

PLANNING REVIEW AND ASSESSMENT OF EFFECTS: WOONG TREE STAGE 2 EARTHWORKS

1. Summary

This Assessment of Effects should be read in conjunction with the overall assessment of Effects prepared by Tattico for the Woong Tree development.

This Assessment of Effects focuses on the Stage 2 earthworks. It finds that these earthworks exceed 2,500m² within which there is the reclamation of existing vineyard pond used for frost mitigation purposes. Therefore this proposal may trigger an earthworks consent under the Otago Regional Plan: Water (Plan Change 8).

The vineyard pond is an artificial pond fed by a groundwater bore authorised by a water take consent. It has traditionally provided a water supply for frost mitigation purposes associated with the Woong Tree Vineyard.

The bore supply to this pond is to be discontinued and the pond reclaimed.

In terms of Plan Change 8, this proposal is an area of earthworks in excess of 2,500m², but does not trigger any of the matters of discretion reserved for earthworks under the plan change.

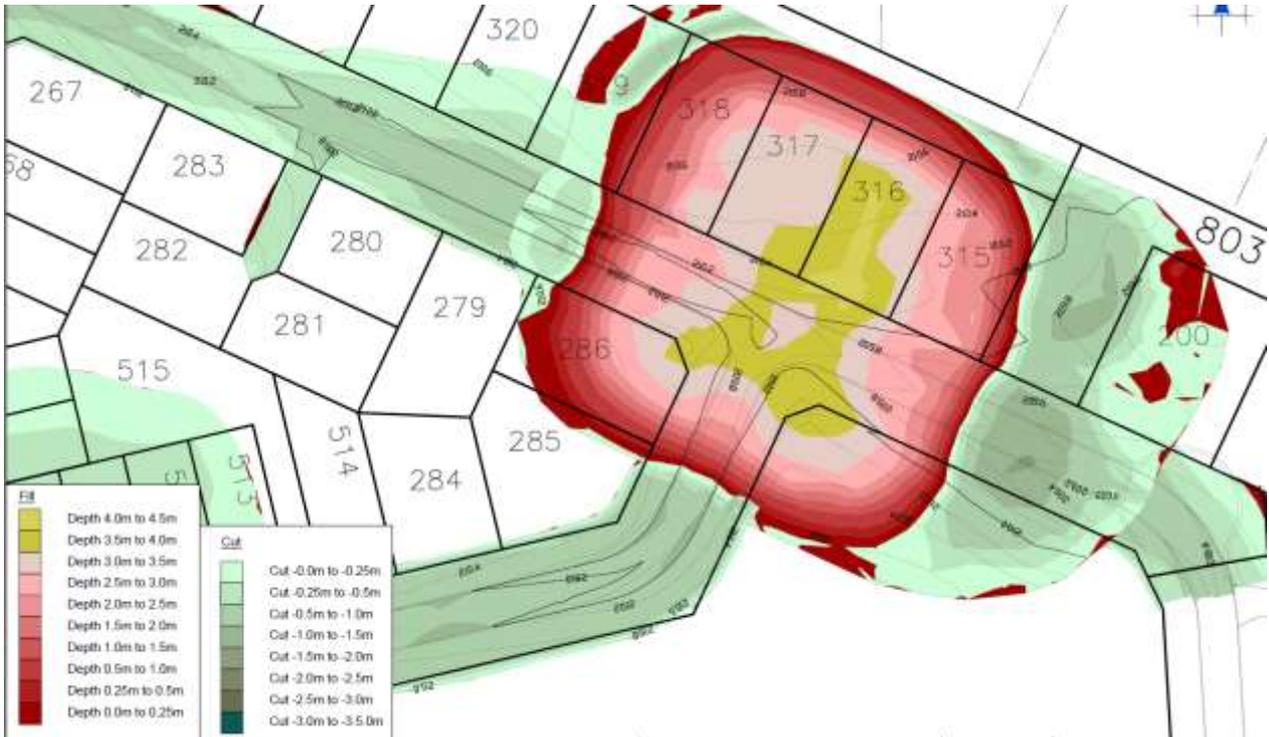
The primary effects of this development will be dust and noise during construction activity. All these matters can be successfully managed so that the effects of the development are less than minor.

This proposal meets the statutory tests of the Resource Management Act and the assessment criteria for Plan Change 8.

2. Proposal

Diagram 1 below is the earthworks plan prepared by Paterson Pitts Group for the Stage 2 development of Woong Tree. This is an extract from the plans prepared by Paterson Pitts group.

Diagram 1 : Stage 2 Earthworks



As described in the primary application, Stage 2 involves the conversion of an existing vineyard area into a residential subdivision.

The works involve:

- removal of the vine plants and associated infrastructure (completed);
- reclamation of the existing farm pond;
- creation of final land contours;
- formation of roading and the provision of inground infrastructure;
- creation of the greenway linkages and parkland which will vest with CODC;
- creation of residential lots and the associated subdivision of these lots.

3. Reasons for consent

Plan Change 8 to the Regional Plan: Water requires resource consent (restricted discretionary activity) where earthworks exceed 2,500m².

Plan Change 8 is working through the statutory process. It is currently on appeal before the Environment Court. The plan change has legal effect.

Rule 14.5.1.1 states:

14.5.1.1 The use of land, and the associated discharge of sediment into water or onto or into land where it may enter water, for earthworks for residential development is a *permitted* activity providing:

- (a) The area of exposed earth is no more than 2,500 m² in any 12-month period per landholding; and
- (b) Earthworks do not occur within 10 metres of a water body, a drain, a water race, or the coastal marine area; and
- (c) Exposed earth is stabilised upon completion of the earthworks to minimise erosion and avoid slope failure; and
- (d) Earthworks do not occur on contaminated or potentially contaminated land; and
- (e) Soil or debris from earthworks is not placed where it can enter a water body, a drain, a race or the coastal marine area; and
- (f) Earthworks do not result in flooding, erosion, land instability, subsidence or property damage at or beyond the boundary of the property where the earthworks occur; and
- (g) The discharge of sediment does not result in any of the following effects in receiving waters, after reasonable mixing:
 - (i) the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or
 - (ii) any conspicuous change in the colour or visual clarity;
or
 - (iii) any emission of objectionable odour; or
 - (iv) the rendering of fresh water unsuitable for consumption by farm animals; or
 - (v) any significant adverse effects on aquatic life.

The earthworks to reclaim the pond will be in excess of 2,500 m². Consent is therefore required for a restricted discretionary activity.

Rule 14.5.2 deals with restricted discretionary activity consents and states

14.5.2.1 Except as provided by Rule 14.5.1.1, the use of land, and the associated discharge of sediment into water or onto or into land where it may enter water, for earthworks for residential development is a restricted discretionary activity.

In considering any resource consent under this rule, the Otago Regional Council will restrict the exercise of its discretion to the following:

- (a) Any erosion, land instability, sedimentation or property damage resulting from the activities; and
- (b) Effectiveness of the proposed erosion and sediment control measures in reducing discharges of sediment to water or to land where it may enter water; and
- (c) Compliance with the *Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016 (Auckland Council Guideline Document GD2016/005)*; and
- (d) Any adverse effect on water quality, including cumulative effects, and consideration of trends in the quality of the receiving water body; and
- (e) Any adverse effect on any natural or human use value, and on use of the coastal marine area for contact recreation and seafood gathering; and
- (f) Measures to avoid, remedy or mitigate adverse effects on Kāi Tahu cultural and spiritual beliefs, values and uses.

4. Site considerations

There are no streams, wetlands, waterways or overland flow paths on the site.

There is an existing water take consent on the site which has been used to supply an artificial formed pond used for water storage for frost management purposes.

With the development of Wooing Tree, bulk water supply for frost management purposes is no longer required. The pond will be reclaimed and the ground level returned to its original contour.

No other stage of the Wooing Tree development will trigger any matter within the ambit of the Regional Plan: Water and Plan Change 8.

It is arguable that because this is an artificial pond fed by a groundwater take and the pond is to be reclaimed, then it does come within the scope of Plan Change 8.

Out of an abundance of caution therefore, this activity has been included as a reason for consent.

5. Matters of discretion

The Otago Regional Council has restricted its discretion to:

(a) "Any erosion, land instability, sedimentation or property damage resulting from the activities"

Comment: In this case this is relatively flat land. The proposal is to fill in a historic artificial pond. The land is returned to its natural contour. There is no issue of land stability. Filling the pond if anything will increase land stability. Having said that this is a relatively shallow agricultural pond which has been in place for some considerable time with no stability issues.

There are no streams or waterways on or adjacent to the property and hence no issues of erosion and sediment entering the waterways.

There is the potential for erosion by way of dust. However the proposed dust control measures do meet the air quality requirements of the Regional Plan: Air and can be successfully managed as they were for Stage 1 of the consent.

- (b) *“Effectiveness of the proposed erosion and sediment control measures producing discharges of sediment to water or to land where it may enter water”*

Comment: As stated above, there is no prospect of any sediment entering any water given the location of the site.

- (c) *“Compliance with the Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016:”*

Comment: The Auckland erosion and sediment control guidelines referred to address a best practice model in terms of managing the effects of silt and erosion, particularly in streams, wetlands, the coast, around waterbodies, and in environmentally sensitive areas.

Wooring Tree does not fit any of these criteria.

The guidelines do set appropriate controls for windblown erosion. These involve the same or similar methods for this type of development that Mr Garmonsway has put forward for Stage 1 and that are included within the suggested conditions for Stage 2 and subsequent stages.

This development would be consistent with the referenced guidelines.

- (d) *“Any adverse effect on water quality including cumulative effects and consideration of trends in the quality of the receiving waterbody”*

Comment: This application is well removed from any waterbody and has no effect on waterbodies.

- (e) *“Any adverse effect on any natural or human use value and on the use of the coastal marine area or for contact recreation and seafood gathering”*

Comment: This is largely not applicable. This development has no impact on the coast, Lake Dunstan or indeed any other waterway.

- (f) *“Measures to avoid, remedy or mitigate adverse effects on Kaitahu cultural and spiritual beliefs, values and uses”*

Comment: WTPDLP have consulted with Aukaha and worked through cultural issues.

There are no cultural issues associated with water on the site by virtue of the fact there are no waterbodies or overland flow paths associated with the site. Erosion through dust can be a factor. However, the conditions of this consent enable this matter to be successfully managed. The dust issues comply with the Regional Plan: Air.

There are matters of accidental discovery of archaeological features. These matters have been addressed with Aukaha and appropriate conditions are included in the application.

6. Effects of the activity

The effects of this activity (i.e. the earthworks required for the pond infilling) were extensively addressed in the application. They are not repeated here. The aspects below identify the core issues relevant to this reason for consent. This is in a context where the matters of discretion are very largely targeted at the impact of earthworks on waterbodies; and there are no waterbodies and therefore no such effects within this site.

(a) Dust Effects

The single biggest effect in terms of erosion given that the site is not adjacent to any waterbody or in an overland flow path, will be windblown effects of dust.

The effect could be two-fold. First is the impact on the site from the loss of soil. The second is the effect on neighbours who are impacted by the dust.

Mr Garmonsway, in his original Infrastructure Assessment, addressed issues of dust, erosion and mitigation.

These methods were applied and hence tested through the Stage 1 consent. They included a series of initiatives involving:

- staging the development so only portions of the land were exposed at any one time;
- sprinkler systems;
- water carts, particularly on heavily trafficked road areas;
- on site work practices.

These mitigation measures proved to be successful during Stage 1 and are proposed to be employed during Stage 2.

Consequently, these methods will reduce the impact of dust. This affects both loss of soil from the site, and the impact of dust on neighbours.

(b) Water effects

There are no streams, wetlands, waterbodies or overland flow paths on the site. There are no effects on waterbodies.

(c) Groundwater

Currently, the water bore and water take consent takes water from the groundwater and puts it in the pond. This aspect of the water take will simply cease. The pond will be emptied and then reclaimed. This is not a case where siltation and other matters can re-enter back into the aquifer.

For the avoidance of doubt, the water take consent is not being surrendered. It will be taken over by the Residents Society who will use it for irrigation purposes associated with the landscaping and vines within the Wooing Tree development. However, the functionality of the pond will cease.

(d) Overall effects

The overall effects of this activity are less than minor. The only potential effect is dust which can be successfully managed.

7. Statutory assessment

The analysis below assesses the relevant statutory provisions that apply to the Application as a whole.

(a) Clause 31, Sixth Schedule, COVID-19 Recovery (Fast-track Consenting) Act (CRFCA)

The RMA sets out the statutory framework within which resources are to be managed. The CRFCA incorporates elements of this framework into decisions under the Act, pursuant to clause 32(1) of schedule 6. Clause 31 sets out the matters for consideration when assessing the resource consent under the CRFCA.

Under clause 31(1), when considering an application for resource consent and any comments received, the Panel must, subject to Part 2 of the RMA and the purpose of the CRFCA, have regard to:

- (i) Any actual and potential effects on the environment of allowing the activity;
- (ii) Any measure proposed or agreed to by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity;
- (iii) any relevant provisions of any of the documents listed in clause 29(2), which includes a national environmental standard, national policy statement, New Zealand Coastal Policy Statement, regional policy statement, plan or proposed plan, and any planning document recognised by a relevant iwi authority and lodged with a local authority; and
- (iv) Any other matter the Panel considers relevant and reasonably necessary to determine the consent application.

A restricted discretionary consent is required for this activity. Section 104C of the RMA (which is relevant pursuant to clause 32 of the CRFCA) states:

104C Determination of applications for restricted discretionary activities

- (1) When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which—
 - (a) a discretion is restricted in national environmental standards or other regulations;
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan.
- (2) The consent authority may grant or refuse the application.
- (3) However, if it grants the application, the consent authority may impose conditions under [section 108](#) only for those matters over which—
 - (a) a discretion is restricted in national environmental standards or other regulations;
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan.

(b) Clause 31(1)(a) – Actual or potential effects on the environment

Clause 31(1)(a) requires the Panel to have regard to any actual or potential effects on the environment of allowing the activity.

Section 6 above sets out an assessment of the effects of this proposal. The conclusion is that the effects are less than minor. This activity has always been included in the Application, it had just not been listed in the reasons for consent.

As there are no adverse effects, there is no need for the applicant to propose an offset or compensatory measure to offset or compensate for adverse effects and to bring about positive effects.

(c) Clause 31(1)(c) and clause 29(2)(a) – National Environmental Standard

There are no environmental standards relevant to this activity.

(d) Clause 31(1)(c) and clause 29(2)(b) – Other regulations

There are no other regulations relevant to this activity.

(e) Clause 31(1)(c) and clauses 29(2)(c) and (d)– National Policy Statement and New Zealand Coastal Policy Statement

The National Policy Statement on Freshwater Management in theory applies given that this is a rule under the Regional Plan: Water. However, in this case, there are no streams, wetlands, waterbodies or overland flow paths on the site. Consequently, the National Policy Statement on Freshwater Management has no relevant policies, and in reality does not apply.

The New Zealand Coastal Policy Statement obviously does not apply.

(f) Clause 31(1)(c) and clause 29(2)(e) –Regional Policy Statement or Proposed Regional Policy Statement

The Otago Regional Council has an Operative Regional Policy Statement 2019 (Operative in Part). This addresses a number of issues.

Relevant matters of the Regional Policy Statement were addressed in the application and in the additional information requested by the Panel (see Attachment P to the Applicant’s response to request 1 for further information).

In terms of water quality, there are policies within the Statement addressing lakes, rivers and wetlands, water allocation, and soil erosion.

The most relevant policy is Policy 3.1.8 dealing with soil erosion. This states:

“Minimise soil erosion resulting from activities by undertaking all of the following:

(a) using appropriate erosion controls and soil conservation methods;

(b) maintaining vegetative cover on erosion prone land;

(c) remediating land where significant erosion has occurred;

(d) encouraging activities that enhance soil retention.”

Policies (b), (c) and (d) do not apply.

Policy (a) does apply.

The work that Mr Garmonsway has done in terms of dust management on the site will create appropriate erosion and soil conservation methods.

(g) Clause 31(1)(c) and clause 29(2)(f) – Regional Plan

The Regional Plan has relevant objectives relating to water quality. Plan Change 8 confirms these objectives, i.e. it does not change them.

Those objectives relate to:

- retaining flows in river so as to support aquatic life;

- providing for water needs of industries, the community and domestic supply;
- maintaining long-term ground water levels and water storage in the aquifer;
- minimising the conflict among those taking water;
- maximising the opportunity for diverse consumptive uses of water;
- minimising adverse effects on the quality of receiving water;
- minimising downstream adverse effects;
- minimising effects in the change of lake levels.

It can be seen from these objectives that none relate to or are relevant to this activity. They are targeted at activities which impact waterbodies or wetlands.

The associated policies similarly do not apply.

The most relevant objectives relate to water take from the aquifer. In this case, the site has an existing water take consent. There is no change sought to that consent. In actual fact, the bore water supply of water to the pond will cease. The water take consent may still be used for irrigation purposes on the land, but that will all be within the entitlements of the current consent.

The primary focus of Plan Change 8 and the Regional Plan: Water is to address matters of water quality and impacts of erosion and sedimentation on waterbodies. In this case there are none.

There is a potential from erosion through dust if the site was not appropriately managed. However, Mr Garmonsway has identified an operational management process that will successfully manage dust issues and mitigate this effect.

Cultural aspects have been worked through with Aukaha on behalf of the three runanga. The comments on this application by Ngai Tai confirm the issues raised by Aukaha. Successful management of dust addresses these issues.

While not directly part of this assessment, but to confirm, this application in response to the request from Aukaha also includes accidental discovery protocols relating to koiwi that may be found on the site through earthworks processes. These matters are already addressed and protected through the consent.

The comments in terms of the matters of discretion under section 5 also apply here.

8. Comments from parties

This project is proceeding under the CRFCA. Opportunities for involvement of identified parties are provided through that legislation.

There is no change to any water body or water course as part of this proposal. The proposal makes it clear that the vineyard is being significantly reduced to the buffer area and the land repurposed for residential. The reclamation of the pond and returning it to its natural contour is highlighted in the original application. There is no difference in what is proposed now to what was in the original application. It is simply out of an abundance of caution this additional reason for consent, being Plan Change 8 of the Regional Plan: Water and the reclamation of the farm pond, is included.

This would have no impact on the comments procedures completed by the Panel.