

ORIGINAL

Decision No. C039/2006

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN EDWARD CASSIDY and CHRISTINE JOY
CASSIDY

(ENV C 0039/05)

Appellants

AND

QUEENSTOWN-LAKES DISTRICT
COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Alternate Environment Judge D F G Sheppard (presiding)

Environment Commissioner J D Rowan

Deputy Environment Commissioner R Grigg

HEARING at Queenstown on 27 and 28 February, and 1 March 2006.

APPEARANCES

E D Wylie QC for the appellants

G M Todd for the respondent

M E Parker for J R Williams and N W Martin (Section 274 parties)

W P Cafe in person and for Mrs C Cafe (Section 274 party)



DECISION

TABLE OF CONTENTS

Introduction	2
Proposed consent conditions	3
Primary legislation.....	4
The partly-operative district plan	5
District-wide issues	6
Rural areas.....	7
Heritage	27
Subdivision etc.....	30
Environmental effects of proposal.....	33
Actual and potential effects.....	33
Permitted baseline	34
Precedent effects	34
Cumulative effects.....	35
Judgement and determinations	36
Evaluative judgement.....	36
Beneficial effect.....	36
Adverse effects.....	37
Comparing beneficial and adverse effects	38
Determinations	39

Introduction

[1] In this case provisions of the district plan for conservation and enhancement of heritage values and for avoiding degradation of the natural pastoral character of the rural landscape by avoiding over-domestication have to be reconciled.

[2] On Mr and Mrs Cassidy's lifestyle property in a rural area on Lower Shotover Road in the Wakatipu Basin, a building has stood on a flat area near the road for about 50 years, where it has been used as a woolshed and for shearing sheep. The building had been erected on another property in the vicinity in the early 1900s for, and was used for many years as, a farm worker's cottage. It was moved to its present site in the 1950s, and has not been lived in on that site. Despite the use made of the building for some decades, the original cottage is capable of being restored.



[3] The Cassidys wish to re-orient and restore the cottage to create an additional residential unit; build a garage next to it; establish a visitor accommodation business for up to six paying guests in the additional residential unit; and subdivide the land by creating one lot of 3,119 square metres (proposed Lot 1) containing the additional residential unit (and identifying a residential building platform in that lot), reducing the area of the remainder of the land to 6.5 hectares.

[4] The proposal is a discretionary activity and on the resource-consent application being notified, submissions were lodged, some in opposition. The Queenstown-Lakes District Council appointed an independent hearings commissioner who, having heard the parties and their evidence, judged that the heritage and other benefits would be outweighed by adverse effects on landscape and rural amenity, and that the site is not appropriate. He refused consent both for the subdivision and land use applications.

[5] The Cassidys appealed against that decision, and their appeal was opposed by the District Council, by owners and occupiers of an adjoining property to the north Mr J R Williams and Ms N W Martin, and by the owners and occupier of another property in the vicinity, Mr W P and Mrs C Cafe.

Proposed consent conditions

[6] The appellants presented a set of consent conditions that they submitted should be imposed. It is appropriate that the Court consider the proposal on the basis that if the consents sought are granted, those conditions would be imposed.

[7] The proposed conditions include –

- (a) Registration on the title to Lot 1 (the 3,119-square-metre lot) of a consent notice for approval by a conservation architect of any extension or alterations to the restored cottage, or any new building within the residential building platform, to ensure the integrity of the restored cottage is maintained.
- (b) A building height restriction that any extension or alterations to the cottage or any new building within the residential building platform is not to exceed 5.5 metres in height above original ground level.



- (c) If the cottage has not been restored to the Council's satisfaction within 5 years, the two lots to be amalgamated and rights associated with the residential building platform surrendered.
- (d) External materials and colours of the cottage to be approved by a conservation architect approved by the Council's regulatory manager.
- (e) Clothesline, barbecue area and vehicle parking to be located on the eastern side of the cottage.
- (f) Landscaping to be carried out in accordance with a landscape concept plan.

[8] The Cassidys accepted as an alternative to the condition about amalgamating the lots that subdivision consent not be implemented until after the cottage has been restored. They also agreed that if consent is granted they would relinquish any existing right they may have to erect greenhouses on the land,¹ and undertook not to do so.

Primary legislation

[9] The appeal has to be decided in accordance with the Resource Management Act 1991. There was no dispute that, the resource-consent application having been made on 11 August 2004, and the appeal commenced on 17 February 2005, the appeal has to be decided under the Act as amended by the Resource Management Amendment Act 2003,² and as if the Resource Management Amendment Act 2005 had not been enacted.³

[10] The decision has to be made for the purpose of the Act: to promote the sustainable management of natural and physical resources.⁴ The meaning of the term sustainable management is described in section 5(2), and elaborated by provisions of sections 6, 7 and 8 of Part 2.

¹ Two greenhouses were contemplated, and perhaps required by condition, in resource consent granted in 1995 by which the existing dwelling on the land was authorised.

² See Resource Management Amendment Act 2003, s112.

³ See Resource Management Amendment Act 2005, s131(1)(b).

⁴ RMA s 5(1).



[11] Subject to Part 2, when considering a resource-consent application a consent authority is to have regard to any actual and potential effects on the environment of allowing the activity;⁵ to any relevant provisions of planning instruments;⁶ and to any other matter the consent authority considers relevant and reasonably necessary.⁷ When forming an opinion about effects on the environment, a consent authority may disregard an adverse effect if the plan permits an activity with that effect.⁸ In deciding an appeal, the Environment Court has the same power, duty and discretion as the consent authority.⁹

[12] In considering a resource-consent application for a discretionary activity, a consent authority has power to grant or refuse the application, and (if it grants the application) to impose conditions under section 108.¹⁰

[13] By section 108(1), except as expressly provided in that section, a resource consent may be granted on any condition that the consent authority considers appropriate.

[14] The relevant provisions of the partly operative district plan assist in considering the effects on the environment of allowing the activity. So we will identify the relevant provisions, and apply them to the circumstances of the proposal, before making our findings on the environmental effects of the activity.

The partly-operative district plan

[15] Although the district plan is only partly operative, there was no dispute that the provisions that are relevant to deciding this appeal are operative. Therefore the provisions of the transitional district plan are not relevant. No party contended that any other planning instrument under the Act is relevant, and we accept that. The site is in the Rural General zone of the partly-operative district plan (PODP).

⁵ RMA, s104(1)(a).

⁶ RMA, s 104(1)(b).

⁷ RMA, s104(1)(c).

⁸ RMA, s104(2).

⁹ RMA, s290(1).

¹⁰ RMA, s104B.



[16] Several parts of the PODP are relevant to this case:

- Part 4 (District-wide issues)
- Part 5 (Rural areas)
- Part 13 (Heritage)
- Part 15 (Subdivision etc).

District-wide issues

[17] Part 4 of the PODP addresses district-wide issues. Part 4.2 concerns landscape and visual amenity. It identifies classes of activity that have the potential to affect adversely on the landscape and visual amenity, including structures. It states—

The location and impact of new development must be managed to ensure that the changes that occur do so in a manner which respects the character of the landscape and avoids any adverse effects on the visual qualities of the landscape.¹¹

[18] The plan classifies landscapes, and there was no dispute that the site is in a visual amenity landscape. In respect of landscapes of that class, the plan states—

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.¹²

[19] The relevant objective is—

Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates adverse effect on landscape and visual amenity values.¹³

[20] The policies for achieving that objective in visual amenity landscapes include these—

(a) To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:

- ...
- visible from public roads

¹¹ PODP, para 4.2.3i.

¹² PODP, para 4.2.4(3).

¹³ PODP, para 4.2.5.



(b) To mitigate loss of or enhance natural character by appropriate planting and landscaping.

¹⁴

[21] The material policies in respect of structures are—

To preserve the visual coherence of:

...

(b) visual amenity landscapes

- by encouraging the use of existing natural topography and appropriately designed planting to screen development in order to maintain and enhance the naturalness of the environment; and

(c) all rural landscapes by

• ...

- providing for greater development setbacks from public roads to maintain and enhance amenity values associated with views from public roads.¹⁵

[22] The policy in respect of land use is—

To encourage land use in a manner which minimises adverse effects on the open character and visual coherence of the landscape.¹⁶

Rural areas

[23] Part 5 of the PODP concerns Rural areas. In identifying the issues in respect of protecting rural amenity values, it states—

All Rural Zones have particular amenity and environmental values, which are important to rural people. These include privacy, rural outlook, spaciousness, ease of access, clean air and, at times, quietness. However, because of the range of activities that necessarily occur in a rural area, there are levels of noise, dust, traffic generation and smell that are an integral part of rural amenity values. Provided that these effects do not constitute a genuine nuisance or a health risk, they must be accepted as anticipated consequences of rural amenity values.¹⁷

[24] One material objective is—

To protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.¹⁸

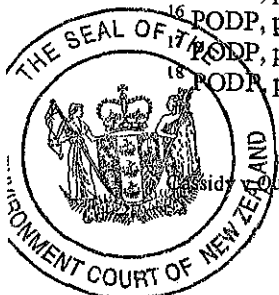
¹⁴ PODP, para 4.2.5.4.

¹⁵ PODP, para 4.2.5.9.

¹⁶ PODP, para 4.2.5.17.

¹⁷ PODP, para 5.1iii.

¹⁸ PODP, para 5.2, Objective 1.



[25] The policies for achieving that objective include these—

1.1 Consider fully the district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.

...

1.6 Avoid, remedy or mitigate adverse effects of development on the landscape values of the District.

1.7 Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with potential to absorb change.¹⁹

[26] Another material objective is—

Avoiding, remedying or mitigating adverse effects of activities on rural amenity.²⁰

[27] The policies for achieving that objective include—

3.3 To avoid, remedy or mitigate adverse effects of activities located in rural areas.

...

3.5 Ensure residential dwellings are set back from property boundaries, so as to avoid or mitigate adverse effects of activities on neighbouring properties.

[28] The rules prescribe assessment matters for consideration of resource-consent applications in the rural zones. These include landscape assessment criteria, involving analysis of the site and surrounding landscape, determination of landscape category, and application of assessment matters.

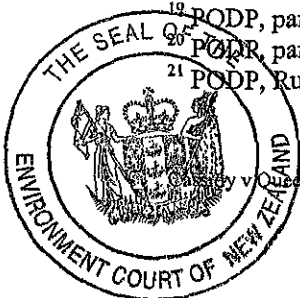
[29] In respect of the site of the Cassidys' proposal, there was no dispute that it is in the visual amenity landscape category. There is an extensive suite of assessment matters for visual amenity landscapes, and we apply such of the assessment matters for visual amenity landscapes that relate to the effects of the proposal to which regard is to be had.

[30] The first group of criteria relate to effects on natural and pastoral character.²¹ Item (i) applies where the site is adjacent to an Outstanding Natural Landscape or Feature. The Cassidys' site is at the foot of Slope Hill, which is an outstanding natural feature. We have to consider whether, and the extent to which, the visual effects of the development proposed would compromise any open character of that feature.

¹⁹ PODP, para 5.2.

²⁰ PODP, para 5.2, Objective 3.

²¹ PODP, Rule 5.4.2.2(3)(a).



[31] Two landscape experts gave evidence. Mr B Espie gave the opinion that the proposal would not affect the openness or naturalness of Slope Hill, and that no current view of that feature would be enclosed or blocked by the proposal. Ms R E Ramsay gave the opinion that the proposal would not result in any significant increase in effects on the open character of Slope Hill.

[32] Having ourselves visited the site (with the express consent of all parties), and observed it in relation to Slope Hill, we find those opinions acceptable. We find that the buildings and development would not compromise such open character as that aspect of Slope Hill may possess.

[33] Item (ii) calls for consideration of the extent to which the scale and nature of the development would compromise the natural or arcadian pastoral character of the surrounding visual amenity landscape.

[34] Mr Espie acknowledged that there are currently a number of dwellings in the vicinity already. However, he gave the opinion that the potential effects on natural and pastoral character would be avoided due to the design of the proposal, in that the finished building would appear entirely in accordance with the existing character of the vicinity.

[35] In cross-examination, he agreed that the landscape is at a relatively small scale, because of enclosure by topography and trees; that to travellers on Lower Shotover Road from south to north the change would be obvious; and that the type of appearance would change.

[36] Ms Ramsay gave the opinion that restoration of the shed to become a residential dwelling would alter the character of the site from one dominated by rural elements to one dominated by residential use, the nature of the development being further domestication of the landscape. She considered that the site of proposed Lot 1 is not of a scale that could absorb residential development while retaining rural amenity or natural character. The additional dwelling would detract from the rural character of the surrounding visual amenity landscape through increased density of residential (or potentially visitor accommodation) use.



[37] In cross-examination, this witness maintained that the proposed dwelling would detract from the rural character through increased density of residential or potentially visitor accommodation.

[38] We find that the scale and nature of the development that would result from the proposal would be that of a single, small dwelling sited where it would be visible from the road. Its appearance would be mitigated by existing and proposed planting, and the pastoral character of much of the whole site would be maintained. In summary, we find that the scale and nature of the development would compromise the natural and arcadian pastoral character of the visual amenity landscape, though only to a minor extent.

[39] Item (iii) calls for consideration of whether the development would degrade any natural or arcadian pastoral character of the landscape by causing over-domestication of the landscape.

[40] Mr Espie gave the opinion that the proposal would not over-domesticate the vicinity because the building will not appear out of context or non-rural. He remarked that one rural element in the landscape (an old house used as a shearing shed) would be replaced by another rural element (a traditional, small, rustic house). He considered that no degradation of the appreciation of the landscape would occur.

[41] Ms Ramsay gave the opinion that the proposed development would add further residential use to an area that has been the subject of development pressure.

[42] We find that the extent of domestication of the neighbourhood (including numerous future residential buildings on platforms already approved) is at the threshold of over-domestication. In our judgement, the revival of the cottage, the development associated with it, its use for visitor accommodation, and the potential effects of the proposed subdivision would amount to over-domestication and in that, it would degrade the natural or arcadian pastoral character of the landscape.

[43] The final item in this group of criteria requires consideration of whether any adverse effects identified in the other items can be avoided or mitigated by appropriate subdivision design and landscaping and/or by appropriate consent conditions, having regard to succeeding groups of criteria (visibility, form and density, cumulative effects, and rural amenities).



[44] In this regard, Mr Espie gave the opinion that the specific design and nature of the proposal avoid the potential adverse effects on character that creating a dwelling in a rural landscape can have.

[45] Ms Ramsay gave the opinion that it would be difficult to mitigate the effects of the dwelling given the location and the size of proposed Lot 1 (3,119 square metres). Although the cottage would be a historical reference, it would be another residential building added to an area that is losing rural character through over-domestication. She considered that the adverse effects could not be mitigated through subdivision design, building design or landscaping, as domestication is not solely design details, but the high number of residences in relation to the paddocks and natural landscape surrounding.

[46] In cross-examination, Ms Ramsay did not accept that the small size of the proposed residential activity, and the small frontage it would present, would mitigate the effects of the increase of density of residential uses in the area. Nor did the witness accept that tying the use of the building platform to restoration of the historic cottage would mitigate the increase in density; ~~and~~ nor that landscape planting (which she observed would take some time to mature) would mitigate it. Ms Ramsay did accept that placing domestic activities (barbecue, washing line, garage) behind the cottage, out of public sight, would be a mitigating factor to some degree; but she stated that involvement of a conservation architect on style and colour could not mitigate increase in density, though she accepted that it is a degree of mitigation. RS

[47] In considering the preceding items in this group of the assessment matters, we have found that the proposal would have adverse effects in that the scale and nature of the development would compromise the natural and arcadian pastoral character of the visual amenity landscape, but only to a minor extent; and that it would degrade the natural or arcadian pastoral character of the landscape by marginal over-domestication. We accept Ms Ramsay's opinion that those adverse effects cannot be avoided or effectively mitigated by subdivision design and landscaping or by appropriate consent conditions on visibility, form and density, cumulative effects, or rural amenities, because (valuable as they might be) they do not address the effects on natural and pastoral character of scale or nature of the development or over-domestication.



[48] The next group of criteria²² concerns visibility of the development that would result in loss of the natural or arcadian pastoral character in nine specified respects. Item (i) calls for consideration of the extent to which the development would be visible from any public road.

[49] Mr Espie stated that the cottage is highly visible from a 100-metre stretch of Lower Shotover Road, and remarked that the visibility of the building would not change as a result of the proposal. Ms Ramsay added that the site is also visible from Domain Road.

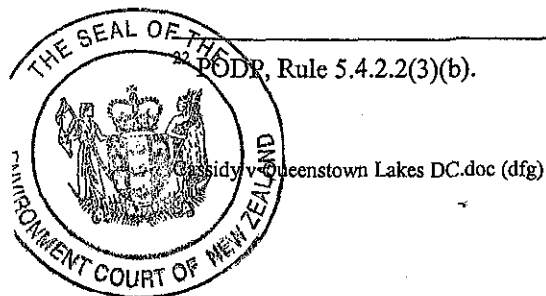
[50] We find that the re-oriented and restored cottage building and the proposed garage would be visible from a public road. Although, as Mr Espie remarked, the visibility of the building would not change, its obvious change of character from a rural building to a residential building having no association with current rural activity would result in a marginal loss of the natural or arcadian pastoral character of the landscape.

[51] Item (ii) calls for consideration of whether the development would be so visually prominent as to detract from public or private views otherwise characterised by natural or arcadian pastoral landscapes.

[52] Mr Espie gave the opinion that residential or visitor accommodation activities have potential to create visual effects on the landscape, citing the presence of cars and car-parking areas, and the increased presence of people on the landscape. He referred to proposals for a car-parking area, barbecue and washing line behind the cottage, and gave the opinion that no aspect of the proposal would appear visually prominent compared with the existing situation.

[53] Ms Ramsay observed that it would be difficult to mitigate the visual effects of the building, but she did not propose that it would be visually prominent.

[54] We have studied the plans in the light of our own observations of the building in its existing condition, location, and environs. We set aside for the purpose of this criterion the effects of existence of the re-oriented and restored cottage and garage and their intended uses. Focusing on the visual effects identified in the criterion, we do not



consider that the development would be so visually prominent as to detract from any public or private views otherwise characterised by natural or pastoral landscape.

[55] Item (iii) raises whether there is opportunity for screening or other mitigation (such as earthworks and new planting) which does not detract from existing topography or cultural plantings.

[56] New planting is proposed on the northern boundary of proposed Lot 1, and a stone wall along the road boundary. Mr Espie advised that the proposed additional landscaping is not intended to screen the building. Ms Ramsay considered that the landscaping would add to the level of domestication.

[57] That may be so, but it is not what this criterion calls for us to consider. We find that there is opportunity (which the appellants intend to take) of mitigation by new planting and a wall which would not detract from or obstruct views of the existing natural topography or cultural plantings.

[58] Item (iv) requires us to consider whether the development would result in loss of natural or arcadian pastoral character of the landscape having regard to whether, and the extent to which, the site and the wider visual amenity landscape of which it forms part is enclosed by any confining elements of topography or vegetation.

[59] Mr Espie gave evidence that the site is confined by mature vegetation to the north and the south which restricts views into the site to those from a relatively short stretch of road. Ms Ramsay added that to the east is the beginning of rising ground up to Slope Hill, and that there are two rows of fruit trees that form a boundary between proposed Lots 1 and 2.

[60] Neither expert considered that being located within those confining elements meant that the development would result in loss of natural or arcadian pastoral character of the landscape. We do not consider that it would.

[61] Save for Item (ix), the remaining items in this group are not directly applicable. Item (ix) raises whether the development constitutes sprawl of built development along the roads of the district with respect to areas of established development.



[62] Mr Espie gave the opinion that since the development does not involve any visible new structure, it would not constitute sprawl along Lower Shotover Road.

[63] In contrast, Ms Ramsay gave the opinion that the development would constitute sprawl along Lower Shotover Road as it involves a dwelling close to the road on a small site. This witness reported that the Domain Road triangle nearby is more intensively developed, and gave the opinion that further spread of intensification outside the triangle would further degrade the natural character of the landscape, reducing its rural natural or pastoral character.

[64] Asked in cross-examination whether the development could be sprawl when the building is already there, Ms Ramsay gave the opinion that sprawl relates to the further residential use along the road; that a rural building might not be perceived as sprawl; and acknowledged that one more residential building would not be as bad as half a hectare of houses²³ outside of town.

[65] With the understanding we have of the evidence from our observations of Lower Shotover Road and the Domain Road triangle, we find that the extent to which the proposed development would constitute sprawl along Lower Shotover Road would be minimal because of the low density.

[66] The third group of criteria²⁴ relates to the appropriateness of the form and density of development.

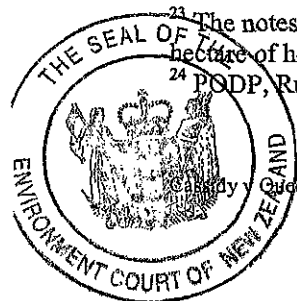
[67] Item (i) calls for consideration of the extent to which there is opportunity to utilise existing topography to locate development where it is not highly visible from public places.

[68] Mr Espie gave the opinion that existing topography cannot be used to mitigate the visibility of the cottage building, and Ms Ramsay agreed. So do we.

[69] Item (ii) relates to opportunity to aggregate built development to utilise common access ways and open space.

²³ The notes of evidence record 'half an hour of houses', but we take it that this was a mis-hearing of 'half a hectare of houses'.

²⁴ POP, Rule 5.4.2.2(3)(c).



[70] Mr Espie gave the opinion that re-orienting the cottage means that the development will be aggregated in one cluster, so that it would combine with the collection of rustic buildings on the Williams land immediately to the north of proposed Lot 1 to appear as one element in the landscape.

[71] Ms Ramsay remarked that although there is an existing farm gate and access to the Cassidy's residence, a new and separate access to the cottage is proposed. She also observed that there is little or no opportunity to aggregate open space due to the scale of the proposal and the size of proposed Lot 1.

[72] We do not accept that the proposed cottage and garage would be aggregated with built development on the Williams land to appear as one element in the landscape. They would be separated by even more planting than exists now. Nor do we accept that opportunity has been taken to aggregate development to utilise common access ways or open space. The proposed subdivision precludes a positive response to this criterion.

[73] Item (iii) in this group concerns the extent to which development would be concentrated in areas with higher potential to absorb development, retaining areas which are more sensitive in their natural or arcadian state.

[74] Mr Espie gave the opinion that the development would be located in an area with higher potential to absorb change than most others in the vicinity, primarily due to existing mature trees, the existence of the former cottage building, and the ability to link the development with the Williams development on the adjacent site.

[75] Ms Ramsay gave the opinion that the proposal does not tuck further development discreetly into the landscape while maintaining the pastoral and natural state. She considered that maintenance of what are essentially paddocks associated with rural living is important to maintenance of the visual amenity landscape aesthetic. Although the development would be small in scale it would be further intensification of residential use and further reduction of the areas recognisable as paddocks. She also gave the opinion that the site and surrounding landscape is particularly sensitive in that the small areas of open space, paddocks and pasture are vital in maintaining the perception of a rural pastoral and predominantly natural landscape character.



[76] We do not accept Mr Espie's point about linking with the Williams development, but we do accept his opinion that the site has higher potential to absorb development of the proposed scale. It would leave free of development areas on higher ground which are more sensitive, and eliminate the earlier consent for greenhouses there. Although we agree with Ms Ramsay's view (expressed in cross-examination) that greenhouses would not reduce the natural or arcadian state as much as the proposed development, the site approved for them is more sensitive in maintaining the perception of a rural, pastoral and predominantly natural character. In short, we find that the development would be concentrated in areas with higher potential to absorb development, retaining in their natural or arcadian pastoral state areas that are more sensitive.

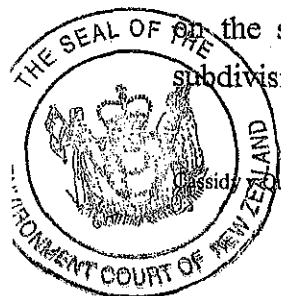
[77] Item (v) requires consideration of building-platform locations in clusters, alternative to any proposed that are separated from at least two others by more than 50 metres.

[78] Mr Espie stated that the existing cottage is within 50 metres of the collection of buildings on the Williams property, and gave the opinions that the proposal achieves the intention of this criterion, and that the site is the most appropriate location for the proposed activities.

[79] Ms Ramsay stated that the site is not located within existing development, as there are not more than two dwellings within 50 metres of the proposed building platform. She also gave the opinion that the proposal does not enable creation of a cluster, but rather would infill one of the paddocks that currently helps maintain the natural and pastoral character of the landscape. This witness also gave the opinion that there are not any alternative locations or methods for the development.

[80] We find that the proposed residential building platform is not located within existing development as defined. We also find that there is no alternative location within the prescribed radius or method where, or by which, the existing former cottage building could be restored on a site where it has heritage significance.

[81] Item (vi) raises the question of precluding subdivision and residential development on neighbouring land due to adverse cumulative effects from high densities on the site. We find that, in the context of the particular site, and the particular subdivision design and proposed conditions, the densities proposed would not be high.



[82] The fourth group of criteria²⁵ relate to cumulative effects of development on the landscape, with particular regard to inappropriate domestication, having particular regard to the preceding assessment matters, and to the nature and extent of existing development in the vicinity.

[83] In respect of items (i) and (ii), Mr Espie gave evidence of the extent of the existing development in the vicinity. On the same side of the Shotover River there are 22 existing dwellings, and more across the river. In addition, more than 10 further residential building platforms have been identified on the same side of the river.

[84] Ms Ramsay gave the opinion that further residential use, even if small in scale, would contribute to cumulative degradation of the natural and pastoral landscape.

[85] Consistent with our previous findings, we find that the cumulative effect of the proposed subdivision would be marginal inappropriate domestication of the landscape, having regard to the preceding assessment matters and to the nature and extent of existing development in the vicinity.

[86] Item (iii) of this group of assessment matters raises whether the existing development represents a threshold for the ability to absorb further change leading to further degradation or domestication.

[87] Mr Espie doubted that, because only some of the domestication in the vicinity is visible, and only some has any effect on an observer's appreciation of the landscape.

[88] Ms Ramsay gave the opinions that proposed development in the area exceeds the capacity of the landscape to absorb change, and that a future dwelling would further degrade the existing rural character.

[89] We find that the existing development in the vicinity represents a threshold in the ability of the landscape to absorb further change; but that the proposal is not likely to lead to further domestication of the landscape.

[90] Item (iv) requires us to address whether the proposal would visually compromise the existing natural and arcadian pastoral character of the landscape by exacerbating existing and potential adverse effects.

[91] Mr Espie accepted that the landscape in the vicinity is sensitive in terms of landscape character. He gave the opinion that the proposal would not further degrade that character, nor exacerbate the sometimes undesirable effects of existing development, because it will not add any new structure (except for the garage behind the cottage) and would not make the landscape any less rural, or any less in keeping with its existing character.

[92] Ms Ramsay stated that the contribution to the natural and pastoral character of the landscape made by the site in its existing state would be lost by the proposed development and accommodation activity. She gave the opinion that this would exacerbate the effects that the current density of development has on that character.

[93] Unlike the previous assessment matter, this one is focused on visual compromise of the landscape character. We have already stated our finding that the site is a part of the landscape that is able to absorb further change. Although it is at a threshold, the adverse effect of the proposal is over-domestication, in its effect on the landscape character, but its visual effect would be minor. So we find that the proposal would not visually compromise the landscape character.

[94] By Item (v) we are to address (in considering cumulative effects on the landscape character with particular regard to inappropriate domestication) the ability to contain development within discreet landscape units as defined by topographical features or other significant natural elements so as to check spread of development as a consequence of granting consent.

[95] Mr Espie observed that the site is well contained by existing mature planting. Ms Ramsay stated that development on Lower Shotover Road is either prominent due to proximity to the road, or prominent due to elevation on Slope Hill, so visually containing development relies largely on planting which, she remarked, is a transient containment.



[96] Item (v) is addressing cumulative effects on landscape character, particularly inappropriate domestication. A decision-maker is to consider the ability to contain development in one or other of the identified ways so as to check spread as a consequence of granting consent. This is similar to consideration of precedent effects.

[97] We find that the nature of the site is such that there is no ability to contain the proposed development within landscape units defined by topographic features. It would be contained within the natural elements of existing mature trees, although as Ms Ramsay correctly reminded us, they are transient. We do not consider that the existing trees would check spread of development.

[98] What would check spread of development would be the particular feature of the proposal on which the application relies: the existence on the site of the relic of a cottage of potential heritage value, and the proposal to restore it so that the heritage value is realised.

[99] So although we find that there is no ability to contain development so as to check further spread by topographical features or significant natural elements, we do not regard that as a relevant negative aspect of this proposal.

[100] Item (vi) concerns need for infrastructure consistent with urban landscapes. Mr Espie and Ms Ramsay both advised that no infrastructure of that kind is required for the proposal, and we accept that.

[101] Item (vii) requires consideration of whether the potential for cumulative adverse effects may be avoided, remedied or mitigated by covenant, consent notice or other legal instrument.

[102] Mr Espie gave the opinion that restrictions on further development of the site should be secured by appropriate legal instrument. Ms Ramsay referred to the difficulty and cost of the proposed restoration and landscaping, and did not dispute that they should be so secured. The consent conditions proposed on behalf of the Cassidys would require a consent notice to secure performance of constraints on extending or altering the restored cottage.



[103] Without at this stage considering the detail of the proposed consent notice, we find that the proposal, assessed by this item, is positive.

[104] The fifth group of criteria²⁶ relate to effects on rural amenities. Item (i) concerns the extent to which visual access to open space and views across arcadian pastoral landscapes from public roads and other public places is maintained, and from adjacent land where views are sought to be maintained.

[105] Mr Espie gave evidence that the proposal would not enclose any rural views, and that visual access across pastoral lands and from neighbouring properties would be unaffected. Ms Ramsay did not dispute that, although she remarked that the residential or visitor accommodation activity would change the character of the site.

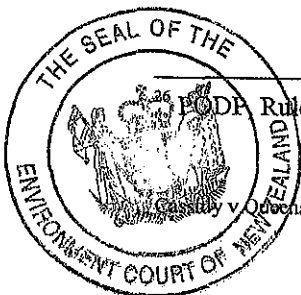
[106] However that is not the point of item (i), which focuses our attention on the whether views are maintained, not whether their character is unchanged. We find that the development would maintain and not hinder views of the kind referred to. The outcome of assessment by this item is positive.

[107] Item (ii) directs consideration of whether, and to what extent, the proposal would compromise the ability to undertake agricultural activities on surrounding land.

[108] Mr Espie considered it possible that the presence of a residential activity on the site could compromise the ability to undertake agricultural activities on proposed Lot 2, due to reverse sensitivity. He added that other sites on which agricultural activities may be undertaken are some distance from the cottage site.

[109] Ms Ramsay gave the opinion that loss of the existing accommodation for shearing and storage in respect of sheep grazing on the rest of the Cassidys' land would compromise the ability to undertake agricultural activities on it.

[110] We accept Mr Wylie's submission that the Court does not have responsibility for determining the relative efficiency of the proposed use of the natural and physical resources involved (land zoned Rural-General and an historic cottage for residential



PODP Rule 5.4.2.2(3)(e).

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accommodation) with other possible uses of those resources, such as grazing and a shearing shed.²⁷

[111] We accept that the loss of the existing shearing and storage shed, and the possibility of reverse sensitivity effects could compromise the ability to undertake agricultural activities on proposed Lot 2; but we judge that the extent of the compromise would not be significant.

[112] Item (iii) again raises the question of infrastructure consistent with urban landscapes; and we have already stated our finding that no infrastructure of that kind is required for the proposal.

[113] By Item (iv) we are to consider whether landscaping, including fencing and entrance ways, are consistent with traditional rural elements, particularly where they front public roads.

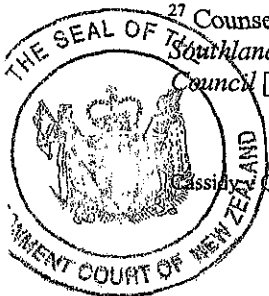
[114] Mr Espie gave the opinion that the landscape treatment of proposed Lot 1 is to be simple and traditionally rural in style. He described a proposal for a stacked schist wall along the road frontage.

[115] Ms Ramsay agreed that the landscaping, fencing, stone wall and entrance ways would be consistent with traditional rural elements. She remarked that the stone wall would strengthen the residential aesthetic of the site associated with use of the building as a dwelling and visitor accommodation.

[116] However that is not within the scope of this assessment item. We consider that with such an extensive range of assessment items, some of them overlapping, we are not called on to extend the consideration of any of them beyond its own scope.

[117] There is no difference between Mr Espie and Ms Ramsay that the proposed landscaping, including fencing and entrance ways, would be consistent with traditional rural elements. We accept their opinions, and so find.

²⁷ Counsel cited *Swindley v Waipa District Council* Environment Court Decision A75/94; *Campbell v Southland District Council* Environment Court Decision W114/94; and *Baker Boys v Christchurch City Council* [1998] NZRMA 433, paras 105,106.



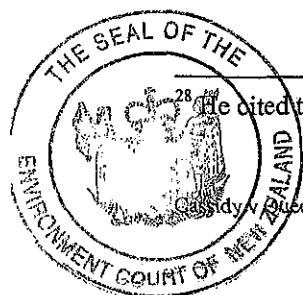
[118] Item (v) directs consideration of whether and to what extent buildings and building platforms are set back from property boundaries to avoid, remedy or mitigate the potential effects of new activities on the existing amenities of neighbouring properties.

[119] Mr Espie considered that in the PODP the characteristics of rural amenities are privacy, rural outlook, spaciousness, ease of access, clean air and at times, quietness.²⁸ He gave the opinion that overall, those characteristics would be maintained, and that the current rural amenities of occupiers of the Williams property would not be affected, as the privacy, outlook, spaciousness ease of access, clean air and quietness that are currently enjoyed by them would be unchanged.

[120] This witness considered whether the physical works could affect their rural amenities by increased presence of people, increased vehicle movements, parked cars, and noise. He gave the opinion that they would not, due to intervening dense trees and separation distance.

[121] Ms Ramsay acknowledged that the proposed cottage is to be set back 20 metres from the road boundary, and that the proposed residential building platform allows for a setback of at least 15 metres from the remaining boundaries. She also considered that in addition, existing and proposed vegetation would help filter views to and noise from the site, but considered that there would be aural clues of residential activity from the site associated with its residential use.

[122] We find that the extent to which the buildings and building platform are to be set back from property boundaries would be appropriate to avoid, remedy or mitigate the potential effects of the new activity on the existing amenities of neighbouring properties. We accept Ms Ramsay's opinion that occupiers of the Williams property might perceive aural clues of the occupation of the site for residential and visitor accommodation activities, but we do not accept that those changes would necessarily amount to a reduction of rural amenities. They would not necessarily be different in kind or degree from what they might perceive from occupation of the Cassidys' land ancillary to genuine rural activity.



²⁸ He cited the explanation for Objective 3 of Part 5.2

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[123] We have now assessed the proposal by all of the material assessment matters for visual amenity landscapes. There are also assessment matters described as general,²⁹ but no party relied on any of them. We have reviewed them, and find that none is material to the circumstances of this proposal.

[124] The assessment matters that we have been using are to enable the Council to implement the plan's policies and fulfil its functions and duties under the Act.³⁰ In deciding whether or not to grant consent, they are to be applied 'in addition to considering any other relevant matters.'³¹ The other relevant matters include the extent to which granting consent to the proposal would serve the policies for attaining the objectives of the plan. So the assessment matters do not lead to an arithmetic calculation of the outcome by counting the numbers of positive and negative assessments. Rather they are among the criteria by which an application is assessed in coming to a judgement whether or not granting consent would promote the sustainable management purpose of the Act.

[125] We now summarise the findings we have made in respect of the several assessment matters that we have applied:

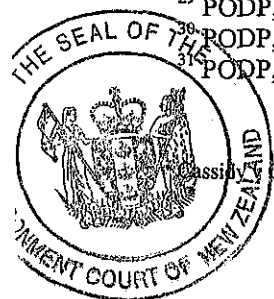
(a) Effects on natural and pastoral character:

- the proposal would to a minor extent have adverse effects in that the scale and nature of the development that would compromise the natural and arcadian pastoral character of the visual amenity landscape;
- that the proposal would degrade the natural or arcadian pastoral character of the landscape by marginal over-domestication;
- that those adverse effects cannot be avoided or effectively mitigated by subdivision design and landscaping or by appropriate consent conditions on visibility, form and density, cumulative effects, or rural amenities, because they do not address the effects on character of scale or nature of the development or over-domestication.

²⁹ PODP, para 5.4.2.3.

³⁰ PODP, para 5.4.1(i).

³¹ PODP, para 5.4.2.

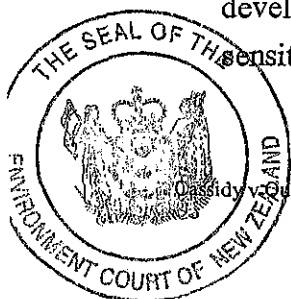


(b) Visibility of the development that would result in loss of the natural or arcadian pastoral character:

- The change of character from a rural building to a residential building with no association with current rural activity would result in a marginal loss of the natural and arcadian pastoral character of the landscape;
- The development would not be so visually prominent as to detract from any public or private views otherwise characterised by natural or pastoral landscape;
- There is opportunity (which the appellants intend to take) of mitigation by new planting and a wall which would not detract from or obstruct views of the existing natural topography or cultural plantings;
- The site being confined by mature vegetation to the north and the south which restricts views into the site to those from a relatively short stretch of road, and to the east by the beginning of rising ground up to Slope Hill, would not result in loss of natural or arcadian pastoral character of the landscape;
- Because of the low density, the extent to which the proposed development would constitute sprawl along Lower Shotover Road would be minimal.

(c) Appropriateness of the form and density of development:

- The existing topography cannot be used to mitigate the visibility of the cottage building;
- The proposed cottage and garage would not be aggregated with other built development to appear as one element in the landscape;
- Opportunity has not been taken to aggregate development to utilise common access ways or open space;
- The development would be located in an area with higher potential to absorb development, retaining in their natural or arcadian state areas which are more sensitive;



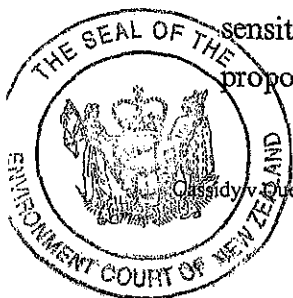
- The proposed residential building platform is not located within existing development as defined; and there is no alternative location within the prescribed radius or method where or by which the existing former cottage building could be restored on a site where it has heritage significance;
- In the context of the particular site, and the particular subdivision design and proposed conditions, the densities proposed would not be high.

(d) The cumulative effects of development on the landscape, with particular regard to inappropriate domestication:

- The cumulative effect of the proposed subdivision would be marginal inappropriate domestication of the landscape;
- The existing development in the vicinity represents a threshold in the ability of the landscape to absorb further change; and that the proposal is not likely to lead to further domestication of the landscape;
- The adverse effect of the proposal is over-domestication, and its visual effect on the landscape character would be minor, so the proposal would not visually compromise the landscape character;
- There is not ability to contain development so as to check further spread by topographical features or significant natural elements;
- No infrastructure of the kind referred to is required for the proposal;
- The potential for cumulative adverse effects may be avoided, remedied or mitigated by covenant, consent notice or other legal instrument.

(e) Rural amenities:

- That the development would maintain and not hinder views of the kind referred to;
- Loss of the existing shearing and storage shed, and the possibility of reverse sensitivity effects, could compromise the ability to undertake agricultural activities on proposed Lot 2, but not to a significant extent;



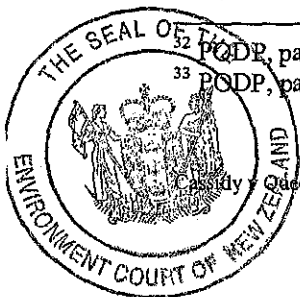
- The proposed landscaping, including fencing and entrance ways, would be consistent with traditional rural elements;
- The extent to which the buildings and building platform are to be set back from property boundaries would be appropriate to avoid, remedy or mitigate the potential effects of the new activity on the existing amenities of neighbouring properties.

[126] In summary, by those assessments the aspects of the proposal which are unfavourable are marginal over-domestication (compromising the natural or arcadian pastoral character of the landscape), and failure to aggregate development in a cluster and utilise common access-ways and open space.

[127] We now use those findings in considering the extent to which the proposal would serve the policies for attaining the objectives of the PODP.

[128] The relevant district-wide objective is avoiding, remedying or mitigating adverse effects on landscape and visual amenity values. On our findings, the adverse effects on landscape and visual amenity values would be mitigated and would be minor. On the district-wide policies in respect of visual amenity landscapes,³² the proposal would not preserve the visual coherence of the landscape by use of existing natural topography or screen planting; however the extent of setback from the public road would maintain amenity values associated with views from public roads, and adverse effects of the land use on the open character and visual coherence of the landscape would be minimal.

[129] Although the text of the relevant objectives for rural areas differs in detail from the district-wide objective, the substance is similar. We find that the adverse effects on the rural character and amenity and landscape value would be mitigated and would be minor. On the relevant rural policies,³³ the new element is preserving visual coherence of the landscape by locating structures in areas with potential to absorb change, and setting back of residential dwellings from property boundaries. In that regard, we have found that the development would be located in an area with higher potential to absorb development; and the extent to which the buildings would be set back from property boundaries would be appropriate to avoid, remedy or mitigate the potential effects of the proposed activity on neighbouring properties.



³² PODP, paras 4.2.5.9 and 4.2.5.17.

³³ PODP, para 5.2.

[130] In short, the proposal does not rate favourably on the assessment criteria because of marginal over-domestication (compromising the natural or arcadian pastoral character of the landscape), and failure to aggregate development in a cluster. Yet it rates well in not conflicting with the relevant policies. Overall, the proposed development and use is marginal: it might be granted, or it might be refused.

[131] We now continue to consider other parts of the PODP that may assist us in making a judgement.

Heritage

[132] Part 13 of the PODP concerns heritage.

[133] The relevant objective is—

The conservation and enhancement of the District's natural, physical and cultural heritage values, in order that the character and history of the District can be preserved.³⁴

[134] Of the policies for attaining that objective, the following is relevant—

To protect and enhance the heritage values of urban and rural areas and the built environment ...³⁵

[135] The list of environmental results anticipated, includes—

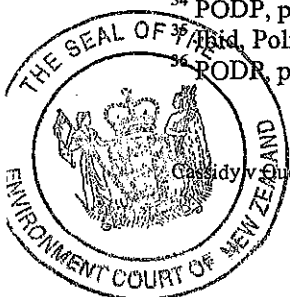
- (i) the preservation of a representative range of resources of heritage and cultural values important to the present and future generations of Queenstown-Lakes district's residents and visitors.
- (ii) The active and productive use of heritage buildings and sites, while ensuring the protection of the heritage values of those sites.
- (iii) Maintenance and enhancement of heritage items to enable their continued use and enjoyment.³⁶

[136] The rules of Part 13 apply to activities affecting heritage items that are identified and listed in an appendix to the plan. The building the subject of the Cassidys' application is not listed or identified in that way, so the rules are not applicable to the proposal. We observe that the purpose of the rules includes this passage—

³⁴ PODP, para 13.1.3, Objective 1.

³⁵ Ibid, Policy 1.1.

³⁶ PODP, para 13.1.4.



Incentives will be considered as part of the protection and retention process including acceptance of non-compliance with other rules for activities.³⁷

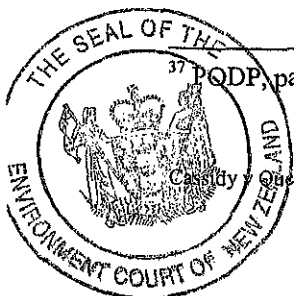
[137] It was the appellants' case that the Court should take into account the heritage value of restoration of the cottage as a positive effect of the proposal. Counsel contended that aside from this proposal, nothing prevents demolition of the building, or its falling into further disrepair.

[138] For the Council, Mr Todd remarked that nobody had sought to have the cottage protected by inclusion in the heritage inventory in the PODP.

[139] That theme was repeated by Mr Parker. He did not deny that the restoration of the cottage is a proper element to be considered in deciding the application, but contended that it amounts to a sugar-coating that should not comprise an overarching element in the assessment.

[140] The objectives, policies and anticipated environmental results of this part of the PODP are general in scope, and (unlike the rules) are not confined to items that are identified and listed in the plan. We hold that they extend to heritage items that are not so identified and listed, and whatever extent this proposal may serve those policies for attaining the objective should be taken into account in deciding the appeal. We understand Mr Parker's remarks about sugar-coating that should not comprise an overarching element in the assessment mean not to give it more weight than it deserves. We will review the evidence and make our findings on this topic, apply the objectives and policies quoted, and make a judgement about the extent to which this aspect of the proposal should influence the outcome.

[141] Mrs C J Cassidy stated that she and her husband have an interest in things historical, and were currently restoring an old cottage at Moeraki. She described their proposal to remove the later lean-to addition, re-orientate the cottage so that it faces the road, restore the cottage and fit it out for visitor accommodation, using as much of the original materials as possible, and if new elements are needed, using recycled materials if possible. They had sought advice on restoration of historic buildings, including that of Oakley Gray, architects.



³⁷ PODP, para 13.2.1.

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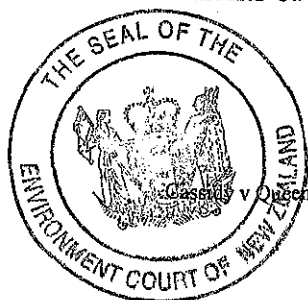
[142] Mr W J Brown gave evidence that between 1900 and 1905 his grandfather had built the cottage that the Cassidys now want to restore, and had lived in it until August 1923, bringing up his family of 6 children in it. The witness's uncle had lived in the cottage until 1955 or thereabouts, when it had been moved to its present position for use as a woolshed. Mr Brown stated that the cottage is important in the history of his family, and that he and other members of the family are keen to see it restored as proposed. He recounted family traditions concerning the building, and produced photographs.

[143] Mr J B Gray is an experienced heritage architect who reported that the cottage is remarkably straight and true with many examples of original features and fabric remaining or leaving good evidence of their previous form and location, and the structure being in good condition. He considered that it could be very successfully restored.

[144] Mr Gray gave the opinion although a humble worker's cottage, it has historical and social significance because of its known history and association with the Brown family; and architectural significance as a good example of this building type, of which there are probably few examples remaining within the Wakatipu Basin. It would be in context with what one would expect a rural-residential historic setting to be, and would considerably enhance its heritage significance.

[145] In cross-examination, Mr Gray acknowledged that the ICOMOS New Zealand Charter ascribes some value to the original site of a historical structure, and agreed that the current site (where the building has stood for 50 years) would have associated value. He considered that orientation so that the cottage would face the road would be normal for a building of the type.

[146] Mr A P Henderson, a resource management consultant, gave the opinion that further domestication of the rural environment and degradation of landscape character and amenity of the site and vicinity should not be tolerated simply because it is to be undertaken in a restored historic building. He considered that the rural-residential accommodation will differ from the original historic setting of the building, having no relationship with the larger site and contained within a small area defined by boundary planting. He considered that undue weight is placed by the Cassidys on the apparent benefits of the application.



[147] In cross-examination, Mr Henderson agreed that a rustic heritage cottage in an appropriate landscape setting is a feature that you do encounter in the rural environment, and comes within the description of pastoral in a poetic and picturesque sense contained in the plan.

[148] One of the section 274 parties, Mr J R Williams, gave his view that retention of the building as a woolshed is of relevant historical importance and provides one of the last examples of rural heritage of the region, having been used as such for over 50 years, approximately the same period as it had been a home. He questioned the heritage value of the proposal because of the change from its original site, incorrect claims of historical relevance, and the impossibility of creating a credible replica.

[149] On reviewing the evidence we do not accept Mr Williams attitude to the heritage value of the proposal. The fact that the building was removed from its original site does not deprive it of its heritage value;³⁸ and its association as the home of a long-standing local family has more heritage value than its more recent abuse as a woolshed and shearing shed. On the practicality of restoring and reconstructing the cottage after its original form, we prefer the expert opinion of Mr Gray, and find that it will be practicable to do so in a way that would revive its heritage value.

[150] Returning to the heritage objectives and policies of the PODP, we find that the proposal would be consistent with the policy of protecting and enhancing the heritage values of rural areas and the built environment, a policy for attaining the objective of conservation and enhancement of the District's cultural heritage values in order that the character and history of the district can be preserved. The proposal would assist in leading to the anticipated results of the preservation of a representative range of resources of heritage and cultural values, of active and productive use of heritage buildings while ensuring protection of those values, and maintenance and enhancement of heritage items to enable their continued use and enjoyment.

Subdivision etc

[151] Part 15 of the PODP is relevant to the proposed subdivision of the Cassidys' land. The introduction includes acknowledgement that—



³⁸ Cf *Minister of Defence v Waitakere City Council* Environment Court Decision A190/05.

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The principle feature of subdivision is that it produces a framework of land ownership which provides the basis for land use, development activities and conservation.³⁹

[152] In identifying the issues, the plan states of site suitability—

The underlying objective is to ensure that the lots created by subdivision are suitable for the anticipated use, that the land is of suitable size and shape, is able to be serviced and development and it is not subject to any unacceptable man-made or natural hazard.⁴⁰

[153] One of the objectives of this part of the PODP relates to amenity protection—

The maintenance or enhancement of the amenities of the built environment through the subdivision and development process.⁴¹

[154] The policies for attaining that objective include these—

To ensure lot sizes and dimensions to provide for the efficient and pleasant functioning of their anticipated land uses, and reflect the levels of open space and density of built development anticipated in each area.⁴²

To ensure subdivision patterns and the location, size and dimensions of lots in rural areas will not lead to a pattern of land uses which will adversely affect landscape, visual, cultural and other amenity values.⁴³

[155] In the explanation and statement of principle reasons, the plan states—

It is desirable to maintain and enhance the amenity values of areas, regardless of their land use, when subdivision takes place. This applies to the level and patterns of open space, plantings and built density desired in all areas of the district. This can be influenced by the pattern of subdivision, which leads to land-use activities such as the location of fencelines, shelterbelts, access roading and buildings.

The potential for subdivision patterns to influence the land use patterns should be considered at the time of subdivision consent, particular in rural areas.⁴⁴

[156] The introductory statement to the rules on subdivision acknowledges that subdivision of land for purposes of land tenure can have effects on land use expectations. In the Rural General zone all subdivision, and the location of residential building

³⁹ PODP, para 15.1.1.

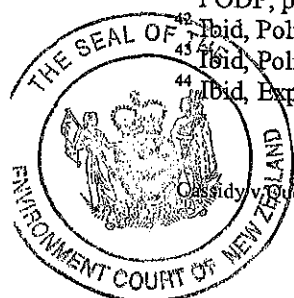
⁴⁰ PODP, para 15.1.2.i.

⁴¹ PODP, para 15.1.3, Objective 5.

⁴² Ibid, Policy 5.1.

⁴³ Ibid, Policy 2.

⁴⁴ Ibid, Explanation and Principal Reasons ...



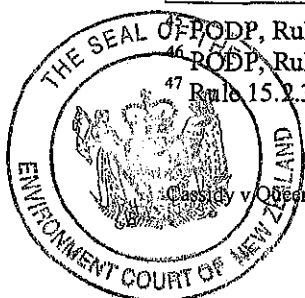
platforms, is a discretionary activity.⁴⁵ The rules contain assessment matters which are to be applied in considering whether or not to grant consent to such a subdivision,⁴⁶ and the relevant assessment matters are those prescribed by Rules 5.4.1 and 5.4.2.1 in Part 5. Regard is also to be had, though not limited to, the relevant assessment matters in Rules 5.4.2.2 and 5.4.2.3 (also in Part 5).⁴⁷

[157] Mrs Cassidy gave evidence that the land is owned by trustees of a family trust, and explained that she and her husband are seeking to subdivide the property and to locate the restored cottage on a separate title. She stated that she and her husband have no present intention of selling the land, either now or in the future, but had been advised that the trustees should not meet the cost of the restoration if they cannot also obtain separate title to the cottage property; that the trustees should obtain secure separate title so they have the opportunity to quit the land if the proposed venture is unsuccessful. So the subdivision is a fallback position, that would enable the trustees to sell the cottage to protect the other assets in the event that should become necessary. In cross-examination, Mrs Cassidy described the subdivision as an insurance policy for the trust.

[158] Mr Freeman stated that the subdivision ensures that the resultant site sizes can provide for the efficient functioning of rural living land uses, and that the proposed boundaries for Lot 1 are based on pragmatic use of feature that immediately surround the new residential unit.

[159] We understand the reasons why the Cassidys, and the trustees of their family trust, would like to subdivide the land as proposed. We find that the subdivision is not necessary for the protection and enhancement of the heritage building, as it could be restored and reconstructed, and used for visitor accommodation, without the property being subdivided. So unlike the aspects of the proposal for the work on the cottage, the use of it, and for the residential building platform, we hold that the heritage value should not be weighed with the subdivision.

[160] We bear in mind the Cassidys' offer that the subdivision consent be suspended and not implemented until after the restoration of the cottage and related landscaping has been completed.



⁴⁵ ROPD, Rule 15.2.3.3(vi).

⁴⁶ ROPD, Rules 15.2.2.8(ii), 15.2.3.5(ii) and 15.2.3.5(d).

⁴⁷ Rule 15.2.3.5(d)(i).

[161] The subdivision is a discretionary activity, and the decision whether to grant or refuse consent to it should be made according to the relevant objectives and policies of the PODP, rather than private interests.

[162] The second of the policies for attaining the objective is by ensuring that subdivision patterns and the location, size and dimensions of lots do not lead to a pattern of land uses which will adversely affect landscape, visual, cultural and other amenity values. The explanation and statement of principal reasons identifies built density as relevant to the amenity values of rural areas that can be influenced by the pattern of subdivision; and stipulates that the potential for subdivision patterns to influence land use patterns should be considered at the time of subdivision.

[163] We find that the proposed subdivision would not serve that policy, because creating the proposed 3,119-square-metre lot would lead to a rural-residential land use that would not conform with the rural policies against over-domestication and for clustering, and would lead to adverse effects on landscape, and on visual amenity values of the rural area. That contra-indication to the subdivision would not be avoided by suspending implementation of it until after the cottage has been restored and landscaping carried out.

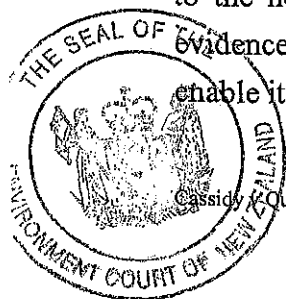
Environmental effects of proposal

[164] Having considered the proposal by reference to the relevant provisions of the PODP, we now have regard to any actual and potential effects on the environment of allowing the activity; then we consider the permitted baseline and whether there would be any precedent effects or cumulative effects.

Actual and potential effects

[165] From the findings we have made in considering the plan provisions, we identify the actual and potential effects of allowing the activity, both beneficial and adverse.

[166] We identify the beneficial effect of allowing the activity as being the contribution to the heritage values of the district by restoration of the historic cottage, preserving evidence of the character and history of the district, and making use of it that would enable its maintenance and continued enjoyment.



[167] We identify the adverse effects of allowing the activity as being that it would result in marginal over-domestication, and minor adverse effects on landscape values and visual amenity values due to not clustering development.

Permitted baseline

[168] A consent authority may disregard an adverse effect on an activity on the environment if the plan permits an activity with that effect.⁴⁸

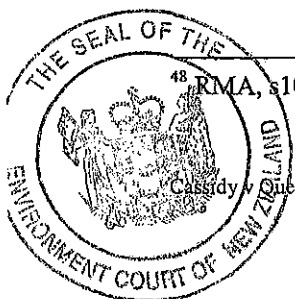
[169] Mr Freeman stated that by the PODP, structures not defined as buildings can be erected on the site without the need for consent provided they are less than 5 square metres in area and less than 2 metres in height above ground level.

[170] We do not accept that the PODP permits an activity with the adverse effect that the proposal would have. The effect of structures which are permitted by the plan are limited in scale, and would not necessarily conflict with landscape and visual amenity or rural character.

[171] In short, we do not consider it appropriate to disregard the adverse effects that we have found would follow allowing the proposal, because they are contrary to specific objectives and policies of the PODP.

Precedent effects

[172] Mr Williams and Ms Martin contended that the proposal would have a precedent effect that is undesirable. Mr Parker submitted that granting consent might lead to the perception that new development close to, and along Lower Shotover Road is permissible, if not encouraged (which would be emphasised by the unconsented access-way to the Cassidys' own dwelling). He urged that it is likely, rather than merely possible, that owners of other land may seek similar development close to the road. Mr Cafe made a similar point.



⁴⁸ RMA, s104(2).

[173] In response, Mr Wylie submitted that section 104(1) is not concerned with effects which allowing the activity might have on the fate of subsequent resource consent applications, referring to *Dye v Auckland Regional Council*⁴⁹ and to *Scurr v Queenstown Lakes District Council*.⁵⁰ Counsel submitted that the grant of a resource consent has no precedent effect in the strict sense because in factual terms no two applications are ever likely to be the same. The most that can be said is that the granting of consent to one may well have an influence on how other applications should be dealt with, depending on the extent of the similarities. A grant may create an expectation that a like application will be treated in like manner, but applications for discretionary activities must be assessed on a case-by-case basis.

[174] We accept Mr Wylie's submissions as correctly stating the law. We do not consider that the grant of consent to the Cassidys' application would have a precedent effect for three reasons:

- (a) The proposal is a discretionary activity, not a non-complying activity;
- (b) The decision depends on our findings of fact and degree on the beneficial heritage value of restoring the cottage; and
- (c) The decision depends on our findings on site-specific facts and degree on the relative gravity of the adverse factors of over-domestication and failure of clustering.

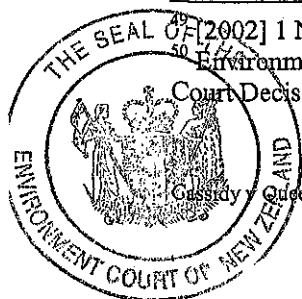
[175] Accordingly we do not accept the submission on behalf of the section 274 parties that consenting to the proposal would have an undesirable precedent effect.

Cumulative effects

[176] Mr Henderson gave the opinion that granting the application would give rise to adverse cumulative effects in that the residential development and introduction of trappings of domestication would further compound the effects of development in the vicinity such that there would be further degradation of the landscape.

⁴⁹ [2002] 1 NZLR 337; [2001] NZRMA 513 (CA).

⁵⁰ Environment Court Decision C060/05, para 43. See also *Campbell v Napier City Council* Environment Court Decision W067/05, paras 58-65.



[177] Mr Williams and Ms Martin contended that the proposal would have a cumulative adverse effect, changing the rural character of the vicinity to one where domestication is the major characteristic (albeit short of urban character), contrary to the policies and assessment criteria of the PODP. Mr Cafe urged that the current amount of domestication combined with the already approved but unbuilt housing in the district is already too much for the area to absorb.

[178] In reviewing the evidence and coming to our findings on over-domestication we have already taken into account the extent to which the proposal would have cumulative effects on those already existing. We found that that it would, although as a matter of degree it would be marginal. To take any further account of cumulative effects would risk double-counting.

Judgement and determinations

Evaluative judgement

[179] We can now make an evaluative judgement whether to grant or refuse the resource consents sought by the Cassidys. In doing so we have regard to the actual and potential effects (beneficial and adverse) on the environment of allowing the activity, and the relevant provisions of the PODP, and apply the relevant provisions of Part 2 of the Act.

Beneficial effect

[180] We have found that the proposal would have beneficial effects on the environment of restoration and reconstruction of the historic cottage. In considering the extent to which this positive environmental effect of the proposal should influence the outcome of the resource-consent application, we bear in mind that as well as serving a policy of the PODP, Parliament has recently amended the Resource Management Act⁵¹ by adding to the list of matters of national importance in section 6 paragraph (f): the protection of historic heritage from inappropriate subdivision, use and development.



⁵¹ Resource Management Amendment Act 2003, s 4.

[181] The term 'historic heritage' is defined so as to include physical resources that contribute to an understanding and appreciation of New Zealand's history and culture deriving from architectural and cultural qualities (among others) and includes historic structures.⁵²

[182] To the extent that the Cassidys seek to protect the historic cottage from further inappropriate use as shearing shed, or for casual storage, and from continued neglect, we do not accept Mr Henderson's opinion that further domestication of the rural environment and degradation of landscape character and amenity of the site and vicinity should not be tolerated merely because the applicants propose to restore an historic building.

[183] The restoration and reconstruction of the cottage would serve a plan policy for achieving an objective, would yield results of the kind anticipated, and would respond to Parliament's recent statement of the importance of protection of historic heritage.

[184] Applicants cannot 'buy approval' for development and uses that would not otherwise deserve approval in return for restoring historic buildings. But in genuine cases, the PODP contemplates incentives for the protection process, including even acceptance of non-compliance with other rules for activities. That is not an unlimited opportunity. But it responds to Mr Henderson's point about not tolerating further domestication involving a restored historic building. In some cases, the value of restoring a heritage building may outweigh some adverse environmental effects.

Adverse effects

[185] We have found that the proposal would (contrary to policies of the PODP) also have adverse effects on the environment; and that as matters of degree, the extent of the over-domestication of the landscape (compromising the natural or arcadian pastoral character of the landscape) would be marginal, and the failure to aggregate development in a cluster would be a minor adverse effect.

[186] We have also found that the proposed subdivision would be contrary to a policy of the PODP, because creating the proposed 3,119-square-metre lot would lead to a rural-residential land use that would not conform with the rural policies against over-



⁵² RMA, s2(1) as amended 2003.

Cassidy Queenstown Lakes DC.doc (dfg)

domestication and for clustering, and would lead to adverse effects on landscape, and on visual amenity values of the rural area. Those adverse effects of the subdivision would not be avoided by suspending implementation of it until after the cottage has been restored and landscaping carried out.

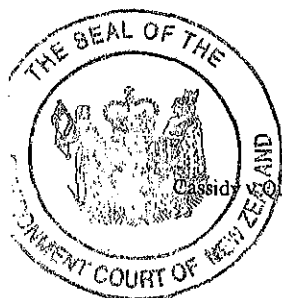
Comparing beneficial and adverse effects

[187] Although the cottage building may not have high heritage value, and is not listed in the PODP inventory, it is representative of the resources of heritage value of the district, and its faithful restoration and reconstruction would contribute to preserving evidence of the character and history of the district; and the proposed use of it would enable its maintenance and continued enjoyment.

[188] That is not to belittle the harm to the visual amenity landscape of over-domestication, or the value to it of clustering development. Yet tolerating those deficiencies (which in this case are marginal and minor) provides an incentive for protection and enhancement of the heritage building, without having to tolerate non-compliance with other rules for activities.

[189] Section 6 of the Act includes in the list of matters of national importance that are to be protected from inappropriate subdivision use and development the protection of outstanding landscapes, and the protection of historic heritage. It does not extend that status to visual amenity landscapes. As the landscape affected by this proposal is not classified as an outstanding landscape, we infer that where the relative extent of the historic heritage values and landscape values supports, greater influence in the judgement can be placed on the former, than on the adverse effects on landscape values—at least where the landscape is not in the outstanding category.

[190] However the subdivision is independent of the cottage restoration. Bearing in mind the importance placed by the objectives and policies of the PODP on maintaining landscape values and rural character and amenities, and the fact that the site is in a visual amenity landscape, it is our judgement that the application for subdivision consent should be refused.



[191] Our judgement is that the statutory purpose of promoting the sustainable management of natural and physical resources would be more effectively served by granting consent to the other elements of the proposal (re-orientation and restoration of the cottage, its use for visitor accommodation, and identification of the residential building platform).

[192] Because proposed conditions of consent were only presented at the appeal hearing, we are not confident that the subject matter of them is sufficiently comprehensive, and that the drafting of them is sufficiently mature, for us to impose them at this stage. We prefer to allow the parties to review them, and if possible reach agreement on a revised set of conditions based on those presented at the hearing and on the content of this decision. Of course the Court will receive timely submissions on any disputes about the conditions, and make decisions on them.

Determinations

[193] For those reasons, the Court makes the following determinations:

- (a) To the extent that the appellants seek subdivision consent, the appeal is disallowed, and the application refused.
- (b) In all other respects the appeal will be allowed to the extent that resource consent will be granted—
 - i. to re-orient and restore the cottage to create an additional residential unit;
 - ii. to build a garage behind it; and
 - iii. to establish a visitor accommodation business for up to six paying guests in the additional residential unit;

all subject to compliance with consent conditions to be settled by the Court.



[194] Leave is reserved for the parties to make written submissions on the content and drafting of consent conditions to be attached to the resource consents. If agreement cannot be reached, the appellants may lodge and serve written submissions, and any other party that wishes to may respond by written submissions lodged and served 10 working days later.

DATED at Auckland this *8th* day of *April* 2006.

For the Court:




D F G Sheppard
Alternate Environment Judge

Issued 10 APR 2006