> and the PDP<sup>8</sup> did not apply.
116. The definition of urban development within the ODP is:
- "any development/activity within any zone other than the Rural Zones, including any development/activity which in terms of its characteristics (such as density) and its effects (apart from bulk and location) could be established as of right in any such zone; or any activity within an urban boundary as shown on the District Planning Maps."*
117. The definition of urban development within the PDP is:
- "means development which is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development."*
118. The definition of a resort within the PDP is:
- "means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor accommodation and forming part of an overall development focused on onsite visitor activities."*
119. As outlined earlier, Mr Brown's position was that the proposal constituted a resort development because it is an integrated and planned development with low average net density of residential development, and it met the requirement of principal use for temporary visitor accommodation as the residential units would be available for visitor accommodation when they were not being used for residential purposes. The applicant proposed a condition which would require this to occur. And because the proposal was a resort, it was excluded from the definition of urban development.
120. Mr Bryce disagreed with this interpretation, for the reason that the proposal as notified was clearly a residential led golf course with the ability for the residential units to be used for visitor accommodation purposes, and not the other way. The only way he could see that it could fall within the definition of resort was if the majority of the development was used for visitor accommodation purposes, with a low average density of residential activity. He did not consider that the condition adequately responded to this, and that there was no evidence that the residential lots would not be used as residential units for the majority of the time. He also noted that while the definition of resort may have operative status, there is no rule or specific policy construct in the PDP that specifically refers to a resort. For that reason, the ODP contains the applicable rule framework.
121. In terms of how the policy documents are to be interpreted, Mr Bryce also advised us that the definition of urban development in the ODP must be used for interpreting the ODP objectives and policies and the definition of urban development in the PDP must be used for interpreting

---

<sup>7</sup> In particular ODP Chapter 4.9, policies 1.1, 3.2, 7.2, 7.4, 7.5

<sup>8</sup> In particular PDP objective 3.2.2 and policy 3.2.2.1, policies 3.3.13 – 3.3.15,

the PDP objectives and policies. This is irrespective if the definition of urban development in the PDP is now beyond challenge, as the PDP objectives and policies are not.

122. We noted the findings of the Hearings Panel for Chapter 24 PDP, who stated in respect of the applicant's submission on that Chapter:

*"The objectives and policies in Chapters 3 and 4 of the PDP seek to avoid urban development outside the urban development boundaries shown on the planning maps. The definition of "urban development" states that a resort development in an otherwise rural area is not urban development. The definition of resort is:*

*"Means an integrated and planned development involving low average density of residential development (as a proportion of the developed area) principally providing temporary visitor accommodation and forming part of an overall development focused on onsite visitor activities."*

*While The Hills Resort Zone would satisfy the first part of the definition, we heard no evidence that it would principally provide visitor accommodation, although we note that Mr Colegrave's evidence was based on visitor accommodation being a principal component. Rather the contrary; the impression we had was that the intention was that this would be a gated residential community surrounding a golf course.*

*The same is the case with Hogans Gully. Mr Todd, however, sought to argue that it would meet the definition of "resort", because the residential units constructed as part of the development were able to be used for visitor accommodation. We do not think this is sufficient and note that the same applies to development in the residential zones throughout the District. The definition quoted above focusses on what is actually occurring as a matter of fact; whether the development is principally providing visitor accommodation, not whether it might do so. The importance of this being 'locked in' was emphasized by evidence we heard that the character of Millbrook 'Resort' has changed over time as it has grown in size, such that it would probably not be considered a resort if constructed today.*

*We contemplated the possibility of amending The Hills Resort Zone provisions to express them in terms that would ensure the development met the requirements of a resort (as well as addressing the other issues identified above), but concluded that this is such a fundamental element of the development that we ought not to undertake the redrafting required in the absence of clear evidence that the submitter actually sought to undertake a development within the definition set out above.*

*We have concluded, therefore, that what is proposed is urban development that the strategic chapters of the PDP seek to avoid. In our view, that is decisive, and leads us inexorably to the conclusion that the submission should not be accepted. We considered whether this conclusion puts too much weight on Stage 1 provisions that are the subject of appeal. The key definitions we have relied on are not the subject of appeal, and while the policy approach of avoiding urban development outside urban development boundaries is challenged, it is fundamental to the approach the strategic chapters take to management of urban development. It would be inconsistent for us to take an alternative approach unless and until the Environment Court directs that course.*

*The same conclusion follows for Hogans Gully, although there we have identified additional reasons supporting rejection of the proposed zone. Those additional reasons are important because Hogans Gully sought, in the alternative, imposition of Precinct zoning on the elevated terraces identified for residential development in its proposed zone. The alternative proposal was not fully fleshed out and we were left unclear how it could be reconciled with the information Mr Baxter provided to us on the pattern of residential development. Be that as it may, high density Precinct development (down to 2500m<sup>2</sup>) would, in our view, have unsatisfactory results. It would not, in particular, maintain or enhance landscape character and*

*visual amenity values in the eastern part of the Basin.”*

123. We agree with Mr Bryce that the appropriate approach is that the definitions contained in the ODP must be used for evaluating the objectives and policies in that Plan, and similarly, the definitions contained in the PDP must be used for evaluating the objectives and policies in that Plan.
124. In terms of whether the proposal constitutes a resort; we agree with Mr Bryce and the Hearings Panel for Chapter 24, that find that it does not. We also agree with the Hearings Panel for Chapter 24 that the proposed development falls within the definition of urban development in the PDP, and therefore approach our consideration of this application in terms of the PDP in that regard. We agree with the applicant that the proposal does not fall within the definition of urban development as defined in the ODP.

*Landscape and visual effects, including cumulative effects*

125. We were faced with conflicting evidence from the applicant's and Council's Landscape Architects and it is clear to us that the two landscape experts disagree over the landscape issues and effects that the application could generate. In saying that, there was common ground between the parties that this is one of the last pieces of rural-zoned land of this size within the Wakatipu Basin. We agree with Ms Mellsop that the overall eastern part of the Wakatipu Basin has high aesthetic values with a scenic quality to its rural landscape.
126. As we have set out above, Mr Baxter is of the view that the application, as amended, is appropriate in landscape terms and Ms Mellsop does not. The rationale for their views has been set out in their evidence/reports. We note that there is nothing inappropriate with disagreement between professionals and making a finding in this regard does not imply inappropriate behaviour on any party. However, for the reasons we will discuss below, we favour Ms Mellsop's evidence and find that the proposal will generate adverse landscape effects, including cumulative effects on the local and wider landscape environment, which are inappropriate to this context. We note for completeness that we are of a view that these adverse landscape effects cannot be mitigated or avoided through the use of appropriately designed conditions of consent, including through planting, even in the long term.
127. In coming to this position, we agree with Ms Mellsop's view that the introduction of the residential elements as proposed would introduce (especially residential clusters R3, R2 and R7 and to a lesser extent in-conjunction with other clusters) residential densities of an urban character into a rural landscape with high aesthetic values. We agree with Ms Mellsop's assessment of these landscape impacts and their effects when considered from the different locations adjacent to, and around the site, including from McDonnell Road, Hogan's Gully Road and SH6, save for the Sturt's property which we shall consider below. We acknowledge that the landscape impacts have been reduced when viewed from the adjacent Bendemeer properties. However, we still have significant concerns about adverse cumulative landscape effects that the introduction of an urban element such as proposed would have from these properties against the wider views towards Arrowtown across this section of the Basin.
128. We agree with Ms Mellsop and Mr Bryce that the introduction of urban elements such as proposal, and at the level proposed, would result in a substantial change in landscape values when viewed from the different viewing opportunities along and from the Crown Range. In saying this, we do accept that these adverse impacts are different when viewed from the differing viewing locations along the Crown Range. At this point we should also acknowledge

that we do not accept Mr Baxter's view or Mr Todd's submission that the golf course would be indeterminable in these views. It was clear to us from our site visits (we visited a number of locations along the Range on a number of occasions) that this was not the case. The existing golf courses (The Hills, Millbrook and to a lesser extent the Arrowtown Golf course) had a significant presence in the landscape by the inherent design, that changing the type of grass would not address. A point Ms Mellsop also brought to our attention. This, in-conjunction with the residential units, would significantly affect the landscape views from the Crown Range.

129. We concur with Ms Mellsop that the scale, form and density of development would appear as sporadic urban development within the landscape. The densities proposed for the different clusters are those that would be anticipated in a residential environment and will appear incongruous with the surrounding environment.
130. Finally, turning to the effects of the maintenance compound and its impact from the Sturt's property. In part, we agree with Mr Baxter that these structures could read as part of a functioning farm operation, which could be anticipated in the Rural Zone, noting that the number required would require consent at least as a restricted discretionary activity under the ODP. However, we are of the view that their size and scale will have an adverse impact on the Sturt's property. As we have considered above, we found that the relocation of the maintenance compound as suggested by Mr Todd is not within the scope of the application as notified and this option is not available to the applicant. As a result, we find that the scale and size of these structures will have an adverse impact on the Sturt's enjoyment of their property.
131. As a result, we find that the application would generate significant adverse landscape effects through the introduction of strong urban elements, especially from the Crown Range, which would warrant the application being declined consent on landscape grounds. In reaching this view, we have considered the potential for the use of conditions to mitigate these adverse effects, and the positive effects to the applicant and those brought to our attention by Mr Turner and Mr Brandeburg to the local, national and potentially international golfing community. However, as we have set out above, these effects cannot be avoided or mitigated to a level we find would make the impact acceptable.
132. Finally, for completeness, while we have reached our determination on the landscape and visual amenity effects, based on the evidence we received, we note that the Hearing Panel for Stage 2 to the PDP reached the same conclusion on the applicant's submission to the PDP, seeking a very similar outcome through the plan making process, as brought to our attention by the applicant.

*Firstly, considering the Hogans Gully Zone, we find that this would not be the most appropriate zone for the site. We think that the landscaping proposed will stand out because it is not where it would naturally be (i.e. in the gullies). We also find that the view from zig-zag is important. The simulations provided by the submitter support both Ms Gilbert's comments in her reply evidence, that it is an artificial configuration driven primarily by the golf course layout, and Ms Mellsop's view that the density of the visible built development would result in a visible spread of intensive rural living. In our view, the development enabled by the zone would be obtrusively visible.*

*We agree with Mr Todd that the 55ha of indigenous planting proposed is a potentially significant ecological benefit that we should take into account. However, in our view, it will not in this instance counter the adverse effects of the proposal. We also think that the benefit is lessened by the way it fails to follow natural patterning, by being located on higher points rather than in the gullies. Even if the restoration had been more well-conceived, we do not think it sufficient to counter the intensive level of rural living that will be clearly visible from a*

*significant viewpoint. Had the development not been concentrated on the ridgelines and been coupled with revegetation in the gullies we may have reached a different view.*

#### *Ecological effects*

133. By the conclusion of the hearing it had become clear to us that the issues surrounding ecological effects were no longer a major area of contention between the applicant and the Council. In our view, the effects generated (save for the impact on the wetland adjacent to proposed hole 17 of the golf course), which we will address in detail below, could be addressed through the appropriate use of conditions of consent. Moreover, these had been addressed through the conditions of consent offered as part of Mr Todd's right of reply. We also acknowledge the enhancement that the applicant proposes, which would result in positive ecological outcomes both on and beyond the site.
134. We note for completeness the significant level and cost of the ecological works proposed, which, in our minds raised the appropriate level of bond for these works. To that end, we asked Mr Davis this question to which he advised the works were around the \$2million mark for the cost of the restoration, including maintenance and irrigation. The role and purpose of a bond are well known, and it is common practice throughout New Zealand to seek a bond value up to or representing a significant proportion of the value of the works. Mr Todd submitted that this would not be appropriate in this case and submitted that in some previous examples from around the district this was not the case. In doing so, he did not provide us with any evidence or context as to why this was appropriate to this application. Given the position we have reached on the application we did not pursue this matter further, but we note, for completeness, that we found Mr Todd's approach unhelpful in this regard.

#### *Earthworks effects*

135. Earthworks were proposed for both the residential elements as well as for the golf course, noting the earthworks required for the proposed roading issues were included in the residential elements. However, given the nature of the evidence provided and how this was addressed as part of the hearing process we shall deal with the earthworks proposed in two parts. The first part shall address the areas still in contention which related to the level and nature of the earthworks proposed for the actual golf course.
136. At the time of the hearing, the applicant had not yet determined the volume and nature of the earthworks that would be required for the shaping of the golf course. In essence, this position has not fundamentally changed, even though we sought this information from the applicant through our minutes post-hearing. This point was also brought to our attention by Mr Bryce and Mr Hopkins who suggested that figure could be another 500,000m<sup>3</sup> on top of the earthworks required for the residential and roading elements. However, without the actual details this figure could not be confirmed. Mr Todd submitted that the actual level, volume and location of the earthworks could not be confirmed until the actual design of the golf course was completed. He also suggested that this could be adequately addressed through the appropriate use of conditions of consent with a confirmation that there would be an onsite cut to fill ratio and that this approach has been used in other locations in the district. However, again he did not provide us with the evidence and or details of these situations to determine whether or not they were relevant to our consideration of this application. We acknowledge the Council's email to the applicant dated 9 April 2019, which agreed to a condition led approach. However, we also note the concerns raised by the Council in its response and its highlighting of the importance of addressing more sensitive fairways. This being said, we find

it hard to understand how this information and detail would not be provided for at a resource consent hearing, especially given the level of earthworks potentially involved and their location in respect to sensitive ecological environments. In our view, while this level of information may not be necessary as part of a submission to a proposed plan or to a plan change, this is not the case for a resource consent hearing where we are seeking to understand the actual and potential effects of the proposal and to determine whether this is appropriate in policy terms. We do not accept that these are matters that can be appropriately addressed through conditions which will require detailed assessment.

137. As a result, we are not in a position to come to a view on the earthworks required for the golf course and do not agree that this can simply be addressed through the use of conditions of consent. Consequently, we find that, in the absence of sufficient information, that the earthworks required for the golf course are unacceptable in this context. We also consider that s104(6) is relevant to this matter. We simply have inadequate information to determine the effects of these earthworks.
138. Finally, we note for completeness in this section on earthworks that the same issues arose with the potential impact of the 17<sup>th</sup> hole of the golf course on the existing wetland. A point that Mr Bryce highlighted in his responses to our post hearing minutes. As a result, again we cannot come to a view on the impact of the earthworks on this wetland and s104(6) similarly applies.
139. In terms of the impacts of the earthworks required for the residential elements, roads and accessways, golf driving range, maintenance compound and club house, we agree with the evidence of Mr Hansen, Mr Faulkner (for geo-technical) and Mr Hopkins that the physical impacts and effects of the earthworks proposed for these activities, as part of the overall proposal are appropriate and the potential and actual adverse effects can be adequately addressed through the use of appropriate conditions of consent. However, in our view, this level of earthworks is only required to give effect to a design proposition which, as we have found above, seeks to introduce urban elements into a rural landscape with high aesthetic values. With this comes the visual impacts of the earthworks required for the level of roading and access ways which would not be present for the rural use of the land.

#### *Transport and traffic effects*

140. At the close of the hearing there were still a number of outstanding issues between the applicant and Council officers, including the linkages between R1 and R2, access to the golf driving range (sightlines etc) and access arrangements to and from the site onto McDonnell Road, noting issues around the access point were also raised by the McDonnell Road submitters as well. Finally, it should be acknowledged that concerns were also raised during the hearing about the impact of the SH6/McDonnell Road intersection.
141. In terms impact of the SH6/McDonnell Road intersection we received confirmation from NZTA that they, as the road controlling authority had no concerns with the potential traffic impacts this proposal could generate at this intersection. This view as also supported Mr Bartlett and Mr Hopkins. As a result, based in this evidence, we have not taken this issue any further.
142. Mr Hopkins at the end of the hearing still had concerns about

- The potential for traffic using the linkage between R1 and R2;

- The access arrangement to the golf driving range for the main access road through the development; and
  - The design of the arrangements to and from the site onto McDonnell Road.
143. We address these issues in turn. We understand and agree with Mr Hopkins' concerns about the potential issues a connection between R1 and R2 could create. However, we support Mr Todd's proposition that this could, and should, be controlled by a condition of consent. Should we be of a view to grant consent, a condition to this effect must be included limited access between these two clusters for residents' vehicles.
144. Again, we understand and agree with Mr Hopkins' concerns regarding the potential traffic safety issues regarding the access point, and also agree with Mr Hopkins that a reduced traffic speed environment and an amended intersection design which addressed the sightline issue would be appropriate in this regard. It now appears that the applicant has agreed to this request, noting Mr Todd's concerns, for a 30km/h environment in this location and an amended intersection design. Again, this issue could be addressed through an appropriate condition of consent.
145. This leaves the design of the access to and from McDonnell to which we now understand agreement has been reached on how this issue could and should be addressed and this is now reflected in the agreed set of conditions. This, however, does not address the McDonnell Road residents' concerns. We acknowledge that the proposal would increase the level of traffic using both Mc Donnell and Hogans Gully Road. However, we are of the view that subject to the appropriately safe access arrangement been delivered these impacts are acceptable in terms of residential amenity.
146. We note for completeness that the Queenstown Trail Trust sought through their submission to ensure that there was the sufficient opportunity for cycle way to be incorporated on site which would then form part of their overall cycleway network. We support this approach by the Trust and accept the advice of Mr Bartlett and Mr Hopkins sufficient opportunity has now been provided for to meet the Queenstown Trail Trust outcomes. However, this is an issue best addressed between the Trust and the applicant, as acknowledged by Mr Goldsmith in presenting the Trust's submission.
147. Finally, we acknowledge of the paper road closure is at the Council's discretion and beyond our scope to make a determination on, and we accept Mr Todd's submissions on this matter that this is at the applicant's risk.

*Productive use of the land*

148. Loss of rural productive land was not raised as an effects issue directly and was more of an issue in contention over the district policy implications of the loss of rural land to a golf course and residential activity, which we will consider in greater detail below. We do acknowledge that the applicant proposed to retain parts of the land for rural production purposes, which it currently is now. We note the applicant's submission that it is uneconomic to retain all of the land for rural production. We find, which may on the surface seems self-evident, that the proposal will result in the loss of the majority of the site to rural and productive purposes as we find that a golf course is not a rural productive purpose.



### *Positive effects*

149. We acknowledge and accepted that the proposal will result in positive benefits to the applicant and the wider district through the provision of further housing stock, whether that is short term or long-term occupation. We also accepted the evidence of Mr Turner and Mr Brandeburg that the proposal will bring positive benefits to the local, national and potentially international golfing community. The construction period would result in economic benefits and there would be employment opportunities created by staff and through golf course users and those renting the accommodation when not used by residents.

### **Statutory Assessment**

150. Subject to Part 2 of the Act, Section 104 sets out those matters to be addressed by the consent authority when considering a resource consent application, as follows:

- (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*

(ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*

(b) *any relevant provisions of –*

(i) *a national environmental standard* [not applicable];

(ii) *other regulations* [not applicable];

(iii) *a national policy statement*:

(iv) *a New Zealand coastal policy statement* [not applicable];

(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*

...

- (6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*

#### Section 104B

151. Section 104B sets out the following in respect to determining discretionary activities:

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

- (a) may grant or refuse the application; and*  
*(b) if it grants the application, may impose conditions under section 108.*

#### **Section 104(1)(a) Effects on the Environment Assessment**

152. Section 104(1)(a) requires consideration of the effects of the activity. We have addressed this through our consideration of the principal issues in contention. In summary, we found in that assessment that:

- (a) There would be significant adverse landscape and visual effects, that could not be avoided or mitigated;
- (b) Any ecological effects would be acceptable, with the exception of the impact on the wetland adjacent to proposed hole 17 of the golf course, which we had inadequate information on;
- (c) We had inadequate information to make a determination on the effects arising from the earthworks to create the golf course. The earthworks to create the residential component of the development could be appropriately addressed through conditions of consent;
- (d) Any traffic effects would be acceptable, and any adverse effects could be appropriately addressed through conditions of consent;
- (e) There would be a loss of productive land within the District, an adverse effect, albeit reduced because of the retention of some productive land; and
- (f) The proposal would result in positive effects associated with additional housing stock, employment opportunities, tourism and golfing.

153. Overall, we find that the effects on the environment are unacceptable, primarily due to the size and scale of the proposed development and the lack of adequate information on which to make a determination.

#### **Section 104D(1)(ab) Positive Effects to Offset or Compensate Assessment**

154. Section 104(1)(ab) requires consideration of any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.

155. The applicant proposed significant environmental replanting and enhancement as part of the proposal. We acknowledge the positive effects that such planting would bring. However, we concur with the Council that this planting does not mitigate the significant adverse landscape and visual amenity effects and neither does it offset them. The applicant did not propose any compensation measures.

### **Section 104(1)(b) Relevant planning documents**

#### *Operative and Proposed District Plans*

156. Given the “state of flux” of the district plans, as described by Mr Bryce, we have considered both the ODP and PDP. We agree that at this point of time, given the number of appeals on Stage 1 and the timing of decisions on submissions on Stage 2, that lesser weight should be given to the PDP. However, rather than addressing the ODP and the PDP sequentially, we have rather considered the objectives and policies of both by theme; with a focus on the areas of disagreement between the applicant, the Council and submitters.
157. In doing so, we have considered the assessments of the objectives and policies of the ODP and PDP as set out in the application, the s.42A report and the evidence presented before and at the hearing. Given the comprehensive coverage of the objectives and policies in those documents, we have not set them out in detail in this decision.
158. By the conclusion of the hearing, there was general agreement between the Council and the applicant that the proposal would generally be consistent with the objectives and policies relating to:
- (a) The natural environment, ecological outcomes and earthworks, except in relation to the earthworks for the golf course and treatment of the wetland in respect to hole 17; where there was insufficient information to assess the effects and therefore the consistency with the Plan provisions;
  - (b) The proposal would not significantly compromise the land for rural productive activities; while noting that there will be loss of some rural land, it is more marginal land that would be lost;
  - (c) Noise and lighting, albeit, we have concerns about the overall amenity of the proposed maintenance compound. On this point we also note that the Mr Todd provided us with an operational management plan setting out the hours of operation etc for the proposed golf course and maintenance compound.
  - (d) Providing recreational activities that meet the recreational needs of the District’s residents and visitors;
  - (e) Servicing and infrastructure provision; and
  - (f) Transport.
159. The fundamental differences between the applicant and Council’s positions were in respect of:
- (a) Whether the proposal was an appropriate activity in the Rural Zone, in respect to its scale, form, location and density; and

(b) The impact on the visual amenity landscape and rural amenity.

160. In essence, Mr Brown (for the applicant) was of the view that the application was appropriate in policy terms (objectives and policies) for both the ODP and PDP and Mr Bryce (for the Council) was not. This includes their position on the two major areas still in contention as listed above. The rationale for their positions as been summarised above and set out in detail within their evidence and s.42A reports respectively. For the reasons set out below, in conjunction with Mr Bryce's evidence, we favour Mr Bryce's view and find that the proposal is inconsistent with the objectives and policies in both the ODP and PDP in terms of the proposal's impact on visual amenity, landscape and rural amenity. We also find that the level of residential activity is inappropriate in the General Rural Zone.
161. As we have set out above, both the ODP and PDP address these two matters. In our assessment of the objectives and policies we acknowledge that the proposal does not constitute urban development under the ODP; however, as while it may not under the ODP we do note that the ODP seeks to provide for a form of development in manner which avoids, remedies and mitigates adverse effects on landscape and visual amenity values<sup>9</sup>.
162. This objective in Part 4 of the ODP is supported by range of policies, including policy 2a (Visual amenity landscapes) which we believe is particularly relevant to our consideration of this application (not to undermine the others):

*To avoid, remedy and mitigates the adverse effects of subdivision and development visual amenity landscapes which are:*

*Highly visible from public places and other places which are frequented by members of members of the public generally (except any trail as defined in the Plan) and visible from public roads.*

163. It is clear to us, based on our assessment of landscape and amenity effects above that the proposal does not maintain the quality of the visual amenity landscape when viewed from public places and will introduce an element of residential development which, while providing for cluster residential development, will appear as clustered sporadic urban development, when viewed from beyond the site. We consider this will represent an over-domestication of the landscape in this part of the Wakatipu Basin. While acknowledging Policy 4.2.5.8 and the extensive ecological planting proposed, this does not outweigh the adverse cumulative effects and development of this form, scale and density in this location.
164. We note for completeness, based on Mr Bryce's evidence that we find that the proposal is also inconsistent with policies 1, 2 and 8 under this objective as well.
165. We accept that limited weighting should be awarded to the PDP. As we have discussed above, we have found that the proposal would constitute urban development and that it does not fall within the definition of a resort. We find, for the same rationale consideration under the ODP, that the proposal would be inconsistent with Objective 3.2.1 and its associated policies.
166. In turning to Part 5 (General Rural Zone) of the ODP we note that the objective 1 seeks to protect the character and landscape values of the rural area. Objective 3 seeks to avoids, remedy and mitigate adverse effects of activities on rural amenity. In our view, the proposal

---

<sup>9</sup> Objective 4.2: Landscape and visual amenity

will result in a significant change to the rural environment, which would normally be anticipated through a zone change, rather than through a resource consent process. Again, while coming to our own conclusions of the application we were mindful of the Stage 2 Panel's conclusion, which rejected the applicant's submission to rezone the site.

167. As a result, we find that the proposal is inconsistent with the rural character of the area; which at the moment is generally an open rolling pasture. It will result in a significant change, while will not protect the existing rural amenity values of the site. It will also result in significantly changing the rural outlook as viewed from the Bendemeer properties, while acknowledging the changes the applicant has made to properties near the Bendemeer boundary; the outlook across the site will alter from a rural outlook towards Arrowtown.
168. In terms of the PDP, again we find that the proposal is inconsistent with the policy outcomes sought for the Wakatipu Basin rural Amenity Zone.
169. Finally, we note that the proposal seeks to introduce a form of residential development outside the Arrowtown Growth Management Boundary which has the potential to undermine the Council's approaches to urban growth management in the district.

*Operative and Proposed Regional Policy Statements*

170. Both planners addressed the Operative Regional Policy Statement for the Otago Region 1998 (ORPS) and the Partially Operative Regional Policy Statement for the Otago Region 2019 (PORPS). We note that the changing status of both documents and how the planners referenced them caused us some confusion. We consider it relevant to consider these documents, given the current status of both the ODP and PDP and their timing relevant to the PORPS in particular.
171. In the AEE, Mr Brown set out his view that the proposal is consistent with and achieve the relevant provisions of the Operative Regional Policy Statement for the Otago Region 1998 (ORPS).
172. While he did not address the Partially Operative Regional Policy Statement for the Otago Region (PORPS) in the AEE given issues of timing and appeals at the time, in his evidence, Mr Brown was of the view that the proposal is broadly consistent with its policy direction. He disagreed with Mr Bryce that the proposal was inconsistent with Objective 9.4.3 and Policies 9.5.4 and 9.5.5 in relation to the character values of the visual amenity landscape, based on Mr Baxter's view.
173. In respect of the ORPS, Mr Bryce considered the proposal to be generally consistent with those objectives and policies that seek to provide for ongoing primary productive use of the region's soil resource. He considered it inconsistent with Objective 9.4.3 and Policies 9.5.4 and 9.5.5 relating to the adverse effects of built environment on the region's natural and physical resources, including visual intrusion and a reduction in landscape qualities. He considered the proposal to be overall consistent with the objectives and policies of the PORPS, while identifying he considered it to be inconsistent with Policy 5.3.1, as the proposal is of a scale and density that promotes development close to, and is incompatible with, adjoining rural properties.
174. We prefer Mr Bryce's evidence in this regard and find that the proposal is generally consistent with the ORPS and PORPS rural resource objectives and policies but is inconsistent with

those relating to impacts on landscape and character values (ORPS) and compatibility of the proposal with a rural environment (PORPS).

### *National Policy Statements*

175. Mr Bryce did not address whether there were any relevant national policy statements.
176. Mr Brown was of the view that there are no particularly relevant national policy statements; with any issues in a national policy statement (such as for freshwater) captured by the lower order planning documents.
177. We accept their evidence in this regard. We note that the National Policy Statement on Urban Development Capacity 2016 relates to urban environments and the need to provide sufficient development capacity in these environments. Given the site is not identified as an urban environment in either the ODP or the PDP, we agree it is not relevant.

### **Section 104(1)(c) Other Matters**

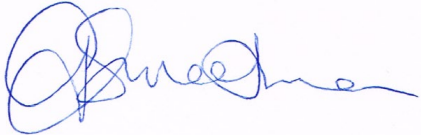
178. Mr Bryce considered that precedent effects and Plan integrity were relevant other matters to this application. In short, he was of the view that the overall scale and density of the development, if approved, could be seen to undermine the relevant statutory planning instruments if other similar applications were applied for; resulting in a precedent effect.
179. Mr Brown, conversely, considered that there were not many, if any, other locations where the attributes (golf experience, environmental protection and enhancement, protection of active production, lack of visibility from roads, mitigation measures from elevated views, master-planning and architecture) of the proposal could be replicated. He was of the view that any precedent, if the proposal was replicated, was positive.
180. We agree that precedent effects are relevant. While we acknowledge the positive aspects of the proposal, we find that the proposal would result in adverse precedent effects, arising from the scale of urban development proposed and its resulting adverse landscape and visual amenity effects.
181. There were no other relevant matters brought to our attention.

### **Part 2**

182. Given the relative state of flux of the planning documents, which are at different stages and subject to review and appeal, we consider it appropriate to turn our mind to Part 2.
183. It is clear to us, based on our consideration above, that the application does not promote the sustainable use of natural and physical resources. We agree that the relevant s.6 matters are appropriately recognised and provided for and that s.7(b) and (g) have been had particular regard to and are satisfactory. However, we consider that the significant adverse landscape and visual amenity effects resulting from the proposal would neither maintain nor enhance amenity values or the rural environment. While the proposal would benefit some people and provide for their health and wellbeing; those benefits would be limited and do not outweigh and significant landscape and visual amenity effects arising, which have been identified as being important to the Queenstown Lakes community through its planning documents.
184. As a result, we find that the proposal does meet the purpose of the Act.

## Determination

185. In exercising our delegation under section 37 of the Act, and having considered the matters contained within section 37A(i), we have determined that:
- (a) The late submission by Arrow Irrigation Company Limited which was received by Council one day following close of the submission period, be accepted.
186. In exercising our delegation under sections 34 and 34A of the Act, and having regard to the matters discussed above under sections 104 and Part 2 of the Act, we have determined that resource consent to the discretionary activity application by Hogans Gully Farming Limited for subdivision and land use consent to establish an 18-hole championship golf course with associated clubhouse, driving range and maintenance facilities, and 96 residential (and associated residential building platforms) and visitor accommodation units, and to undertake approximately 500,000m<sup>3</sup> (volume) of earthworks to construct the golf course, be refused consent.
187. The reasons for our decision have been set out in the sections above.



---

Gina Sweetman (Chair)

For the Hearings Commissioners: Gina Sweetman, Calum Macleod and Dr Lee Beattie

15 May 2019