

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER Submission of Jet Boating New
Zealand Incorporated on the
Proposed Queenstown Lakes District
Plan

**STATEMENT OF EVIDENCE OF LUKE GERARD MCSORILEY FOR JET
BOATING NEW ZEALAND INCORPORATED
23 MAY 2016**

QUALIFICATIONS AND EXPERIENCE

- 1 My name is Luke Gerard McSoriley.
- 2 I hold the degree of Master of Resource and Environmental Planning from Massey University.
- 3 I have fifteen years of professional experience in the field of Resource Management Planning and am a Full Member of the New Zealand Planning Institute.
- 4 I have been employed as a Resource Management Planner by Opus International Consultants since March 2013. I am currently the Work Group Leader for Planning in the Invercargill Office of Opus. I am responsible for the provision of consulting services in resource management and planning to a range of public and private sector clients.
- 5 I confirm that I have read the 'Code of Conduct for Expert Witnesses' contained in the Environment Court Consolidated Practice Note 2014 and I agree to comply with it. I have complied with it in the preparation of this statement of evidence. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this statement.

SCOPE OF EVIDENCE

- 6 In my evidence I will discuss the following:
 - The Jet Boating New Zealand Incorporated (JBNZ) submission;
 - Comment on the Planners 42A recommending report; and
 - Provide concluding comments and clarify the relief that JBNZ seeks.

THE JBNZ SUBMISSION

- 7 Many of the submission points made by JBNZ were supportive of the proposed plan provisions that relate to the surface water activity of recreational jet boating within the Queenstown Lakes District. My evidence today is focussed on the JBNZ submission points that the reporting officer (Mr Barr) has recommended be rejected or those that have been misunderstood. I will also clarify the changes to the Proposed Plan provisions JBNZ seek through their submission.

PLANNERS 42A RECOMMENDING REPORT

- 8 Mr Barr refers to Jet Boating New Zealand Ltd in his recommending report. For clarification purposes the submission was made by Jet Boating New Zealand Incorporated (JBNZ). JBNZ is a not for profit association representing the interests of its recreational jet boating members.
- 9 Mr Barr refers uses to term 'development right' in his recommending report to describe the ODP provisions that provide for recreational jet boating in the Queenstown Lakes District. JBNZ's submission, Environment Court appeal relating to the ODP (see Appendix 2 C 109/2003) and current submissions on the PDP have not and do not seek 'development rights'. What JBNZ have sought and now seek in the interests of its jet boating members is to retain access and use of surface water for recreational jet boating.

Hawea River Prohibition

- 10 The key point I would like to raise in relation to the PDP rules relating to the Hawea River is one of interpretation of the existing ODP rule. Subsections (1) and (2) of Rule 5.3.3.5.i (a) of the ODP are not directly linked and function as standalone rules with Rule 5.3.3.5.i (a) (1) relating to the Hawea River Jet Sprint Course and Rule 5.3.3.5.i (a) (2) providing for motorised craft use on six days of the year.
- 11 This distinction is important as the existing ODP rules provide for motorised craft on the Hawea River on either the one lawfully established jet-sprint course (Rule

5.3.3.5.i (a) (1)) and motorised craft on the river six days a year (Rule 5.3.3.5.i (a) (2)) subject to conditions (i) to (vi). It appears Mr Barr may consider 5.3.3.5.i (a) (1) and (2) as the same rule when they are in fact distinct rules providing for different activities. Rule 5.3.3.5.i (a) (1) provides for motorised craft on the jet boat sprint course while Rule 5.3.3.5.i (a) (2) provides for use of the river by motorised craft on 6 days of the year.

- 12 Only the six days a year rule (Rule 5.3.3.5.i (a) (2)) is subject to conditions (i) to (vi). Recreational boating of the Hawea River is therefore currently permitted on one lawfully established jet boat sprint course and up to 6 days a year subject to compliance with conditions (i) to (vi).
- 13 JBNZ seek to retain this existing Rule in the PDP. Mr Barr's report recommends a complete prohibition on recreational jet boating on the Hawea River. I will now discuss and respond to the specific points Mr Barr has outlined as justification for recommending a complete prohibition on recreational jet boat activities on the Hawea River.
- 14 The recommending report (point 17.52) notes that the presence of the existing rule in the ODP is no automatic guarantee that it will be included in the PDP "especially if the development right has never been exercised". As detailed in Appendix 2 the 'development right' to undertake recreational jet boating on the Hawea River has been exercised. Recreational jet boating runs were held on the Hawea River in September 2012, April 2013 and April 2015.
- 15 I also note here that the presence of a Rule in an ODP in no way precludes its reuse in a PDP. In my experience existing Plan rules are often 'rolled over' into new Plans. I note most of the existing Plan provisions relating to recreational use of surface water have been. So it is unclear, particularly when no submission points have sought the change or supported it, why a blanket prohibition on the Hawea River is still recommended.
- 16 As Mr Barr notes the failure to demarcate of the Hawea River Jet Sprint Course on the District Plan Maps is not the fault of the submitter. But Mr Barr then considers this illustrates the rule has not been exercised. It is unclear how the

failure of the Council to demarcate the course on the relevant District Plan maps illustrates that the rule has not been exercised. JBNZ went through a lengthy and costly process to establish the 'right' to jet boat the River through the ODP submission and appeal process. The existing ODP rule provides for the right for recreational use of the Hawea River. In relation to the jet boat sprint course there is no requirement in the operative plan that it must be used.

- 17 The utilisation of the sprint course and holding of events is influenced by a range of factors. As a voluntary non-profit organisation the use of the course will be sporadic and there may be lengthy periods where it is not utilised. JBNZ wish to retain the ability to use Hawea River Jet Sprint Course and would like to see it demarcated on the relevant PDP maps as should have occurred in the ODP.
- 18 The 'cumbersome' qualifiers and exemptions Mr Barr refers to were put in place via an Environment Court decision following a detailed hearing and appeal process. In relation to recreational jet boating runs under Rule 5.3.3.5.i (a) (2) as noted above at paragraph 14 the process has been utilised and has worked well.
- 19 JBNZ have no control over access and use of the jet sprint facility at Oxbow Lake which is privately owned. The ODP Rules and the jet sprint course on the Hawea River provide recreational jet boat users with the ability access and race on a sprint course located on a publicly owned recreation reserve.
- 20 JBNZ have indicated that they were not aware of the changes made to the Albert Town Recreation Reserve Management Plan (ATTRMP) in the form of Policy 14. The Hawea Jet Boat Sprint Course was constructed by members of JBNZ. It is not clear why a specific policy discouraging recreational jet boating over other recreational uses has been adopted. The failure of Council to demarcate the Hawea Jet Boat Sprint Course on the relevant District Plan maps may have contributed to the failure to recognise this existing right under the ODP.
- 21 Policy 14 of the ATTRMP conflicts with the ODP and the Environment Court decision that led to the existing rule providing for recreational jet boating on the Hawea Jet Boat Sprint Course. The purpose of the Recreation Reserves under the Reserves Management Act 1977 provide areas for recreational and sporting

activities and the use of the Hawea Jet Boat Sprint Course is consistent with this.

- 22 It is not clear in what capacity Mr Barr is referring to Central Otago Whitewater's 'expression of interest' in the Hawea River Jet Sprint Course. Central Otago Whitewater not made a specific submission on the PDP in regard to this point. We note that no persons have made submissions objecting to or commenting on the Hawea River Jet Sprint Course. In my opinion no regard should be had to this 'expression of interest' as no formal submissions have been made and it is not a justification for rejection of the submissions of JBNZ on the PDP.
- 23 As noted above Policy 14 of the ATRRMP conflicts with the ODP rules providing for use of the Hawea Jet Boat Sprint Course. JBNZ are concerned that the Council has formulated a Reserve Management Plan that conflicts with the District Plan. JBNZ intend to submit on the ATRRMP when it is next reviewed to seek a change to the policy.
- 24 In summary I see no valid resource management reasons for the proposed prohibition on recreational jet boat use of the Hawea River. In my opinion the rules approach of the ODP should be carried over into the PDP. No submitters have objected to the relief sought by JBNZ and I see no resource management based justification for the prohibition.

Hunter River

- 25 Mr Barr considers that the notified rule is 'carried over' from Rule 5.3.3.5i (f) of the Operative ODP. We wish to clarify that JBNZ do not seek any changes to the PDP provisions relating to the Hunter River.

RELIEF SOUGHT

- 26 JBNZ seek retention of the existing ODP rules that provide for use of the Hawea Jet Boat Sprint Course for recreational jet boating activity and their inclusion in the PDP. JBNZ also seek the demarcation of the Hawea Jet Boat Sprint Course on the relevant PDP planning maps. JBNZ seek the adoption of the existing ODP

rules in the PDP.

- 27 JBNZ seek retention of the right to undertake recreational jet boating activity on the Hawea River up to 6 times a year (subject to conditions) as provided for under the existing ODP rules.

CONCLUDING COMMENTS

- 28 Retention of the right to undertake recreational jet boating activities on the Hawea River will enable people and the recreational jet boating community to provide for their social well-being and for their health and safety. In my opinion the changes sought by JBNZ are consistent with sustainable management of the natural and physical resources.

Dated at Invercargill this 23rd day of May 2016



Luke McSoriley (MNZPI)

RESOURCE MANAGEMENT PLANNER

Opus International Consultants

RURAL AREAS - RULES

5

- (a) Structures such as gates, fencing and stiles necessary to facilitate public access or necessary for farming purposes; and
- (b) Works to enable community assets such as water tanks consented through the designation process.

5.3.3.5 Prohibited Activities

The following shall be Prohibited Activities:

i Surface of Lakes and Rivers

The use of the following lakes and rivers for the following specified activities shall be Prohibited Activities, except where the activities are for emergency search and rescue, hydrological survey, public scientific research, resource management monitoring and water weed control, and for access to adjoining land for farming activities

- (a) **Hawea River** - Motorised craft, except:
 - (1) on the one lawfully established jet-sprint course; as shown on the District Plan Maps
 - (2) on six days in each year (including at least four (4) days in the months January to April, November and December) provided the following conditions are met:
 - (i) The Jet Boat Association of New Zealand ("JBANZ") (JBANZ or one of the Otago and Southland Branches as its delegate) administers the activity on each day;
 - (ii) The prior written approval of Central Otago Whitewater Inc is obtained if that organisation is satisfied that none of its member user groups are organising activities on the relevant days; and
 - (iii) JBANZ gives two (2) calendar months written notice to the Council's Harbour-Master of both the proposed dates and the proposed operating schedule;

(iv) The Council's Harbour-Master satisfies himself that none of the regular kayaking, rafting or other whitewater (non-motorised) river user groups or institutions (not members of Central Otago Whitewater Inc) were intending to use the Hawea River on that day, and issues an approved operating schedule;

(v) JBANZ carries out, at its expense, public notification on two occasions 14 and 7 days before the proposed jet boating;

(vi) Public notification for the purposes of (v) means a public notice with double-size font heading in both the Otago Daily Times and the Southland Times, and written notices posted at the regular entry points to the Hawea River.

(b) **Lake Hayes** - Commercial boating activities.

(c) **Dart and Rees Rivers** - Motorised craft on any tributary of the rivers (except the Rockburn tributary of the Dart River) or upstream of Muddy Creek on the Rees River; and

(d) Motorised craft on the Rees River during the months of May to October inclusive.

(e) **Makarora, Young and Wilkin Rivers** - Motorised craft on the Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River.

(f) **Dingle Burn, Timaru Creek** and the tributaries of the Hunter River - Motorised craft on the Dingle Burn, Timaru Creek or any tributary of the Hunter River; and

- Motorised craft on the Hunter River during the months of May to October inclusive.

(g) **Motatapu and Matukituki Rivers** - Motorised craft on the Motatapu River or any tributary of the Matukituki River.

(h) **Ciutha River** - More than six jet boat race days per year.

Rule 21.5.44.1 of the Proposed District Plan

Table 9	Activities and Standards for Activities on the Surface of Lakes and Rivers	Activity Status
21.5.44	<p>Recreational and commercial boating activities The use of motorised craft on the following lakes and rivers is prohibited, except where the activities are for emergency search and rescue, hydrological survey, public scientific research, resource management monitoring or water weed control, or for access to adjoining land for farming activities.</p> <p>21.5.44.1 Hawea River.</p> <p>21.5.44.2 Commercial boating activities on Lake Hayes.</p> <p>21.5.44.3 Any tributary of the Dart and Rees rivers (except the Rockburn tributary of the Dart River) or upstream of Muddy Creek on the Rees River.</p> <p>21.5.44.4 Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River.</p> <p>21.5.44.5 Dingle Burn and Timaru Creek.</p> <p>21.5.44.6 The tributaries of the Hunter River.</p> <p>21.5.44.7 Hunter River during the months of May to October inclusive.</p> <p>21.5.44.8 Motatapu River.</p> <p>21.5.44.9 Any tributary of the Matukituki River.</p> <p>21.5.44.10 Clutha River - More than six jet boat race days per year as allowed by Rule 21.5.38.</p>	PR
	<p>Standards: Surface of Lakes and Rivers</p>	Non-compliance Status
21.5.45	<p>Boating craft used for Accommodation Boating craft on the surface of the lakes and rivers used for accommodation, unless:</p> <p>21.5.45.1 the craft is only used for overnight recreational accommodation; and</p> <p>21.5.45.2 the craft is not used as part of any commercial activity; and</p> <p>21.5.45.3 all effluent is contained on board the craft and removed.</p>	NC

Appendix 2 – Environment Court Decision C109/2003

Decision No. C 109 /2003

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a reference under Clause 14 of the First
Schedule of the Resource Management Act
1991

BETWEEN

NEW ZEALAND JET BOAT
ASSOCIATION – OTAGO BRANCH

(RMA 1328/98)

and

NEW ZEALAND JET BOAT
ASSOCIATION – SOUTHLAND
BRANCH

(RMA 1403/98)

Referrers

AND

QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson (presiding)

Environment Commissioner C E Manning

Deputy Environment Commissioner R Grigg

HEARING at QUEENSTOWN on 27, 28 May 2003



APPEARANCES

Mr R Ibbotson for the New Zealand Jet Boat Association - Otago Branch and the
New Zealand Jet Boat Association - Southland Branch (referrers)

Mr N S Marquet for the Queenstown Lakes District Council (respondent) and for the
Glenorchy Community Association (section 271A party)

DECISION

[1] This case concerns access for motorised craft to three rivers within the Queenstown Lakes District: the Hawea River, the Rees River and the Rockburn, a tributary of the Dart River. By its decisions on the proposed district plan, the Queenstown Lakes District Council included Rule 5.3.3.5 which states:

The following shall be Prohibited Activities:

i **Surface of Lakes and Rivers**

The use of the following lakes and rivers for the following specified activities shall be Prohibited Activities, except where the activities are for emergency search and rescues, hydrological survey, public scientific research, resource management monitoring and water weed control, and for access to adjoining land for farming activities

(a) **Hawea River** - Motorised craft, except on the one lawfully established jet-sprint course, as shown on the District Plan Maps.

...

(c) **Dart and Rees Rivers** - Motorised craft on any tributary of the rivers or upstream of the Rees River road bridge; and

- Motorised craft on the Rees River during the months of May to October inclusive.

...

[2] By the time the hearing was reached, the differences between the parties had been substantially reduced and the referrers now seek:



- (1) that an exception be written into the rule permitting six scheduled days of boating (for motorised craft) on the Hawea River;
- (2) that the words “upstream of the Rees River road bridge” be deleted from clause (c), and that the word “October” be replaced by the word “September”;
- (3) that an exception to the prohibition on access to the tributaries of the Dart be made in the case of the Rockburn.

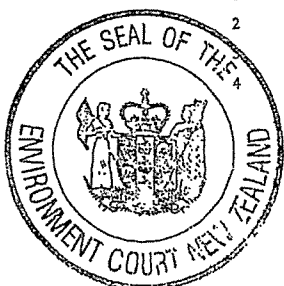
The relief sought is opposed by the respondent and the Glenorchy Community Association which appeared under section 271A of the Resource Management Act 1991 (“the RMA” or “the Act”). The latter did not call evidence, but adopted the case of the Council.

[3] Because this proceeding is a reference, we have to decide it in accordance with¹ (relevantly):

- A territorial authority’s function under section 31 – in this case the control of effects of activities in relation to the surface of water in rivers²;
- The provisions of Part II;
- Section 32.

There is one relevant instrument to have regard to³: the Sports Fish and Game Management Plan for Otago (“the F & G Plan”). Finally the rules we decide on must not be inconsistent with⁴ the Otago Regional Policy Statement. As it happens the relevant

¹ Section 74(1) of the RMA.
² Section 31(e) of the RMA.
 Section 74(2)(b)(i) of the RMA.
 Section 75(2)(c)(ii) of the RMA.



objectives⁵ in that document merely restate matters of national importance in section 6 of the RMA so independent questions of inconsistency do not arise.

[4] Of the three matters directing us, it is clear first that this proceeding is within jurisdiction since it relates to the activities of motorised craft (which in this District's rivers tends to mean jet boats) on the surface of various rivers. We will consider Part II of the Act shortly since matters of national importance under section 6 have to be recognised and provided for. As for section 32 there was no economic evidence in this case, and the principal points argued related to section 32(1)(a)(iii) under which we have to have regard to (relevantly):

- (iii) The reasons for and against adopting the proposed ... rule ... and the principal alternative means available ...

[5] In ascertaining which proposed rule better achieves the purpose of the Act we have to recognise and provide for several relevant matters of national importance⁶:

- (a) The preservation of the natural character of ... rivers and their margins, and the protection of them from inappropriate use, and development:
- (b) The protection of outstanding natural ... landscapes from inappropriate ... use, and development:
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

[6] It was the referrers' case that the Council, in seeking to maintain the prohibition on jet boats in the three rivers, had not recognised and provided for "the maintenance and enhancement of public access to and along ... rivers". Ms K Jameson, the National Rivers Officer for Jet Boating New Zealand gave evidence that jet boats provide access to areas that would normally be inaccessible. She noted the opportunities for those too old or too



⁵
⁶ Otago Regional Policy Statement Objectives 6.4.7 and 6.4.8. Section 6 of the RMA.

young to access areas by other means and for those with mobility problems. Mr E McKenzie, the Rivers Officer of the Southland Branch of the Jet Boat Association, who is himself paralysed from the waist down, also referred to section 6(d) of the Act and told us that recreational jet boating gave him the opportunity to experience environments that he would be unable to reach by any other means.

[7] On the other hand Mr P J Barnes, a qualified planner employed since March 2002 by Civic Corporation Ltd, gave evidence that the relief sought by the referrers would increase access for jet boaters, but considered that the impact of the activity would diminish the experience of other recreational users, such as walkers, anglers and kayakers. We will evaluate this evidence at a later point, and in the context of each point in contention, but Mr Barnes' evidence draws attention to the requirement for us to do more than consider one group in isolation.

[8] Likewise we cannot consider a single sub-clause of section 6 in isolation from other matters in Part II which we are required to consider. In this case, alongside the maintenance and enhancement of public access to and along rivers, we need to consider whether the provisions we finally adopt in the plan appropriately preserve the natural character of the rivers; protect outstanding natural landscapes from inappropriate use; and protect significant habitats of indigenous fauna. We must also give due consideration to the various matters to which we must have regard in section 7. Further, since the district-wide objectives and policies⁷ in Chapter 4 of the proposed plan on surface water issues are now beyond challenge, we also have to give very serious weight to them because the prohibited activity rule 5.3.3.5 is at least partly, meant to implement these. It is by evaluating all these matters – and giving them their due weight – that we can judge which provisions achieve the purpose of the Act.

The Hawea River

[9] The Hawea River flows out of the southern end of Lake Hawea and joins the Clutha River at Albert Town. Flows in the Hawea are controlled by the dam at the outlet

Chapter 4, objective 4.6.3 and following policies [Revised Plan, p4/31].



from Lake Hawea operated by Contact Energy, and range from a minimum of 6 cumecs to a maximum of 200 cumecs under a voluntary regime initiated by that energy company.

[10] For recreational purposes rivers are graded on an international whitewater grading scale from 1 (easiest) to 6 (most difficult). On this scale the Hawea is classed as 2 at lower flows and 2+ to 3 when they are higher. Mr A R Hoffman, an executive officer of the Central Otago Whitewater Rafting Association, gave evidence that the Hawea River is the most important education and training river in Central Otago because of its location, ease of access and generally lower volume water flows. The river is used for educational groups at flows above the minimum and below 80 cumecs.

[11] The unchallenged evidence of witnesses called by the Council was of high use of the river for kayaking by educational institutions, such as Outdoor Education Courses (based in Wanaka), the Otago Polytechnic Institute, the Dunedin College of Education, the University of Otago Physical Education Department, Cromwell College, Mount Aspiring College, Wakatipu High School, Otago Boys' and Southland Boys' High Schools. A number of these institutions hold a considerable number of sessions.

[12] For the referrers, Mr McKenzie said that jet boating could not occur in the low-flows enjoyed by kayak groups and therefore potential hazards for kayakers would not arise. However Mr Hoffman gave evidence that whitewater kayakers use the river, in particular the surfing waves adjacent to the Wanaka Gun Club which form in higher flows of between 115 and 200 cumecs.

[13] Mr G N Murdoch, the Education and Safety Officer of the New Zealand Recreational and Canoeing Association wrote that when kayaking in whitewater kayakers can move rapidly and unpredictably from one whitewater feature to another; they sit low in the water and their field of vision is often restricted to approximately one metre above the river. Mr Murdoch understood that jet boats needed to travel at speed to maintain steering control; in these circumstances it was possible for a kayaker not to see a jet boat approaching over a whitewater rapid and vice-versa. It was also Mr Murdoch's evidence



that numbers of kayakers were increasing and that would produce greater competition for river resources. He considered that where there is overlap of use between kayakers and jet boats, the increasing number of users would add to the risk of collision.

[14] Mr M A Black, harbourmaster for the Council since 1985 shared the concern about conflict between these two user-groups, and gave evidence that in the past these conflicts had led to serious injury (on other rivers, not on any of the three rivers we are concerned with).

[15] Mr I L Young, the Treasurer and Rivers Officer of the Otago Branch of the Jet Boating Association, accepted the evidence of Mr Murdoch and Mr Hoffman. However he indicated that they had not directly commented on the proposal of the Jet Boating Association which did not oppose the general prohibition but merely sought an exemption from the prohibition for up to six days per year. Messrs Murdoch and Hoffman each confirmed that under cross-examination when they indicated that their evidence had been prepared on the assumption that the Jet Boating Association had been seeking an uplifting of the 5 knot speed limit (a speed too low for jet boats to be able to operate) imposed under a bylaw.

[16] When the proposal to allow the jet boaters access for up to six days per year was put to Mr Murdoch and Mr Hoffman, they were not opposed to it in principle but were concerned that the practicalities of finding suitable days, and ensuring that the river was cleared of other users, might prove too difficult. We record the estimate of Mr Hoffman that less than a third of the kayakers living in Central Otago were members of Central Otago Whitewater (Inc). We recognise that before we can grant the referrers the relief they seek we need to be sure that any independent kayakers would be aware of jet boat use on particular days.

[17] Kayakers are not the only other users of the river. Mr T P Kroos is a Fish and Game Officer with the Otago Fish and Game Council. He has a science degree and has worked in salmon and trout management and research for the past 33 years, the last 17 in



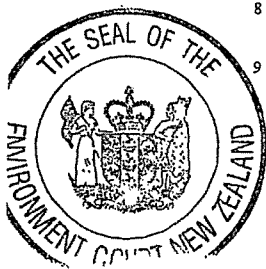
Queenstown. It was his evidence that the F & G Plan for Otago identified the Hawea River as a regionally important sports fish habitat. He said that the river supports stocks of brown and rainbow trout. The National Anglers Survey, conducted in 1994-6⁸, had identified the Hawea as the ninth most popular river in Otago, with 1,924 visits per year.

[18] Mr Kroos told us that jet boats would have significant adverse effects on adult spawning trout (and salmon), sometimes causing them to abandon the spawning site. He also cited research by Sutherland and Ogle⁹ which showed that pressure variation caused by passing jet boats would cause egg mortality in the places (called "redds") where the fish 'laid' their eggs. The nature of the evidence provided did not enable us to determine whether this effect was restricted to those occasions when a boat passed directly over a redd. Mr Kroos also opined that speed would intimidate other recreational users of the river and significantly detract from the angling experience as a result of engine noise and physical intrusion in an otherwise peaceful environment.

[19] We find first that the Hawea River is in terms of the policies 1 to 3 to objective 4.6 most suited for non mechanical activities. Further to enable people to provide for their health and safety we should not attempt to mix jet boating with other recreational uses. Nevertheless it appears to us that if separation of times of use can be achieved, jet boaters should not be denied limited use of the river. For such access to be acceptable a number of conditions would need to be fulfilled:

- The training and competitive events organised by the NZ Canoe Federation, Central Otago Whitewater (Inc), and the various educational institutions which use the Hawea must have priority, because elsewhere jet boats have de facto priority;
- All reasonable steps should be undertaken, including advertising in local and regional newspapers and at entry points to the river, to ensure that the river is cleared of other users;

⁸ Unwin and Brown, 1998 'The Geography of Freshwater Angling in New Zealand'; A summary of results from the 1994-6 National Anglers Survey, NIWA.
⁹ Sutherland and Ogle, 1975, Effects of Jet Boats on Salmon Eggs, New Zealand Journal of Marine and Freshwater Research 9 (3) pp 273-282.



- Periods of the year in which jet boating could impact on spawning fish or their redds should be avoided;
- Negotiations should take place with other river user groups to set dates well in advance, which would not deny access to casual non-motorised users at times of peak usage; (except for 1 day between 26 December in any year and 8 January in the following);
- All access should be at the discretion of the harbourmaster.

The Court was told that prior to the introduction of the plan, activities on the river had been controlled by a bylaw which amongst other things, controlled speeds to below the level at which jet boats could operate, except on occasions when the bylaw was specifically uplifted; the temporary uplifting of the bylaw had been at the discretion of the harbourmaster; that bylaw had now lapsed, and consultations were taking place prior to the introduction of a new bylaw. In the absence of an extant bylaw, we need to consider how specifically the plan should provide for the conditions outlined above to be achieved. We also wish to make plain that in practice it may not be possible to achieve six days of jet boating without disruption to other users. In such a situation a lesser number of days will have to suffice, and by the end of the plan period (10 years) or even earlier it may not be possible to achieve any jet boating days. However, if six days jet boating per year could be arranged on the Hawea River on the conditions outlined earlier in this paragraph, we consider that the policies about recreational activities under objective 4.6 will be met. We need to specify the rule with sufficient certainty to meet policy 6. Accordingly we order under clause 16 of the First Schedule that rule 5.3.3.5(i)(a) should read as follows:

- (a) Hawea River – Motorised craft, except ...
 - (1) on the one lawfully established jet-sprint course;
 - (2) on six days in each year (including at least four (4) days in the months January to April, November and December) provided the following conditions are met:
 - (i) The Jet Boat Association of New Zealand (“JBANZ”) (JBANZ or one of the Otago and Southland Branches as its delegate) administers the activity on each day;



- (ii) The prior written approval of Central Otago Whitewater Inc is obtained if that organisation is satisfied that none of its member user groups are organising activities on the relevant days; and
- (iii) JBANZ gives two (2) calendar months written notice to the Council's Harbour-Master of both the proposed dates and the proposed operating schedule;
- (iv) The Council's Harbour-Master satisfies himself that none of the regular kayaking, rafting or other whitewater (non-motorised) river user groups or institutions (not members of Central Otago Whitewater Inc) were intending to use the Hawea River on that day, and issues an approved operating schedule;
- (v) JBANZ carries out, at its expense, public notification on two occasions 14 and 7 days before the proposed jet boating;
- (vi) Public notification for the purposes of (v) means a public notice with double-size font heading in both the Otago Daily Times and the Southland Times, and written notices posted at the regular entry points to the Hawea River.

The Rees River

[20] The Rees River enters Lake Wakatipu approximately 1 kilometre north-west of Glenorchy. From the lake to a footbridge 1 kilometre upstream of the Hunters Creek confluence, the Rees is a braided river of low gradient. Above the footbridge the river changes character: there is a single narrow channel which flows through deep pools and shallow rapids.

[21] As for the landscape through which the river runs: between the lake and Lover's Leap on the true right and McDougall's Creek on the true left the river is bordered by pastureland with fences, drainage ditches, farm buildings, roads and a bridge (the road to Paradise!). Upstream to the footbridge the river flats remains predominantly open with pockets of native beech, although the river is now flanked by Mount Earnslaw and the Forbes mountains on the west and the Richardson mountains on the east.. Beyond the footbridge native beech becomes dominant to the upper bush line, where it gives way to sub-alpine vegetation and tussocks.

[22] The Council contends that the prohibitions on motorised craft on the river listed in the plan were necessary to:



- Protect the habitat of significant native species of bird, a matter of national importance under section 6(c) RMA;
- Protect the significant elements of naturalness and remoteness associated with the river, a matter of national importance under sections 6(a) and 6(b) RMA, also relevant under section 7(c) and 7(f) RMA;
- Protect the habitat of trout and salmon, a matter to which we are required to have particular regard under section 7(h) RMA;
- To ensure the safety of both jet boaters and other river users under section 5 RMA.

[23] It was the evidence of Mr Barnes, the planner called by the Council, that the Rees River is an outstanding habitat for 20 species of bird; these included the endemic banded dotterel, the wrybill, and the black-fronted tern. Citing the research of McKinlay and Smale¹⁰, he expressed concern that the wrybill and the black-fronted tern in particular, which use the lower-lying shingle banks of the riverbed for feeding, nesting and rearing young, would be disturbed by the noise, vibration and wash from motorised craft.

[24] Mr McKenzie noted that jet boating had occurred on the Rees River for 40 years, and opined that it had had no adverse effect on birdlife. It was the referrer's submission that the respondent had provided slim justification for prohibition.

[25] Mr Barnes conceded in cross-examination that that McKinlay and Smale study had not considered the Rees River, but noted that the Rees and the Dart have similar characteristics. We note the lack of empirical data, such as bird counts, on the Rees. In the circumstances we would have difficulty in finding any adverse effect on significant habitats of native species because in *Kemp v Queenstown Lakes District Council*¹¹ the Court noted in the case of the Dart River "*in respect of the native fauna, ... there is no evidence that the existing jet boats are causing any harm*".



¹⁰

2001 Effects of Jet Boat Wake on Braided River Beds on Dart River, *Notornis* 48 pp 72-75. C229/99 at para 67.

[26] Mr Barnes noted that the Rees River is located in an outstanding natural landscape, and considered that it possessed a high degree of naturalness. He considered that visitors' experiences of the area around the river consisted not just of its visual elements, but also a sense of remoteness stemming from low visitor numbers and limited human impact on the area. He opined that these experiences would be destroyed by the noise and visual intrusion of jet boats.

[27] Mr McKenzie did not perceive the Rees as a remote river. He noted the presence of farm and farm related activities along with four wheel drive access tracks and helicopter landing areas. He stated that there were six farms and farm homesteads upstream of the Rees River road bridge, along with three homes on smaller blocks and a power house and helipad for the Invincible ski-field. He told us that there were shearing sheds, sheepyards and related buildings adjacent to the river.

[28] We have noted the predominantly rural nature of the environment and activities as far upstream as Lover's Leap and McDougall's Creek. Rees Valley Road runs on the true left bank alongside the river from just upstream of the road bridge to Muddy Creek. A car park is located immediately to the south of the confluence of Muddy Creek and the Rees River. Beyond the car park the road runs a further 2 kilometres to Arthurs Creek, and beyond that is a track capable of being used by four wheel drive vehicles. While jet boats will impose noise, and for some people visual intrusion, they will not do so on a pristine environment.

[29] Mr Kroos gave evidence that the Rees River from the road bridge to Muddy Creek is defined by the F & G Plan as a locally important backcountry sports fishery; and between the Muddy Creek and Hunters Creek confluences as a regionally important remote sports fishery. He reported that the 1994-6 anglers' survey showed that the Rees attracted approximately 293 angler visits per year, including visits by people from overseas and all parts of New Zealand. He told us that the evidence of surveys on backcountry rivers near the Rees was that anglers on them particularly valued the peace and solitude, the natural environment and the absence of human structures.



[30] Mr Kroos indicated that chinook salmon, brown and rainbow trout migrated from Lake Wakatipu up river to spawn; the typical spawning season for chinook salmon and brown trout was from April to October, and for rainbow trout from August to December. When asked whether the spawning was confined to the tributaries, he explained that the fish were opportunistic, and that sometimes opportunities for spawning occurred in the main river stem. He told us that the peak-period for movement of rainbow trout back to the lake after spawning was from mid-October to early November; some trout take up residence throughout the length of the river.

[31] Mr Peter Reid, the head boat driver for Dart River Jet, who has resided all his life in Glenorchy, told us that in his experience there were few resident fish in the Rees. Likewise he had observed low numbers of anglers and 95% of these were fishing upstream of Muddy Creek. Mr Reid said that the 1994-6 anglers' survey had been conducted at a time when there were no restrictions on jet boating. He opined that despite the long history of jet boating on the Rees, no adverse affect on the fishery had been identified as a result of it.

[32] Mr Kroos acknowledged in cross-examination that his evidence-in-chief had been based on the belief that a prohibition on jet boat use beyond the road bridge already existed. He also conceded that the main reported adverse impact had been conflict with fishermen. However, given his evidence on the periods of peak fish migration and spawning we are disposed to let the temporal limits on jet boating remain, so that it continues to be prohibited from May to October inclusive. Before we decide the length of river over which jet boat access is permitted, there is one further matter to consider.

[33] Mr Black considered that the prohibition of jet boating beyond the road bridge was necessary for the safety of both the jet boaters themselves, and other recreationalists. He opined that the low flows experienced on the Rees restricted safe jet boating to those who were very experienced; otherwise the danger of running aground and the difficulty of travelling beneath the road bridge made the activity hazardous. He indicated that high use



by recreationalists would increase safety concerns on the upper Rees River where there were tight stretches and limited visibility.

[34] Mr McKenzie and Mr Reid noted that there had been no reported incidents or accidents on the Rees, although historically jet boating on the river had occurred since the 1960's. Mr McKenzie estimated that there are currently around 300 recreational boat trips per year on the river. His evidence acknowledged that the section between Cockburn Bush and Muddy Creek was navigable only at high flows. Mr Black drew the Court's attention to the difference in skill and experience that separated professional boat drivers and officers of the Jet Boat Association and less experienced owners and drivers. Undoubtedly that difference exists, but the safety record of jet boats on the Rees River suggests we should not attach great significance to it.

[35] Mr Black's evidence on the Rockburn tributary, which we shall discuss later in this decision, expressed concern about the level of use of the Dart. Mr Reid commented that the confirmation of an extensive prohibition on boating on the Rees would add to pressures on the Dart, the only other river available in the vicinity of Glenorchy. This seems self-evidently the case.

[36] We consider that there is no reason to prohibit jet boating between the road bridge and Muddy Creek. It is at that point that the Sports Fish and Game Management Plan distinguishes the locally important backcountry fishery from one which is remote and regionally significant, and Mr Reid indicated that it was upstream of that point where he had seen the vast majority of anglers. Below that point we do not consider that the river has those qualities of remoteness which require protection from jet boating. We consider the purposes of the Act are best served by deleting from Rule 5.3.3.5(i)(c) the words "the Rees River road bridge", and inserting the words "Muddy Creek".

The Rockburn

[37] The Rockburn flows into the Dart River 2kms downstream from Chinaman's Bluff. It is a narrow single channel river which flows from the Park Pass area on the main divide



of the Southern Alps, south-east into the Dart River. It flows through deep gorges and contains pools and high gradient rapids. There is a steep-walled chasm approximately 500m from the confluence with the Dart. The Rockburn is within the National Park which holds World Heritage Park status as part of the South West New Zealand Heritage Area, Te Wahipounamu. Approximately 180m from the chasm is the Rockburn Hut, 25 metres from the river. The riverbank between the hut and the river is a popular picnicking spot, while the hut itself is a destination for trampers walking in and out from the end of Lake Sylvan Road or undertaking the two day tramp between Lake Sylvan and Sugarloaf Pass.

[38] The respondent's case was that the prohibition on motorised craft entering this tributary should remain in the plan, to ensure public safety on an already crowded waterway, to preserve the wildlife values of the area, and to avoid adverse effects on the natural character and sense of remoteness associated with the area. The referrer contended that access to the Rockburn was not unsafe and that there was no reported history of accidents. It further submitted that the wildlife and the natural values of the area had co-existed with jet boating activity for a considerable period.

[39] Mr Barnes gave evidence that under the proposed district plan it is prohibited for recreational motorised craft to enter tributaries of the Dart River; commercial craft enter the Rockburn under their resource consents. During the course of the hearing the Court began to have doubts about the precise terms of the resource consents and exactly what was permitted on the Rockburn. At our request Mr Barnes supplied us with copies of relevant resource consent and Environment Court decisions.

[40] As a result of our consideration of these we find:

- that in February 1992 Mr Neil Ross received consent for a maximum of 12 trips daily on those parts of the Dart River and Rees River outlined on plan A attached to the application; the plan shows the Rockburn within the proposed area of operation; this consent was replaced by another in 1996 without any change of condition;



- that in March 1992 Wilderness Jets Ltd received consent for a further 8 trips on the Dart; this consent was subsequently replaced in 1995 and 1996; it is not clear from the maps attached to the application precisely what area of operation received consent. (We note from the evidence presented in Court that the holder of this consent has operated on the basis that the Rockburn is included);
- that in 1996 Mr and Mrs Kemp applied for consent for 10 trips on the Dart River, and in 1999 received consent¹² from the Environment Court for 4 trips in addition to the 2 already consented; the application specifically stated "*passengers will be taken into the Rockburn and Beansburn areas*". The silence of the Court on the area of operations is to be taken as consent to undertake the permitted trips over the area applied for.

[41] We find that of the 26 commercial jet boat trips allowed daily on the Dart, at least 18, and possibly all 26 both lawfully and actually access the Rockburn. The consequences of removing the prohibition on access to the Rockburn must therefore be assessed against a history of lawful access, effects that have been shown to result, and the consequence of any additional use that may result from the prohibition not being upheld.

[42] Mr Black told us that he had serious concerns about jet boats entering the Rockburn. He told us that the channel into the chasm was both narrow and shallow, and that visibility was poor on entering and exiting the Rockburn from and to the main channel of the Dart River. He considered there was a risk of collisions with significant consequences. He was also concerned that the Dart itself was a congested waterway, and that the attraction of entering the Rockburn would increase that congestion.

[43] Mr Neil Ross, a resident of Gore and the first commercial jet boat operator on the Dart, told us that during the time he operated, he always stopped off at the Rockburn if conditions permitted. A logical inference is that there were times conditions did not afford safe entry to the tributary. Mr Reid, under cross-examination indicated that there were occasions he chose not to enter the Rockburn. He also said that a boat exiting the



Rockburn had good visibility “99% of the time” and estimated the total time when he had experienced some difficulty as “less than a month”.

[44] We accept Mr Black’s evidence that a number of recreational boaters would not have the skill and experience of professional drivers such as Mr Reid. However the long history of jet boating into the Rockburn suggests that prohibition is not necessary to enable people to provide for their health and safety.

[45] It was Mr Barnes’ evidence that there was significant birdlife on the Rockburn, including the whio (blue duck). He considered that the potential existed for significant adverse effects on this birdlife from the noise, vibration and wavewash of motorised craft. What was notably lacking was any empirical data which showed an adverse effect from existing operations (which the Council had not reviewed under section 128) or demonstrated any additional effect which might result from the rather lesser number of private jet boat trips.

[46] Mr Barnes also considered that the natural character and sense of remoteness of the Rockburn would be diminished by the wave action, noise and visual effects of jet boat operation; the experience of users of the popular Lake Sylvan-Sugarloaf Pass track would be lessened in that they would no longer experience the Rockburn in its natural state.

[47] We accept that the Rockburn is set in one of New Zealand’s most outstanding natural landscapes. We also accept that landscapes are perceived by all the senses. However consents exist for a considerable level of jet boat activity in the area already. We do not consider the additional effect which would be created by allowing a number of private jet boaters access would be so severe that to prohibit it is justified. We note that the Council has not chosen to review the conditions of consent for commercial operators to exclude them from the Rockburn. If they had done so, we might have drawn a different conclusion.



[48] In *Kemp v Queenstown Lakes District Council*¹³, the Court noted an agreement between parties operating on the Dart, which allowed a 2 hour interval during which jet boats would not operate above the confluence with the Beansburn and which attempted to control times of access by private jet boaters to avoid conflict on a narrow stretch of waterway. We would commend a similar approach to those operating on and controlling activities on the Rockburn.

Final Outcome

[49] We consider that the objectives and policies of the plan are best implemented, and the purpose of the Act best achieved by upholding the reference to the extent that the following changes are made to Rule 5.3.3.5(i):

- That clause (a) reads as follows:
 - (a) Hawea River – Motorised craft, except ...
 - (1) on the one lawfully established jet-sprint course;
 - (2) on six days in each year (including at least four (4) days in the months January to April, November and December) provided the following conditions are met:
 - (i) The Jet Boat Association of New Zealand (“JBANZ”) (JBANZ or one of the Otago and Southland Branches as its delegate) administers the activity on each day;
 - (ii) The prior written approval of Central Otago Whitewater Inc is obtained if that organisation is satisfied that none of its member user groups are organising activities on the relevant days; and
 - (iii) JBANZ gives two (2) calendar months written notice to the Council’s Harbour-Master of both the proposed dates and the proposed operating schedule;
 - (iv) The Council’s Harbour-Master satisfies himself that none of the regular kayaking, rafting or other whitewater (non-motorised) river user groups or institutions (not members of Central Otago Whitewater Inc) were intending to use the Hawea River on that day, and issues an approved operating schedule;
 - (v) JBANZ carries out, at its expense, public notification on two occasions 14 and 7 days before the proposed jet boating;



cit supra paragraph 40.

(vi) Public notification for the purposes of (v) means a public notice with double-size font heading in both the Otago Daily Times and the Southland Times, and written notices posted at the regular entry points to the Hawea River.

- That in clause (c) the words “or upstream of the Rees River road bridge;” be deleted, and replaced by “(except the Rockburn tributary of the Dart River) or upstream of Muddy Creek on the Rees River.” So that clause (c) reads:

Dart and Rees Rivers – Motorised craft on any tributary of the rivers (except the Rockburn tributary of the Dart River) or upstream of Muddy Creek on the Rees River; and

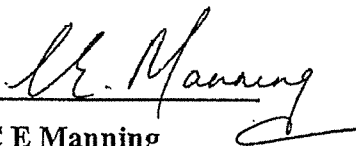
- Motorised craft on the Rees River during the months of May to October inclusive.

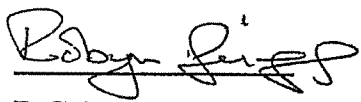
[50] The question of costs is reserved. The normal practice in references is for costs to lie where they fall, and our preliminary view, subject to submissions, is that that is appropriate in this case.

DATED at CHRISTCHURCH

13th August 2003

For the Court:


 C E Manning
 Environment Commissioner


 R Grigg
 Environment Commissioner



Issued¹⁴: 15 AUG 2003

Appendix 3 – Aerial Photograph of the Hawea Jet Sprint Course, Map of Hawea River



500 ft



Lake Hawea

Domain Rd

Butterfield Rd

Camp Hill Rd

Alison Ave

Albert Town

6

6

6

