

**BEFORE THE PANEL APPOINTED ON BEHALF OF
CENTRAL OTAGO DISTRICT COUNCIL**

Under	The Resource Management Act 1991 (the Act)
In the Matter	of an Application for a Land Use Consent to construct a dwelling, shed and vehicle access in the Rural Resource Area and Outstanding Natural Landscape (RM250353)
Between	ANDREW WALSH DUNCAN Applicant
And	CENTRAL OTAGO DISTRICT COUNCIL Local Authority

SUBMISSIONS OF COUNSEL ON BEHALF OF APPLICANT

DATED 3 AUGUST 2026



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SUBMISSIONS OF COUNSEL ON BEHALF OF ANDREW WALSH DUNCAN

INTRODUCTION

1. This is an application by Andrew Walsh Duncan to construct a low-profile dwelling and shed with vehicle access on their 202ha property at 528D Kawarau Gorge Road, Cromwell.
2. The proposed buildings are located within a subtle, saddle like landform that provides a high degree of enclosure.
3. The site presents a unique opportunity for a young family to live in sympathy with the landscape and support the ongoing stewardship of the ~200ha block. Built form can be absorbed with little disruption to the overall landscape coherence, ensuring the proposal is in keeping with District Plan objectives.
4. The proposed design:
 - (a) follows natural landform lines with targeted indigenous mitigation planting around the building to provide visual softening and further obscure visibility.
 - (b) visually integrates the buildings with the surrounding landscape by controlling building height and using dark and recessive cladding and roofing colours.
 - (c) Maintains rural character by adopting built forms that are characteristic of the rural environment and controlling potential domesticating elements through conditions.
 - (d) imposes a positive obligation on the Applicant for environmental and landscape stewardship by requiring control of wilding pines

and pest animals and the implementation of biodiversity enhancement measures.

5. The following evidence has been filed on behalf of the Applicant:
 - (a) Evidence from Andrew Duncan explaining why his family wants to live at the site, their aspirations for it and the approach they took to site selection.
 - (b) Evidence from Steve Skelton assessing the landscape, natural character and amenity effects of the proposal;
 - (c) Evidence from Craig Barr providing the planning analysis.
6. It is agreed that the application falls to be considered as a discretionary activity.

SCOPE OF THESE SUBMISSIONS

7. These submissions will traverse the following:
 - (a) Statutory decision-making framework;
 - (i) Section 104 and Section 104B
 - (b) The permitted baseline
 - (c) The 'environment'
 - (d) Key effects/matters in contention;
 - (i) Landscape character and visual amenity effects;
 - (ii) Access

(iii) Other matters – Precedent and Plan Integrity

SECTION 104

8. Section 104 of the Act sets out the evaluative exercise that must be carried out by the Panel in assessing whether consent should be granted.
9. Section 104(1) requires a consent authority to have regard to the following relevant matters, subject to Part II:¹
 - (a) any actual and potential effects on the environment of allowing the activity. This includes an evaluation of both positive and negative effects.
 - (b) any relevant provisions of any relevant statutory document. In this case the District Plan is the primary document, although the Regional Policy Statement 2021 is also relevant.
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application; and
 - (d) any measure proposed or agreed to by the Applicant for the purpose of ensuring positive effects to offset or compensate for any adverse effects arising from the application.
10. Having undertaken the evaluative exercise, the Panel may grant or refuse consent (Section 104B) and where you elect to grant consent conditions may be imposed pursuant to sections 108 and 220.

¹ Resource Management Act 1991, section 104(1)(a)(b)(c)(ab).

THE PERMITTED BASELINE

11. Section 104(2) of the Act allows a consent authority to disregard an adverse effect on the receiving environment if the plan permits an activity with that effect.
12. I broadly agree with the conclusion in the s 42A report regarding the extent of permitted baseline considerations. Buildings and tracks associated with buildings within an ONL require resource consent.

THE ENVIRONMENT

13. Under section 104(1)(a) the assessment of effects must be undertaken against the 'environment' within which the activity will take place. This 'environment' encompasses what we see on the ground today, but also the future state of the environment as it might be altered by permitted activities and/or the implementation of existing resource consents that are likely to be exercised.
14. Potential adverse effects are those that are not already impacting on the environment.
15. Where consideration is given to the future environment, it requires a genuine attempt to envisage that future environment. However, it must not stray so far from what can reasonably be predicted, such that the environment becomes artificial.
16. The application, supporting information and evidence have described the environment within which this application takes place.
17. The receiving environment is also described in the section 42A. The only point to note is that the consent to the south is more accurately described as a consent for subdivision and a residential building..

KEY EFFECTS MATTERS IN CONTENTION

Landscape Character and Visual Amenity Effects

18. Mr Skelton's evidence carefully analyses the landscape assessment and the feedback provided via the landscape peer review. This application is a discretionary activity therefore the Panel retains full discretion to consider the proposal. No effects are 'off the table'.
19. The standards set in the District Plan are intended to implement the objectives and policies and provide us with a benchmark for understanding what is anticipated by the Plan and what the application is considered against.
20. The following District Plan objectives and policies are relevant to the management of landscape, visual amenity and rural character:
 - (a) Objective 4.3.2 protecting the district's outstanding natural landscapes (ONL) from the adverse effects of inappropriate subdivision, use and development.
 - (b) Objective 4.3.3 to maintain and where practicable enhance rural amenity values and to maintain the open natural character of the hills and ranges.
21. In particular, policy 4.4.2 provides guidance on managing landscape and amenity values:

Policy 4.4.2 – Landscape and Amenity Values

To manage the effects of land use activities and subdivision to ensure that adverse effects on the open space, landscape, natural character and amenity values of the rural environment are avoided, remedied or mitigated through:

- a) The design and location of structures and works, particularly in respect of skylines, ridgelines, prominent places and natural features;
- b) Development which is compatible with the surrounding environment including the amenity values of adjoining properties;
- c) The ability to adequately dispose of effluent on site,
- d) Controlling the generation of noise in back country areas
- e) The location of tree planting, particularly in respect of landscape values, natural features and ecological values;
- f) Controlling the spread of wilding trees.
- g) Encouraging the location and design of buildings to maintain the open natural character of hills and ranges without compromising the landscape and amenity values of prominent hillsides and terraces.
- h) Strongly discouraging buildings in the Rural Resource Area of the Wooing Tree Overlay Area to ensure a vineyard or treed park-like character with an absence of built form².

22. This is best discussed separately under:

- (a) visual effects;
- (b) landscape effects; and
- (c) cumulative effects

Visual effects

23. The key management technique applied to this proposal is site selection. As discussed in the evidence of Mr Duncan and Mr Skelton, the site allows the dwelling to be largely contained within the existing topography. It does not rely primarily on-screen planting. It is positioned within a shallow saddle-like depression, below the crest of the adjacent knoll to the east and avoids any skyline, ridgeline or terrace edge in accordance with Policy 4.4.2(a) of the District Plan.

² This part of the policy does not apply to this application.

24. In preparing the current application, the Applicant was acutely aware of the Environment Court's decision declining consent for a residential building platform on a property in the ONL near Northburn. *Larksbay New Zealand Trustees Limited v Central Otago District Council*. In this proposal, the building platform location did not protect the visual amenity of the ONL because the proposed building site was in a prominent location clearly visible from Cromwell.³
25. Further, no specific house design was proposed. Instead, it sought identification of a building platform with no real detail or assessment about the appropriateness of the dwelling. This left the utility of many of the effects management levers uncertain.
26. In the current proposal, the siting substantially reduces the dwelling's prominence from public and private viewpoints – including the wider Cromwell Basin, Kawarau Gorge and State Highway 6 - and limits the broader pattern of domestication that might otherwise be associated with residential use. The dwelling is visually subdued and integrated with the broader landscape character. This aligns with the Plan's clear direction to protect the amenity of the Pisa Range slopes and are accordingly agreed to have very low to low visual effects on the wider ONL landscape by both landscape assessments and the s 42A report.
27. The extent of night-time light exposure is limited and adequately addressed in conditions of consent. Any exterior lighting associated with the dwelling and curtilage areas will be downward-directed, low-spill and fitted with warm spectrum bulbs. In addition, any windows are positioned well below the ridgeline and on the Eastern side of the dwelling under a veranda. This ensures that light emissions are appropriately managed to maintain the dark sky character of the ONL.

³ *Larksbay New Zealand Trustees Limited v Central Otago District Council* [2025] NZEnvC at [111].

28. The only visual effect that has been identified as having high visibility from either landscape advisor is from a localised viewpoint from the unformed legal road along the western boundary of the site. However, due to the characteristics of this legal road it is submitted that limited weight should be afforded to these effects.
29. While there is technically legal public access along the unformed road where the buildings would be visible the reality is that the viewing audience would be extremely limited. There is no vehicle access to the identified viewpoint, because the legal road does not have formed access from the state highway, and there are Forestry Blocks and Irrigation Dams that a vehicle would not be able to pass through. The same applies to foot access. The only practical route to be followed is along the existing accessway which is a private ROW and therefore landowner approval is required. The formed access drops below the crest of the hill on the Kawarau Gorge side meaning that the dwelling is not visible when this alignment is followed. It is possible that some walkers may depart from the access track and use the Road, however the alignment is steep and covered in places with matagouri making progress difficult. Therefore, the number of people who would experience visual effects from this location is very low.
30. Similar reasoning was accepted in *Royalburn Farming Company v Queenstown Lakes District Council*, where little weight was given to visual effects from unformed roads that were unlikely to be used by the public and which did not provide access beyond that property.⁴ The same rationale should be applied here. The number of people likely to experience any visual effect from the unformed legal road is very small, and the effect should be treated as highly localised and of limited significance.

⁴ *Royalburn Farming Company v Queenstown Lakes District Council* [2010] NZEnvC [28] and [38].

31. It is submitted that the proposal maintains the visual amenity of the landscape.

Landscape effects

32. The landscape is characterised by long, uninterrupted convex slopes, open skylines and a distinctive sense of exposure and remoteness that defines the eastern Pisa foothills. The proposed built form is deliberately recessive in appearance and positioned within a natural saddle to minimise visual prominence. All associated infrastructure will be integrated into the proposal in a manner that seeks to avoid or reduce adverse landscape and visual effects. On that basis, the proposal maintains overall landscape coherence and does not materially diminish the wider ONL values. The s 42A report agrees with both landscape assessments that at the scale of the wider Pisa Range ONL, the landscape effects are very low to low. It is submitted that as a result of this the proposal protects the ONL from inappropriate development as required by section 6 and the District Plan provisions.
33. The adverse effect on the open and natural character of the hills and ranges has been assessed as moderate, however this is at the more confined scale of the 'Subject Area'. The Landscape Peer review considers that the proposal is an 'uncharacteristic modification' and an 'erosion of the undeveloped character of this part of the ONL'.
34. It is submitted that careful consideration of those comments is required. The site is in close proximity to Cromwell, on its immediate lower slopes is considerable development including horticulture, Shannon Farm etc. The site comprises 200ha rural allotment that is capable of active farming with the associated buildings and structures that come with that. When the full extent of the relevant ONL is considered the site occupies an area on the more modified end of the continuum relative to the extensive area a-top the Pisa Range. It is respectfully submitted that this wider context has been somewhat lost in the

assessments by the Peer reviewer and in the Section 42A report. This observation is further supported by other comments within the reports, such as the assertion that development isn't anticipated or that the proposal is within an elevated part of the Pisa Range ONL. Whilst the site could be considered elevated relative to Cromwell, it is ~500m below the height of Mt Michael and considerably lower again than the numerous elevated features of the Pisa Range including Mt Dotterel at 1690m and Mt Pisa at 1963m. All of this to simply point out that there remains considerably more elevated, open natural landscape within the ONL as one gets past the lower pastoral slopes of which the application site is a part.

35. It is submitted that while the proposal will introduce some additional built form, the Development Area will remain sparsely occupied and that occupation can be readily absorbed.
36. Further to that the proposal secures ongoing landscape management that will, overtime further protect and enhance the open natural character of the site. This requires the consent holder to manage wilding conifers and carry out a programme of eradication on a rolling seven-year cycle. This will ensure that the insidious effects of wilding trees do not slowly erode the landscape values of the site and the natural indigenous vegetation values are enhanced. It also directly gives effect to Policy 4.4.2(f) and 4.3.3 of the District Plan.
37. Wilding conifers are a recognised threat to landscape and ecological values in Central Otago. They reduce catchment water yield, displace indigenous vegetation and increase fire risk through increasing the load of flammable material. Wilding conifers are inherently at odds with the values of the ONL. Their ongoing removal and management is a positive effect, particularly as they are becoming more prominent within the ONL and Kawarau corridor.

38. Mr Skelton considers that this condition is an enhancement and offset measure, for the residual character effects of the proposal by reversing the ongoing spread of wilding conifers and enhancing the natural character values of the wider landscape.⁵
39. On that basis, the proposal is not simply the introduction of residential activity into an ONL. It is carefully sited, recessive in design and supported by ecological and landscape stewardship within a 200ha site that can be actively farmed. Those measures appropriately manage landscape change, maintain the broader rural character and do not diminish the integrity of the wider ONL.

Cumulative effects

40. The cumulative effects of the proposed development must be considered in light of other existing and consented building elements within this part of the Eastern Pisa Slopes landscape. The presence of existing farm access track, fences and the proximity of the Cromwell township to the west are also relevant to the cumulative landscape context.
41. Collectively, these elements introduce a modest degree of domestication but remain widely spaced, small in scale and hidden within the broader landscape setting. The proposal will be similarly contained in scale and design, with the building geographically hidden from view, reducing its visual impact. The small number and isolated distribution of built elements ensures that there will be little sense of a cumulative intensification or transformation of landscape character.
42. While there may be a slight shift in the perception of this part of the Pisa Range, this does not overwhelm the landscape's natural and open character. Therefore, the cumulative effects will not be significant. The

⁵ Evidence of Steve Skelton at [46].

Landscape Peer review concluded that this part of the landscape will likely reach its capacity to accommodate this form of change. The section 42A report overstates this conclusion claiming that a tipping point is reached and the Pisa Range Landscape (which must mean the entire ONL) is unable to accommodate any further change.

43. The Landscape Peer Review concludes that future applications may result in cumulative effects within this part of the ONL. It did not conclude that a tipping point for the Pisa Range had been reached. Further, cumulative effects arising from future applications are not relevant to an assessment of this application. The assessment must be grounded in the effects of this application on the current receiving environment. Whether future applications exceed the landscapes capacity to absorb change is a matter to be assessed at the relevant time.
44. In this regard, it is important to be cognisant of the rules that operate within the ONL. In essence, new buildings require consent, so the consent authority can exercise judgement and control over the potential cumulative effects of future applications when those applications come to be considered.

Weight to be given to the LA4 Landscape Assessment.

45. The Landscape Peer Review and the section 42A report place some stock in the 'extreme sensitivity' of the Pisa ONL the assessment of which is found in a 2008 Landscape Assessment Report that informed changes to the District Plan. It is submitted that the Panel need to be careful in relying on such extraneous documents. The District Plan must be interpreted within its 4 corners. Whist the LA4 report may have reached conclusions regarding landscape sensitivity, that concept has not found its way into the District Plan Provisions. The rules have resulted in a discretionary regime for buildings. There is no mention of

the sensitivity of any particular landscape areas in the policy framework or ONL Schedule.

46. It is also noted that the landscape sensitivity appears to apply to the ONL as a whole and as a result real care should be taken when undertaking a site-specific assessment. The reality is that there are areas more or less sensitive within an ONL as extensive as the Pisa.

Access

47. Access will be provided via a 4m wide gravel track extending approximately 650m from the existing farm access track to the proposed building platform. The alignment within the application site has been selected to follow the natural contours of the land, minimising its visual prominence in the wider landscape.
48. A condition proposed in the s 42A report is that access to the site should be upgraded in compliance with CODC rural right-of-way standards. This requires any sections of the ROW over 12.5% gradient are sealed and that the accessway is upgraded to include passing bays. The Applicant does not support those conditions.
49. This ROW only provides private access for this property and the adjacent farm land including the Double Rock Hut consented pursuant to RC230728. It is not for public use. RC230728 was for a subdivision, which created an additional lot bringing with it increased traffic – albeit occasional. What is proposed here is use of an existing property. It does not create a step change in access demand.
50. Mr Duncan has set out his preference in his evidence. Having owned the site for some time and regularly travelled to the property, he is very familiar with the access. His evidence and views with respect to the access should be given weight. Consistent with case law, this is an occasion where the Council should not be overly paternalistic.

51. *Otago Regional Council v Dunedin City Council*⁶ dealt with a land use consent to build a house on an undersized rural lot in Karitane, Dunedin. The application site was located in a floodplain. The applicant in that case proposed a building established on stilts with freeboard above predicted flood and storm surge levels. They also proposed a covenant identifying the flood risk, and provision of additional potable water storage and a boat to manage during flood events. The Otago Regional Council appealed the grant of the consent by the Dunedin District Council.
52. The Court held that the Applicants were well-informed, had a good appreciation of the risks of building on a flood plain close to sea level and it was not unreasonable for them to assume the resulting risks. The Court further concluded that there comes a point where a consent authority should not be paternalistic but leave people responsible for themselves.⁷
53. Andrew Duncan's evidence highlights his willingness to not seal the driveway and accept the risk.⁸ If anything, both Mr Duncan and Mr Hensman view sealing the driveway as an increased risk during frosts or snowfall events, and it is these two parties who are responsible for this ROW including the ongoing maintenance costs.
54. It is not clear what adverse effect is being managed by this condition under s 108AA of the Act. There would not be consideration of effects on Hensman as he has given affected party approval, and Mr Duncan has accepted the maintenance of the gravel driveway. These are the only two parties who access and use this driveway. There is nobody else to consider effects on and therefore the consent authority must not include a condition for the proposal.⁹

⁶ *Otago Regional Council v Dunedin City Council* [2010] NZEnvC 120

⁷ *Ibid* at [2].

⁸ Evidence of Andrew Duncan at [22] – [25].

⁹ S 108AA(1).

PRECEDENT AND PLAN INTEGRITY

55. Precedent and plan integrity are not ‘environmental effects’, although they may be a relevant matter pursuant to section 104(1)(c). Neither are mandatory matters to be considered.

Precedent

56. It is almost trite to say that applications for resource consent, particularly those with discretionary status must be assessed on their own merit. In *Wellington Regional Council (Bulk Water) v Wellington Regional Council* the Court stated

“that to consider future applications as a potential effect or cumulative effect is to make a totally untenable assumption that the consent authority would allow the dyke to be breached without evincing any further interest in control, merely because it has granted one consent”.¹⁰

57. Applications yet to be determined or filed are not part of the ‘environment’ and are not an effect of this application. On this basis it is not appropriate to speculate about what other land users might do in the future. Even where those applications eventuate, they need to be assessed against the environment that exists at the time. That environment would include this consent (assuming it was granted) and as such any outcome may be quite different.
58. The Court in *McLauchlan v. Hutt City Council*¹¹ found that a discretionary activity will not, of itself be contrary to or incompatible with the plan.

¹⁰ *Wellington Regional Council (Bulk Water) v Wellington Regional Council* [1998] NZEnvC p 8.

¹¹ *McLauchlan v. Hutt City Council* EnvC W062/08

59. In *Progressive Enterprises Ltd v North Shore City Council*¹² the Court discussed whether plan integrity effects arise from the granting of consents. The Court acknowledged that unwise or unprincipled resource consent decisions may impair the usefulness of Plan provisions in the sense that they may raise a legitimate expectation that truly similar applications will have similar outcomes.¹³

60. However it went on to say that:

*“Where a plan gives an activity discretionary status, and provides criteria against which applications for a consent for such an activity are to be measured, such a problem should not arise. If the application, measured against the criteria, can be shown to have its adverse effects avoided, remedied or mitigated, and its positive effects demonstrated, to the point of meeting the Act’s purpose of promoting the sustainable management of resources, then by definition granting the consent cannot harm the integrity of the plan.”*¹⁴

61. On this basis it is submitted that the section 42A report was wrong to conclude that the proposal represents a challenge to the integrity of the Plan due to the effects on the ONL having been overstated. To reach the conclusion that has been reached it is necessary to extrapolate the localised Development Area effects over the whole Pisa ONL. That is inconsistent with the Landscape Evidence which explicitly concludes that the effects on the wider ONL to be Low. There is no landscape evidence available that suggests that this proposal gives rise to significant effects that lead to a conclusion that the proposal is contrary to the provisions of the Plan.

62. In assessing the proposal against the provisions of the Plan the section 42A does not appear to appropriately weigh all the effects, including the compensatory and positive effects. An example of this is the

¹² *Progressive Enterprises Ltd v North Shore City Council* [2008] EnvC at

¹³ *Ibid* at [81].

¹⁴ *Ibid* at [82].

assessment in relation to Objective 4.3.1. Despite the evidence indicating that the proposed ecological plans would have positive effects this does not feature in the discussion. Only the landscape aspects appear to have factored into the analysis.

CONCLUSION

63. It is submitted that in many respects the key question in this case is whether it is appropriate for there to be some built form on a 202ha farm in close proximity to Cromwell to enable the owner to productively use and manage the site. In my view, the answer to that must be yes.
64. Mr Duncan and his Family seek the opportunity to live in that environment so that they may educate their children and steward the environment. The evidence demonstrates that over time the values of the site will be enhanced through the proposed restoration programme.
65. The proposal is a carefully designed and site-specific response to the fact the site is entirely located within a large ONL. Its effects are managed through the proposed conditions related to wilding conifer management and indigenous planting coupled with the discrete dwelling location and avoidance of the skyline and prominent ridgelines.
66. Granting this consent is consistent with the District Plan's acknowledgement that outstanding natural landscapes are still often working environments. They are not necessarily pristine and free of built form. This achieves a result that is consistent with the direction of the relevant District Plan Objectives and Policies.
67. In light of the evidence, it is submitted that granting consent will achieve the purpose of the Act. It will support Mr Duncan and his family to achieve their social, economic and cultural wellbeing whilst managing the effects of the development and enhancing the sites

values for future generations. It is submitted that it is a commendable application that deserves to be granted.

Dated 3 August 2026

A handwritten signature in blue ink, appearing to read "Bridget Irving". The signature is written in a cursive, flowing style with a large initial 'B'.

Bridget Irving

Counsel for Andrew Walsh Duncan