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RC230173

01 March 2024

Jeffrey Smith & Katherine Gordon-Smith
C/- Edgar Planning Ltd
PO Box 716
Wanaka 9343

Via email

Dear Sir/Madam

Decision Notification: RC 230173 – Jeffrey Smith & Katherine Gordon-Smith – 55 Totara Place, Queensberry

I enclose a copy of the Council's decision on the above application as required by section 114(1) of the Resource Management Act 1991.

I also draw your attention to Section 120 of the Act which provides for the right to appeal a decision, or part of a decision, under certain circumstances. Please note that there is no right of appeal against the whole or any part of a decision to the extent that the decision relates to a boundary activity unless the boundary activity is a non-complying activity.

Appeals must be lodged with the Environment Court and served on the consent authority within 15 working days of notice of the decision being received in accordance with Section 121 of the Resource Management Act 1991."

Yours faithfully



Tarryn Lines
Team Leader - Planning Support



1 Dunorling Street
PO Box 122, Alexandra 9340
New Zealand

03 440 0056

Info@codc.govt.nz
www.codc.govt.nz



CENTRAL OTAGO DISTRICT COUNCIL

DECISION OF HEARINGS PANEL

APPLICANT: JEFFREY SMITH AND KATHERINE GORDON-SMITH
55 TOTARA PLACE, QUEENSBERRY
RC230173

INTRODUCTION AND PRELIMINARY MATTERS

Resource consent is sought by Jeffrey Smith and Katherine Gordon-Smith (the applicant) to undertake a two-lot subdivision of Lot 16 DP 328097 as contained in Certificate of Title 114457 (the site) and establish a residential building platform (RBP) on proposed Lot 2. The site comprises an area of 8.024ha.

The application was considered by the Central Otago District Council Hearings Panel on 12 December 2023. Jeffrey Smith and Katherine Gordon-Smith appeared at the hearing and were supported by Ms Erin Stagg as Planning Consultant and Mr Richard Tyler as Landscape Architect. One submitter attended the hearing, Mr Andrew Perkins. The Council's Planner and author of the section 42A report, Ms Tanya Copeland attended the hearing and the Hearings Panel was assisted by Hearings Administrator Tarryn Lines.

In making this decision the Panel has given consideration to the application submitted to Council, the planner's section 42A report and the evidence presented at the hearing. The Panel issued Minute 1 following the hearing, which requested further information in regards to the productive capacity of the site relative to the available irrigation allocation. The Panel has considered the applicants response to Minute 1 in making this decision.

Full details of the application are outlined in the Section 42A report, including the site description, a description of the proposal including the proposed subdivision design and servicing details and a description of the surrounding receiving environment. The Panel accepts these descriptions, and they are not repeated here.

During the hearing, in response to a line of questioning about the Panel's concern regarding the productive use of the property, the applicant formally amended the current irrigation quota proposed to be re-allocated to the resultant allotments. The amendment proposed an irrigation volume of 60,000L/day to proposed Lot 1 and 40,000L/day to proposed Lot 2.

RULE FRAMEWORK

Rule 4.7.3 (iii)(b) states that where a subdivision will create lots with an average size of no less than 8ha and a minimum size of no less than 2ha then this is assessed as a discretionary activity. Proposed Lot 2 meets the minimum allotment size, however the average allotment size created by the subdivision is approximately half of the required 8ha. As such, the proposed subdivision is a non-complying activity pursuant to Rule 4.7.5 (iii) of the District Plan.

The proposed residential building platform is a restricted discretionary activity pursuant to Rule 4.7.3 (vii) of the District Plan.

In this case, as there is more than one rule involved, and the effects are linked, the activities were bundled and the proposal was considered in the round as a non-complying activity pursuant to sections 104 and 104D of the Resource Management Act 1991.

NOTIFICATION AND WRITTEN APPROVALS

In accordance with section 104 (3)(a)(ii) of the Act, a consent authority must not have regard to any effect on a person who has given written approval to the application. In this instance, written approval was received from the following parties:

Persons	Property Address	Location in Relation to Application Site
Melanie Mueller	167 Pukerangi Drive	Property to the north
Sharon McIntyre and Sharex Trust	23 Miharo Lane	Property adjacent to the east
Mac, Daniel, Anthony and Nicholas Gardner	41 Totara Place	Property adjacent to the south
Craig Barr and Jessica Maddock	29 Totara Place	Property to the south
Carlton and Louise Carney	11 Totara Place	Property to the south
Andrew Keene and Sorrelle Pearson	175 Queensberry Terrace	Property to the east
Stephen and Megan Burke	109 Pukerangi Drive	Property to the east
Rachel Predergast and Matt Ragg	54 Totara Place	Property adjacent to the east on the opposite side of Totara Place
Lyndon Stott and Sophie Copley	189 Pukerangi Drive	Property adjacent to the north

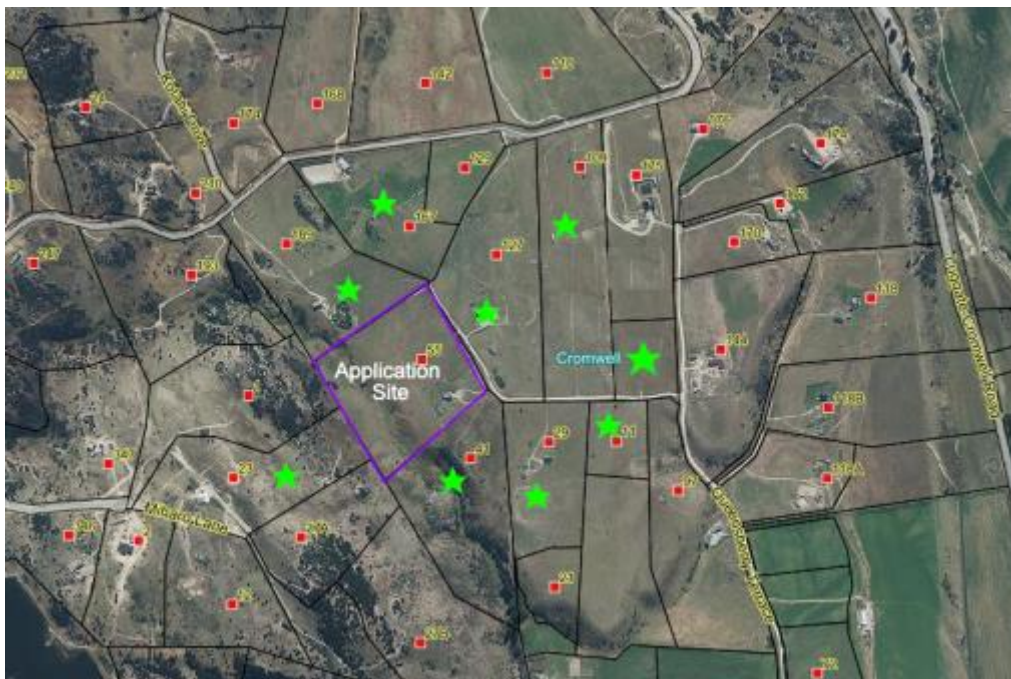


Figure 1: Affected party approval locations

The application was publicly notified on 28 September 2023 at the request of the applicant. The application was served on a number of parties who were considered affected by the proposal in accordance with s95E(3) as landowners who access from the private right of ways named Queensberry Terrace and Totara Place and those parties who have direct views over the subject property. Seven submissions were received by the closing date and summarised as follows:

SUBMITTER	SUMMARY OF SUBMISSION	DECISION REQUESTED	WISHES TO BE HEARD
Clive Jones	<p><u>Neither support nor oppose</u></p> <ul style="list-style-type: none"> • Holds concerns about cumulative effects of increased density of development in the Rural Resource Area 	Condition preventing further subdivision of Lot 1	No
Beth Krehic and David Krehic	<p><u>Support</u></p> <ul style="list-style-type: none"> • More houses in Queensberry will provide greater rates collection to prompt upgrade of Council services i.e rubbish collection 	Approve	No
Amanda and Blair Allen	<p><u>Support</u></p>	Not stated	No
LINZ	<p><u>Neither support nor oppose</u></p> <ul style="list-style-type: none"> • Notes that the proposal is unlikely to impact on the beds of the Clutha, Hawea and Cardrona Rivers. 	Not stated	No
Peter and Wendy Davie	<p><u>Oppose</u></p> <ul style="list-style-type: none"> • The proposal results in the creation of allotments which do not meet the minimum required by the District Plan • Intensification of housing on the flat area of Totara Place 	Decline	Not stated
Andrew Perkins and Kirsten MacFarlane	<p><u>Oppose</u></p> <ul style="list-style-type: none"> • Impact on the semi-rural views from the submitters property • Reduction in open space and amenity values • Future built form not anticipated by the non-complying nature of subdivision in the locality. • Concern over matters of precedent • Concern over cumulative effects and that the landscape has reached capacity to absorb further residential properties. • Concern over the nature of the positive effects identified in the application 	Decline	Yes
Aukaha	<p><u>Oppose</u></p>	Decline	Undecided

SUBMITTER	SUMMARY OF SUBMISSION	DECISION REQUESTED	WISHES TO BE HEARD
	<ul style="list-style-type: none"> • Concern over the increased number of subdivisions within the rural areas and their encroachment and adverse effects on the cultural landscape. • Seeks additional information in regards to wastewater, potable water and irrigation water. 		

SECTION 104 MATTERS

PERMITTED BASELINE

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, there are no permitted activity subdivisions or residential building platforms under the Central Otago District Plan and there is no permitted baseline to be applied.

RECEIVING ENVIRONMENT

The subject site contains an existing dwelling and established curtilage area. Surrounding sites comprise small scale rural activity combined with low density residential dwellings and outbuildings. Lot sizes generally meet 8ha, however between 2017 and 2021 a number of subdivisions have been approved within the Totara Place/Queensberry Terrace locality which have subdivided these circa 8ha allotments into two.

ASSESSMENT MATTERS/RULES

The proposal requires resource consent as a non-complying activity, and it is therefore appropriate that a full assessment in relation to potential effects on the environment be undertaken. We consider the matters raised in Ms Copeland's report are valid considerations and are addressed below.

Visual and Landscape Effects

The proposal seeks to establish two lots within an 8ha rural site which do not comply with the average lot sizes. As noted above, the proposal seeks to hold the existing dwelling within proposed Lot 1 and to establish a residential building platform on proposed Lot 2.

Ms Copeland's evidence was that, when considering the effects of rural subdivision and development, the District Plan clearly sets out objectives and policies which seek to maintain and enhance the "open space, landscape, natural character and amenity values" of the Rural Resource Area. According to Ms Copeland, the District Plan's use of both a minimum allotment size and an average allotment size is to provide for varied designs of development, which when assessed overall, will maintain the open and natural characteristics of the rural environment. Ms Copeland asserted that the significant breach of the average allotment size controls proposed in the application, combined with the establishment of an additional residential building platform will result in a definitive increase in the domestication and density of the site. We agree with this position.

The Panel considered the characteristics of the site's existing environment and the development which has occurred on surrounding sites as part of previous consented development and also consented, yet unimplemented development. In this context, many of the circa 8ha sites created by the underlying subdivision have been subdivided into smaller sized sites than provided for by the density provisions of the District Plan. The Panel has agreed with Ms Copeland that further incremental subdivision within the surrounding flat terrace area will start to give rise to a density of development which has the potential to permanently convert the locality to a rural lifestyle enclave. The presence of this level of development and domestication compromises the open and natural character and rural amenity values intended for the Rural Resource Area, and that which the provisions of the District Plan are designed to protect.

The application was supported by a landscape and visual assessment, prepared by Richard Tyler of Site Landscape Architects. Mr Tyler presented evidence at the hearing in response to the section 42A report and submissions received from the property owners at 27A and 27B Miharo Lane. Mr Tyler presented view shafts simulations, showing the current and proposed level of development within the subject site and surrounding and Queensberry Terrace/Totara Place terrace flats, as viewed from the elevated escarpment to the west and south-west of the site where the properties on Miharo Lane are located.

At the hearing, Mr Tyler confirmed the position reached in his evidence that the open and natural character of the rural environment in this locality had been eroded with the increase in the density of development. Mr Tyler agreed that the proposal would result in a further reduction in the natural and open character of the surrounding flat terrace area, however quantified that this reduction is balanced by the maintenance of the wide-open views of the plains and surrounding mountains which formed the primary views from the Miharo Lane properties.

The Panel does not agree with this assessment and considers that the maintenance and enhancement of the open space, landscape, natural character and amenity values of the District's rural environment apply to the entire rural environment and do not hinge on visibility from public or specific private viewpoints.

In consideration of the evidence presented at the hearing, the Panel notes the greatest effects on rural character and amenity values resulting from a subdivision of this nature and the establishment of a residential building platform is the additional domestication of the site and visual increase in the density of development.

The Panel is of the opinion that the community, and in particular neighbouring properties, should expect that these values are adequately protected, maintained and enhanced through the implementation of the rule framework, objectives and policies of the District Plan. The Panel concludes that the establishment of a quasi- rural lifestyle enclave in this locality will irrevocably change the rural character of the locality to a point where adverse cumulative effects on the open and natural character of the rural environment will become significant and inappropriate.

Access and Transportation Effects

The transport assessment report commissioned by Abley Consultants noted that the proposed subdivision relies on access via two private unsealed right of ways, named Queensberry Terrace and Totara Place. Abley calculated that the proposal would result in 28 allotments serviced by Queensberry Terrace, noting that this exceeds the 15 allotment threshold at which

Council's Engineering Standards ¹ requires a right of way to be both sealed and vested with Council. Abley concluded that the creation of additional allotments accessing from the unsealed private right of ways had the potential to result in adverse cumulative effects in relation to the safe and efficient operation of the roading network. Abley recommended a pro-rated approach to sealing, as presented within the planners s42A report.

On behalf of the applicants, Ms Stagg confirmed that the applicant rejects the imposition of a requirement to upgrade Queensberry Terrace to meet Council standards, citing that the current state of the accessway is suitable for current traffic volumes. The applicant did confirm acceptance of upgrading Totara Place to the standard imposed by Table 3.2 of Council's standards.

Overall, the Panel agrees with the conclusions reached by Abley and is of the opinion that both the current standard of the private accessways and the ownership/maintenance arrangement is unacceptable in the context of Council's standards. We consider that Council standards impose a minimum standard of construction to ensure that roads and accessways are both safe and efficient.

The Panel considers it imperative that Queensberry Terrace, as a minimum, is sealed and vested in accordance with the Council's standards in order to address cumulative safety and efficiency effects. The Panel accepts that the only mechanism by which sealing and vesting of Queensberry Terrace can be imposed is through the resource consent process.

Effects on the productive capacity of the land

The Panel acknowledges that fragmentation of rural productive land and land with special qualities can have significant adverse effects on the productive and life-supporting capacity of the districts soil resource. In general terms, the creation of smaller rural allotments including the establishment of additional residential activity within these allotments, provides less opportunities for efficient, effective and feasible productive land uses to be undertaken.

The Panel accepts Ms Copeland's evidence that the soils underlying the subject site are classified as LUC 4 soils according to the Landcare Research map and are therefore not considered to be highly productive as defined by the National Policy Statement on Highly Productive Land (NPS-HPL). We agree that the site is located within an area identified within Section 2 of the District Plan as having 800 or above growing degree days and is considered to be a special land resource.

Turning to the circumstances of the site, the site currently contains a singular residential activity and associated curtilage area with the remainder of the site used for livestock grazing. We heard from the applicant's that they currently use their irrigation quota of 100,000L per day to apply water via k-line irrigation to the flat parts of the property outside of the curtilage area. The applicants contended that this irrigation was sufficient to grow feed for the livestock on the property. The original application included proportioning the current irrigation quota between Lot 1 and Lot 2 relative to the size of the allotments, however during discussions at the hearing, the applicants formally amended the proportional split of the irrigation quota to provide 60,000L per day to Lot 1 and 40,000L per day to Lot 2. The applicant's redistribution of irrigation volume was an attempt to better correlate irrigation volume with available cultivatable and irrigatable land within each allotment.

In response to Minute 1 issued by the Panel, the applicant sought advice from an irrigation engineer and sales expert, Mr Scott Collie. Mr Collie concluded that the water allowance, as distributed across proposed Lot 1 and 2, would not support efficient irrigation of productive

¹ Table 3.2, Councils July 2008 addendum to NZS 4404:2004.

pasture-based systems throughout a normal irrigation season period. The reasoning being that the application rates for the cultivatable areas on proposed Lot 1 and 2 are well below evapotranspiration rates. Ms Stagg then assessed this information and subsequently concluded that the existing irrigation quota would not support any intensified productive land use within the proposed allotments but would be sufficient to retain the existing productive land use across the site. On balance, it appears obvious that although the irrigation quota as distributed both pre and post subdivision is less than evapotranspiration rates, the site is able to currently support productive use.

The issue then comes to how the subdivision may impact on the potential to maintain the productive use of the resultant allotments. Ms Stagg contends that the subdivision would allow for increased investment in water infrastructure and potential to increase irrigation quota which could then increase the productivity of the two allotments.

The Panel concludes, based on on-site evidence, that there is sufficient irrigation water available to support the continuance of a productive rural land use across the site. The proposed subdivision locates the residential building platform and curtilage area on a part of the site which is currently productive due to flat topography and access to k-line infrastructure and adequate water pressure. As a result, the proposed subdivision will result in a reduction in the overall availability of productive land by introducing a non-productive rural land use to land that is able to support a productive land use.

The Panel is of the opinion that smaller allotment sizes which would result from the subdivision would also limit the flexibility and options available for alternative productive land uses to be established in the future. The Panel has not been persuaded that additional investment in water infrastructure mitigates the effects of the loss of productive land as obtaining more irrigation water and/or investing in infrastructure does not need to be predicated by subdivision.

Therefore, the Panel is of the opinion that the applicant has not provided sufficient information or provided a robust argument to persuade the Panel of the merits of the subdivision with regard to rural productivity. The proposed subdivision does not represent a sustainable use of the soil resource and will result in adverse effects on the life-supporting capacity of the soil resource. The proposal will contribute to a loss of rural productivity within the District's rural area.

Servicing and Access

No concerns were raised by Council's Development Engineers or the reporting officer with respect to servicing arrangements. The servicing arrangements were outlined in the section 42A report and no changes were requested by the applicant at the hearing apart from a change to the distribution of irrigation water. The proposed servicing details are as follows:

The site is currently serviced by a 5,000L/day potable water supply which is proposed to be split evenly between proposed Lot 1 and 2. The applicants have provided evidence to confirm that the allocation is able to be split with the subdivision of land. The applicant proposes to register a consent notice on the title of Lot 2 to secure firefighting water requirements in accordance with regulations. This approach has been also recommended by Council's Development Engineering team.

The applicant has provided information confirming shares of water from Queensberry Irrigation Limited which equate to 100,000 L per day across the parent subject site. The applicant proposes to split the irrigation water as 60,000L/day to proposed Lot 1 and 40,000L/day to proposed Lot 2.

On-site wastewater and stormwater discharge was confirmed as being achievable within the proposed boundaries of proposed Lot 2 and the applicant agreed to the provision to submit a full wastewater report prior to the grant of 224 (c) certification confirming that the wastewater disposal was able to meet AS/NZS 1547:2012.

Council's Engineer has recommended that the new vehicle entranceway to serve proposed Lot 2 and the existing vehicle entranceway be constructed (or upgraded) to meet Council standards contained with Part 29 of Council's Roading Policies January 2015.

The Panel concludes that adverse effects of the proposal in regards to these servicing arrangements will be acceptable.

Precedent

'Precedent' is a relevant matter under section 104(1)(a) in regard the 'potential effects' arising as a consequence of further development being treated like for like. It is also a relevant matter under the section 104(1)(c) in terms of 'plan integrity'. In this instance the proposed subdivision will result in the creation of allotments which effectively double the density of the Rural Resource Area that is anticipated by Rule 4.7.4(iii)(b) of the Plan.

With regard to section 104(1)(a), 'actual and potential effects' include the potential cumulative effects of further subdivisions which may result as a consequence of precedent. It also includes the cumulative effects of preceding development in the surrounding area combined with the effects of the current proposal.

The Panel considers that the surrounding receiving environment has reached a density of development that will not support further fragmentation and domestication without significantly undermining the open and natural character and rural amenity values of the rural environment. The Panel concludes that the potential cumulative effects from this proposal will be unacceptable.

The Panel acknowledges that the Council is responsible for consistent administration of the operative District Plan. Matters of precedent and plan integrity have been traversed by the Environment Court and case law requires that consideration as to whether approval of a non-complying activity will create an undesirable precedent. Where a plan's integrity is at risk by virtue of such a precedent the 'true exception test' is to be applied.

The applicant failed to persuade the Panel that the proposal is a true exemption within the receiving environment or within the Rural Area in general. To meet the test a 'true exception' must be genuine and not merely a point of difference.

On this matter, the Panel is in agreement with Ms Copeland that there are no sufficiently unique or extenuating factors applying to this site that would set it apart from other sites in the Rural Resource Area in such a manner as to nullify concerns regarding either precedent or plan integrity.

We acknowledge that the original intentions of the density requirements for rural subdivision was to enable a range of allotment sizes, while maintaining the overall pattern of development, with larger lots balancing out the establishment of smaller lots.

On this matter, the Panel agrees with Ms Copeland and considers that the density of subdivision in the immediate vicinity of the site has resulted in the absence of larger balance allotments which could act to counterbalance the presence of the smaller allotments proposed by this application. Therefore, we agree that the subdivision proposed raises fundamental issues with respect to the integrity of the Plan. The proposed subdivision would establish a

precedent for the subdivision of other pockets of similarly sized rural land which would have an adverse effect on the integrity of the plan, its coherence and public confidence in its administration.

In terms of precedent and plan integrity, the Court has confirmed that cases should be assessed on their merits and precedent should only be used to refuse consent applications in instances likely to lead to subsequent applications of a similar nature. In this instance, the Council is currently assessing multiple, similar non-complying subdivisions within the immediate vicinity of the subject site and seeks to provide a consistent approach. Furthermore, the subject proposal is not unique to the extent that it could be distinguished from the other applications currently before Council and also from the many other sites within the Rural Resource Area.

Overall, the Panel concludes that adverse effects, particularly cumulative effects, will result which are unable to be adequately avoided, remedied or mitigated. The proposal sets an undesirable precedent for further fragmentation which will undermine the integrity of the Plan.

OBJECTIVES AND POLICIES FRAMEWORK

Central Otago District Plan

From the evidence of both Ms Copeland and Ms Stagg we consider the following objectives and policies to be of particular importance and relevance for this application:

Objective 4.3.1 (Needs of the District's People and Communities)

On this matter, Ms Copeland and Ms Stagg agreed that the proposal will provide for the social and economic wellbeing of the application. However, as discussed above, the applicant has failed to convince the Panel that subdivision is necessary in order to increase the productivity of the subject site. Therefore, we agree with the reporting officer's assertion that the proposal fails to provide for the wider community's and future generation's need to utilise the special soil resource to provide for their social, economic and cultural well-being, nor does the application maintain the environmental quality of the application site.

Objective 4.3.3 (Landscape and Amenity Values), Objective 16.3.4 (Amenity Values) and Policies 4.4.2 (Landscape and Amenity Values) and 4.4.10 (Rural Subdivision and Development)

Both Ms Copeland and Ms Stagg assessed the abovementioned objective and policies in tandem and both expressed that these objectives and policies enable a consideration of whether adverse effects are able to be avoided, remedied or mitigated. The Panel asserts that these policies are all-encompassing and provide a high threshold for the maintenance of the amenity values and open and natural character values of multiple aspects of the District's Rural Areas including hills and ranges, wetlands, lakes, rivers, soils and neighbouring properties.

For the reasons detailed in the assessment of effects above, the Panel concludes that the proposal fails to satisfactorily avoid, remedy or mitigate the adverse effects of the proposal in terms of landscape, natural character and amenity values of the Rural Resource Area in its entirety. The proposed density of development and subsequent domestication will result in cumulative effects on the amenity values of neighbouring properties and result in a reduction in the productive use of soils with special qualities.

Objective 4.3.7 (Soil Resource), Objective 16.3.5 (Water and Soil Resources) and Policy 4.4.6 (Adverse Effects on the Soil Resource)

Objective 4.3.7 and 16.3.5 seeks to maintain the life-supporting capacity of the soil resource to meet the needs of present and future generations. Policy 4.4.6 seeks to avoid the loss of soils with special qualities. As noted above, the subject site is currently afforded sufficient irrigation water to support a viable productive land use. The proposed subdivision and land use activity represents both fragmentation of productive land with special soil qualities and the conversion of this productive land to a non-productive use. These activities will result in a net loss of productive land and that fragmentation of the site will not maintain the life supporting capacity of the District's soil resource, and will not ensure the needs of present and future generations are met. We consider the proposal to be contrary to Objective 4.3.7 and Policy 4.4.6.

Objective 16.3.1 (Adverse Effects on the Roothing Network) and Policy 16.4.1 (Adequate Access)

As noted above, the proposal is considered to result in cumulative adverse transport effects as a result of the additional demand on the unsealed, private accessways which service the site. The existing accessway of Queensberry Terrace fails to meet Council standards in relation to the 2008 Addendum to NZS 4404:2004 which sets out the thresholds for sealing and vesting of private accessways. The proposal is contrary to Objective 16.3.1 and Policy 16.4.1 which require access to subdivisions to be adequate for the likely future traffic levels to ensure safe and convenient movement of vehicles and to provide for the safe and efficient operation of the roading network.

Objective 16.3.2 (Services and Infrastructure), Objective 16.3.9 (Physical Works Involved in Subdivision), Objective 16.3.10 (Provision for Future Development), Objective 16.3.11 (Effluent Disposal), Policy 16.4.3 (Adequate Infrastructure), Policy 16.4.2 (Existing Access) Policy 16.4.4 (Unreticulated Areas), Policy 16.4.6 (Construction Standards) and Policy 16.4.7 (Subdivision Design)

In terms of vehicular access onto the site and servicing, the site is considered to be able to be satisfactorily serviced and generally consistent with Objective 16.3.2, 16.3.11 and supporting policies 16.4.2, 16.4.3 and 16.4.4.

Physical works associated with the subdivision and the proposal can be undertaken in a manner which does not adversely affect the stability of land, water quality and neighbouring properties in respect of the effects of noise, dust and vibration. The proposal is therefore consistent with Objective 16.3.9 and supporting policy 16.4.6.

Objective 16.3.10 requires that subdivisions are designed to facilitate an appropriate and co-ordinated ultimate pattern of development having regard to the particular environment within which the subdivision is located, and cross references to Issue 16.2.1 (intensification of development) and Policy 16.4.7 (subdivision design).

The subdivision design generally provides for the relevant matters in Policy 16.4.7, however the proposal represents an inappropriate pattern of development for the rural zone, and is inconsistent with Objective 16.3.10. Furthermore, the proposal results in additional load on an unsealed accessway which fails to comply with Council standards. This situation is not considered to result in an appropriate or co-ordinated ultimate pattern of development for the locality.

Based on our findings on the effects of the proposal, and on the relevant objectives and policies of the Central Otago District Plan, the Panel considers that the proposal is also inconsistent with these higher order documents which contain similar objectives and policies to the Central Otago District Plan.

National Policy Statement for Highly Productive Land

The National Policy Statement for Highly Productive Land (NPS-HPL) came into effect on 17 October 2022. The evidence we received on this application is that the NPS-HPL only affects sites within land classified at LUC 1, 2 and 3. Therefore, the NPS-HPL is not applicable to the subject site.

PART 2 OF THE RESOURCE MANAGEMENT ACT 1991

The purpose of the RMA to promote the sustainable management of the natural and physical resources detailed below:

‘managing the use, development and protection of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic and cultural well being and for their health and safety while:

- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations:*
and
- (b) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems:*
and
- (c) *Avoiding, remedying, or mitigating any adverse effect of activities on the environment.’*

In respect of the other matters set out in Section 7, the following matters are considered relevant:

- 7(a) kaitiakitanga
- 7(b) the efficient use and development of natural and physical resources:
- 7(c) the maintenance and enhancement of amenity values:
- 7(f) maintenance and enhancement of the quality of the environment:
- 7(g) any finite characteristics of natural and physical resources:

The proposal seeks to subdivide a productive rural site into a manner which reduces productive use of the smaller allotment. Section 5(2)(a) refers to sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, while Section 5(b) seeks to safeguard the life supporting capacity of soil resources. Section 7(g) requires that regard be had to any finite characteristics of natural and physical resources.

We do not consider that the proposed application represents sustainable management of the finite resource of New Zealand’s rural productive land, or provides for the needs of future generations in this regard. We therefore do not consider the application to be consistent with Part 2 of the RMA.

SECTION 104D 'GATEWAY TEST'

We have previously noted that the proposed subdivision is a non-complying activity and in terms of section 104D the Council may grant resource consent for a non-complying activity only if it is satisfied that either: -

- a) *The adverse effects of the activity on the environment ... will be minor; or*
- b) *The application is for an activity that will not be contrary to the objectives and policies of ... the relevant plan, ...*

For the reasons outlined in the body of this report, we consider the proposed application to fail to meet both limbs of the 'gateway test' for non-complying activities provided for under Section 104D(1) of the Act.

CONCLUSION

Having regard to the information available, prior to the Hearings Panel consideration of application, information provided at the hearing and in response to Minutes issued by panel, the proposal has been considered as an application for subdivision and land use consent for a non-complying activity in terms of sections 104, 104B, and 104D of the Resource Management Act 1991.

The proposal represents a significant departure from the site size averaging rule. For the reasons noted above the Panel considers that the adverse effects of the proposal in relation to the potential for adverse cumulative visual and landscape effects, cumulative transport effects, effects on the rural productive capacity of the site, and setting a precedent in relation to these matters are more than minor and not able to be adequately avoided, remedied or mitigated.

DECISION

Having regard to the reasons detailed above, the Council has resolved pursuant to sections 104 and 104D of the Resource Management Act 1991 to decline the subdivision and land use consent.

Certified to be a correct copy of the decision of the Central Otago District Council Hearings Panel.



.....
Neil Gillespie
Chairperson
Central Otago District Council Hearings Panel

Dated: 01 March 2024