

CENTRAL OTAGO DISTRICT COUNCIL
S95A-F DECISION FOR RC220350
1426D Teviot Road, Roxburgh

INTRODUCTION

DESCRIPTION

The application seeks land use consent to establish and operate an alluvial gold mining operation in a Rural Resource Area at 1346 – 1536 Teviot Road, Millers Flat, Roxburgh. The subject site comprises 15 records of title as summarised in Table 1 of the Applicant's AEE, dated 8 February 2023, titled, *Application for Resource Consent to the Central Otago District Council: Hawkeswood Mining Limited, Land use consent to establish and operate a gold mining activity at 1346-1536 Teviot Road, Millers Flat*, and completed by Town Planning Group. A detailed description of the proposed development and the existing environment is outlined within Sections 2 and 3 of the Applicant's AEE, and this agreed description of the proposal is summarised below.

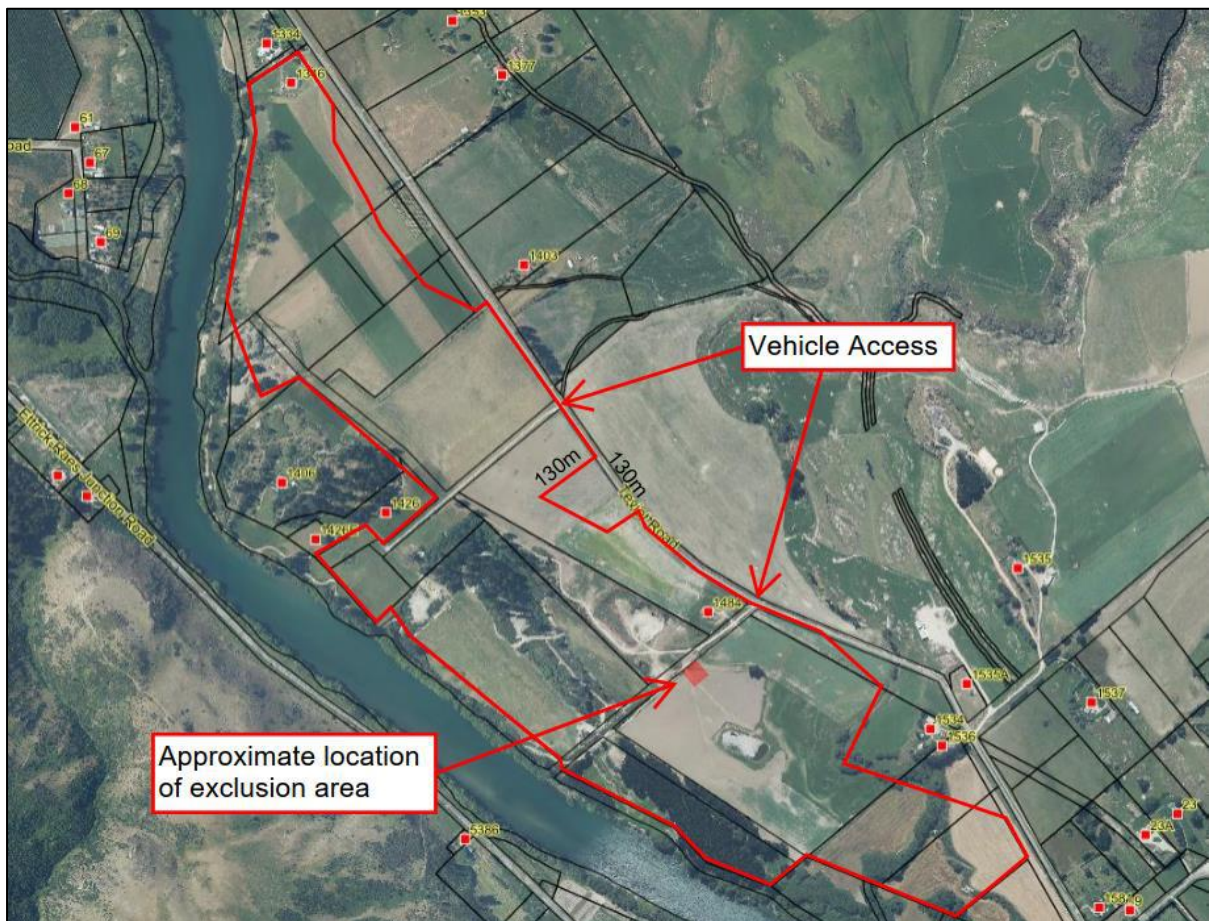


Figure 1 Showing “the extent of application site area generally indicated in red outline (CODC GIS)”¹. Source Applicant's AEE

- The total area where the mining is proposed to take place for the 5-year term of the consent is 50 ha with a total volume of 650,000m³. The applicant proposes to undertake

¹ Figure 2 of the Applicant's AEE, titled, Hawkeswood Mining Limited Land use consent to establish and operate a gold mining activity at 1346-1536 Teviot Road, Millers Flat and dated 12 October 2022

approximately 130,000 m³ of earthworks annually over an area of 10 ha. The maximum area of open mine pit at any one time is expected to be approximately 2 ha;

- The depth of excavation varies across the site, with the base of the gold bearing wash layer being located approximately 8m to 15m below existing ground level. The applicant expects to encounter groundwater and proposes to establish a floating dredge. At the northern end of the site, the applicant proposes to maintain a dry working area, above natural ground level;
- Rock material will be processed on-site using gravity separation methods to extract the gold. Areas where the gold bearing wash has been removed will be backfilled with overburden from the excavation and extraction process;
- The establishment of the alluvial gold mine includes processing and stockpiling of overburden on-site. Overburden will primarily be removed with excavators and dump trucks and stockpiled on-site in piles of up to 4 meters above ground level. The stockpiles may not be vegetated due to their temporary nature;
- The remainder of the overburden will be used for the construction of bunds. The bunds along the site boundaries will be a maximum of 4m in height and will be vegetated with grass. In total, the applicant anticipates that at minimum, 80,000m³ of overburden is to be stockpiled within the bunds at any one time during the operational phase of mining;
- Topsoil will be stockpiled separately for rehabilitation purposes and grassed to prevent erosion;
- Proposed rehabilitation will entail the removal of all bunds, the land will be restored as closely as possible to the pre-existing contour with exception to a small terminal void, and grassed. Rehabilitation will be undertaken progressively as overburden from the next stage is used to fill in the mine pit from the previous stage;
- The Clutha Gold cycle trail which runs along the Clutha River, adjacent to the western side of the site is proposed to be diverted around the work site along Teviot Road where necessary;



Figure 2: Demonstrating the proposed reroute of the cycle trail in red. Source: Proposed Cycle Trail Route, Millers Flat, Completed by Overview Surveying, dated 10 October 2022 and provided by the applicant as part of the further information response.

- Lighting fixtures are proposed around the processing area the site office area, and at the active work area within the mine pit. The lights will be compliant with light spill standards in the District Plan and will be located away from dwellings and roads. The applicant proposes to use lighting specialists to measure and verify levels of onsite lighting;
- A number of temporary buildings are proposed to be established and maintained on the site for the duration of the project to provide a site office, a storage area and a machinery workshop area;
- Works on site will operate Monday to Friday 7am – 7pm and Saturday 7am – 1pm with no work occurring on Sundays or public holidays;
- Up to 20 staff will be employed on the project, including machinery operators, mechanics and engineers;
- Drinking water will be sourced from an existing on-site private scheme and wastewater will be removed from the site.

The applicant has already undertaken earthworks on the site for the purpose of establishing the internal accessways, bunding and establishing a test pit as shown in Figure 3. Earthworks that have been undertaken are included in the total earthworks quantities proposed in the application. Earthworks within the test pit on Section 91 Block VIII Benger SD have totalled 5,118m³, exceeding the District Plan allowance by 2,118m³. Retrospective consent is sought for these works as part of this application.



Figure 3: Works already undertaken on the site. Source: Council compliance site visit photos taken on 15 May 2023.

BACKGROUND

The application as originally lodged, sought a maximum open mine pit area of 4 hectares at any one time, for a duration of 20-years with a proposed stockpile height of 8 metres. Following a response to the further information request received by Council on 10 February 2023, the applicant amended the proposal, to reduce the open area to 2 hectares, the duration to five years and the stockpile height to a maximum of 4 metres.

PLANNING FRAMEWORK:

Central Otago District Plan

The relevant statutory provisions are set out in Section 4 of the Applicant's AEE. The site is located in the Rural Resource Area and is subject to a number of annotations. It is partially located in a flood hazard area, adjacent to the Mata-Au River and Section 92 Block VIII Benger SD is designated for Greenwaste Refuse Management Purposes (D236) and Gravel Pit – Millers Flat Landfill (D75), with the requiring authority being Central Otago District Council.

The proposal requires resource consent for the following reasons in accordance with the Central Otago District Plan (District Plan):

- A restricted discretionary activity pursuant to Rule 4.7.3(iii) for breaching the colour and finish requirements for buildings. In this case, the portacom (site office), containers and workshop, which are ancillary to the proposed mining operation, will not comply with the finish and colour requirements of Standard 4.7.6D of the District Plan.
- A restricted discretionary activity under Rule 4.7.3(i) for non-compliance with Standard 4.7.6F which requires storage areas and stockpiles to be screened from all public viewpoints and neighbouring properties. In this case the stockpiles may be visible from Teviot Road, the paper road to the north of the site, the Clutha River (Mata-Au) at various stages of the proposed operation and from neighbouring properties.
- A discretionary activity pursuant to Rule 4.7.4(i) for more than three persons being involved in an activity of industrial or commercial in nature, resulting in a breach to Standard 4.7.6B(b)(i). In this case the application is proposing up to 20 persons to be employed on-site for the mining activity.
- A discretionary activity pursuant to Rule 4.7.4(i) as the proposed earthworks do not comply with the earthworks quantities as stipulated in Standard 4.7.6J(b) being a maximum of 2000m² and 3000m³. In this case, the volume of earthworks on the site is approximately 130,000 m³, over 10 ha, per year, with a total volume of 650,000m³ over the lifetime of the consent.
- A restricted discretionary activity under Rule 4.7.3(vi) for the construction of tracks that don't comply with Rule 4.7.6J. The proposed tracks are to be established for limited vehicle access. It is anticipated that cut or fill batters on ramps within the mine pit will exceed 2m in height.
- A restricted discretionary activity pursuant to Rule 12.7.1 (iii) as the existing accesses to Teviot Road are not sealed.

For clarity, Rule 4.7.5 states that no buildings shall be established in an area identified as being subject to a flood hazard. In this case, the applicant is not proposing to breach this rule as all buildings will be established outside of flood hazard areas.

NES for Assessing and Managing Contaminants in Soil to Protect Human Health (NES CS)

The application describes a known 2.4ha historic landfill on Sec 118 Blk VIII Benger SD, located adjacent to Teviot Road. A report prepared by Environmental Consultants Otago (EC Otago) was provided with the application to identify the boundaries of the historic landfill, and to ensure soil disturbance near the historic landfill was avoided. In addition, a set of historic stockyards are also identified in the report by EC Otago, which have been excluded from the proposed mine area.

Based on the report by EC Otago, the project area avoids any potential HAIL sites, effectively the regulations of the NESCS do not apply as the site is not defined as a 'piece of land' captured under clause (5) of the NESCS.

OVERALL STATUS

Overall, the proposal is to be treated as a discretionary activity under the District Plan.

In addition to the above requirements for land use consent, the proposed alluvial gold mine also requires consents from the Otago Regional Council (ORC). ORC received an application for the proposal on 31 May 2023.

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)).*
- *In this particular instance written approval has been provided by all owners and occupiers of each parcel of land which forms the subject site as shown in Table 1 of the Applicant's AEE as follows:*
 - Jacks Ridge Limited - 1426A-D Teviot Road
 - L.A. & P.F. Crawford – 1346 Teviot Road
 - Donna May Parker – 1426E Teviot Road
 - Georgia Parker – 1534 Teviot Road
 - Alan Thomas Parker – 1534-1536 Teviot Road
 - G.C. Campbell-Lloyd – 1406 Teviot Road

In addition, subsequent to the lodgement of the application, the written approval of the following was provided:

- G A and C M Liyanarachchi owners of 1403 Teviot Road.
- D MacDougal on behalf of Minzion Station Limited, 9 Tima Burn Road, Millers Flat
- B. Tomkin and P. McNeil owners of 5386 Etrick-Raes Junction Rd.
- Murray Paterson and David Vollweiler on behalf of Clutha Gold Trail Charitable Trust.
- R Pannett owner of 1313 Teviot Road, Miller Flat.
- W Moore, owner of 9 Oven Hill Road, Millers Flat
- D Kleeber, owner of 1353 Teviot Road, Millers Flat
- J Asher, owner of 1333 Teviot Rd, Millers Flat

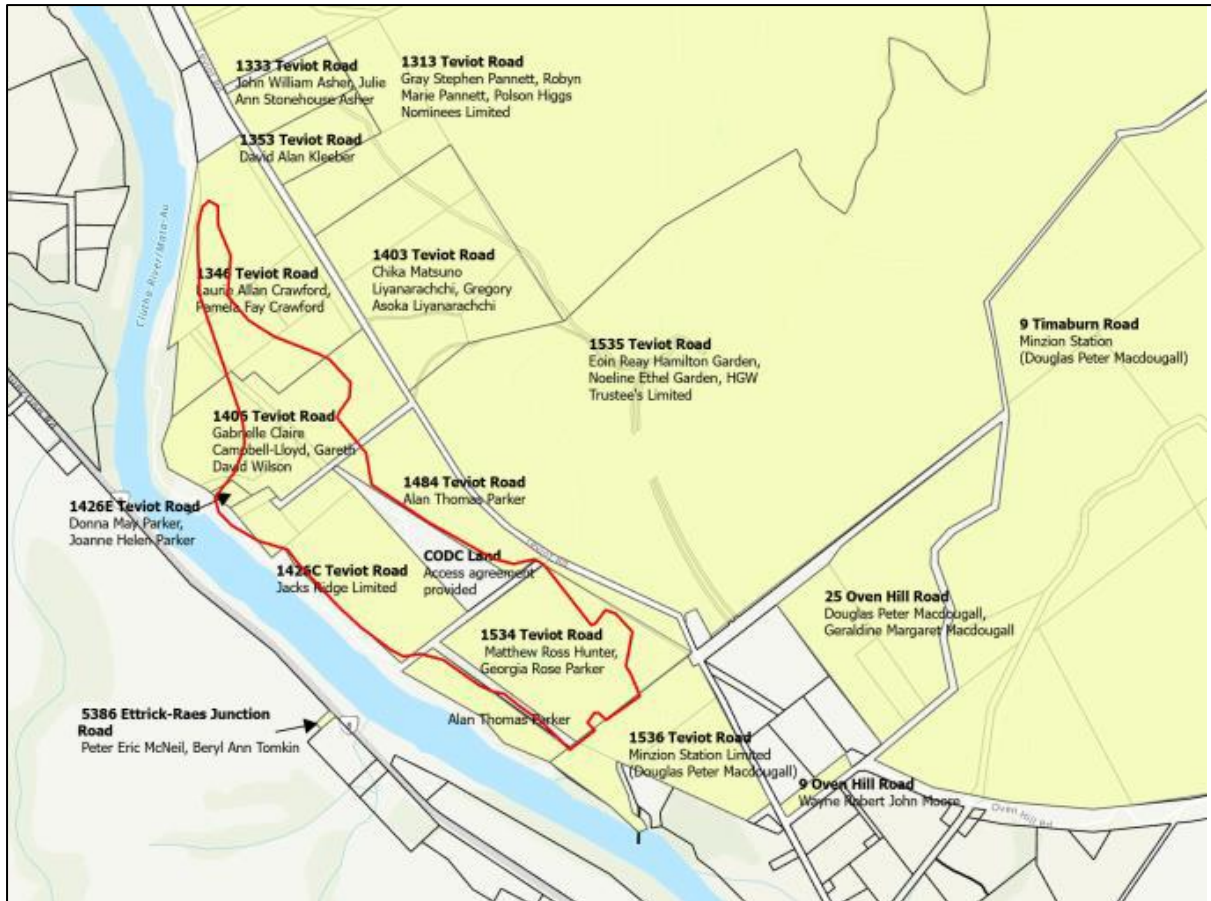


Figure 4: Map provided with Letter to Council from Ms Collie on behalf of the applicant on 18 June 2023, demonstrating the spatial location of properties where written approval has been provided.

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.

I note that, other than identifying rules that they comply with, the applicant has not put forward any argument for a permitted baseline to be applied in the Applicant's AEE. They do, however, specify that noise standards are a valid permitted baseline in the letter provided to Council on 27 June 2023. I note that the Environment Court, in *Lyttleton Harbour Landscape Protection Association Inc v Christchurch CC [2006]*, helpfully provides the following list of questions aimed at assisting decision makers to determine whether or not it is appropriate to apply a permitted baseline to their consideration of a given application;

- *Does the plan provide for a permitted activity or activities from which a reasonable comparison of adverse effect can conceivably be drawn?*
- *Is the case before the Court supported with cogent reasons to indicate whether the permitted baseline should, or should not, be invoked?*
- *If parties consider that application of the baseline test will assist, are they agreed on the permitted activity or activities to be compared as to adverse effect, and if not, where do the merits lie over the area of disagreement?*
- *Is the evidence regarding the proposal, and regarding any hypothetical (non-fanciful) development under a relevant permitted activity sufficient to allow for an adequate comparison of adverse effect?*

- *Is a permitted activity with which the proposal might be compared as to adverse effect nevertheless so different in kind and purpose within the plan's framework that the permitted baseline ought not to be invoked?*
- *Might application of the permitted baseline have the effect of overriding Part 2 of the RMA?*
- *Whether the application of the baseline might have the effect of overriding the intention of the restricted discretionary criteria in the plan, or might compromise plan policies or objectives.'*

Having regard to the above questions, I note that the proposed activity and associated effects fall well outside of any relevant permitted activity standards, therefore, a reasonable comparison between the proposed activity and activities permitted by the plan cannot be drawn. I do not consider there to be any useful or relevant permitted baselines including noise to be applied to the consideration of this proposal.

ASSESSMENT: EFFECTS ON THE ENVIRONMENT

As noted above, overall, the proposal is considered a discretionary activity. Matters that are considered relevant as addressed in the Applicant's AEE are assessed below. Given the proposal results in various breaches to the District Plan the assessment of the effects on the environment in relation to the proposed breaches have been grouped.

In undertaking this assessment, I have relied on the information submitted by the applicant, and peer reviews commissioned by Council. The key documents as referenced in this assessment include the following:

- The Applicant's AEE, titled, *Application for Resource Consent to the Central Otago District Council: Hawkeswood Mining Limited, Land use consent to establish and operate a gold mining activity at 1346-1536 Teviot Road, Millers Flat*, dated 8 February 2023, and completed by Anita Collie of Town Planning Group (NZ) Limited.
- The response to the Further Information Request, titled, *Response to Further Information Request RMA/2022/220350 – Teviot Road, Roxburgh*, dated 10 February 2023 and completed by Town Planning Group (NZ) Limited.
- Letter from Applicant, titled *S95 RMA Decision RMA/2022/220350 – Teviot Road, Roxburgh*, dated 27 June 2023 (updated from the letter dated 19 June 2023) and completed by Anita Collie of Town Planning Group (NZ) Limited.
- The Transport Assessment Report, titled *Millers Flat Gold Mine Transport Assessment Report*, dated 21 November 2022 and prepared by Dave Smith of Abley.
- The Landscape Assessment titled, *Proposed Alluvial Gold Mine 1346 – 1536 Teviot Road, Millers Flat Landscape Effects Assessment Report*, dated 3 February 2023 and completed by Mike Moore.
- The Acoustic Assessment, titled *Proposed Alluvial Mining Millers Flat Assessment of Noise Effects*, dated 16 May 2022 and completed by Nevil Hegley of Hegley Acoustic Consultants.
- The Dust Management Plan, titled, *Hawkeswood Mining Limited: Dust Management Plan Millers Flat Gold Mine 1346-1536 Teviot Road* dated 9 February 2023 and prepared by Town Planning Group (NZ) Limited.
- *The Vibration Report, titled, Proposed Alluvial Mining, Millers Flat, dated 11 November 2022 and completed by Nevil Hegley of Hegley Acoustic Consultants*
- The Dust Peer Review, completed by Chris Bender of Pattle Delamore Partners Ltd, titled *Technical Review – RC220350 – Hawkswood Mining Limited – Air Quality Assessment* and dated 19 May 2023.
- The Acoustic Peer Review, titled, *Acoustic review*, dated 26 May 2023 and completed by Jamie Exeter of Styles Group.

Visual amenity and landscape character effects

Temporary buildings

The proposed temporary buildings have been considered in the Landscape Assessment and in the Applicant's AEE. Both assessments conclude that the proposed buildings will not have a more than minor effect on landscape character and visual amenity values, due to the cladding and colouring of the buildings which are proposed to be darker than the surrounding environment, the location of the buildings close to the bunds, that the buildings are not prominent on a skyline or terrace, and that they are unlikely to be visible from Teviot Road. The Landscape Assessment proposes mitigation measures in relation to the colour of the buildings and the maintenance of bunding. The applicant has offered these recommended mitigation measures as conditions of consent. I consider the assessment completed by the applicant and by Mr Moore in the Landscape Assessment to be complete and accurate in regard to the effects of temporary building on visual amenity and landscape character, and I agree with these assessments.

Unscreened storage areas and stockpiles

The application states that approximately 80,000m³ of stockpiling will occur on the site for the duration of the mining and rehabilitation work. The majority of this material will be used for the proposed bunds and the remainder will be stockpiled on the site. It was noted at my site visit that bunds have already been formed on the site, and that stockpiles are still visible from outside of the site from Teviot Road and from Etrick-Raes-Junction Road. The Landscape Assessment acknowledges that stockpile heights associated with the exploratory mining are currently over 10 metres in height but will be reduced to a maximum of 4 metres, as proposed as a condition of consent by the applicant, to reduce visual effects. Based on the Landscape Assessment, subject to the bunds being up to 4 metres in height and grassed, and the stockpiles being no higher than 4 metres in height, I consider that there will be minor impacts on the landscape as a result of unscreened storage areas. I note that the conclusions of the Landscape Assessment recommended the height of stockpiles to be 4 metres, it is unclear when the applicant intends on levelling the stockpiles off to 4 metres, and until such time as they are levelled off, I consider there to be a more than minor effect as a result of the existing 10-metre-high stockpiles.

Mining activity

The mining activity is primarily located below ground level and the application states that the mining activity will be difficult to see from outside of the site, once the mine pit and bunds are established. Notwithstanding this, it is likely the site works will be visible from the cycle trail diversion on Teviot Road for approximately 400 metres. My site visit confirmed that an area on the southern side of the site where no bunding is proposed will be visible from Teviot Road where the cycle trail is proposed to be diverted. The visit also confirmed that the mine pit area is unlikely to be visible from the existing cycle trail or the Mata-Au due to the location of the trail and the river sitting lower than the site works, and due to the established bunds on the site, which will screen the activity. The applicant is proposing to take a staged approach to the proposed mining activity whereby approximately 2-hectares will be actively mined at a time and the mine site will be rehabilitated concurrently with the mining activity progressing through the site. The Landscape Assessment concludes that the activity will be adequately screened by proposed 4-metre-high bunds and a series of conditions of consent have been offered by the applicant. I consider the assessment provided in the Landscape Assessment to be complete and accurate, and it's overall conclusions in relation to the mining activity are accepted for the purpose of this assessment.

Effects of earthworks

Air quality effects

In terms of the effects of dust emissions from the site (these being emissions generated from all areas of disturbed land and site accesses), the applicant's AEE provides an assessment of these effects and a Dust Management Plan from Town Planning Group has been submitted in response to a further information request. A peer review of the Dust Management Plan was undertaken by Chris Bender of Pattle Delamore Partners Limited (PDP) on behalf of Central Otago District Council (CODC) which identifies that the receiving environment generally has a relatively low sensitivity to air quality effects, other than rural residential dwellings in the vicinity of the site, which have high sensitivity, and the cycle trail, users of which will be sensitive to dust effects.

A range of controls are proposed by the applicant with the intention of avoiding potential dust nuisance generated from the site. The controls relate to vehicle movements and internal roads, topsoil stripping and storage, overburden excavation, topsoil and overburden stockpiles, rehabilitation, speed of the site accesses, and dampening of potentially dust generating surfaces with water (using sprinkler systems and a water cart). Various management and mitigation measures are detailed within a proposed Dust Management Plan.

The PDP peer review memorandum dated 19 May 2023 by Mr Bender, states that the Applicant's AEE and the Dust Management Plan are lacking in sufficient detail regarding the nature of potential dust discharges, and regarding the resulting effect on the surrounding environment. The peer assessment found that the applicant's assessment of dust has not been undertaken in accordance with the recommendations made in the MfE Dust Guide². It concludes that more than minor dust effects could arise within 250 metres from the site where rural residential activity is located. I note that an assessment on specific parties is not a s95A matter, and in this case except for J. P. Clarke & K. L. Franklin (1334 Teviot Road, located 150m to the north of the proposed activity) the written approvals have been provided from all persons residing within 250 metres of the site. The peer assessment states that users of the cycle trail will be sensitive to amenity effects from deposited and suspended particulate matter from the proposal and it is noted that this will be a temporary adverse effect on users of a small part of the cycle trail.

It is acknowledged that the Regional Council are responsible for managing airsheds to meet ambient air quality standards for fine particulate matter (PM₁₀). However, the District Council still has a role in the management of nuisance effects in accordance with Policy 12.4.7 of the District Plan, and as a discretionary activity, Council is able to use their discretion to consider the effects associated with land use activity in accordance with Section 31(1)(a) of the Resource Management Act 1991 (RMA). Issue 4.2.4 of the District Plan relates to mineral resources and identifies that the development of these resources has the potential to have significant adverse effects upon soil, water and air resources of the district, and landscape and heritage values if not appropriately controlled. I note that while the Regional Council are the primary organisation for controlling air quality effects, the District Council have a duty to ensure the effects of land use activities are managed in a way that do not cause nuisance, therefore, I do consider that the effects on air quality including PM₁₀ and dust are relevant considerations for this consent.

The PDP peer assessment concludes that the dust mitigation methods in the dust management plan are generally appropriate, however adequate implementation of the methods and continuous monitoring is recommended to ensure dust effects are appropriately

² <https://environment.govt.nz/publications/good-practice-guide-for-assessing-and-managing-dust/>

managed. The applicant has offered to implement continuous dust monitoring as recommended in the assessment by PDP.

Taking into consideration all the information available, I acknowledge that the Dust Management Plan is an appropriate mechanism to control dust. However, there is still a level of uncertainty in regard to amenity effects on the wider environment. PDP were unable to reach a robust conclusion on the scale of potential adverse effects of the proposed discharge, without an understanding of the nature, amount and effects of dust and PM₁₀. As the public cycle trail is located directly adjacent to the site, I consider that without further evidence to the contrary, there are reasonably likely to be more than minor effects on the public users of the cycle trail and that the proposal will impact on the rural amenity values presently experienced in the receiving environment.

Noise and vibration effects

A Noise Assessment Report and Vibration Report were prepared by Nevil Hegley of Hegley Acoustic Consultants and submitted in support of the application and further information response. Noting the proximity of the site to surrounding sensitive land uses, CODC commissioned Styles Group to undertake a peer review of the applicant's noise assessment.

The peer review by Styles Group generally concludes that the methodology and predicted noise levels outlined within the Hegley Acoustic Consultants report are reasonable and that the permitted noise limits in the District Plan can be complied with. The noise from the site will be similar in level and character to activities that are anticipated by the permitted standards, but that the larger scale and duration of the activity may give rise to noise effects that are not anticipated in the zone.

I note that the applicant has relied on a permitted baseline argument in terms of noise, in a letter provided to Council on 27 June 2023, however, as mentioned above in this report it is not considered that the application of this permitted baseline is not appropriate in this circumstance. Further to this, the applicant has referred to the explanation of Policy 4.4.9 in the District Plan to reinforce that mining operations are anticipated in the rural area and that associated noise should be recognised by persons moving to these areas. I consider that the applicant has been overly selective in referring to Policy 4.4.9, as the closing statement of the explanation (as underlined below) has been left out of the applicant's argument. This policy is referring to activities in the rural environment which are already established and to the impact of introducing new noise sensitive activities to this environment.

Policy 4.4.9 Explanation

'With the recent trend towards country living, traditional agriculture, mining, horticulture, viticulture, utilities and energy generation and transmission activities may be subject to an increasing number of complaints in respect of the effects of their day to day activities. The effects of these activities often cannot be readily avoided, remedied or mitigated by the person undertaking the activity without causing significant adverse economic effects. If people choose to live in the rural area of the Central Otago District, they should be prepared to accept the inconveniences, discomforts, disturbances or irritation that are caused and will be caused by such operations as a normal and necessary aspect of living in a district with strong rural character and a healthy developing agricultural/horticultural/viticultural sector and utility Central Otago District Plan 15 July 2013 Page 4:17 Rural Resource Area and energy generation/transmission activities. Although such inconveniences, discomforts, disturbances or irritations may not be acceptable in an urban area, they are to be expected in rural areas. It is, therefore, considered appropriate that those activities that locate adjacent to an existing rural activity should take steps to mitigate the effects that the existing rural activity may have upon them.'

I note that resource consent is required for the proposed gold mining activity as a discretionary activity, with the provisions in the Rural Resource Area District Plan directing careful consideration to be given to effects on rural amenity associated with noise. I consider that adherence to noise standards to be an overly simplistic approach to determining effects on rural amenity in the receiving environment, of a new activity which results in various significant breaches to the District Plan standards, as it does not take account of the change in ambient noise, albeit at levels that can achieve the standards of the plan.

In my opinion, it is overly simplistic to simply rely on compliance with the noise standards to determine whether the resulting effect on amenity and wellbeing is reasonable or not. Overall, I accept the assessment of Styles Group and consider that noise associated with this proposal has the potential to have more than minor effects on rural amenity values, currently experienced in this environment.

In terms of vibration, Styles Group generally agree with the assessment completed by Hegley Acoustic Consultants and do not expect the vibration as a result of the activity to interfere with residential activities or cause unreasonable disruption or annoyance within dwellings.

Effects on land stability and water bodies

The application states that the earthworks will avoid steep slopes and areas of instability, that earthworks will not be undertaken during high rainfall events and that suitable geotechnical expertise will be obtained where necessary, to ensure the stability of the mine pit. It is anticipated that the requirement of stormwater ponds to contain sediment and runoff during the works will be considered by the applicant's geotechnical expertise. As the applicant intends on implementing suitable measures to ensure land stability, I consider the effects on land stability to be minor.

In terms of effects on water bodies, the applicant is not proposing any earthworks within 10 metres of flowing water courses and the effects on groundwater will be considered through a groundwater study, as submitted with the Otago Regional Council (ORC) Resource Consent. As the effects on groundwater and water bodies lies wholly within the remit of the ORC and is addressed in detail within the ORC application for the activity, it is not considered further for the purpose of this assessment.

Effects of traffic generation

The application is supported by a transport assessment report prepared by Abley Limited. This assessment concludes that the traffic generation as a result of this proposal can be accommodated by the existing roading network, this is due to the acceptable sight distances from the access points and low risk ratings. The applicant offered that the recommendations in the report be applied as conditions of consent to minimise effects on traffic. I consider the assessment completed by Ableys Limited to be complete and accurate and I agree with it for the purpose of this assessment. On this basis it is considered that, there are considered to be less than minor effects on the safe and efficient operation of the roading network.

Effects on cultural values

The subject site is not affected by any known cultural, heritage or archaeological sites identified in the District Plan, Heritage NZ list or the New Zealand Archaeological Association (NZAA) site recording scheme. The site does, however, sit adjacent to the Clutha River/Mata Au which is a Statutory Acknowledgement Area and, as such, Te Runanga o Ngai Tahu will be notified of the application. While I accept that the applicant intends to implement an Accidental Discovery Protocol, rehabilitate the mined area, and to ensure contaminants

entering waterways will be avoided, I note that evidence of consultation with local iwi authorities has not been provided with the application. This notification process will provide an opportunity for Nga Rūnanga to formally raise any concerns they hold regarding cultural effects.

Hazard effects

The site is partially located in a flood hazard area, shown in Figure 5. Further information provided by Ms Collie, on behalf of the applicant on 5 July 2023 confirms that no buildings will be established within flood hazard areas on the site.

It should be noted that the site is elevated above the Clutha River (Mata-au) and the applicant has confirmed that all works will be undertaken on the plateau above the river. The applicant proposes to manage the effect of displacing flood water by establishing bunds at least 10 metres from water bodies and by not establishing bunds parallel to the Tima Burn.

For completeness, the applicant acknowledged on 5 July 2023, that the bunding shown on the proposed bunding plan partially crosses the Tima Burn stream. The applicant clarified that this was an error in the plan and that they will maintain a gap in the bunding over the stream, as to not impede the flow of the Tima Burn Stream.

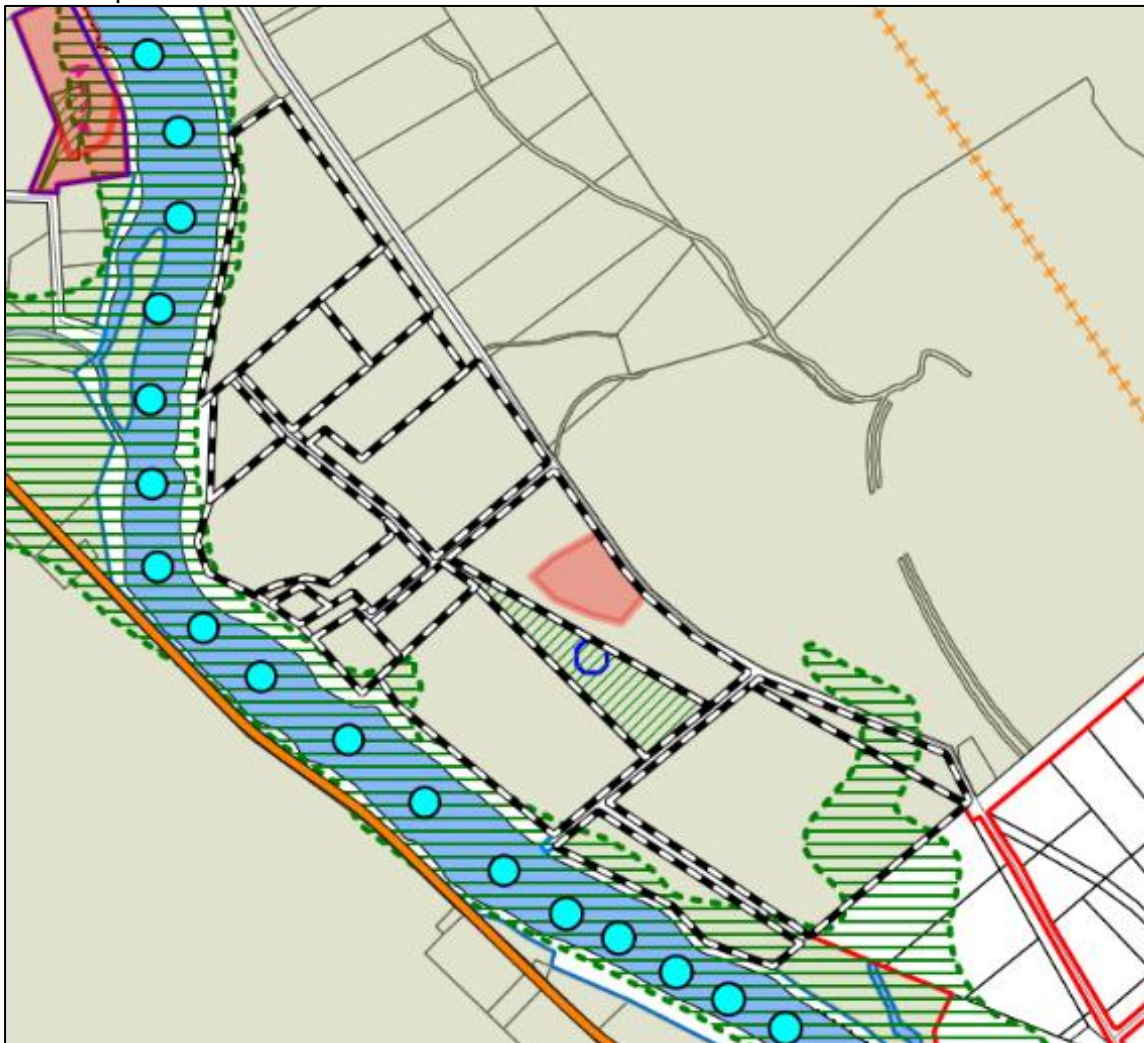


Figure 5: Screenshot of the subject site outlined with black and white lines in relation to the flood hazard area shown as green diagonal hatched lines. Source CODC GIS.



Figure 6: Bunding (shown by the green line) and extent of earthworks plan (shown in red). Source: Bunding plan dated 11 May 2023, titled Millers Flat Mine and completed by Town Planning Group.

I note that no comment from a suitably qualified and experienced person was provided by the applicant to support the proposed food hazard mitigation measures. Notwithstanding this, due to the separation distance from waterways and that proposed bunding is generally established outside of flood hazard areas as shown in Figure 6, I consider there to be a minor flood hazard risk resulting from this proposal.

Effects on public access

The proposal will have the effect of restricting public access to paper roads within the site, one of which provides access to the Clutha River / Mata-Au. The work will also impact the Clutha Gold cycle trail by reconfiguring the cycle trail. I note that Clutha Gold Charitable Trust, have provided their written approval to the application, and they are the authority who finance and maintain the public cycle trail. Notwithstanding this, I consider reconfiguring the cycle trail has the potential to impact on public users of the trail, where they will be required to be redirected up the northern unformed legal road, and along Teviot Road, as opposed to along the Mata-Au where the trail is currently located. I consider that this has the potential to change users experience of the trail to a more than minor degree.

In terms of the restricted access to the two paper roads, one is located on the southern side of the site and the other to the northern side of the site. The application states that the northern paper road provides access to private properties, and that the owners of the affected properties have all provided their written approval. In terms of the northern access road, the application acknowledges that various people use this road for access to the river for recreational purposes, therefore, they intend to provide a separate access to the river, over a part of the rehabilitated area of the site. It should be noted that the Clutha Cycle Trail currently traverses a portion of the southern paper road and the application is seeking separate approval from Council to mine a portion of the paper road. I consider that this proposal will have a more than minor effect on public access to the river and although the northern paper road is primarily utilised by persons who have given their written approval, the application

restricts access to this currently publicly accessible road. I note that the paper roads are already being utilised for the mining activity that have been established on the site with no alternative access to the river, by vehicle at this stage.

Effects of scale of activity on rural character and amenity values

While the preceding assessment addresses the technical issues of noise and vibration, air quality, traffic, landscape and a range of other matters that contribute to amenity, it is also necessary to consider the combined effect of the gold mining operations on the overall amenity of the area. The various effects associated with the proposed gold mine have the potential to change the current amenity attributed to the area by those who live and work in it, use recreational spaces and otherwise experience it. I understand that a change in amenity values is not necessarily an adverse effect in itself, rather, it is the scale and the intensity of the change against the existing amenity levels that require consideration.

The character of the site and surrounding area is predominantly rural and rural residential, influenced by the presence of the Clutha Gold Cycle Trail. There are no large-scale mining activities in the vicinity and the only large-scale rural activities are productive farming activities. Whilst mining activity is expected to be located in a rural environment in the District Plan and to not be located in an urban environment, the activity is a fully discretionary activity and when giving consideration to the likely intensity of the proposed activity I consider the level of the combined effects to exceed the level of effects on rural character and amenity anticipated in the rural environment. For clarity, the earthworks proposed over a five-year period is approximately 14.5 times the 3,000m³ permitted volume of earthworks when splitting 650,000m³ across the 15 parcels of land associated with the activity. I note that if these proposed earthworks were to be undertaken on one 'site' as defined in the District Plan the earthworks quantity would be approximately 217 times over the permitted earthworks quantity of 3,000m³. As the parcels of land subject to this site are all adjacent to one another and all associated with the activity, the cumulative effects of this activity across the various parcels are considered to be significantly greater than what is currently experienced and reasonably anticipated in a rural environment.

Due to the Clutha Gold Cycle Trail located directly adjacent to the site, I consider the existing amenity values associated with the receiving environment, to be higher and more sensitive to intensive activities, than a typical rural environment. This is due to the presence of tourists and other recreational users along the trail. I note that this proposal will result in various significant breaches to the District Plan standards, and will have resulting adverse noise, dust and temporary landscape effects as detailed above. When combining the effects of the activity, I consider the character and amenity as presently experienced from the cycle trail by recreational users will be adversely impacted.

Overall, I do not agree that the proposed development is compatible with the surrounding environment, when taking into consideration the tranquil qualities of the receiving environment and the low intensity of existing land uses. Whilst it is acknowledged that mining activity is not an unexpected activity within a rural context, this does not mean that such activities can't have significant environmental effects. In this case, the degree of change to the environment is significant and overall, the proposal will result in more than minor effects on rural character and amenity values as experienced in this area.

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

Overall, the proposed activity is likely to have adverse 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].

The application has been publicly notified as a result of Step 3, therefore, consideration has not been given to whether special circumstances exist.

OVERALL DECISION - S95A NOTIFICATION

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

EFFECTS ON PERSONS

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, are used to determine whether to give limited notification of an application for a resource consent, if the application is not publicly notified under section 95A. In this instance, public notification is required pursuant to s95A and assessment under Section 95B(1) is not required.

However, notice of the application is to be served on every prescribed person, as set out in clause 10(2) of the Resource Management (Forms, Fees and Procedure) Regulations 2003 as follows:

(2) *The consent authority must serve that notice on—*

- (a) *every person who the consent authority decides is an affected person under section 95B of the Act in relation to the activity that is the subject of the application or review:*
- (b) *every person, other than the applicant, who the consent authority knows is an owner or occupier of land to which the application or review relates:*
- (c) *the regional council or territorial authority for the region or district to which the application or review relates:*
- (d) *any other iwi authorities, local authorities, persons with a relevant statutory acknowledgement, persons, or bodies that the consent authority considers should have notice of the application or review:*
- (e) *the Minister of Conservation, if the application or review relates to an activity in a coastal marine area or on land that adjoins a coastal marine area:*

- (f) *the Minister of Fisheries, the Minister of Conservation, and the relevant Fish and Game Council, if an application relates to fish farming (as defined in the [Fisheries Act 1996](#)) other than in the coastal marine area:*
- (g) *Heritage New Zealand Pouhere Taonga, if the application or review—*
- (i) *relates to land that is subject to a heritage order or a requirement for a heritage order or that is otherwise identified in the plan or proposed plan as having heritage value; or*
- (ii) *affects any historic place, historic area, wāhi tūpuna, wahi tapu, or wahi tapu area entered on the New Zealand Heritage List/Rārangi Kōrero under the Heritage New Zealand Pouhere Taonga Act 2014:*
- (h) *a protected customary rights group that, in the opinion of the consent authority, may be adversely affected by the grant of a resource consent or the review of consent conditions.*
- (ha) *a customary marine title group that, in the opinion of the consent authority, may be adversely affected by the grant of a resource consent for an accommodated activity:*
- (i) *Transpower New Zealand, if the application or review may affect the national grid.*

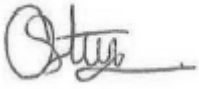
An assessment of the above persons has been undertaken and it is considered appropriate to serve notice on the following parties set out in the table below:

Party to be served	Reasons for service
Aukaha Limited	Cultural Values
Te Rūnanga O Ngai Tahu	Cultural Values
LINZ	Administrator of Crown Land
Department of Conservation	Riparian Habitat Management
Otago Fish and Game Council	Riparian Habitat Management
Heritage New Zealand	Heritage Values
Otago Regional Council	Relevant Authority
J. P. Clarke & K. L. Franklin (1334 Teviot Road)	Adjacent Site
Pamela and Wesley Reichel (5434 Ettrick-Raes Junction Road)	Adjacent site (across the western side of the Mata-au)
SSGarden Holdings Limited (1535A Teviot Road, Roxbrough)	Adjacent site (across the eastern side of Teviot Road)

OVERALL NOTIFICATION DETERMINATION

Given the decisions made under s95A, the application is required to be processed on a publicly notified basis. 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:



Olivia Stirling
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Date: 7 July 2023

Reviewed by:



Oli Monthule-McIntosh
Consultant Planner

Date: 7 July 2023

Approved under Delegated Authority by:



Lee webster
Planning and Regulatory Services Manager

Date 17 July 2023