

**CENTRAL OTAGO DISTRICT COUNCIL**  
**LOOP ROAD LTD RC 220191**  
**S42A PLANNING REPORT**

<b>APPLICATION</b>	<b>RC 220191</b>
<b>APPLICANT</b>	<b>LOOP ROAD LTD</b>
<b>ADDRESS</b>	<b>BENDIGO LOOP ROAD, BENDIGO</b>
<b>LEGAL DESCRIPTION</b>	<b>LOT 100 DP 579535 AND HELD IN RECORD OF TITLE 1076037</b>
<b>ACTIVITY STATUS</b>	<b>DISCRETIONARY</b>

**BACKGROUND**

**Consenting Background:**

[1] Various consents have been approved on the site in the past.

- On 22 July 2021, RC210171 approved a subdivision to create three allotments from one 38.92-hectare record of title as follows:

Lot 1 – 5.46ha  
Lot 2 – 4.29ha  
Lot 3 – 29.173ha

This subdivision provided for an average allotment area of 8.6 hectares.<sup>1</sup> Lots 1-3 of RC210171 were intended to be retained as bare dryland pasture, and no change of land use was proposed. Nonetheless, consent notice conditions in relation to domestic servicing were offered by the applicant, in the case that the allotments would be developed in the future.

- On 25 January 2022, RC210466 approved a two-lot subdivision of Lot 3 of RC 210171, prior to RC210171 being given effect to by way of section 223 or 224(c) certification:

Lot 3 – 3.478 ha  
Lot 100 – 25.727 ha

This subdivision provided for an average allotment area of 9.73 hectares.<sup>2</sup> Both lots were intended to be maintained as bare rural land, however servicing conditions as imposed by RC210466 were requested by the applicant to be carried

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<sup>1</sup> When taking into account Rule 4.7.4(iii)(b) which stipulates that lots greater than 16 hectares are deemed to be 16 hectares for averaging purposes

<sup>2</sup> When taking into a Rule 4.7.4(iii)(b) which stipulates that lots greater than 16 hectares are deemed to be 16 hectares for averaging purposes

down to the new records of title, in the case the allotments were developed in the future.

On 14 February 2022, RC210466V1 approved the cancellation of consent conditions 9 and 10 of RC210466 pursuant to Section 127(1)(a) of the Resource Management Act 1991(RMA). Condition 9 stated that:

*‘For the purposes of calculating the average allotment area as required by Rule 4.7.4(iii)(b) of the Operative Central Otago District Plan 2008 (or an equivalent superseding Rule), any future subdivision of Lot 3 or Lot 100 shall consider the area of ALL allotments contained within RC210466 and RC210171. Any further subdivision of Lot 3 and Lot 100 hereon that would result in the total density averaged over all these allotments being less than an average of 8.0 hectares shall not be permitted.’*

This condition was imposed on RC210171 as concerns were raised by the processing planner in relation to cumulative effects resulting from the cumulative subdivision of this parent title. The imposition of condition 9 was considered by the processing planner to uphold the integrity of the averaging approach specified in Rule 4.7.4(iii)(b) and ensure that any future subdivisions are assessed appropriately in light of potential cumulative effects that could occur.

After consideration of relevant case law, the processing planner for RC210466V1 agreed with the applicant that Conditions 9 and 10 could be cancelled, as subdivision is controlled by the District Plan and the resulting effects should be considered at the time of future subdivision applications.

#### **Application Background:**

- [2] Subsequent to the application being lodged, the applicant provided expert productivity and landscape assessment, in response to the further information request. The reports were peer reviewed, with the details as follows:
- A Landscape Assessment was prepared by Paul Smith of Rough Milne Mitchell (RMM), titled *Landscape Assessment Report, Proposed Subdivision Bendigo Loop Road*, and dated 3 November 2022. This report and its findings were peer reviewed by Ben Espie of Vivian Espie Ltd, titled, *Landscape and Visual Effects Assessment - Peer Review RC220191 – Loop Road Limited*, and dated 30 June 2023.
  - A Land Productivity Assessment was provided by Blair McLachlan (the applicant) of Peregrine Wines on 30 May 2023. The productivity report was supported by a frost assessment, titled *Frost Assessment and Protection Feasibility at Peregrine Wines Bendigo Vineyard*, prepared by Climate Consulting and dated April 2019, and a *Viticulture Gross Margin Report*, prepared by New Zealand Wine Pure Discovery in collaboration with Ministry for Primary Industries. This reports and their findings were peer reviewed by James Dicey of Grape Vision on 31 July 2023.
- [3] Subsequent to the landscape and productivity report peer reviews the applicant provided a memorandum, titled, *Response to peer review reports Bendigo Loop Road – Loop Road Ltd*, dated 20 October 2023 and completed by Rod Baxter, to respond to the matters raised in the peer reviews.

- [4] In addition to this, the applicant provided a letter from Mark Allen from Allen Vineyard Advisory, dated 18 August 2023 confirming the yield potential for the resulting 2-hectare allotment.
- [5] These reports, comments, and recommendations are considered in the assessment below.

**The site:**

- [6] The site subject to the application is legally described as Lot 100 DP 579535 and held in Record of Title 1076037. The site comprises approximately 25.8 hectares of bare rural land and is located approximately 2 kilometres north of the historic settlement of Bendigo. The site was created as result of RC210466. The site has legal frontage to Bendigo Loop Road.
- [7] The Otago Natural Hazards Database (Otago Natural Hazards Portal)<sup>3</sup> does not identify any hazards located on to the site.
- [8] The applicant in the report titled '*Application for Discretionary Subdivision Consent Bendigo Loop Road – Loop Road Ltd*' dated 1 June 2022 and prepared by Rod Baxter of Patterson Pitts (Applicant's AEE) provides the following site description which is considered accurate and is accepted for the purpose of this report:

*“The area is predominantly rural in nature, with the surrounding allotments comprising rural farming activities with a mix of dryland pasture to the south and vineyards to the west and east of the subject property. The site is generally flat dryland pasture. There are no dwellings or other structures on the land. The property gains access from two existing points off Bendigo Loop Road, one to the north and one to the south of the section.”*

**Proposal:**

- [9] The application 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 will be achieved via a Right of Way easement over Lot 101 to Bendigo Loop Road.
- [10] The proposal will result in two records of titles, which will result in a 9 hectare<sup>4</sup> average allotment size as a result of the proposed subdivision. The Applicant's AEE states no change in land use is sought, in particular no residential activity is sought as part of this proposal, as both lots are intended to be maintained as rural production land,
- [11] As the resulting allotments are to remain as rural production land, no services to support residential activity are proposed. The irrigation water supply is proposed from an existing consented bore RM 12.323.01, with an abstraction rate of 1,134cu/day. It

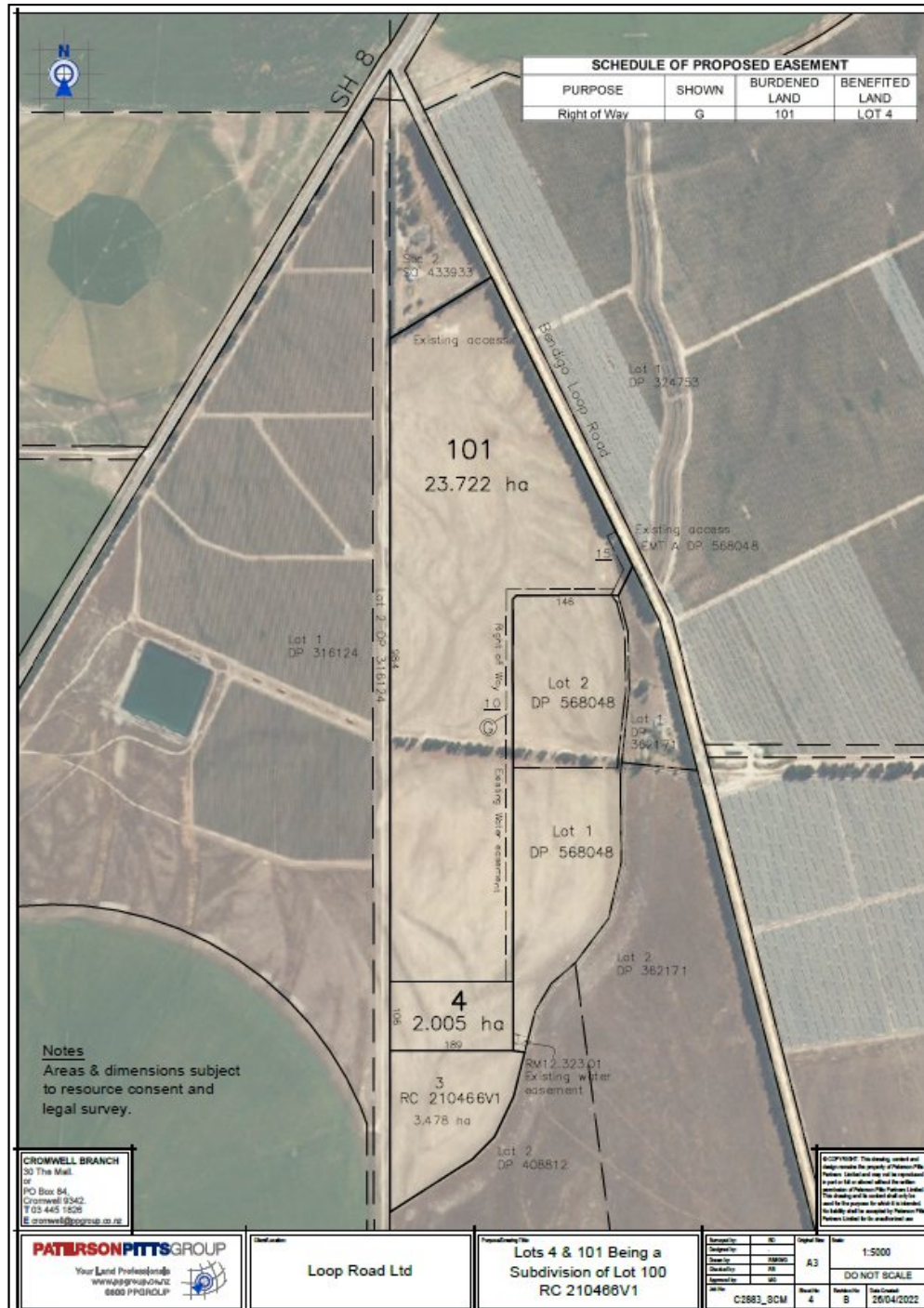
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<sup>3</sup> [orc.govt.nz](http://orc.govt.nz)

<sup>4</sup> When considering Rule 4.7.4(iii)(b) which stipulates that lots greater than 16 hectares are deemed to be 16 hectares for averaging purposes

will continue to provide water to Lots 1 and 2 DP 568048, Lot 3 RC 210466V1 and new proposed Lots 4 and 101.

- [12] Legal frontage to Lot 4 will be provided via a proposed right of way over proposed Lot 104. Lot 104 will retain frontage to Bendigo Loop Road, as the essential balance area.
- [13] The proposed subdivision layout is shown below in Figure 1.



**Figure 1: Proposed Subdivision Scheme Plan. Source: Application**

- [14] The applicant has requested pursuant to Sec 221(5) of the RMA, a certificate cancelling CONO 12528484.6, as it relates to Lots 4 and 101. While residential activity

is not proposed in this application, it is requested by the applicant that Conditions a – d CONO 12528484.6 be duplicated to a new Consent Notice which is to be registered on titles of Lots 4 & 101. The proposed replaced consent notice conditions are detailed as follows:

- a) *Lots 4 and 101 are intended for productive purposes only and the lots are unserviced land. The provision of potable water, wastewater disposal, power supply and telecommunications will be the future responsibility of owners at the time of building.*
- b) *In the event that Loop Road is sealed, the successor shall upgrade the accesses to the sealed standard in accordance with Part 29 of Council's Roading Policy.*
- c) *If any residential activity is proposed on Lot 101 in the future, this must not be located within the areas identified in Appendix 1, Figure 2 as not suitable for residential development in the Insight Engineering Report title 'Preliminary Environmental Site Investigation at Lot 1 DP 408812, Bendigo Loop Road, Bendigo' reference 21010 dated 14 April 2021.*
- d) *At the time of construction of a dwelling on any of the Lots 4 or 101 or at the time an existing on-site wastewater disposal system is subsequently upgraded and replaced, an on-site wastewater disposal system that complies with the requirements of AS/NZ 1547:2000 "On-site Domestic Wastewater Management" shall be designed by a suitably qualified professional, and:*
  - i. *A copy of the design and designer producer statement shall be supplied to the Chief Executive. The dwelling shall not be constructed until the design and producer statement have been supplied to the Chief Executive.*
  - ii. *The designer shall supervise the installation and construction of the system and shall provide a construction producer statement to the Chief Executive.*
  - iii. *An operation and maintenance manual shall be provided to the owner of the system by the designer and a copy supplied to the Chief Executive. This manual shall include a maintenance schedule and an as-built plan of the system dimensioned in relation to the legal property boundaries. A code of compliance certificate for the dwelling and/or disposal system shall not be issued until the construction producer statement and a copy of the owner's maintenance and operating manual have been supplied to the Chief Executive. The maintenance and operating manual shall be transferred to each subsequent owner of the disposal system.*
  - iv. *Disposal areas shall be located such that the maximum separation (in all instances greater in 50 metres) is obtained from any water course or any water supply bore.*

## **REASONS FOR APPLICATION**

- [15] The subject site is located within the Rural Resource Area of the Central Otago District Plan (the District Plan). There are no other landscape classifications on the site.
- [16] The proposal requires the following resource consents:

### **District Plan:**

- A **discretionary activity** resource consent pursuant to Rule 4.7.4(iii)(b) which states that where a subdivision will create lots with an average size of no less than 8ha and a minimum lot size of no less than 2ha. In this instance, the proposal does meet the average and minimum allotment area standard and as such is to be assessed as a Discretionary Activity.

**Resource Management Act 1991:**

- Section 221(3) of the RMA provides that:

*At any time after the deposit of a survey plan:*

- a) *the owner may apply to a territorial authority to vary or cancel any condition specified in a consent notice:*
- b) *the territorial authority may review any condition specified in a consent notice and vary or cancel the condition.*

[17] In this case, the applicant proposes to cancel Conditions a-d of CONO 12528484.6 pursuant to Section 221(3)(a) of the RMA and to duplicate the conditions on a new Consent Notice which is to be registered on the resulting titles for Lots 4 and 101. The variation of a consent notice is a discretionary activity pursuant to section 221 of the RMA.

**National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health**

[18] The National Environment Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS) requires that any subdivision consent or change in the use of land where there may be contaminants that are a risk to human health should be considered in terms of the NES-CS.

[19] A Preliminary Site Investigation (PSI) was provided with the application, dated 14 April 2021, titled *Re: Preliminary Environmental Site Investigation at Lot 1 DP408812, Bendigo Loop Road, Bendigo* and completed by Insight Engineering. The PSI concluded that there is an area on the northern side of Lot 100 DP 579535, that is not suitable for residential development. This is due to a green waste burning site and historical livestock yards which were removed from the site between 2009 and 2011, where it is possible that livestock were treated with pesticides within the area surrounding the woolshed.

[20] Ultimately the PSI concluded that the HAIL activities identified during the investigation are unlikely to pose a significant risk to human health, if the potentially impacted areas are not used for residential purposes. The PSI recommended that the proposed subdivision and potential change of use are allowed as a permitted activity under NES Regulation 8(4). For completeness, this PSI was completed in the context of an earlier subdivision of the site, however, as the use of the site remains largely the same, and a consent notice is offered by the applicant with a no build area in relation to the contaminated land, the findings of the PSI are considered to be relevant to this application.

[21] In addition, it is also important to note that the site is used for production purposes, and there are no residential building platforms proposed, therefore, pursuant to section 5(8) the subdivision is not subject to the regulations of the NES-CS.

[22] Given the assessment above, the NES-CS is not invoked in this instance.

[23] There are no other National Environmental Standards relevant to this application.

## Overall Status

- [24] Where an activity requires resource consent under more than one rule, and the effects of the activity are inextricably linked, the general principle from case law is that the different components should be bundled and the most restrictive activity classification applied to the whole proposal.
- [25] In this case, there is more than one rule involved, and the effects are linked. As a result, the proposal is considered to be a discretionary activity pursuant to Section 104B.

## COMMENT ON PROPOSAL:

### [26] **Part 2 of the RMA and Section 104(1)**

[27] This application must be considered in terms of Section 104 of the RMA. Subject to Part 2 of the RMA, Section 104(1) sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (b) *any relevant provisions of:*
- (i) *A national environmental standards*
  - (ii) *Other regulations;*
  - (iii) *a national policy statement*
  - (iv) *a New Zealand coastal policy statement*
  - (v) *a regional policy statement or proposed regional policy statement*
  - (vi) *a plan or proposed plan; and*
- (c) *any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

## Sections 108 and 220

- [28] Sections 108 and 220 empower the Hearings Panel to impose conditions on a resource consent should it be of a mind to grant consent.

## NOTIFICATION AND SUBMISSIONS

- [29] A notification decision was made on 20 November 2023 that determined that the application warranted public notification. 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"><li>• 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 of future residential activity.</li><li>• 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.</li><li>• The applicant acknowledges that the</li></ul>	Support	No

Submitter	Summary of submission	Decision requested	Wishes to be heard
	<p>application states that all services would be the responsibility of future owners.</p> <ul style="list-style-type: none"> <li>• If residential dwellings were to be built on all four remaining lots the accumulative effect would be considerable.</li> <li>• The submitter supports the findings of Landscape Planner Ben Espie's Peer Review when he recommends legal covenant or similar devices to prevent residential building on new lots.</li> <li>• The submitter seeks that if the subdivision is granted subject to a legal covenant to prevent residential buildings on the new lots is imposed.</li> </ul>		

## EFFECTS ON THE ENVIRONMENT

### Permitted Baseline

- [30] Under sections 95D(b) and 104(2) of the Resource Management Act 1991, the Council may disregard an adverse effect of an activity on the environment 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.
- [31] In this situation, there is no permitted subdivisions in the District Plan, therefore, there is no permitted baseline to be applied. I also note that in the Applicant's AEE, does not specify that a permitted baseline applies to this proposal.

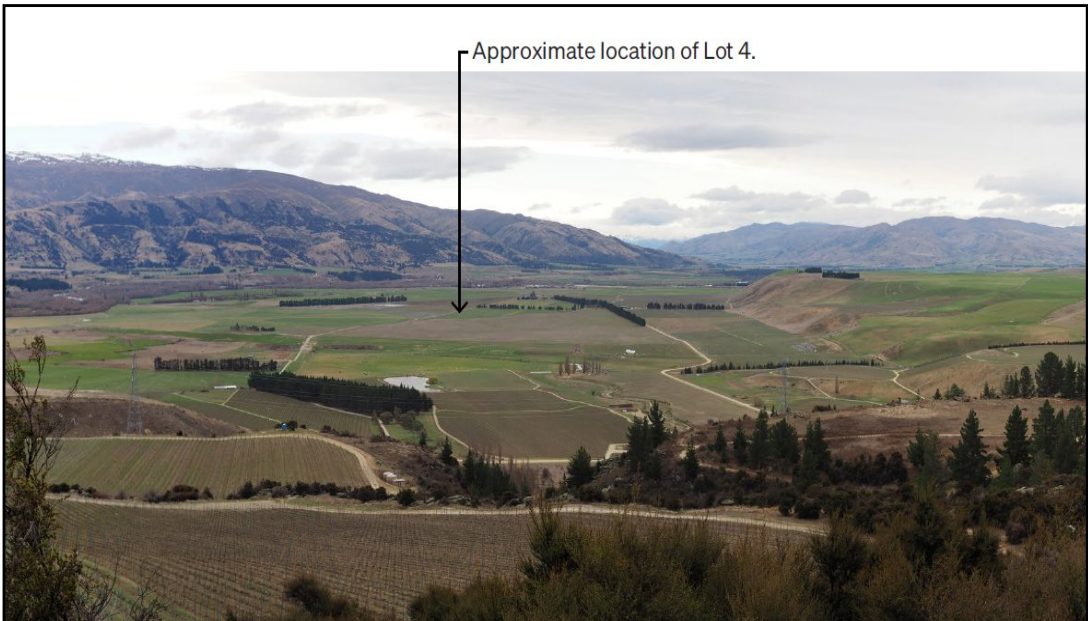
### Receiving Environment

- [32] With regard to the existing environment, the subject site comprises bare rural land currently used for rural production purposes.
- [33] A site visit on 23 November 2023 confirms that the surrounding environment generally comprises flat bare land used for pastoral and viticultural purposes. Sporadic dwellings are located on these rural properties, most of which appear to provide housing for the farms and vineyards. The surrounding environment primarily comprises large rural landholdings, significantly larger than 8 hectares, interspersed with rural lifestyle sized allotments. Sporadic dwellings are located on these rural properties, most of which appear to provide housing for the farms and vineyards.





**Figure 2:** View of the site from State Highway 8, arrow pointing at proposed Lot 4. Source Google Maps.



**Figure 3:** Screenshot of the site, “Located at ‘The Canyon’ a private restaurant / venue centre situated part way up the Dunstan Range”<sup>5</sup>. Source Rough Milne Mitchell Landscape Architects Landscape Report Appendices.

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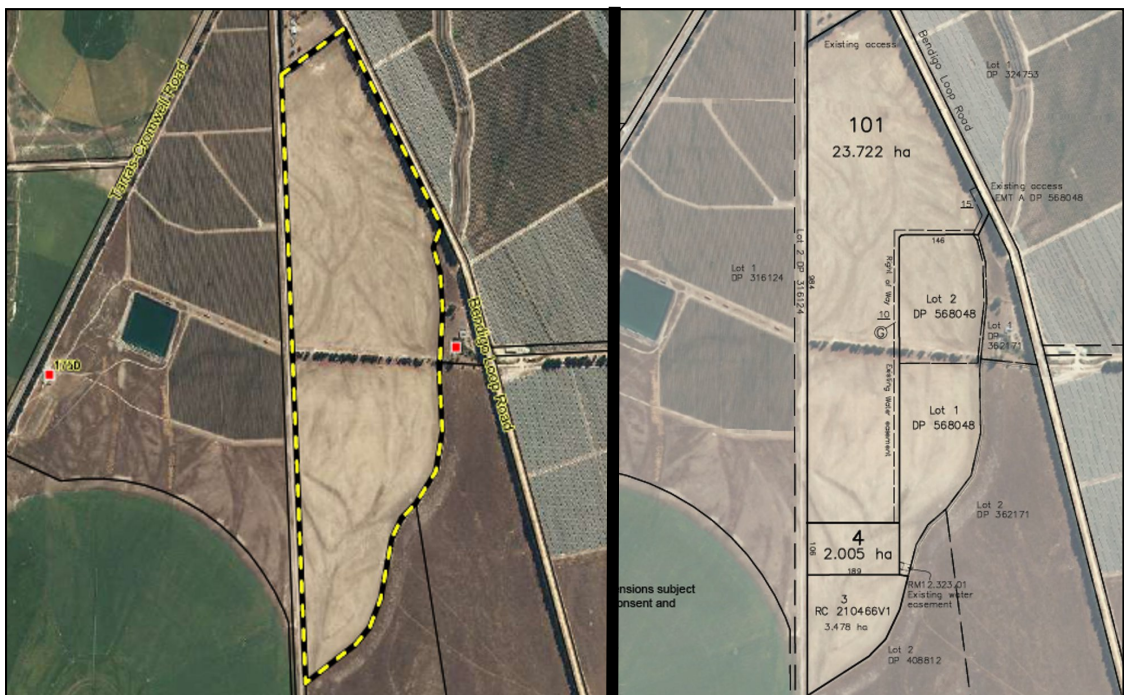
<sup>5</sup> Source Rough Milne Mitchell Landscape Architects Landscape Report Appendices, titled ‘Proposed Subdivision - Bendigo Loop Road, Bendigo Graphic Attachment to Landscape Assessment Report’ dated 3 November 2022.

## Assessment Matters

- [34] The application is for a discretionary activity and, therefore, the assessment is not restricted. For expediency, relevant matters have been grouped below. No regard has been given to any trade competition or any effects of trade competition.

### ***Effects on open space, landscape, natural character and amenity values***

- [35] The objectives and policies of the Plan (in particular Objective 4.3.3, Policy 4.4.2, and Policy 4.4.10), explicitly seek to protect the “open space, landscape, natural character and amenity values” of the Rural Resource Area. It is considered that such values are intrinsic to the Rural Resource Area. As specified in Policy 4.4.10, these values are maintained by the minimum and average allotment sizes in the District Plan. The average allotment area in the Rural Resource Area is 8ha, with a minimum allotment area of 2ha.
- [36] In the case of this application, the proposal complies with both the average and minimum allotment areas. Notwithstanding this, there have been multiple subdivisions of the same piece of land in the past two years. When considering RC 210171, RC 210466<sup>6</sup> and this proposed subdivision collectively, the various applications result in the division of a 38.9-hectare parcel of land into five new allotments as shown in Figure 4 below, with an average allotment size of 6.24 hectares.<sup>7</sup>



**Figure 4:** Screenshot on the left shows the underlying allotment in 2021 prior to any subdivision (Source: RC210171 S42A Report). The screenshot on the right, is the scheme plan proposed by way of this application (Source: RC220191 application).

- [37] It is evident that the applicant has taken advantage of the average allotment areas in the District Plan, which are intended to be used to manage the level of development in a rural area, and ensure the open space character is maintained. I consider that the

<sup>6</sup> Two previous subdivisions of the site, as detailed in the background section of this report.

<sup>7</sup> Noting that lots greater than 16 hectares are deemed to be 16 hectares for averaging purposes.

staging of the subdivisions of the same underlying piece of land has resulted in a density of development that is not anticipated by the District Plan. I consider that further incremental subdivision of this area will give it the appearance of a rural lifestyle enclave. In my opinion, the emergence of a rural lifestyle enclave within a distinctly rural landscape will visually appear as a departure from the open and natural character intended for the Rural Resource Area.

- [38] The landscape assessment prepared by Paul Smith of Rough Milne Mitchell (RMM), titled *Landscape Assessment Report, Proposed Subdivision Bendigo Loop Road*, and dated 3 November 2022 (“Landscape Assessment”), 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. This is due to the flat topography of the site and the use of the site for productive agricultural purposes. The landscape assessment<sup>8</sup> 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. Mr Smith, therefore, concludes in the landscape assessment that the open character will not be reduced.
- [39] While I agree, that the legal process of subdivision does not cause direct visual effects, I consider that the patterns of resulting development, is a significant contributing factor to the change in land management practices and the establishment of new buildings within the surrounding environment. It is important to note that the High Court made it clear in *Pukenamu estates Ltd v Kapiti Environmental Action Incorporated* that:
- [40] *The actual and potential effects of a subdivision are well beyond the simple drawing of lines on a map.*<sup>9</sup>
- [41] It was further indicated in *Pukenamu estates Ltd v Kapiti Environmental Action Incorporated*, that consideration of effects cannot be excluded simply because they would be dealt with as part of a separate and later resource consent application. If the contrary approach were adopted, then, as noted by the High Court in *Pukenamu Estates*:
- [54] *... this would potentially enable an applicant to manipulate what a local authority could take into account as an effect on an activity with the timing of its applications and provision of information. This is not what the act intends.*<sup>10</sup>
- [42] In the case of this application, as raised in the submission of Mr Marsh, while the applicant has not proposed residential activity on the resulting allotments, they have offered a consent notice for the purpose of potential future residential development of the resulting allotments. The consent notice conditions include wastewater disposal design standards for a residential dwelling on Lots 4 and 101, that future landowners be aware that the allotments are un-serviced, and to establish a no build area within Lot 101, in relation to residential development, as a result of the PSI findings. Therefore, while it is indicated in the Applicant’s AEE that the purpose of the subdivision is to facilitate rural productive use, it is not considered fanciful that a

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<sup>8</sup> Prepared by Paul Smith of Rough Milne Mitchell (RMM), titled *Landscape Assessment Report, Proposed Subdivision Bendigo Loop Road*, and dated 3 November 2023

<sup>9</sup> High Court, Wellington, AP106/02, 1 July 2003, Ronald Young J

<sup>10</sup> High Court, Wellington, AP106/02, 1 July 2003, Ronald Young J

residential development will be expected to be established on the resulting allotments in the future. In this respect, as the applicant has considered the provision of servicing for a future dwelling on Lot 101 and Lot 4, the amenity effects associated with the subdivision which will result in potential future residential use of the resulting allotments is considered by way of this assessment.

- [43] A peer review of the Landscape Assessment was commissioned by Council, prepared by Ben Espie of Vivian Espie, titled, *Landscape and Visual Effects Assessment - Peer Review RC220191 – Loop Road Limited*, and dated 30 June 2023. The Landscape Assessment Peer Review states that;

*“No legal mechanisms proposed by the current application would restrict future land uses. Pursuant to the ODP, the creation of new lots brings with it the provision for residential activity on each lot by way of a restricted discretionary activity. If activities that may occur by way of restricted discretionary resource consents are to be considered, it is my opinion that 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.”<sup>11</sup>*

- [44] Rob Baxter of Paterson Pitts responded to the peer review on 20 October 2023 stating that:

*“The report states that any potential domestic or rural living form on Lot 2 would result in associated effects on views and visual amenity. However, these effects may be lessened with landscaping controls through the land use consent if Council considers it necessary at time of application. Suitable design controls through the ODP can ensure that the built form is absorbed into the rural environment.”*

- [45] As the proposal will result in potential residential activity on the resulting allotments, I consider that the adequacy of additional built form on the resulting allotments, should be considered by way of this application, noting that the area is currently attributed to a ‘lack of built elements’, and a ‘dominance of productive land uses.’<sup>12</sup> I do not consider the Applicant’s AEE and the RMM Landscape Assessment, to have adequately considered the visual effects of future built form resulting from the subdivision. When considering the assessment of Mr Espie and the peer review response by the applicant, I agree with Mr Espie, that a residential dwelling on each proposed Lot 101 and 4 in the future will result in visual effects that are out of character with the surrounding environment.

- [46] I agree with the concerns raised in the submission of Mr Marsh, that the applicant has provided mixed messaging, with respect to the potential resulting use of the allotments. I also do not consider the applicant has adequately provided for or assessed the potential effects relating to the establishment of a dwelling on the resulting allotments, as a result of this application, or offered a no build consent notice, to ensure the resulting allotments will be solely used for productive purposes. If the Panel were of mind to grant consent, I consider that the applicant should provide further certainty and expert assessment, around the potential future use of the site, and consideration

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<sup>11</sup> Paragraph 18 of the Landscape Assessment Peer Review prepared by Ben Espie of Vivian Espie, titled, *Landscape and Visual Effects Assessment - Peer Review RC220191 – Loop Road Limited*, and dated 30 June 2023

<sup>12</sup> See Landscape Assessment prepared by Paul Smith of Rough Milne Mitchell (RMM), titled *Landscape Assessment Report, Proposed*

of the actual and potential effects resulting from resulting activities. I note the meaning of effect in described in Section 3 of the Resource Management Act 1991 includes any past, present, or future effect, and any potential effect of high probability, as detailed below:

*“Meaning of effect*

*In this Act, unless the context otherwise requires, the term effect includes—*

- (a) any positive or adverse effect; and*
- (b) any temporary or permanent effect; and*
- (c) any past, present, or future effect; and*
- (d) any cumulative effect which arises over time or in combination with other effects—*

*regardless of the scale, intensity, duration, or frequency of the effect, and also includes—*

- (e) any potential effect of high probability; and*
- (f) any potential effect of low probability which has a high potential impact.”*

- [47] Overall, I consider that the subject site forms part of 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. In this context, I consider this receiving environment to have 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 in this location.

***Effects on the sustainable use of productive land and soils***

- [48] Subdivision in rural areas can impact on the productive capacity of the land through fragmentation.
- [49] A productivity assessment was prepared by the applicant (Blair McLachlan of Peregrine Wines), which took into account the productivity and profitability of viticultural use of a small holding, with focus on proposed Lot 4. The productivity assessment was peer reviewed by James Dicey of Grape Vision, which focused on the potential for the loss of productivity as a result of the subdivision and the adequacy of the resulting allotments in terms of productivity and economic viability to grow grapes.
- [50] It was found in *New Zealand Rail v Marlborough District Council* (‘New Zealand Rail’) that financial viability is not a matter that the RMA explicitly provides for, however, economic wellbeing is. The financial analysis provided in the viticultural assessment and the peer review, provides a useful guide to determining the subdivision impacts on the sustainable management of the land, specifically for the ability for the land to reasonably be used for rural production following the subdivision.
- [51] The productivity assessment prepared by the applicant, concluded the following:
- “As the lot in question is situated in a successful grape growing region and with proven economic viability (either with or without the support of viticultural experts), the above information makes it clear that the lot, with its proposed size of 2ha, could be utilised to become a productive and profitable vineyard.”*
- [52] It is noted that the productivity assessment completed by Mr McLachlan is limited to the productivity of resulting Lot 4, whereby the reduction of productive value associated

with subdivision in full, including Lot 101 is not considered in the productivity assessment. In addition to this, although the applicant possesses relevant experience in the wine industry, and their report offers valuable context, the assessment is not considered to be independent expert evidence. This is attributed to Mr McLachlan's role as the developer of the subdivision.

- [53] The productivity report prepared by Peregrine Wines was peer reviewed by James Dicey of Grape Vision. 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 the properties up and a potential future house site.
- [54] The applicant provided a response to the peer review, which detailed the vineyard potential for Lot 101, and considered 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, I agree, that Lot 101 could be transitioned to vineyard development, and the applicant has provided sufficient provision of water and management, to ensure the vineyard development will be feasible. Notwithstanding this, I consider 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, will result in a decrease to the productive potential of the site to a minor degree.
- [55] In the context of this application alone, I do not consider the scale of the reduction of productivity to materially compromise the overall productive capacity of the soils given the extensive information provided by the applicant to demonstrate the establishment and maintenance of viticultural activities on the site. The proposed 2ha allotment will also provide future owners with the opportunity to engage in small scale primary production and will allow for continued ability to utilise the soil resource.
- [56] Notwithstanding the above, when giving consideration to previous subdivisions undertaken on the site cumulatively, I consider that this proposal contributes to additional rural land fragmentation, whereby, the sustainable management of the land will be further compromised.
- [57] Overall, when considering the cumulative effect of previous subdivisions of the site, I consider 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. Effectively, I consider that the application would lead to rural fragmentation that would inappropriately compromise the productive use of the rural land resource.

***The adequacy of the allotments and the provision of services***

- [58] While no residential services are proposed as the site is being subdivided for rural productive purposes, the applicant proposes consent notices to 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.

- [59] The application states that the site has reticulated water suitable for irrigation from an established consented bore RM12.323.01 with a groundwater take permit, located at the southern end of Lot 1 DP 568048. It has since been confirmed that a second consented bore RM21.042.01 has been drilled at the northwestern corner for Lot 2 DP 568048. A groundwater allocation application is currently underway to supply additional water to the northern portion of Lot 101. Lot 4 will be provided with minimum water allocation from Loop Road Water South Limited of approximately 53,000 L/ha/day. A copy of the draft Loop Road Water South Limited water supply agreement was provided with the application.
- [60] Council's Environmental Engineer assessed the proposal and did not raise any concerns in relation to the proposed servicing arrangements.
- [61] As discussed earlier in this report, I do not consider it fanciful that a future dwelling will be expected to be established on the resulting allotments, and the Preliminary Site Investigation, dated 14 April 2021 provided with the application, states that the applicant advised that "*...the property is proposed to be used for agricultural activities, but that the option for rural residential activities is desirable.*" I consider that servicing should represent the potential development of the site in the future, when considering Policy 16.4.3 of the District Plan, which requires subdivided land to be supplied with services and infrastructure that are adequate for the intended use, and this should be the responsibility of the developer.
- [62] I do not consider the proposed servicing arrangements are adequate for the potential and intended use of the allotments. Notwithstanding this, I consider that appropriate conditions can be imposed to mitigate the potential effect of unserviced allotments, and to ensure that adequate serving is provided to the resulting allotments. I therefore, consider that if the Panel were of mind to grant consent, appropriate conditions should be imposed, requiring the allotments to be serviced for residential activity prior to the completion of the subdivision.

### **Access**

- [63] The applicant has advised that access to proposed Lot 4 will be achieved via a Right of Way off Bendigo loop Road and that Lot 101 has road frontage to Bendigo Loop Road. Overall, I consider that the proposed location, design and construction of the right of way and entranceway will be adequate for the intended use of the subdivision.
- [64] I further note that Council's Environmental Engineer assessed the proposal and considered that subject to appropriate conditions, that the resulting allotments can be adequately serviced for access.

### **Reverse Sensitivity**

- [65] The immediately adjoining properties are farming and viticultural properties. I recognise the potential for reverse sensitivity effects, in the case a future residential activity was established on resulting Lot 4 or Lot 101. A consent notice is considered to be appropriate by ensuring that future owners are prepared to accept neighbouring rural operations as expected in the rural area.

### ***Earthworks***

- [66] The proposal will result in earthworks required to construct the right of way. The earthworks will be at a scale which complies with Rule 4.7.6 J of the District Plan. Accordingly, effects in relation to earthworks will be less than minor and appropriate.

### ***Amalgamations and Easements***

- [67] The proposal does not propose any amalgamations.
- [68] With regard to easements, the Applicant's AEE identifies that an easement is proposed for a right of way over Lot 101 to provide access to Lot 4. Furthermore, I consider that it is appropriate to include a condition of consent which provides for any additional easements required for servicing or access will be confirmed at the time of survey.

### ***Financial contributions***

- [69] Financial contributions have been calculated as follows:

<b>Activity</b>	<b>Payment</b>
Water Supply	\$Nil
Wastewater	\$Nil
Reserves	\$1,034.78 +GST
Roading	\$1,494.68 +GST
<b>Total</b>	<b>\$2,529.46 +GST</b>

- [70] This development/financial contribution demand has been calculated in accordance with Council's Policy on Development and Financial Contributions effective from 1 July 2021.

### ***Consent Notice Cancellation***

- [71] I consider that the cancellation of the consent notice (CONO 12528484.6) conditions a-d presently registered on the record of title for Lot 100 DP 579535 which relate to serving and a no building area on Lot 101 to be appropriate if the panel is of mind to grant consent. The cancellation of the conditions will not have any adverse effects on the environment because the new two lot subdivision would replace the outdated conditions contained within the consent notice.

### ***Cumulative effects***

- [72] In terms of cumulative effects, consideration must be given to the degree that this subdivision will contribute to the existing effects which are already occurring and which detract from the open space, landscape and natural character amenity values of the rural environment. In this regard, the change in this area began most notably through the two previous subdivisions of the 38.9-hectare piece of land.
- [73] The Applicant's AEE<sup>13</sup> 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

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<sup>13</sup> See Section 4 of the Applicant's AEE



huge economies of scale.’ I agree that a range of rural sized allotments is appropriate to a degree in the rural environment, as 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, section 104(1)(a), ‘actual and potential effects’ includes the potential cumulative effects of further subdivisions. It also includes the cumulative effects of preceding development in the surrounding area combined with the effects of the current proposal.

- [74] As assessed above in this report, it is my 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.
- [75] My assessment is that the cumulative effects “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.

## **SUBSTANTIVE DECISION ASSESSMENT**

### **Effects**

- [76] In accordance with sections 95D and 104(1)(a) of the Resource Management Act 1991, the actual and potential adverse effects associated with the proposed activity have been assessed and outlined above. It is considered that the adverse effects on the environment arising from the proposal are more than minor and unacceptable.

### **Offsetting or Compensation Measures**

- [77] In accordance with section 104(1)(ab) of the Resource Management Act 1991, there are no offsetting or compensation measures proposed or agreed to by the applicant that need consideration.

### **Objectives and Policies**

- [78] In accordance with section 104(1)(b) of the Resource Management Act 1991, the following objectives and policies of the Central Otago District Plan were taken into account when assessing the application:

#### **Central Otago District Plan**

- [79] The objectives and policies of the Plan that are of particular relevance to this application include:

4.3.1 *Objective - Needs of the District’s People and Communities*

*To recognise that communities need to provide for their social, economic and cultural wellbeing, and for their health and safety at the same time as ensuring environmental quality is maintained and enhanced.*

4.3.3 *Objective – Landscape and Amenity Values*

*To maintain and where practicable enhance rural amenity values created by the open space, landscape, natural character and built environment values of the District's rural environment, and to maintain the open natural character of the hills and ranges.*

4.3.5 Objective – Water Resource

*To maintain and enhance the quality of the District's water resources by avoiding, remedying or mitigating the adverse effects of land use activities adjacent to water bodies.*

4.3.6 Objective - Margins of Water bodies

*To preserve the natural character of the District's water bodies and their margins.*

4.3.7 Objective – Soil Resource

*To maintain the life-supporting capacity of the District's soil resource to ensure that the needs of present and future generations are met.*

4.3.8 Objective – Significant Indigenous Vegetation and Habitats of Indigenous Fauna

*To recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*

4.4.2 Policy – Landscape and Amenity Values

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

- (a) The design and location of structures and works, particularly in respect of the open natural character of hills and ranges, skylines, prominent places and natural features,*
- (b) Development which is compatible with the surrounding environment including the amenity values of adjoining properties,*
- (c) The ability to adequately dispose of effluent on site,*
- (d) Controlling the generation of noise in back country areas,*
- (e) The location of tree planting, particularly in respect of landscape values, natural features and ecological values,*
- (f) Controlling the spread of wilding trees.*
- (g) Encouraging the location and design of buildings to maintain the open natural character of hills and ranges without compromising the landscape and amenity values of prominent hillsides and terraces.*

4.4.3 Policy - Sustainable Management of Infrastructure

*To ensure that the development of infrastructure in the rural environment promotes sustainable management by:*

- (a) Requiring developers to contribute a fair and reasonable proportion of the costs involved, and*
- (b) Maintaining and enhancing the safe and efficient operation of the infrastructure network (including roading), while avoiding, remedying or mitigating adverse effects.*

4.4.5 Policy - Effects on Water Quality

To assist the Otago Regional Council in its role of maintaining and enhancing water quality, by ensuring allotments are adequate for effluent disposal requirements and encouraging the use of land management techniques that maintain and/or enhance the life supporting capacity of water.

4.4.6 Policy – Adverse Effects on the Soil Resource

To ensure that the location, construction and/or operation of land use activities and subdivision make adequate provision for the protection of the soil resource by avoiding, remedying or mitigating the adverse effects of practices which may cause:

- (a) Erosion, instability or loss of topsoil,
- (b) Loss of nutrient or incidence of soil contamination,
- (c) Loss of soils with special qualities,
- (d) A reduction in vegetation and moisture holding capacity, and
- (e) Soil compaction

4.4.7 Policy – Significant Indigenous Vegetation, Wetlands and Wildlife

To protect areas of:

- (a) Significant indigenous vegetation,
- (b) Significant habitats of indigenous fauna,
- (c) Significant wetlands,
- (d) Indigenous vegetation or habitats that support a significant indigenous freshwater fishery, and
- (e) Habitats of statutorily managed sports fish and game from the adverse effects of land use activities and subdivision and to promote and encourage, where practicable, the retention, enhancement and reinstatement of indigenous ecosystems within the District.

4.4.8 Policy – Adverse Effects on the Amenity Values of Neighbouring Properties.

To ensure that the effects associated with some activities including (but not limited to):

- (a) Noise (including noise associated with traffic generation, night time operations), and vibration,
- (b) The generation of a high level of traffic, in particular heavy vehicles,
- (c) Glare, particularly from building finish,
- (d) A reduction in visual amenity due to excessive signage and the storage of goods or waste products on the site,
- (e) The generation of odour, dusts, wastes and hazardous substances, and
- (f) The use and/or storage of hazardous goods or substances

do not significantly adversely affect the amenity values and privacy of neighbouring properties or the safe and efficient operation of the roading network.

4.4.9 Policy - Effects of Rural Activities

To recognise that some rural activities, particularly those of a short duration or seasonal nature, often generate noise and other effects that can disturb

*neighbours by ensuring that new developments locating near such activities recognise and accept the prevailing environmental characteristics associated with production and other activities found in the Rural Resource Area.*

4.4.10 Policy – Rural Subdivision and Development

*To ensure that the subdivision and use of land in the Rural Resource Area avoids, remedies or mitigates adverse effects on:*

- (a) The open space, landscape and natural character amenity values of the rural environment in particular the hills and ranges,*
- (b) The natural character and values of the District’s wetlands, lakes, rivers and their margins,*
- (c) The production and amenity values of neighbouring properties,*
- (d) The safety and efficiency of the roading network,*
- (e) The loss of soils with special qualities,*
- (f) The ecological values of significant indigenous vegetation and significant habitats of indigenous fauna,*
- (g) The heritage and cultural values of the District,*
- (h) The water quality of the District’s surface and groundwater resources, and*
- (i) Public access to or along the rivers and lakes of the District, particularly through the use of minimum (and average) allotment sizes.*

[80] The proposal will provide for the social and economic wellbeing of the applicant, but I do not consider that it will provide for the wider community’s and future generation’s need to utilise the district’s soil resources to provide for social, economic and cultural wellbeing. I, therefore, consider that the proposal is inconsistent with Objective 4.3.1.

[81] Objective 4.3.3 and Policies 4.4.2 and 4.4.10 seek to maintain rural amenity values whilst ensuring that development is compatible with the surrounding environment. I consider 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. Whilst no built form is proposed as part of this subdivision, it is reasonable to expect that residential activity will be intended to be established in the future, as indicated by the proposed consent notice and the PSI. The effects associated with the potential built form have not been established and, are considered to result in adverse visual effects.

[82] 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. In my opinion, the fragmentation of the site, over three subdivisions, will result in a density of development that is not anticipated in the Rural Resource Area. It is also important to acknowledge the relatively unmodified nature of the receiving environment, where production activities are prevalent. It is my opinion, that the subdivision will compromise the open space currently experienced in this environment. The proposal is, therefore, considered be inconsistent with Objective 4.3.3 and Policies 4.4.2 and 4.4.10.

[83] The proposal will maintain the quality of the District’s water resource (Objective 4.3.5 and Policy 4.4.5) as an appropriate on-site water supply has been determined and conditions can be imposed to ensure wastewater will be appropriate. The proposal will also preserve the margins of waterbodies by including marginal strips along the Clutha

River/Matau-au, as it is located approximately 1.8 kilometres from the river (Objective 4.3.6).

[84] With regard to the life-supporting capacity of the soil resource, the proposal will result in the creation of additional allotments in the Rural Resource Area. While the subdivision when considered independently complies with the allotment sizes in the District Plan, when considering the cumulative subdivisions of the underlying parcel of land, the application results in a subdivision that does not comply with the average allotment size requirements. This proposal results in further fragmentation of rural land and further reduces the ability of the site to be used for rural productive purposes promoting further incremental change in the rural environment. The proposed allotments sizes, and the information provided in the application indicates that the resulting lots, particularly Lot 4 will be utilised for future rural residential lifestyle activity that conflicts with the existing primary production purpose of the zone and will further undermine the protection of the district's soil resource. I consider the proposal is inconsistent to Objective 4.3.7 and Policy 4.4.10.

[85] The proposal will not result in any significant effects on indigenous vegetation and habitats of indigenous fauna as the subdivision will result in the creation of two additional records of title in an area where the land comprises exotic grass coverage. I consider the proposal is consistent with Objective 4.3.8 and Policy 4.4.7.

[86] In terms of other supporting policies in the Rural Resource Area section, the proposal is not considered to be consistent with Policy 4.4.3 (sustainable management of infrastructure), as the applicant does not propose servicing for future potential residential activity. Notwithstanding this, I consider that if the Panel were of mind to grant consent, that appropriate conditions can be imposed, to require the Consent Holder to provide all necessary infrastructure lots at the applicant's expense.

[87] With regard to Chapter 16 Subdivision of the District Plan, the following objectives and policies are considered relevant:

16.3.1 Objective - Adverse Effects on the Roding Network

*To ensure that subdivision avoids, remedies or mitigates adverse effects on the safe and efficient operation of the District's roading network.*

16.3.2 Objective – Services and Infrastructure

*To ensure that subdivisions provide all necessary services and infrastructure without adversely affecting the public interest and the ongoing viability of those services and infrastructure.*

16.3.3 Objective – Hazards

*To ensure that subdivision does not facilitate development that may potentially be at risk from hazards.*

16.3.4 Objective – Amenity Values

*To ensure, where appropriate, that amenity values of the District created by the open space, landscape and natural character values, and areas of significant indigenous vegetation, significant habitat of statutorily managed sports fish and game are not adversely affected by subdivision.*

16.3.5 Objective – Water and Soil Resources

*To ensure that subdivision does not facilitate development that may compromise the life-supporting capacity of the District's water and soil resources.*

16.3.7 Objective – Open Space, Recreation and Reserves

*To ensure that subdivision contributes to the open space, recreation and reserve needs of the community.*

16.3.9 Objective – Physical Works Involved in Subdivision

*To ensure that the physical works involved in preparing land that is part of the subdivision avoids, remedies or mitigates adverse effects on:*

*(a) The stability of land.*

*(b) Water quality within natural watercourses and the stability of their margins.*

*(c) Neighbouring properties in respect of the effects of noise, dust and vibration.*

16.3.10 Objective – Provision for Future Development

*To ensure 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.*

16.3.11 Objective – Effluent Disposal

*To ensure that subdivision in areas without reticulated foul sewage services does not facilitate development that has an adverse effect on soil, surface and groundwater resources, and public health.*

16.4.1 Policy – Adequate Access

*To require that all subdivisions have legal and physical access that:*

*(a) Is of a standard that is adequate for the intended use of allotments having regard to current and likely future traffic levels and the safe and convenient movement of vehicles and pedestrians, and*

*(b) That integrates with the existing roading network in a safe and efficient manner, except in circumstances where Council is satisfied that section 321(2) and (3) of the Local Government Act 1974 is to apply or where no new lots are to be created.*

16.4.2 Policy – Existing Access

*To encourage the use of existing access points to rural State highways and arterial roads to avoid or mitigate adverse effects on the safe and efficient operation of these roads.*

16.4.3 Policy - Adequate Infrastructure

*To require that the land to be subdivided is supplied with services and infrastructure that are adequate for the intended use of the land to be subdivided without the public interest being adversely affected.*

16.4.4 Policy – Unreticulated Areas

*To require that subdivisions within unreticulated areas are designed to ensure*

that each allotment:

- (a) *Has the ability to adequately dispose of effluent and stormwater on site without compromising health, the life-supporting capacity of soil resources, the quality of ground and surface water resources, and the drainage and amenity values of adjoining properties: and that,*
- (b) *An adequate supply of water can be provided, where this is appropriate to the intended use of the allotment.*

16.4.6 Policy – Construction Standards

*To require that all physical works within subdivisions are designed and constructed in accordance with NZS 4404:1981 which is the Council's Subdivision Code of Practice unless Council determines modification of this code is necessary given the local conditions and particular circumstances affecting the subdivision.*

16.4.7 Policy – Subdivision Design

*To require that the design of subdivision, where relevant to the intended use, provides for the following matters:*

- (a) *Facilitates convenient, safe and efficient access to all allotments including pedestrian access where appropriate.*
- (b) *Facilitates the safe and efficient provision and operation of services and infrastructure.*
- (c) *Facilitates access to passive solar energy resources.*
- (d) *Facilitates any foreseeable subsequent development or redevelopment including the economic provision of roading and network utility services.*
- (e) *Facilitates adequate provision of, or contribution to, the open space, recreational and reserve needs of the community with physical links to existing reserve areas where this is practicable.*
- (f) *Facilitates an appropriate level of access to heritage sites, natural features and water bodies where appropriate.*
- (g) *Facilitates development which keeps earthworks to a minimum.*
- (h) *Facilitates retention of the heritage values of a site or area.*

16.4.8 Policy – Sites Subject to Hazards

*With respect to land that is, or is likely to be, subject to the effects of hazards (including the circumstances set out in section 106 of the Act) Council may only grant a subdivision consent where either:*

- (a) *The area of the subdivision to be used for building or other development purposes will not be subject to material damage from the hazard; or*
- (b) *The subdivision is not materially changing the status quo (e.g. boundary adjustment); or*
- (c) *The subdivision is to facilitate land stabilisation, erosion protection, flood protection or some other method of avoiding, remedying or mitigating the effects of the hazard; or*
- (d) *The adverse effects of the hazard can be avoided, remedied or mitigated by conditions attached to the consent including the provision of appropriate works;*
- (e) *Other exceptional circumstances exist; and/or*
- (f) *The subdivider is willing to accept any potential risk and is prepared to have the*

*resultant certificate of titles registered accordingly.*

- [88] As noted, the site is not subject to risk of material damage from any known hazards. The proposal is therefore considered to be consistent with Objective 16.3.3 and Policy 16.4.8.
- [89] I consider that there are minimal, if any, 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.
- [90] Reserve contributions will ensure that the subdivision contributes to the open space, recreation and reserve needs of the community and can be imposed as a condition. The proposal is therefore consistent with Objective 16.3.7.
- [91] 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.
- [92] I consider that the proposed subdivision will facilitate subdivision that may compromise the life-supporting capacity of the District's soil through further fragmentation and domestication of the site and is, therefore, inconsistent to Objective 16.3.5.
- [93] 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). In my opinion the proposal does not result in an appropriate pattern of development for the Rural Resource Area, as it does not adequately provide for the provision of potential intended use of the subdivision by way of residential activities to support the rural productive use of the site. Notwithstanding this, while the applicant does not propose serving in line with the intended use of the subdivision, I consider that the site can be adequately serviced through conditions of consent. A new vehicle access will be provided to Lot 4 via a right of way through Lot 101. I assess that the proposal is partially consistent with this objective and policies.

### **Partially Operative Otago Regional Policy Statement 2019**

- [94] The Partially Operative Otago Regional Policy Statement (POORPS) was declared partially operative on 15 March 2021. Specific to this proposal are the following objectives and policies:

*Objective 4.3*

*Infrastructure is managed and developed in a sustainable way; and coordinated way, and integrates effectively with adjoining urban and rural environments.*

*Objective 5.3*

*Sufficient land is managed and protected for economic production.*

*Policy 5.3.1 of the PORPS seeks to manage activities in rural area to support the region's economy and communities by:*



- (a) *Enabling primary production and other rural activities that support that production;*
- (b) *Minimising the loss of significant soils;*
- (c) *Restricting the establishment of incompatible activities in rural areas that are likely to lead to reverse sensitivity effects;*
- (d) *Minimising the subdivision of productive rural land into smaller lots that may result in rural residential activities;*
- (e) *Providing for other activities that have a functional need to locate in rural areas.*

- [95] I consider that, if the Panel were of mind to grant consent, any future residential activity on the resulting allotments as a result of the proposal can be appropriately supported through the provision of appropriate conditions and consent notices. I, therefore, consider that the proposal is consistent with Objective 4.3.
- [96] 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 this report, it is considered to be inconsistent with Objective 5.3 and Policy 5.3.1.
- [97] Overall, I do not consider that the proposal is consistent with the POORPS.

### **Proposed Regional Policy Statement 2021**

- [98] The Otago Regional Council notified the new Proposed Otago Regional Policy Statement (Proposed ORPS) on 26 June 2020 and on 30 September 2022 notified the freshwater planning instrument components of the RPS. Both RPS's are consistent with relevant national direction. There are no provisions within the freshwater planning components of the RPS that are applicable to this application so they have not been assessed. As the Proposed ORPS's have not yet been tested, more weight will be applied to the provisions in the POORPS (as assessed above) which was updated on March 15 2021.

#### Objective LF-LS-O11 – Land and soil

*The life-supporting capacity of Otago's soil resources is safeguarded and the availability and productive capacity of highly productive land for primary production is maintained now and for future generations.*

#### Policy LF-LS-P20 – Land use change

*Promote changes in land use or land management practices that improve: (1) the sustainability and efficiency of water use, (2) resilience to the impacts of climate change, or (3) the health and quality of soil.*

#### Objective UFD-O4 – Development in rural areas

*Development in Otago's rural areas occurs in a way that:*

- 1) *avoids impacts on significant values and features identified in this RPS,*
- 2) *avoids as the first priority, land and soils identified as highly productive by LF-LS-P19 unless there is an operational need for the development to be located in rural areas,*

- 3) *only provides for urban expansion, rural lifestyle and rural residential development and the establishment of sensitive activities, in locations identified through strategic planning or zoned within district plans as suitable for such development; and*
- 4) *outside of areas identified in (3), maintains and enhances the natural and physical resources that support the productive capacity, rural character, and long-term viability of the rural sector and rural communities.*

Policy UFD–P7 –Rural Areas

*The management of rural areas:*

1. *provides for the maintenance and, wherever possible, enhancement of important features and values identified by this RPS,*
2. *outside areas identified in (1), maintains the productive capacity, amenity and character of rural areas,*
3. *enables primary production particularly on land or soils identified as highly productive in accordance with LF–LS–P19,*
4. *facilitates rural industry and supporting activities;*
5. *directs rural residential and rural lifestyle development to areas zoned for that purpose in accordance with UFD–P8,*
6. *restricts the establishment of residential activities, sensitive activities, and non-rural businesses which could adversely affect, including by way of reverse sensitivity, the productive capacity of highly productive land, primary production and rural industry activities, and*
7. *otherwise limits the establishment of residential activities, sensitive activities, and non-rural businesses to those that can demonstrate an operational need to be located in rural areas.*

[99] I note that Objective LF-LS-011 and associated policies primarily concern is highly productive land, and while the site is not identified as being highly productive land pursuant to the National Policy Statement for Highly Productive Land (NPS-HPL) <sup>14</sup>, evidence has been provided by the applicant to demonstrate that there is appropriate water and frost infrastructure to enable the site to be productive.

[100] As discussed in this S42A Report, the proposal seeks to further fragment rural land and provide for additional residential lifestyle opportunities in a rural environment.

[101] When considering the relatively unmodified nature of the receiving environment, where production activities are prevalent, it is my opinion that the subdivision will compromise the rural amenity values associated with open space and natural character that is currently experienced in this environment. I also consider that the proposal will result in the modification of the open space rural character of the rural environment, by becoming rural lifestyle in nature.

[102] Overall, the proposal is not considered to be consistent with the PRPS. As outlined above, more weight is provided to the POORPS as the PRPS has not been not been adequately tested.

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<sup>14</sup> Landcare Research Maps: [https://ourenvironment.scinfo.org.nz/maps-and-tools/app/Land%20Capability/Iri\\_luc\\_main](https://ourenvironment.scinfo.org.nz/maps-and-tools/app/Land%20Capability/Iri_luc_main)

## **Other Matters**

- [103] With regard to 'plan integrity', I note that the density requirements for rural subdivision enables a range of allotment sizes, while maintaining the overall pattern of development, with larger lots balancing out the establishment of smaller lots. In this instance, the recent and proposed subdivision of the site, will result in the average size of the resulting allotments to be 6.24 hectares.<sup>15</sup> It is evident that the applicant has taken advantage of the average allotment areas in the District Plan, which are intended to be used to manage the level of development in a rural area, and ensure the open space character is maintained. This staged subdivision approach of the same underlying piece of land has resulted in a density of development that is not anticipated by the District Plan and compromises the integrity of the averaging approach specified in Rule 4.7.4(iii)(b).
- [104] In all circumstances I consider the surrounding landscape to have already reached a density that is unable to absorb any further fragmentation without significantly undermining the rural character, amenity and open natural landscape values of the Rural Resource Area.
- [105] In my opinion, the subdivision proposed by this application raises fundamental issues with respect to the integrity of the Plan, its coherence and public confidence in its administration. The land in the Rural Resource Area can be expected to be subdivided to create an average lot area of 8 hectares, in which this application will surpass, enabling the area to become rural lifestyle in nature.

### **OFFSETTING OR COMPENSATION MEASURES:**

- [106] In accordance with Section 104(1)(ab) of the RMA, consideration for offsetting or compensation measures is required. The applicant has not offered offsetting or compensation measures.

### **PART 2 OF THE RESOURCE MANAGEMENT ACT 1991**

- [107] 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.'*

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

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<sup>15</sup> Noting that lots greater than 16 hectares are deemed to be 16 hectares for averaging purposes

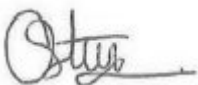
- 7(a) *kaitiakitanga*
- 7(b) *the efficient use and development of natural and physical resources:*
- 7(c) *the maintenance and enhancement of amenity values:*
- 7(d) *intrinsic values of ecosystems:*
- 7(f) *maintenance and enhancement of the quality of the environment:*
- 7(g) *any finite characteristics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

[109] The proposal seeks to subdivide a rural site into allotment sizes not anticipated by the Plan. The proposal would enable the use and development in a manner that enables the applicant to provide for the social, economic and cultural wellbeing, however, the proposal will result in further fragmentation of the rural environment. As identified above, 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, I do not consider the proposal to be wholly consistent with Part 2, in particular 7(c) and 7(f).

## **RECOMMENDATION**

After having regard to the above planning assessment, I recommend that:

1. Having regard to the information available, prior to the Hearing Panel's consideration of application, it is recommended that the proposal be considered as an application for subdivision consent to a discretionary activity in terms of sections 104 and 104B of the Resource Management Act 1991.
2. In my opinion, the proposal is not consistent with the objectives and policies of the Rural Resource Area in which it is located. The fragmentation of rural land, in an area where the Plan has not anticipated such levels of activity, can have a wide range of acute and cumulative adverse environmental effects. In my opinion further fragmentation and incremental change at the scale proposed by this application, is likely to have more than minor adverse effects on the environmental values of the Rural Resource Area.
3. For the reasons detailed in the body of this report, I have come to the view that adverse effects on the environment will be unacceptable and that granting consent will be contrary to the objectives of the Plan and that the application will undermine the integrity of the plan.
4. I, therefore, recommend that the Panel decline the application for subdivision consent and Section 222(3) cancellation of consent notice.
5. In the event that the Panel reaches a different conclusion, I have prepared a draft set of conditions for the consideration of the applicant and the Panel. These conditions are attached as Appendix 1 of this report.



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Olivia Stirling  
**Planning Consultant**  
Date: 18 April 2024

## **APPENDIX 1 – RECOMMENDED CONDITIONS**

### **SUBDIVISION CONDITIONS:**

1. The proposed subdivision must be undertaken in general accordance with the approved plans attached to this certificate as Appendix One, the information provided with the resource consent application received by the Council on 1 June 2022 and referenced as RC220191, and further information received, except where modified by the following conditions.
2. Prior to the commencement of works occurring on site approved by this subdivision consent, the consent holder must:
  - a) Confirm who their representative is for the design and execution of the engineering work.
  - b) Provide copies of designs: reports, calculations, specifications, schedules and drawings as applicable.
  - c) Receive Council Engineering Approval of the design/s.
3. Certificates Schedule 1A, Schedule 1B, and Schedule 1C are to be submitted at the appropriate times as per NZS 4404:2004.
4. Prior to certification of the survey plan, pursuant to section 223 of the Resource Management Act 1991, the subdivider must ensure the following:
  - c) If a requirement for any easements for services, including private drainage, is incurred during the survey then those easements must be granted or reserved and included in a Memorandum of Easements on the cadastral dataset.
  - d) Right of Way A must be duly granted or reserved and shown in a Memorandum of Easements on the cadastral dataset.

### Water

5. Prior to 224c certification, an adequate working water supply shall be provided to proposed Lot 4 and Lot 101 from a new bore, or via an existing bore in accordance with the CODC Addendum, Clause 6.3.15 Small Rural Water Supplies and other relevant provisions of NZS 4404:2004 and the CODC Addendum, with the following specific requirements:
  - a) Source water to be sampled and tested by a testing laboratory recognised by the Taumata Arowai with bacteriological and chemical testing to the satisfaction of the Executive Manager of Infrastructure Services.
  - b) Any non-compliance with Maximum Allowable Values (MAVs) and Guideline Values (GVs) under Drinking Water Standards for New Zealand 2005 (revised 2018) shall be highlighted in the Laboratory Report and an appropriate means of remedial treatment described and installed at the time of building subject to an appropriately worded consent notice attached to the title of proposed Lot 101 and Lot 4.

- c) Evidence that the minimum water available from the bore to be supplied to proposed Lot 101 and Lot 4 is 1,000 litres per day.
- d) If required, the new bore shall be designed and constructed by a suitably qualified professional, and as-builts submitted to Council.
- e) Necessary easements in place for pipework and access to water source.

#### Access

- 6. Prior to 224c certification, the existing Right-of-Way access to proposed Lot 4, (off Bendigo Loop Road, along the 10m wide easement along the western boundary of Lots 1 & 2 DP 568048 as created through RC210466V1), shall be inspected to confirm compliance or upgraded to achieve compliance with Table 3.2 (a) of the Council's 2008 addendum.

#### Power and Telecommunications

- 7. Prior to 224c certification, operational underground power connections shall be provided to the boundary of proposed Lot 4 and Lot 101.
- 8. Prior to 224c certification, operational underground telecommunication connections must be provided to the boundary of proposed Lot 4 and Lot 101. Alternatively, telecommunications may be by wireless technology if desired by the applicant, to be formalised by registration of the standard consent notice on the new title of proposed Lot 4 or Lot 101, pursuant to Section 221 of the Resource Management Act 1991.

#### Financial Contributions

- 9. Payment of a reserves contribution of \$1,034.78 (exclusive of Goods and Services Tax) calculated in terms of Rule 15.6.1(1)(a)(i) of the Operative District Plan on the basis of one additional dwelling equivalent.

#### Consent Notice

- 10. Pursuant to Section 221 of the Resource Management Act 1991, a consent notice must be prepared for registration on the title for Lot 4 and Lot 101 hereon, for the following ongoing condition:
  - i. At the time residential activity (new dwelling) is constructed on Lot 4 and Lot 101, domestic water and firefighting storage is to be provided by:
    - a) a standard 30,000 litre tank. Of this total capacity, a minimum of 20,000 litres must be maintained at all times as a static firefighting reserve. Alternatively, an 11,000 litre fire fighting reserve is to be made available to the building in association with a domestic sprinkler system installed in the building to an approved standard. A fire fighting connection is to be located within 90 metres of any proposed building on the site.
    - b) In order to ensure that connections are compatible with Fire and Emergency New Zealand equipment the fittings are to comply with the following standards:
      - I. Either: 70 mm Instantaneous Couplings (Female) NZS 4505, or 100 mm Suction Coupling (Female) NZS 4505 (hose tail is

to be the same diameter as the threaded coupling (e.g. 100 mm coupling has 100 mm hose tail) provided that the consent holder must provide written confirmation from Fire and Emergency New Zealand to the Chief Executive to confirm that the couplings are appropriate for firefighting purposes.

- II. The connection must have a hardstand area adjacent to it to allow a Fire and Emergency New Zealand appliance to park on it. The hardstand area must be located at the centre of a clear working space with a minimum width of 4.5 metres. Access must be maintained at all times to the hardstand area.
  - III. All connections must be capable of providing a flow rate of 25 litres per second at the connection point.
  - IV. Underground tanks or tanks that are partially buried (provided the tank is no more than 1 metre above ground) may be accessed by an opening in the top of the tank, removing the need for couplings.
- c) Firefighting water supply may be provided by means other than that provided for above if the written approval of Fire and Emergency New Zealand is obtained for the proposed method and that approval is submitted to the Chief Executive.
- d) Any new water tanks shall be coloured dark green, dark grey, or dark brown, and located in such a manner as to ensure it is not visible against the skyline when viewed from any public place.
- ii. At the time that a new dwelling is constructed on Lot 4 and Lot 101, an on-site wastewater disposal system must be designed and installed by a suitably qualified and experienced professional that complies with the requirements of AS/NZ 1547:2012 and in compliance with Clauses 5.5 b), c), d) and e) of Council's July 2008 Addendum to NZS 4404:2004.
  - iii. At the time a residential dwelling is established on Lot 4 and Lot 101, Stormwater from buildings and other impervious surfaces within the allotment shall be stored for beneficial reuse or disposed of by soak-pit designed by a suitably qualified and experienced professional within the boundary of each lot.
  - iv. Water tanks must be coloured, sited and buried and/or screened (by planting) to have minimal visual impact from beyond the property.
  - v. Fencing must be of standard rural post and wire construction. Stone walls must be constructed using locally appropriate rock.
  - vi. In the event that Loop Road is sealed, the successor shall upgrade the accesses to the sealed standard in accordance with Part 29 of Council's Roading Policy.
  - vii. If any residential activity is proposed on Lot 101 in the future, this must not be located within the areas identified in Appendix 1, Figure 2 as not suitable for residential development in the Insight Engineering Report titled '*Preliminary Environmental Site Investigation at Lot 1 DP 408812, Bendigo Loop Road, Bendigo*' reference 21010 dated 14 April 2021.
  - viii. All physical services are to be located below ground.

- ix. The consent holder/s is/are aware of and will take reasonable and appropriate steps to advise all purchasers, lessees, licences or tenants, or any other users having an interest in Lot 4 and Lot 101 hereon of;
  - a. Horticultural, viticultural, and agricultural activities that can occur as of right in the Rural Resource Area; and
  - b. The usual incidence of these activities including (but not limited to) stock handling, haymaking, chemical spraying, pest control (including by use of poison, night shooting and helicopters), deer stag roaring, irrigation, frost control and bird scaring, which may have amenity impacts beyond the boundaries of adjoining properties.
  - c. The need for appropriate siting, design and screening of dwellings and other sensitive uses to mitigate adverse effects associated with noise and spray drift from adjacent horticultural activities.

### **CONSENT NOTICE CONDITION**

1. At the time of certification pursuant to section 224(c) Conditions a-d of Consent Notice CONO 12528484.6 as it relates to Lot 100 DP 579535 held in Record of Title 1019928 shall be cancelled pursuant to Section 221(3) of the Resource Management Act 1991.

### **ADVICE NOTES:**

1. All earthworks to develop and/or landscape each lot shall comply with Rule 4.7.6J of the Central Otago District Plan or additional resource consent will be required.
2. Where there is a risk that sediment may enter a watercourse at any stage during the earthworks, it is advised that the Otago Regional Council be consulted before works commence, to determine if the discharge of sediment will enter any watercourse and what level of treatment and/or discharge permit, if any, may be required.
3. It is strongly recommended that additional treatment be included for all water supply to provide wholesome water by achieving compliance with the Guideline Values (GVs) shown to be exceeded in the laboratory reports.
4. On-site disposal shall comply with the Otago Regional Council requirements.
5. For more information on how to comply with Condition 10 above or on how to provide for FENZ operational requirements refer to the Fire and Emergency New Zealand Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 retrieved from [http://www.fire.org.nz/CMS\\_media/pdf/da516e706c1bc49d4440cc1e83f09964.pdf](http://www.fire.org.nz/CMS_media/pdf/da516e706c1bc49d4440cc1e83f09964.pdf). In particular, the following should be noted:
  - For more information on suction sources see Appendix B, SNZ PAS 4509:2008, Section B2.
  - For more information on flooded sources see Appendix B, SNZ PAS 4509:2008, Section B3.
6. All charges incurred by the Council relating to the administration, inspection and supervision of conditions of subdivision consent must be paid prior to Section 224(c) certification.



7. Development contributions for roading of \$1,494.68 (exclusive of goods and services tax) are payable for pursuant to the Council's Policy on Development and Financial Contributions contained in the Long-Term Council Community Plan. Payment is due upon application under the Resource Management Act 1991 for certification pursuant to Section 224(c). The Council may withhold a certificate under Section 224(c) of the Resource Management Act 1991 if the required Development and Financial Contributions have not been paid, pursuant to section 208 of the Local Government Act 2002 and Section 15.5.1 of the Operative District Plan.
8. It is the consent holder's responsibility to obtain all necessary Temporary Traffic Management Plans, Corridor Access Requests or any other approvals to undertake works within the road reserve. These approvals should be obtained prior to the works commencing.
9. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
10. Resource consents are not personal property. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
11. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
12. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.

Appendix Two: Subdivision Plan/s for RC220191 (scanned image(s), not to scale)

