

QUEENSTOWN LAKES DISTRICT COUNCIL

Hearing of Submissions on the Proposed District Plan

Report 16.12

Report and Recommendations of Independent Commissioners
Regarding Upper Clutha Planning Maps
Smith Road
(Jeremy Bell Investments Limited)

Commissioners

Trevor Robinson (Chair)

Jenny Hudson

Calum MacLeod

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JEREMY BELL INVESTMENTS LIMITED (JBIL) (820)

Further Submitter; FS 1034 Upper Clutha Environmental Society (UCES)

1. SUMMARY OF RECOMMENDATIONS

1.1. Overall Recommendation

1. Accept in part.

1.2. Summary of Reasons

2. A discrete area of the site below an elevated terrace and riser is appropriate for Rural Lifestyle zoning as there will be only minor adverse visual effects on the ONL beyond and on the rural values of the surrounding area. The PDP Rural Zone is more appropriate over the remaining area because that zone has the most appropriate provisions to manage the wide variety of effects that are possible from rural living on the site.

2. PRELIMINARY MATTERS

2.1. Subject of Submissions

3. This submission relates to a 93.2 hectare area within Lots 1-3 DP 300397 and Section 32 BLK VI Tarras SD (Computer Freehold Register 2455) located on Smith Road.

2.2. Outline of Relief Sought

4. Submission 820¹ sought the rezoning of a 93.2 ha area of land² forming part of Criffel Station from Rural (as shown on Planning Maps 11 and 18) to Rural Lifestyle. It is proposed that 22 ha of the site be subject to a BRA, leaving a developable area of 49.6 ha within which 25 rural living allotments are proposed.
5. One further submission, from UCES (FS1034.147) opposed the requested rezoning for the reasons that:
 - a. the subdivision and development resulting from Rural Lifestyle zoning will result in significant and adverse effects on landscape values;
 - b. granting the request will set a precedent for other Rural Lifestyle rezoning requests in sensitive landscape areas;
 - c. the density concept is wasteful and results in adverse landscape effects.

2.3. Description of the Site and Environs

6. The site is located at the base of the Criffel Range, to the southeast of Mt Barker and has access via Mt Barker Road and Smith Road.

¹ The submitter is referred to as JBIL for convenience in this report.

² This is the area of land as stated in the submission. In his evidence, Mr Vivian clarified that the proposed area of Rural Lifestyle zoning is 71.6 ha which includes the 22 ha BRA, leaving a developable area of 49.6 ha. These are the areas which we have adopted throughout this report, noting that there are minor discrepancies in the evidence of various witnesses.

7. The outline of the site is shown on a map that was attached to the submission, reproduced below.

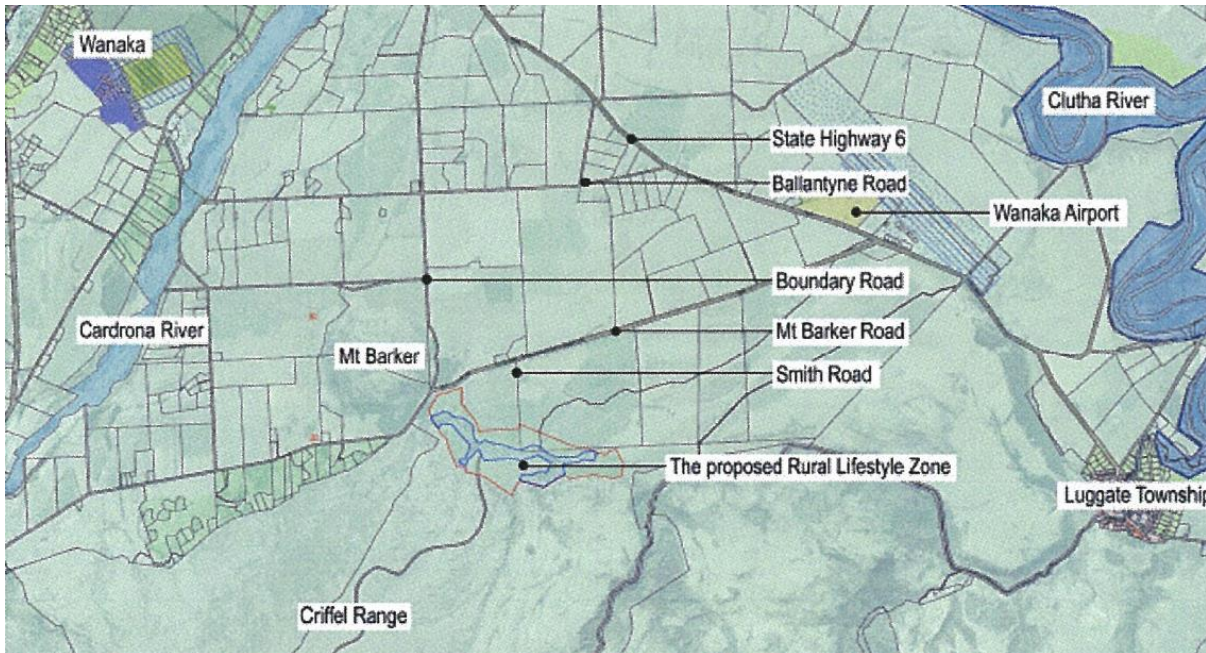


Figure 1: location of submission site forming part of Criffel Station outlined in red

8. The mountainous, tussocky slopes of the Criffel Range rise above a series of terraces stepping up from the basin floor. Within the submission site at the toe of these slopes, and below the ONL line identified in the PDP, there are two distinct terraces separated by a steep escarpment, in places up to 40m in height. The upper terrace extends from Knob A3KV at its eastern end to Criffel Diggings Track ridgeline³. The lower terrace is flat land on the basin floor, rising to the escarpment at its western end. The terraces are currently in pasture and used for grazing deer. The escarpment face has significant vegetated areas and significant ecological values⁴, and is the area identified as proposed BRA in the submission. A more detailed plan showing the inter-relationship between the BRA and the proposed rural lifestyle development areas provided to us by Ms Mellsoop is reproduced later in this report.
9. Within the wider environs and on Criffel Station, there are dwellings and farm buildings interspersed on the lower land off Mt Barker Road and intersecting local roads, as well as an established Rural Lifestyle zone to the southwest of Mt Barker, approximately 750m as the crow flies, from the closest part of (but not visible from) the submission site. Wanaka Airport is immediately adjacent to the intersection of Mt Barker Road and SH 6, 3.6km from Smith Road.

³ As identified in the Vivian and Espie Landscape Report dated June 2015

⁴ As identified in the uncontested evidence of Mr Davis on behalf of the Council

2.4. The Case for Rezoning

10. An engineering report and landscape/visual effects assessment⁵ ('the Vivian and Espie report') were attached to the submission as supporting material. The key issues identified in the engineering report were that reticulated services are not available to the site and it will be necessary to establish a private water scheme, either from a bore, or surface take from the Luggate Creek. It would also be necessary to establish a private wastewater scheme, with individual on site waste water disposal, or a private community scheme. The engineering report confirmed that this is feasible, and Mr Glasner, on behalf of Council, did not oppose the proposal on infrastructure grounds.
11. The Vivian and Espie report was prepared by Mr Paul Smith, a colleague of Mr Espie's, and adopted by Mr Espie in his evidence as discussed below. Evidence was also presented at the hearing in support of the rezoning request by Mr Jeremy Bell, Dr Mandy Bell, and Mr Vivian (planning).
12. Dr Bell told us that she runs the property and the terraces which the submitter seeks rezoned are only able to be partially irrigated. The rocky paddocks are not ideal for farmland and without irrigation, stock levels drop from 18 units per ha to four or five per ha. She and her husband were looking at alternative income streams given the low productivity of the land and the likely impact of new technologies on traditional farming practices in the future. She gave an example of this as the production of synthetic proteins which in her opinion could be a significant threat to farming in New Zealand.
13. In his summary statement of landscape evidence, Mr Espie opined that the lower terrace risers were suitable for Rural Lifestyle zoning because: they are not in an ONL, the land is contained by topographical boundaries, agricultural activities may still be possible within a rural living area and the lower land is less sensitive in terms of landscape character than the steep mountain slopes.
14. He acknowledged that the alteration of the site from a farming character to a rural living character will have a moderate effect overall on landscape character, but he did not see this as a reason why the proposed zoning should not be accepted. He also placed some emphasis on the fact that no further submissions had been received from private landowners in the area who might experience effects on views and visual amenity if the Rural Lifestyle zoning was to occur.⁶ In addition, he considered that the location of the requested zone is not as sensitive to change as other locations within the Rural Zone.
15. He described the views experienced by users of SH6 as being at a distance of between 2.8 and 4.4 kms, in which the site appears as *"a small and relatively inconspicuous horizontal sliver of land at the base of the Criffel Range; instances of built form would be discernible*

⁵ Report dated 29 September 2015 from Hadley Consultants Limited (author John McCartney) and Criffel Station Proposed Rural Lifestyle Zone - Landscape and Visual Assessment Report dated 5 June 2015 (author Paul Smith) respectively

⁶ Evidence of B Espie dated 4 April 2017 at paragraph 6.2, second bullet point

but visually softened by vegetation within the zone".⁷ He considered that landscape/visual effects have been well mitigated by the additional controls now offered, being:

- a. a maximum of 25 dwellings (whereas the proposed 'net developable' area is 49.2ha and has been assessed by Mr Vivian as capable of yielding 29 allotments;⁸
- b. a maximum building height of 6m;
- c. design methods to ensure activities are reasonably inconspicuous when viewed from SH 6;
- d. comprehensive management of the BRAs so as to maintain and enhance indigenous vegetation and ecosystems in those areas⁹.

16. Mr Vivian's evidence analysed the proposed zoning in some detail against the relevant statutory considerations as established by the *Colonial Vineyards* case, and in particular section 32 matters.
17. In Mr Vivian's opinion, the proposed Rural Lifestyle zoning is the most appropriate zone and provides for a comprehensive approach to the management of Criffel Station, comparable to other similar high country stations such as Closeburn and Wyuna. In terms of all relevant considerations regarding the suitability of the site for rezoning he opined that:
 - a. the site can be fully serviced, as per the Hadley Consulting report, and accepted by Mr Glasner;
 - b. the risk of impacts from natural hazards is low and can be managed;
 - c. traffic effects are assessed as minor (as per section 42A report);
 - d. responding to Mr Davis's concerns, that ecological values can be addressed at the time of subdivision, and in accordance with a new policy that he has recommended;
 - e. the location of the Rural Lifestyle zone is not as sensitive to change as many locations within the Rural zone, the landscape and visual effects will be well mitigated and there is considerable logic to the proposal in terms of landscape planning (relying on Mr Espie's evidence)¹⁰.
18. Ms Mellsop and Mr Barr opposed the submission on landscape and planning grounds. Ms Mellsop agreed with the conclusion reached by Mr Smith in his landscape report that there would be a change from a rural character to one of rural living. However, in contrast to Mr Espie's view, she was of the opinion that the site would be visible from a wide area, with buildings and domestic plantings seen from SH 6 as well as Mt Barker Road. She considered that the proposal relied on future vegetation around dwellings to mitigate adverse visual effects, that this would in itself draw attention to rural living development and it was unlikely that vegetation would be planted in locations that obstructed north-facing views (inferring that future houses would not be fully screened from public viewing locations).
19. Ms Mellsop also compared the location of the proposed zone with the established Rural Lifestyle zone on Mt Barker Road to the west, which she considered has already detracted from the landscape quality, natural character and visual integrity of the ONL. In her

⁷ Evidence of B Espie dated 4 April 2017 at paragraph 6.3

⁸ Evidence of C Vivian dated 4 April at paragraph 10.5

⁹ Summary evidence of B Espie dated 13 June 2017 at paragraph 6

¹⁰ Evidence of C Vivian dated 4 April 2017 at paragraph 12.1

opinion, the adverse effects of the rezoning sought would be cumulative with those of the existing zone.

20. Mr Barr's section 42A report had incorrectly identified the submission site as being within an ONL; however, his rebuttal and right of reply provided further clarification and corrections to his earlier assessment in which he discussed the efficacy of the Rural Lifestyle zone compared with the Rural Zone. He confirmed his initial conclusion that the Rural Zone was the most appropriate, relying on the opinion of Ms Mellsop as to likely adverse visual and landscape character effects.
21. In weighing the evidence before us, we have disregarded Mr Barr's section 42A report and have been guided primarily by his subsequent evidence, the landscape evidence and the relevant objectives and policies of the Plan.

2.5. Discussion of Planning Framework

22. Mr Barr and Mr Vivian provided us with input on the planning background to the relevant Plan provisions, the issues being primarily the sensitivity of the landscape and appropriate methods for managing visual effects. We note that the latest version of the PDP available to the planners was that recommended in the staff reply on each chapter. In our Report 16, we summarise the key background provisions in the PDP, as recommended by the Hearing Panel, that is to say, a further iteration along from that considered in the planning evidence (and also relied on by Mr Page in his legal submissions). For the purposes of our discussion here, we have not repeated the reference to every objective, policy or other provision to which we have had regard.
23. Focussing on the most relevant provisions, given that the site is within a Rural Character Landscape and adjacent to an ONL, the question of whether rural character and visual amenity values are maintained or enhanced in terms of recommended Objective 3.2.5.2 is clearly applicable. Likewise the corresponding provisions of recommended Policy 3.3.32. The high visibility of the upper terrace from the flat land in the basin including from SH 6, and its situation in the foreground of views of the Criffel Range ONL are also important matters under Policy 6.3.26, requiring that adverse effects on visual amenity be avoided.
24. Chapter 21 - Rural Zones - echoes these overarching objectives and policies by referring to enabling a wide range of land uses including farming, permitted and established activities *"while protecting, maintaining and enhancing landscape, ecosystem services, nature conservation and rural amenity values"* in Objective 21.2.1.
25. As in Chapter 21 (Rural Zones), Chapter 22 - Rural Residential and Rural Lifestyle Zones - has similar objectives and policies relating to protection of landscape character and amenity values and rural character, which sit underneath the higher order provisions in Chapters 3 and 6. Accordingly:

"Objective 22.2.1:

The district's landscape quality, character and amenity values are maintained and enhanced while enabling rural living opportunities in areas that can absorb development"

and

Policy 22.2.1.1:

"Ensure the visual prominence of buildings is avoided, remedied or mitigated..."

Policy 22.2.1.4:

"Manage anticipated activities that are located near Outstanding Natural Features and Outstanding Natural Landscapes so that they do not diminish the qualities of these landscapes and their importance as part of the District's landscapes"

are particularly relevant.

3. ISSUES

- a. The effects of Rural Lifestyle development within a sensitive landscape;
- b. Whether bespoke provisions are an adequate and appropriate method of avoiding, remedying or mitigating adverse effects on this site.

4. DISCUSSION OF ISSUES AND CONCLUSIONS

26. Both Mr Espie and Ms Mellsop acknowledged the sensitivity of the landscape and the potential for development to adversely affect rural character and the ONL. As already noted, the land over which rezoning is sought is not within the ONL, but lies at the toe of the Criffel Range immediately adjoining the boundary of the ONL.
27. Ms Mellsop opposed the Rural Lifestyle zones sought by JBIL on the basis that, while certain areas of the landscape have some capacity to absorb change, the Rural Lifestyle zone does not provide the level of control necessary to avoid adverse effects on the ONL and rural landscape character.
28. Mr Haworth's evidence on behalf of the further submitter relied upon the conclusion reached by Ms Mellsop in her assessment for the Council that Rural Lifestyle zoning would be inappropriate from a landscape perspective.¹¹
29. Mr Page's legal submissions for JBIL argued that, while the Rural Lifestyle Zone did not provide the Council with as much control over development of the site as would the Rural Zone, that was not the relevant test. Rather, in his submission, the appropriate zone was the one that achieved the objectives of the PDP with the least restriction on land use activities¹². Mr Page referred us to the policies of the Rural Lifestyle zone that manage landscape effects and submitted that they provided all the control that was required.
30. We discussed with Mr Espie whether the prominence of an existing Rural Lifestyle development further west on the lower terraces of the Criffel Range, on the other side of Mt Barker from the subject site, suggested that whatever the theory, the Rural Lifestyle zone did not provide enough control over such development in practice. Our view was,

¹¹ Evidence of J Haworth at paragraph 71, referring to Ms Mellsop's primary evidence at paragraph 8.72

¹² Relying on *Guthrie v Dunedin City Council* C174/2001

and is, that this existing development provides a poor advertisement for the merits of Rural Lifestyle developments on sensitive hillside sites. Mr Espie's response was that it depended on the site. He accepted that the existing Rural Lifestyle development to the west was widely visible but said that that was the product of a site that sloped towards and faced out over the valley. He described it as a topographical problem which meant that that site had considerably more effect than would development on the JBIL site.

31. Mr Espie's evidence in this regard did not accord with the impression we had formed during our site visit that even with the proposed BRA, areas of the upper terrace on the JBIL site would be both clearly visible and sensitive, because they would form the foreground of the ONL when viewed from the Smith Road (in particular) and Mt Barker Road. We asked that the Council address the visibility of that part of the site in reply. The correctness of the impression we had was confirmed by Ms Mellsop, who commented as follows:

"The answer is that some parts of this upper terrace are open to the north when viewed from Smiths [sic] Road. There are two small stream courses that cross the upper terrace within the rezoning area. To the east of the eastern stream the terrace is relatively level, but has a gentle north-facing slope at the toe of the mountain. This area is not open to Smiths [sic] Road. Between the two streams, the eastern half of the terrace is contained by a 'lip' and the predominant slope is to the south, away from the terrace edge. Further to the west and as far as the westernmost end of the zoning area, the upper terrace slopes gently to the north or north-east and is open to Smiths [sic] Road. This is demonstrated in Photographs 1 to 3 below. The approximate area of the upper terrace that slopes towards and is open to the north when viewed from Smiths [sic] Road is shown on the annotated map in Figure 1 below.

32. We have reproduced Ms Mellsop's Figure 1 below.



33. As it appears that Mr Espie was mistaken in his opinion regarding the visibility of up to half of the upper terrace, it seems to us that development of this elevated land could have similar adverse effects to the Rural Lifestyle development west of Mt Barker. Mr Espie's statement that that was not the case also causes us to question the reliability of his evidence in other respects.
34. While we accept that the eastern half of the upper terrace Ms Mellsop says would not be as visible, we are not convinced that visual effects able to be managed by the Rural Lifestyle zoning provisions even with the bespoke rules offered by the submitter. Important attributes of the upper terrace are the views and northeast-facing aspect. We anticipate that considerable efforts would be made to locate building platforms to maximise these features on the highest permissible elevations, which would be essentially at odds with the objectives and policies discussed above and, in particular, Policies 22.2.1.1 and 22.2.1.4. The proposed number of allotments within the site as a whole is also high enough to create the potential for dwellings to be clustered in relatively close proximity to one another in a way that would adversely affect landscape and amenity values (using the 1 ha minimum/2ha averaging provisions, noting Mr Vivian's evidence that any lot of 4 ha or greater in area is deemed to be 4 ha, including the balance site). We noted from our site visit and having also had the benefit of viewing the site from the top of Mt Iron, that a significant portion of the upper terrace including the eastern end is clearly visible from both viewpoints. A small glamping tent at the western end was also visible and while the glamping area is within the proposed BRA, the visibility of an object as small as a tent highlighted to us the sensitivity of the landscape and the necessity for rigorous assessment of any proposed building location and associated curtilages.

35. We have had regard to the detailed evidence of Mr Vivian in which he has addressed the relevant statutory matters, and considered the objectives and policies of the operative and proposed Otago RPS. He has commented on the Kai Tahu ki Otago Resource Management Plan. He has also assessed each of the applicable strategic objectives and policies of the PDP as well as the Chapter 6 tangata whenua and landscape objectives and policies, and Chapter 22 objectives, policies and rules for the Rural Lifestyle zone with reference to the section 32 tests of efficiency and effectiveness, benefits, costs and risks of acting/not acting.
36. We do not consider there to be any significant issues relating to site servicing, traffic generation, or natural hazard risks. While the potential loss of ecological values was identified by Mr Davis, we accept that this issue could be addressed by the imposition of the BRA as proposed but whether this is necessary depends on the inclusion or otherwise of the upper terrace.
37. We also note the legal submissions of Mr Page regarding formulation of bespoke provisions addressing the issues posed by specific sites. Mr Page submitted that the proliferation of bespoke rules is inherent in the PDP. He submitted in particular that notified Policies 6.3.15 and 6.3.16 in Chapter 6 are conflicting and compared with the ODP, the policy framework of the PDP is more aggressively against Rural Lifestyle development as a policy. However, under Policy 6.3.16, where there is a location that can accommodate change, in his submission, it can be enabled through the Rural Lifestyle zoning and associated methods. Given the complexity of the landscapes, site specific controls would be the end result, but those are inherent in protecting landscape values.
38. We have discussed the general issue of bespoke provisions in our Report 16 and agree that there is no legal or planning impediment to their adoption in an appropriate case, but for the other reasons set out here do not consider that a Rural Lifestyle zoning is the most appropriate method.
39. We have given weight to Mr Barr's point that Rural Lifestyle zoning creates an expectation that a certain level of development is anticipated and will be enabled by the Plan. As we have noted in our Report 16, this underlying premise, in many of the submissions made to it, was accepted by the Stream 4 Hearing Panel - that the zoning of the land represents a considered decision that the land is suitable for development for the identified purpose. In the case of the Rural Lifestyle Zone, this means development into rural lifestyle blocks at the density provided for in that zone.
40. This implied development right in the Rural Lifestyle zone leads us to the conclusion that it is inappropriate to create that expectation in relation to the upper terrace. We find that a significant portion of this terrace is visible from Mt Barker Road and Smith Road, as well as further afield, and do not consider that a potential density of development averaging one site per 2 ha (with an averaging provision that could see this land subdivided to a 1 ha minimum, by reducing the density on the lower areas) is appropriate. The site is in the foreground of the Criffel Range ONL and the likely adverse effects on landscape character and visual amenity from rural lifestyle development is an outcome which the PDP seeks to avoid - it is contrary to recommended Policy 6.3.26 in particular. We agree with Mr

Barr that the Rural Lifestyle zone provisions, even with the bespoke provisions proposed by the submitter's experts, are inadequate to avoid or mitigate adverse effects and that retention of Rural zoning for the upper terrace is the most appropriate method of achieving the Plan's objectives.

41. In relation to the submission point made by UCES that rezoning to Rural Lifestyle would be an inefficient use of land, we had no expert evidence on this particular matter, although at the hearing of the UCES's numerous submission points, Mr Haworth traversed a number of wide-ranging issues that included reference to urban dwelling capacity, efficient use of land and the need for an overall study of the Upper Clutha similar to that undertaken for the Wakatipu Basin. That said, we note that as the site is well removed from existing (and future) urban development, there is no conflict in terms of urban dwelling capacity and ultimately the choice is the landowner's as to how the land is to be utilised within the constraints of the Plan's provisions.
42. However, having concluded that Rural Lifestyle zoning of the upper terrace area of the site would be inappropriate, we find that rural living within the lower area is less likely to adversely affect landscape character and amenity values, or impact on the ONL, and that with this location being in front of (and not on) the terrace riser, Rural Lifestyle development could occur without the need for special controls to manage landscape effects.
43. In terms of Section 32AA of the Act, we conclude that maintaining the Rural zoning over the upper terrace and escarpment areas is the most appropriate way of achieving the Plan's objectives discussed throughout this report. However, enabling the lower and less visible land to be used for rural living at the density permitted by the Rural Lifestyle zone is efficient and effective in achieving Objective 22.2.1. There are no costs to the submitter or Council associated with the recommended zoning and there are benefits to the submitter of being able to diversify activities within its landholding. There are no risks of acting or not acting arising from uncertain or insufficient information.
44. Our recommendation is that the lower land following the northern edge of the proposed BRA be rezoned Rural Lifestyle as shown in Figure 2 below. In this area, no BRA or bespoke controls are required.

SUBMISSION #820 JEREMY BELL INVESTMENTS

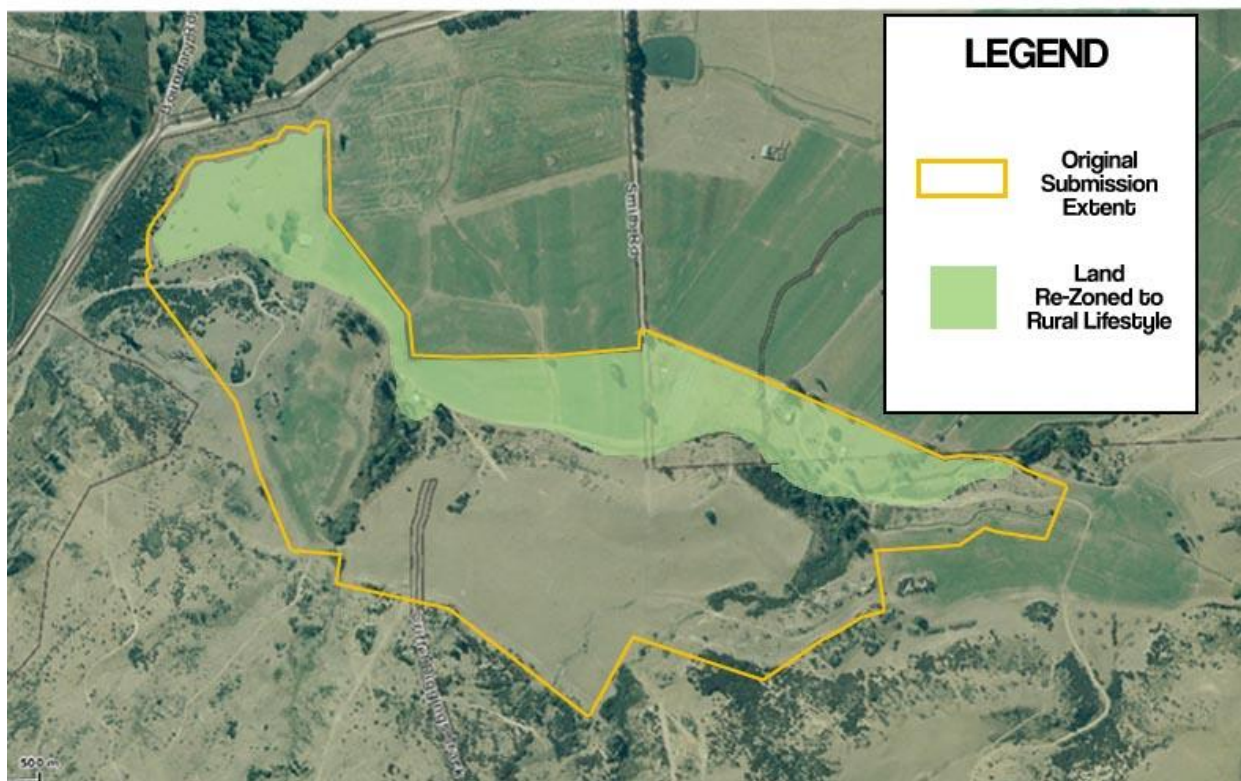


Figure 2: recommended area for rezoning to Rural Lifestyle

5. OVERALL CONCLUSIONS AND RECOMMENDATIONS

45. For the reasons set out in our report, we recommend that the submission of Jeremy Bell Investments Ltd be accepted in part, through the rezoning of a reduced area (compared with that sought) as Rural Lifestyle. The area recommended for rezoning is shown on Figure 2 above.
46. It follows that we recommend the further submission of Upper Clutha Environmental Society, opposing the principal submission likewise be accepted in part.

For the Hearing Panel

Trevor Robinson, Chair

Dated: 27 March 2018