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RC220191

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25 June 2024

Loop Road Limited
C/- Paterson Pitts Partnership
PO Box 84
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Via email

Dear Sir/Madam

Decision Notification: RC 220191 – Loop Road Limited – Bendigo Loop Road, Bendigo

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



Karen Smith
Planning Support Officer

CENTRAL OTAGO DISTRICT COUNCIL

DECISION OF HEARINGS PANEL

IN THE MATTER OF:

LOOP ROAD LTD (RC220191) LOOP ROAD, BENDIGO - THE SUBDIVISION OF LOT 100 DP 579535 (RT 1076037)

INTRODUCTION AND PRELIMINARY MATTERS

The application was considered by the Central Otago District Council Hearings Panel (the Panel) comprising Councillor (Cr) N Gillespie, (Chair), Cr M McPherson and Cr I Cooney on 23 May 2024. Council's consultant planner and author of the section 42A report, Ms Olivia Stirling attended the hearing. The applicant's planning consultant, Mr Rodney Baxter, and the Applicant Blair McLachlan were also in attendance. No submitters were in attendance.

The Panel has considered the application submitted to Council 1 June 2022, further information submitted in response to request, the consultant planner's Section 42A report, submissions received, the applicant's pre-circulated planning evidence, and a statement prepared by the submitter Billee Marsh that was tabled at the hearing.

The proposal seeks to undertake a two-lot subdivision of Lot 100 DP 579535 resulting in one additional record of title. The proposed subdivision will result in the following allotments:

- Lot 101 comprising approximately 23.722 hectares of bare rural land fronting Bendigo Loop Road.
- Lot 4 comprising approximately 2.005 hectares of bare rural land. Vehicle access to this lot will be achieved via a Right of Way easement over Lot 101 to Bendigo Loop Road.

Rule 4.7.4(iii)(b) of the operative Central Otago District Plan (the Plan) provides for allotment with an average allotment area of no less than 8 hectares and a minimum allotment area of no less than 2 hectares as a discretionary activity. For the purposes of this rule the Plan also states that allotments in excess of 16 hectares are deemed to be 16 hectares for averaging purposes. The panel notes that the proposal will create two records of titles, resulting in an average allotment size of 9 hectares and is to be considered as a discretionary activity.

The Applicant's Assessment of Environmental Effects (AEE) states that no change in land use is sought. No residential activity is sought as part of this proposal, as both lots are intended to be maintained as rural production land. The Panel notes that no services to support any future residential activity have been proposed by the applicant. The applicant advises that irrigation supply can be achieved by an existing consented bore RM 12.323.01, with an abstraction rate of 1,134cu/day that will continue to provide water to Lots 1 and 2 DP 568048, Lot 3 DP 579535 and new proposed Lots 4 and 101.

Legal frontage to Lot 4 will be provided via a right of way over proposed Lot 101. Lot 101 will retain frontage to Bendigo Loop Road, as the balance area.

The Panel accepts the District Plan rule assessment as set out in the Section 42A report and that there are no National Environmental Standards relevant to this decision.

It is appropriate to assess the application as a discretionary activity overall. Discretionary activities are assessed under sections 104 and 104B 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 case, the Panel notes that no affected party approvals were submitted with the application.

A notification decision was made on 20 November 2023 that determined that the application should be publicly notified. The submission period closed on 9 February 2024 and one submission was received. The submission is summarised as follows:

Table 1: Summary of Submissions

Submitter	Summary of submission	Decision requested	Wishes to be heard
Billee Marsh	<ul style="list-style-type: none">• The submitter is concerned about the mixed messaging of the application, as the applicant seeks to subdivide bare land with no services, however, recognises the possibility for future residential activity.• It would be reasonable for future owners of these lots to have an expectation that they would be able to build dwellings on their land.• If residential dwellings were to be built on all four remaining lots the accumulative effect would be considerable.• The submitter supports the findings of Ben Espie's Peer Landscape Peer Review when he recommends a legal covenant or similar devices to prevent residential building on new lots.• The submitter seeks that the subdivision only be granted if it is subject to a legal covenant to prevent residential buildings on the new lots.	Support subject to conditions	No

SECTION 104 MATTERS

PERMITTED BASELINE

Under section 104(2) of the RMA, an adverse effect of the activity on the environment may be disregarded if the plan permits an activity with that effect. The Panel agrees with Ms Sterling's assessment in her s42A report that there are no permitted activity subdivisions under the Central Otago District Plan and there is no permitted baseline to be applied.

ASSESSMENT OF EFFECTS

The Panel considers key areas of contention for the assessment of effects relate to effects on landscape and rural amenity values, servicing, and rural productivity. The Panel agrees with the assessment in the s42A report that the level of adverse effects in relation to reverse sensitivity, earthworks and the cancellation of the consent notice will be minor and these are not matters of contention.

Rural Amenity, Visual and Landscape Effects

The objectives and policies of the Plan (in particular Objective 4.3.3, Policy 4.4.2, and Policy 4.4.10), seek to protect the "open space, landscape, natural character and amenity values" of the Rural Resource Area.

The proposal complies with both the average and minimum allotment areas. Notwithstanding this, there has been a pattern subdivision associated with the same piece of land in the past few years. As indicated by Ms Sterling in her s42A report RC 210171, RC 210466 and RC 220191 collectively, result in the division of a 38.9 hectare parcel of land into five new allotments, with an average allotment size of 6.24 hectares.¹ Although the previous subdivisions of the underlying title were undertaken by a different landowner, as noted in Mr Baxter's evidence, these subdivisions provide useful context to the site's history and the allotments resulting from the previous subdivisions now form part of the receiving environment.

The Panel agrees with Ms Stirling that the receiving environment, which is currently characterised by its open space natural character, will be compromised by further incremental subdivision in this location. In the context of the proposed subdivision and the allotments previously created from the balance title, the application results in a higher density of development than anticipated for the Rural Resource Area. The Panel concurs with the s42A Report that the area will resemble a domestic or rural living enclave as a result of the subdivision. This view is supported by Mr Espie's landscape peer assessment, which concludes that if residential activity is established on the resulting allotments the proposed subdivision will adversely affect landscape and visual amenity values through the creation of domestic or rural living character in a vicinity that is currently open and agricultural/rural in character.

The Panel acknowledge that a residential dwelling is not explicitly proposed, it was confirmed by Mr McLachlan in the hearing that the applicant did not propose to restrict the potential for a dwelling in the future on the resulting allotments. Particularly as a future dwelling may be required to support rural productive activities on the resulting allotments.

Mr Baxter's evidence briefly addresses the effects of a resulting dwelling on the allotments (Paragraphs 66 to 74), relying primarily on a decision granted on an adjoining site (RC220337)

¹ Noting that lots greater than 16 hectares are deemed to be 16 hectares for averaging purposes.

and the applicant's Landscape Assessment Report, prepared by Paul Smith of Rough Milne Mitchell (RMM), dated 3 November 2022.

The assessment by Mr Smith describes the surrounding environment as being consistent with an open space, rural character (i.e., a lack of built elements), and a dominance of productive land uses. Mr Smith states that the subdivision of the site into non-serviced lots, can be absorbed in the receiving environment, due to the flat topography of the site and the use of the site for productive agricultural purposes. The landscape assessment notes that multiple rural land use activities can occur within a larger property without causing fragmentation, and that the level of built form is restricted to buildings that can occur as a permitted activity.

It is evident that Mr Smith has relied his assessment on the intended use of the allotments for rural production purposes only, and has not assessed the potential adequacy of the resulting allotments for potential future residential land use.

The Panel also considers that while the applicant has indicated that there is no intention to establish residential activity on the site, in separate ownership there would still inevitably be multiples buildings or structures of some sort on both sites. The Panel accepts Mr Espie's view that if residential activity is established on the resulting allotments the proposed subdivision will adversely affect landscape and visual amenity values.

Policy 16.4.7 of the District Plan requires the design of subdivision, where relevant to the intended use to provide for safe and efficient access, infrastructure, and any foreseeable subsequent development, including economically providing roading and network utility services. The policy explanation states that for subdivision to promote the sustainable management of natural and physical resources, the design of individual subdivisions must have due regard to these matters listed in the policy.

In the context of this application, although not explicitly proposed, the Panel consider that the establishment of a dwelling is a foreseeable subsequent development resulting from the subdivision. This is evident from the applicant's consideration of potential future residential activity on the resulting allotments through the proposed consent notices. The Panel notes that Mr McLachlan indicated at the hearing that there are no restrictions on future residential development proposed, acknowledging that a future landowner might wish to establish residential activity or that a dwelling might be needed to support the production use of the allotments. Therefore, in accordance with this policy, the subdivision's adequacy for potentially establishing future residential activity on the resulting allotments must be considered by the Panel.

In terms of the consideration of the adequacy of additional built form on the resulting allotments, the Panel do not consider the Applicant's AEE and the RMM Landscape Assessment, to have adequately considered the visual effects of residential built form resulting from the subdivision. When considering the assessment of Mr Espie and the peer review response by the applicant, the Panel agree with Mr Espie, that a residential dwelling on each proposed Lot 101 and Lot 4 in the future will result in visual effects that are out of character with the surrounding environment.

Overall, the Panel consider that the resulting allotments will form a readily distinguishable enclave of rural lots which have already been subdivided and developed to a degree that is relatively dense for the Rural Resource Area. When considering the findings of Mr Espie, the Panel is a view that a subdivision which creates the potential for a residential dwelling on the resulting allotments, will adversely affect landscape and visual amenity values. In this context, the Panel considers the receiving environment has been developed to the point that it has no further capacity to absorb further fragmentation or development without significantly

compromising the open space, landscape and natural character amenity values of the Rural Resource Area.

Effects on the productive capacity of the land

The applicant has indicated that the resulting allotments could be used for viticultural use with potential future associated residential activities. The Panel understands that while the site does not contain highly productive soils (LUC 1 – 3)², the site still provides for a productive use when water is used. The application acknowledges that there is irrigation supply available to serve a productive use of the site.

The Panel acknowledges the productivity assessment prepared by the applicant (Blair McLachlan of Peregrine Wines), which addresses the adequacy of the resulting Lot 4 in terms of productivity and economic viability to grow grapes. The productivity assessment was peer reviewed by James Dicey of Grape Vision.

In the peer review, Mr Dicey concluded that there would be a small but appreciable loss of productivity as a result of the subdivision. The loss relates to the additional fences which will break up the properties and a potential future house site.

The Panel acknowledges the applicant's response to the peer review, which provided detail on the vineyard potential of Lot 101, and considers that viticultural use of the site would be a more productive use of the site than the current agricultural use, given sufficient provision of water and management. The applicant confirmed that they have recently purchased Sauvignon Blanc vines, in which they intend to plant within Lot 101, provided frost management and water supply arrangements and discussed the viability of the site for vineyard development.

When considering the information provided by the applicant, the Panel agrees that Lot 101 could be converted to vineyard following the subdivision, and that the applicant has indicated there is sufficient irrigation water, to ensure the vineyard development will be feasible. Notwithstanding this, the Panel considers that the site in its current form would have higher viticultural potential, as indicated in the report completed by Mr Dicey, and that the subdivision, while not significant, will result in a decrease to the productive potential of the site.

In the evidence of Mr Baxter, it is stated that the application will support economic wellbeing and that the subdivision of proposed Lot 4 from the balance allotment is a sustainable use of the land resource. Mr Baxter considers that it would be a less sustainable use of the land resource to keep the site in its current form when it may be viable for other productive uses once subdivided.

The Panel accepts that the subdivision of the site will contribute to the economic well-being of the applicant by enhancing the production of Lot 101. However, when considering previous subdivisions undertaken on the site and the economic well-being of future generations, the Panel considers that this proposal contributes to additional rural land fragmentation in this location, which will further compromise the sustainable management of the land.

Overall, when considering the cumulative effect of previous subdivisions of the site, the Panel considers that the subdivision of small sections from the main landholding for rural-residential purposes limits the productive capacity of the rural land in this area, and the application would lead to inappropriate rural fragmentation in this area that compromises the productive use of the rural land resource and is contrary to Objective 4.3.7.

² https://ourenvironment.scinfo.org.nz/maps-and-tools/app/Land%20Capability/lri_luc_main

Provision of services

No residential services are proposed as the application states that the site is intended to be subdivided for rural productive purposes. The applicant proposes consent notices be brought down on the new records of title, in relation to the design standard of wastewater disposal, access standards, and that the provision of potable water, wastewater disposal, power supply and telecommunications will be the future responsibility of owners at the time of building.

Policy 16.4.3 of the District Plan requires subdivided land to be supplied with services and infrastructure that are adequate for the intended use and that this is the responsibility of the developer. The Panel agree with Ms Stirling in the Section 42A report, which states that it is not considered to be fanciful to expect a future dwelling will be established on the resulting allotments. The Panel consider that the level of servicing provided to each allotment, should be consistent with potential future development of the site.

As no servicing is proposed, and the applicant confirmed in the hearing that they did not intend to restrict future residential use on the allotments by way of a covenant, as suggested by Billee Marsh in her submission. Therefore, the Panel do not consider that the proposed servicing arrangements adequately provide for the foreseeable subsequent development as required by Policy 16.4.7.

Cumulative Effects and Precedent

In his evidence, Mr Baxter states that cumulative effect does not occur where development of a site has no consequence to the general zone strategy, does not run counter to objectives and policies, and has no general adverse amenity effect – *Clulee v Kapiti Coast DC*. While the Panel agree with this statement, the Panel do consider there to be adverse rural amenity, landscape, productivity and effects with the application as proposed.

The panel accepts that generally cumulative effects are inherently difficult to define and quantify, it was acknowledged that rural areas of the Central Otago region already have a large number of small rural sites as a result of historic subdivision patterns under earlier district plans and schemes and, therefore, is already facing significant cumulative effects in relation to loss of productive land. In this regard, the change within the receiving environment began most notably through the two previous subdivisions of the 38.9-hectare piece of land. The Applicant's AEE³ states that 'smaller allotments allow for labour intensive specialty crops to be grown still as commercial ventures, such as saffron, lavender, cherries, flowers and vineyards where mechanization (i.e. long rows) don't provide huge economies of scale.' The Panel agree that a range of rural sized allotments is appropriate to a degree in the rural environment, as the District Plan's use of both a minimum allotment size and an average allotment size provides for varied designs of development, which when assessed overall, will maintain the open and natural character of the rural environment. Notwithstanding this, as assessed above in this report, it is the Panel's opinion that the proposed subdivision will create a relatively dense enclave to the extent that the area's open space, landscape and natural character amenity values are being significantly compromised.

The Panel consider this subdivision to be a "tipping point" at which the open and natural character of the rural environment is at risk of being irrevocably changed to a character akin to rural lifestyle has been reached. The additional development and potential resulting domestication which will result from this proposal has the potential to push these cumulative effects beyond a point at which they become significant and inappropriate.

³ See Section 4 of the Applicant's AEE

Overall, the Panel considers that the approval of this scale of development within an already modified and fragmented rural environment will lead to adverse effects on rural amenity, landscape values and productivity that are more than minor and inappropriate.

OBJECTIVE AND POLICY FRAMEWORK

Central Otago District Plan

With regard to objectives and policies of the Operative Central Otago District Plan, the Hearings Panel notes Mr Baxter's assessment provided in the AEE and in his evidence. Mr Baxter maintains that the proposal is not contrary to the objectives and policies of the District Plan.

The relevant objectives and policies in the Plan are Objective 4.3.1, Objective 4.3.3, Objective 4.3.7 and Policies 4.4.2 and 4.4.10.

Objective 4.3.1 (Needs of the Districts People and Communities)

The proposal will be of benefit to the applicant, however the application has failed to convince the Panel that the subdivision is necessary to increase productivity of the subject site. The Panel agrees with Ms Sterling that the proposal fails to provide for the wider community's and future generations needs 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 applications site.

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

Objective 4.3.3 and Policies 4.4.2 and 4.4.10 seeks to maintain rural amenity values whilst ensuring that development is compatible with the surrounding environment.

The Panel concur with Ms Stirling's assessment in her Section 42A, that in terms of Objective 4.3.3 and Policies 4.4.2 and 4.4.10, the proposed subdivision fails to satisfactorily avoid, remedy or mitigate the adverse effects of the proposal in terms of the landscape, natural character, and amenity values of the Rural Resource Area. While no buildings are proposed as part of this subdivision, the Panel is of the view that it is reasonable to expect that residential activity will be intended to be established in the future, as indicated by the proposed consent notice. The effects associated with the potential built form have not been adequately assessed and, are considered to result in adverse visual effects. Mr Espie in his review of the landscape assessment report prepared by Rough Milne Mitchell (RMM) report notes that it was prepared on the basis that only rural and productive uses would occur on the resultant allotments. Mr Espie considers that given no legal mechanisms are proposed to restrict further land use, if activities were to establish domestic or rural living character, the proposed subdivision will adversely affect landscape and visual amenity values.

The Panel is of the view 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. The proposed density of development and subsequent domestication will result in a reduction in the productive use of soils with special qualities.

The Panel agrees with Ms Sterling that the proposed subdivision fails to satisfactorily avoid, remedy or mitigate the adverse effects of the proposal in terms of the landscape, natural character, and amenity values of the Rural Resource Area. Any effects associated with the

potential built form have not been established and, are considered to result in adverse visual effects.

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

In terms of Objective 4.3.7 which seeks to maintain the life-supporting capacity of the soil resource to meet the needs of present and future generations, the Section 42A report raises concerns that the proposal represents further fragmentation of rural land in an area where rural fragmentation has already occurred. The fragmentation of land through subdivision as well as the resulting on-selling of the land into separate ownership would mean that there is no guarantee that the existing productivity of the land would be maintained.

The Panel also notes that no assessment has been provided by the applicant in their evidence or in their AEE on the objectives and policies of Section 16 of the District Plan. The Panel agrees with and adopts Ms Stirling's assessment of the proposal in relation to this chapter, as set out in the Section 42A report.

The Panel notes that the peer review undertaken by Mr Dicey from Grape Vision states that *"The site can grow and ripen most grape varieties grown in Central Otago. Given the amount of accumulated heat it should have an opportunity to ripen higher yields than the district average with the addition of sufficient nutrients. ... It will, however, not be economically viable to grow grapes on such a small site when considered alone when the impact the small size has on efficiency and cost is considered."*

Mr Dicey concludes his view that "There will be a small but appreciable loss of productivity because of the subdivision. The additional fences which will break the properties up will result in lost productive land as will a potential future house site."

Overall, the Panel considers that fragmentation of the site and future built form that can be reasonably anticipated to not maintain the life supporting capacity of the soil resource, the open space character, or ensure the needs of present and future generations are met. The Panel, therefore, concludes that the proposal is contrary to the objectives and policies of Section 4 of the District Plan.

Otago Regional Policy Statement 2019 (ORPS 2019)

An assessment of the Partially Operative Otago Regional Policy Statement 2019 was undertaken in the Section 42A. The panel note that the Otago Regional Policy Statement 2019 (ORPS 2019) became fully operative on 4 March 2024.

Objective 5.3 seeks to manage and protect land for economic production through various controls, including minimising loss or soils, restricting the establishment of incompatible activities and minimising the subdivision of productive land into smaller lots that may result in its productive capacity and productive efficiency. The proposed subdivision will result in further fragmentation of land, incremental change, and cumulative effects and for the reasons detailed in the Section 42A, the Panel consider the application to be inconsistent with Objective 5.3.

As identified above, as Lot 4 is intended to be sold, with no guarantee of continued productive use. The fragmentation of this site will have adverse effects on productive use in the rural area, and will contribute to cumulative effects on the overall productivity of the Rural Zone. The Panel, therefore, accepts the Section 42A report that the proposal is contrary to Objective 5.3 and Policy 5.3.1 of the ORPS.

Offsetting or Compensation Measures

In accordance with Section 104(1)(ab) of the RMA, consideration for offsetting or compensation measures is required. The applicants have not offered offsetting or compensation measures and the Panel finds that none are necessary.

Other Matters

Section 104(1)(c) of the Resource Management Act 1991 requires the Panel to have regard to any other matters considered relevant and reasonably necessary to determine the application.

Section 106

A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that the land is or is likely to be subject to or is likely to accelerate material damage from natural hazards, or where sufficient provision for legal and physical access to each allotment has not been made. In this case sufficient provision has been made for access and the proposal is not likely to accelerate material damage from natural hazards.

Precedent

In terms of precedent, the Panel is concerned that granting this consent will create an expectation that this scale of development in a rural area is appropriate for this location, which may lead to similar applications being advanced on adjacent properties.

Based on the above, the Panel takes a different view from Mr Baxter, in that the proposal will represent a 'tipping point' where the proposed subdivision in combination with existing historic fragmentation in the surrounding environment could be considered to significantly affect the landscape and rural amenity values of the surrounding environment. The proposed subdivision promotes further fragmentation where rural landholdings will be reduced and new allotments will be sold to new landowners for potential rural residential purposes. This leads to the creation of a more established rural residential environment, which in this case is not provided for by the objectives and policies of the District Plan and results in wider concerns of creating a precedent.

Part 2 of The Resource Management Act 1991

The panel agree with the assessment in the Section 42A report, that the district is already facing significant cumulative effects in relation to loss of productive land and further fragmentation of land where it is not anticipated by the Plan further adds to these effects, as pressure for rural residential subdivision in rural areas threatens to further fragment rural land through incremental change. In this case, the panel do not consider the proposal to be wholly consistent with Part 2, in particular 7(c) and 7(f).

CONCLUSIONS

The Panel:

1. Finds that the effects of the proposal on the environment are more than minor and will be inappropriate. In particular, the Panel finds that the proposal will have adverse effects relating to fragmentation, rural amenity and landscape values and the productive capacity of the rural land resource.

2. Finds that adverse effects on the environment will be unacceptable and that granting consent will be contrary to the objectives and policies of the Plan.
3. The proposal is not truly unusual or of particular circumstances that set it apart, and the proposal would establish an undesirable precedent which would undermine the integrity and coherence of the District Plan and the public confidence in its administration.

DECISION

Having regard to the reasons detailed above, the Panel has resolved pursuant to sections 104 and 104B of the Resource Management Act 1991, to decline the two-lot subdivision.

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

Issued at Central Otago on the 25 June 2024



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Neil Gillespie
Hearings Panel Chairperson