



DECISION OF QUEENSTOWN LAKES DISTRICT COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	J Baker
Reference:	RM181540
Location:	Gibbston Highway
Proposal:	To establish a residential building platform to provide for the future construction of a residential unit
Legal Description:	Lot 2 DP 305699
Operative Zoning:	Rural General
Proposed Zoning:	Wakatipu Rural Amenity Zone
Activity Status:	Non-complying
Notification:	31 January 2019
Commission:	Robert Nixon
Date of Decision:	6 June 2019
Decision:	Granted with Conditions

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

**of an Application to QUEENSTOWN
LAKES DISTRICT COUNCIL by J.BAKER
(RM181540)**

**DECISION OF COMMISSIONER ROBERT NIXON APPOINTED BY QUEENSTOWN
LAKES DISTRICT COUNCIL**

The Hearing and Appearances

Hearing Date: Tuesday, 21 May 2019 at the Rees Room, QT Hotel, Queenstown

Appearances for the Applicant:

Mr Jake Woodward, Planning Consultant

Mr Richard Tyler, Consultant Landscape Architect

Mr John Baker, Applicant

Appearances for the Queenstown Lakes District Council

Mr Nigel Bryce, Principal Planning and Policy Consultant, 4Sight Consulting Limited, on behalf of the Queenstown Lakes District Council

Ms René Davies, Consultant Landscape Architect 4Sight Consulting Limited, on behalf of the Queenstown Lakes District Council

Mr Steve Hewland, Land Development Engineer, on behalf of the Queenstown Lakes District Council

Abbreviations

The following abbreviations are used in this decision:

J. Baker	“the Applicant”
Queenstown Lakes District Council	“the Council”
The Operative Queenstown Lakes District Plan	“the ODP”
The Proposed Queenstown Lakes District Plan	“the PDP”
The Resource Management Act 1991	“the RMA”
The Proposed Otago Regional Policy Statement	“the PORPS”
The land subject to this application is referred to as “the site”.	

INTRODUCTION AND BACKGROUND

1. The applicant seeks consent to establish a residential building platform on Lot 2 DP 305699 to provide for future construction of a residential unit. The site is located on the north-eastern side of the Gibbston Highway between Arrow Junction and Gibbston.
2. At the commencement of the hearing, I noted that the evidence had been prepared in the name of the Baker Family Trust, which was queried with the applicant. The application itself was lodged in the name of J. Baker. Having considered the matter further, I have proceeded on the basis that the application continue to be assessed and decided under that name.
3. The hearing was closed on 31 May following receipt of a joint response from the applicant and the Council in response to a Minute issued to the parties, as discussed later in this decision.

THE PROPOSAL

4. The application site currently contains no dwelling or approved residential building platform, and the only on-site building is an existing hay shed located centrally on the lower portion of the site which has frontage to the northern side of State Highway 6. The site has a legal description of Lot 2 DP 305699.
5. The site has a 435m road frontage to the highway, but access to the site will be from an unformed legal road located along the western boundary of the site containing an existing driveway serving the neighbouring property to the north-west at 1331 Gibbston Highway. Access along the legal road will be shared with this neighbouring property, and a driveway extended into the site to provide access to the future residential building platform and curtilage.
6. The application site has an area of 26.9325ha and a generally rectangular shape. The front portion of the site (approximately 40% of the site area) comprises open pasture and is generally level, but rises gently to the foot of the very prominent escarpment making up the balance of the site. This escarpment slopes steeply up to the Crown Terrace above, and there is a very distinct physical contrast between the pastoral frontage of the site and the escarpment. Mr Tyler described the vegetation cover of this escarpment as comprising mainly hawthorne and briar, with scattered regenerating native shrub species and occasional wilding pines¹.
7. The area containing the site is located between the edge of the Crown Terrace escarpment and a deep gorge to the south containing the Arrow River. The river terrace containing the site is bisected by State Highway 6 passing between Cromwell and Frankton. The applicant's landscape architect describes the receiving environment thus;

"The surrounding landscape has a rural character characterised by open paddocks containing a mix of residential and working farm buildings, with a generous setback and visible from the highway, contained within the structure of hedgerows and shelterbelts.

¹ Evidence R Tyler, paragraph 3.0,p3.

and:

Along the immediate stretch of highway (apart from the subject site) there is a consistent pattern/rhythm of dwellings located roughly 150 – 200 m (a)part within lot sizes of 10 – 32 ha, characteristic of a medium to small lot rural environment”².

8. The siting of the building platform proposes that it be setback from the highway in the position currently occupied by the hayshed. The proposed siting would be broadly consistent with that of most other dwellings along this section of the highway, and would retain existing open views over the paddocks to the visually dominant escarpment behind. The residential building platform is proposed to be oriented perpendicular to the highway thus minimising the ‘spread’ of built form as seen from the highway. As notified, it was proposed to retain existing remnant hedgerow vegetation within the lower part of the site and strengthen it with some mixed native hedgerow vegetation. The purpose of this was to provide a visual buffer from the highway to reduce the visibility of future built form and domestication that would be associated with the proposed dwelling and its curtilage. A small amount of supplementary planting was also proposed along the legal frontage on the north-western boundary. There is an avenue of deciduous trees within the road reserve along the highway frontage of the site.
9. The building controls forming part of the application are intended to ensure the colours of the building will be recessive, with an LRV between 7% and 25% comprising natural tones including browns and greys. The proposed height of the residential building on the site is 7m, with a maximum building coverage of 50% (500 m²). Any associated domestic elements will be confined within the curtilage area and all fencing is to be typical rural post and rail or wire.
10. The curtilage would have dimensions of 60m x 65m, being a rectangular shape with the total area of 3900m².

NOTIFICATION AND SUBMISSIONS

11. The application was publicly notified on 31 January 2019, with submissions closing on 1 March 2019. No submissions were received.
12. The applicants obtained the written approval of five adjoining neighbours, these being Adam and Rosemary Hill (1358 Gibbston Highway); Barry Hodges and Michelle Uitentius (1289 Gibbston Highway); Mark and Tracy Galbraith (1330 Gibbston Highway); Raymond Finn (1413 Gibbston Highway); and Aaron Taylor and Bridget Steed (1331 Gibbston Highway).
13. I understand the only party identified as affected by the Council, and from which the applicant has been unable to obtain written consent, is the owner of 1332 Gibbston Highway, diagonally opposite the site but further to the east.
14. I am required to disregard any adverse effects on those parties who have given affected party approval to the proposal.

² Evidence R Tyler, paragraph 4.0, pp 4-5

STATUTORY MATTERS

(1) OPERATIVE DISTRICT PLAN (ODP)

15. The applicant has sought consent for a residential building platform, but not for a dwelling at this stage. This was confirmed at the hearing by Mr Woodward for the applicant, and I record at this stage that the future erection of a dwelling would be the subject of a separate consent process. No subdivision is proposed.

16. The subject site is zoned Rural General under the ODP. Resource consent is required for the following reasons:

A **discretionary** activity resource consent pursuant to Rule 5.3.3.3 (i) (b) to establish a residential building platform on a site with a building platform of no less than 70m² in area and not greater than 1000m² in area. The proposed residential building platform is 1000m².

17. On the face of the Plan, the application site is classified as part of an Outstanding Natural Landscape (ONL) under the ODP³. However, the applicant contended that the lower portion of the site (i.e. that part excluding the escarpment) should be assessed as a Visual Amenity Landscape⁴ (VAL) as did the reporting officer⁵. The boundary between the VAL and the ONL is shown as a dotted line following the State Highway. The section 42A report explained that:

“As the line is a dotted line on the map this means that the boundary between the two different landscape categories has not been through the Environment Court process to determine their exact location and is indicative as outlined in the Environment Court decision C1 80/99”⁶.

18. A note to this effect is also contained in the ‘Legend’ attached to Appendix 8A, Map 2. Both Mr Tyler and Ms Davies were satisfied that in ‘practical terms’, the lower portion of the application site should be treated as a VAL.
19. In response to a question, neither of the parties was certain as to whether there was an appeal against the position of the ONL boundary as shown in the PDP, which is at the foot of the escarpment and bisects the property. From a review of the appeals lodged on Stage 2 decisions on the PDP concerning the Wakatipu Basin, I note that there are six appeals relating to the boundary of the ONL, none of which have challenged the amended position of the ONL in this location. I have formed the view that in terms of section 86F of the RMA, the *position of the ONL* as shown in the PDP can be treated as operative. Accordingly, I have treated the lower part of the property between the highway and the foot of the escarpment as a VAL.
20. It was agreed between the parties, and I also agree, that the activity is a discretionary activity under the ODP.

³ ODP, Appendix 8A, Map 2

⁴ AEE, paragraph 6.1,p11

⁵ S42A, N Bryce, paragraph 8.1,pp 8 – 9.

⁶ Ibid,p8

THE PROPOSED DISTRICT PLAN - STAGE 2

21. The application was lodged following the notification of Stage 2 of the PDP, but prior to the release of decisions on submissions and the close of appeals. Following questioning of Mr Bryce and Mr Woodward, it was agreed that the application was to be processed, considered, and decided on the basis of the status of the application which applied at the time it was notified⁷. However, I am also required to have regard to the provisions of the PDP at the time the application is considered – that is, following the issue of decisions on Stage 2⁸.

22. The site is located within the Wakatipu Rural Amenity Zone. Again, there is a potential complication in terms of the status of the activity under the PDP. Mr Bryce noted that⁹:

“Under Stage 2 provisions, there is no rule for the identification of a residential building platform and any activity not listed in Table 24.1 and 24.2 is a noncomplying activity. I understand that the PDP hearings panel declined to include a rule covering the identification of a building platform because it considered that was ultra vires as there is no physical activity that could be considered to be a land-use activity. However as rules are included in Stage 1 Chapters 21 (Rural) and 23 (Gibbston Character Zone) that provide for the identification of a building platform as a specific land-use activity, there is an assumption elsewhere in the PDP that it is a land-use activity. That being said, the status of any future dwelling does not change as a result of the building platform being identified and therefore I cannot see what land-use is being consented. On this basis and as no specific dwelling design is provided for as part of the application, the proposal does not require consent under Stage 2 of the PDP”.

23. In response to a question, he confirmed that there was no rule requiring the identification of a residential building platform in the Wakatipu Rural Amenity Zone *as notified*. Notwithstanding his earlier conclusion, Mr Bryce considered that the activity had to be assessed as a non-complying activity on the basis that any activity not listed in Tables 24.1 and 24.2 of Chapter 24 defaulted to non-complying activity status under Rule 24.4.1, a view supported by Mr Woodward¹⁰. This was based on the fact that a residential building platform is not identified as an ‘activity’ listed under Chapter 24, however explanation Rule 24.3.2.6 sets out that “all activities, including any listed permitted activities are subject to the rules and standards contained in Tables 24.1 to 24.3.” The complicating factor here was the Hearing Panel’s view on hearing submissions on Chapter 24 that a residential building platform is not an ‘activity’ at all. If this is so, the applicant’s proposed residential building platform would not require consent under the PDP.

24. Neither party was represented by legal counsel, or provided a legal opinion relating to this rather thorny issue. I believe it is outside the scope of this application to resolve this matter, particularly as Chapter 24 is subject to an extensive array of appeals. I would take the opportunity to urge the Council to resolve the legal issues around this matter, as it is likely to arise elsewhere in the Wakatipu Rural Amenity Zone.

⁷ Section 88A(1A) RMA

⁸ Section 88A(2) RMA

⁹ Ibid, p6

¹⁰ Evidence J Woodward, paragraph 2.2

25. In the meantime, for want of caution, I have assessed the application as a **non-complying activity** under the PDP on the basis that it may be an 'activity', and if so would be caught by Rule 24.4.1.
26. It would appear that under the Chapter 24 of the PDP, the erection of a dwelling on a site with an approved/registered residential building platform would be a restricted discretionary activity¹¹, dependent of course on the outcome of appeals.
27. It was confirmed at the hearing, and explained in the evidence, that there were no issues concerning earthworks on the site (which were expected to be minimal, such as trenching) or with the provision of services, water, stormwater, and effluent disposal. I have accepted this evidence, noting also that some of these matters can be addressed in conditions of consent.
28. A review of the Regional and District Council's records by the applicant has not revealed the previous presence of any HAIL activities on the site, and consent is not required in terms of the National Environmental Standard. This has been accepted by the Council, and I have adopted this conclusion.

EVIDENCE

29. Matters relating to the status of the application and how it should be assessed were traversed in the pre-circulated evidence of Messrs Bryce and Woodward, and during the hearing, and have already been discussed above.
30. As is typically the case with proposals for rural dwellings, the key issue centred on the potential landscape impacts associated with the establishment of the proposed residential building platform. Even prior to the hearing, it was readily apparent that there was a significant degree of convergence between the positions of the two landscape witnesses, Mr Tyler for the applicant and Ms Davies for the Council. Specifically, there was broad agreement that:
 - (1) the proposal would not compromise the Arcadian pastoral character of the landscape and would have low effects;
 - (2) the proposed development would create a minor but insignificant (visual) interruption to the prominent ONL escarpment at the rear of the site;
 - (3) the proposed development would not constitute sprawl;
 - (4) the proposed siting of a dwelling in the central part of the front of the site, and setback from the State Highway, was appropriate;
 - (5) the development would have a low impact on the overall landscape character and experience of the landscape;
 - (6) the development would not result in unacceptable adverse cumulative effects and would not tip the balance to over – domestication;
 - (7) the retention of existing vegetation and supplementary planting would ensure the development would not visually compromise the existing and Arcadian pastoral character of the landscape of the either the immediate site, or of broader views of the landscape;

¹¹ PDP, Chapter 24, Rule 24.4.5

(8) the proposed development would maintain a sense of open space across the site when viewed from the highway.

31. The proposed planting programme as notified, was attached to the applicant's AEE¹², and there were two photomontages showing the building platform, the height of proposed mitigation planting and the extent of the curtilage as observed from the highway in each direction¹³.
32. All neighbours identified as potentially affected by the Council but one, had provided affected party written approval to the application. This property at 1393 Gibbston Highway, is located on the southern side of the State Highway and 300m further to the east of the application site. Mr Bryce considered that any visual impacts on that person and their property would be negligible¹⁴.
33. Notwithstanding this measure of agreement between the Council and the applicant however, there were some differences of emphasis, which were sufficient to initially persuade Mr Bryce to recommend that the application be declined.
34. Ms Davies accepted the applicant's contention that the impact of the proposed development would approach, but not cross, the threshold for the landscape's ability to absorb change¹⁵.
35. Ms Davies considered that:

*"The proposed building platform will form a noticeable new element within the overall scene, however it does not detract from the overall quality of the landscape, from both pastoral and natural character perspectives. As such I assess the visual effects to be **moderate** from the public environment of the Gibbston Highway"*¹⁶.
36. In response to a question, Mr Tyler confirmed that in terms of landscape architecture, this term implied effects that could be 'more than minor'.
37. Ms Davies considered that it would be appropriate to ensure that oblique views of the proposed development as seen from the highway have a strong vegetative backdrop assisting with integration into the landscape and providing positive conservation and landscape values for the adjacent ONL¹⁷.

¹² Figure 2: Structural Landscape Plan dated 02.05.19

¹³ Figure 3: Photomontage – Gibbston Highway SE Bound dated 09.10.18 and Figure 4: Photomontage – Gibbston Highway NW Bound dated 09.10.18

¹⁴ S42A report, page 18

¹⁵ ibid paragraph 6.15

¹⁶ ibid, paragraph 5.3

¹⁷ ibid, paragraph 4.2

38. With regard to advice from Ms Davies, Mr Bryce noted that the proposed development would be visible and perceived as a new element in the landscape, albeit that it would not detract from the quality of the landscape. However, he noted she had recommended additional measures to ensure that the mitigation planting proposed was effective in reducing and offsetting the moderate visual effects identified in her report. This became an important issue between the parties, and in distilling the advice he received from Ms Davies, Mr Bryce stated in his evidence¹⁸:

"She states the site has the ability to absorb change to a degree and that with the proposed mitigation planting, this ability can be further enhanced, allowing for the proposed building platform to be integrated into the existing landscape character. Ms Davies concludes that the addition of the proposed building platform and associated curtilage area despite being partially visible will have a low level of effect on the overall landscape character and experience of the landscape. I read Ms Davies conclusion as highlighting that while the proposal will have moderate visibility effects from public and private locations, that these effects will not degrade the overall landscape character and experience of the landscape".

39. Ms Davies proposed that an area of indigenous planting approximately 230m long and 20m wide (4600m²) be established along part of the base of the escarpment as a backdrop to the proposed dwelling. She also considered that some additional specimen planting would be necessary adjacent to the edge of the curtilage. Having regard to Ms Davies evidence, Mr Bryce concluded that without such measures, the proposed development would have adverse effects which were more than minor.
40. Mr Bryce also considered that it would be appropriate to require a covenant to prevent any future subdivision of the property, and to protect the existing vegetation on the site.
41. He concluded that the proposal as notified promotes the overall purpose of the RMA, but with more comprehensive ecological enhancement *is more likely* to promote sustainable management.¹⁹ In response to questioning, Mr Bryce and Ms Davies were both of the opinion that 'environmental compensation' and not just mitigation, was an important component of their recommendations with respect to the need for additional planting.
42. Relying on the evidence of Mr Tyler, Mr Woodward noted that a traveller's experience of the character of the area would be at speed from the passing highway, and would not be changed by the additional background landscaping suggested in the officers reports. In his opinion, too much emphasis had been placed by Ms Davies on the issue of visibility, rather than the effects on the rural pastoral character of the site and its surrounds. In his view, Ms Davies had focused on the visual effects of the proposal to conclude it had a moderate effect whereas he considered the assessment matters in the ODP required consideration as to whether the development would result in the loss of the natural or 'arcadian' pastoral character of the landscape.

¹⁸ S42A report,p13

¹⁹ S42A report, p3

43. While he conceded that there may be a moderate visual effect as viewed from a static viewpoint, from persons travelling on the highway at open road speeds, the view would be characterised by rural fields, trees, and buildings with the dominant visual backdrop of the escarpment. In his opinion, the insertion of another building and landscaping in the location proposed would form an expected part of the view. Further, he claimed that the additional planting sought by the Council would give rise to an arbitrary and artificial line in the landscape with respect to existing character.
44. He expressed the owners concern that the requested 4600m² of planting would reduce the area available for grazing stock on the property and would cost \$35,000 to establish. In his opinion, there was already a strong vegetative backdrop on the escarpment and he doubted that the requested planting would provide any benefit in terms of mitigation. He noted that from static viewpoints (nearby neighbours) written consents had been provided except from the owner of 1332 Gibbston Highway. He added that the applicant was already proposing the planting of over 2000 m² of indigenous vegetation.
45. He also expressed concern about any conditions requiring a covenant to prohibit any future subdivision on the site. He noted that an 80ha minimum allotment size for both subdivision and dwellings was now proposed within the Wakatipu Rural Amenity Zone under the PDP and a further consent would be required for further subdivision. That said however, all parties acknowledged that these provisions were subject to fierce challenge through appeals.
46. Mr Bryce also considered it was necessary that a covenant be imposed to protect existing planting on the site which was to be retained, and that trees within this be identified by survey. Mr Woodward was of the opinion that requiring their identification by survey would be unduly onerous, and that this could be adequately identified and scaled from an appropriate structure plan.
47. With respect to the relevant policies in the ODP, Mr Bryce concluded that the proposal was inconsistent with Policy 1 (Future Development), and Policy 4 (Visual Amenity Landscapes), but generally consistent with the other policy provisions.

Amendments to the application.

48. During the course of the hearing, amendments to the proposal were put forward by the applicant in an attempt to address the concerns raised by the Council. These primarily related to the requested supplementary planting at the base of the escarpment. The first of these was amendments to add an additional area of indigenous planting in the north-western corner of the front part of the property at the foot of the escarpment. The second was a reduced area of indigenous planting at the base of the escarpment and approximately in line with the curtilage of the proposed residential building platform.
49. These two areas would amount to approximately 2050m² and were described by the applicant's witnesses as having a primary purpose of environmental compensation. There would be a limited component of mitigation with respect to providing a more vegetated backdrop to the residential building platform as seen from an oblique angle from the highway.

50. Following this, in discussion with Ms Davies, Mr Bryce stated that he was prepared to change his recommendation to one of approval to the application. However, the Council witnesses were of the opinion that it would be necessary to protect these areas and existing plantings on the property by way of a covenant, and that the location of the existing trees and shrubs described earlier in this decision, should be established by survey. Mr Bryce indicated that such an approach was not unusual with respect to resource consents in the District and would assist in providing greater certainty and allow practical enforcement. The response on behalf of the applicant was that it would be sufficient to identify these and plot their location by way of aerial photograph, and that it would be onerous and unnecessary to go to the extent of establishing the location of these trees and shrubs by survey.
51. Towards the close of the formal hearing, Mr Woodward stated that the applicant would reluctantly accept a condition requiring covenants.

Minute of the Hearing Commission

52. By the close of the formal hearing, it was readily apparent that there was a considerable degree of convergence between the positions of the Council and the applicant. On 21 May, I issued a Minute to the parties requesting them to confer and present an agreed amended Structural Landscape Plan, and an amended set of conditions, with the response to me by Friday 31 May.
53. This response was duly received on 31 May. It comprised an amended Structural Landscape Plan (Final Hearing Plan) dated 31.05.19. Also attached was a set of conditions, which included some dissenting matters remaining between the parties, some of which were of an essentially drafting nature.
54. The key features of the Structural Landscape Plan were as follows:
- (1) Two separate areas of native vegetation to be established at the base of the escarpment, one in the north-western corner, and the other at the base of the escarpment beyond the proposed building platform;
 - (2) Reinforcement of the existing remnant hedgerows with additional planting; (both of the above with a specific list of native plants)
 - (3) Identification of the existing hedgerow trees to be retained;
 - (4) Three specimen trees to be planted on the south-eastern side of the curtilage, and another three along part of the legal road frontage;
 - (5) Design controls specified on the Structural Landscape Plan.
55. I consider that the agreed changes would provide sufficient mitigation of the visual impact of the proposed building platform and eventual dwelling, while providing at least modest environmental compensation by way of a revegetation program on a small part of the site. The applicant has also agreed with the proposed council condition requiring that the escarpment Terrace be managed to provide for native revegetation, while allowing for stock grazing and the removal of wilding species.

56. With respect to the imposition of a covenant, I agree with Mr Woodward to the extent that it is likely (but not certain) that an ongoing regime of resource consents would be required for future subdivision and dwellings within the Wakatipu Rural Amenity Zone. However, I have taken into account comments that have been made by the Environment Court²⁰ in a recent case with respect to the duration of covenants. Although the Council typically seeks covenants “in perpetuity”, the Court noted that a period of 40 to 60 years (two or three generations) may be more appropriate. Although this is an interim decision and is not binding, I consider that given the potential changes in both the physical and regulatory environments that could occur over that time, a more limited period would be appropriate. Accordingly I have imposed a requirement for covenants for both restricting future subdivision and for the protection of mitigation and enhancement planting, limited to a period of 60 years.
57. I will now go on to assess the application in terms of the relevant provisions of the ODP in the PDP.

ASSESSMENT OF EFFECTS

The nature and character of the site and the application

58. The issues arising from this application, at least to the extent that they were apparent towards the close of the hearing, were entirely related to landscape issues and particularly the visibility of the proposed development.
59. As noted earlier, I am required to disregard any adverse effects on those parties who have given their written consent to the application. I record at this stage that given the written consents obtained from affected parties, and that effects on the only party who had not given consent would be negligible (a finding I accept), the only issues in play with respect to the visibility of the proposed development were those relating to public views. These were confined to views from the highway. Although the legal road along the north-western boundary can be regarded as a ‘public place’, I consider that existing and proposed planting adjacent to this road and the curtilage would be sufficient to prevent the proposed residential building platform and future dwelling being obtrusively visible.
60. In terms of the weighting to be given to the ODP and the PDP – with particular reference to Chapter 24 of the PDP concerning the Wakatipu Basin Rural Amenity Zone – I consider that greater weight should be given to the ODP given the breadth and depth of legal challenges through appeals against decisions on Chapter 24 to the PDP. As noted earlier, the only exception to this is the location of the ONL boundary as it relates to this property and location.

²⁰ Ballantyne Barker Holdings Ltd v Queenstown Lakes District Council, Interim Decision[2018] NZEnvC 181, paragraph 180

61. I have accepted the views of both landscape architects and their planning advisers that the appropriate course of action is to treat the lower portion of the application site as a Visual Amenity Landscape (VAL) and the balance of the property on the escarpment as an Outstanding Natural Landscape (ONL). The proposed building activities on the site are contained within the VAL, and no physical development is proposed within the ONL component of the site. I have however taken into account visual and landscape impacts that development within the VAL may have on the ONL.
62. Chapter 5 of the ODP contains an extensive suite of detailed 'Assessment Matters' which are relevant to proposals undertaken within the VAL. These are quite lengthy and sometimes overlapping, but notwithstanding the degree of agreement between the parties, I consider these need to be assessed.

Assessment matters – ODP

63. Rule 5.4.2.2(3) is specific to Visual Amenity Landscapes. I have followed the subheadings under the applicable assessment matters.

(a) Effects on natural and pastoral character²¹

In considering whether the adverse effects (including potential effects of the eventual construction and use of buildings and associated spaces) on the natural and pastoral character are avoided, remedied or mitigated, the following matters shall be taken into account:

- (i) where the site is adjacent to an Outstanding Natural Landscape or Feature, whether and the extent to which the visual effects of development proposed will compromise any open character of the adjacent Outstanding Natural Landscape or Feature;*
- (ii) whether and the extent to which the scale and nature of the development will compromise the natural or Arcadian pastoral character of the surrounding Visual Amenity Landscape;*
- (iii) whether the development will degrade any natural or Arcadian pastoral character of the landscape by causing over domestication of the landscape;*
- (iv) whether any adverse effects identified in (i) – (iii) above are all can be avoided or mitigated by appropriate subdivision design and landscaping, and/or appropriate conditions of consent (including covenants, consent notices and other restrictive instruments) having regard to the matters contained in (b) to (e) below;*

64. It was common ground that the pastoral component of the application site which would contain the residential building platform is adjacent to the ONL to the north. The substantial escarpment is the dominant physical feature as seen from the highway, and any development on the pastoral area will inevitably be part of the visual foreground to this feature. A large part of the escarpment is in turn dominated by exotic weed species, particularly towards the western end, and including the land above the application site. Visually, it is not characteristic of the lower pastoral environment at the front of the site and indeed contrasts strongly with it. In passing, I note that the applicant indicated that the escarpment was occasionally grazed by stock.

²¹ ODP Rule 5.4.2.2(3) (a) (i) to (iv)

65. The proposed indigenous planting to be undertaken towards the base of the escarpment will provide a useful seed source and to that extent have a beneficial effect. I do not consider that the proposed planting regime will have a *significant* effect on how a future dwelling is perceived against the backdrop of the escarpment, apart from reinforcing the current visual impression of a partly wooded slope as a backdrop. However, I am satisfied that the planting now proposed would not result in the creation of an artificial 'line in the landscape'.
66. The dwelling intended to eventually occupy the residential building platform would be a reasonably substantial structure with a height of 7m, and added to any visual impact will be activities within the curtilage of the dwelling. I note from the photomontages that the supplementary hedgerow planting proposed up to 3 m high would soften, but not conceal, the future dwelling on the site.
67. There are four factors which I consider offset the visual impact of a future dwelling on the site.
68. Firstly, I agree with Mr Tyler that a dwelling in this location would not be an 'unexpected' feature, having regard to the existing pattern of subdivision and dwellings. I agree that it would form part of an existing 'rhythm' of dwellings along the highway as described by Mr Tyler and quoted earlier in paragraph 7 of this decision.
69. Secondly, the residential building platform is proposed to be well set back from the highway and is located in approximately same position as existing hayshed on the site. Although smaller than a future dwelling would be, the hay shed is still sufficiently large as to clearly register the visual impression of an existing building.
70. Thirdly, the site is quite large at nearly 27 ha. I would be much more concerned about the potential visual effects if subdivision were involved, given the sensitivity of this site in landscape terms. A more intensive pattern of subdivision is nearly always associated with a more intensive pattern of dwellings and associated features (parking, sheds, etc) and create an impression of a rural residential character. I do not believe this would eventuate here should consent be granted, and the establishment of a future dwelling in this location would replicate (but not extend) the pattern of development already present in this location.
71. Finally, the visual public perception of the site is from the State Highway. This is a section of open road with relatively high vehicle speeds, and glimpses of buildings on rural sites in this area are relatively fleeting and partly interrupted by the line of deciduous trees scattered along the northern side of the highway. The verge of the highway, and particularly its northern side, is not a very congenial environment for pedestrians.
72. The nature and scale of the development is consistent with the existing pastoral character of that part of the site below the escarpment, and will not in my opinion have a significant effect on the perception of the escarpment (ONL) as seen by passing traffic on the State Highway. Bearing in mind this is a 27 ha lot, subject to the retention and strengthening of the pattern of existing vegetation within the site, I consider that a dwelling and its associated curtilage will not result in over domestication of the landscape. Furthermore, the use of recessive colours, albeit a standard requirement for new rural dwellings in much of the district, will also assist to mitigate the visual impact, although a building of the scale proposed will nevertheless be visible to viewers whose attention is drawn towards the north.

73. (b) *Visibility of Development*²²

Whether the development will result in a loss of the natural or Arcadian pastoral character of the landscape, having regard to whether and the extent to which:

- (i) the proposed development is highly visible when viewed from any public places, or is visible from any public road and in the case of proposed development in the vicinity of unformed legal roads, the Council shall also consider present use and practicalities and the likelihood of potential use of unformed legal roads for vehicular and/or pedestrian, equestrian and other means of access and*
- (ii) the proposed development is likely to be visually prominent such that it detracts from public or private views otherwise characterised by natural or Arcadian pastoral landscapes;*
- (iii) there is opportunity for screening or other mitigation by any proposed method such as earthworks and/or new planting which does not detract from or obstruct the views of the existing natural topography or cultural plantings such as hedgerows and avenues;*
- (iv) the subject site and the wider Visual Amenity Landscape of which it is forms part is enclosed by any confining elements of topography and/or vegetation;*
- (v) any building platforms proposed pursuant to rule 15.2.3.3 will give rise to any structures being located where they will break the line and form of any skylines, ridges, hills or prominent slopes;*
- (vi) any proposed roads, earthworks and landscaping will change the line of the landscape or affect the naturalness of the landscape particularly with respect to elements which are inconsistent with the existing natural topography;*
- (vii) any proposed new boundaries and the potential for planting and fencing will give rise to any arbitrary lines and patterns on the landscape with respect to the existing character;*
- (viii) boundaries follow, wherever reasonably possible and practicable the natural lines of the landscape and/or landscape units;*
- (ix) the development constitutes sprawl of built development along the roads of the District and with respect to areas of established development.*

74. The visibility of a future dwelling on the residential building platform was a central point at issue, at least initially, between the Council and the applicant. I consider that a future 7m high dwelling on the application site would be visible, but not 'highly visible' from any public place – in this case the State Highway. This is for the reasons described above – the relatively high speed environment of the State Highway for passing viewers of the site, use of recessive colours, the retention and strengthening of planting in the vicinity of the residential building platform, the physical dominance of the escarpment in the background, and the setback.
75. I am satisfied that private views will not be adversely affected, and those who might have been adversely affected have given their written consent.
76. The residential building platform and future dwelling are located such that when viewed from the highway and particularly towards the north, would be largely dwarfed by the escarpment in the background. The location of the platform would not penetrate a skyline or appear as an elevated feature, even allowing for a slight rise between the road frontage and the foot of the escarpment.

²² ODP Rule 5.4.2.2 (3)(b) (i) to (ix)

77. No significant earthworks are proposed in association with this development, with access being obtained from the existing legal road shared with the neighbour to the west. Accordingly, there will not be a new entrance feature as seen from along the highway frontage. Instead a driveway will be constructed from the unformed legal road to the site of the dwelling and set well back from public view. At the hearing it was confirmed by the Council that it would not undertake upgrading or maintenance of the legal road in circumstances such as this as it serves less than six properties. Access across a legal road in these circumstances is subject to a Council policy leaving responsibility for maintenance to adjoining owners being served by the 'road'.
78. There was some debate between Mr Tyler and Ms Davies regarding the appropriate planting regime, particularly in terms of the contrast between the pastoral foreground of the site, and the vegetated backdrop of the escarpment. I am satisfied that the proposed planting regime now agreed between the parties will avoid the creation of any visually artificial line on the landscape, albeit in my view more in the nature of environmental compensation than mitigation. I also consider that the Council's strong preference for the identification of existing 'hedgerow' trees within the site, and their reinforcement with additional planting, is appropriate having regard to the potential height and scale of the future dwelling.
79. Both the Council and the applicant agreed that the development would not constitute sprawl, and I concur with that assessment. A dwelling in this location replicates the existing pattern of development along the northern side of the highway and would form part of, but not an extension to, the existing pattern of development.

(c) Form and Density of Development²³

In considering the appropriateness of the form and density of development the following matters the Council shall take into account whether and to what extent:

- (i) there is the opportunity to utilise existing natural topography to ensure that development is located where it is not highly visible when viewed from public places;*
- (ii) opportunity has been taken to aggregate built development to utilise common access ways including pedestrian linkages, services and open space (i.e. open space held in one title whether jointly or otherwise);*
- (iii) development is concentrated in areas with a higher potential to absorb development while retaining areas which are more sensitive in their natural or arcadian pastoral state;*
- (iv) the proposed development, if it is visible, does not introduce densities which reflect those characteristic of urban areas.*
- (v) if a proposed residential building platform is not located inside existing development then on any application for resource consent and subject to all the other criteria, the existence of alternative location or methods:*

.....

- (vi) recognition that if high densities are achieved on any allotment that may in fact preclude residential development and/or subdivision on neighbouring land because of the adverse cumulative effects would be unacceptably large.*

²³ ODP Rule 5.4.2.2 (3)(c) (i) to (vi)

80. The proposed residential building platform is located on a slightly rising slope within a substantial escarpment as a dominant physical background. The topography does not, at least in the absence of what would otherwise be rather artificial earthworks, allow mitigation by way of exploiting the topography of the site. Any mitigation is reliant on the use of recessive colours for any future dwelling, the extent of the setback, and the retention and strengthening of existing vegetation for screening purposes. In my assessment, these factors are in this case sufficient to avoid a future dwelling being a visually dominant feature.
81. The proposed development takes advantage of existing access through the adjoining legal road without the need to create an additional frontage onto the State Highway.
82. The site of the residential building platform has a strong pastoral character in the foreground by way of contrast to the vegetated escarpment in the background. Given the characteristics of the site, its size, and the compatibility of the proposal with the surrounding pattern of development, I consider that the receiving environment has the capacity to absorb the development proposed. It is at least doubtful that this would be the case of the land were being subdivided.
83. Given this is a nearly 27ha existing lot with no further subdivision proposed, the development would hardly be characteristic of an urban area in terms of density.
84. Subclause (v) has been referred to previously as the 'circle criteria', as it was apparently intended to discourage rural intensification by ensuring open space was retained between development of dwellings in a rural area. I do not consider this is relevant in this case, as it is a proposal for a dwelling within an existing pattern of subdivision, with which it is consistent. The development does not involve a high density of development and would not be inconsistent with the pattern and density of developments elsewhere in the near vicinity.

(d) Cumulative effects of development on the landscape²⁴

In considering whether and the extent to which the granting of the consent may give rise to adverse cumulative effects on the natural or arcadian pastoral character of the landscape with particular regard to the inappropriate domestication of the landscape, the following matters shall be taken into account:

- (i) the assessment matters detailed and (a) to (c) above;*
- (ii) the nature and extent of existing development within the vicinity or locality;*
- (iii) whether the proposed development is likely to lead to further degradation or domestication of the landscape such that the existing development and/or land use represents a threshold with respect to the vicinity's ability to absorb further change;*
- (iv) whether further development as proposed will visually compromise the existing natural and arcadian pastoral character of the landscape by exacerbating existing and potential adverse effects;*
- (v) the ability to contain development within discrete landscape units as defined by topographical features such as ridges, terraces or basins, or other visually significant natural elements, so as to check the spread of development that might otherwise occur either adjacent to or within the vicinity as a consequence of granting consent;*

²⁴ ODP Rule 5.4.2.2 (3)(d) (i) to (vii)

(vi) whether the potential for the development to cause cumulative adverse effects may be avoided, remedied or mitigated by way of covenant, a consent notice or other legal instrument (including covenants controlling or preventing future buildings and/or landscaping, and covenants controlling or preventing future subdivision which may be volunteered by the applicant).

85. Again, the nature and density of the proposed development is consistent with that already existing in the vicinity. Because the lot size is relatively large, and no subdivision is involved, I am satisfied that the proposal would not represent a 'tipping point' beyond which the ability of the environment to absorb change was breached.
86. Subject to appropriate conditions, the development will not exacerbate the risk of domestication of the rural environment in this area. The location of the proposed residential building platform as setback from the State Highway is broadly consistent with the existing pattern and a density of development within this rural enclave adjacent to the highway and below the escarpment.
87. The residential building platform proposed falls within an existing pattern of development, and there is no realistic prospect in my assessment that this would result in development spreading beyond this existing rural enclave.
88. There was an element of debate between the Council and the applicant regarding whether the imposition of a covenant or covenants was appropriate in this case. I have addressed this matter earlier in the response to the Minute, under paragraph 56 of this decision.

(e) Rural Amenities²⁵

In considering the potential effect of the proposed development on rural amenities, the following matters the Council shall take into account whether and to what extent:

- (i) the proposed development maintains adequate and appropriate visual access to open space and views across arcadian pastoral landscapes from public roads and other public places; and from adjacent land where views are sought to be maintained;*
- (ii) the proposed development compromises the ability to undertake agricultural activities on surrounding land;*
- (iii) the proposed development is likely to require infrastructure consistent with urban landscapes such as street lighting and curb and channelling, particularly in relation to public road frontages;*
- (iv) landscaping, including fencing and entranceways are consistent with traditional rural elements, particularly where they front public roads.*
- (v) buildings and building platforms are setback from property boundaries to avoid remedy or mitigate the potential effects of new activities on the existing amenities of neighbouring properties.*

²⁵ ODP Rule 5.4.2.2 (3)(e) (i) to (v)

89. While the proposed dwelling will appear as a new feature as viewed from the highway and adjoining properties, there is currently a large hayshed on the property (to be removed) so to that extent views across the property already include a building. With respect to private views, the written consents of all affected neighbours have been obtained.
90. The residential building platform and curtilage will occupy approximately 3900 m² of land. This is a very small component of the nearly 27 ha area of the property as a whole, albeit a somewhat larger proportion in the context of the more productive land below the escarpment. I expect that the property is too small to constitute an independent economic unit, but I consider any loss of productive potential on the property would be offset by the advantages of on-site management that would result from a dwelling being built on the site. It appears that the property is being used for rural productive purposes.
91. No urban infrastructure is required or proposed in association with this development, nor is such infrastructure a feature of this rural enclave as a whole.
92. No new entranceway is required to the property from the state highway where it would be inevitably be quite visible, albeit that it would also be visible, but to a much lesser extent, from the unformed legal road. There was no evidence presented to the hearing with respect to any proposed changes to existing (deer) fencing on the property. The proposed residential building platform is proposed to be set in the centre of the lower part of the site below the escarpment, which will remain undeveloped. This will ensure that it does not have any significant impact on adjoining properties, or from the State Highway.
93. Rule 5.4.2.3 (i) of the ODP was identified by Mr Bryce as having relevance, as it addresses potential effects on ecological and nature conservation values. There was no suggestion through the evidence that the proposed development would have adverse effects on these values, but some modest positive effects were seen as being possible with indigenous planting at the base of the escarpment.
94. Subclause (a) of this rule states as follows:

(a) the extent to which activities will result in opportunities for the protection and enhancement of indigenous bio – diversity or indigenous ecosystems.
95. With the indigenous planting of two areas totalling approximately 2000m², forming part of the amended proposal, I consider that the proposal will contribute, to a modest degree, to the protection and enhancement of biodiversity.

Assessment matters – PDP

96. My understanding of the provisions of the PDP with respect to the Wakatipu Basin Rural Amenity Zone were described earlier in this decision, and no provision is made for subdivision or dwellings on sites of less than 80 ha at a policy²⁶ or rule level, except as a non-complying activity. There are assessment matters under Rule 24.7.3 that relate to landscape and visual amenity for new residential buildings, which could include residential building platforms approved earlier under the ODP. However, I have not heard any evidence on this matter and cannot reach any determinative conclusion with respect to it. This application is not for a dwelling, but for a residential building platform for which there is no specific provision under the PDP.
97. The escarpment is identified as an ONL, while the balance of the site falls within 'Gibbston Highway Flats Landscape Character Unit'²⁷. The purpose of these Landscape Character Units is described in the 'Zone Purpose' for Chapter 24²⁸ as follows:

The Landscape Character Units are a tool to assist identification of the particular landscape character and amenity value sought to be maintained and enhanced. Controls on the location, nature and visual effects of buildings are used to provide a flexible and design led response to those values.

98. Among the key characteristics identified for this Landscape Character Unit are the following:
- predominantly working rural landscape with some rural residential development, particularly along the Arrow River edge.
 - reasonably spacious pattern of settlement with very few consented but un-built platforms (2). Typical lot sizes greater than 10 ha with approximately half falling in the 20 – 50 ha range.
 - the area is highly visible from State Highway 6.
 - the key views are vistas from SH 6 across the flats to the Arrow River margins, the ONL mountain range to the south (Remarkables) and eastwards to the large-scale and scrub clad Crown Terrace escarpment.
 - the unit displays a variable sense of enclosure and openness as a consequence of vegetation patterning.
 - a moderate perception of naturalness as a consequence of the working rural landscape. The very close proximity of the wild scrub dominated Crown Terrace escarpment serves to counter the diminishing influence of visible dwellings in terms of naturalness.
 - in terms of sense of place, the unit reads as a working rural landscape at the very edge or entrance of the Wakatipu Basin
 - potential development reads as linear sprawl from the established and legible rural residential node associated with Arrow Junction.
 - large-scale lots suggest potential for subdivision
 - an impression of the area as a green gateway to the (Wakatipu) Basin.

²⁶ PDP, Policy 24.2.1.1

²⁷ Landscape Character Unit 19

²⁸ ODP, 24.1

99. I am aware of the numerous appeals to the provisions of Chapter 24, and accordingly I have attached only limited weight to the provisions of the PDP. Nevertheless, I consider a grant of consent would not be inconsistent with the characteristics of this landscape unit has described in the PDP, and which are referred to under Policy 24.2.1.3.

OBJECTIVES AND POLICIES

100. In *Ballantyne Baker Holdings*, the Environment Court held that²⁹:

However, while we accept the parties position that the objectives and policies under the ODP should be given more weight, that does not mean no weight should be attributed to the PDP.

101. The Court's findings in this case were based on an application which was in the Rural Zone under the PDP, where the objectives policies and assessment matters are under challenge through appeals, but perhaps ironically, not many of the rules. This application is within the Wakatipu Basin Rural Amenity Zone so is not directly comparable, but notwithstanding that, I have put some weight on the relevant provisions of the PDP, including those addressed through Stage 1 of the review of the District Plan.

Objectives and policies – ODP

102. Chapter 4 of the ODP contains District Wide Issues, Objectives and Policies. Objective 4.2.5 and its associated policies specifically address matters concerning landscape and visual amenity.

Objective 4.2.5:

Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values.

103. This is an overarching objective is expressed in very general terms, paraphrasing the provisions of section 5(2)(c) of the Act, but which is given more specific focus in its accompanying policies. Policy 1 reads as follows:

Future Developments

- (a) *To avoid, remedy or mitigate the adverse effects of development and/or subdivision in those areas of the District where the landscape and visual amenity values are vulnerable to degradation.*
- (b) *To encourage development and/or subdivision to occur in those areas of the District with greater potential to absorb change without detracting from landscape and visual amenity values.*

²⁹ *Ballantyne Baker Holdings Ltd versus QLDC* – Interim decision [2018]NZ Env C. 181, paragraph 209

104. I consider this part of the district is vulnerable to degradation, particularly if rural densification and more intense of subdivision were to occur. However, in this case I consider that the establishment of the proposed residential building platform will be consistent with maintaining its existing character. This area of the district can absorb the establishment of an additional dwelling, subject to mitigation measures, primarily screening through a planting regime. I am satisfied that this objective and its policies can be met.

105. Policy 4 is specific to VAL's.

Visual Amenity Landscapes

(a) *To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:*

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

(b) *To mitigate loss of or enhance natural character by appropriate planting and landscaping.*

106. The site is visible from State Highway 6, but given the speed environment along this section of road, the physical dominance of the escarpment, the adoption of a recessive colour scheme for the proposed dwelling, the setback from the highway, the visually low impact of access arrangements, and the retention and strengthening of on-site screen planting, I am satisfied that this policy is also met by this proposal.

107. Policy 6 seeks to restrain urban development within a VAL. Although developments along a highway can give rise to rural residential 'sprawl', I consider this would not eventuate as a result of a residential building platform and ultimately a dwelling being established on this existing allotment.

108. Policy 8 is concerned with cumulative effects.

Avoiding Cumulative Degradation

In applying the policies above the Council's policy is:

(a) *To ensure that the density of subdivision and development does not increase to a point where the benefits of further planting and building are outweighed by the adverse effect on landscape values of over domestication of the landscape.*

(b) *To encourage comprehensive and sympathetic development of rural areas.*

109. No additional allotments are proposed to be created, and the establishment of a residential building platform on this large vacant rural allotment would not be inconsistent with Policy 8.

110. Although the proposed application is for the establishment of a residential building platform, this would be the precursor to a dwelling being established on the site in due course. Policy 9 addresses the effect of structures in the landscape and reads as follows:

Structures

To preserve the visual coherence of:

(a) Outstanding natural landscapes and features and visual amenity landscapes by:

- Encouraging structures which are in harmony with the line and form of the landscape;
- Avoiding, remedying or mitigating any adverse effects of structures on the skyline, ridges and prominent slopes and hilltops;
- Encouraging the colour of buildings and structures to complement the dominant colours in the landscape;
- Encouraging placement of structures in locations where they are in harmony with the landscape;
- Promoting the use of local, natural materials in construction.

(b) Visual amenity landscapes

- By screening structures from roads and other public places by vegetation whenever possible to maintain and enhance the naturalness of the environment; and

(c) All rural landscapes by

- Providing for greater development setbacks from public roads to maintain and enhance amenity values associated with the views from public roads.

111. Part of the site includes the escarpment, a highly dominant physical feature. The proposed residential building platform is proposed to be located within the centre of the pastoral component of the site between the highway and the escarpment. It will be a visible physical feature, but I am satisfied that the colour of the proposed building would be appropriate, it would not occupy an elevated position or interrupt the foreground of the escarpment to any significant extent. The proposed residential building platform is well setback from the road and will be partially screened by existing vegetation.

112. Policy 9 is an important one in the overall context of assessing the effects of rural subdivision and residential building platforms, and I have concluded that the proposal is not contrary to this provision. No significant earthworks are proposed, either in association with the establishment of the platform or in respect to access to the site.

113. Part 5 contains the objectives and policies relevant to 'Rural Areas'. Objective 5.2.1 is rather general in its application, and its related policies address the need to protect landscape values, and retain the capacity for rural production. I have already concluded that the proposed development will be consistent with protecting rural landscape values, and on balance, the establishment of a residential building platform and eventual dwelling on the site will enhance the ability to manage the property for rural production.

114. The Transport Chapter 14, Objectives 14.1.3, Objective 1 and Objective 2 are relevant to the functioning and efficiency of transport in the District. Policy 2.2 states:

"To ensure the intensity and nature of activities along particular roads is compatible with road capacity and function, to ensure both vehicle and pedestrian safety".

115. Although the site has frontage to State Highway 6, there will be no new frontage access and the property will rely on access through an existing legal road which already serves the neighbouring property. I consider a grant of consent to this application would maintain the safety and efficiency of the State Highway.

Objectives and Policies – PDP

116. While I am required to have regard to the objectives and policies in the PDP, I note that they are under appeal, although many appear to be similar to those contained in the ODP. There is a high degree of agreement between the witnesses for both the Council and the applicant as to the application of the objectives and policies under the ODP and the PDP. Accordingly, I have concentrated my assessment on those provisions which have most direct relevance to this proposal.
117. Chapter 3 contains the Strategic Directions. Objective 3.2.5 calls for the retention of the District's distinctive landscapes, while more specifically Objective 3.2.5.2 seeks that the rural character and visual amenity values within identified Rural Character Landscapes are maintained or enhanced by directing new development to occur in those areas that have the potential to absorb change without detracting from their values. I am satisfied that the establishment of the proposed residential building platform and future dwelling would be consistent with these objectives, as the rural allotment subject to the application has the capacity to absorb a dwelling without adverse effects on the Gibbston Highway Flats Landscape Character Unit.
118. Similarly, although there are a number of dwellings on small rural allotments along the State Highway, I am satisfied that the cumulative effects of an additional residential building platform and dwelling on the currently vacant application site would not alter the character of this area to a point where it was no longer rural in character.
119. Chapter 6 addresses Landscape and Rural Character, while Chapter 24 contains objectives and policies related to the Wakatipu Basin Rural Amenity Zone. The proposed landscaping is designed to be ecologically viable, and while the site contains predominantly exotic species, the visual impact would be consistent with the character of the area and with Policy 6.3.11.
120. Objective 24.2.1 and Policy 24.2.1.3 respectively state that:

Landscape character and visual amenity values in the Wakatipu Basin Rural Amenity Zone are maintained or enhanced.

Ensure that subdivision and development maintains or enhances the landscape character and visual amenity values identified in Schedule 24.8 – Landscape Character Units.

121. I set out some of the key provisions relative to the Gibbston Highway Flats Landscape Character Unit earlier in paragraph 98. In my assessment, taken in conjunction with the mitigation measures proposed, the proposed development is consistent with the outcomes expected in this Landscape Character Unit. The development is in the foreground of the escarpment which is classified as an ONL, but I consider that with the mitigation proposed it will be consistent with Policy 24.2.1.5. The proposed colour, location, setbacks and landscaping provisions are consistent with Policy 21.2.1.4. The proposed planting regime is consistent with Policy 24.2.4.9.
122. The applicant is not applying for a dwelling at this stage but only a residential building platform. A dwelling on the site would be clearly contrary to Policy 24.2.1.1 (and its associated rules) which proposes an 80ha minimum net site area within the Wakatipu Basin Rural Amenity Zone. However, this provision represents a major new regulatory initiative, and is subject to significant challenge through appeals. In addition, provision is made under the PDP Rule 24.4.5 to establish dwellings on an approved residential building platform.
123. The small-scale earthworks proposed and the nature of the access to the site are such that there are no inconsistencies with PDP objectives and policies relating to earthworks or transport, to the extent that these have weight at this point.

Objectives and Policies – Proposed Otago Regional Policy Statement

124. The Operative Otago Regional Policy Statement has now reached the point where it has been virtually overtaken by the Proposed Regional Plan (PORPS) and its provisions with respect to landscape protection are very general and given effect to through the much more specific provisions of the ODP.
125. The PORPS contains a number of objectives and policies which are specifically relevant to the soil and water resource, which do not arise as a major issue in terms of this application. Policy 3.2.4³⁰ is relevant to that part of the site comprising the escarpment which is classified as an ONL. This policy is however subject to appeal, so has limited weight at the time of this decision. It seeks to protect outstanding natural features by avoiding adverse effects on those values which contribute to the significance of the landscape, avoiding, remedying or mitigating other adverse effects, and (interestingly) recognising and providing for the positive contributions of existing introduced species to those values. The witnesses for the applicant and the Council are satisfied that the proposal is consistent with this policy, and I concur with their conclusions.

PART 2 AND SECTION 104 RMA

126. Under my assessment of the status of this application, I have concluded (despite some uncertainties) that it has an overall status of non-complying under the PDP and discretionary under the ODP. I have accordingly addressed it as non-complying overall.

³⁰ PORPS, Decisions version

127. Section 104D of the RMA provides that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that the adverse effects of the activity on the environment will be minor, or that it is not contrary to the objectives and policies of the relevant plan or proposed plan.
128. As finally amended, it was apparent to me that the evidence from both the Council and the applicant established that with appropriate mitigation, that both limbs of section 104D would be satisfied. I still have a discretion to determine whether or not consent should be granted in terms of section 104 RMA.
129. The relevant provisions of section 104 are as follows:

104 Consideration of applications

(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 or 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 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*
- (ii) other regulations;*
- (iii) a national policy statement;*
- (iv) a New Zealand coastal policy statement;*
- (v) a regional policy statement or proposed regional policy statement;*
- (vi) a plan or proposed plan; and*

(c) any other 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 –

- (i) trade competition or the effects of trade competition; or*
- (ii) any effect on a person who has given written approval to the application.*

.....

130. The application of Part 2 of the RMA has been the subject of proceedings before the Courts, including most recently in the findings of the Court of Appeal in *RJ Davidson Family Trust versus Marlborough District Council*³¹. My understanding of the Appeal Court's findings is that if a plan has been competently prepared the consent authority may in many cases consider an evaluation under Part 2 RMA was unnecessary.

³¹ RJ Davidson Family Trust versus Marlborough District Council[2018] NZCA 316

131. I am not qualified to make legal judgements on matters of this nature, and heard no legal submissions with respect to it. Given the extent to which Chapter 24 of the PDP is open to challenge, I have taken a cautious approach and applied Part 2 in this instance.
132. I consider that this application does at least indirectly raise a matter of national importance under section 6 of the RMA, as although that part of the site subject to proposed building development is not within the escarpment and (arguably) not classified as ONL. Nevertheless, the manner in which development is implemented on the site might potentially have an effect on an adjoining ONL as was raised in evidence from the Council. Section 6(b) calls for the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.
133. However, I am satisfied in this case that with appropriate mitigation as proposed, the application is not contrary to section 6(b).
134. In terms of section 7 of the RMA, I consider that the proposed residential building platform and dwelling would enable on-site management which would at least potentially promote the efficient use and development of the land resource for farming purposes, consistent with subsection (b). With the mitigation measures proposed, I am satisfied that the proposed development would maintain and enhance amenity values and the quality of the environment in terms of subsections (c) and (f).
135. Overall, I consider that the Purpose of the Act as set out in section 5 would be better achieved by a grant of consent to this application.
136. I have considered the effects on the environment and the relevant provisions of the applicable district and regional planning instruments earlier in this decision, and have reached the conclusion that the proposal is broadly consistent with these plans.
137. In terms of subsection 104(1)(c) I have considered whether a grant of consent might create a precedent or undermine confidence in the administration of the plan. I consider there would be a significant risk of such an outcome were this proposal including a subdivision, as the relatively large lots along this part of the highway have the potential to invite subdivision. However as this is a proposal for the establishment of a residential building platform on an existing and (comparatively) large site, I do not consider this is a significant issue in this case.
138. I do not consider that given the nature of the rules framework, that the permitted baseline under subsection (2) has any useful application to this proposal.
139. Overall, I consider that the proposal will have effects which are minor, but not more than minor, and that it is not contrary to the objectives and policies of either the ODP or the PDP.
140. I consider that the purpose of the RMA would be better served by a grant of consent to the application.

DECISION

I have resolved that pursuant to sections 104, 104D and 108 of the RMA, that the application be granted subject to the conditions specified below.

A handwritten signature in black ink, appearing to read 'R. Nixon', with a stylized, flowing script.

Robert Charles Nixon

Hearings Commissioner

6 June, 2019

APPENDIX 1 – Consent Conditions

APPENDIX 1 – CONSENT CONDITIONS

General conditions

1. That the development shall be undertaken/carried out in general accordance with the plans:
 - Structural Landscape Plan, prepared by SITE Landscape Architects, and dated 31.05.19 (Final Hearing Plan)

stamped as approved on 5 June 2019,

and the application as submitted, with the exception of the amendments required by the following conditions of consent.

2. This consent shall not be exercised and no work or activity associated with it may be commenced or continued until the following charges have been paid in full: all charges fixed in accordance with section 36(1) of the Resource Management Act 1991 and any finalised, additional charges under section 36(3) of the Act.
3. The consent holder is liable for costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991.
4. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being QLDC's Land Development and Subdivision Code of Practice adopted on 3rd May 2018 and subsequent amendments to that document up to the date of issue of any resource consent.

Note: The current standards are available on Council's website via the following link:

<http://www.qldc.govt.nz>

New Building Platform to be registered

5. At the time the consent is given effect to, the consent holder shall provide a 'Land Transfer Covenant Plan' showing the location of the approved building platform (as per 'Figure 2 Structural Landscape Plan', dated 31.05.19, Final Hearing Plan). The consent holder shall register this "Land Transfer Covenant Plan" on Register of Title Identifier **XXX** and shall execute all documentation required to register this plan. The costs of doing so are to be borne by the consent holder.

Design Controls

6. The following design controls shall apply to a dwelling located within the approved residential building platform:

Buildings

- a) Not more than one residential dwelling shall be erected on the specified building area shown on the Structural Landscape Plan prepared by SITE Landscape Architects, dated 31.05.19 (Final Hearing Plan)
- b) All buildings are to be located within the approved residential building platform.
- c) The maximum building height of all buildings within the proposed platform will be 7.0 metres above existing ground level;
- d) The exterior colouration of the dwelling, including the roof, to be within a light reflectance value range of 7 to 25% and to be of natural tones in the range of browns, greens or greys.
- e) The maximum building coverage within the proposed platform will be 500m²;
- f) All water tanks are to be wholly or partially buried. Partially buried water tanks are to be in a dark recessive colour and/or visually screened so as to not be visible from beyond the subject site.
- g) All exterior lighting shall be restricted to down lighting only, no higher than 1 metre, for the purpose of lighting private areas only and shall be located beyond the boundary setbacks.
- h) All external lighting not fixed to the external walls of a building shall be no higher than 1.2m above ground level.

Landscaping:

- i) All fencing is to be limited to post and rail, post and wire or post and mesh fences.
- j) Any entranceway structures shall be to a height of no more than 1.2m and shall be constructed of natural materials such as timber, steel or stone and to be consistent with traditional rural elements.
- k) Access to the lots is to be of gravel formation with swale edge as necessary. Concrete kerb and channel is not allowed.
- l) All domestic elements are to be limited to the curtilage area identified on the Structural Landscape Plan prepared by SITE Landscape Architects and dated 31.05.19 (Final Hearing Plan).

Landscape Plan

7. Prior to the erection of a dwelling within the approved residential building platform, the consent holder shall implement all landscaping in accordance with the Structural Landscape Plan prepared by SITE Landscape Architects and dated 31.05.19 (Final Hearing Plan). The Structural Landscape Plan shall be implemented to provide for the following:
 - a) Provide for an area of ecological enhancement to the rear of the approved residential building platform that provides for an area of indigenous vegetation and as identified in the yellow outlined areas (and identified as 'C1') on the approved 'Structural Landscape Plan'. All indigenous vegetation shall be locally sourced and all planting shall be implemented in accordance with the details set out in the Structural Landscape Plan;
 - b) Prior to the erection of the dwelling, all hedgerow planting (identified as 'C' on the Landscape Structure Plan) and Specimen Planting (identified as 'C2' on the Landscape Structure Plan), shall be implemented in accordance with the Landscape Structure Plan.
 - c) All planting, including hedgerow trees indicated as being retained on the Structural Landscape Plan shall be retained on site and protected in for a period of 60 years from the date of consent. In the event that any trees die or become diseased and require removal that the tree shall be replaced with an appropriate replacement tree from the list of native tree species on the Structural Landscape Plan or a Council approved alternative;
 - d) All planting as identified on the approved Structural Landscape Plan and once implemented shall be maintained as per the plan to ensure healthy growth. If any tree or plant shall die, become damaged or is no longer of healthy condition it shall be replaced within 12 months. All trees to replace existing hedgerow trees shown to be retained shall be of the species identified on the Structural Landscape Plan or a council approved alternative and planted at a grade of no less than 1.5m in height.

Management of Balance Lot

8. The consent holder shall manage the escarpment terrace to the rear of the residential building platform, in a manner that promotes natural regeneration of indigenous vegetation of this elevated area of the site. This condition shall not restrict the grazing of stock within this part of the property or removal of exotic wilding tree species or other plant pests.

Prior to the registration of the building platform on the Register of Title

9. Prior to the building platform being registered on the Register of Title, the consent holder shall complete the following:
 - a) The provision of an access way to the building platform that complies with the guidelines provided for in QLDC's Land Development and Subdivision Code of Practice. The access shall have a minimum formation standard of 150mm compacted AP40 with a 3.5m minimum carriageway width. Provision shall be made for stormwater disposal from the carriageway.

- b) The provision of a water supply to service the building platform in accordance with Council's standards. The building platform shall be supplied with a minimum of 2,100 litres per day of potable water that complies/can be treated to comply with the requirements of the Drinking Water Standard for New Zealand 2005 (revised 2008).
- c) A digital plan showing the location of all building platforms as shown on the Land Transfer Plan shall be submitted to the Manager of Resource Management Engineering at Council. This plan shall be in terms of New Zealand Transverse Mercator 2000 coordinate system (NZTM2000), NZGDM 2000 datum.
- d) Written confirmation shall be provided from the electricity network supplier responsible for the area, that provision of an underground electricity supply has been made available (minimum supply of single phase 15kva capacity) to the development.
- e) Written confirmation shall be provided from the telecommunications network supplier responsible for the area that provision of underground telephone services has been made available to the development.

Ongoing Conditions/Covenants

10. At the time that the building platform is registered on the Register of Title for the site, the consent holder shall register the following conditions as a covenant pursuant to Section 108(2)(d) of the Resource Management Act 1991 for works to be carried out at the time a residential unit is proposed:
 - a) a covenant shall be registered on the title of Lot 2 DP 305699 to prohibit any further subdivision of this lot within 60 years of the date of consent.
 - b) A covenant shall be registered on the title of Lot 2 DP 305699 to ensure that all mitigation and enhancement planting areas that are established within this lot in accordance with approved plans are retained and maintained for a period of 60 years from the date of consent.
 - c) All future buildings shall be contained within the Building Platform as shown as Covenant Area X as shown on Land Transfer Plan XXXXX.
 - d) At the time that a residential unit is erected the owners for the time being are responsible for monitoring and treating their individual domestic water supply, this shall include filtration and disinfection so that it complies with the Drinking Water Standards for New Zealand 2005.
 - e) Council shall not be responsible for any ongoing maintenance associated with the access within the unformed legal road adjacent to the north western boundary of Lot 2 DP 305699 until such time as the access is either upgraded to the standard of a public road, or until an alternative agreement is obtained with Council for the maintenance.

- f) At the time a residential unit is erected on the lot, the owner for the time being shall engage a suitably experienced person as defined in sections 3.3 & 3.4 of AS/NZS 1547:2012 to design an onsite effluent disposal system in compliance with AS/NZS 1547:2012. The design shall take into account the site and soils investigation report and recommendations by Civilised Ltd, dated 10 October 2018, reference QS013. The proposed wastewater system shall be subject to Council review prior to implementation and shall be installed prior to occupation of the residential unit.
- g) Prior to the occupation of any residential unit on the lot, domestic water and fire fighting storage is to be provided. A minimum of 20,000 litres shall be maintained at all times as a static fire fighting reserve within a 30,000 litre tank or similar. Alternatively, a 7,000 litre fire fighting reserve is to be provided for each residential unit in association with a domestic sprinkler system installed to an approved standard. A fire fighting connection in accordance with Appendix B - SNZ PAS 4509:2008 is to be located no further than 90 metres, but no closer than 6 metres, from any proposed building on the site. Where pressure at the connection point/coupling is less than 100kPa (a suction source - see Appendix B, SNZ PAS 4509:2008 section B2), a 100mm Suction Coupling (Female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100kPa (a flooded source - see Appendix B, SNZ PAS 4509:2008 section B3), a 70mm Instantaneous Coupling (Female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. The reserve capacities and flow rates stipulated above are relevant only for single family residential units. In the event that the proposed residential units provide for more than single family occupation then the consent holder should consult with Fire and Emergency New Zealand (FENZ) as larger capacities and flow rates may be required.

The FENZ connection point/coupling must be located so that it is not compromised in the event of a fire.

The connection point/coupling shall have a hardstand area adjacent to it that is suitable for parking a fire service appliance. The hardstand area shall be located in the centre of a clear working space with a minimum width of 4.5 metres. Pavements or roadways providing access to the hardstand area must have a minimum formed width as required by QLDC's standards for rural roads (as per QLDC's Land Development and Subdivision Code of Practice adopted on 3rd May 2018 and subsequent amendments to that document up to the date of issue of any subdivision consent). The roadway shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Access shall be maintained at all times to the hardstand area.

Underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1 metre above ground) may be accessed by an opening in the top of the tank whereby couplings are not required. A hardstand area adjacent to the tank is required in order to allow a fire service appliance to park on it and access to the hardstand area must be provided as above.

The FENZ connection point/coupling/fire hydrant/tank must be located so that it is clearly visible and/or provided with appropriate signage to enable connection of a fire appliance.

Fire fighting water supply may be provided by means other than the above if the written approval of the Fire and Emergency New Zealand Fire Risk Management Officer is obtained for the proposed method.

The fire fighting water supply tank and/or the sprinkler system shall be installed prior to the occupation of the building.

Note: Fire and Emergency New Zealand considers that often the best method to achieve compliance with SNZ PAS 4509:2008 is through the installation of a home sprinkler system in accordance with Fire Systems for Houses SNZ 4517:2010, in each new residential unit. Given that the proposed residential unit is are approximately 10km from the nearest FENZ Fire Station the response times of the New Zealand ***Volunteer*** Fire brigade in an emergency situation may be constrained. It is strongly encouraged that a home sprinkler system be installed in any new residential unit.

Advice Note:

1. This consent triggers a requirement for Development Contributions, please see the attached information sheet for more details on when a development contribution is triggered and when it is payable. For further information please contact the DCN Officer at Council.



- KEY:**
- (A) Existing hedgerow / trees retained:
 - E Eucalyptus
 - H Hawthorne
 - P Poplar
 - (B) Proposed timber farm style entry gates in place of existing steel gate
 - (C) Proposed mixed native hedgerow, to reinforce existing remnant hedgerow and provide shelter/screening to building platform
 - Species mix to include a combination of:
 - Cordyline australis @ 1.2m crs
 - Coprosma propinqua @ 1.2m crs
 - Hoheria augustifolia @ 1.5m crs
 - Kunzea ericoides @ 1.5m crs
 - Nothofagus spp. @ 1.5m crs
 - Olearia spp. @ 1.5m crs
 - Phormium tenax @ 1.2m crs
 - Pittosporum tenuifolium @ 1.5m crs
 - Plagianthus regius @ 1.5m crs
 - Sophora microphylla @ 1.5m crs
 - (C1) Proposed native revegetation area to consist of species list above
 - (C2) 3 x Specimen trees
Nothofagus solandri var. cliffortioides @ 1.5m grade
 - (D) Proposed curtilage 3,900m²
 - (E) Proposed building platform 1,000m²
 - (F) Existing Shed
 - (G) Proposed driveway

- Proposed Design Controls:**
- Building Platforms**
External materials including spouting and joinery to have LRV between 7 - 25%, & be of natural tones including brown & grey;
Building height: 7.0m above existing ground
Max. building coverage within platform: 500m²
- Curtilage**
Domestic elements to be contained within curtilage area.
- Fencing**
Fencing outside of curtilage to be standard farm fencing or post & rail.
- Planting**
Tree planting outside of that shown on this plan shall be rural in stature and avoid brightly coloured leaf colours or wilding species.
- Lighting**
External lighting to be directed downward to avoid light pollution.
- Driveway**
Rural in character with informed edges and consisting of either local gravels or chipseal.
- Existing Trees**
All existing trees to be retained, except those contained within Building platform.