

CENTRAL OTAGO DISTRICT COUNCIL
S95A-F DECISION FOR RC250077
Luggate-Cromwell Road (State Highway 6), Cromwell

INTRODUCTION

The application seeks land use consent to extract alluvial gold over a three year period in the rural resource area at Luggate-Cromwell Road (State Highway 6), Lot 1 DP 466676, Cromwell. The site is partially subject to a flood hazard notation, associated with the Clutha River, in the Otago Regional Council's Natural Hazards Portal.

The proposed mine would be located on the lower terrace of the site, working between the base of the terrace and the Mata-Au Clutha River. The following setbacks are proposed:

- 40m from top of the riverbank
- 10m from the Mata-Au Clutha River marginal strip
- 5m from the drip line of any kanuka
- 10m from the boundary with the DoC reserve.

Mining is proposed to be carried out for up to 10 hours per day, Monday to Friday and directly employ four people. The applicant anticipates that around 200m³ of material could be processed per hour. The applicant proposes that the active mine area would be up to 2 hectares in area (Excluding office, storage and maintenance areas), with a mined face approximately 50m across. The active mining area would shift around the site, progressively stripping, extracting and remediating the land. The remediation would include backfilling, replacing topsoil and resowing with pasture grass. The applicant intends that remediated areas would be contoured to match existing landforms as closely as possible.

Mine equipment is proposed to consist of a floating gold processing screen plant, five excavators, two dump trucks, a bulldozer, pumps and ancillary equipment. Up to 2,520m³ of water per day is proposed to be used to run the processing plant, based on a flow rate of 70L/s over a 10 hour working day. The applicant intends this to primarily come from groundwater brought to the surface into ponds, and supplemented by water from the Mata-Au Clutha River. Bulk storage of 10,000 litres of diesel fuel is proposed on site. Fuel would be contained within double skinned tanks that have bunds constructed around them with 120% spill capacity.

Access to the site is from State Highway 6. The applicant proposes to retain the existing access location and design roughly opposite Pukerangi Drive. The applicant anticipates that most heavy vehicle movements would occur at the start and end of the mine's operation, with most movements during operation being light vehicles, for example staff vehicles, fuel and maintenance vehicles.

The application is supported by assessment from people with the following expertise:

Benje Patterson – Economist
Juan Gaviria – Acoustic Engineer
Mike Moore – Landscape Architect
Dr Blair McPhee – Archaeologist
Tom Heller – Environmental Scientist/Engineer
Darrly Sycamore – Planner

SECTION 95A NOTIFICATION

Step 1 – Mandatory public notification

Public notification has not been requested. (s95A(3)(a)).

There has been no failure or refusal to provide further information or the commissioning of a report under section 92(2)(b) of the Act (s95A(3)(b)).

The application does not involve the exchange of recreation reserve land under section 15AA of the Reserves Act 1977 (s95A(3)(c)).

Step 2 – Public notification precluded

There are no rules or national environmental standards precluding public notification (s95A(5)(a)).

The proposal is not exclusively for controlled activities and/or boundary activities (s95A(5)(b)).

Step 3 – If not precluded by Step 2, public notification is required in certain circumstances

The application is not for a resource consent for one or more activities, where those activities are subject to a rule or national environmental standard that requires public notification (s95A(8)(a)).

A consent authority must publicly notify an application if it decides under s95D(8)(b) that the activity will have or is likely to have adverse effects on the environment that are more than minor (s95A(2)(a)). An assessment under s95D is therefore made below.

ASSESSMENT OF EFFECTS ON THE ENVIRONMENT (s95D)

MANDATORY EXCLUSIONS FROM ASSESSMENT (S95D)

- A: Effects on the owners or occupiers of land on which the activity will occur and on adjacent land (s95D(a)).*
- B: An adverse effect of the activity if a rule or national environmental standard permits an activity with that effect (s95D(b) (the permitted baseline, refer to section below)).*
- C: In the case of a restricted discretionary activity, any adverse effect that does not relate to a matter for which a rule or national environmental standard has restricted discretion (s95D(c)).*
- D: Trade competition and the effects of trade competition (s95D(d)).*
- E: Adverse effects on any parties who have provided written approval must be disregarded (s95D(e)).*

The following persons have provided their written approval to the proposal:

PERMITTED BASELINE (S95D(B))

Under Section 95D(b) of the RMA, an adverse effect of the activity on the environment may be disregarded if the plan permits an activity with that effect. That is, an application can be assessed by comparing it to the existing environment and development that could take place on the site as of right, without a resource consent, but excluding development that is fanciful. In this case, earthworks under the District Plan are permitted up to an area of 2,000m² and a volume of 3,000m³, and commercial activities employing up to three people are also permitted. This forms a permitted baseline. However, given the difference in scale, particularly in relation

to earthworks, I do not consider that applying a permitted baseline would be particularly beneficial to Council's consideration of the application.

ASSESSMENT: EFFECTS ON THE ENVIRONMENT

Broadly speaking, I consider that the proposed mining activities can have effects on the following matters:

- Noise effects
- Rural amenity, visual and landscape character effects
- Effects on the operation of the roading network
- Effects on productive capacity of the soil
- Effects on land stability
- Dust generation
- Ecological effects
- Effects on water quality and quantity
- Economic effects
- Soil contamination
- Effects on archaeological values
- Effects on cultural values
- Changing flood hazard patterns and characteristics

Mr Gaviria's noise assessment indicates that noise levels in the area will increase above ambient levels as a result of the proposal. Elevated noise levels would likely be experienced by members of the public using the Clutha River, State Highway 8 and the Autaia Scenic Reserve (Section 6 SO 23929). The exact noise levels experienced would vary over time depending on where the mine was operating. Particularly where the mine is operating in close proximity to the Clutha River, Mr Gaviria's assessment predicts that noise experienced by users of the river would exceed levels where serious annoyance could occur, in a residential outdoor living context (55dB L_{Aeq}). While outdoor recreation activities may be more or less sensitive to annoyance than residential activities, I consider that the risk of levels of noise that can create a serious annoyance to people, while short term in duration at any one point, likely to have a more than minor effect on public recreation values.

The landscape effects assessment provided by Mr Mike Moore concludes that the proposal will have up to moderate-high effect (Interpreted by Mr Moore as constituting a more than minor effect) on a temporary basis during the mine's operation. Mr Moore considers that these would be primarily due to the removal of pastoral land cover, modification of the landform and the presence of mining vehicles, plant and facilities. Mr Moore considers that these effects would be remedied through progressive remediation of the site, with the effects after the activity ceases and all remediation is in place being considered to be less than minor. I note that temporary adverse effects are still adverse effects¹ and in making my assessment for the purposes of s95A-F, I am guided by relevant caselaw involving Trilane Industries Limited where the Court found that temporary effects that will be mitigated must still be considered effects where there will be a notable delay before they became effective. Regardless of whether mitigation timelines are acceptable in terms of whether to grant consent, they may still not mitigate more than minor effects that occur in the interim.² As such, I consider that the visual effects arising from the proposal will be more than minor in the short term, reducing to less than minor in the long term.

¹ Resource Management Act 1991, s3(b).

² *Trilane Industries Limited v Queenstown Lakes District Council and Nature Preservation Trustee Limited* CIV-2020-425-000002 [2020] NZHC 1647 at [59]-[61].

In terms of the roading network, I understand that vehicle traffic during the mine's operation would be largely light vehicles associated with staff. The applicant has noted that traffic management plans would likely be required during periods where heavy machinery are being moved to and from the site. However, while the mine is operating, heavy vehicle movements would be limited as machinery would remain on site. In this context, I agree with the applicant that traffic movements from the proposal will have a minor effect on the operation of the roading network, at most.

In terms of productive capacity and soil stability, the applicant proposes to progressively reinstate and re-sow topsoil removed from the site. In the long term, I consider that this will result in some potential effects on the productive capacity of the soil. For example, the removal and replacement of the soil will require vegetation to re-grow, and might impact on chemical and hydrological processes (Such as water absorption rates) in the soil. However, particularly given that there is a resource consent to subdivide the property and because the site will be remediated as the mine progresses, reducing the amount of land that is disturbed at any one time, I consider that this effect will be minor, at most.

In terms of dust, the applicant has proposed to implement dust suppression measures, such as the application of water to disturbed areas. I consider that this, along with the relatively small actively mined area, to be sufficient to reduce the potential dust effects of the proposal to minor levels, at most.

In terms of ecological effects, I understand that the site is predominantly exotic pasture. The application has identified several areas of extant native vegetation that they propose to avoid mining close to. I consider this to be sufficient to reduce the ecological effects of the proposal to minor levels, at most.

Based on the assessment of Mr Heller, I consider that the likely effects of the proposal on water quality and quantity (To the limited extent that these matters fall within CODC's jurisdiction) will be no more than minor. For the avoidance of doubt, nothing in this assessment should in any way preclude the Otago Regional Council from coming to a different conclusion when assessing any applications for water takes or discharges associated with the proposal.

The proposal involves mining for alluvial gold which, in itself, is unlikely to introduce new contaminants to the soil due to the extraction and processing of the gold (unlike other mining activities). The applicant proposes that any areas used for storage of fuel or other chemicals have measures installed to contain spills. Given this, I consider the proposal likely to have minor effects in terms of soil contamination, at most.

The application proposes to avoid areas with elevated archaeological or cultural value identified by Dr McPhee. I concur with the applicant that the proposal will have minor effects on archaeological and cultural values, at most.

The site is subject to a flood hazard notation related to the Clutha River. The application proposes that the site be remediated, with the site contoured to resemble the existing terrain as closely as possible. Given this, I consider that the proposal may change the hydrological profile of the site and its associated risk of inundation. However, provided the site is remediated as proposed, I consider that this change would likely be minor, at most.

DECISION: EFFECTS ON THE ENVIRONMENT (S95A(2))

Overall, the proposed activity is likely to have adverse noise and landscape effects on the wider environment that are more than minor. Therefore, public notification is required under Step 3.

Step 4 – Public Notification in Special Circumstances

Public notification is required if the consent authority decides such special circumstances exist as to warrant the application being publicly notified (s95(9)(a)).

Current case law has defined ‘special circumstances’ as those “*outside the common run of things which is exceptional, abnormal or unusual, but they may be less than extraordinary or unique.*” The court has also found that special circumstances are deemed to apply where there is likely to be high public interest in the proposal [*Murray v Whakatane DC* [(1997) NZRMA 433 (HC), *Urban Auckland v Auckland Council* [(2015) NZHC 1382, (2015) NZRMA 235].

There is nothing exceptional or unusual about the application that makes public notification desirable in this particular instance. As such, there are no special circumstances that warrant the application being publicly notified.

OVERALL DECISION - S95A NOTIFICATION

Pursuant to 95A(5)(b)(i), public notification is required as identified in the assessment above.

EFFECTS ON PERSONS

While the application is to be publicly notified, I consider it appropriate to consider whether there are any directly affected parties should be notified of the proposal. Section 95B(1) requires a decision whether there are any affected persons (under s95E). The following steps set out in this section, in the order given, have been used to determine whether to give any party notification of the application.

Step 1: certain affected groups and affected persons must be notified

The site is adjacent to the Clutha River, which is subject to a statutory acknowledgement in favour of Ngāi Tahu. Consideration of whether Ngāi Tahu should be considered affected in terms of s95E will be provided under Step 3.

Step 2: if not required by step 1, limited notification precluded in certain circumstances

Limited notification is not precluded under Step 2 as the proposal is not subject to a rule in the District Plan or is not subject to a NES that precludes notification.

Limited notification is not precluded under Step 2 as the proposal is not exclusively for a controlled land use activity.

Step 3: if not precluded by step 2, certain other affected persons must be notified

Limited notification is not required under Step 3 as the proposal is not a boundary activity where the owner of an infringed boundary has not provided their approval, and it is not a prescribed activity.

Limited notification is not required under Step 3 as the proposal falls into the ‘any other activity’ category and the effects of the proposal on persons are assessed below.

PERMITTED BASELINE

Under Section 95E(2)(a) of the RMA, an adverse effect of the activity on persons may be disregarded if the plan permits an activity with that effect. The permitted baseline has been established above.

ASSESSMENT: EFFECTS ON PERSONS

I consider that the primary effects that may be experienced by nearby landowners are noise, visual effects and dust. The proposal is also adjacent to the Clutha River and may adversely affect values associated with the river and its statutory acknowledgement.

Mr Gaviria identifies noise levels that could cause annoyance (Exceeding 50dB L_{Aeq}) at the notational boundaries of the following properties at various points during the proposed activity:

13 Pukerangi Drive
174 Queensberry Terrace

The following properties are predicted to experience noise levels approaching annoyance levels (47-49dB L_{Aeq}). While not predicted to cause an annoyance based on WHO standards, I consider that these noise levels from the proposed mine could still have rural amenity effects.

63 River Ridge Road
67 River Ridge Road
79 River Ridge Road
71 Pukerangi Drive
738 Tarras-Luggate Road
3360 Luggate Cromwell Road

Lot 1 DP 332902 and Lot 2 DP 332902 are unoccupied lots a similar distance from the proposed mine to 63 and 67 River Ridge Road. While Mr Gaviria has not made noise calculations for these properties, I consider that they would likely be similar to these two properties. This is supported by the noise contours provided with Mr Gaviria's assessment that suggests noise levels between 45 and 55dB L_{Aeq} across different parts of both sites while the mine operates in the southern parts of the site. Similarly, Mr Gaviria has not specifically assessed noise levels on the Autaia Scenic Reserve or the Sandy Point Conservation Area, but the noise contours predict noise levels up to 55dB L_{Aeq} while the mine is in the northern parts of the site. Therefore, I consider that the owners of all of lots should be considered affected by the proposal.

In terms of visual or landscape effects, in addition to those parties identified above, I consider that parties with close views overlooking the site could reasonably have their rural amenity affected by the visual impacts of proposed mine operations identified by Mr Moore. This includes the following sites:

738 Luggate Tarras Road
738A Luggate Tarras Road
85 River Ridge Road
172 Queensberry Terrace
176 Queensberry Terrace
3204 Luggate Cromwell Road
Lot 4 DP 332902

I consider that the owners and occupants of the above land would reasonably be considered affected by the proposal and should be served notice.

The values of the Clutha River, as identified in the Ngāi Tahu Claims Settlement Act 1998, include historic associations with mahinga kai trails and resource gathering as part of seasonal migration patterns, and as a representation of the mauri binding all things together and upholding life. The Kāi Tahu Ki Otago Natural Resource Management Plan 2005 identifies

mining activities as a key issue for Otago Rūnanga. Given this, I consider that the Otago Rūnanga of Ngāi Tahu should be served notice of the proposal.

The applicant also identified that the New Zealand Transport Agency and Heritage New Zealand Pouhere Taonga have interests in the site that warrant them being considered by the proposal. I consider it appropriate to serve notice on these parties.

The applicant notes that Gold View Holdings Ltd, the owners of 3360 Luggate Cromwell Road, provided their written approval to the proposal. This approval does not appear to have been provided with the application. I consider it appropriate to serve notice on them.

Step 4: Further limited notification in special circumstances

Special circumstances do not apply that require limited notification.

DECISION: EFFECTS ON PERSONS

The following persons should be served notice of the application:

Ngāi Tahu
Department of Conservation
New Zealand Transport Agency
Heritage New Zealand Pouhere Taonga
Samuel Stewart and Craig Blake – 13 Pukerangi Drive
Mark Williams – 71 Pukerangi Drive (PO Box 546, Wanaka, 9343)
James Dale and Sarah Taylor – 176 Queensberry Terrace
Shanan and Danielle Pullar – 174 Queensberry Terrace
Alan and Bridget Williams – 172 Queensberry Terrace (88 Queensberry Terrace RD3, Cromwell, 9383)
John Kookshorn – 3204 Luggate-Cromwell Road (PO Box 983, Main Beach, QLD 4217, Australia)
Rivendell Ltd – 738A Luggate-Tarras Road
Richard and Caroline Bell – 738 Luggate-Tarras Road
Phillip and Anne-Christine Everest – 85 River Ridge Road
Roderick and Phillipa Fee – 79 River Ridge Road (25 Hinemoa Street, Birkenhead, Auckland 0626)
Jane Stevens – 67 River Ridge Road (151 Easter Crescent, Kew, Dunedin 9012)
Jason Chuval – 63 River Ridge Road
Lynn and Paul Bridson – Lot 1 DP 332092 (22 Niger Street, Wanaka 9305)
Andy and Melanie Elia – Lot 2 DP 332092 (57 Onslow Road, Lake Hayes Estate, Queenstown 9304)
Margaret Lindsay – Lot 4 DP 332902 (G07 Aspiring Lifestyle Village 83 Rodeo Drive, Wanaka 9305)
Gold View Holdings Ltd – 3360 Luggate-Cromwell Road

Addresses in parenthesis are postal addresses where the party owns the land but does not reside on site.

OVERALL NOTIFICATION DETERMINATION

Given the decisions made under s95A, the application should be processed on a publicly notified basis. As a courtesy, I consider that the persons listed above, who are considered to be directly affected by the proposal, should have notice of the application served on them. It is noted that the determination, as to whether an application should be notified or not, is separate from the issues to be considered in making a decision on the application itself.

Prepared by:



Adam Vincent
Planning Officer

Date: 07 January 2026

Approved under Delegated Authority by:



Tim Anderson
Team Leader – Planning

Date: 13 January 2026