

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

Of applications for land use and subdivision consent
(LUC-2018-628 and SUB-2018-118) at 33 Gladfield
Road, East Taieri.

BY GLADFIELD COUNTRY GOLF COURSE

Applicant

TO DUNEDIN CITY COUNCIL

The Council

**EVIDENCE OF PETER ALLAN CUBITT
ON BEHALF OF GLADFIELD COUNTRY GOLF COURSE**

INTRODUCTION

1. My name is Allan Cubitt. I hold Bachelor of Arts and Law Degrees from the University of Otago. I am an affiliate member of the New Zealand Planning Institute and have been involved in resource management matters since 1989. During this time, I have been involved in many aspects of planning and resource management throughout the South Island. I was the principal author of three District Plans prepared under the Resource Management Act, being the Southland, Clutha and Central Otago District Plans. I have also participated in the review of numerous District and Regional Plans throughout the South Island for a large range of private clients.
2. I am the Principal of Cubitt Consulting Limited that practices as planning and resource management consultants throughout the South Island, providing advice to a range of local authorities, corporate and private clients.
3. I am also a Certified Hearings Commissioner (Chair certified) having completed the 'RMA: Making Good Decisions' programme. I have conducted numerous hearings on resource consent applications, designations and plan changes for the Dunedin City Council, the Southland District Council, the Hurunui District Council, the Timaru District Council, the Waitaki District Council, the Grey District Council, the Otago Regional Council, the West Coast Regional Council and Environment Southland. I was also the Chair of Environment Southland's Regional Policy Statement Hearing Panel and the Chair of the Hurunui District Council Hearing Panel on the proposed Hurunui District Plan.
4. I am familiar with the Dunedin City District Plans, the Otago Regional Policy Statement and the other relevant statutory planning documents. I am also familiar with the application site and the surrounding environment. Cubitt Consulting Limited prepared the resource consent application documentation for the site.
5. While this is a local authority hearing, I have read and agree to comply with the Code of Conduct for Expert Witnesses set out in the Environment Court Practice Note on Alternative Dispute Resolution, Expert Witnesses, and Amendment to Practice Note on Case Management. My evidence has been prepared on that basis.

SCOPE OF MY EVIDENCE

6. My evidence will cover the following matters:
 - The site and the proposal
 - Status of the proposal and Section 104
 - The baseline
 - Environmental effects
 - The objectives and policies of the District Plans

- Decision Making Framework

7. My evidence is based on the application material, my visits to the site and the surrounding area, the submissions received and the Council Consultants Planner's report.

THE SITE AND THE PROPOSAL

8. The site has been fully described in the application documentation and the planners report but I briefly set out the key points here:

- The property has an area of 21.2 hectares and has legal and formed frontage to both Gladfield Road and Gladstone Road South. State Highway No.1 also forms the southern boundary of the property, and is a 'Limited Access Road' in this location.
- The property contains two distinct uses, with the predominate use being a 9-hole golf course that occupies approximately 15.8ha (or three quarters) of the site. The remaining 5.3ha is bare land currently leased out for grazing.
- A golf course has operated from this site for many decades. The golf club buildings are accessed from Gladfield Road, approximately 350m from the Gladfield Road/SH 1 intersection to the east.
- The wider area is characterised by a number of undersized rural properties and a range of different uses. The block bounded by Gladfield Road, Gladstone Road South, Riverside Road and the State Highway (within which the subject property is located) is an area of large lifestyle blocks, not productive farm units. These properties range in area from from 5 to 9ha, with most in the 6 to 7 range.
- The property directly to the west, at 411 Gladstone Road also contains a golf course, along with a function centre, while directly north of the site is a small industrial property of 4939m², which contains a contractor's yard.

9. The proposal is for the subdivision of this site into two parcels, with the golf course to be held in a 15.8-hectare parcel (Lot 2 on the scheme plan). The remaining 5.3-hectares of bare land will be held in Lot 1 and will be on-sold by the golf club as a small farm block.

10. This application has been necessitated because of the financial position the club has recently been put in due to their bank no longer being prepared to finance them. The capital raised from selling the land surplus to their requirements (it is not big enough to increase the club to an 18-hole course) will secure the financial future of the club by paying off the remaining debt on the land. The club will then become a sustainable operation at the lower membership levels that all golf club are now experiencing.

STATUS OF THE PROPOSAL AND SECTION 104

11. The site is zoned **Rural** in the Operative District Plan (“ODP”) and **Rural Taieri Plains** in the Proposed Second-Generation Dunedin City District Plan (“2GP”). There are also a number of planning notations that apply to the site under 2GP which have been set out in both the application and the planners report. I am in agreement with the Mr Buxton’s report regarding the status of the activity and it is accepted that the proposal is a non-complying activity.
12. As Mr Buxton’s report notes, there are two Otago Regional Council designations affecting the property (being D217 and D218) which relate to flood control matters. Section 176(1)(b) of the Act provides that:
 - a. *no person may, without the prior written consent of that requiring authority, do anything in relation to the land that is subject to the designation that would prevent or hinder a public work or project or work to which the designation relates, including—*
 - i. *undertaking any use of the land; and*
 - ii. *subdividing the land; and*
 - iii. *changing the character, intensity, or scale of the use of the land.*
13. This proposal involves all of the matters listed in (i) to (iii) and while the proposed building site itself is outside the designated areas, there are likely to be other works (such as access formation) that will occur within the designated area. While these works are unlikely to hinder or prevent the purpose of the designation being achieved, the proposal has been discussed with the relevant people at the Otago Regional Council. They have advised that they have no particular concerns with the proposal, provided any earthworks needed in the future do not divert flood flows or reduce the schemes flood storage capacity in any significant way. It has been agreed that most efficient approach to this matter is to seek the necessary approvals from the Otago Regional Council if and when the consents in front of you are approved. Hence, Section 91 of the Act, which allows Council to defer the hearing of the application if other consents are necessary and important for a better understanding of the activity, does not come into play here.
14. Turning to the assessment of resource consent applications, this begins with consideration of the proposal in terms of the matters listed in section 104 of the Act - the actual and potential effects of the activity, the provisions of relevant plans and policy statements, and any other relevant and reasonably necessary matter. However, non-complying activities must get through either the effects or policy threshold test in Section 104D before the consent authority can exercise its discretion to grant or refuse the application.

THE PERMITTED BASELINE

15. At paragraphs 39 to 44, Mr Buxton discusses the permitted baseline and the existing environment. Section 104(2)(b) of the Act provides Council with a discretion to disregard the effects of an activity if a rule permits an activity with that effect. The baseline is established by determining what can occur as of right on the site and what can occur by way of a resource consent, implemented or not. Any effects from an activity that is equivalent to or less than what can be generated under this scenario need not be regarded by the Panel.
16. I generally agree with Mr Buxton's position on the permitted baseline but would highlight the fact that at the time this application was lodged, the permitted density standard in the zone (without subdivision) was 15 hectares. Because the subject site is 21-hectares in area, the applicants could have erected a dwelling on the platform proposed as of right. This is not a fanciful scenario as it would not be unusual for a dwelling to be erected on such a site for managers accommodation. Hence, the physical effects of the proposal at the time of lodgement can be largely ignored as it was only the subdivision proposal that creates the need for consent. The effects on rural character and visual amenity values could already be present in the environment had the club chosen to build a manager's residences without the subdivision proposal.

EFFECTS ON THE ENVIRONMENT

17. Mr Buxton addresses a wide range of issues in his environmental effect's assessment of the proposal. Overall, he has concluded that any adverse environmental effects of the proposal will be no more than minor (subject to the appropriate conditions being imposed) and, on that basis, has accepted that it passes through the s104D gateway test for consideration by the panel. I largely agree with Mr Buxton's conclusions and accordingly my comments on environmental effects are brief.

Lot Size and Amenity and Rural Character

18. In my view, the effect of the proposal on rural amenity values is probably the most critical matter in the success or otherwise of the application. Mr Buxton has addressed rural amenity matters at paragraphs 83 to 85 and lot size at paragraphs 47 to 51. In assessing the effects of the proposal, I consider these matters are linked. As highlighted in the application, when assessing the impact of a proposal on amenity and rural character values, the character of the existing environment becomes the key factor. That character is generally determined by density of development in the receiving environment. As was described in paragraph 1.1 of the application and in Mr Buxton's report at paragraph 7, this particular rural location is not typical of the rural zone, or what the DP anticipates in the rural zone, as there are many sites that are significantly undersized in both the immediate location and the wider rural environment.

19. Of particular note is the density of the receiving environment, being the block bounded by Gladfield Road, Gladstone Road South, Riverside Road and the State Highway. The rural character of this environment is one of lifestyle, hobby farms, not productive farm units. The subject site is the only property within this block that meets the ODP 15-hectare minimum, with the exception of 54 Riverside Road which, at 15.53 hectares, takes in land across Gladstone Road South also. The remaining sites range between 5.8 to 13.6 hectares in area. Leaving aside the subject site, the average density is 8.6 hectares. This is well below the density standards of both the ODP and PDP. There are also many sites to the south of the State Highway that are significantly smaller than the properties in this block.
20. Hence, the proposed lots are of a size that reflect the character of the existing receiving environment, even though they are well short of the PDP minimum lot size standard. And as Mr Buxton has recognised, the new boundary proposed reflects the current land use regime of the subject property. While the establishment of a dwelling and its curtilage within Lot 1 will reduce the area of land available for the continued grazing of the site, experience tends to indicate that the occupation of smaller rural sites such as these provides the opportunity for more effective and efficient management of the land. In that sense, I agree with Mr Buxton's comments at paragraph 85 where he addresses the concerns of Ms Baughan regarding the current management of the site. That is likely to significantly improve under independent ownership as the site as it stands now is merely a burden on the golf club.
21. I also agree with Mr. Buxton's assessment (paragraph 84) of the proposal against the plan's amenity expectations for the rural area (i.e. to maintain a sense of openness etc). The building platform is set back over 200 metres from both Gladstone and Gladfield Roads. It will not be highly visible from Gladfield Road while the topography will provide a landform backdrop for views of the dwelling from Gladstone Road. It also achieves the 40m set back to the neighbour to the west (Ms Baughan). While only a 10m set back has been provided to the Golf Course, this is an internal boundary and there is a reasonable degree of vertical separation between the two lots to ensure internal amenity values are maintained.
22. Overall, I agree with Mr Buxton that any adverse effects on rural amenity and character will be minor. Mr Buxton's conclusion is conditional upon a consent notice being placed on Lot 2 (the golf course) that restricts further residential development on this site. This would only seem to be necessary if the current DP standards are retained through the appeal process. However, the applicant is comfortable with this recommendation.

Hazards and Earthworks

23. The proposed District Plan identifies part of Lot 1 as a Hazard 1 – Flood zone, which coincides with the ORC designation over the property. While the dwelling site sits outside this zone, development of the wider site can have implications for hazard management within the

flood zone. Mr Buxton deals with this issue in his paragraphs 64 to 69 and advises that Councils Consulting Engineer considers there is no reason to decline this application on the basis of natural hazard issues.

24. As I advised earlier in this evidence, approval from the ORC for any works that may affect the designations over the property will be sought if and when these consents are granted. This process will address the issues of concern raised in the submissions of Mr Wilson and Ms Baughan, being the potential to increase the natural hazard effect on other properties. Given the nature of this proposal, the likelihood of any such effect occurring here is very minimal.
25. Mr Buxton has also recommended that a number of advice notes be attached to any consent granted that address the ORC designation process and the potential need for an earthworks consent from the DCC within the hazard overlay, along with the potential need for an earthworks consent in relation to the development of the building platform itself. The applicant is aware of these responsibilities and has no concern with the advice notes as proposed.
26. Mr Buxton also addresses the matter of alternative access should the primary access to the dwelling from Gladstone Road ever be cut off due to flood flows (see his paragraphs 52 and 68). The applicant has offered to create an easement over the golf course to address this matter and is therefore comfortable with the condition proposed by Mr Buxton as part of the subdivision consent.
27. In conclusion, the proposal is not constrained by the natural hazards affecting the site, while its development will not exacerbate the effects of these natural hazards.

Transportation and Infrastructure

28. The application has been referred to the relevant Council departments that assess the servicing requirements of development and the effects that a development can have on the transportation network. Mr Buxton deals with the infrastructure issues at paragraphs 54 to 63 and the transport related effects at paragraphs 77 to 79. Neither Council department raises any concern in relation to these matters although a number of conditions and advice notes are proposed. These are all acceptable to the applicant.
29. Mr Buxton also addresses the concerns of the submitters in this context at his paragraphs 60 to 63. I agree with Mr Buxton's conclusion in this regard and would merely highlight that there are already ORC rules in place that deal with the matters raised.

Conflict and Reverse Sensitivity

30. Mr Wilson has raised the issue of reverse sensitivity; which Mr Buxton has dealt with at his paragraphs 86 to 87. The proposed building platform is over 250m from Mr Wilson's contracting yard at 370 Gladstone Road South. Both Gladstone Road and the main trunk

railway line separate his property from Lot 1 and the Golf Course. The northern part of the golf course is located directly across Gladstone Road from Mr Wilsons site and the golf club has never received any complaints regarding the operation of Mr Wilsons yard. I would also note that under the ODP, a dwelling could have already been established on the subject site while a dwelling could also be erected within 40m of Mr Wilsons northern boundary.

31. In these circumstances, it is hard to understand how a reverse sensitivity issue could arise with this proposal. As a consequence, I agree with Mr Buxton assessment of this matter.

Conclusion on Environmental Effects

32. I agree with Mr Buxton that the proposal will have no more than minor adverse effects on the environment. On that basis, I have concluded that it passes through the first gateway test of section 104D. The proposal will also have the significant social and economic benefit of ensuring a sustainable long-term future for the golf club.

OBJECTIVES AND POLICIES OF THE DISTRICT PLANS

33. The fact that the activity is non-complying means direct support from any specific provisions of the plan will be unlikely. Thus, the usual approach when considering the relevant objectives and policies under the 104D test for non-complying activities involves an overall consideration of the purpose and scheme of the Plan rather than determining whether the non-complying activity fits exactly within the detailed provisions of the Plan. However, the High Court decision *QCL v Queenstown Lakes District Council* [2013] NZHC 817 at [35] and [37] did throw some doubt on this approach by suggesting that the activity must not be contrary to any of the objectives and policies. However, I understand that Court of Appeal cases such as *Dye* and *Arrigato* have endorsed the accepted practice while the Environment Court decision of *Cookson Road Character Preservation Society Inc. v Rotorua District Council* [2013] NZEnvC 194 specifically discussed the High Court finding and deliberately determined not to apply it, considering it contrary to accepted practice and Court of Appeal authority.
34. It would seem therefore that the correct approach would still require a holistic assessment of the objectives and policies and it is on this basis that I have assessed the proposal under section 104D(b).
35. Mr Buxton has undertaken a thorough review of the relevant objectives and policies in his report. In relation to the ODP, Mr Buxton finds the proposal consistent with all the relevant policy provisions including the key Rural section. I agree with Mr Buxton's findings and as a consequence do not propose to address the ODP further.
36. In relation to the 2GP, Mr Buxton also finds the proposal consistent with the bulk of policy framework with the exception of those policies dealing with density and minimum lot size

found within the Rural and Strategic Direction provisions, which he considers the proposal contrary to. In this context, I would note in this context that the Environment Court in the *Blueskin Energy* case considered that Strategic Directions provisions are not to be applied directly to applications for resource consent but are to be borne in mind when interpreting and applying the subsequent detailed plan provisions.

37. Turning first to Objective 16.2.1 (addressed at page 25 of Mr Buxton's report, where he finds the proposal contrary to this policy framework), this provision sets out what the Plan considers the rural parts of the city should be used for, with these three things being *'productive rural activities'*, *'the protection and enhancement of the natural environment'* and other *'activities that support the wellbeing of rural communities where these activities are most appropriately located in a rural rather than an urban environment'*. The objective then goes on to say that 'residential activity' in rural zones is limited to that which directly supports farming.
38. In this context, the vast majority of the site (15-heactes) falls within the 'other activity' category because it is a golf course that supports the wellbeing of the community. The remaining 5-hectares supports productive rural activities (noting that 'productive' is not defined in the District Plan), being farming in this case. The proposal is to separate these land uses into separate titles as the farmed part of the site is surplus to the requirements of the golf club. The residential activity will directly support the farming of that site.
39. As a consequence of this, the proposal does not seem to be contrary or even inconsistent with the objective. The associated policies are Policy 16.2.1.5 and Policy 16.2.1.7. Policy 16.2.1.5 again requires residential activity to be at a level (density) that supports farming activity, which this proposal would appear to achieve. It supports the only part of the site that is used for farming and this part of the site is in fact similar in size to the surrounding rural sites.
40. The difficulty comes with Policy 16.2.1.7 which requires residential activity to be *"avoided in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision."* This policy introduces a density standard as opposed to the broader test of Policy 16.2.1.5, which is merely that it needs to be at a level that supports farming. The proposal obviously does not meet the density standard so is contrary to this policy but as the application noted, the proposed subdivision is aligned with the proviso of this policy as it deals with land surplus to the needs of a non-productive activity. Had the dwelling already been established, as was possible under the ODP, then the proposal would effectively be a subdivision for a surplus dwelling.
41. Mr. Buxton addressed the next suite of policies at page 26, being objective 16.2.3 and its associated policies. This suite of provisions deals with rural amenity and Mr. Buxton considers the proposal consistent with the objective but contrary to the policies, again because of the reference here to density. This assessment seems inconsistent with his amenity effects

assessment. In his discussion at paragraph 84, Mr. Buxton agrees that amenity values of a site are largely determined by the existing environment while also acknowledging that such values are also expressed by the District Plan. Under both assessments, Mr Buxton appears to conclude in his report that adverse effects on amenity values are minor and at paragraph 49 he specifically states that the proposal *“will maintain the character and amenity of the existing environment”*. In the context of Policy 16.2.3.2, it would seem to me that the proposal is at a density that maintains the character and amenity values of this part of the rural zone. Hence, I disagree that the proposal is contrary to this suite of policies.

42. The other policy suite Mr. Buxton has concerns with relate to the productivity provisions of Objective 16.2.4 and Policies 16.2.4.3 and 16.2.4.4. His concern again appears to relate to the density infringement but when taking into account the nature of the existing use of the site, Mr. Buxton’s effects assessment does not appear to be concerned with any effect on productivity, noting that *“the reduced lot sizes will not affect food production”* at paragraph 49. The proposal will in fact hold the existing productive farm land in one title, which is at a size consistent with the neighbouring properties. In my view, the proposal does not create a situation that is any worse than what currently exists in this regard and does not displace rural activities (policy 16.2.4.4). At worst, the proposal could be considered inconsistent with the overall thrust of this policy suite but not contrary.

Conclusion on the Policy framework

43. As a consequence of the forgoing, I am of the opinion that the proposal is not contrary to the policy framework of the 2006 District Plan (and is in fact consistent with it) or the overall thrust of the 2GP. While it is contrary to the density restriction imposed by Policy 16.2.1.7 of the 2GP, this policy should not trump the wider policy framework of the 2GP given the nature of the current use of this site. On that basis, I consider it also passes through the policy limb of the s104D test.

DECISION MAKING FRAMEWORK

44. Both Mr Buxton and I consider that the proposal passes through the effect’s limb of the s104D test, while I also find that it passes through the policy limb. Mr Buxton states in his reasons for recommending approval that he also finds it generally consistent with the key relevant objective and policies of both plans and therefore also passes through the policy limb of s104D (see paragraph 128). However, this may be a mistake as Mr Buxton found the proposal to be contrary to the 2GP at paragraph 116 because of the conflict with the density provisions.
45. Regardless of that, Mr Buxton has assessed the proposal against the relevant decision-making framework and considers that the proposal should be granted consent, subject to conditions. In terms of the ‘true exception’ test, Mr Buxton considers it a ‘relatively unique and

confined proposal', given the current use of the site and the nature of the receiving environment. I would add that the proposal is also in line with the permitted density baseline of the ODP and that the dwelling will support a farming use.

46. On this basis, I believe the purpose of the Act will be best served by granting consent to the proposal subject to the conditions proposed by Mr Buxton.

A handwritten signature in black ink, appearing to read 'P. Cubitt', written in a cursive style.

Peter Allan Cubitt
10 May 2019