



# Environment Court of ]

## **Royalburn Farming Company v Queenstown-Lakes District Council [2010] NZEnvC 386 (11 November 2010)**

Last Updated: 3 December 2010

### **BEFORE THE ENVIRONMENT COURT**

Decision No. [\[2010\] NZEnvC 386](#)

**IN THE MATTER** of an appeal under section 120 of the  
Resource Management Act

**BETWEEN ROYALBURN FARMING COMPANY**

(ENV-2009-CHC-188)

Appellant

**AND QUEENSTOWN-LAKES DISTRICTCOUNCIL**

Respondent

Hearing: Queenstown on 2 - 4 August 2010

Court: Environment Judge L J Newhook

Environment Commissioner R M Dunlop Environment  
Commissioner C E Manning

Appearances: R H Ibbotson for Royalburn Farming Company

M A Ray for Queenstown-Lakes District Council

D Palmer for Wakatipu Trails Trust Incorporated

## **DECISION OF THE ENVIRONMENT COURT**

- A. The appeal is allowed to the extent outlined, and on the conditions attached.
- B. The question of costs is reserved.

### **REASONS**

#### **Background**

[1] Royalburn Farming Company owns Royalburn Farm, a property of some 483 hectares located on the Crown Terrace, on both sides of the Crown Range Road in the Queenstown-Lakes District. It applied to QLDC for consent to subdivide 20 lots from the property to provide rural lifestyle allotments, each with a building platform. When consent was refused, Royalburn appealed.

[2] Between the lodging of the appeal and the matter coming to hearing the differences between the parties had narrowed somewhat. Royalburn had reduced its application so that it now sought only 14 lots. The witnesses called by the council conceded that consent could properly be granted to six (in the case of the landscape witness it called, Ms H Mellsop), or eight lots (as agreed by the planning witness it called, Mr M Brown). The issue

[3] The issue in this case is how many, and which, of the rural lifestyle lots proposed can be granted consent consistent with the maintenance of the visual and rural amenity of the Crown Range. Essentially the question is at what point does over-domestication compromise the qualities of the Crown Range landscape to an unacceptable degree, keeping in mind the mitigation and environmental compensation offered by the applicant.

#### **The proposal**

[4] Royalburn Farming Company now proposes to create 14 lots for rural-residential purposes on the south-western side of Crown Range Road, where the land slopes generally downhill in gentle but undulating fashion until it reaches a steep scarp above the Kawarau River valley. The lots would be clustered in three groups, accessed in the case of Lots 1-8 by an existing vehicle access and driveway, and in the case of Lots 9-14 by a re-aligned vehicle access and driveway largely over an existing farm-track. These accesses would be protected by rights of way.

[5] The lots would vary in size from 0.78 hectares to 1.35 hectares. Lot 1 would

be approximately 250 metres from Crown Range Road, while the remaining lots would be a minimum of 600 metres from it. The applicant has used the topography of the site and existing shelterbelt planting to limit views of the development and to obviate the need for extensive additional screening. Each lot would have a building platform of 1,000 m<sup>2</sup> and initially the applicant proposed a maximum coverage of the building platform of 65%, and a height restriction of 5.5 metres. As a result of discussion between the landscape architects called by the parties, Mr P J Baxter called by the applicant, and Ms Mellsoy, it offered to limit the extent of building on platforms 1-3 to 450 m<sup>2</sup> (45%) and the height of building on platform 7 to 4.5 metres. In order to provide further mitigation, it proposes a maximum height for glazing of 3.5 metres and that wall and roof cladding be in dark colours with a reflective value below 36. The only exterior lighting within the residential lots would be downlighting.

[6] The lots would be supplied with water from tanks located approximately 100 metres from Crown Range Road between Lot 1 and the road. These would be partially sunk into the ground and surrounded by mitigation planting. The applicant has obtained consent for a new bore to supply these tanks, to avoid adverse effects on those who rely on downstream takes from the Royalburn and to maintain its current water supply for farming purposes.

[7] The applicant proposes to limit fencing to post and wire, including at the entrance ways. Its initial proposal was to chipseal accessways, but, again during the course of the hearing, agreement was reached between the planners, Mr J B Edmonds called by Royalburn, and Mr Brown, that the preferred surface for the accessways would be a silica binding agent applied to a gravel base-course.

[8] Planting to reduce the visibility of development would be restricted to a shelterbelt running west to east, north of Lot 11, shelterbelt planting east of Lots 1112, and a small plantation north of Lot 5. The species proposed are leyland cypress, willow and poplar which are common in the surrounding environment. A condition of consent, supported by a consent notice, would require the trees to reach a height of 4.5 metres before development of the residential lots can begin. Planting within the residential lots would be restricted to native, fruit, or a specified list of exotic, trees.

[9] Royalburn also offers a series of measures which might be termed 'environmental compensation' or 'environmental benefit' rather than being strictly in mitigation. It proposes to create areas, mainly in gullies, in some of which there would either be no grazing, and in others only light grazing or grazing restricted to sheep, to improve nature conservation values on the site. In the no-grazing areas weed species would be removed, and groups of matagouri shrubland species planted including matagouri, kowhai, olearia, coprosma and mountain beech. The areas of restricted grazing would be managed to allow natural regeneration of native species.

[10] It further proposes to remove a row of alders planted on the southern side of Crown Range Road. The alders were planted initially, with consent, prior to 2002, and were replanted after a recent upgrade of Crown Range Road. The removal of these trees would restore and maintain public views across the pastoral landscape of the Crown Terrace.

[11] Royalburn Farm is currently divided into 11 titles. If consent to the proposal is granted, the applicant proposes to amalgamate the balance of the lots from which the new residential allotments are to be created (Lots 24 and 25) with Lots 26-28 to form a single block of 222 hectares. It initially proposed to place a covenant on this lot, together with Lot 29 of 108 hectares, and Lots 22-23 comprising 88 hectares (a total of 418 hectares approximately) to the effect that:

- these lots will continue to be managed in their current productive farming and pastoral use (including cropping from time to time);
- they will not be further subdivided;
- there is to be no residential development of these lots, not however precluding application for resource consent for farm-related buildings, including a residence for a farm manager if that should prove necessary.

During the course of the hearing, the applicant amended the third element in the covenant to exclude reference to a farm manager's residence.

[12] As we understand the evidence, the 50 or so hectares that are split over the remaining titles are separated by road or in some other way from the main titles, and the company wishes to retain the opportunity of selling them to adjoining owners. If a need arose for accommodation for a farm manager it would be open to Royalburn to apply for consent for it on any of the remaining lots. Mr H Ryan, a director of the applicant company, asserted that the company intended to continue farming the area as part of the wider farming operations of companies of which he and his brother were the major shareholders.

[13] Royalburn also offers to grant easements over its land to facilitate access to the Crown Range. A track approximately 1.2 kilometres long would be created. It would link with Tobins Track (which runs between Arrowtown and the Crown Terrace), and proceed around the lower slope of the Crown Range, before descending to Crown Range Road. At that point the trail would cross the road and continue in a southerly direction below the

western edge of the road to the intersection with Eastburn Road. The trail would be formed as a poled route, and remain unfenced. It might be subject to restrictions for approximately six weeks each year for farming purposes during the lambing season.

#### Consents required

[14] The land is zoned Rural General. Rule 15.2.3.3(vi) provides, with one exception not relevant to this case, that in the Rural General Zone all subdivision and the location of residential building platforms is a discretionary activity. The associated zone standard (Rule 15.2.6.3(iii)(b)) requires a building platform of between 70 m<sup>2</sup> and 1,000 m<sup>2</sup> to be identified on all lots to be created, including the balance lot, except for (relevantly), land subject to restrictive covenant, consent notice, or other legal instrument that either:

- prohibits buildings into the future; or
- protects nature conservation values; or
- maintains and enhances open space.

[15] Although no building platform is identified on the balance lot, the proposal satisfies the zone standards in the following ways:

- (1) a condition of consent and consent notice requires areas to be retired from grazing or be grazed only lightly or only by sheep, to facilitate revegetation by native species;
- (2) a covenant is proposed which requires the land to be managed in its current productive fanning and pastoral state;
- (3) the balance lot after completion of the subdivision is to be amalgamated with the lot to the south.

The zone standard is thus satisfied, and the status of the activity remains discretionary.

[16] As a result of that we must consider the matter under section 104 of the Act and exercise our discretion to grant or refuse the application, and, if we decide to grant consent, impose conditions under section 104B. Under section 104(1), subject to Part 2, the relevant matters to consider are:

- any actual and potential effects on the environment of allowing the activity;
- any relevant provisions of the Queenstown-Lakes District Plan.

We are also required to have regard to the initial decision of the Council pursuant to section 290A.

[ 1 7] We record that no party in this case, (nor the initial Council decision),

identified any other statutory instrument, or any other matter under section 104(1)(c) as relevant to this decision.

### **The site and surrounding landscape**

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[18] The Crown Terrace is a perched and tilted terrace formed by glaciation some 200 metres above the Wakatipu basin at an altitude of between approximately 600-700 metres above sea level. It is divided by the Crown Range Road which is one of the principal routes between Queenstown and Wanaka. In the north and east it is bounded by the Crown Range, and to the west and south by steep escarpments above the Gibbston Valley and the Wakatipu basin.

[19] The terrace has a rural character, with much of the land in pasture, and some used over the summer for arable crops. Some small lot subdivision has occurred, partly in accordance with the provisions of a previous district plan which permitted larger holdings to subdivide two hectare lots to the extent of one per every hundred hectares held. The land is incised by gullies, some comparatively steep, which form tributaries of the Swiftburn and Royalburn Streams. While, as we have indicated, the majority of the land is covered by introduced grasses and crops, the gullies contain remnant matagouri shrubland. Since the paddocks lie between these gullies, shelterbelts of such introduced species as poplar, willow and leyland cypress tend to follow the pattern of the gullies.

[20] Mr Baxter noted that the terrace was a memorable landscape, contrasting with the surrounding mountains and separated from the Wakatipu basin below.

[21] We note that the extent of consented housing on the terrace is not yet visible to the observer. For example, there are twelve consented lots with building platforms to the east of Glencoe Road, some of them relatively close to its intersection with the Crown Range Road.<sup>[1]</sup> We particularly note the agreement of Mr Baxter and Ms Mellsoop that the limits of domestication appropriate in this landscape are close to being reached. Whether, and at what point of this application, a threshold would be crossed is the central issue in dispute between the parties.

[22] The 483 hectare Royalburn Farm occupies about one third of the Crown Terrace. Approximately 132 hectares lie north-east of Crown Range Road and include an area which might more appropriately be described as part of the foothills of the Crown Range than part of the terrace. The 351 hectares south of the road possess the characteristics of the terrace we have earlier described. The site contains two dwellings, one the homestead, part of which is heritage-protected under the district plan, and a farm manager's residence. The homestead, but not the farm manager's residence, is visible from Crown Range Road.

[23] A number of unformed legal roads run through the farm property or along its boundary as follows:

- an L-shaped road leaves Crown Range Road on the north-western boundary of the property, runs east-south-east for about 600 metres to the homestead and then turns right at an angle of 90° to run south-south-west to the western boundary of the property. Mr J B Edmonds, a planner called by the applicant, told us that agreement had been reached between Royalburn and the Council to retain the road status of the access to the homestead, but to stop it beyond the 90° turn, leaving a road of 600 metres giving access to the homestead;

- a road runs south-west from the Crown Range Road close to the eastern boundary of the property down to the Swiftburn. This road stops at the southern boundary of the Royalburn property, the further section which originally ran to the Gibbston highway having been stopped by agreement between Transit and the adjoining property owner;
- a third road runs east from Crown Range Road, and runs to Crown Peak and down to the east to connect with the road again on the Cardrona Valley side;
- a fourth road runs along the northern boundary of the farm from Glencoe Road for a distance of 940 metres. It is this road which it is proposed to use to connect Glencoe Road to the walking trail we have described in paragraph [12] .

[24] The parties agree that the site is contained within a visual amenity landscape which comprises the Crown Terrace, with the exception of some of the gullies to the south-west of the site which are contained within an adjacent ONL. No building platforms are proposed within the area mapped as ONL, although the north-western edge of Lot 9 extends into it. The parties also agree that within the continuum of landscapes that make up the visual amenity landscapes of the district, the landscape in which this proposal is set is at the higher end of the spectrum.

### **Section 104(1)(a) Effects on the environment**

[25] Given the narrowing of the differences between the parties, it would be fair to say that the essential difference between them concerns the point at which the cumulative effects of the activity, that is the addition of the proposal to existing, permitted and consented development, becomes too great for the landscape to absorb without suffering detriment. If that point is exceeded, the result would be adverse effects on natural and pastoral character and possibly rural amenity, which cross the threshold of the capacity of the surrounding vicinity to absorb change.

[26] The district plan provides an extensive set of assessment

criteria, along with a process for categorising the landscape which are to be applied in assessing proposals for development within the Rural-General zone. There is expert agreement that the site is part of a visual amenity landscape, and having considered the evidence carefully, we do not need to enquire further about that. Before applying the various landscape assessment criteria, together with such of the general assessment criteria and subdivision assessment criteria that are relevant and not already covered, we outline the level of agreement and disagreement between the parties.

[27] The parties are agreed that the most significant viewing points of the development are from Crown Range Road. They also agree that from some point on that road buildings on Lots 1-3 and 5-7 would be visible at least in part, though not all in one view. Mr Baxter and Ms Mellsop helpfully produced an agreed chart evaluating the visibility of dwellings from a range of viewpoints. We note particularly:

- that more than 50% of the building envelope<sup>[2]</sup> on Lot 1 would be visible from the northern entry to the lots and from a point on Crown Range Road 1.4 kilometres north-west of Eastburn Road;
- that more than 50% of the building envelope on Lot 2 would be visible from the lookout on Crown Range Road (at a distance of 3.2 kilometres) and from a point 700 metres south-east of Eastburn Road;
- that more than 50% of the building envelope on Lot 5 would be visible on Crown Range Road at a point 1.4 kilometres north-west of Eastburn Road;
- that more than 50% of the building envelope on Lot 6 would be visible from places between the northern entry to the site and 900 metres northwest of Eastburn Road;
- that buildings on Lots 1, 5 and 6 would at times be seen along with two or three other buildings on proposed building platforms in views from Crown Range Road.

[28] The landscape architects did not place great emphasis on views from the unformed legal roads running in a southerly direction from Crown Range Road. Neither do we, since these

roads do not give access beyond the Royalburn property. Similarly, we do not place significant weight on views from Queenstown and the Frankton Road. They are, as Mr Baxter told us, at a distance of 12 kilometres and we accept his evidence that given the proposed design controls, houses will not be conspicuous in those views.

There was more debate on the significance of views from the lower part of the legal road east of Crown Range Road. The joint visibility analysis presented by the landscape architects indicated that six dwellings would be visible from this road, though all of them to the extent of less than 50% of the building envelope. Three of the visible lots, 1, 5 and 6, are also visible to the extent of more than 50% of the

building envelope in views from Crown Range Road. Mr Baxter considered that the dwellings were sufficiently distant from the viewer that, with the various restrictions proposed, they would be barely perceptible, while Ms Mellsoop considered that even where dwellings on lots would not be publicly visible, there would be a perceptible change in landscape character. We note that the council's planning witness, Mr Brown, agreed that visibility of houses or building platforms from paper roads (without qualification) was not an issue, but this does not negate the necessity to consider Ms Mellsoop's more expert opinion.

[29] The parties also differed on the significance of the effect on the landscape caused by those elements of the development other than the buildings themselves, which might broadly be categorised as domestication of the landscape. While it was agreed that letterboxes could be clustered and concealed behind existing trees at the northern entrance, Ms Mellsoop remained concerned about garden plantings and outdoor activities on the lots which might be visible from some points on Crown Range Road, together with lights at night, smoke from fires, and non-farm-related traffic on the accessways. Of particular concern both to her and to Mr Brown was the prospect of sealed and formed accessways along with road signs. We return to this

latter point later in this decision.

[30] It was Mr Baxter's evidence that these elements would not have significant effects because all viewers except residents experienced the Crown Range by driving through it. In consequence he considered that the "finer grain" domestic activities described by Ms Mellsop would barely be perceived. While that might be true for those driving on the Crown Range Road, those walking on the legal road east of Crown Range Road might have the time to experience more elements in the landscape.

[31] We also share the concerns of Ms Mellsop and Mr Brown about road signs, and sealed and fenced accessways. The former in particular are likely to draw attention to the presence of residential activity on the terrace even to those driving across it. We understand that the requirement for road signs and accessway sealing where the access is to more than four dwellings is that of the Council, but is a matter of "policy" rather than the result of a provision in the district plan or bylaw.<sup>[3]</sup> It is within the competence of the court to impose conditions which require signs and sealing to be avoided.

[32] Before turning to the assessment matters, we refer to Ms Mellsop's evidence in response to questions from the Court, that if we were to select lots that were largely not visible, up to eight would qualify, and that her concerns might be reduced further if the Court declined to allow road signs, and sealing and fencing of accessways.

The assessment criteria

[33] The various assessment criteria for visual amenity landscapes set out under five heads matters that are to be taken into account. They are generally couched in the form of the question whether and to what extent an effect will occur. They are all an indication of the matters the Council consider to be important, but there is no requirement that any or all of the matters have to be satisfied. It is a matter of broad overall judgement of how any proposal stands alongside them that is to

be factored into the overall evaluation, together with any other matters that are significant in a particular case.

[34] In considering whether the adverse effects on natural and pastoral character are avoided, remedied or mitigated, we are required to consider:

- (i) where the site is adjacent to an Outstanding Natural Landscape or Feature, whether and the extent to which the visual effects of the development proposed will compromise any open character of the adjacent Outstanding Natural Landscape or Feature;
- (ii) whether and the extent to which the scale and nature of the development will compromise the natural or arcadian pastoral character of the surrounding Visual Amenity Landscape;
- (iii) whether the development will degrade any natural or arcadian pastoral character of the landscape by causing over-domestication of the landscape;
- (iv) whether any adverse effects identified in (i)-(iii) above are or can be avoided or mitigated by appropriate subdivision design and landscaping, and/or appropriate conditions of consent (including covenants, consent notices and other restrictive instruments) having regard to the matters contained in (b) to (e) below

[35] The landscape architects explained that the application site included areas that could be described as outstanding natural landscape, including areas of Lots 8 and 9 outside their building platforms. Neither considered the proposal would compromise any open character of the outstanding natural landscape in a significant way. The question of whether the natural or arcadian pastoral character of the visual amenity landscape is compromised turns on the question of cumulative effects, and we will deal with the question under that head. In terms of the second and third of these assessment matters, while Mr Baxter considered that they would be satisfied, Ms Mellsop's view was that while the site has the ability to absorb some development without adverse effect, that ability is exceeded by the scale of

the development proposed. The result, she said, would be over-domestication of the landscape.

[36] In our overall assessment of these matters, we should not overlook the improvement in natural character that will result from the retirement of land from grazing, the planting of matagouri shrubland species, and the management of grazing in other areas. Ms Mellsop fairly stated that these would provide ecological benefits, particularly in terms of improved habitat for the eastern falcon, a species in gradual decline. The increase in grey shrubland is also expected to improve the existing habitat of native skinks and geckos. We also accept that the subdivision has been designed to locate dwellings some distance from the road within natural undulations in the land and that the screening vegetation proposed would follow patterns associated with existing land use. In terms of the matters contained in subsequent assessment criteria, we note that condition 19 of the proposed consent would require a covenant to be registered on Lots 22-29 to the effect described in paragraph [11]. The requirement for continued pastoral and productive farming use of the combined area of these lots would be of considerable benefit in maintaining the future rural amenity of the visual amenity landscape.

[37] The plan sets out the following assessment criteria relating to the visibility of

development:[\[4\]](#)

Whether the development will result in a loss of the natural or arcadian pastoral character of the landscape, having regard to whether and the extent to which:

(i) the proposed development is highly visible when viewed from any public places, or is visible from any public road and in the case of proposed development in the vicinity of unformed legal roads, the Council shall also consider present use and the practicalities and likelihood of potential use of unformed legal roads for vehicular and/or pedestrian, equestrian and other means of access; and

- (ii) the proposed development is likely to be visually prominent such that it detracts from public or private views otherwise characterised by natural or arcadian pastoral landscapes;
  - (iii) there is opportunity for screening or other mitigation by any proposed method such as earthworks and/or new planting which does not detract from or obstruct views of the existing natural topography or cultural plantings such as hedge rows and avenues;
  - (iv) the subject site and the wider Visual Amenity Landscape of which it forms part is enclosed by any confining elements of topography and/or vegetation;
  - (v) any building platforms proposed pursuant to rule 15.2.3.3 will give rise to any structures being located where they will break the line and form of any skylines, ridges, hills or prominent slopes;
  - (vi) any proposed roads, earthworks and landscaping will change the line of the landscape or affect the naturalness of the landscape particularly with respect to elements which are inconsistent with the existing natural topography;
  - (vii) any proposed new boundaries and the potential for planting and fencing will give rise to any arbitrary lines and patterns on the landscape with respect to the existing character;
  - (viii) boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape and/or landscape units;
- (ix) the development constitutes sprawl of built development along the roads of the District and with respect to areas of established development.

[38] The public roads we have considered earlier are the only public places from which the visibility of development is a relevant consideration in this case. In the case of unformed legal roads, we do not consider it likely that roads giving access only to the Royalburn property will be formed or used by other than the owners or workers on the property. The evidence of both Mr Baxter and Mr Edmonds was that the road running east from

Crown Range Road, and that running along the northern boundary receive little or no use. That is likely to change when the trail proposed by the applicant is constructed because both these unformed roads will form links in the route between Arrowtown and Crown Range Road and further up the Crown Range. The landscape architects' evidence is that from the lower parts of the road running east, six building envelopes could be seen, and Ms Mellsop says that from higher up the Crown Range almost all the development would be seen.

[39] In assessing the significance of views from the latter two unformed roads we note changes introduced into the district plan by Plan Change 28, the final form of which was determined by the Environment Court in April 2010.<sup>[5]</sup> That plan change redefined the term "public place" to exclude trails and introduced into the plan a definition of trails as follows:

Trail — means any public access route (excluding roads and public access easements created by the process of tenure review under the Crown [Pastoral Land Act](#)) legally created by a grant of easement registered after 11 December 2007 for the purpose of providing access in favour of the Queenstown Lakes District Council, the Crown or any of its entities.

The plan change also amended the landscape policy on visual amenity landscapes<sup>[6]</sup> so that trails as defined in the plan were not considered to be places frequented by the public generally.

[40] The significance of that in this case is that the trail created by the applicant is not a "public place" for the purposes of considering this application. While that exclusion does not formally apply to the legal roads we are considering, it is the creation of the trail which will make them useful pedestrian links. While they should not be excluded from consideration altogether, we consider some degree of latitude should be allowed in assessing views from them.

[41] Ms Mellsop agrees that many of the visibility criteria do not tell against consent. She considers that the level of

domestication able to be perceived from neighbouring properties is not significant, that the proposed mitigatory planting of shelterbelt and woodlot type could largely be absorbed without detracting from existing landscape patterns, that any adverse effect of earthworks on the landscape are unlikely to be widely perceived, that lot boundaries follow the natural topography as far as possible, and that the restriction of fencing to post and wire or deer fencing only, avoids the introduction of arbitrary lines to the landscape. She acknowledges that the proposed removal of the alder trees along the boundary of the Crown Range Road is of benefit to the visual amenity of the area. We add that the building platforms are well set back from the road and clustered, so we do not think the development constitutes sprawl along roads.

[42] However, Ms Mellsop remains concerned about what she considers would be a disruption of the landscape pattern of agricultural planting by shelter and amenity garden planting on the lots and that the accumulated visibility of dwellings, roads, gardens, non-farming traffic and other cues to domesticity would result in a loss of natural and pastoral character.

[43] Although we observed clear light conditions and good visibility on our visit to the site, we are inclined to agree with Mr Baxter that curtilage activities of low height and lawns and low-growing garden plants will be obscured by the landform and planting that screens the dwellings. Nevertheless to some degree we share Ms Mellsop's concern about cumulative visible effects. Conditions precluding both signs on Crown Range Road and the sealing and fencing of accessways will go some way to reducing the clues to domesticity. A condition requiring that the accessways are not fenced would also eliminate a characteristic of development that is not generally associated with rural activity. But we consider that a total of six houses on the Royalburn property visible to travellers on the Crown Range Road, and up to four from a single viewpoint would be too many.

[44] A considerable (and necessary) reduction in such visibility could be achieved, in addition to the condition we described in

the previous paragraph, by eliminating Lots 1, 5 and 6. If this is done not only will three of the most visible building envelopes be removed, but there would never be more than two lots visible in a single view from Crown Range Road and only three in total, and the number of lots visible from the lower part of the unformed legal road would be halved to a total of three. We add that Ms Mellsoop identified that the lots on which curtilage development (other than the taller trees planted) and activities would be visible are Lots 1, 2, 3, 5 and 6. The deletion of Lots 1, 5 and 6 from the consent would also reduce the accumulation of curtilage effects to a considerable degree.

[45] We have considered whether these assessment criteria, along with those on cumulative effects, also suggest the removal of Lot 2, and after the close of the hearing sought further evidence from the parties. In response to a question from the Court, Mr Baxter has proposed to move Lot 2 to the north-east and locate the building platform where a greater degree of screening would be provided by a spur lying to the east and south-east of it. While a building on the platform might still be visible from a viewpoint on Crown Range Road 700 metres south-east of Eastburn Road, it would be much less so than a building in the location originally proposed. Ms Mellsoop commented on the relocated platform as follows:

I agree that the relocated platform for lot 2 would be much less visible. I think parts of a roof would be visible from my VP3 and more of a dwelling could be visible from VP1 (the lookout) but overall less than 50% of the platform is likely to be visible. The reconfiguration of the lot boundaries will also reduce the visibility of curtilage activities/garden area though some of the garden area and any trees would still be visible.

In response to a further memorandum from the court, the Council confirmed that it remained opposed to the creation of Lot 2 and its associated building platform, but that that opposition is related solely to the cumulative aspects of the proposal. Ms Mellsoop, considered that by itself Lot 2 would not be inherently objectionable. We return to the question of this lot

in considering the proposal in the context of the overall provisions of the plan.

[46] In considering the form and density of development, the district plan requires us to take into account whether, and to what extent:[\[7\]](#)

- (i) there is the opportunity to utilise existing natural topography to ensure that development is located where it is not highly visible when viewed from public places;
- (ii) opportunity has been taken to aggregate built development to utilise common access ways including pedestrian linkages, services and open space (ie. open space held in one title whether jointly or otherwise);
- (iii) development is concentrated in areas with a higher potential to absorb development while retaining areas which are more sensitive in their natural or arcadian pastoral state;
- (iv) the proposed development, if it is visible, does not introduce densities which reflect those characteristic of urban areas;
- (v) if a proposed residential building platform is not located inside existing development (being two or more houses each not more than 50 metres from the nearest point of the residential building platform) then on any application for resource consent and subject to all the other criteria, the existence of alternative locations or methods:
  - (a) within a 500 metre radius of the centre of the building platform, whether or not:

- (i) subdivision and/or development is contemplated on those sites;
- (ii) the relevant land is within the applicant's ownership; and
- (b) within a 1,100 metre radius of the centre of the building platform if any owner

or occupier of land within that area wishes alternative locations or methods to be taken into account as a significant improvement on the proposal being considered by the Council

— must be taken into account.

(v) recognition that if high densities are achieved on any allotment that may in fact

preclude residential development and/or subdivision on neighbouring land because the adverse cumulative effects would be unacceptably large.

[47] In terms of these assessment criteria, Ms Mellsoop is of the view that the proposed building platforms have been clustered in those parts of the site where development can best be absorbed by natural topography, and that in consequence of this common accessways can be used and the majority of the site can be retained in pastoral use. She has considered alternative locations within a 500 metre radius of the proposal and found none that have greater capacity to absorb development.

[48] Ms Mellsoop accepts that the density of the development proposed is not characteristic of an urban area, which is the strict form of the assessment criterion. She adds that nevertheless clusters of dwellings 100 metres apart would be publicly visible from some points along Crown Range Road, and would undermine rural character and amenity. We consider later in this decision the specific assessment criteria relating to rural character and amenity, but note that the agreed visibility chart produced by the landscape witnesses does not suggest that more than three dwellings of a cluster would be visible in the same view, and if the limits we have suggested in response to the visibility assessment matters are adopted, that number will be reduced to two. Further, we consider that the second and third of these assessment criteria favour clustering, and the fourth inserts a proviso relating to the visible elements of such clustering that the density does not result in development with urban characteristics.

[49] Both parties accept that the opportunities for further development on the Crown Terrace are limited. Ms Mellsoop considered that on the Crown Terrace, apart from Royalburn,

only two visible dwellings could be absorbed. Ms Mellisop considered it a question of appropriate location, rather than absolute numbers or distribution. Mr Baxter accepted that the limit was being approached though we suspect did not consider that the absorption capacity of the whole area was so restricted. Either way, in terms of the final assessment criterion, consent to this development would not preclude development on neighbouring land, and would not by itself determine the opportunities available for residential subdivision and development. That is particularly the case if development is limited in the way we have suggested in response to the visibility assessment criteria.

[50] The assessment matters which relate to cumulative effects are arguably the most significant for the outcome of this case[8]. They are:

- (i) the assessment matters detailed in (a) to (d) above;
- (ii) the nature and extent of existing development within the vicinity or locality;
- (iii) whether the proposed development is likely to lead to further degradation or domestication of the landscape such that the existing development and/or land use represents a threshold with respect to the vicinity's ability to absorb further change;
- (iv) whether further development as proposed will visually compromise the existing natural and arcadian pastoral character of the landscape by exacerbating existing and potential adverse effects;
- (v) the ability to contain development within discrete landscape units as defined by topographical features such as ridges, terraces or basins, or other visually significant natural elements, so as to check the spread of development that might otherwise occur either adjacent to or within the vicinity as a consequence of granting consent;
- (vi) whether the proposed development is likely to result in the need for infrastructure consistent with urban landscapes in order to accommodate increased population

and traffic volumes;

(vii) whether the potential for the development to cause cumulative adverse effects may be avoided, remedied or mitigated by way of covenant, consent notice or other legal instrument (including covenants controlling or preventing future buildings and/or landscaping, and covenants controlling or preventing future subdivision which may be volunteered by the applicant).

[51] These criteria are one of the means of giving effect to an important district-wide landscape policy on the cumulative effects of development when the development is proposed in a visual amenity landscape. That policy is<sup>[9]</sup>:

In applying the policies above the Council's policy is:

- (a) to ensure that the density of subdivision and development does not increase to a point where the benefits of further planting and building are outweighed by the adverse effect on landscape values of over domestication of the landscape;
- (b) to encourage comprehensive and sympathetic development of rural areas. It will be convenient to consider this policy in the light of these assessment criteria.

[52] Ms Mellsop outlined development in the same view as the proposal from Crown Range Road as follows:

- six dwellings and two large barns strung along the western edge of the terrace — the Corbett dwelling and barn, a dwelling and barn on the Irwin property, two dwellings on the Desbecker and Bodle property and a dwelling and undeveloped building platform on the Stretch property;
- the historic Crown Lodge homestead on the corner of Glencoe Road;
- two undeveloped building platforms on the Glencoe Landholdings Ltd property;
- the Rooke dwelling;
- the Royalburn farm manager's house; and
- the undeveloped building platform on the Clarke and Mason property.

She also referred us to consents for building platforms on two small lots near the intersection of Eastbum and the Crown Range Road, and two building platforms on the Desbecker and Bodle property which were still subject to appeal. We consider the latter are still too speculative to consider as part of the receiving environment. As for the former, Ms Mellsop identified the statement in the resource consents that dwellings on these lots would not be visible. We also note Ms Mellsop's evidence that the Glencoe landholdings subdivision, to which we referred earlier, is not highly visible from Crown Range Road.

[53] It is common ground that the level of development already existing in the Crown Terrace visual amenity landscape is close to reaching acceptable limits, and that those limits will be exceeded either by a grant of all this application seeks, or by that and only a little more. Ms Mellsop concedes, however, that two more visible dwellings on this site, along with other building platforms where dwellings will not be able to be seen, are able to be accommodated within the threshold of the vicinity's ability to absorb change.

[54] It is accepted that the applicant has used topography to confine development and the visibility of it. We consider it possible to impose conditions to avoid urban-type infrastructure such as street signs and sealed access roads. In saying that we are aware that the Council's policy on signs responds to a concern from emergency services over the ability to locate rural properties on which an emergency has occurred. However, from our observation the rapid point numbering system visible at the boundary of existing properties on Crown Range Road provides ready identification of dwellings.

[55] We also note that the covenants which perpetuate future farming use of the bulk of the land and set their face against further residential development of it, are strong positives. To the extent that the proposal is complete, that further dwellings cannot be added to it, and that the development is largely hidden from Crown Range Road by the landform, it represents comprehensive and sympathetic development of this rural area.

Nevertheless we consider that consent to all fourteen proposed lots would compromise the visual character of the pastoral landscape if added to existing development, and that a threshold would be crossed. To bring development within the existing threshold Lots 1, 5 and 6 need to be excluded. If the dwellings and associated visible curtilage activities on those lots are eliminated, and the conditions restricting infrastructure with urban characteristics are imposed, there would be a reduction of cumulative effects to appropriate levels.

[56] We have considered carefully Ms Mellsop's opinion that the planting of large amenity trees on the lots might add to the cues of domesticity. The relevant policy envisages that planting might have a domesticating rather than a beneficial effect. We accept that some of the permitted species can grow to considerable height and would be visible at least on some lots. However, given the existing rural character in which taller trees play a significant part, we are inclined to agree with Mr Baxter that private tree planting will not change the existing rural character of the landscape.

[57] Overall we consider that if the changes to the proposal we have outlined in terms of the reduction of lots, and restrictions on potentially urban style infrastructure are made, the proposal will achieve an appropriate 'fit' with the policy and assessment criteria on cumulative effect.

[58] The final concern of the assessment matters for proposed developments in the visual amenity landscapes is potential effect on rural amenity.[\[10\]](#) In considering this potential effect we are required to take into account whether, and to what extent:

- (i) the proposed development maintains adequate and appropriate visual access to open space and views across arcadian pastoral landscapes from public roads and other public places; and from adjacent land where views are sought to be maintained;
- (ii) the proposed development compromises the ability to undertake agricultural activities on surrounding land;
- (iii) the proposed development is likely to require infrastructure

consistent with urban landscapes such as street lighting and kerb and channeling, particularly in relation to public road frontages;

(iv) landscaping, including fencing and entrance ways, are consistent with traditional rural elements, particularly where they front public roads;

(v) buildings and building platforms are set back from property boundaries to avoid remedy or mitigate the potential effects of new activities on the existing amenities of neighbouring properties.

[59] Ms Mellsop does not consider the assessment matters relating to rural amenity support the proposal. However, it is important to consider the precise wording of the criteria. The development has been designed to allow the continuation of farming across the majority of Royalburn Farm, and one of the covenants proposed requires that. It is also proposed to register a covenant against the residential lots to be created to prevent the owners complaining about or restricting legitimate farming activities on the Royalburn farm. Visual access to open space will be maintained, as building

platforms are set back 600 metres or more from Crown Range Road, and in fact that access will be improved by the proffered removal of the recently planted alders on Crown Range Road. Ms Mellsop does not consider the level of domestication perceived by neighbours to be significant.

[60] We have already recorded that we intend to impose conditions preventing such urban style infrastructure as street signs and sealed accessways. In contrast, post and wire fencing is typically rural. Mr Brown was concerned that changes to the roading at the entrance to the accessways would be an indication of residential development. He has assessed these effects on the basis that accessways would need to be formed in accordance with a diagram labelled Diagram D in a report sent to Lakes Environmental by a firm of traffic consultants, GHD Limited, prior to the first instance hearing. The recommendation for accessways of this type was based on a proposal for 20 lots with an estimated traffic generation of 209 vehicles per day, or

approximately 100 vehicles per day from each accessway. [61] If we were to grant consent to all the allotments now proposed, and to adopt the rate of vehicle generation in accordance with the amendments adopted by QLDC to New Zealand Standard 4404:2004, there would be 64 vehicle movements daily at the northern accessway and 48 at the southern. That number will be reduced by the reduction of the number of lots we have directed be removed. Mr Edmonds' evidence was that that would require an access to be formed in accordance with Diagram 3 of Appendix 7 to the district plan. In response to questions from Mr Ibbotson, Mr Edmonds said that it would be possible for a farmer to widen the road in this way to provide access for articulated grain or stock trucks. We note that the relevant diagram in the plan is headed "Private Access (frequent use by heavy vehicles, eg; dairy tankers)". We do not consider the vehicle entrances necessitated by the development would be indicative of an urban rather than a rural landscape.

[62] We accept that fourteen lots would cause some adverse effects which we have described, and there would be change to the natural and pastoral character of the landscape, but even if fully developed the amenity would remain rural.

[63] The general assessment matters<sup>[11]</sup> contain a series of criteria relating to nature conservation values. We have noted that the grey shrubland planting proposed by the applicant would have benefits for the existing habitat of native skinks and geckos and particularly for the eastern falcon, a species in gradual decline. Three of the assessment matters relating to nature conservation values suggest we should attach some importance to that, namely:

(a) the extent to which activities will result in opportunities for the protection and

enhancement of indigenous biodiversity or indigenous ecosystems;

(e) the extent to which activities will protect or enhance the survival and wellbeing of indigenous plants and/or animals that

are rare, vulnerable or endangered, or significant within the district, region, or nationally;

(f) in the case of activities proposed in the vicinity of rock outcrops, the extent to which the activity will adversely affect or provide opportunities to enhance the protection of lizard populations and their habitat.

The ecological restoration programme proposed tells significantly in favour of the proposal.

[64] We further note that the planting restrictions contained in a proposed condition of consent<sup>[12]</sup> deals with the need to avoid, contain and/or manage the adverse effects of any introduced plant species with the potential to spread or naturalise.

[65] Mr Brown also referred us to general assessment matters relating to the nature and scale of activities and to residential units.<sup>[13]</sup> We have discussed almost all of those that are relevant in our discussion of the criteria for proposals in the visual amenity landscape. In terms of those that remain, we refer to Mr Brown's assessment that any adverse traffic effects of the proposal can be adequately mitigated by conditions of consent. We also note the agreement of the planning witnesses that the landscape in which the proposal is set is not a heritage landscape.

#### Other relevant effects

[66] Although the assessment matters, particularly when they are provided in the detail contained in the Queenstown Lakes District Plan, generally give a clear indication of the environmental effects of concern in the district, there are occasions when they will not refer to every matter in the case worthy of consideration. This is particularly so as plans age and communities develop new aspirations. This proposal is designed to accommodate one such aspiration, the provision of recreational trails off-road for pedestrians and cyclists. The increased importance the community attaches to such trails is attested by the formation of the Wakatipu Trails Trust during

the last decade, and by Plan Change 28 which was designed to remove a perceived obstacle to the formation of trails through private land.

[67] As we have indicated the applicant proposes to create in favour of the Council an easement of 1.2 kilometres around the lower slopes of the Crown Range which would provide helpful linkage to other unformed roads and tracks. Ms D Palmer, a trustee of the Wakatipu Trails Trust, appeared and informed us that while the Wakatipu Trails Trust strategy does not currently show trails on the Crown Terrace, opportunities sometimes arise through the resource consent process for the acquisition and formation of links that would not otherwise occur. The Royalburn trail was one such valuable link. Ms Palmer also provided helpful information on appropriate standards for track formation. We return to this in considering conditions of consent. At this point we record that the proposed grant of easement and formation of the track would be a significant positive effect. We now proceed to consider these effects in the light of the provisions of the district plan.

The provisions of the **Queenstown Lakes District Plan**

[68] In this case the question is not whether but to what extent consent to the application is appropriate. In such circumstances we consider it more useful to identify relevant provisions of the plan, and to consider what reductions to the development (if any) and what changes to conditions are necessary to make the proposal appropriate in terms of those provisions, then to attempt an evaluation of the total proposal against each objective and policy and make a judgement as to where on the continuum between contrary to and implements the application in its entirety sits.

[69] The application is for subdivision and land use consent for the development of rural-residential style lots in a visual amenity landscape in the rural-general zone. There are relevant, but overlapping, provisions in the district-wide, rural-general and subdivision sections of the plan. The Council does not contest that the proposal as put forward by Royalburn satisfies

those rural objectives and policies which relate to the life-supporting capacity of soils and their use for rural production.[\[14\]](#) We also draw attention to the district-wide objective and related policies[\[15\]](#) on nature conservation values which we consider would be implemented by the planned grey-shrubland revegetation in the gullies.

[70] Mr Brown is of the opinion that the proposal is in conflict with the objective and a policy relating to the maintenance of rural amenity values. As we indicated in our discussion of the assessment criteria, we consider that even if all lots were developed as proposed, the amenity of the landscape would remain rural.

[71] The difference between the parties centres on landscape, and to what extent the proposal can be allowed without inappropriate reduction of the visual amenity values of the Crown Terrace landscape. The district-wide section of the plan[\[16\]](#) identifies landscape and visual amenity as a significant issue for the district. It says this of visual amenity landscapes: They are landscapes which wear a cloak of human activity much more obviously — pastoral (in the poetic and picturesque sense rather than the functional sense) or Arcadian landscapes with more houses and trees, greener (introduced) grasses and tend to be on the District's downlands, flats and terraces;

The key resource management issues for the visual amenity landscapes are managing adverse effects of subdivision and development (particularly from public places including public roads) to enhance natural character and enable alternative forms of development where there are direct environmental benefits.

Interestingly the issue is stated in terms of management of adverse effects rather than avoidance, remedy or mitigation.

[72] The Environment Court in deciding the threefold division of landscapes in the district appositely stated the issue like this:[\[17\]](#)

An important point in respect of [s 7](#) landscapes is that the Act does not necessarily protect the status quo. There is no

automatic preference for introduced grasses over pine forest. Nor should it be assumed (on landscape grounds) that existing rural uses are preferable in sustainable management terms to subdivision for lifestyle blocks which could include restoration of indigenous bush, grasses or wetlands, especially if predator controls are introduced;

Logically there is a limit: the law of diminishing returns where too much subdivision leads to overdomestication of the landscape.

[73] In producing a joint statement, the planning witnesses agreed that the relevant objective and policies for us to consider were the district-wide landscape objective and the policies flowing from it relating to future development, visual amenity landscapes, avoiding cumulative degradation, structures, transport infrastructure, retention of existing vegetation and land use. The landscape related objective and policies in the rural section of the plan do not raise any relevant issues for this case beyond those outlined in the district-wide landscape section of the plan.<sup>[18]</sup> Mr Brown's evidence was that adverse traffic effects can be mitigated by conditions. It was also that the provision of areas not to be grazed or grazed only in restricted fashion will enhance the natural character and ecological values of the areas concerned. We therefore consider the policies<sup>[19]</sup> on these subjects no further, except to record that the positive effects of and policy support for the measures to enhance grey shrubland must be brought to account in deciding precisely what development is appropriate.

[74] The district-wide landscape objective is that subdivision use and development avoids, remedies or mitigates adverse effects on landscape and visual amenity values.<sup>[20]</sup> There is a tripartite supporting policy on future development.<sup>[21]</sup> This is firstly to avoid, remedy or mitigate adverse effects of subdivision and development where landscape and visual amenity values are subject to degradation, but that is balanced by encouragement of development in areas with the capacity to absorb change without detrimental landscape or visual effect.

Thirdly the policy is to ensure the harmony of proposed development with local topography, ecological systems and nature conservation values.

[75] The specific policy on visual amenity landscapes[22] is to avoid, remedy or mitigate adverse effects on subdivision and development on visual amenity landscapes which are highly visible from public places and other places frequented by the public generally. Appropriate planting and landscaping is regarded as a suitable means of mitigating the loss of, or enhancing natural character, but linear tree planting along roads is specifically discouraged. It will also be useful at this point to consider a general policy of encouraging land use which minimises adverse effects on the open character and visual coherence of the landscape.[23]

[76] In terms of the policies on future development, visual amenity landscapes and land use, there is significant support for the proposal. Ms Mellsoy's evidence was that the proposed houses have been clustered where gullies, terrace escarpments and moraine hills provide greater capacity for visual absorption. The proposed mitigatory planting accords with the existing pattern of shelterbelts and is set back from the road. The limited nature of the mitigatory planting necessary suggests that the site is suitable for development. The only real question is when does enough become too much and begin to degrade the area. We tend to share Ms Mellsoy's opinion that the level of development appropriate on the Crown Terrace is less than that in a VAL in the Wakatipu basin.

[77] In terms of this proposal, the evidence is that dwellings in the southern cluster (9-14) will not be visible from Crown Range Road when 90% of the proposed shelterbelt planting has reached the required height. Ms Mellsoy qualifies her evidence on this matter by the proviso that 60% of the shelterbelt planting comprises evergreens. We can reduce the clues to the presence of residences in this cluster by requiring that the accessway be formed either as a gravelled track or a gravelled track with a silica binding agent, and by forbidding any street sign. We also accept that the condition relating to shelterbelt planting should

specify that 60% of the planting must be evergreen. With those provisos, we find that consent to the second cluster would be in accord with all the policies to which we have referred and with the policy on avoiding cumulative degradation.

[78] The northern clusters are more problematic. We intend to impose the same conditions on the accessway and the avoidance of road signs as in the case of the southern cluster. Even so the addition of six houses visible from Crown Range Road, up to four in any one view, would in our view be inappropriate in terms of the policy on cumulative effects and represent an adverse effect on a visual amenity landscape that is not adequately mitigated in terms of the policy relating to such landscapes. In view of that we consider consent to Lots 1, 5 and 6 would not be appropriate in terms of the district plan. By the same token we consider that after the modifications to conditions suggested by Mr Baxter and Ms Mellsop in Exhibit E, Lots 3, 4, 7 and 8 with their proposed building platforms are acceptable. That leaves the question of Lot 2. The evidence is that the building platform in the location proposed by Mr Baxter does not of itself have adverse effects. Had it done so we would have thought it appropriate to delete it. However, we consider that the change to its location, its reduced visibility combined with the removal of three lots and the changes to the conditions proposed to reduce the obvious clues to domesticity, produce the result that the cumulative effect of this lot and the building platform on it are not beyond the capacity of the landscape to absorb.

[79] The final policy we consider relates to structures.[\[24\]](#) This policy is to encourage structures to be so located and constructed as to be in harmony with the landscape, to use local natural materials in construction and to be of colours which complement the colours of the landscape for the purpose of preserving the visual coherence of visual amenity landscapes, and to screen structures by vegetation whenever possible so that the naturalness of the

environment is maintained or enhanced. We have already discussed the locations of the proposed dwellings, and have indicated that they have been carefully chosen. We also consider the restrictions on height, colour and materials, and, with the addition of Ms Mellsop's proviso, the provisions for screening are appropriate. Our only concern relates to one of the building design conditions (11e).

[80] This condition contains the following paragraph:

*Building Form and Scale*

No building shall exceed 650 m<sup>2</sup> in area and any such building shall be a

combination of joined or otherwise building elements. Such individual building elements shall not exceed 150 m<sup>2</sup>. Each building element shall have a pitched roof of between 12.5 and 45 degrees (except for a flat roof area not exceeding 30 m<sup>2</sup> or 20% of the total roof area). No two or more building elements are to be joined so as to appear as one uniform building element but to appear as a cluster of smaller attached building elements.

We have observed buildings of this type, including one on our site visit. We are of the view that houses of this type are not sympathetic to the Crown Range landscape and do not consider the condition proposed to have any environmental benefit. We put our concerns to the parties in a memorandum. We record that both Ms Mellsop and Mr Baxter continued to favour the condition. Ms Mellsop suggested that an alternative means of reducing the apparent bulk of future dwellings would be to reduce the allowable building coverage within all building platforms to, say, 35 or 40%. We prefer that solution, allowing up to 400 m<sup>2</sup> for a dwelling and 50 m<sup>2</sup> for a single separate building such as a garage and implement shed. We intend to allow that as an alternative to the condition proposed — about which we remain unconvinced.

[81] Having considered the objectives and policies of the district

plan, and examined the assessment matters and other provisions, we consider that appropriate regard would be had to the provisions of the district plan if we were to consent to a reduced and modified form of the proposal. This would involve:

- the deletion of Lots 1, 5 and 6;
- the imposition of the restrictions on the development of the remaining lots outlined in Exhibit E;
- an addition to condition 1 of the consent specifying that any planting shown as mitigation planting in the Royalburn Farm Development Master Plan shall comprise 60% evergreen species;
- an amendment to condition 4(e), so that (i) reads: both accessways shall be formed of gravel which may have the addition of a silica binding agent and be of a 3.5 m minimum carriageway width;
- the deletion of condition 10h;
- the deletion of condition 4(e)(vi) and the substitution of the following: the entrance to the accessways shall not be marked by any street signs, nor shall they be fenced.

[82] It is convenient at this point to refer to the trail which the applicant has offered to create and the conditions attaching to it. The initial condition proposed by the applicant was that following agreement between the consent holder the Wakatipu Trails Trust and the Council on the precise alignment of the track and type of formation, the track should be formed by the consent holder as a poled route to the standard required by the Trails Trust and the Council's recreation manager. The condition then provided that five years after registration of the easement, the Trails Trust and the Council are able to require upgrading of the track to an agreed higher standard including fencing, formation and localised widening, and that ten years after, liability for any costs associated with the easement should be transferred to the Council.

[83] During the course of the hearing Ms Palmer advised us,

after consultation with a Mr P Wilson, the general manager, community services for the Queenstown-Lakes District Council, that the appropriate standard for the track is that defined in NZS B 8630:2004. Ms Palmer produced an email from Mr Wilson, in which he stated:

The New Zealand standard] provides for a well-defined and marked formation (by poles and trackmarkers) suitable for inexperienced people. I would anticipate the track be formed by benching and regrassing the surface. The formation may require appropriate drainage and boardwalk/bridging to avoid wet patches and maintain a solid formation. Graveling the surface would not be warranted at this time.

Ms Palmer stated the view of the Trails Trust that the standard recommended by Mr Wilson represented the initial and final standard appropriate for this trail. She said that a future upgrade of the standard was not required, provided it was maintained to the original standard of construction. We accept her evidence on that question and will amend the condition accordingly.

### The Council decision

[84] We have read and considered the Council's initial decision. It has limited relevance to our deliberations, because of the many modifications that arose during the course of the hearing, and our subsequent decisions about others. In declining consent, the Council had considered a proposal for 20 lots. The proposal as it was put to us was for 14 lots. The witnesses called by the Council accepted that six or eight rural-residential lots could be appropriately located on the site, and there was no evidence which suggested Royalburn's appeal should be completely refused. We have found that 11 lots could receive consent on certain quite strict conditions. [Part 2](#)

[85] District plans are the means by which territorial authorities give local effect to the provisions of [Part 2](#). It would be unusual therefore for a consideration of [Part 2](#) to alter the conclusions reached after evaluation under the other provisions of [section](#)

[104](#), especially when the plan is as comprehensive as the QLDP. We agree with the Council's commissioners that the district plan appropriately reflects the various matters contained in [Part 2](#).

[86] We record that neither [section 6](#) nor [section 8](#) are relevant to this case. Although proposed Lot 9 is to a limited extent outside the building platform within the boundaries of an outstanding natural landscape, neither party suggested that the proposal would result in an adverse effect on the outstanding natural landscape. Relevant [section 7](#) matters include:

- the efficient use and development of natural and physical resources ([section 7\(b\)](#));
- the maintenance and enhancement of amenity values ([section 7\(c\)](#));
- maintenance and enhancement of the quality of the environment ([section 7\(d\)](#)).

We consider the proposal represents an efficient use of the land, particularly by requiring continuing productive use of the bulk of Royalburn Farm, while using areas of lesser productive value for residential lots. We consider the proposal, reduced and modified as we have described above, has appropriate regard for the maintenance and enhancement of amenity values and the quality of the environment.

[87] The matters outlined in [section 7](#) are to be given particular regard not in themselves but in achieving the purpose of the Act, that of promoting sustainable management as that term is defined in [section 5](#). Mr Brown sees the creation of residential lots as enabling Royalburn Farm to provide for its social and economic wellbeing. We presume he would extend that enablement to the purchasers of the lots. We agree with Mr Edmonds that the proposal with the various environmental enhancements proposed has a wider enabling effect: the formation of the proposed pedestrian trail would enable recreational use of the foothills of the Crown Range, and enable walkers to provide for their health and social wellbeing; the removal of the alders beside Crown Range Road would enable motorists to enjoy into the future the visual amenity of the

Crown Terrace; and the planting of the grey shrubland would be a positive step in sustaining the life-supporting capacity of a native ecosystem.

[88] What we have to decide is at what point those benefits would be outweighed by cumulative adverse effects of residential development in what is agreed to be a sensitive landscape at the higher end of the visual amenity landscape continuum. To avoid reaching that point we find that the proposal should be restricted and made subject to the amended conditions we have outlined in paragraphs [82] — [84]. That outcome would best serve the purpose of the Act.

Outcome

[89] Consent is granted to Royalburn's application to subdivide as Rural-Residential Lots, Lots 3, 4 and 7-14 as shown on Royalburn Farming Company Limited's masterplan numbered 7152-001 dated March 2010, plus amended Lot 2 as drawn in Mr Baxter's revised plan entitled Amended Lot 2 Building Platform Position Reference 7182 submitted on 9 August 2010, subject to the amended conditions we have outlined. We attach to this decision a revised set of conditions, both to incorporate the specific changes we require to be made, and to accord with the approach in *Mead* that conditions use a subjunctive tense to give instruction and that information given through the use of an indicative tense is conveyed through advice notes.

[90] Given that the draft conditions had become agreed to a high level of detail by the conclusion of the hearing, we have attached them to this decision which we record is a final one. Leave is however reserved to approach the Court within 3 months of the date of the decision if minor changes or clarifications are needed, for instance for internal consistency or to ensure that the essence of our decision is met in an enforceable way.

[91] The Judge and Commissioner Dunlop gratefully acknowledge the considerable input of Commissioner Manning to the preparation of this decision.

Costs

[92] The question of costs is reserved. However, given the conclusions the court has reached applications are not encouraged. If, nevertheless, any party does seek costs, submissions are to be lodged in Court and served within fifteen working days of the issue of this decision. A further ten days is allowed for any submissions in reply.

DATED this 11th day of November 2010

For the Court :

L J Newhook

Environment Judge

### **CONDITIONS OF CONSENT**

1. The consent is to be exercised in accordance with the **plans** submitted with the

application, but as modified by this decision of the Environment Court, and subject to these conditions of consent, namely:

Baxter Design Group Ltd:

Royalburn Farm Development — Master Plan, March [2010, Job 7182001](#), scale 1:5,000 @ A1, 1:10,000 @ A3;

Royalburn Farm Development — Landuse and Proposed Fence Changes Plan — March [2010, Job 7182-002](#), scale 1:5,000 @ A1;

Royalburn Farm Development — Management of Nature Conservation Areas, June [2009, Job 7182-012](#), scale 1:5,000 @ A3;

Royalburn Farm Development — Water Storage Plan, May [2009, Job 7182-014](#), scale 1:500 @ A4;

Bonisch Consultants Ltd:

Lots 1-7, 9-17, 19-20 & 25 being a proposed subdivision of Lots 24 & 25 DP 417527 & closed road Crown Range Road, Queenstown, Job Ref : 5670, SP2e, dated 10 July 2009, Sheets 1-5, (plan 1: scale 1:12,500 @ A3, Plans 2-5: 1:4000 @ A3);

Height Control Plan, Job ref: 5670-WP2d, dated 30 April 2009, date printed 6 May 2009, Sheets 1 & 2 (scale 1:4000 @ A3)

which shall be redrawn to incorporate the amendments outlined in this decision, including the removal of Lots 1, 5 and 6, and the deletion of fencing and accessways to the deleted lots. All development shall proceed in accordance with the redrawn plans except where otherwise specified in a condition of consent. The redrawn plans are to be lodged with the council for approval as complying with these requirements by it or the relevant delegatee, before work commences.

1. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.
2. The subdividing owner of the land shall provide a letter to the Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this subdivision and shall confirm that these representatives will be responsible for all aspects of the works covered under [Sections 1.4 & 1.5](#) of NZS4404:2004 "Land Development and Subdivision Engineering", in relation to this development.
3. Prior to the commencement of any works on the land being subdivided and prior to the Council signing the Title Plan pursuant to section 223 of the Resource Management Act 1991, the consent holder shall provide to the Queenstown Lakes District Council for review and approval, copies of specifications, calculations and design plans as is considered by Council to be both necessary and

adequate, in accordance with Condition (2), to detail the following engineering works required:

- (a) The provision of a water supply to the boundary of the approved lots in terms of Council's standards. Each lot shall be supplied with a minimum of 2,100 litres per day of potable water that complies with the requirements of the Drinking Water Standard for New Zealand 2005. Restrictor valves shall be installed to ensure that each lot receives the required allocation. Any water storage and/or treatment facilities shall be located outside stormwater secondary flow paths.
- (b) The provision of two sealed vehicle crossings to the subdivision from the Crown Range Road, in accordance with Council's requirements and design standards, including any necessary road markings, set out in Diagram 3 on page A7-8 of the district plan. These shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Provision shall be made to continue any roadside drainage.
- (c) Provision for mail delivery to future dwellings on the lots. All mail boxes shall be grouped together within a single location no less than 25m from the property boundary within a specifically designed area, and generally designed so that the structure is not highly visible from the road. The letterbox area shall be designed so that is accessible by vehicle with adequate space for vehicles to manoeuvre within the site.
- (d) The nature and extent of earthworks associated with the subdivision; including the nature and location of any fill areas, and any permanent retaining.
- (e) The formation of the internal access roads to provide physical access to the boundary of Lots 2, 3, 4 and 7-14, in accordance with Council's standards, except where otherwise stated, and incorporating the following:
  - (i) Both accessways formed with gravel with a minimum carriageway width of 3.5m. The formed accessway width shall be no less than 5.5m within 15m of the road boundary. A silica binding agent may be added to the

gravel.

(ii) Provision for passing bays at strategic locations where the carriageway is 3.5m wide. Sight distance shall be maintained between passing bays.

Provision for the suitable disposal of stormwater from the carriageway.

Culverts or other drainage features installed where accesses intercept secondary flow paths.

The carriageways constructed at least 3m from the crest of stream gullies, except where specific slope stability assessment has been undertaken by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 to confirm that the proposed alignment is appropriate.

No signs shall be used to identify the accessways at or close to the boundary with Crown Range Road.

(vii) Where required to protect areas of native regeneration, fencing shall be standard post and wire.

5. Prior to commencing any work on the site the consent holder shall install a

vehicle crossing or crossings, which all construction traffic shall use to enter and exit the site. The minimum standard for such a crossing shall be a minimum compacted depth of 150 mm AP40 metal. Any crossing shall be upgraded in accordance with Council's standards, or removed, at the time the access roads are constructed on the site.

1. The consent holder shall install measures to control and or mitigate any dust, silt run-off and sedimentation that may occur. These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project.
2. The consent holder shall implement suitable measures to

prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at its expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.

3. No earthworks, temporary or permanent, are to breach the boundaries of the site.

4. Prior to commencing works in the road reserve, the consent holder shall submit a traffic management plan to Council for approval. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor (certification gained by attending the STMS course and getting registration). All contractors obliged to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan.

5. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder shall complete the following:

(a) the submission of 'as-built' plans in accordance with Council's as-built standard and information required to detail all engineering works completed in relation to or in association with this subdivision;

(b) the completion and implementation of all works detailed in condition (4) above.

(c) notification of Public Health South, P O Box 2180, 442 2500 of the details of the water supply;

(d) evidence to the satisfaction of Council as to how the water supply will be monitored and maintained on an ongoing basis to ensure that it continues to comply with the Drinking Water Standard for New Zealand 2005;

(e) a copy of the operation and maintenance manuals for the private water supply, and evidence that this has been made available to a management company responsible for the water supply;

(f) provision of each lot created, for residential use, by this

subdivision with a minimum electricity supply of single phase 15kVA capacity. This supply shall be made available to the net area of the lot. Each supply shall be underground from any existing reticulation;

(g) a suitable and usable telecommunications connection to each lot. These connections shall be underground from any existing reticulation and in accordance with any requirements/standards of Telecom;

(h) all necessary road markings completed on all public or private roads (if any), created by this subdivision;

(i) the consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent;

(j) certification by a suitably qualified engineer experienced in soils investigations, in accordance with NZS 4431:1989, for all areas of fill within the site on which buildings are to be founded (if any);

(k) submission to Council of an as-built plan of the fill location shall be in terms of New Zealand Transverse Mercator contours indicating the depth of fill. Any fill that has not been certified by a suitably qualified and experienced engineer in accordance with NZS 4431:1989 shall be recorded on the as-built plan as "un

(l) topsoiling and grassing or any other permanent stabilisation of all earth-worked areas;

(m) the fencing of all of those areas as identified in the plan revised in accordance with condition 1 and titled *Royalburn Farm Development – Management of Nature Conservation Areas*;

(n) the detailed planting, management and weed removal plan for that area of land covered by the plan revised in accordance with condition 1 and titled *Royalburn Farm Development – Management of Nature Conservation Areas*, to the stage that it has been approved by the consent authority. Such plan is to identify the various stages of work to occur and the timeframes within such stages shall be implemented and deemed complete;

(o) removal of all of those roadside trees (Alders) that are

generally located alongside the Crown Range Road, and are located in between the two vehicle crossings that serve the subdivision — as indicated on the plan revised in accordance with condition 1 and titled *Royalburn Farm Development — Master Plan*.

11. Prior to certification pursuant to section 224 of the Act and in accordance with

section 221 of the Resource Management Act 1991, a consent notice shall be registered on the pertinent Certificate of Title for the performance of the following conditions on a continuing basis:

(a) Stormwater

At the time a dwelling is erected on Lots 2, 3, 4 and 7-14, the owner for the time being shall engage a suitably qualified professional as defined in Section 1.4 of NZS 4404:2004 to design a stormwater disposal system to provide stormwater disposal from all impervious areas on the site. Each design shall be based on the specific soakage characteristics at that building platform site. The proposed stormwater system shall be subject to the review of Council prior to implementation. The design of all stormwater disposal systems and driveway locations shall have regard to the report prepared by MWH (*Geotechnical Risk Assessment — Royalburn Infrastructure, April 2009 (project number Z1700900)*).

(b) Access formation

At the time a dwelling is erected on Lots 2, 3, 4 and 7-14, the owner for the time being shall construct an access way to the dwelling from the lot boundary that complies with Council's standards applicable at that time.

(c) Effluent disposal

At the time a dwelling is erected on Lots 2, 3, 4 and 7-14, the owner for the time being shall engage a suitably qualified professional as defined in Section 1.4 of NZS 4404:2004 to design an effluent disposal system in terms of AS/NZS

1547:2000 that will provide sufficient treatment/renovation to effluent from on-site disposal, prior to discharge to land. To maintain high effluent quality this system must include the following:

- specific design by a suitably qualified professional engineer, including a specific site and soil assessment for each lot;
- regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of each system to undertake this maintenance;
- intermittent effluent quality checks to ensure compliance with the system designer's specification;
- disposal areas located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore.

(d) Water

At the time a dwelling is erected on Lots 2, 3, 4 and 7-14, domestic water and fire fighting storage is to be provided (in accordance with the New Zealand Fire Service Fire Fighting Water Supplied Code of Practice (SNZ PAS 4509:2008)).

A minimum of 20,000 litres shall be maintained at all times as a static fire fighting reserve within a 30,000 litre tank; or

A 7,000 litre fire fighting reserve is to be provided for each dwelling in association with a domestic sprinkler system installed to an approved standard.

A fire fighting connection in accordance with Appendix B — SNZ PAS 4509:2008 is to be located no further than 90 metres, but no closer than 6 metres, from any proposed building on the site. Where pressure at the connection point/coupling is less than 100 kPa (a suction source — see Appendix B, SNZ PAS 4509:2008 section B2), a 100 mm suction coupling (female) complying with NZS 4505, is to be provided. Where pressure at the connection point/coupling is greater than 100 kPa (a flooded source — see Appendix B, SNZ PAS 4509:2008 section B3), a

70 mm instantaneous coupling (female) complying with NZS 4505, is to be provided. Flooded and suction sources must be capable of providing a flow rate of 25 litres/sec at the connection point/coupling. In the event that the proposed dwellings provide for more than single family occupation then the consent holder shall consult with the NZFS as larger capacities and flow rates may be required. The Fire Service connection point/coupling must be located so that it is not compromised in the event of a fire.

The connection point/coupling shall have a hardstand area adjacent to it that is suitable for parking a fire service appliance. The hardstand area shall be located in the centre of a clear working space with a minimum width of 4.5 metres. Pavements or roadways providing access to the hardstand area must have a minimum formed width as required by QLDC's standards for rural roads (as per NZS 4404:2004 with amendments adopted by QLDC in 2005). The roadway shall be trafficable in all weathers and be capable of withstanding an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Access shall be maintained at all times to the hardstand area.

Underground tanks or tanks that are partially buried (provided the top of the tanks is no more than one metre above ground) may be accessed by an opening in the top of the tank whereby couplings are not required. A hardstand area adjacent to the tank is required in order to allow a fire service appliance to park on it and access to the hardstand area must be provided as above. Fire fighting water supply may be provided by means other than the above if the written approval of the New Zealand Fire Service is obtained for the proposed method. The fire fighting water supply tank and/or the sprinkler system shall be installed prior to the occupation of the building. This alternative supply may include a reticulated supply system sourced from a central storage location.

The drinking water supply is to be monitored in compliance

with the Drinking Water Standard for New Zealand 2005, and the results forwarded to Council. The Ministry of Health shall approve the laboratory carrying out the analysis. Should the water not meet the requirements of the Standard then the consent holder shall be responsible for the provision of water treatment to ensure that the Drinking Water Standards for New Zealand 2005 are met or exceeded.

(e) Building design controls

*Platforms*

All structures including dwellings and garaging shall be contained within the residential building platforms as located on the Master Plan (refer: *Royalburn Farm Development – Master Plan*, revised in accordance with condition 1). There shall be no structures erected outside the building platforms.

*Building coverage*

The total building coverage of all structures within the residential Lots 4 and 7-14 shall not exceed 650 m<sup>2</sup>. On Lots 2 and 3 total building coverage shall not exceed 450 m<sup>2</sup>.

*Building form and scale*

No building shall exceed 650 m<sup>2</sup> in area on Lots 4 and 7-14, or 450 m<sup>2</sup> on Lots 2 and 3. Each building element shall have a pitched roof of between 12.5 to 45 degrees (except for a flat roof area — not exceeding 30 m<sup>2</sup> or 20% of the total roof area).

All buildings shall be designed as single level structures. There may be mezzanine floors or levels within the building.

Where a building platform is occupied by 400 m<sup>2</sup> or less of buildings, such buildings may be of single or multiple elements. Where a building platform is occupied by more than 400 m<sup>2</sup> and no more than 450 m<sup>2</sup> of buildings, such buildings must consist

of at least 2 elements and no element may exceed 400 m<sup>2</sup>. Where a building platform is occupied by more than 450 m<sup>2</sup> of buildings, the buildings shall be a combination of building elements joined or otherwise, of which no individual element may exceed 150 m<sup>2</sup> and no two or more building elements shall be joined so as to appear as a single unit.

#### *Building height*

Maximum building heights for all structures on Lots 2, metres from floor level to the highest point of the roof, shall be within 500 mm of the specific control height for platform centre as shown on the *Banish Consultants Limited Plan, Job ref 5670-SP2f dated 1 April 2010, Sheets 1 and 2 (scale 1:4000 @ A3)*. The maximum building height on Lot 7 shall be 4.5 metres, using the same basis for calculating building height as on the other lots.

#### *Roof pitch*

Roof pitch shall be between 12.5 — 45 degrees, except for roof areas less than 30 m<sup>2</sup> or 20% of the total roof area.

#### *Glazing*

The maximum height of any glazed surface shall not exceed 3.5 metres. The maximum area of glazing on any façade shall not exceed 50%. All glazing in the building is restricted to systems with a reflected visible light of less than or equal to 8%.

#### *Cladding and colours — walls*

Exterior wall materials for all structures shall be: natural timber, painted timber, 'Linea' or similar weatherboard cladding systems, smooth plaster, stained plywood, local stone, coloured corrugated iron, steel or concrete blocks provided that they have a reflective value of less than 36%.

Wall colours shall be chosen from the following list or similar

from other manufacturers; or other similar colours within this general colour range. All colours listed are from the Resene range:

- a. Diesel (black red)
- b. Oil (sooty green black)
- i. Sepia (deep burnt brown)
  - a. Acadia (grey brown)
  - b. Domino (warm grey brown)
  - c. Mondo (grey green)
  - d. Oilskin (brown with green-grey)
  - e. Masala (grey brown)
- f. Tapa (smoky grey)
  - a. Gravel (dark grey)
  - b. Colins Wicket (mid grey-green)
- 1. Nullarbor (mid brown)
  - a. Stonewall (mid grey-green)
  - b. Oilskin (mid grey-brown)
  - c. Portland (mid cool grey)
  - d. Tapa (mid cool grey)
  - e. Castle Rock (mid grey)
  - f. Triple sandcastle (warm grey)
  - g. Double Napa (mid-grey)

*Cladding and colours – roofs*

Roofing claddings to be in steel (corrugated or tray), timber shingles or slate. All steel roofing shall be painted or otherwise colour treated. Acceptable Colorsteel hues shall be limited to Ironsand, and Grey Friars. Colours of colour treated steel roofing not manufactured by `Colorsteel' shall be chosen from the following list or similar from other manufacturers:

- a. Diesel (dark grey)
- b. Domino (mid grey-brown)
- i. Mondo (mid grey)
  - a. Oilskin (mid grey-brown)
  - b. Masala (dark grey-green) Tapa (mid cool grey)

c. Gravel (dark cool grey).

(f) Landscape design controls — residential lots (2, 3, 4, 8-14)

### *Fencing*

The lots shall be fenced in accordance with the programme for subdivision staging and required structural planting for that particular stage, and shall be undertaken in accordance with the plans titled *Royalburn Farm Development — Landuse and Proposed Fence Changes Plan* — revised in accordance with condition 1 and *Royalburn Farm*

*Development — Management of Nature Conservation Areas*, revised in accordance with condition 1.

Perimeter fencing may occur only around individual lots shown in the list below or when the lots are indicated as a group only around the group or cluster as a whole. There shall be no fencing between lots that are described below as part of a cluster.

Lot 2 Lots 3-4

Lot 7 Lot 8 Lot 9 Lot 10 Lot 11 Lots 12-14

All fencing around residential lots shall be standard rural post and wire fences. No deer fencing is permitted as a boundary fence for any residential lot. There shall be no fencing of the accessways.

### *Lighting*

All exterior lighting within the residential lots shall be down lighting. Such exterior lighting shall be limited to the building platform area only.

### *Driveways*

Driveways within the residential lots shall be a minimum of 3.5

metres wide, and constructed in gravel which may be bound by a silica binding agent. Driveways shall be swale edged with no kerb and channel. Timber edging of driveways is permitted.

Driveways from lot boundaries to the building platforms generally as shown on the Masterplan (*Royalburn Farm Master Plan*, revised in accordance with condition 1).

#### *Use of land outside residential building platform*

All land within a residential lot that is not included within a residential building platform shall remain open and shall not be used for storage, play equipment or parking of vehicles or similar. There shall be no impervious surfaces outside the residential building platform except for necessary driveways and manoeuvring areas, with the exception of a paved patio area not exceeding 100 m<sup>2</sup>.

#### *Vegetation and planting*

Where any existing shelterbelts (as indicated on the plan titled *Royalburn Farm Development – Master Plan*, revised in accordance with condition 1) are within individual lots they shall be retained and maintained by the lot owner. If any tree should die or become diseased it shall be replaced within the next planting season by another tree of the same or similar species.

Where any new or additional structural planting required by this consent is within a residential lot it shall be retained and maintained by the lot owner. If any tree should die or become diseased it shall be replaced within the next planting season by another tree of the same or similar species if at all possible.

Any other tree planting within the residential lots with a mature height of greater than 5 metres shall be either native species or edible fruit trees, or from the following list:

- *Acer* species (maples excluding sycamore)

- *Cedrus deodara* (Himalayan cedar)
- *xCupressocyparis leylandii* (Leyland cypress)
- *Populus nigra* (Lombardy poplar)
- *Quercus* species (oaks)
- *Ulmus* species (elms)

(g)

### *Planting restrictions*

No Corsican pine, Douglas fir, Scots pine, Larch, Lodgepole pine, Ponderosa Pine, Radiata Pine, Eucalyptus species, Birch, Sycamore, *Sorbus aucuparia* (Rowan) or any other species liable to spread, shall be planted anywhere on a lot.

### *Weed control and pest management*

The residential lots shall be kept free of noxious weed pests and wilding species such as gorse, broom, thistles and exotic tree species.

### Landscape design controls — balance lot

#### *Fencing*

All fencing shall be standard rural post and wire fences. Deer fencing is only permitted as part of an external boundary fence of Lots 24 and 25 (RM081447).

Entrances for both the access-ways from Crown Range Road shall be limited to post and wire, with a maximum height of 1.1 metres. Large scale gates or any other road front 'furniture' other than simple rural wire fencing is prohibited.

#### *Lighting*

There shall be no lighting within the balance lot, except for necessary down-lighting to assist with illumination of the letterbox area.

### *Driveways*

Driveways within the balance lot shall be a minimum of 3.5 metres wide, and constructed in gravel, which may be bound with a silica binding agent. Driveways shall be swale edged with no kerb and channel. Driveways shall be aligned as shown on the Masterplan.

### *Use of land – balance lot*

The balance lot shall be used for sheep farming and/or cropping purposes only (except where limited by a Nature Conservation Area, Light Sheep Grazing Area or a Sheep Grazing Area — refer to *Royalburn Farm Development – Management of Conservation Areas*, revised in accordance with condition 1).

### *Vegetation and planting*

All existing shelterbelts within the balance lot and on any adjoining certificates of title (refer to *Royalburn Farm Development – Master Plan*, March [2010, Job 7182-001](#), scale 1:5,000 @ A1, 1:10,000 @ A3) shall be retained and maintained by the consent holder. If any tree should die or become diseased it shall be replaced within the next planting season by another tree of the same or similar species.

### *Nature Conservation Area*

The Nature Conservation Area (no grazing) (refer: *Royalburn Farm Development – Management of Conservation Areas*, March [2010, Job 7182-003](#), scale 1:5,000 @ A3), shall be fenced by the consent holder prior to planting. Stock shall be excluded from this area at all times.

Illicitly shrubland vegetation shall be maintained within the Nature Conservation Area (no grazing). Briar rose may be retained to help shelter native seedlings. In the long term, the briar rose is to be removed as native plants establish. Planting in

these areas, by the consent holder, is to be undertaken as detailed on the *Royalburn Farm Development – Management of Nature Conservation Areas*, revised in accordance with condition 1). It is to include 'matagouri shrubland' species (to be grown from local seed stocks where possible), to function as a seed source for regeneration within these areas. For the purposes of this condition the list of 'matagouri shrubland' species is limited to:

- a. *Discaria toumatou* (matagouri)
- b. *Nothofagus solandri* var. *cliffortioides* (mountain beech)
- i. *Sophora microphylla* (kowhai)
  - a. *Coprosma propinqua* (mingimingi)
  - b. *Coprosma* species 7'
  - c. *Olearia odorata* (tree daisy)
  - d. *Melicytus alpinus* (porcupine shrub).

The implementation of this planting is to be carried out in accordance with the timing outlined in condition 10(n) of this consent.

#### *Light Sheep Grazing Area and Sheep Grazing Area*

The Light Sheep Grazing Area and Sheep Grazing Area (refer *Royalburn Farm Development – Management of Nature Conservation Areas*, revised in accordance with condition 1) shall be fenced by the consent holder. This area shall be managed as defined in the plan approved by condition 10(n) of this consent.

All existing native grey shrubland vegetation shall be maintained within the Nature Conservation Area (no grazing). Briar rose may be retained to help shelter native seedlings. In the long term, the briar rose is to be removed as native plants establish. Planting in these areas, by the consent holder, is to be undertaken as detailed on the *Royalburn Farm Development – Management of Nature Conservation Areas*, revised in accordance with condition 1. It is to include 'grey shrubland species (to be grown from local seed stocks where possible), to

function as a seed source for regeneration within these areas. For the purpose of this condition the list of 'grey shrubland' species is limited to:

- a. *Discaria toumatou* (matagouri)
- b. *Nothofagus solanclri* var. *cliffortioides* (mountain i.)
- i. *Sophora microphylla* (kowhai)
- a. *Coprosma propinqua* (mingimingi)
- b. *Coprosma* species 'T'
- c. *Olearia odorata* (tree daisy)
- d. *Melicytus alpinus* (porcupine shrub)

The implementation of this planting is to be carried out in accordance with the timing stated in condition 10(n) of this consent.

#### *Planting restrictions*

No Corsican pine, Douglas fir, Scots pine, Larch, Lodgepole pine, Ponderosa Pine, Radiata Pine, Eucalyptus species, Birch, Sycamore, *Sorbus aucuparia* (Rowan) or any other species liable to spread shall be planted anywhere on the balance lot.

#### *Weed control and pest management*

The balance lot shall be kept free of noxious weed pests and wildling species such as gorse, broom, thistles and exotic tree species; except that briar may be maintained with the Nature Conservation Area and Light Sheep Grazing Area (refer *Royalburn Farm Development – Management of Nature Conservation Areas*, revised in accordance with condition 1).

1. All easements shall be granted or reserved.
2. No building shall occur until such time as the structural planting identified on the *Royalburn Farm Development – Master Plan*, revised in accordance with condition 1) has achieved a minimum height of 4.5 metres.

Note: Compliance with this requirement is achieved where there is at least 90% of any section of required structural planting at

least 4.5 metres high.

1. This consent may be staged in the following manner:

Stage 1 : Lots 2, 3 and 4 Stage 2 : Lots 7-8

Stage 3 : Lots 9-14.

The consent in relation to Lots 9-14 (stage 3) shall lapse ten years after the commencement of this consent.

16. A public walkway easement shall be registered in favour of the Council for the

purpose of non-motorised access. The easement shall generally be aligned in accordance with the plan titled *Royalburn Farm – Master Plan*, as revised in accordance with condition 1. Further detailed plans of the type of formation and actual alignment shall be prepared by the consent holder in consultation with the Wakatipu Trails Trust and the Parks and Recreation Manager of the Council. An easement shall be registered upon confirmation of those final plans, between those parties. The track alignment shall be initially formed by the consent holder as a poled trail to the standard agreed in writing prior to the date of the appeal hearing between the Wakatipu Trails Trust and the Parks and Recreation Manager of the Council, and shall generally be unfenced. The consent holder may agree with the Council and the Trails Trust on such restrictions on use as are necessary from time to time, specifically for the purpose of the protection of farm-related activities such as lambing or fawning.

The consent holder shall be responsible for the maintenance of the track at the standard to which it is constructed.

Ten years after registration of the easement, the consent holder will no longer be liable for any costs associated with the trail easement, and the Council shall take over all associated costs and liabilities.

[1] Mr Baxter suggested the distance was roughly 300-150 metres from the road.

[2] 'The parties in this case have used the term 'building platform' to refer to the cube within which buildings can be constructed. We prefer to use the term 'building envelope' for this concept.

[3] Mr Edmonds told us that the plan contained no rules on the construction of accessways. [4] Rule 5.4.2.2(3)(b). [5] [2010] NZEnvC 109. [6] Policy 4.2.5.4. [7] Rule 5.4.2.2(3)(c). [8] Rule 5.4.2.2(3)(d). [9] Policy 4.2.5.8. [10] Rule 5.4.2.2(3)(e). [11] Rule 5.4.2.3(i) [12] Condition 11 g. [13] Rule 5.4.2.3xxiv and xxvii [14] Objective 5.2.2 and related policies, policy 5.2.1.2, 1.3 and 1.5. [15] Objective 4.1.4.1 and policies 4.1.4.1.10 and 4.1.4.1.17. [16] District Plan Issue 4.2.4. [17] Decision C180/1999 at para [91]. [18] Objective 5.2.1 and policies 5.2.1.1, 1.6.1.7 and 1.8. 9 Policies 4.2.5.12 and 15. [19] Objective 4.2.5. [20] Objective 4.2.5. [21] Policy 4.2.5.4. [22] Policy 4.2.5.4. [23] Policy 4.2.5.17. [24] Policy 4.2.5.9.