



## **DECISION OF QUEENSTOWN LAKES DISTRICT COUNCIL**

### **RESOURCE MANAGEMENT ACT 1991**

<b>Applicant:</b>	<b>Gibbston Vines Limited</b>
<b>RM Reference:</b>	RM170201
<b>Location:</b>	2404 Gibbston Highway (State Highway 6), Gibbston
<b>Proposal:</b>	Subdivide land into seven allotments and to identify seven residential building platforms with associated earthworks and landscaping.
<b>Type of Consent:</b>	Subdivision and land use consent.
<b>Legal Description:</b>	Section 5 Block III Kawarau Survey District held in CFR OT 10B/192
<b>Valuation Number:</b>	2907203600
<b>Zoning:</b>	Gibbston Character Zone
<b>Activity Status:</b>	Discretionary
<b>Public Notification:</b>	20 September 2017
<b>Commissioners:</b>	W D Whitney & D Clarke
<b>Date of Decision:</b>	<b>14 February 2018</b>
<b>Decision:</b>	<b>Consent Refused</b>

## **A. INTRODUCTION**

### **A.1 Background**

1. Gibbston Vines Limited has applied to the Queenstown Lakes District Council for subdivision consent to subdivide a site into 7 allotments and to identify seven residential building platforms; and for land use consent to establish seven residential building platforms. It is noted that the application, as publicly notified, provided for 8 allotments and eight building platforms, but the application was amended prior to the hearing to delete Lot 4 and its associated residential building platform. It is also noted that the applicant proposes to utilise the residential building platform on Lot 1 for a commercial purpose (subject to a further resource consent).
2. The subject site has an area of 8.8727 hectares more or less and is located generally to the south of the Gibbston Highway (State Highway 6) and to the west of Gibbston Back Road at Gibbston. The subject site is described as Section 5 Block III Kawarau Survey District as contained in Computer Freehold Register Identifier OT 10B/192 in the Otago Land Registration District.
3. The site is rectangular in shape having a 268 metre frontage to State Highway 6 and a 328 metre frontage to Gibbston Back Road. The subject site is currently covered mostly in rank grass which grows under a derelict vineyard, the vineyard having been planted in about 1993. Posts and trellises remain on the site; and sweet briar has invaded the property. The site is bisected by a watercourse that begins near the foot of Mt Rosa. On the upper (southern) portion of the site the watercourse is surrounded by mature poplar, maple and birch trees. Two sheds (authorised by RM 930588 and RM 980106) are located on the property adjacent to the mature trees and close to the southern boundary of the site.
4. The site has two existing entrances from Gibbston Back Road. The two sheds are connected to the southern entrance via a vehicle track which is located adjacent to the southern boundary of the site.
5. The site is located within the Gibbston Valley which is recognised as comprising the area between the Kawarau Bridge (to the west) and Nevis Bluff (to the east). Established vineyards are located on the terraces throughout the Gibbston Valley and are particularly apparent at the eastern end, including to the south of State Highway 6.

6. Land immediately to the west of the subject site is utilised for the Lanes (Gibbston Highway Limited) vineyard; and land immediately to the south comprises the Brennan vineyard. Land to the east of Gibbston Back Road (opposite the site) is also in a vineyard that encloses sites containing four dwellings as authorised by RM 010388 being a subdivision and land use consent granted to Signature Investments Limited via a consent order of the Environment Court issued on 15 August 2003.
7. Activities other than vineyards are present in the Gibbston Valley landscape. These include residential dwellings and other rural activities and structures. Much of the existing residential development in the Gibbston Valley has taken place in tandem with viticulture. A substantial rural residential subdivision has occurred beyond the land suitable for viticulture generally to the south of Little Mt Rosa, at the Mt Rosa subdivision. The Mt Rosa subdivision includes allotments occupied by dwellings and vacant allotments. Rural residential development is also apparent to the north of State Highway 6, between the highway and the Kawarau River, which is visible when travelling west on State Highway 6 around Nevis Bluff.
8. Some distance to the west of the site, and to the south of State Highway 6, is the Kinross vineyard which provides for visitor accommodation in chalets within a vineyard setting. Such chalets are generally set against an escarpment within the Kinross vineyard.
9. The site and surrounding land at Gibbston Valley is located in the Gibbston Character Zone as shown on Map 13 of the Queenstown Lakes Operative District Plan (Operative District Plan/District Plan). Stage 1 of the Proposed Queenstown Lakes District Plan (Proposed District Plan) was notified on 26 August 2015. The Proposed District Plan also includes the site and surrounding land in a Gibbston Character Zone as shown on Maps 13 and 15 of the Proposed District Plan.

## **A.2 The Proposal**

10. The proposal as presented at the hearing is to subdivide the site to create seven allotments being Lot 1 (3.7622 ha), Lot 2 (9050m<sup>2</sup>), Lot 3 (8345m<sup>2</sup>), Lot 5 (6491m<sup>2</sup>), Lot 6 (7685m<sup>2</sup>), Lot 7 (8200m<sup>2</sup>) and Lot 8 (8660m<sup>2</sup>). The description which follows relates to the proposal as presented at the hearing albeit that it is acknowledged that

specific alterations or alternatives were advanced in the applicant's right of reply as detailed in the penultimate paragraph in Section A.5 of this decision.

11. A 992m<sup>2</sup> building platform is proposed on Lot 1 that is to be 38.68 metres off the State Highway 6 boundary and 96.25 metres off the Gibbston Back Road boundary. Access to the building platform on Lot 1, which is intended to accommodate a future commercial building, is to be achieved from Gibbston Back Road. The applicant proposes to reinstate the derelict vineyard on Lot 1 which includes land that has frontage to both State Highway 6 and Gibbston Back Road.
12. Lots 2, 3 and 5-8 are each to contain a residential building platform and a residential curtilage. The residential building platforms on Lots 7 and 8 will have an area of 750m<sup>2</sup>; and the residential building platforms on Lots 2, 3, 5 and 6 will have an area of 1000m<sup>2</sup>. Access to Lots 2, 3 and 5-8 will be achieved from Gibbston Back Road via Lot 800 which is to be an access allotment located adjacent to the southern boundary of the site. Access to individual allotments will be achieved via access strips subject to reciprocal right of way easements.
13. A suite of design controls are proposed with respect to building height, exterior materials, colours and reflectivity values, fencing and gates, and exterior lighting.
14. Landscaping is to include structural landscaping as identified on a Site Masterplan dated 19 January 2018; and a landscape plan for Lots 2, 3 and 5-8 is to be submitted to the Council for certification. The objectives for such landscape plans are to screen domestic activities such as clotheslines and swimming pools as viewed from Gibbston Back Road and State Highway 6; to allow for approximately 30m<sup>2</sup> of ecological planting to support the native bird and invertebrate population; and to limit the height and species of any trees planted within the residential curtilage.
15. Earthworks will be associated with the establishment of access, the construction of deflection bunds (with respect to potential flooding of the stream that bisects the site) and soil capping where natural arsenic concentration on the site exceeds 30mg/kg, being land in the south-east corner of the site.

16.Domestic water, power and telecommunications are to be reticulated to the allotments; and wastewater disposal and stormwater disposal is to occur on site within each of the allotments.

17.The applicant seeks provision for the subdivision to be staged.

18.The applicant offered a suite of conditions in evidence presented at the hearing; and some of these conditions were further refined at the hearing and in the applicant's right of reply (as attached to Mr Geddes's reply evidence dated 29 January 2018). The Commission confirms that it has assessed the application on the basis of the application as lodged and as subsequently amended by the applicant.

### **A.3 Zoning**

19.The site is within the Gibbston Character Zone as shown on Map 13 of the Operative District Plan. As noted above the Proposed District Plan also provides for the site to be included in a Gibbston Character Zone.

20.Section 86B(1) of the Resource Management Act 1991 (the Act) confirms that a rule in a Proposed District Plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified. As no decision has been made and publicly notified with respect to the relevant rules of the Proposed District Plan those rules do not have legal effect albeit that the objectives and policies of the Proposed District Plan are relevant to the consideration of this application. The status of the current proposal must therefore be determined by reference to the rules of the Operative District Plan.

21.The identification of a residential building platform of not less than 70m<sup>2</sup> in area and not greater than 1000m<sup>2</sup> in area is a discretionary activity pursuant to Rule 5.7.3.3i(b).

22.Site Standard 14.2.4.1vi requires that all vehicle access be in accordance with the standards contained in NZS 4404:2004. A breach of Site Standard 14.2.4.1vi (being a metalled driveway access) is a restricted discretionary activity in terms of Rule 14.2.2.3ii.

23. Rule 15.2.3.3(v) provides for subdivision and the location of residential building platforms in the Gibbston Character Zone as a discretionary activity.

24. Rule 15.2.21.1 confirms that earthworks associated with any subdivision is a controlled activity with control reserved in respect to the matters listed in Rule 22.3.2.2(a)(i)-(ix) in Section 22 of the Operative District Plan.

25. Having regard to the above the Commission has considered the proposal as an application for subdivision consent and land use consent to a discretionary activity.

#### **A.4 Submissions**

26. The application was publicly notified on 20 September 2017 and 19 submissions were received within the statutory submission period which closed on 18 October 2017.

27. A submission by Sarah Irwin was lodged with the Council on 19 October 2017. Ms Irwin has advised in an email dated 25 October 2017 that her submission was posted at the Frankton Post Office before 7:00am on 17 October 2017.

28. Under section 37 of the Act a consent authority may waive the requirement to make a submission within the required time period provided the matters listed in section 37A(1) of the Act have been taken into account. Having taken into account those matters the Commission has decided pursuant to section 37 to extend the time period for receipt of the submission by Sarah Irwin.

29. It is noted that a submission from Norm Thompson was included in the Order Paper but that this submission relates to another application being RM 170931. The Thompson submission has therefore not been considered further as it is not relevant to this application.

30. The Commission confirms that it has given consideration to the contents of all 20 submissions received in response to the application

#### **A.5 Reports and Hearing**

31. The Commission has had the benefit of a planning report dated 12 December 2017 prepared pursuant to section 42A of the Act by Mr Elias Matthee, a Planner with the

Queenstown Lakes District Council; a peer review report with respect to landscape dated 4 October 2017 prepared by Ms Anne Steven a Consultant Landscape Architect and an email from Ms Steven to Mr Matthee dated 7 December 2017 with respect to proposed conditions; an engineering report dated 7 November 2017 prepared by Mr Tim Dennis a Consultant Engineer with Southern Land Limited; and a report with respect to arsenic contamination issues prepared by Mr Paul Heveldt, National Environmental Science Specialist with Stantec New Zealand Limited, and various emails relating to remediation with respect to the arsenic contamination.

32. At the hearing on Monday 22 January 2018 the Commission was assisted by Mr Matthee, Ms Steven and Mr Heveldt; and Ms Alana Standish, Senior Planner for the Queenstown Lakes District Council, was also in attendance. Mr Michael Wardill, an engineer with the Queenstown Lakes District Council, was available to assist the Commission if required albeit that he was not in attendance at the hearing. Ms Charlotte Evans, Planning Support, provided administrative support at the hearing.

33. Prior to the hearing the Commission had the opportunity to consider the application and supporting material which included various technical reports; the submissions; the section 42A planning report and appendices thereto; and the pre-circulated evidence prepared by Mr Geddes and Mr Skelton (for the applicant) and by Mr Deaker (for several submitters who are listed in paragraph 35 below. The Commission made a site inspection with Mr Matthee prior to the hearing on 22 January 2018.

34. At the hearing the applicant was represented by Ms Maree Baker-Galloway, Solicitor, of Anderson Lloyd; Mr Graham Wilkinson, the sole Director of Gibbston Vines Limited; Mr Stephen Skelton, Landscape Architect and Director of Patch Limited; and Mr Nicholas Geddes, Planning Consultant, of Clark Fortune McDonald & Associates Limited. Leave was granted for Mr Wilkinson to present supplementary evidence in response to the evidence of Mr Deaker as Mr Wilkinson's evidence had not been circulated prior to the hearing. It is also noted that Messrs Skelton and Geddes presented short statements which summarised their evidence.

35. Mrs Jayne Macdonald, Solicitor, of Macalister Todd Phillips represented several submitters who had lodged a combined submission; and it is noted that several of those submitters also lodged individual submissions in their own names. The

submitters represented by Mrs Macdonald were Lisa and Matt White, Ken and Trish Mackenzie, Fiona and Peter Bersani, Russell and Christina Perkins, Grant Taylor and Nicole Schofield, Sean Brennan and Sharyn McWilliams, John and Juliet Wilson, Craig and Stacey Palmer, Ian Dee and Maryanne Sonner, Lynne and Tony Fleming, Jason and Jen Thompson, and Sherry Thornberg and Que Belk. Ms Macdonald called evidence from Mr Timothy Deaker, Viticulturist, of Viticultura Central Otago in support of the submissions lodged by the submitters represented by her.

36. Several of the submitters represented by Mrs Macdonald also appeared and spoke to their individual submissions. These included Mr Grant Taylor, Mr Sean Brennan, Mr Craig Palmer, Mr Que Belk, Mr Ken Mackenzie, Mr Matt White and Mr Peter Bersani.

37. Other submitters who appeared in support of their submissions at the hearing included Mr Simon Allen as Director of Gibbston Highway Limited and Mr Boanas for Mt Rosa Wines Limited.

38. The planning, landscape, engineering and arsenic contamination reports were taken as read and Mr Heveldt, Ms Steven and Mr Matthee were invited to comment following the presentation of the evidence. It is noted that Ms Steven presented a statement of evidence which served to document her concluding comments on the proposal.

39. Leave was granted for Ms Baker-Galloway to submit a formal reply in writing.

40. The hearing was adjourned on 22 January 2018 pending receipt of Ms Baker-Galloway's written reply. This was received on Monday 29 January 2018.

41. The applicant's right of reply comprised Ms Baker-Galloway's written reply and reply evidence prepared by Messrs Geddes and Skelton. In an email dated 29 January 2018 Mrs Macdonald challenged the introduction of reply evidence on the part of the applicant in its legal reply. Ms Baker-Galloway responded to Mrs Macdonald's concerns in an email dated 30 January 2018.

42. The Commission has considered whether the reply evidence should be disregarded as sought by Mrs Macdonald. It is noted, in the first instance, that the Commission



invited the applicant to exercise a right of reply and did not explicitly limit such reply to legal submissions only.

43. The Commission notes that Mr Skelton's reply evidence responds to the contents of the statement of evidence presented by Ms Steven towards the end of the hearing. This evidence was not pre-circulated and it is noted that Ms Steven significantly changed her position with respect to the proposal in that evidence. In all the circumstances the Commission considers it reasonable that the applicant's reply include Mr Skelton's evidence.

44. Much of Mr Geddes's evidence confirmed or clarified aspects of the proposal which have been raised during the course of the hearing; and it is noted that Mr Geddes provided up to date copies of the plan of subdivision and of the draft conditions, again addressing matters which have been raised at the hearing. The Commission has concluded that it is appropriate for the Commission to have regard to these parts of Mr Geddes's reply evidence.

45. It is noted that Mr Geddes's reply evidence, in part, is essentially supplementary evidence (particularly paragraphs 3-16 of his reply evidence). The Commission has chosen to place no weight on those portions of Mr Geddes's reply evidence that are essentially supplementary evidence.

46. The Commission acknowledges that it would have been open to Ms Baker-Galloway to include much of the material contained in the reply evidence of Mr Skelton and Mr Geddes in her written reply.

47. In all the circumstances the Commission has concluded that having regard to Mr Geddes's reply evidence and to Mr Skelton's reply evidence would not be unfair to submitters and to the Council's reporting officers, or be prejudicial and ultra vires the hearing process, as asserted by Mrs Macdonald.

48. Ms Baker-Galloway sought formal leave for the right of reply to include the statements of reply evidence, if such formal leave is considered to be required. Given that the reply evidence relates to matters discussed at the hearing it was obviously not practicable for such evidence to be circulated prior to the hearing in accordance with

the Commission's Minute dated 30 November 2017. Accordingly leave is granted for the right of reply to include the statements of reply evidence of Mr Geddes and Mr Skelton.

49. The Commission notes that Ms Baker-Galloway, in her reply, offered the following alterations or alternatives in order to address matters raised at the hearing. These were:

- Restrictions on planting of red beech and totara on the east of Lot 5 and on the north of Lot 6.
- As an alternative to the applicant's preferred option to create Lot 1 with the intention of developing Lot 1 commercially either:
  - (i) A further consent notice condition is offered in respect of restricting solely residential activities on Lot 1 such that the platform is guaranteed to only be used for commercial purposes; or
  - (ii) A redesigned subdivision plan is approved which removes the Lot 1 building platform and amalgamates Lot 1 with Lot 5.

50. The Commission acknowledges that it has given consideration to the alternatives and alterations offered in Ms Baker-Galloway's reply for the applicant when giving consideration to the proposal.

## **A.6 Principal Issues in Contention**

51. The principal issues in contention are the effects on the environment of allowing the proposed subdivision and land use activity on the subject site, including effects on the productive potential of the site and effects on the amenity and character of this part of the Gibbston Valley; and the matter of precedent.

## **B. EFFECTS ON ENVIRONMENT**

### **B.1 Permitted Baseline**

52. Section 104(2) of the Act states that when forming an opinion for the purposes of section 104(1)(a), a consent authority may disregard an adverse effect of an activity on the environment if the plan permits an activity with that effect.

53. Subdivision and the establishment of building platforms requires resource consent in the Gibbston Character Zone and these activities are therefore not a permitted activity. Accordingly there is no permitted baseline in terms of the Operative District Plan that is relevant to this application.

54. The permitted baseline is not relevant in the context of the Proposed District Plan as the rules of the Proposed District Plan have no legal effect at this time.

## **B.2 Receiving Environment**

55. The receiving environment is described in Section A.1 of this decision. Land to the west, south and east (across Gibbston Back Road) is vineyard. State Highway 6 is located adjacent to the northern boundary of the site and it is noted that the Queenstown Trail terminates at Gibbston Back Road adjacent to the site.

56. Clause 5.5.1 of the Operative District Plan identifies Resource Management Issues with respect to the Gibbston Character Zone. These are relevant provisions of the Operative District Plan both in terms of understanding the wider receiving environment at Gibbston and in terms of providing background and assistance when considering the objectives and policies and assessment matters that apply in the context of the Gibbston Character Zone.

57. Clause 5.5.1ii of the Operative District Plan identifies as a Resource Management Issue the Special Character of the Gibbston Character Zone and confirms that the Gibbston area has a special character due to the combination of resource characteristics and values and the fact that these are concentrated within small geographically confined areas. The resource characteristics and values which particularly distinguish the Gibbston area from the surrounding District [including the Rural General Zone], are identified in Clause 5.5.1ii as being:

- “● *soils and microclimate which are particularly suitable for grapes for high quality wines*
- *the density of viticultural plantings to other productive activities which has occurred with very high levels of investment per hectare*
- *the cultural landscape within valley landform*
- *a significant number of heritage buildings, structures and tree plantings*
- *the visual amenity of viticultural development.”*

58. Clause 5.5.1iii recognises as a Resource Management Issue the Protection of Unique Agricultural Resources at Gibbston as follows:

***“iii Protection of Unique Agricultural Resources at Gibbston***

*The Gibbston area has a particular suitability for productive land use activities, enabled by the microclimate of the area. It has an established reputation for the production of high quality wines from its grape plantings. The extent of these plantings is expanding rapidly.*

*Vineyard development is now at a level where additional production facilities and structures are to be anticipated. This is consistent with the recognised trends in the viticultural industry, where subsequent to initial production occurring, cash flow is moved away from vineyard plantings to winery investment.*

*For the District as a whole the viticultural environment at Gibbston is an important component of the visitor facilities/attractions available within Queenstown.*

*The above resources may potentially be adversely affected by the impacts of other activities. These effects need to be controlled if conditions are to be provided for the sustainable management of the agricultural resource present.*

*There is potential for the following activities to adversely affect the sustainable management of agricultural resources:*

- *growth pressures: in the absence of clear and long-term policies, uncertainty and speculative pressures may result in a lack of investment in rural productive activities.*
- *urban development: by removing the land resource on a permanent basis and resulting in interface pressures for living environment performance standards, such as an absence of frost-fighting and other noisy machinery and expectation of a quiet noise environment.*
- *subdivision to allotment sizes which are adequate for utilising the potential of the land. Where this results in a significant number of dwellings, similar expectation for quiet living as described above may occur.*
- *the development of non-rural activities.”*

59. Clause 5.5.1v recognises the appropriateness of some non-rural productive activities in Gibbston as a Resource Management Issue as follows:

***“v The recognition that some non-rural productive activities will be appropriate in Gibbston where potential adverse effects on landscape, heritage character, soil resources and productive activities can be managed (remedied), mitigated or avoided.***

*Gibbston is an attractive rural environment, with a significant viticultural resource. There is potential for further diversification of this resource, and for other productive resources.*

*Considerable parts of the Gibbston Character Zone have high actual or potential value for these activities, while some other areas/allotments may not offer the same potential (eg. they may have poor thermal gradients, inadequate frost drainage or be of an unsuitable allotment size). There is the potential for use of such sites as described below, or for limited lifestyle or dwellings development – where the effects of these activities on primary production and landscape quality is not compromised.*

...”

60. It is clear that within the Gibbston Character Zone land resources which have soils and microclimate particularly suitable for viticulture are intended to be protected; and that those areas that do not have high actual and potential value for such productive activity are identified as having potential for limited lifestyle or dwellings development where the effects of those activities on primary production and landscape quality is not compromised.

61. When read as a whole the relevant provisions of the Operative District Plan, including the Resource Management Issues presented in Clause 5.5.1, place particular emphasis on the potential productivity of the resources that exist in the Gibbston Character Zone. Accordingly the Commission rejects Ms Baker-Galloway’s submission in reply to the effect that the potential productivity of the subject site is not actually a matter that the Operative District Plan requires to be given much weight at all.

62. The Commission considers that the receiving environment, including the resource characteristics and values present in the Gibbston Character Zone as described in Clause 5.5.1 of the Operative District Plan, is relevant when assessing the effects of the proposed activity, when giving consideration to the proposal in the context of the objectives and policies of the Operative District Plan and the Proposed District Plan, and in terms of addressing the matter of precedent.

### **B.3 Affected Persons Approvals**

63. No affected persons approvals have been provided.

### **B.4 Assessment Matters**

64. The Operative District Plan became fully operative on 10 December 2009. The Operative District Plan contains assessment matters in Parts 5, 14, 15 and 22 that are relevant to subdivision and development in the Gibbston Character Zone.

65. The Officer's reports, the application and the evidence presented to us have assessed the effects of the activity in terms of the relevant assessment matters. In our view this approach is generally appropriate and we have assessed the actual and potential effects of the proposed activity having regard to the relevant assessment matters presented, particularly those presented in Parts 5 and 15 of the Operative District Plan. While adopting this approach the Commission acknowledges that all actual and potential effects on the environment of allowing the activity are to be considered pursuant to section 104(1)(a) of the Act.

## **B.5 Part 5**

66. Assessment matters specific to the Gibbston Character Zone are presented in Clause 5.8.2 of the Operative District Plan. The Commission acknowledges that assessment matters specific to subdivision in the Gibbston Character Zone are presented in Clause 15.2.3.6(i)(c); and that these are generally consistent with those presented in Clause 5.8.2. Accordingly the following analysis relates to both the subdivision and the land use activity that are proposed in the application.

### **B.5.1 Effects on Gibbston Valley's Character**

67. The relevant assessment matters as presented in Clause 5.8.2iA) state as follows:

#### *"A) Effects on Gibbston Valley's character*

*In considering whether the adverse effects (including potential effects of the eventual construction and use of buildings and associated spaces) on Gibbston Valley's 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 the development proposed will compromise any open character of the adjacent Outstanding Natural Landscape or Feature;*
- (ii) whether the scale and nature of the development will compromise the productive potential, amenity or character of the surrounding Gibbston Valley;*
- (iii) whether the development will degrade the amenity or character of the surrounding Gibbston Valley by causing over-domestication of the landscape."*

68. In terms of Assessment Matter 5.8.2iA)(i) the Commission records that Ms Steven was of the opinion that the Gibbston Valley is an Outstanding Natural Landscape (ONL) on the basis that the Gibbston Valley floor is too small to be a landscape in its own right. Mr Skelton was of the view that the valley floor (as depicted in his Attachment AA) is a Visual Amenity Landscape (VAL). Mrs Macdonald also noted that the Environment Court discussed the Kawarau Gorge below the bungee bridge [which includes the Gibbston Valley] under the heading Visual Amenity Landscapes in the Court's major landscape decision Wakatipu Environmental Society Inc and Others v QLDC Dec C180/99.

69. The site and its environs on the valley floor are generally consistent with the description of visual amenity landscapes as contained in Clause 4.2.4(3) of the Operative District Plan and the Commission accepts that the site is within a VAL. The landscape witnesses were agreed that the surrounding landscapes comprise Outstanding Natural Landscapes; and Mr Skelton was of the opinion that Little Mt Rosa is an Outstanding Natural Feature.

70. The Commission is satisfied that the proposal will not compromise the open character of the Outstanding Natural Landscape or the Outstanding Natural Feature that are adjacent to (ie. lying near) the site.

71. The proposal is to subdivide the subject site which has an area of 8.8727 hectares into 7 allotments each with a residential building platform; and residential curtilages are to be defined on Lots 2, 3 and 5-8. It is proposed to reinstate a vineyard on Lot 1 (which is to have an area of 3.7622 ha) that comprises 42.4% of the site; and the balance of the property is to be subdivided into Lots 2-3 and 5-8 for rural residential purposes. The aggregate area of the land in Lots 2, 3 and 5-8 is some 5.1105 hectares or 57.6% of the site area.

72. As previously noted the site is occupied by a derelict vineyard. It is understood that this vineyard, known as the Nevis Bluff vineyard, was planted in about 1993 and Mr Deaker's expert viticultural evidence outlined the circumstances which has resulted in this situation. In summary the vineyard comprised vines planted on their own roots which are vulnerable to the root aphid Phylloxera; and the first signs of Phylloxera (that kill vines planted on their own roots) were discovered in 2006 in the Nevis Bluff

vineyard. Subsequently the vineyard was abandoned and become overrun with weeds. Mr Wilkinson confirmed that he has not, to date, replanted the vineyard.

73. Mr Deaker is of the opinion that if the vineyard on the subject site had been planted on grafted vines, and latterly had permanent frost protection, that there would be no issue with the financial viability of farming grapes at the site. He considered the site to be very ideal and suitable for viticulture.

74. The Commission has concluded that the proposal will compromise the productive potential of the site, and therefore of the surrounding Gibbston Valley, by enabling 57.6% of the site to be subdivided for rural residential purposes. Providing for such an enclave or cluster of rural residential development on the subject site would have an adverse effect on the amenity and character of the surrounding Gibbston Valley; and the Commission again notes in this context the special character of the Gibbston area which in large part is derived from viticultural development as confirmed in Clause 5.5.1ii of the Operative District Plan. In all the circumstances the Commission considers that the proposal represents inappropriate subdivision, use and development at Gibbston.

75. In terms of Assessment Matter 5.8.2iA)(iii) the Commission has noted Ms Steven's conclusion that over-domestication would be an effect as the proposal as a whole does not have sufficient on-site open space to mitigate its effects. The Commission therefore finds that the development will degrade the amenity and character of the surrounding Gibbston Valley by causing over-domestication of the landscape.

### **B.5.2 Visibility of Development**

76. Visibility of development is subject to the following assessment matters in terms of Clause 5.8.2iB) of the Operative District Plan:

#### *"B) Visibility of development*

*In considering whether the development will result in a loss of the viticultural or arcadian pastoral character of the landscape the Council shall have regard to whether and the extent to which:*

- (i) the proposed development is highly visible when viewed from any public roads and other public places which are frequented by the public, or is visible from SH6;*



- (ii) *development which is highly visible or visible pursuant to (i) above is appropriate within Gibbston Valley;*
- (iii) *the proposed development is likely to be visually prominent such that it dominates or detracts from views otherwise characterised by viticultural or cultural landscapes;*
- (iv) *there is opportunity for screening or other mitigation by any proposed method such as earthworks and/or new planting which does not detract from the existing natural topography;*
- (v) *the subject site and the wider visual amenity landscape of which it forms part is enclosed by any confining elements of topography and/or vegetation;*
- (vi) *any residential 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;*
- (vii) *any proposed roads, earthworks and landscaping will change the line of the landscape or affect the viticultural landscape particularly with respect to elements which are inconsistent with the existing natural topography;*
- (viii) *boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape and/or landscape units."*

77. The proposal will be highly visible when viewed from Gibbston Back Road in the vicinity of the site; and will be visible from approximately 2 kilometres of State Highway 6 at the eastern end of the Gibbston Valley.

78. In terms of Assessment Matter 5.8.2iB)(ii) the Commission considers that the development as a whole is not appropriate within the Gibbston Valley having regard to its visual prominence and to the fact that the cluster of rural residential development is proposed on land that has a high actual or potential value for viticulture.

79. The proposal will be visually prominent as viewed from State Highway 6 at the eastern end of the Gibbston Valley and as viewed from Gibbston Back Road. As previously noted the site has a history of viticulture and viticulture is established on the adjacent properties to the south of State Highway 6 in this locality. The Commission finds that the development is likely to be visually prominent such that it detracts from views otherwise characterised by viticultural landscapes.

80. In terms of Assessment Matter 5.8.2iB)(iv) the proposed earthworks (that include earthworks associated with deflector bunds, access roads and soil capping) will not detract from the existing natural topography; and Ms Steven has observed that there will be no change to the main topographical feature, which is the incised gully that bisects the site. Proposed planting will not detract from existing natural topography.
81. The Commission notes that Assessment Matter 5.8.2iB)(v) explicitly refers to the “wider visual amenity landscape” of which the site forms part. This supports the Commission’s conclusion that the site forms part of a VAL.
82. In the context of Assessment Matter 5.8.2iB)(v) the Commission observes that the site is not enclosed by any confining elements of topography albeit that the eastern part of the Gibbston Valley is, in a broader sense, topographically separate from the balance of the valley as indicated on Ms Steven’s Figure 1. As a consequence of this broader topographical separation views of the site from State Highway 6 are achieved from a radius of approximately 1 kilometre of the site.
83. The Commission is satisfied that the residential building platforms will not give rise to any structures being located where they will break the line and form of any skyline. The height of any future building on Lot 1 has now been reduced to avoid any skyline breach as initially identified by Ms Steven. Ms Steven has advised that any interruption to the view of Little Mt Rosa by a future building on Lot 1 will be small and experienced in a fleeting glimpse only; and that any such visual interruption would have a negligible effect.
84. In terms of Assessment Matters 5.8.2iB)(vii) and (viii) the proposed roading and earthworks will not change the line of the landscape or effect the viticultural landscape; but landscaping on the rural residential allotments being Lots 2, 3 and 5-8 will adversely affect the viticultural landscape as some 5.1105 hectares will be landscaped for predominantly domestic purposes rather than being in vineyard. As the site is reasonably flat and the wider landscape is in geometric vineyards, the proposed boundaries would not be seen as being inconsistent with the natural lines of the landscape and/or landscape units.

### **B.5.3 Rural Amenities**

85. Clause 5.8.2iC) contains assessment matters relating to rural amenities as follows:

*“C) Rural Amenities*

*In considering the potential effect of the proposed development on rural amenities, the following matters shall be taken into account:*

- (i) whether the proposed development maintains adequate and appropriate visual access to open space and views across Arcadian pastoral landscape from SH6 and other public places; and from adjacent land where views are sought to be maintained;*
- (ii) whether the proposed development compromises the ability to undertake viticultural activities on surrounding land;*
- (iii) whether the proposed development is likely to require infrastructure consistent with urban landscapes such as street lighting, curb and channelling and impervious surfaces other than roads, particularly in relation to SH6 frontages;*
- (iv) whether landscaping, including fencing and entrance ways, are consistent with a traditional rural elements, particularly where they front SH6.*
- (v) The proposed use of the winery building, and whether a covenant has been placed on the winery building prohibiting or restricting any change to that use.”*

86. In terms of Assessment Matter 5.8.2iC)(i) it is noted that the site is set in a viticultural landscape rather than an Arcadian pastoral landscape as viewed from State Highway 6. Amendments have been made to the proposal to restrict the height of built development and tree planting; mitigating any effects in terms of the views of Little Mt Rosa. Given that this is not an Arcadian pastoral landscape the Commission finds that this assessment matter has limited relevance in this instance.

87. In terms of Assessment Matter 5.8.2iC)(ii) the Commission notes that the proposal is to provide for a cluster of rural residential allotments (being Lots 2, 3 and 5-8) adjacent to the southern and western boundaries of the site.

88. While conditions are offered by the applicant with respect to reverse sensitivity, the Commission acknowledges the concerns expressed by submitters including Mr Brennan who operates the vineyard to the south of the site. These concerns are to the effect that notwithstanding “no complaint” type condition, future residents of Lots 2,

3, 5-8 are likely to complain about certain activities associated with viticulture, including spraying, shooting (for bird control) and frost fighting on the neighbouring Brennan property, and possibly on others. The Commission accepts these to be valid concerns given the close proximity of the building platforms (and particularly those on Lots 5 and 6) to the adjacent Brennan vineyard.

89. The Commission acknowledges in the context of reverse sensitivity that Mr Allen, who operates the Lanes vineyard to the west of the site, is supportive of the proposal.

90. The applicant does not propose infrastructure consistent with urban landscapes.

91. In terms of Assessment Matter 5.8.2iC)(iv) the applicant has proposed design controls to ensure rural character is retained in respect of fencing, entrances, planting and landscaping. Vineyard and native planting is proposed at the frontage to State Highway 6.

92. Assessment Matter 5.8.2iC)(v) is not relevant as no winery building has been proposed as part of the development. This assessment matter would be relevant in the context of any future application for land use consent for such activity.

#### **B.5.4 Form and Density of Development**

93. Clause 5.8.2iD) contains assessment matters with respect to the form and density of development as follows:

##### *“D) Form and Density of Development*

*In considering the appropriateness of the form and density of development the following matters shall be taken into account:*

- (i) whether and to what extent there is the opportunity to utilise existing natural topography to ensure that the development is located where it is not highly visible when viewed from any public roads and other public places frequented by the public, or visible from SH6;*
- (ii) whether and to what extent there is the opportunity for the aggregation of built development to utilise common access ways including pedestrian linkages, services and commonly-held open space (ie. open space held in one title whether jointly or otherwise);*
- (iii) whether and to what extent development is concentrated in areas with a high potential to absorb development while retaining areas which are more sensitive in their natural state;*

- (iv) *whether and to what extent the proposed development, if it is visible, does not introduce densities which reflect those characteristics of urban areas.*
- (v) *With regard to proposals that breach one or more zone standard(s), whether and the extent to which the proposal will facilitate the provision of a range of Residential Activity that contributes to housing affordability in the District.”*

94. Given the flat nature of the site there is no opportunity to utilise existing natural topography to ensure that the development is located such that it is not highly visible from Gibbston Back Road or visible from State Highway 6. The development will be highly visible and visible from Gibbston Back Road and State Highway 6, respectively.

95. In terms of Assessment Matter 5.8.2iD)(ii) the proposal utilises a common access allotment (being Lot 800) to serve Lots 2, 3 and 5-8. Given that the proposal is to create freehold lots, no provision is made for commonly held open space.

96. As the site has previously been developed for vineyard purposes it cannot be described as being in a natural state. Given that the development will be highly visible from Gibbston Back Road and visible from State Highway 6 the proposal does not result in development being concentrated in an area with a high potential to absorb development.

97. In terms of Assessment Matter 5.8.2iD)(iv) it is accepted that the proposed development does not introduce densities which reflect those characteristic of urban areas. It is noted in this context that Lots 2, 3 and 5-8, which are to be developed and used for rural residential purposes have an average area of some 8518m<sup>2</sup>.

98. Assessment Matter 5.8.2iD)(v) is not relevant as no zone standards are to be breached in this instance. While this assessment matter refers to housing affordability the Commission concurs with Mr Matthee that the creation of rural residential allotments would arguably cater to the upper end of the market, rather than contributing to housing affordability in the District.

### **B.5.5 Cumulative Effects of Development on the Landscape**

99. Clause 5.8.2iE) contains assessment matters relating to cumulative effects of development on the landscape as follows:

#### *“E) Cumulative Effects of Development on the Landscape*

*In considering whether and the extent of which the granting of the consent may give rise to adverse cumulative effects on the viticultural 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 in A) to D) 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 viticultural and Arcadian pastoral character of the landscape by exacerbating existing and potential adverse effects;*
- (v) whether the potential for the development to cause cumulative adverse effects may be avoided, remedied or mitigated by way of covenant, 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).”*

100. The assessment matters detailed in A) to D) have been addressed above. The proposal has been found to constitute over-domestication of the landscape and to be inappropriate given that land having high actual or potential value for viticulture is proposed to be subdivided to provide for a cluster of rural residential development.

101. Existing development within the vicinity includes the established vineyards on the neighbouring properties and four dwellings to the east (across Gibbston Back Road) as consented in a consent order of the Environment Court in the context of RM 010388. Residential development also exists on the north side of State Highway 6 which is visible (along with that authorised by RM 010388) as vehicles approach from the east on State Highway 6 at Nevis Bluff. Further afield there are a number of residences and residential sections at Mt Rosa albeit that many of these are not in the

“vicinity” as defined in the Note which follows Clause 5.8.2iE) in the Operative District Plan.

102. In terms of Assessment Matter 5.8.2iE)(iii) the Commission acknowledges that the landscape at the eastern end of the Gibbston Valley, as viewed from State Highway 6 in the vicinity of Nevis Bluff, contains significant existing development. The Commission has concluded that the proposed development is likely to lead to further degradation or domestication of the landscape such that the existing built development represents a threshold with respect to the vicinity’s ability to absorb further change as proposed, being a cluster of rural residential subdivision and development. The Commission also observes in this context that it appears that existing residential development in the vicinity has been permitted on land with limited productive potential; whereas productive land is proposed to be subdivided and developed in this instance.

103. The development will visually compromise the existing viticultural character of the landscape by exacerbating existing and potential adverse effects that will result from the introduction of a cluster of rural residential subdivision and development into a part of the Gibbston Valley that has obvious viticulture character.

104. In terms of Assessment Matter 5.8.2iE)(v) the potential for the development to cause cumulative adverse effects is unlikely to be mitigated by way of covenant, consent notice or other legal instrument; and no such measures, to address cumulative adverse effects, have been volunteered by the applicant in this instance.

#### **B.5.6 State Highway 6**

105. Clause 5.8.2ii contains assessment matters with respect to State Highway 6 as follows:

**“ii State Highway 6**

- (i) the extent to which the development is visible from the road in terms of the effects on rural and/or cultural character and vistas from the road.*
- (ii) The extent to which visual coherence can be maintained or enhanced by alternative locations and landscaping including planting and earthworks.*
- (iii) Whether the location of planting will obstruct views of Outstanding Natural Landscapes and Features.”*

106. In this instance the subject site is adjacent to State Highway 6 and development will be visible from the east and west as vehicles approach and pass the site on State Highway 6. Future development on Lot 1 will be clearly visible from the road; and the roofs of future dwellings and accessory buildings on Lots 2, 3 and 5-8 will also be visible from the road. This cluster of rural residential development will have an adverse effect on rural character and vistas from State Highway 6.

107. In terms of Assessment Matter 5.8.2i(ii) no alternative locations have been identified with respect to the rural residential allotments and residential building platforms which are clustered in the southern portion of the site. Landscaping, which is intended to complement existing trees on the site, will contribute little to visual coherence; and the proposed earthworks will also contribute little in this respect.

108. As previously noted Little Mt Rosa has been identified by Mr Skelton as an ONF. Restricting the height of plantings, as proposed, will minimise effects in terms of obscuring views of the lower portion of the ONF. The proposal will have no effect on views of the mountainous landscape which encloses the Gibbston Valley which Mr Skelton and Ms Steven agree is an ONL.

#### **B.5.7 Access**

109. While the site has physical frontage to State Highway 6 the applicant has volunteered a condition to the effect that access to Lot 1 will be achieved from Gibbston Back Road and not from State Highway 6. Such a condition will satisfy the intent of the submission by the NZ Transport Agency on the application.

110. Access to Lots 2, 3 and 5-8 is to be achieved via an access allotment (Lot 800) adjacent to the southern boundary of the site and then via access strips subject to reciprocal right of way easements.

111. The access arrangements with respect to Lot 1 and Lots 2, 3 and 5-8 have been considered by Mr Dennis. In essence effects with respect to access can be mitigated by adherence to appropriate conditions of consent.



### **B.5.8 Services**

112. The applicant has identified options for domestic water supply being the Mt Rosa Wines Limited private water scheme or the Gibbston Community Water Company 2014 Limited scheme. It is proposed that water storage for firefighting will be installed on the respective allotments by individual lot owners.

113. Effluent disposal and stormwater disposal is to be to ground within the respective allotments.

114. Correspondence from Aurora Energy Limited dated 13 July 2017 and Chorus dated 19 July 2017 confirm that electricity and telecommunication reticulation can be provided to the subdivision.

115. The Commission has concluded that any effects in terms of the provision of services will be no greater than minor and can be mitigated by adherence to conditions of consent (some subject to consent notices) as recommended by Mr Dennis.

### **B.5.9 Natural Hazards**

116. The applicant has provided a Geotechnical Assessment report prepared by RD Agritech that addresses natural hazards. That report notes that there are four hazards present across the site as identified on the Council's Webmaps being alluvial fans described as recently active, regional scale - flood water dominated fan, river terrace, and fan less recently active. The Agritech report confirms that the regional scale – flood water dominated fan has low to very low risk of impacting the site; and that the remaining three hazards are considered to be very low to nil risk.

117. The Agritech report recommends deflection bunds to mitigate any effects of flood water associated with the regional scale – flood water dominated fan. Deflection bunds are proposed to deflect flood water away from the Lot 8 building platform (the bund being in Lot 8) and from the Lot 1 building platform (the bund being in Lot 3).

118. The applicant proposes to protect access to the deflector bund proposed on Lot 3 via an easement.

119. The Agritech report also notes that seismic ground shaking has been identified as a risk for the Wakatipu region as a whole and that prudent design to mitigate the risk of seismic ground shaking should be applied to all proposed structures.

120. In summary any adverse effects associated with the natural hazards discussed above can be mitigated by adherence to appropriate conditions of resource consent and/or at the building consent stage.

#### **B.5.10 Arsenic Soil Contamination**

121. Opus International Consultants Limited have prepared a Preliminary Site Investigation report (PSI) and a Detailed Site Investigation report (DSI). The applicant has also provided a copy of an Arsenic Bioavailability Assessment prepared by HAIL Environmental with respect to land at Mt Rosa in close proximity to the subject site.

122. Mr Heveldt has noted that the application of the derived Soil Guideline Value (SGV) for arsenic based on the Mt Rosa Arsenic Bioavailability Assessment findings to the analytical results found in the DSI shows that only a limited area of the site in the south-east corner has arsenic concentrations at or slightly in excess of the 30mg/kg SGV. The presence of arsenic results from an historical drainage feature that leads from an unnamed gully below Antimony Saddle to the south of the subject site.

123. The applicant proposes to cap that portion of the site with an SGV in excess of 30mg/kg with clean imported soil; and has also proposed conditions with respect to defining garden beds and excluding the keeping of animals on the affected allotments.

124. Mr Heveldt confirmed at the hearing that the measures now proposed by the applicant will mitigate any adverse effects associated with those arsenic concentrations found at the site which are at or slightly in excess of 30mg/kg SGV.

#### **B.5.11 Positive Effects**

125. The proposal will have positive effects by providing six opportunities for rural residential living in the Gibbston Valley; and providing for 42.4% of the site (in Lot 1) to be re-established as vineyard with a building platform that the applicant proposes to utilise for some commercial activity in close proximity to and visible from State

Highway 6. Capital resources resulting from subdivision could be applied to the development of vineyard on Lot 1.

## **B.6 Summary : Effects and Assessment Matters**

126. The Commission finds that the proposal will have significant adverse effects including the use of land with high actual or potential value for viticulture for rural residential subdivision and development, over-domestication, and visual effects on State Highway 6 and Gibbston Back Road. The Commission concludes that the significant adverse effects outweigh the positive effects associated with the proposal.

## **C. OBJECTIVES & POLICIES**

127. Section 104(1)(b)(vi) of the Act requires that the consent authority have regard to any relevant provisions of a plan or proposed plan. As previously noted these include the Resource Management Issues in Clause 5.5.1 [some of which are presented in Section B.2 of this decision] which provide background and assistance in the consideration of the objectives and policies that are specific to the Gibbston Character Zone.

128. The application and Mr Matthee's section 42A report assesses the proposal in terms of the objectives and policies of the Operative District Plan and the Proposed District Plan. To a large degree the objectives and policies of the Operative District Plan and the Proposed District Plan relate to matters discussed in Section B of this decision. It is neither desirable or necessary, therefore, to undertake a line by line analysis of every objective and policy as this would involve a significant amount of repetition without materially advancing the Commission's analysis of this application.

### **C.1 Operative District Plan**

129. Parts 4, 5, 14 and 15 of the Operative District Plan contain objectives and policies for the whole District, for the Gibbston Character Zone, for Transport, and for Subdivision, Development and Financial Contributions.

## **Part 4**

130. Clause 4.2.4(3) confirms that the visual amenity landscapes are the landscapes to which particular regard is to be had under section 7 of the Act. The key resource

management issues for the visual amenity landscapes are managing adverse effects of subdivision and development (particularly from public places including public roads) to enhance natural character and enable alternative forms of development where there are direct environmental benefits.

131. Section 4.2 relates to Landscape and Visual Amenity. Objective 4.2.5 is:

***“Objective:***

***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.”***

132. Objective 4.2.5 is supported by a number of policies. Policies of relevance include Policy 1 Future Development that relates to the effects of development; Policy 4 that relates to Visual Amenity Landscapes; Policy 8 that relates to Avoiding Cumulative Degradation; and Policy 17 that relates to Land Use.

133. Policy 1 – Future Development – is to avoid, remedy or mitigate the effects of development and/or subdivision in those areas of the District where the landscape and visual amenity values are vulnerable to degradation; to encourage development and/or subdivision to occur in areas of the District that have a greater potential to absorb change without detracting from landscape and visual amenity values; and to ensure that subdivision and/or development harmonises with local topography and ecological systems and other nature conservation values as far as possible.

134. In this instance the subdivision is to occur in an area where the landscape and visual amenity values are vulnerable to degradation; the subdivision is located in an area which does not have greater potential to absorb change without detracting from landscape and visual amenity values (given the visibility from State Highway 6 and from Gibbston Back Road); and, while the proposal includes native plantings, there will be little contribution to nature conservation given that the surrounding land is vineyard.

135. In terms of Policy 4 – Visual Amenity Landscapes – the Commission considers that the proposal will not adequately avoid, remedy or mitigate the adverse effects on the visual amenity landscape that is visible from public roads.

136. In terms of Policy 8 – Avoiding Cumulative Degradation – the Commission concurs with Ms Steven that the proposal constitutes over-domestication of the landscape; and the Commission considers that the proposal does not constitute comprehensive and sympathetic development of rural areas.

137. Policy 17 – Land Use – encourages land use in a manner which minimises adverse effects on the open character and visual coherence of the landscape. In this instance land use consent has been sought for the residential building platforms. The identification of such platforms will not serve to minimise adverse effects on the open character and visual coherence of this landscape in the Gibbston Valley.

138. The Commission has concluded that the proposal will be contrary to Objective 4.2.5 and its supporting policies.

## **Part 5**

139. Part 5.6 of the Operative District Plan contains objectives and policies that are specific to the Gibbston Character Zone. The Commission considers that it is important, when assessing the proposal in terms of these objectives and policies, to bear in mind the description of the special character and resources of the Gibbston area as contained in Clause 5.5.1 Resource Management Issues which have been discussed in Part B.2 of this decision.

140. Objective 1 relates to Character and Landscape Value of the Gibbston Valley; and this objective and its related policies state as follows:

### ***“Objective 1 – Character and Landscape Value***

***To protect the character and landscape value of Gibbston Valley by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.***

#### ***Policies:***

- 1.1 Allow for the establishment of a range of activities, which utilise the soil resource of the rural area in a sustainable manner.***
- 1.2 Ensure land with potential value for rural productive activities is not compromised by the inappropriate location of other developments and buildings.***

- 1.3 *Ensure activities not based on the rural resources of the area occur only where the character of Gibbston Valley will not be adversely impacted.*
- 1.4 *Provide for a range of buildings allied to rural productive activity and worker accommodation.*
- 1.5 *Allow subdivision to a size range that is compatible with the potential productivity of the character area or with other aspects of special character, such as protection/preservation of significant heritage or archaeological resources, or other structures of architectural merit.*
- 1.6 *Avoid or mitigate adverse effects of development on the landscape values of the Valley.*
- 1.7 *Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.*
- 1.8 *Avoid the location of structures and water tanks on skylines, ridges, hills and prominent slopes.”*

141. Mr Deaker has confirmed that the site is very ideal and suitable for viticulture; and several of the individual submitters who are knowledgeable with respect to viticulture have also confirmed that the site is suitable for viticulture. The proposal, which would result in 5.1105 hectares or 57.6% of the site being subdivided and used for rural residential purposes, is inconsistent with promoting the sustainable management of natural and physical resources as provided for in Objective 1.

142. In terms of Policy 1.1 and Policy 1.2 the creation of Lots 2, 3 and 5-8 and their associated residential building platforms is not consistent with allowing for the establishment of a range of activities which utilise the soil resource of the rural area in a sustainable manner; and ensuring that land with potential value for rural productive activities is not compromised by the inappropriate location of other developments and buildings.

143. It is important to note that Policy 1.2 refers to the “potential value for rural productive activities” and physical factors are relevant to such productive potential as described in Clause 5.5.1 of the Operative District Plan. The Commission is satisfied that the potential value for rural productive activities can be distinguished from financial or economic viability factors as discussed in Mr Wilkinson’s evidence. The relevant provisions of the Operative District Plan focus on potential value of the land for productive activity, including viticulture, rather than addressing the financial or economic viability of viticulture under various production regimes. The Commission

has no doubt, based on Mr Deaker's evidence, that the subject site is suitable for viticulture and that the suitability of the site for such use is an important consideration in this instance.

144. The subject site has frontage to State Highway 6 and Gibbston Back Road and future development (as provided for on the residential building platforms) will be visible from State Highway 6 and from Gibbston Back Road. The character of Gibbston Valley, as viewed from these roads, will be adversely impacted by the proposal. The Commission therefore finds that the proposal is also contrary to Policy 1.3.

145. In terms of Policy 1.4 a commercial development allied to rural productive activity is anticipated on Lot 1; but Lots 2, 3 and 5-8 are proposed to be utilised for rural residential purposes and therefore future buildings on these allotments are unlikely to be allied to rural productive activity.

146. As previously noted Lots 2, 3 and 5-8 have an average area of 8518m<sup>2</sup>; and each allotment contains a residential building platform and residential curtilage. Given Mr Deaker's expert opinion that the site is very ideal and suitable for viticulture the Commission has concluded, in terms of Policy 1.5, that the size of the allotments is not compatible with the potential productivity of this site having regard to the special character of the Gibbston Character Zone.

147. The proposal will not serve to avoid or mitigate adverse effects of development on the landscape values of the Gibbston Valley; and will not serve to preserve the visual coherence of the landscape as future structures are not to be located in areas with the potential to absorb change. Accordingly the Commission finds that the proposal is contrary to Policies 1.6 and 1.7.

148. The Commission is satisfied that the proposal, as amended, is not contrary to Policy 1.8.

149. Objective 2 in section 5.6 relates specifically to the life supporting capacity of soil in the Gibbston Valley. Objective 2 and its associated policies state as follows:

***“Objective 2 – Life Supporting Capacity of Soil***

***Retention of the life supporting capacity of soils and/or vegetation in Gibbston Valley so that they are safeguarded to meet the reasonably foreseeable needs of future generations.***

*Policies:*

- 2.1 Avoid, remedy or mitigate adverse effects of subdivision and development on the life-supporting capacity of the soils.*
- 2.2 Enable a range of activities to utilise the range of soil types and microclimates.*
- 2.3 Encourage the long-term retention of the capabilities of the District's soils through research and dissemination of relevant information to the community.*
- 2.4 Encourage land management practices and activities, which avoid, remedy or mitigate adverse effects on soil and vegetation cover.*
- 2.5 Encourage land users to monitor the condition of vegetation on their land by providing information and assistance, where practicable.”*

150. Again when considering Objective 2 and its associated policies it is appropriate to recognise that some 57.6% of the subject site is proposed to be subdivided for rural residential purposes.

151. The Commission considers that the subdivision will not serve to avoid, remedy or mitigate adverse effects on the life-supporting capacity of soils in terms of Policy 2.1.

152. The proposal will also not serve to enable a range of activities to utilise the range of soil types and microclimates; given that Lots 2, 3 and 5-8 are being created for rural residential purposes and such allotments will have an average area of just 8518m<sup>2</sup>.

153. Policies 2.3 – 2.5 appear to of limited relevance albeit that the Commission again notes that the proposal is not consistent with avoiding, remedying or mitigating adverse effects on land and soil resources which have high actual and potential value for viticulture (which is of relevance in terms of Policy 2.4).

154. Objectives 3 and 4 and their associated policies appear to be of limited relevance in this instance.



155. Objective 5 and its associated policy relate specifically to subdivision and state as follows:

***“Objective 5 – Subdivision***

***To provide for subdivision where it results in the sustainable management of resources, and the management of effects.***

*Policy:*

*5.1 Provide for subdivision, which enables variation in the size of new allotments based upon the physical and natural characteristics of the Character Area.”*

156. In this instance the Commission does not consider that the subdivision will result in the sustainable management of resources and the management of effects given that land suitable for viticulture is to be subdivided such that 57.6% of the land is to be subdivided and developed for rural residential purposes. The Commission notes in the context of Policy 5.1 that creating Lots 2, 3 and 5-8, which have an average area of 8518m<sup>2</sup>, is inconsistent with providing for subdivision based upon the physical and natural characteristics of the Gibbston Character Zone.

157. The Commission also notes the Environmental Results Anticipated as presented in Clause 5.6.1 of the Operative District Plan. This confirms that in the Gibbston Character Zone Environmental Results Anticipated include, amongst other matters, the protection of soil resources for productive purposes; the maintenance and enhancement of rural and cultural character; and the further development of rural productive activities based upon the unique combination of land, soils and microclimate; and the protection of the landscape and visual amenities.

158. Following the above analysis of the objectives and policies which apply to the Gibbston Character Zone the Commission finds that the Environmental Results Anticipated by the Operative District Plan would not be realised if consent were to be granted to the proposal.

159. The Commission is firmly of the view that the proposal is contrary to the relevant objectives and policies which are specific to the Gibbston Character Zone as presented in Part 5.6 of the Operative District Plan.

## **Part 14**

160. The relevant objectives and policies in Part 14 are concerned with the maintenance and improvement of access and the ease in safety of pedestrian and vehicle movement. In this instance access is to be achieved off Gibbston Back Road and the applicant is agreeable to a condition as promoted by the NZ Transport Agency to the effect that access not be achieved directly off State Highway 6. The Commission's conclusion is that the proposal is not contrary to the objectives and policies stated in Part 14.

## **Part 15**

161. The relevant objectives and policies in Part 15 relate to the provision of services and to the demand and cost of infrastructure in the context of subdivision. Having regard to Mr Dennis's report the Commission finds that the proposal is not contrary to those objectives and policies. It is again noted that the Operative District Plan contains an objective and policies specific to subdivision in the context of the Gibbston Character Zone being Objective 5 that is discussed above.

### **C.2 Proposed District Plan**

162. The objectives and policies from the Proposed District Plan are discussed in the application and in Mr Matthee's section 42A report. As previously noted the Proposed District Plan contains a Gibbston Character Zone and it is noted that the purpose of the zone is to provide primarily for viticulture and commercial activities with an affiliation to viticulture within the confined space of the Gibbston Valley. The Zone Purpose for the proposed Gibbston Character Zone observes that the zone has experienced residential subdivision and development; and that this creates the potential to degrade the distinctive character and create conflict with established and anticipated intensive viticultural activities.

163. Objective 23.2.1 and its related policies state as follows:

**"23.2.1 Objective – Protect the economic viability, character and landscape values of the Gibbston Character Zone by enabling viticulture activities and controlling adverse effects resulting from inappropriate activities locating in the Zone.**

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Policies: **23.2.1.2** Ensure land with potential value for rural productive activities is not compromised by the inappropriate location of other developments and buildings.

**23.2.1.3** Ensure activities not based on the rural resources of the area occur only where the character and productivity of the Gibbston Character Zone and wider Gibbston Valley will not be adversely impacted.

...

**23.2.1.5** Avoid or mitigate adverse effects of development on the landscape and economic values of the Gibbston Character Zone and wider Gibbston Valley.

**23.2.1.6** Protect, maintain and enhance landscape values by ensuring all structures are to be located in areas with the potential to absorb change.

...”

164. The Commission also notes that Objective 23.2.2 and its associated policies relate to sustaining the life supporting capacity of soils as follows:

**“23.2.2 Objective – Sustain the life supporting capacity of soils.**

...

Policies: **23.2.2.1** Avoid the adverse effects of subdivision and development on the life-supporting capacity of soil.

**23.2.2.2** Enable of range of activities to utilise the range of soil types and microclimates.

...”

165. The Commission notes that Objectives 23.2.1 and 23.2.2 of the Proposed District Plan and the associated policies are generally consistent with the relevant objectives and policies of the Operative District Plan. Having regard to the analysis presented in Part C.1 of this decision the Commission concludes that the proposal is contrary to the relevant objectives and policies of the Proposed District Plan which relate to the Gibbston Character Zone and which are presented above.

166. Given the uncertainty with respect to the relevant objectives and policies of the Proposed District Plan the Commission has chosen not to address those objectives and policies in any further detail in this decision. The Commission considers that minimal weight can be given to these provisions of the Proposed District Plan given that this document is at an early stage in the statutory process.

### **C.3 Summary : Objectives and Policies**

167. Following the above analysis, the Commission finds that the proposal is contrary to those objectives and policies of the Operative District Plan and the Proposed District

Plan that are specific to the Gibbston Character Zone; and to the relevant objective and policies presented in Part 4 of the Operative District Plan.

#### **D. REGIONAL POLICY STATEMENT AND PROPOSED REGIONAL POLICY STATEMENT**

168. Mr Matthee's report assessed the proposal in terms of the objectives and policies contained in the Regional Policy Statement for Otago which became operative on 1 October 1998; and in terms of the Proposed Regional Policy Statement for Otago, decisions with respect to which were released on 1 October 2016.

169. The Commission considers that the proposal is not consistent with Objective 9.4.3 and the associated Policies 9.5.4 and 9.5.5 of the Operative Regional Policy Statement albeit that the objective and policies are expressed in general terms.

170. The Commission notes that there is considerable uncertainty with respect to the contents of the Proposed Regional Policy Statement as many of the provisions of that document are subject to appeal. Accordingly no particular weight should be given to the Proposed Regional Policy Statement albeit that Mr Matthee considers that the proposal does not reach the outcome sought by the relevant objectives and policies of the Proposed Regional Policy Statement.

#### **E. OTHER MATTERS**

171. Section 104(1)(c) of the Act requires the consent authority to have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application.

##### **E.1 Precedent**

172. Precedent is a relevant consideration notwithstanding that subdivision consent and land use consent is sought for a discretionary activity. The decision of the Environment Court in John Scurr v QLDC Dec C060/2005 at paragraphs 43 and 44 observes that a grant of consent to a discretionary activity can be a precedent in the sense of creating an expectation that a like application will be treated in a like manner; and that there is even greater reason to consider the issues of precedent for discretionary activities in the context of the Operative District Plan, noting that discretionary activities have been awarded such status .... “.. because in visual

amenity landscapes the relevant activities are inappropriate in many locations;...” [see Clause 1.5.3iii(iii) of the Operative District Plan].

173. In this instance the subject site contains a derelict vineyard but the expert viticultural evidence of Mr Deaker has confirmed that the site is very ideal and suitable for viticulture. The Commission considers that consent to the current proposal, if granted, would establish a precedent for the subdivision of land in the Gibbston Valley for rural residential purposes, despite such land having high actual or potential value for viticulture. If consent were granted to the current proposal the owners of other land at Gibbston that is suitable for viticulture, and which may not be actively used for such purposes at present, could also expect that a future application for rural residential subdivision of part of their land would also be consented.

174. The Commission also notes that the site is visible from State Highway 6 and from Gibbston Back Road; and that the proposal would establish a precedent for the subdivision of land visible from State Highway 6 elsewhere in the Gibbston Valley for rural residential purposes.

175. In all the circumstances the Commission is satisfied that the proposal would establish a significant precedent for subdivision and development elsewhere in the Gibbston Character Zone.

## **E.2 Matters Raised by Submitters**

176. The Commission confirms that it has given consideration to the matters raised in all submissions. Opposing submitters have emphasised that the subject site is close to the eastern gateway to the Gibbston Valley and that the proposal would be inappropriate in the context of this gateway. Opposing submitters have also emphasised the importance of wine tourism to the New Zealand economy; and have emphasised the inappropriateness of providing for a cluster of rural residential subdivision and development within the vineyard landscape at Gibbston which is a focal point for tourists.

177. The Commission acknowledges these concerns and finds that these factors are matters that weigh against the proposal noting that Clause 5.5.1iii of the Operative District Plan acknowledges that for the District as a whole the viticultural environment

at Gibbston is an important component of the visitor facilities/attractions available within Queenstown.

### **E.3 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health**

178. The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES) came into effect on 1 January 2012. As the arsenic concentrations on the subject site are at or below background concentrations Regulation 5(9) of the NES confirms that the NES does not apply in this instance.

179. As noted in Part B.5.10 of this decision Mr Heveldt has confirmed that the measures and conditions promoted by the applicant will mitigate any adverse effects associated with arsenic contamination; and accordingly the Commission has concluded that any effects in terms of potential soil contamination will be no greater than minor.

### **E.4 Section 106 of the Act**

180. Mr Matthee has noted that a consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that the land is or is likely to be subject to, or is likely to accelerate material damage from, natural hazards. The Commission concurs with Ms Baker-Galloway's submission that arsenic concentration is not a "natural hazard" as identified in section 106 of the Act as that section existed at the time that the application was lodged (prior to the coming into force of the Resource Legislation Amendment Act 2017). The Commission finds that there is no reason under section 106 to refuse consent.

### **E.5 Other Matters**

181. No other matters appear to have any particular relevance in this instance in terms of section 104(1)(c).

## **F. PART 2 OF THE ACT**

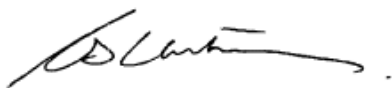
182. Given the uncertainty with respect to whether consideration needs to be given to Part 2 in the context of resource consent applications and given the inchoate status of the Proposed District Plan the Commission considers it appropriate to consider Part 2 in this decision. Part 2 of the Resource Management Act contains sections 5 to 8. These are referred to in reverse order.

183. Section 8 requires the Commission, in exercising its functions on this application, to take into account the principles of the Treaty of Waitangi. No issues were raised in reports or evidence in relation to section 8.
184. Section 7 directs that in achieving the purpose of the Act particular regard is to be had to certain matters which include, of relevance here, the efficient use and development of natural and physical resources; the maintenance and enhancement of amenity values; and the maintenance and enhancement of the quality of the environment. The proposal will not serve to achieve efficient use and development of natural and physical resources as the majority of the subject site that is suitable for viticulture is proposed to be subdivided and developed for rural residential purposes; and the proposal will not maintain and enhance amenity values and the quality of the environment in the Gibbston Character Zone. There are no other matters stated in section 7 which are of any particular relevance to the current application.
185. There are no matters of national importance stated in section 6 which are of any particular relevance to the application albeit that it is acknowledged that Little Mt Rosa is identified by Mr Skelton as being an Outstanding Natural Feature in terms of section 6(b).
186. Section 5 sets out the purpose of the Act – to promote the sustainable management of natural and physical resources. Taking into account the definition of sustainable management contained in section 5(2), the Commission is not satisfied that the application will achieve the purpose of the Act.
187. Sustainable management means managing the use, development and protection of natural and physical resources within certain parameters. In this instance the proposal will not result in the natural and physical resources of this site being sustainably managed to meet the reasonably foreseeable needs of future generations, and in this instance the adverse effects of the activity on the environment are not to be avoided, remedied or sufficiently mitigated.

## **G. OUTCOME**

188. Section 104 of the Act directs that when considering an application for resource consent and any submissions received in response to it, the Commission must, subject to Part 2, have regard to the actual and potential effects on the environment of allowing the activity together with the relevant provisions of the Operative District Plan and of the Proposed District Plan. In the course of considering the application and the submissions and in reaching this decision the Commission has followed this process. Under section 104B the Commission has discretion to grant or refuse consent to the application; and the Commission hereby refuses subdivision and land use consent for the reasons stated in this decision.

This decision on RM170201 is dated 14 February 2018.

A handwritten signature in black ink, appearing to read 'W D Whitney', with a long horizontal flourish extending to the right.

**W D Whitney**

**CHAIR**

**FOR THE COMMISSION BEING WD WHITNEY & D CLARKE**