

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on the Proposed District Plan

Report 16.8

Report and Recommendations of Independent Commissioners
Regarding Upper Clutha Planning Maps
Church Road, Luggate

Commissioners

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WAKATIPU HOLDINGS (314)

Further Submitter: FS 1309.2 The Alpine Group

1. SUMMARY OF RECOMMENDATIONS

1.1. Overall Recommendation

1. We recommend that this submission be rejected

1.2. Summary of Reasons for Recommendation

2. The PDP Rural Zone is more appropriate than the requested rezoning of Rural Lifestyle over the site because the Rural Zone has the most appropriate provisions to manage the wide variety of effects that are possible from rural living on the site, including reverse sensitivity effects arising in relation to industrial activities on adjoining land.

2. PRELIMINARY MATTERS

2.1. Subject of Submission

3. This submission relates to Lot 1, DP 300025 (Computer Freehold Register 654501), a 13.89 hectare site located on Church Road between Luggate and the Clutha River.

2.2. Outline of Relief Sought

4. The submission sought the rezoning of the site, as shown on Planning Map 11a, from its current Rural and Hydro Generation Sub-Zone (in part) to Rural Lifestyle.
5. The further submission from the Alpine Group in opposition raises concerns with adverse reverse sensitivity effects on the established rural industrial activities immediately adjoining the site and opposes the relief sought.

2.3. Description of the Site and Environs

6. It was acknowledged by the submitter that:
 - a. Removal of designation 429 (landfill) separately sought in the submission, though not a matter for this hearing panel, had been resolved; and
 - b. Removal of the Hydro Generation overlay was not a Stage 1 matter¹.
7. The location of the land to which the submission relates is therefore the 10.411 ha identified on the aerial photograph below (Figure 1).

¹ Evidence of Nicholas Geddes dated 3 April 2017, page 4



Figure 1: location of Wakatipu Holdings' site outlined in yellow

8. The site is largely located on two terraces. The part of the site located on the upper terrace appears as a slightly irregular rectangle. On one long side, it has a frontage to Church Road, which links the settlement of Luggate to the 'Red Bridge' that provides access to the southern end of the Hawea Flats and the Lindis Valley across the Clutha River. On the other long side, the upper terrace overlooks the Clutha River and provides views down the Clutha River valley to the south. A popular walking/ cycle trail adjoins the site at the same level as the upper terrace, on the river side.
9. The upper terrace was formerly the site of a landfill and the notified plan map records the existence of a Council designation for that purpose. Mr Geddes's evidence for the submitter was that there is a single approved building platform on the upper terrace.
10. On the Luggate side of the upper terrace, immediately to the south-west along Church Road, the adjoining site has a Rural Industrial Sub-Zoning, reflecting the existence of longstanding existing industrial activities: Luggate sawmill and timber yard, and an animal products manufacturing facility.
11. Further to the south-west down Church Road, on the other side of Luggate Creek, between the Creek and Luggate Township, land is undeveloped Rural Residential zoned land. A rural residential subdivision is currently being developed to the north of Alice Burn Drive and Pah Road on the north east outskirts of Luggate Township (south east of the submitter's site). The corridor of Luggate Creek has a Hydro Generation Sub-Zoning over it under the ODP, but that Sub-Zone is not the subject of the PDP, as the submitter now acknowledges.

12. The land on the other side of Church Road from the site, as well as on the north-east side of the site boundary towards Red Bridge, has a zoning of Rural. There is an existing industrial plant producing timber trusses and frames within this part of the Rural zone, located about 600m north of the sawmill.
13. The upper terrace currently has a belt of pine trees on it separating the neighbouring industrial activities from the balance of the upper terrace, which does not appear (from our site visit) to be actively farmed.
14. The site drops down to the lower terrace which again appears as an irregular rectangle situated above and overlooking the Clutha River. The south and west side of the lower terrace is bounded by Luggate Creek. The lower terrace also adjoins the land zoned Rural Industry Sub-Zone. On the other side of Luggate Creek, towards Luggate, the land is zoned Rural Residential.
15. Adjacent to this leg of the site, the walking/cycling trail noted above drops from the upper terrace to below the lower terrace between the site and the Clutha River.

2.4. The Case for Rezoning

16. The land adjoins and is part of the Clutha River/Luggate Creek corridors and has a Rural Landscape Character classification in the notified PDP. Although it is not within an ONF or ONL, part of the site boundary forms the boundary with the Clutha River ONL (as we have recommended it be, rather than ONF, in our Report 16.1). The balance of the site is encircled by the ONL to the south east and to the south where it extends up the Luggate Creek corridor.
17. The boundary of the ONL runs along the top of the river escarpment, and part way up Luggate Creek. The site is adjacent to a particularly well known, scenic and widely valued feature of the Clutha River known as The Nook².
18. Ms Steven, the landscape expert witness for the submitter, considered that the southern terrace of the site is also an outstanding natural landscape, although not identified as such in the PDP. It followed that this part of the site is in her opinion particularly sensitive to development. While she considered that the site has capacity to absorb 4 additional house sites (one being consented but not yet developed at the time of our site visit), she recommended that any buildings and domestic development be kept away from the mid to southern end of the southern terrace.
19. In his oral submission for the submitter, Mr Todd advised that part of the site was accepted as being outstanding natural landscape, as opined in Ms Steven's evidence. It was not suggested that there would be any development in that area, and Mr Geddes proposed a BRA to address the issue.
20. We discussed with Ms Steven the exact extent of the lower section of the site that would need to be kept free of development. She identified a strip of 50 metres wide along the south-eastern boundary of the adjacent industrial site as suitable for development in terms of landscape considerations.

² Evidence of Anne Steven dated 6 April 2017, para 5.1

21. Ms Steven identified that a buffer of vegetation and open space would also be necessary along the north-eastern boundary next to the river trail.
22. Ms Steven described the aesthetic quality of the site itself as low, and the strong influence of industrial land uses on adjoining land (sawmill, meat processing, timber framing, vehicle towing, restoration blasting and landscaping) on the road corridor. She was of the opinion that Rural Lifestyle zoning would enable a rural character to be maintained as long as those sites were located close to the road frontage and that there would be sufficient opportunity to address relevant landscaping and building platform location matters through the discretionary activity rules in the Rural Lifestyle zone.
23. Ms Mellsop's evidence for the Council considered that buildings in this area could be visible from various public places including Church Road, Clutha River corridor, and the Luggate Creek walkway, and would result in the spread of domestication by infilling an area of rural character that would represent sprawl into the rural landscape, and adversely affect the visual amenity of the approach into Luggate from the Red Bridge.
24. Mr Barr's opinion, relying on Ms Mellsop's landscape evidence, was that the requested zoning could result in development that degrades the landscape character and diminishes the visual amenity of the Rural Landscape. In his opinion, rezoning to Rural Lifestyle would not align with Landscape Objective 6.3.4 and related policies³.
25. He also considered that the requested zoning would not be compatible with Rural Residential & Lifestyle Objective 22.2.1 and associated policies⁴, which aim to maintain and enhance the District's landscape quality, character and visual amenity. While the request would enable rural living opportunities, he was of the opinion that there was not enough certainty that the area could absorb development without detracting from those landscapes and was in effect a spot zone, which is generally discouraged.
26. Addressing the compatibility of the proposed Rural Lifestyle zone with the adjacent industrial activities (reverse sensitivity) in his planning evidence on behalf of the submitter, Mr Geddes compared the location of potential dwellings with the Rural Residential zone to the south. The latter is 61m from the Rural Industrial Subzone, whereas the submission site has one approved building platform 145m from the Rural Industrial Subzone. In his opinion, the Rural Industrial Subzone is a spot zone, whereas the requested Rural Lifestyle zone over the submitter's land is not. He proposed a BRA over the major portion of the southern terrace⁵ to address landscape values and supported non-objection covenants to address reverse sensitivity issues.
27. Mr Edgar for the Alpine Group, who opposed the requested rezoning as owner of adjoining land currently being used for a variety of consented industrial activities, told us that Rural Lifestyle zoning would enable residential units up to 10m from the Rural Industrial Subzone and that noise standards apply at the notional boundary of any residential unit. He compared that scenario with the lifestyle subdivision currently being developed to the south, noting that although the boundary of the Rural Residential Zone is 61m from the boundary of

³ Referring to the version of Chapter 6 he recommended in his evidence in reply in Stream 1B

⁴ Again referring to the version of these provisions recommended in his evidence in reply, this time in Stream 2.

⁵Shown in Exhibit 24 that he provided to us

the site, actual residential development within that zone is required to be a minimum of 220m away. In his opinion, it was more appropriate to address reverse sensitivity issues at the time of rezoning rather than through reverse sensitivity covenants, which could be challenged at the time of subdivision.

28. Mr Barr advised that the requested rezoning would allow for residential use of the site in an area surrounded by rural land where it is permitted to undertake and continue operating established processing and manufacturing activities. He was of the opinion that the rezoned area could lead to reverse sensitivity effects from the Rural Industrial subzone adjoining the submitter's site. He concluded that the request was not compatible with Rural Residential and Lifestyle Objective 22.2.5 and Policy 22.2.5.1.
29. Mr Barr also noted that there are limited areas in the PDP that are zoned specifically for industrial purposes.
30. We discussed with Mr Geddes the constraints on development of a site created by existence of the former landfill. He considered that residential development was not necessarily ruled out, and it may be possible to achieve a building platform location on the land even with the landfill, subject to geotechnical investigation and soil testing. He also noted that the area of the landfill was not extensive enough to prevent development and that it would be possible to utilise the landfill as part of the balance area of each site.

2.5. Discussion of Planning Framework

31. Mr Barr provided us with input on the planning background to the issues as above and in his rebuttal clarified and expanded on the provisions that he considered relevant under the PDP that would apply to subdivision and development in the Rural Lifestyle zone. Of necessity, he had to work off the latest version of the PDP available (that recommended in the staff reply on each chapter). In our Report 16, we summarised the key background provisions in the PDP, as recommended by the Hearing Panel, that is to say, a further iteration along from that considered in the planning evidence. For the purposes of our discussion here, we have not repeated the reference to every objective, policy or other provision to which we have had regard.
32. Focussing on the most relevant provisions, given that the site is within the Rural Landscape Character area, the question of whether rural character and visual amenity values are maintained or enhanced in terms of recommended Objective 3.2.5.2 is clearly a relevant consideration. Likewise the corresponding provisions of recommended Policy 3.3.32. The high visibility of the upper terrace from the Clutha River Trail, and its situation in the foreground of views of the ONL are also important issues under Policy 6.3.26, requiring that adverse effects on visual amenity be avoided.
33. *Chapter 21 - Rural Zones* - echoes these overarching objectives and policies by referring to enabling a wide range of land uses including farming, permitted and established activities "while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values" in recommended Objective 21.2.1.
34. Equally relevant are the following recommended objectives and policies:

21.2.4 Objective

Situations where sensitive activities conflict with existing and anticipated activities are managed to minimise conflict between incompatible land uses

21.2.4.1 Policy

New activities must recognise that permitted and established activities in the Rural Zone may result in effects such as odour, noise, dust and traffic generation that are reasonably expected to occur and will be noticeable to residents and visitors in rural areas.

21.2.4.2 Policy

Control the location and type of non-farming activities in the Rural Zone, so as to minimise conflict between permitted or established activities and those that may not be compatible with such activities.

35. Policy 21.2.1.3 in the Rural Zone specifically identifies the need for separation between potentially activities by requiring buildings to be set back a minimum distance from internal boundaries and road boundaries in order to mitigate potential adverse effects on landscape character, visual amenity, outlook from neighbouring properties and to avoid adverse effects on established and anticipated activities.
36. As in Chapter 21 (Rural Zones), Chapter 22 - Rural Residential and Rural Lifestyle Zones - has similar objectives and policies relating to protection of landscape character and amenity values and rural character, which sit underneath the higher order provisions in Chapters 3 and 6. Accordingly, Objective 22.1.1 is:

22.1.1 Objective

The District's landscape quality, character and amenity values are maintained and enhanced while enabling rural living opportunities in areas that can absorb development

and

22.1.1.1 Policy

Ensure the visual prominence of buildings is avoided, remedied or mitigated..."

37. Policy 22.1.1.4 is particularly relevant.

22.1.1.4 Policy

Manage anticipated activities that are located near Outstanding Natural Features and Outstanding Natural Landscapes so that they do not diminish the qualities of these landscapes and their importance as part of the District's landscapes

38. The Rural Zone also has objectives and policies relating to the Rural Industrial Subzone. Recommended Objective 21.2.13 states:

21.2.13 Objective:

Rural industrial activities and infrastructure within the Rural Industrial Subzones will support farming and rural productive activities, while protecting, maintaining and enhancing rural character, amenity and landscape values.

39. There are two policies relating to this sub-zone, as follows:

21.2.13.1 Policy

Provide for rural industrial activities and buildings within established nodes of industrial development while protecting, maintaining and enhancing landscape and amenity values.

and

21.2.13.2 Policy

Provide for limited retail and administrative activities within the Rural Industrial Sub-Zone on the basis that it is directly associated with and ancillary to the Rural Industrial Activity on the site.

40. Having identified these as the relevant higher order planning provisions in the PDP that form the reference point for our Section 32 analysis, as noted above, we need to be satisfied also that the end result is consistent with Part 2 of the Act.
41. In this regard, although the PDP does not identify it as an ONL, Ms Steven's uncontested evidence was accepted by the submitter that the southern terrace of the site is in fact an outstanding natural landscape; the question as to whether the proposal protects the attributes of the landscape therefore arises under section 6(b) of the Act.

3. ISSUES

42. We have identified the following key issues raised by this submission:
- a. Whether the site can absorb the rural living development that would be facilitated by the proposed rezoning;
 - b. Whether the existing rural character, landscape and amenity values can be adequately maintained;
 - c. Compatibility with adjacent industrial activities (reverse sensitivity and the need to protect limited industrial zoned areas);
 - d. Whether covenants and/or a BRA are appropriate mechanisms to address those effects.

4. DISCUSSION OF ISSUES AND CONCLUSIONS

43. The submitter's land has an awkward shape. This is particularly so once the Hydro Generation Sub-Zoned areas are removed from consideration as not being part of the Stage 1 PDP process, with the remaining area of the site being subject to constraints arising from its previous use as a landfill, its location in relation to existing industrial activities, and its landscape sensitivity (particularly the southern terrace). These constraints mean that identification of suitably located residential building platforms on the site would be a challenge.
44. It is also difficult to assess the degree to which reverse sensitivity protection is required in this case given the evidence we heard from Mr Wallis, the CEO of the Alpine Group, that his company's intentions were to cease operating the sawmill. The benchmarks that have been set to date regarding separation from the Rural Residential development to the south-west and the approved building platform on the site may offer an unreliable guide as to what is reasonably required in future.
45. However, we see considerable merit in enabling alternative economic activities to establish on land that already displays a degree of environmental degradation by reason of past

industrial operations and has a mix of consented industrial activities, rather than on greenfield land elsewhere. We are mindful of the general principle that reverse sensitivity effects generally increase as the number of dwellings increases, and that these effects are more likely to occur with dwellings in close proximity.

46. We can give less weight to Mr Barr's point regarding the amount of available industrial land as we do not have the material before us to form a view on the adequacy of existing provision for industrial activities in the Upper Clutha area⁶ due to the balance of the industrial zones being a matter for another stage of the District Plan Review. However, the Rural Zone objective and policies for the Rural Industrial Subzone referred to above lend weight to the proposition that lawfully established activities within such a sub-zone should not be unduly constrained by the establishment of new, sensitive activities (such as residential) in close proximity.
47. In regard to the lower terrace, even taking account of the uncertainty regarding the degree to which reverse sensitivity protection is required, the area of land available for a suitably located building platform is reduced to a 50 metre strip along the boundary after excluding the area Ms Steven identified as being highly sensitive from a landscape perspective (because of its association with the Clutha River and Luggate Creek corridors). We agree with Ms Steven, having heard separate evidence regarding their outstanding landscape values. The 50 metre strip offers little or no scope for rural living development in a way that does not give rise to significant risk of adverse reverse sensitivity effects. Mr Geddes described this matter as treading a fine line, which we regard as something of an understatement. Neither the imposition of no complaints covenants, and/or consent notices on the titles of any new lots (as also suggested by Mr Geddes), would be, in our view, an appropriate method of managing these effects on an ongoing basis.
48. We are therefore not satisfied that appropriate separation distances can be achieved on that part of the site for residential activities from existing and future industrial activities, or that the Rural Lifestyle zone would achieve the plan objectives and policies referred to above (in particular Objectives 3.2.5.2, 21.2.13, 22.1.1, 22.2.1, Policies 3.3.32, 21.2.1.3, 21.2.13.1, 22.2.4.1, 22.2.4.2).
49. Mr Geddes suggested a BRA over the area of the lower terrace Ms Steven had identified. Having formed the view that the combination of landscape and reverse sensitivity effects means that none of the lower terrace is suitable for rural living, we consider that the more appropriate outcome is that it remains zoned Rural, to avoid the risk of a subdivision design that utilises that land as a means to achieve the 2 ha per lot density requirements of the Rural Lifestyle Zone to be met, while creating much denser development of the upper terrace than is intended within that zone.
50. Turning to the upper terrace as a discrete area that might potentially be rezoned Rural Lifestyle, Mr Geddes's argument was premised in part on his expectation that at least some of the land previously used as landfill could be utilised for residential purposes, subject to appropriate geotechnical and soil testing, and identification of building platforms. We see a number of difficulties with that approach. We had no information on which we could determine how the spatial extent of the previous landfill, any geotechnical constraints, or possible effects of the landfill such as methane gas emissions, might influence the overall layout or potential allotment yield of a Rural Lifestyle subdivision.

⁶ As discussed in our Report 16, this is an aspect of implementation of the NPSUDC

51. As with the lower terrace, the issue of a higher density of development being created as a result of a closer spacing of dwellings within constrained areas of the site, while taking advantage of the total site area to achieve the required 2 ha average density, also arises.
52. As noted already, recommended Policy 6.3.26 emphasises avoiding adverse visual effects of subdivision and development that is highly visible from public places. While this policy does not apply to any trail as defined in the Plan, the Clutha Trail is on Crown land and does not qualify as such, and the northern terrace is highly visible from it, as well as from the road on the other side. Policy 6.3.6 also seeks avoidance of adverse visual effects of subdivision and development which form the foreground to an ONL. Development of the upper terrace would trigger this element too, because of its visibility in the foreground of views of the Grandview Mountains ONL when viewed from Church Road.
53. This policy background brings the landscape evidence sharply into focus. While Ms Steven considered that rural character and landscape effects would be adequately mitigated by ensuring dwellings were not located on the southern terrace and that a buffer of vegetation and open space was maintained next to the river trail, Ms Mellsop did not have the same degree of confidence in the provisions of the Rural Lifestyle zone in achieving the outcomes that both landscape experts agreed would be necessary.
54. For our part, the failure on the submitter's part to provide indicative building platforms showing how a subdivision might be designed utilising the landfill area as 'balance' land has left us unable to identify what actual or potential effects might arise from enabling the use of any part of this upper terrace for residential activity and uncertain whether Policy 6.3.26 can in fact be met. We note in this regard that Ms Steven expressed the view that the site could absorb development at the density a Rural Lifestyle zone would enable, but did not explicitly comment on whether adverse visual effects could be avoided. While, as we have noted in our Report 16, the submitter is not required to produce evidence at the level of detail necessary for a resource consent application, we must be satisfied that we have sufficient information on which to make a decision as to whether the Rural Lifestyle zoning is the most appropriate way of achieving the objectives we have discussed above.
55. We have given weight to Mr Barr's point that Rural Lifestyle zoning, creates an expectation that a certain level of development is anticipated and will be enabled by the Plan. As we have noted in our Report 16, this underlying premise, in many of the submissions made to it, was accepted by the Stream 4 Hearing Panel - that the zoning of the land represents a considered decision that the land is suitable for development for the identified purpose. In the case of the Rural Lifestyle Zone, this means development into rural lifestyle blocks at the density provided for in that zone. In the submitter's case, there are too many potential constraints on the upper terrace area, including arising from the historical use of it as a landfill for us to be satisfied that an average density of 2 ha per lot is achievable in a practical sense.
56. We have also turned our minds to the assertion by Mr Barr, and disputed by Mr Geddes, that the zoning of all or part of the submitter's site would result in a spot zone. As discussed in our Report 16, there are many examples of modified zone provisions in both the ODP and proposed PDP throughout the District. These, along with generally small areas of land zoned for purposes that have no direct relationship to the surrounding environment, are both examples of spot zones. There is accordingly no administrative or legal impediment to

creation of such a zone. However, we have concluded that retaining Rural zoning over the southern terrace is the most appropriate way of achieving the relevant objectives, and if the upper terrace were to be rezoned, that would result in the site having a split zoning which is neither efficient nor effective. More importantly, we conclude that the upper terrace fronting Church Road has too many constraints arising from its historical use, potential reverse sensitivity effects and landscape sensitivity, to be a viable Rural Lifestyle zone.

5. OVERALL CONCLUSIONS AND RECOMMENDATIONS

57. We find that the Rural Zone is the most appropriate way of managing any effects of development on the submitter's land and thereby to achieve the objectives of the PDP.
58. We therefore recommend: that Submission 314 is rejected and Further Submission FS1309.2 is accepted.

For the Hearing Panel



Trevor Robinson, Chair
Dated: 27 March 2018