

CENTRAL OTAGO DISTRICT COUNCIL
S95A-F DECISION FOR RC230278
29 Ritchies Road, Cromwell

INTRODUCTION

BACKGROUND

The application was made on the premise of being a boundary adjustment subdivision. During the processing of the application, I acknowledged with the applicant's agent, Ms Dixon, that the proposal would be considered by Council as a subdivision under Rule 4.7.4 (iii) of the District Plan as a discretionary activity. The new boundary locations are proposed to be in different locations to the existing boundaries and exceed the threshold of which the proposal could be considered as a boundary adjustment. The applicant accepted this position and subsequently provided a full assessment of the proposal as a discretionary activity subdivision.

On 7 May 2024, the applicant further amended the application to seek consent for the establishment of a residential dwelling on the site, as opposed to seeking consent for a residential building platform. The applicant has requested that the indicative dwelling plans originally submitted become the proposed plans for the design of a future dwelling on the site. As part of this revision, the development controls initially proposed have been amended to reflect that the dwelling design is now confirmed via proposed plans. In addition to these amended development controls, the applicant has proposed additional restrictions on the use of exterior lighting, the location of solar panels within the site and the inclusion of a designated carparking pad to restrict and control the location of parked vehicles on the site.

On 7 May 2024, the applicant confirmed that the right of way access to the site would be upgraded to meet Council standards.

This assessment outlined in this report is based on the application as amended.

DESCRIPTION OF ACTIVITY

Consent is sought to subdivide Part Section 20 into two allotments. Proposed Lot 3, at 1.8ha in size will be amalgamated with Section 13 SO 572093, providing a total allotment of 553ha. Proposed Lot 2 is the balance allotment remaining of Part Section 20 and will have an area of 60.12ha.

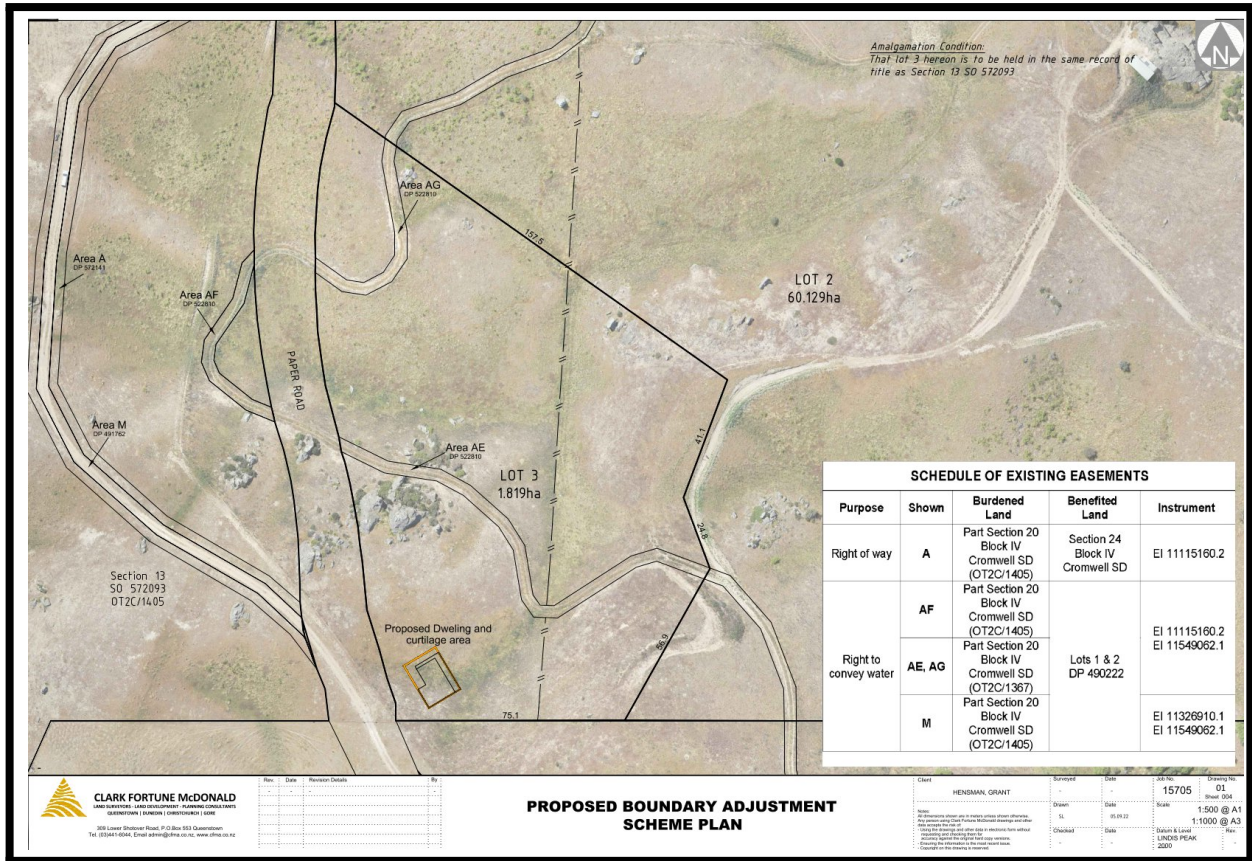


Figure 1: Proposed scheme plan

Residential dwelling

Consent is sought for the establishment of a residential dwelling on the site with an area of 192m². The dwelling and curtilage area is to be located within proposed Lot 3, as shown in Figure 1 above. The dwelling will provide the sole housing associated with the larger farming parcel owned by the applicant.

The application is supported by a Landscape and Visual Effects Assessment (LVEA) prepared by Vivian + Espie. This assessment originally used a conceptual design based on the proposed design controls, however since the writing of this report, the application has been amended to convert the conceptual design to a proposed design. In my opinion, this amendment results in the LVEA becoming more applicable to the proposal than less. I have therefore confirmed acceptance of the original LVEA as appropriate for the revised proposal.



Figure 2: Proposed dwelling design (Source: Application, 2023)

The proposed dwelling is located a distance of 4.2m from the southern boundary and 6.4m from the western boundary. The infringed boundary to the south is in respect of Lot 1 DP 528585 Cromwell SD which is owned by one of the applicants and therefore affected party approval is inferred. The western boundary adjoins a paper road.

SITE DESCRIPTION

The subject site is located at 29 Ritchies Road, Cromwell and is legally described as Pt Sec 20 Blk IV Cromwell SD, contained within Record of Title OT2C/1367. The site encompasses 61ha approximately, with the subdivision resulting in the amalgamation of Lot 3 with the applicant's 552ha landholding; Sec 13 SO 572093.

Both sites subject to this application are located within the Rural Resource Area as mapped by the Central Otago District Plan (District Plan). The site of the proposed dwelling is mapped as Outstanding Natural Landscape, as is much of the applicants' larger landholding and the underlying site to be subdivided. The site of the dwelling contains a hazard notation in respect to an active fault line. The applicant's larger landholding contains a subsidence and slippage hazard notation, approximately 350m to the west of the dwelling site.

The general site locality is shown in Figure 3 below.

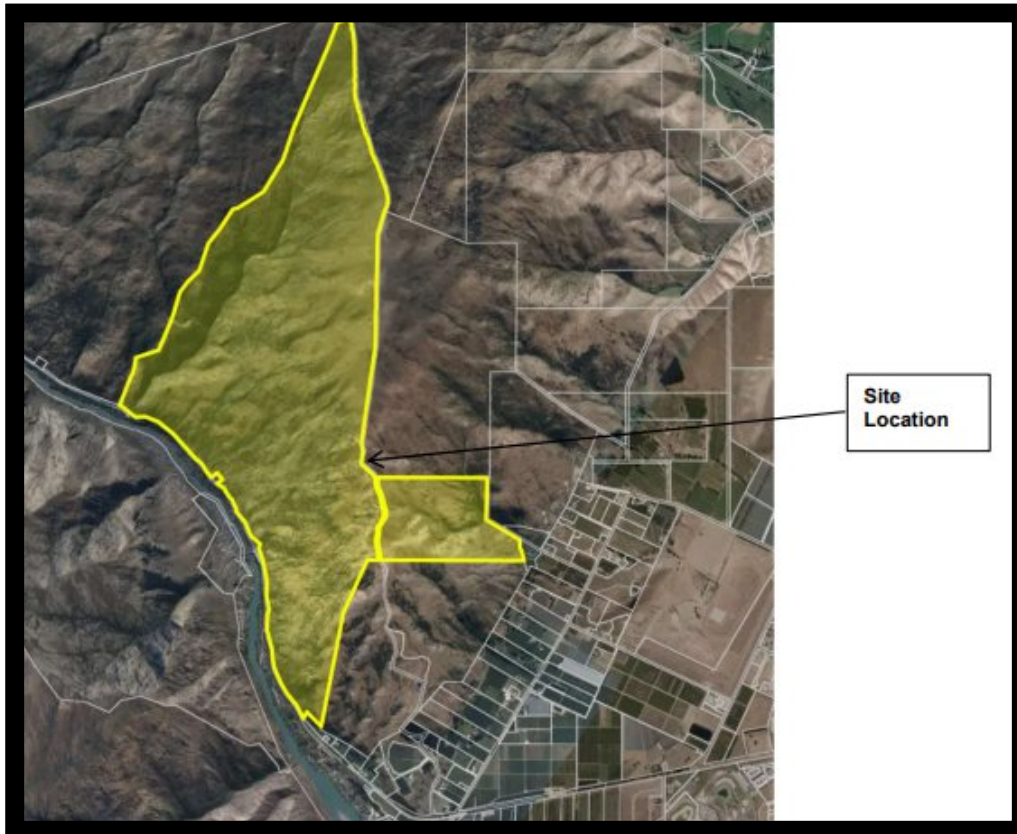


Figure 3: General site location (Source: Application, 2023)

REASONS FOR APPLICATION

Central Otago District Plan

The subject site is located within the Rural Resource Area of the Central Otago District Plan (the District Plan). The site is subject to Outstanding Natural Landscape notation.

Subdivision consent is required for the following under the District Plan:

- A **discretionary activity** resource consent pursuant to Rule 4.7.4 (iii) for the subdivision of land, with an average allotment size of 8ha and minimum allotment size of 2ha.

Land use consent is required for the following under the District Plan:

- A **discretionary activity** resource consent pursuant to Rule 4.7.4 (i) for a breach of Rule 4.7.6 L (1). The proposal breaches clauses (a), (b) and (c) inclusive as it results in the erection of new structures and buildings, the cutting of new landings and tracks and the excavation of more than 20m³ and 50m² of material within the Outstanding Natural Landscape.
- A **restricted discretionary** resource consent pursuant to Rule 4.7.3 (vii) for the establishment of a residential activity. This rule requires that the performance standards set out in clauses (a) to (d) inclusive are met. In this instance, the residential activity fails to comply with clause (a) due to a further breach of the performance standards of Rule 4.7.6. A breach of any of these standards triggers additional reasons for restricted discretionary consent and are assessed separately below. Otherwise,

the residential activity complies with clauses (b) to (d) as there is only one residential activity per site, no additional formed accesses are required onto the State Highway and a separation distance of 50m between another dwelling or platform is achieved.

- A **restricted discretionary** resource consent pursuant to Rule 4.7.3 (i) Breach of Standards. The residential activity breaches the 25m yard setback requirements set out in Rule 4.7.6A in relation to both the southern and western boundaries of the proposed allotment boundaries. In addition, the water tanks required for the servicing of the dwelling breach the western yard setback.
- A **restricted discretionary** resource consent pursuant to Rule 4.7.3 (v) for a breach of Rule 4.7.6 G Provision of Services. The abstraction of water from a water race is not considered a safe and adequate water supply for the purposes of this standard.
- A **restricted discretionary** resource consent pursuant to Rule 4.7.3 (vi) for a breach of Rule 4.7.6 J (a) Earthworks for Access Tracks. The earthworks required for the access track exceed the maximum cut batter of 2m for a maximum length of 3m.

National Environmental Standards

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS) came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.

The applicant has provided historic land use information that confirms that the site has not or is not likely to have had HAIL use in accordance with Regulation. I consider that the NESCS is not triggered by this application. There are no other National Environmental Standards relevant to this application.

Overall Status

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.

In this case, there is more than one rule involved, and the effects are linked. As such, I consider it appropriate that the bundling principle established in *Locke v Avon Motor Lodge* (1973) is applied. Having regard to the most restrictive activity classification, the application be considered, in the round, as a **discretionary activity** pursuant to sections 104 and 104B of the Resource Management Act 1991 ('RMA').

WRITTEN APPROVALS

No written approvals have been provided with the application.

SECTION 95A NOTIFICATION

Step 1 – Mandatory public notification

Public notification has not been requested. (s95A(3)(a)).

There has been no failure or refusal to provide further information or the commissioning of a report under section 92(2)(b) of the Act (s95A(3)(b)).

The application does not involve the exchange of recreation reserve land under section 15AA of the Reserves Act 1977 (s95A(3)(c)).

Step 2 – Public notification precluded

There are no rules or national environmental standards precluding public notification (s95A(5)(a)).

The proposal is not exclusively for controlled activities and/or boundary activities (s95A(5)(b)).

Step 3 – If not precluded by Step 2, public notification is required in certain circumstances

The application is not for a resource consent for one or more activities, where those activities are subject to a rule or national environmental standard that requires public notification (s95A(8)(a)).

A consent authority must publicly notify an application if it decides under s95D(8)(b) that the activity will have or is likely to have adverse effects on the environment that are more than minor (s95A(2)(a)). An assessment under s95D is therefore made below.

ASSESSMENT OF EFFECTS ON THE ENVIRONMENT (s95D)

MANDATORY EXCLUSIONS FROM ASSESSMENT (S95D)

- A: *Effects on the owners or occupiers of land on which the activity will occur and on adjacent land (s95D(a)).*
- B: *An adverse effect of the activity if a rule or national environmental standard permits an activity with that effect (s95D(b) (the permitted baseline, refer to section below)).*
- C: *In the case of a restricted discretionary activity, any adverse effect that does not relate to a matter for which a rule or national environmental standard has restricted discretion (s95D(c)).*
- D: *Trade competition and the effects of trade competition (s95D(d)).*
- E: *Adverse effects on any parties who have provided written approval must be disregarded (s95D(e)).*

PERMITTED BASELINE

Under sections 95D(b) of the Resource Management Act 1991, the Council may disregard an adverse effect of an activity on the environment may be disregarded if the plan permits an activity with that effect. That is, an application can be assessed by comparing it to the existing environment and development that could take place on the site as of right, without a resource consent, but excluding development that is fanciful. In this instance, both a subdivision and the establishment of residential activity in the Rural Resource Area require resource consent.

In addition, earthworks and the erection of structures and buildings within the Outstanding Natural Landscape also require resource consent. Accordingly, there is no suitable permitted baseline to be applied.

ASSESSMENT: EFFECTS ON THE ENVIRONMENT

Consideration is required of the relevant assessment matters in the District Plan, along with the matters in any relevant national environmental standard. For expediency, relevant matters have been grouped below. No regard has been given to any trade competition or any effects of trade competition.

1. The visual effects of the subdivision and adequacy of the allotment

The purpose of the subdivision is to provide a suitable position for a residential activity to be established within Sec 13 SO 572093. The applicant opines that the land was chosen as suitable to meet this purpose given the proximity to the already established right of way, avoidance of land subject to hazard notation and low visibility of the built form. I agree with the applicant that there are unlikely to be any other suitable locations for a dwelling on the property given the steep topography, however it would have been advantageous for the applicant to specifically assess alternatives within the application as required by Schedule 4 of the RMA.

Apart from the establishment of the residential activity, the two resultant allotments will continue to be used for primary production. Both allotments are of a sufficient size to accommodate efficient farming operations, either individually or as operated in conjunction with other adjacent land.

In the context of the receiving environment, the proposed change in boundary locations will create minimal notable visual effects. New post and wire fencing will be required to accommodate the new boundaries however this is unlikely to be visible from outside of the subject site, especially in the context of the size of the subject landholding. All other land subject to the subdivision and outside of the dwelling curtilage area will continue to appear as visually cohesive given that the land use is not intended to change.

There are no reserves or public conservation land, heritage sites, notable trees or areas of significant indigenous vegetation, or named water bodies which will be materially affected by the proposal. The subdivision does not require the provision of esplanade reserves or strips.

Overall, adverse effects on the environment as a result of the subdivision will be less than minor.

2. Access

Legal and physical access is provided to both existing allotments via a right of way which traverses up to the hill to the site of the proposed subdivision. The right of way weaves in and out of a paper road reserve. The right of way has two available entrances, one from the State Highway (Kawarau Gorge Road) and one from Ripponvale Road. The intention of the application is that both allotments will continue to be legally accessed via this right of way and entering from the Ripponvale Road entrance only, with a driveway formed from the right of way to service the proposed dwelling. Accordingly, no upgrade of the State Highway entranceway is proposed.

The existing right of way was approved by Council pursuant to Section 348 of the Local Government Act in April 2022. The legal width of the right of way easement appears to be

10m, with the formed width at approximately 3m. During the Section 348 approval process, the processing planner noted that any future land use changes would require consideration of the adequacy and formation of access. As the subject proposal represents a change in land use with respect to the establishment of a residential activity, it is appropriate to consider the adequacy and formation of the right of way and vehicle entranceways at this time.

Council uses Table 3.2a of the July 2008 Addendum to NZS 4404:2004 as a standard to govern the formation requirements for right of way accessways. This forms Council's Code of Practice for Subdivisions. Section 16 provides for modifications to be made to Councils Code of Practice by any conditions of consent and where local circumstances warrant it, and is underpinned by the requirement to ensure adverse effects on the environment are avoided, remedied or mitigated.

Under the Code of Practice, the subject right of way access is required to be a minimum width of 4.5m with a legal width of 10m and sealed at any points that the gradient exceeds 16.7%. Rule 16.7.5 requires a minimum formed width of 4m and a legal width of 6m and Rule 16.7.6 requires a maximum gradient of 1 in 5, or 20%. The two create discrepancies with respect to formation standards in respect of both width and gradient with the Code of Practice representing a higher standard of formation compared to Section 16 of the District Plan. The applicant has confirmed that they will upgrade the right of way to meet the standards required by the Code of Practice which will ensure that effects on the safety, durability and efficiency of the access are appropriate.

3. Amalgamation and easements

The subdivision requires an amalgamation of proposed Lot 3 with Section 13 SO 572093. Land Information New Zealand has indicated that the amalgamation conditions is acceptable if the title retains its limited as to parcels status. The applicant has confirmed acceptance of this.

Subdivision consents typically impose a generic condition requiring that easements be duly granted or reserved to protect access or for access to services. This ensures that adequate easements will be imposed if determined necessary at the time of survey. Adverse effects in relation to amalgamation and easements will be less than minor.

4. Landscape and Visual Effects of the Residential Building Platform

As outlined above, the application has been supported by a Landscape and Visual Effects Assessment (LVEA) by Vivian + Espie. The applicant provided additional refining commentary on some specific aspects of the LVEA on 8 March 2024 which I have considered to form a part of the overall assessment.

The dwelling proposed by this application is located within the Outstanding Natural Landscape (ONL) notation of the District Plan. The ONL notation in this locality appears to cover the entire extent of the Pisa Ranges above an elevation of between 400-460masl. The elevation of the subject dwelling is approximately 600masl, placing the dwelling within the interior of the mapped ONL area and towards the southern extent of the Pisa Ranges. Areas of ONL are subject to section 6 (b) of the Resource Management Act and Council is required to recognise and provide for the protection of these areas from inappropriate subdivision, use and development as matters of national importance. The District Plan further expresses that in determining what is inappropriate subdivision, use and development, the Council must consider that these landscapes are often used by people and communities for their social, economic and cultural wellbeing.

The LVEA describes the existing landscape. The LVEA describes how the Pisa Ranges were identified during the District-Wide Landscape Assessment as having extreme landscape sensitivity and high landscape quality with a large viewing audience and generally devoid of man-made structures.¹ The LVEA describes that the site is currently managed as open high country land with relatively uniform grassland vegetation cover and the properties subject to the subdivision straddle a spur that runs south from Mt Michael.

The LVEA details the presence of two huts in the vicinity of the proposed dwelling and considers these within the description and assessment of the existing landscape. At numerous points throughout the LVEA, the author compares, assess and considers the proposal against the presence of these two huts within the existing landscape. A comparison and assessment of the proposal is made relative to these huts in clauses 31, 33, 34, 36, 38, 39, 40, 41, 43, 44, 45, 46, 49 and 50; being the sections of the LVEA titled “Effects on views and visual amenity”, “Landscape effects” and “Conclusions”. The reference to these huts is prolific throughout the LVEA, particularly within the sections of the report which provide the crux of the assessment of the proposal.

Aerial photographs indicate that the hut located on Pt Sec 20 Blk IV Cromwell SD (site subject to this application) was constructed sometime between 2014 and 2022. Council records confirm that the hut has not been approved under the Resource Management Act. Aerial photographs indicate that two huts sit side by side on Sec 24 Blk IV Cromwell SD (site adjacent to the north). The smaller of the two huts predates the RMA, with the larger of the huts constructed sometime between 2006 and 2014. Council records confirm that the larger hut has not been approved under the Resource Management Act.

Both huts (the Pt Sec 20 hut, and one on Sec 24) are not reasonably considered to form a legitimate part of the receiving environment upon which effects can be considered. Upon raising this with the applicant, the applicant has provided refining commentary on the above, in consultation with the author of the LVEA. The applicant contends that the conclusions reached in the LVEA do not rely upon assessing the proposal against the presence of these huts within the receiving environment, merely that their presence was noted. I ultimately do not agree with this position. In my opinion, the reliance on the presence of the huts within the LVEA significantly undermines the assessment and conclusions reached regarding the appropriateness of the proposal.

Vivian + Espie originally included a suite of design controls/mitigations which form part of the applicant’s proposal. The inclusion of specific house design plans as part of the revised application have rendered some of these design controls redundant. The applicant confirmed that the following design controls remain in place:

- Specifically designed earthworks to physically form the RBP and access driveway to limit and confine the earthworks as much as possible.
- Volunteered condition of consent requiring that all disturbed ground be reinstated in brown top paddock grasses, tussocks or grey shrub species.
- Volunteered conditions restricting all outdoor living or domestic curtilage activities to be confined to the curtilage area
- Volunteered condition to restrict the location of associated structures, such as but not limited to solar panels or water tanks to be located on site such that they are not able to be viewed from outside the site.

The applicant has proposed a dwelling which is a simple gable, small cottage with lean-to additions. The dwelling will be clad in recessive colours and materials which will be chosen

¹ Central Otago District Rural Review Landscape Assessment Report and Recommendations, July 2008, Map 7 and pages 9 and 10

to give the dwelling a rustic appearance. The plans indicate the exterior to be “unpainted galvanised iron”, which would be required to be pre-weathered through a chemical treatment process to dull the shine in order to comply with the performance standards within the District Plan. Final details of an appropriate weathering process were not detailed in the application. The height of the dwelling has been restricted to 5m above finished ground level to ensure that the height of the roof sits below the height of the adjacent paper road/access track. The applicant has confirmed that the dwelling would be constructed in strict accordance with the approved plans, negating the need for these elements of the design to be volunteered as design controls. On balance, the securing of a specific house design has enabled me to hold a higher level of comfort with the revised application in terms of the certainty of visual effects, compared to using a conceptual design.

The LVEA has relied upon the nature of the accessway as a significant mitigation measure for assessing effects on the wider public. Whilst I agree that the accessway covers private land in the lower reaches, this is a situation which is repeated throughout the Central Otago region. It does not diminish the fact that the road reserve is public land and that public access to this area may be frequent and is expected. In this regard, the proximity of the dwelling to the road reserve undoubtedly results in high visibility of the dwelling from public viewpoints.

As part of the additional assessment provided on 8 March, the applicant has further considered the establishment of structures associated with the servicing requirements of the dwelling, namely the presence of 4-5 water tanks and approximately 17m² of solar panels to provide potable water, firefighting provision and power supply. The presence of these servicing structures were not considered within the LVEA. The applicant has indicated that the water tanks will be partially buried and located inside the curve of the driveway to the site. The solar panels are proposed to be ground mounted and located further north of the dwelling. As part of this further assessment, the applicant has volunteered an additional condition of consent restricting any associated structures on the site to locations which are not able to be viewed from outside of the site.

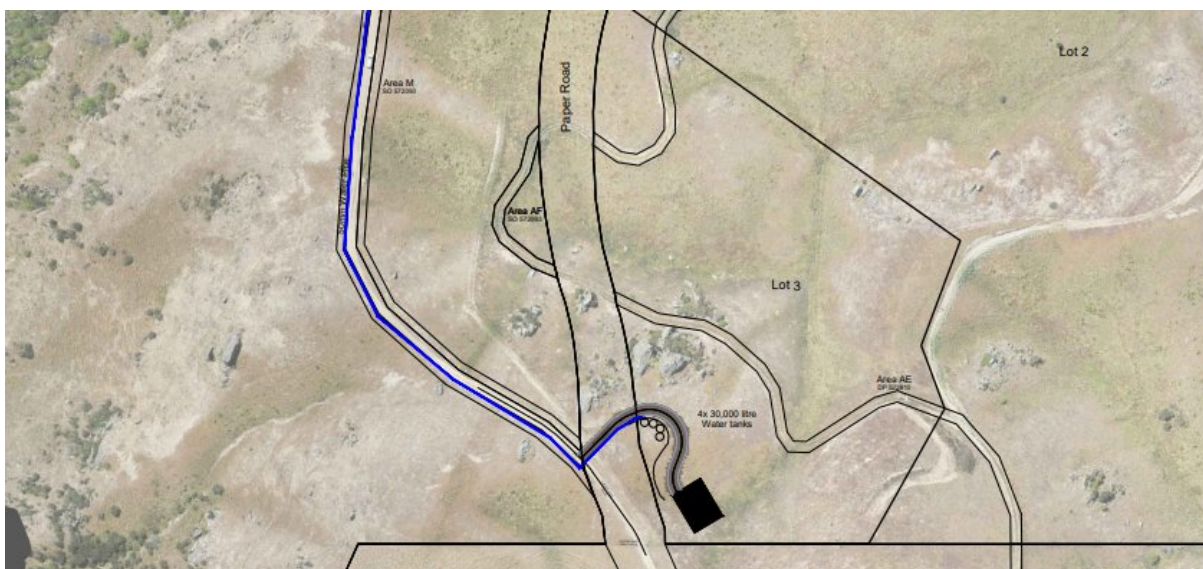


Figure 4: Location of water tanks relative to dwelling (Source: Additional information from applicant)

As can be seen in Figure 3, the legal road reserve is sited immediately to the west of the proposed water tank locations and therefore this volunteered condition may not be entirely achievable even with the burying of the tanks and the elevation difference. The presence of the tanks within a landscape described as having extreme sensitivity and high landscape

quality² will introduce additional elements of domestication which is likely to result in adverse visual effects on users of the adjacent road which is more than minor.

In regards to the solar panels, the applicant has confirmed on 7 May 2024, that a suitable site has been found near the dwelling site which will ensure that the panels are not visible from outside of the site. The applicant has advised that they have used a 3D fly through simulation from their drone imagery taken from the site to confirm the appropriateness of the location for the panels. I note that this did not form part of the landscape assessment report nor has any evidence of this exercise been provided. As above, given the high sensitivity of the site, I consider it important to adopt a precautionary approach. I consider that the presence of solar panels could introduce an inappropriate element of domestication which may result in adverse visual effects on users of the adjacent public land which are more than minor.

The LVEA was silent in regard to visibility effects of the dwelling at nighttime. For any elevated and remote position, visibility of bright, unobstructed lights in the landscape at night can create a significant effect on the openness and natural character of the landscape. In response to my concerns, the applicant has volunteered conditions restricting outdoor lighting to low level, downward facing lighting which is for way finding only. I consider this to be an appropriate and meaningful mitigation measure to address effects of outdoor light spill. Light still from inside the dwelling through the areas of glazing remains unaddressed within the application. Noting the sensitivity of this landscape and the current lack of domestic light sources, I consider that there is potential for more than minor effects on the openness and natural character of the landscape from light spill.

The confirmation of the house design plans has reduced the level of uncertainty around effects of glare. However, the application fails to specifically address effects of glare. I have noted that the dwelling contains a balcony eave which will likely reduce sunstrike on the north-eastern façade containing the stacker windows which can be particularly prone to creating glare effects, particularly during the months when the sun is at a higher elevation. The other elevations of the dwelling contain relatively small windows which will also reduce effects of glare. However, the overall level of uncertainty around effects of glare remains high and adopting a precautionary approach leads me to determine that adverse effects of glare may be more than minor.

² Central Otago District Rural Review Landscape Assessment Report and Recommendations, July 2008, Map 7 and pages 8 and 9.

I do not consider that domestication effects of the proposal were adequately assessed within the LVEA. As mentioned above, the applicant has proposed that all domestic elements be confined to the 192m² curtilage area. This curtilage area is shown in Figure 5 below, relative to the footprint of the proposed dwelling. The area of the curtilage area not occupied by the dwelling is minimal. The water tanks, solar panels and carparking pad are located outside of this area, which appears contradictory to the LVEA which relied on all elements of domestication be confined to this defined area.

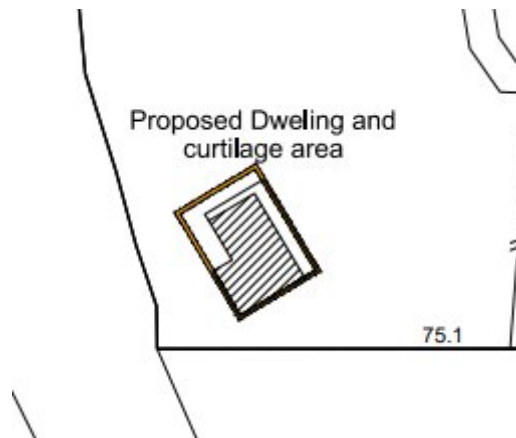


Figure 5: Extent of dwelling and curtilage area

The revised application confirmed that all domestic storage would occur within a single carport structure, as shown on the dwelling plans. A parking pad will be established on the northern side of the dwelling to provide a location for visitor's vehicles, and the storage of other vehicles associated with the dwelling. The parking pad will be in a location which is screened from private view by separation distance and topography but will be visible from the adjacent road reserve and access track. Whilst I agree with the applicant that this revision to the proposal is preferable to the parking of vehicles near the access track which is more highly visible within the landscape, the parking pad will still present as an additional element of domestication outside of the curtilage area. Overall, I consider that effects of domestication are not adequately mitigated within the proposal.

In considering overall effects on the open and natural character of the rural environment, I have placed specific emphasis on the high visual priority afforded to the ONL within both the RMA and the District Plan. The appropriate use and development of ONL is considered as a matter of national importance which presents a high threshold for scrutiny and protection. The locating of a full-size, permanently occupied dwelling within the higher elevated land subject to ONL notation represents a significant exception from the norm. This specific landscape is described as having extreme sensitivity and high landscape quality and is generally devoid of man-made structures, particularly dwellings. I consider it appropriate in this instance to adopt a precautionary approach. The potential adverse effects of the proposal are likely to have high consequence in terms of the remoteness, naturalness and openness on the wider public.

In my opinion, the applicant has not provided a convincing position which justifies the proposal from the perspective of meeting the social, economic and cultural wellbeing of the applicant.

5. Servicing Arrangements

Details of the proposed servicing arrangements are discussed and assessed below.

Water: The applicant originally sought to abstract potable water from a piped water race, abstracted under resource consent obtained from Otago Regional Council. The applicant has since amended this aspect of the proposal as the current water permit did not permit water to be used on the subject site and would have needed to be varied or a new consent sought. The applicants now propose to install a new take off the water race (Scrubby Creek). A new piped system will be established to take water to the proposed house site. Both the point of take and the proposed 50mm water pipe are contained within Sec 13 SO 572093 negating the need for easements to secure the supply.

Information supplied indicates that the proposed take is a permitted activity pursuant to Rule 12.1.2.1 of the Otago Water Plan. In addition, the proposed individual take avoids triggering a network supply under the Water Services Act 2021. In this regard, the proposed take will result in less than minor effects on the wider environment or on any other parties.

The abstraction of water from a water race is not considered a safe and adequate water supply in relation to the performance standards contained within Rule 4.7.6G. Water within a water race carries the risk of contamination by animal sources and other activities which can occur in the catchment. In this instance, the applicant claims that there are no other viable alternative potable water sources as the elevation and characteristics of the locality preclude abstraction from a bore, well or spring. The applicant has submitted a recent water quality test of the water within the water race. The testing and accompanying laboratory report confirmed that the water met all water quality parameters applicable to the Drinking Water Standards for New Zealand except for E.coli. The presence of E.coli organisms at this level suggests the water is not fit for human consumption. It also indicates that other pathogens of faecal origin may also be present.³ In response, the applicant has indicated that point of use remedial treatment will be required. Accordingly, adverse effects in relation to water quality will be able to be internalised within the site and able to be adequately mitigated for the applicant with remedial treatment.

Information provided in the application indicates that the water race is likely to be dry and unable to supply water during the months of May to August. The applicant has addressed the continuity of supply by proposing the use of 4 x 30,000L tanks to provide water storage during this dry period, resulting in a shortfall in water storage buffering of 3 days. As above, the net effect of this shortfall will be internalised within the site and less than minor on the wider environment or on any other parties.

Firefighting: A water storage tank is proposed, containing the correct couplings and hardstand area to provide static reserve for firefighting. Given the remoteness of the site and the potential risk of wildfire, I consider it prudent that Fire and Emergency New Zealand (FENZ) be considered an affected party to this application and provide specific advice on the firefighting requirements of the dwelling. The introduction of residential activity into this environment may have effects on the safety of people and assets, including emergency services personnel.

Wastewater: Information provided in the application confirms that on-site disposal of wastewater is feasible (with some constraints) and able to comply with AS/NZS 1547:2012. Compliance with this standard should ensure that adverse effects on water quality will be less than minor.

Stormwater: Information provided in the application confirms that on-site discharge of stormwater may be impractical. Alternatives are available which will either require some level of detention or discharge to overland flow paths, with the discharge being attenuated to pre-development levels within the site.

³ Laboratory Report, Hill Labe, Lab No: 3456537, 8 February 2024.

Electricity and Telecommunications: The application proposes the use of off-grid power and wireless telecommunications.

6. *Bulk and location effects*

The proposed dwellings and the proposed water tanks are located within the required 25m setbacks from the site boundaries. As the infringed neighbour to the south is listed as an applicant, written approval is inferred and effects on this party have been disregarded. The western boundary setback infringement is to road reserve. The road is unformed within this reserve and therefore exists as a paper road. Information provided recently has confirmed that the dwelling and water tanks will be set at a considerably lower elevation than the formed access track. I consider that the dominance, shading and privacy effects from the presence of built form located within close proximity to the road reserve will be less than minor.

7. *Hazards*

Effects in relation to potential geotechnical hazards are addressed within the Geotechnical Report submitted with the application and the conclusion reached is that no geotechnical hazards are present which would preclude development in this location. No hazards have been identified in the Central Otago planning maps for this property. A Fan Landform: Catchment Unspecified hazard is noted on the Otago Regional Council Natural Hazard mapping portal. The source report for this hazard notation indicates that the locality is outside of the area defined as active landslide or active alluvial fan.

8. *Effects on the capability for the sustainable use of the productive land and soil resource*

The land underlying the site is classified as LUC 6 land, and therefore not considered highly productive land in accordance with the National Policy Statement for Highly Productive Land (NPS-HPL). The site is, however, used for land based primary production, albeit in a low intensity manner. The current land use is likely to have been unchanged on the current site for a number of years given the proliferation of native and exotic vegetation and the topography precluding cultivation and meaningful irrigation. The establishment of a residential activity will slightly reduce the land available for productive use, however this is likely to have a negligible impact on the overall productive capacity of the site and the capability for the sustainable use of the soil resource. The residential activity may be required to support the existing farming operation as currently there is no other housing available on the site. Overall, my conclusion is that the proposal is likely to have less than minor effects in relation to the capability of the use of productive land and soil.

9. *Earthworks*

The proposal seeks resource consent for earthworks in general and for earthworks within the Outstanding Natural Landscape. The application is supported by a Geotechnical Report and conclusions reached in this report addresses suitability for residential development, suitability for wastewater and stormwater discharge, slope stability, sediment control measures, rehabilitation of the site and effects on water quality. The visual effects associated with the earthworks are assessed within the Vivian + Espie Landscape and Visual Assessment report. Overall, I adopt the findings of the Geotechnical Report and conclude that adverse effects on the wider environment and on any particular parties will be less than minor.

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

Based on the conclusions reached in the assessment above, the proposed activity is likely to have adverse effects on the wider environment that are more than minor. Public notification is required under Step 3.

Step 4 – Public Notification in Special Circumstances

Public notification is required if the consent authority decides such special circumstances exist as to warrant the application being publicly notified (s95(9)(a)).

Current case law has defined ‘special circumstances’ as those “*outside the common run of things which is exceptional, abnormal or unusual, but they may be less than extraordinary or unique.*” The court has also found that special circumstances are deemed to apply where there is likely to be high public interest in the proposal [*Murray v Whakatane DC [(1997) NZRMA 433 (HC), Urban Auckland v Auckland Council [(2015) NZHC 1382, (2015) NZRMA 235]*].

There is nothing exceptional or unusual about the application that makes public notification desirable in this particular instance. As such, there are no special circumstances that warrant the application being publicly notified.

OVERALL DECISION - S95A NOTIFICATION

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

EFFECTS ON PERSONS

Section 95B(1) requires a decision whether there are any affected persons (under s95E). The following steps set out in this section, in the order given, are used to determine whether to give limited notification of an application for a resource consent, if the application is not publicly notified under section 95A.

Step 1: certain affected groups and affected persons must be notified

Limited notification is not required under Step 1 as the proposal does not affect customary rights groups, customary marine title groups nor is it on, adjacent to or may affect land subject to a statutory acknowledgement.

Step 2: if not required by step 1, limited notification precluded in certain circumstances

Limited notification is not precluded under Step 2 as the proposal is not subject to a rule in the District Plan or is not subject to a NES that precludes notification.

Limited notification is not precluded under Step 2 as the proposal is not exclusively for a controlled land use activity.

Step 3: if not precluded by step 2, certain other affected persons must be notified

Limited notification is not required under Step 3 as the proposal is not a boundary activity where the owner of an infringed boundary has not provided their approval, and it is not a prescribed activity.

Limited notification is not required under Step 3 as the proposal falls into the ‘any other activity’ category and the effects of the proposal on persons will be less than minor.

Step 4: Further limited notification in special circumstances

Special circumstances do not apply that require limited notification.

The assessment above has concluded that the application is required to be publicly notified. This is in part due to the fact that effects on rural character, remoteness and naturalness are likely to be felt by a large viewing audience who are difficult to individually identify and also in part due to the proximity of the dwelling to public land.

Within the above assessment I have further identified the following person as affected by the proposal:

- Fire and Emergency New Zealand (FENZ)

DECISION: EFFECTS ON PERSONS (s95B(1))

In terms of Section 95E of the RMA, the party listed above is considered affected by this proposal.

OVERALL NOTIFICATION DETERMINATION

Given the decisions made under s95A and s95B, the application is to be processed on a publicly notified basis. It is noted that the determination, as to whether an application should be notified or not, is separate from the issues to be considered in making a decision on the application itself.

Prepared by:



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Planning Officer

Date: 7 May 2024

Reviewed by



Oli McIntosh
Consultant Planner

Date: 9 May 2024

Approved under Delegated Authority by:



Lee Webster
Planning and Regulatory Services Manager

Date: 10 May 2024