IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of references under clause 14 of the First Schedule to the Act
BETWEEN	WAKATIPU ENVIRONMENTAL SOCIETY INC
	RMA 1043/98, 1394A/98, 1165/98
AND	TELECOM NEW ZEALAND LIMITED
	RMA 1030/98
AND	CENTRAL ELECTRIC LTD (now DELTA ELECTRIC LTD)
	RMA 1290/98
AND	CLARK FORTUNE McDONALD
	RMA 1405/98
AND	TRANSPOWER NEW ZEALAND LIMITED
	RMA 1260/98
AND	CONTACT ENERGY LIMITED
	RMA 1401/98
AND	MINISTER FOR THE ENVIRONMENT
	RMA 1194/98
	Referrers
AND	THE QUEENSTOWN-LAKES DISTRICT COUNCIL
	Respondent

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

ERRATUM

1. The decision contains two errors on page 5 of Chapter 1 : Introduction:

   (a) At the head of page 5 the first two lines of paragraph 4 are repeated and should be deleted.

   (b) The paragraph number "6" and the following first three lines of paragraph 6 have been omitted. They read (with the rest of the paragraph in square brackets):

   6. The hearing took place over ten working days and, at the suggestion of the parties, we have carried out site inspections since. To date we have only been able to visit the Lake Wakatipu area, and not Lakes Wanaka [and Hawea and the rivers that flow into or out of them. To that extent this decision is geographically limited[6] although many of the policies we establish may prove to be applicable on a district-wide basis].

   and should be inserted at the foot of page 5 (above the footnotes).

2. In addition the decision [p.84 [fn 113]] refers to the policies we have decided as being 'shaded'. The Court's signed and sealed copy is indeed so shaded, but we are advised by the Registrar that the photocopying has not reproduced the shading. We are at a loss to understand why. We apologise to the parties for any inconvenience. The objectives and policies as corrected by the Court should be discernible from the text of the decision; and in any event they are reproduced together in Appendix III.

DATED at CHRISTCHURCH this 2nd day of **November** 1999.

J R Jackson
Environment Judge

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

DOUBLE SIDED ORIGINAL

Decision No: C180/99

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of references under clause 14 of the First Schedule to the Act

BETWEEN **WAKATIPU ENVIRONMENTAL SOCIETY INC**

RMA 1043/98, 1394A/98, 1165/98

AND **TELECOM NEW ZEALAND LIMITED**

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AND **CONTACT ENERGY LIMITED**

RMA 1401/98

AND **MINISTER FOR THE ENVIRONMENT**

RMA 1194/98

Referrers

AND **THE QUEENSTOWN-LAKES DISTRICT COUNCIL**

BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson
Environment Commissioner R Grigg
Environment Commissioner R S Tasker

HEARING at **QUEENSTOWN** on 20-23 and 26-29 July and 6-7 September 1999
(Final submissions received 23 September 1999)

APPEARANCES

Mr B Lawrence for the Wakatipu Environmental Society Inc
Mr J Haworth for the Upper Clutha Environment Society Inc in respect of RMA 1394/98
Mr P J Page and Mr G M Todd for Telecom NZ Ltd and Mr and Mrs R S Mills
Mr W J Fletcher for Central Electric Ltd (now Delta Electric Ltd)
Mr M Parker for Clark Fortune McDonald and J F Investments Ltd, Mount Field Ltd, Quail Point Ltd
Mr K G Smith for Contact Energy Ltd
Mr A F J Gallen and Ms S Ongley for the Minister for the Environment in relation to RMA 1043/98 (WESI) and RMA 1194/98
Mr N S Marquet for the Queenstown-Lakes District Council
Mr W J Goldsmith and Mr A More for Terrace Towers (NZ) Pty Ltd
Mr G M Todd for the persons listed in Appendix 1
Mr J K Guthrie, Mr W J Goldsmith and Mrs J Simpson for Crosshill Farm Ltd, Pisidia Holdings Ltd, Queenstown Safari Co Ltd, Carolina Developments Ltd, Mr D and Mrs J Jardine and Mr A S Farry
Mr D Masterton for Lake Hayes Holdings Ltd
Mr M V Smith for Federated Farmers NZ Inc
Mr M M Hasselman on behalf of the Community Association, Glenorchy, (on Thursday 29 July 1999)
Mr A More for Terrace Towers Proprietary Ltd (in relation to RMA 1043/98 and 1194/98)
Mr J Reid for Gibbston Valley Estate Ltd

INTERIM DECISION

Index

Chapter 1 : Introduction

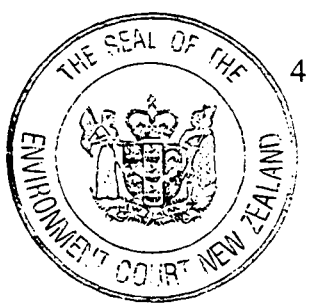
1. These references are about the district-wide issues of the Queenstown-Lakes District ("the district"). Their main focus is on the landscapes of the district – this "country crumpled like an unmade bed"[1] and how they are to be sustainably managed. It was common ground that there are

[1] The Search from Arawata Bill Denis Glover ("Selected Poems", Penguin 1981).

outstanding natural features and landscapes within the district, and indeed that all landscapes of the district are important. The difficulties are first, that most of the parties did not attempt to inform the Court precisely where the outstanding natural features and landscapes end and the important landscapes begin; and secondly, that there are development pressures in the district which could have major adverse effects on the landscapes within the district. The resident population of 10,000 (approximately) is expected to double within the next 16 years, and it is hoped that visitor numbers will increase also.

2. The references arise out of Parts 4 and 15 of the proposed plan of the Queenstown-Lakes District Council ("the Council"). The Council notified a proposed plan in 1995 ("the notified plan") and after hearings issued its decision and a revised proposed plan ("the revised plan") in 1998. Part 4 of both plans relates to, and is headed, "District-Wide Issues". We shall refer to the document which will result as the outcome of this and other decisions as "the district plan".

3. Part 4 of the revised plan is much shorter than, and very different to, Part 4 of the notified plan. Broadly the referrers of Part 4 fall into two groups depending on whether they basically agreed with the notified plan or with the revised plan. The Wakatipu Environment Society Inc ("WESI") largely supported the notified plan and wanted reinstatement of its objectives and policies (with some amendments). The other referrers opposed part of WESI's approach but conceded at the hearing that Part 4 of the revised plan needed changes. For its part the Council, at the hearing before us, supported further changes to Part 4 of the revised plan.



4. At the start of the hearing two parties and one interested person under section 274 of the Resource Management Act 1991 ("the Act" or "the

4. At the start of the hearing two parties and one interested person under section 274 of the Resource Management Act 1991 ("the Act" or "the RMA") agreed to abide by the decision of the Court in respect of the issues they were concerned with:

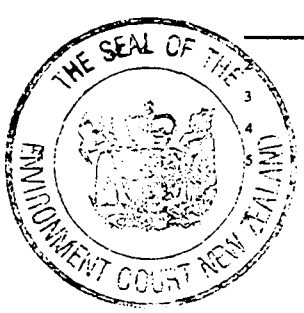
   - Transpower New Zealand Ltd (RMA 1260/98);
   - Contact Energy Ltd (RMA 1401/98); and
   - Gibbston Valley Estate Ltd[2].

   During the hearing Central Electric Limited (now Delta Electric Ltd) - the referrer in RMA 1290/98 - withdrew its reference with regard to Part 4 of the revised plan. Thus the only utility company that took an active part in the hearing was Telecom NZ Ltd ("Telecom").

5. In addition to the referrers there were other parties[3] and interested persons[4] to WESI's three references. We need not identify them individually here[5]. They are (with two exceptions) landowners as individuals or groups in the district who are concerned with (and oppose) the changes sought by WESI. The exceptions are:

   (a) The Upper Clutha Environment Society Inc ("UCES") which supports WESI but with a particular interest in the Wanaka/Hawea/Makarora area;

   (b) The Community Association of Glenorchy which appeared on Thursday 29 July 1999 (having earlier been confused about the venue) to make a general submission on the 'extreme importance' of the landscape in its area.



Under section 274 RMA.
Under section 271A RMA.
Under section 274 RMA.
They are listed under 'Appearances' at the start of this decision.

and Hawea and the rivers that flow into or out of them. To that extent this decision is geographically limited[6] although many of the policies we establish may prove to be applicable on a district-wide basis.

[6] Under section 73(3) a district plan may be prepared in territorial sections.

Chapter 2 : Background

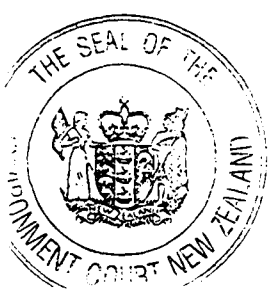
The scope of the hearing

7. Part 4 of the revised plan identifies the district-wide issues under these headings:

   (1) Natural Environment
   (2) Landscape and Visual Amenity
   (3) Takata Whenua
   (4) Open Space and Recreation
   (5) Energy
   (6) Surface of Lakes and Rivers
   (7) Solid and Hazardous Waste Management
   (8) Natural Hazards
   (9) Urban Growth
   (10) Monitoring, Review and Enforcement

   These ten issues are numbered consecutively as sections 4.1 to 4.10 of Part 4 of the revised plan. The revised plan[7] was unclear about these, listing some headings but not others at the start of Part 4. We will use our powers, under section 292(1)(a) of the RMA, to remedy the defects and/or uncertainty by listing all subjects in order in the amended Part 4 of the district plan.

8. There are outstanding references to this Court in relation to section (1) but those mostly relate to specific areas, mainly in the high country, and so it is unnecessary for us to resolve them in the meantime. The exceptions are dealt with briefly later in this decision[8]. There are no



[7] Paragraph 4.1.2 [p4/1].
[8] See Chapter 5 of this decision: The Natural Environment of the District.

references in relation to section (3) of Part 4, and only limited references in relation to sections (4) and (6) which we do not deal with here. Finally there are no references in relation to issues (7), (8) or (10).

9. Pre-hearing conferences on the references had been carried out to identify as many of the genuinely district wide issues as possible and to hear the disputed issues as soon as possible. From the list, issues set down for hearing were therefore:

(1) Nature Conservation Values (in part)

(2) Landscape and Visual Amenity

(5) Energy

(9) Urban Growth

- together with two further issues. A new issue (11) "Social and Economic Wellbeing" was sought by WESI in its reference RMA 1043/98. Confusingly this was identified by WESI as Part 4.9 of the revised plan, but in fact it did not seek to amend the existing Part 4.9 - "Urban Growth" - of the revised plan at all. Finally there is a district-wide issue arising out of Part 15 (subdivision, development and financial contributions) of the revised plan through the reference by Messrs Clark Fortune McDonald. Even in relation to the subject issues heard we should record that our decision only relates to identification of issues and stating objectives and policies. In particular the decision does not identify zone boundaries nor set out any changes to the rules in the revised plan.

10. Because, prior to the hearing, there was some doubt over the scope of the WESI references, the Court issued a minute dated 18 June 1999 to the parties. This described the substantive issues as including:

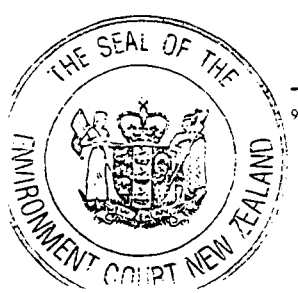
(a) What, if any, areas of the district are outstanding landscapes for the purposes of section 6?

(b) Whether there are other issues under section 5(2) of the RMA and/or other paragraphs of section 6.

11. After we had heard evidence from WESI concerning new urban development, counsel for the Minister for the Environment ("the MFE") drew our attention to the fact that the MFE had filed a reference[9] on the issue of new urban development but that was not yet set down for hearing. Accordingly we adjourned parts of the hearing to Monday 6 September 1999 so that the MFE's reference could be set down and heard at the same time. The matters adjourned were part of section 4.2.7 policies and 8 dealing with 'New urban development' and 'Established Urban Areas'. On 6 September 1999 we reconvened the hearing to deal with those policies, and in effect added the MFE's reference to those already being heard. Since the policy of concern to the MFE - on "new urban development" - is an integral part of Part 4 we have decided to release our decisions on all of the matters in Part 4.2 together (with some geographical restrictions), to avoid fragmentation of the issues and the policies that arise from them.

"Areas of Landscape Importance"

12. There is one further way in which we are limiting the scope of this decision. To explain that we need to give a little more background. The methods of implementation in Part 4 of the notified plan stated that areas of landscape importance should be identified as such and that all new buildings should be a discretionary activity in any Area of Landscape Importance. The notified plan then identified areas on the planning maps as "Areas of Landscape Importance". There were consequential rules in other parts of the district plan e.g. making



[9] RMA 1194/98.

subdivisions a non-complying activity[10] in an Area of Landscape Importance.

13. The revised plan dropped all reference to the Areas of Landscape Importance; and these areas were not shown on the revised planning maps either. As part of its reference WESI sought reinstatement of the implementation methods to Part 4 of the district plan and consequential amendment to the planning maps. After the close of WESI's case it was quite clear:

    (a) that the Areas of Landscape Importance were not identical with areas that qualified as nationally important under section 6(b) of the RMA;

    (b) that certain areas which are nationally important were excluded, and areas that are not so important were included;

    (c) even WESI and its witnesses openly acknowledged that the methodology was flawed in that there were areas included in the Areas of Landscape Importance which should not have been.

14. At the end of the first week we received a rather unusual application from most of the other parties. It was that part of WESI's reference which sought the reintroduction of the 'Areas of Landscape Importance' should be struck out without further evidence having to be called on grounds including (a) to (c) in the preceding paragraph. We declined to strike out WESI's reference on two grounds: first that the questions to be resolved were substantially of fact and degree; and secondly because, while the "Areas of Landscape Importance" method might be flawed it was at least an attempt to protect areas of national importance under section 6 of the Act. Subsequently the other parties (including the Council) argued that we would be able to achieve the necessary protection under section 6 of the Act - especially for "outstanding

[10] Notified Plan, Rule 15.2.3.4, p.15/12.

natural features and landscapes" - simply by statements in writing in an amended Part 4 to the district plan.

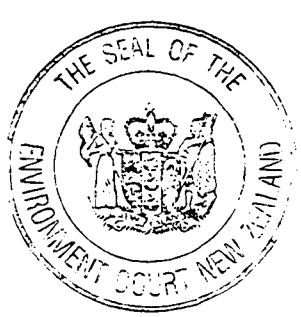
15. We have some doubts about their approach - as indeed did some witnesses - but we consider (as we stated at the hearing without any objection by any of the parties) that we can approach the issues in this way:

    (1) by stating the issues, objectives and policies for the relevant sections of Part 4 of the district plan in this decision;

    (2) by subsequently – not in this decision - deciding the relevant methods of implementation especially in Parts 5 (Rural issues) and 15 (Subdivisional issues) of the district plan;

    (3) while reserving the issue as to whether the district plan requires an extra zone called "Areas of Landscape Importance" over the district in order to protect either areas of national importance under section 6(b) or areas of amenity or other environmental values under section 7.

16. If WESI is satisfied (and it will have to make an election later) as to the adequacy of steps (1) and (2) we might never have to give a considered view on (3) and how the policies and rules on Areas of Landscape Importance could be improved so that they would work practicably. In the meantime we can only decide the objectives and policies and suggested method of implementation since the related rules come under references to be heard later. Only if the rural zone boundaries and the relevant rules are clearly stated will we be able to be sure that the purpose of the RMA is being met in relation to the landscapes of the district.



Chapter 3 : Cases for the Parties

17. Mr Lawrence, in his submissions on behalf of WESI stated the revised plan contains a 'vision' of community aspirations which states that

> *Community aspirations for the District involves (sic) ... basic elements [including]:*
>
> ....
>
> *(iii) identifying and enhancing those values or resources, both natural and physical, which provide the community character and image of the District and which in turn allows both individuals and communities to provide for their social and economic well being, both now and in the future.*
>
> *(iv) ensuring that growth and development does not compromise those resources and amenities which are the reasons why people choose to live in and visit the District*[11].

18. WESI's case was that the 'vision' was not carried through into the rest of the revised plan. Mr Lawrence submitted that there are insufficient objectives and policies, to result in landscape protection and the retention of cohesive urban form and character to which people can identify.

19. Mr Lawrence further submitted that WESI is in an awkward situation having to argue for a tool for landscape protection (Areas of Landscape Importance – "ALI") which it considers the best of a range of bad options. He said that WESI agrees with almost all the criticisms of ALI

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[11] Section 3.6 [revised plan p3/3]. We record the vision here simply as part of WESI's submissions. Visions are not valid parts of plans: ***St Columba's Environmental House Group v Hawkes Bay Regional Council*** [1994] NZRMA 560.

and agrees that ALI is not good enough, but it is now really the only method which will afford the District's landscape some real protection. He said there is near unanimous agreement among professional witnesses, even from the Council's own staff, that the revised plan is not adequate to protect the District's landscape.

20. He further submitted that the ALI are a total package containing rules e.g. residential activities being non-complying. Mr Lawrence said that assessment matters are critical to an evaluation of whether a policy will or will not afford protection. WESI believes that the revised plan lacks rules or assessment matters that give the Council discretion to refuse a 20 hectare (or even 4 hectare) subdivision with attendant residential activity on grounds of landscape. Mr Lawrence said that WESI agrees with witnesses that the entire rural area is of landscape importance under section 6(b) of the Act.

21. WESI agrees that a discretionary regime across all of the Rural General Zone is preferable to the non-complying safeguard of the ALI. Mr Lawrence submitted that the Court may like to consider requesting that the Council reconsider the issue ***Kaitiaki Tarawera Inc v Rotorua District Council***[12]. He said that protection of the landscape resource (in a section 5 sense) is especially important given the stated intention of the Council to cope with residential growth by rural residential developments.

[12] A7/98; 4 ELRNZ 181.

22. Mr Lawrence submitted that to exercise a discretion on all activities in the Rural General Zone with respect to landscape requires the following:

> *"(a) Rules that provide for a discretion. ...*
>
> *(b) ... A clear definition of the meaning of landscape values.*
>
> *(c) That the extent of the phrase "outstanding landscape" is made clear. The Society is of the view that all of the landscapes in the District are important. Should there be or can there be a difference between "important" and "outstanding" landscapes.*
>
> *(d) That the meaning of the term "landscape feature" is clear and the relationship to the wider landscape is understood. It must be remembered that councillors exercising discretion will not have the benefit of all the expert landscape evidence provided to this Court to aid them.*
>
> *(e) ... Landscape value is made up of several elements. All ... need to be part of the assessment matters, so council can exercise its discretion in respect of each one. ...*
>
> *(f) ... To evaluate the ecological, sensual [sic] and cultural groups of landscape values some "across the district measure" is required. [WESI] believe[s] that this can be achieved by the mapping of values which when overlaid provide the basis for assessment. ... Without such tools the assessment becomes the subjective whim of those exercising the discretion. ..."*

23. If the above prerequisites cannot be met then WESI wants ALI "warts and all" to be used. The rules with the ALI make new residential activity a non-complying use, make all other buildings (accessory to a

permitted or controlled use) discretionary, and allow limited earthworks and tree planting under site standards. Mr Lawrence said that WESI does not believe the notified plan implies that areas outside the ALI have no landscape values. WESI accepts that ALI should be extended at Lake Hayes and that the higher terraces at Gibbston could be excluded from the ALI.

24. One final but significant issue identified by Mr Lawrence is that over the management period[13], the process of tenure review of land held under the Land Act 1948 may freehold much of the land held in Crown leases that has not been developed, involving many of the districts prominent landscapes, particularly on higher ground. He produced a letter (without objection from other parties) from the Department of Conservation to WESI advising that it will only be in exceptional circumstances that the Department of Conservation will consider the Crown retaining land in the low to mid altitude range (less than 900 metres) for landscape reasons alone. Mr Lawrence submitted that therefore in the near future freehold land available for subdivision in the District, in highly visible places, will dramatically increase.

25. Mr Ralf Kruger, a qualified landscape architect with a tertiary qualification from Germany, was called by WESI to give evidence. He has been a self employed landscape architect and planner since 1992 and has been based in Queenstown since 1994. Mr Kruger was of the view that the revised plan has a weakened philosophy compared to the notified plan. He said that while the revised plan sets itself the task of protecting the district's landscape, it is devoid of any background, tools

[13] 10 years: section 79(2) RMA.

and mechanisms to fulfil this task. He was of the opinion that whilst the Council has not to date undertaken a comprehensive, objective and defensible study of the District's landscape ecology, it has in the notified plan created tools, although arbitrary and incomplete, that can achieve the purpose of interim protection and can avoid the irreplaceable loss of a precious resource under immense development pressure. He said that the reasons given for removing the interim protection in the revised plan were:

(1) *Available studies were not undertaken to identify such areas.*

(2) *The Council can still decline any land use applications that will have an adverse effect on the landscape based on the objectives and policies of the district Plan and Part II of the RMA.*

(3) *Areas of landscape importance are an unnecessary layer of regulation.*

(4) *The whole district is considered to be important*[14].

Mr Kruger was of the view that the deletion of policies 2 and 3 in the notified plan and the amendment of policy 1, is contradictory to that set out in (2) above. He stated that the Council has failed to comply with section 6 of the Act.

26. Mr Kruger, in acknowledging the confusion relating to outstanding natural features and landscapes, quoted from a paper of Mr Alan Rackham (who later gave evidence to us at this hearing) given at the 1999 New Zealand Institute of Landscape Architects Conference[15] where the latter said:

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14 QLD proposed district plan, Hearings Panel Decision, Issue 51 - Landscape and Visual Amenity, pp26-27 (abridged).

15 Rackham, A, *A Current Practice: Comparative Case Studies, Paper to the NZLIA Conference, March 1999, p17.*

The Queenstown Lakes District Plan does not identify the Remarkables as an outstanding landscape. Under the same Act an area of suburban Langs Beach in Whangarei District is identified as an outstanding landscape. I have the greatest difficulty in believing that the Remarkables in fact are unremarkable, and equally, I have the most serious doubts about whether an area of suburbia should be identified as an outstanding natural landscape under the RMA.

27. Mr Kruger went on to say that he has great difficulty with the often practised reduction of the landscape to its visual quality. He said that the Wakatipu landscape is unique in its richness of landforms, geological features, microclimates, vegetation patterns, and habitats for indigenous (and exotic) flora and fauna. It is a diverse and special landscape and a holistic approach to landscape assessment and evaluation has to reflect that. It was his opinion that the whole of the Queenstown Lakes District is an outstanding landscape in terms of section 6(b) of the Act.

28. Mr Kruger presented a map to the Court that identified what he said were the outstanding landscapes and natural features in the Wakatipu Basin. He said that the distances between the boundaries of these outstanding landscapes and natural features are very short, being 3 to 4 kilometres at the most. In addition, he told the Court that even within the zones that do not fit within outstanding landscapes, there are small scale outstanding natural features, such as Mill Creek and waterfall, the Hawthorn hedgerows, between Lake Hayes and the lower slopes of Coronet Peak, and the wetlands to the west of Hunter Road. Based on this he said that no point in the Wakatipu Basin is any further than 1.5 to 2 kilometres from an outstanding natural feature or landscape. In Mr

Kruger's opinion the size and the density of outstanding natural features and landscapes is justification enough to describe the entire area as an outstanding landscape. He suggested to the Court that the whole of the district should be accepted as an outstanding landscape on an interim basis for the purpose of reaching a decision on this case.

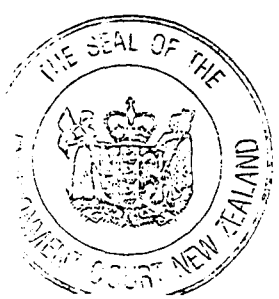
29. Mr Kruger said that the landscape, its scenic values in particular, have always been the one and only resource for Queenstown, being a national and international destination of high repute. He quoted a decision of this Court presided over by Judge Kenderdine where it stated:

> *...allowing the quality of the landscape to be reduced little by little, by allowing unsympathetic development ... will reduce, in the long term, the overall attractiveness of an area which is already so important for the economic future of the Queenstown district ...*[16].

Mr Kruger discussed the threats to landscape. He explained how in his view subdivision into small rural residential lots will produce:

> *...alien rows of quite frequently totally alien plants [which will] carve up the landscape into arbitrary compartments governed by lot sizes and surveyor's practice.*

30. He also noted that in his experience little consideration is given by the Council to the impact of roads, driveways and earthworks on the



16 ***Crichton v Queenstown Lakes District Council*** W12/99, p12.

landscape. He said cuts made into the land for driveways and building platforms create visual problems and due to the steepness, result in continuous erosion and difficulty in revegetating the area. Weed problems usually follow, which with poor land management, results in the invasion of weeds into neighbouring properties.

31. With respect to buildings Mr Kruger said that there are two aspects that need to be considered when looking at buildings in rural areas. Firstly, would any structure (no matter the size, shape and design) have a negative effect on the particular landform and land unit? Secondly, can appropriate design mitigate an adverse effect? He said that at present the reality of residential development in Queenstown is that buildings do not have a functional part in farming operations, but are instead extremely large and ostentatious, which in his view the landscape is not capable of absorbing.

32. Mr Kruger stated that forestry can alter an existing landscape dramatically due to the monotonous use of a single species and the shape and size of the planting. He gave as an example the forestry block on the lower slopes of the Coronet Peak Range, where the formerly cohesive tussock grassland slopes are now overtaken by a monoculture Douglas Fir forestry plantation, in his view showing no regard to landforms at all. He said the impact is enormous with the block being visible from many parts of the Basin. He was of the view that in time it will create a seed source for the spread of the species to formerly unthreatened valleys and mountain slopes and will have a major negative impact on the biosecurity of the district.

33. Mr Kruger was of the view that a lot of the activities in the district give very little consideration to ecosystems. He said that the main reason for this is the absence of significant knowledge about ecosystems,

particularly on a smaller scale. In his view there are few good habitats left in the Wakatipu and some are under direct threat at the moment with land being up for sale, an example being the wetland contained between Malaghan Road, Littles Road and the steep cliffs. In addition he said there is little acceptance of the conservation of historic open spaces such as parks, gardens, trees and other man-made features using vegetation. He said the best examples in the Wakatipu Basin are the Hawthorn hedgerows, especially in Speargrass Flat Road and Lower Shotover Road, created in the early 19th and 20th century. He said that there is a process of "nibbling" away at these and the loss of these would reduce or remove the microclimatic qualities created by the plantings and would alter the cultural significance of the relevant areas. Mr Kruger listed other threats to the area as including sewerage, utilities such as power lines and the Council not enforcing existing District Plan rules and monitoring conditions in the course of development.

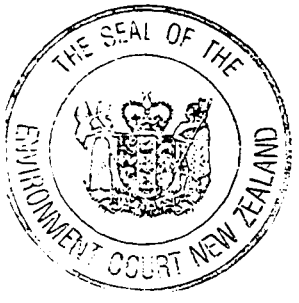
34. The only party supporting WESI was the Upper Clutha Environmental Society Incorporated. Mr J Haworth, the secretary of UCES and a qualified accountant gave evidence that he has lived in Wanaka for nine years working as owner/operator of a backpacker lodge. He said that the UCES is opposed to the deletion of the ALIs because visual aspects and amenity values of the icon landscapes in the District will be significantly and adversely affected by buildings, and other structures associated with the buildings.

35. Mr Haworth said that the zones in the revised plan offer the District's more vulnerable landscapes little more protection than any other rural zone in the district plan; the flat paddocks of Hawea Flat being zoned identically to Roy's Peninsula at West Wanaka. He submitted that to permit development in ALIs is to give these landscapes no more value than any other rural areas in New Zealand, when in reality these

landscapes are of national and international importance. Mr Haworth suggested that it is better to take the precautionary approach and zone the Areas of Landscape Importance now, possibly redefining the boundaries at a later date after studies have been done. He said that UCES acknowledges that the rules in the notified plan for ALIs may have been too restrictive with respect to some issues, but he said that in fact the rules permitted farming to continue much as it always has in the ALIs.

36. Mr Haworth gave the Court an illustration of the difference between the two plans in relation to an area on the south-western shoreline of Lake Wanaka, going north-westwards between Larch Hill and the Ironside Trig and bounded to the west by Mt Aspiring Rd. In summary he said that under the notified plan one extra house would be permitted, and under the revised plan 75 extra houses would be permitted. He then cited a case where the Environment Court[17] granted a resource consent in this area. The Court noted the issue of urban creep and said that it trusted that the small exception being granted would be the last residential extension around this side of the lakeshore under current policies. Mr Haworth stated that if the revised plan is approved in its current form then it will be contrary to the spirit of this decision.

37. He said that as an accountant and working in the tourist industry in Queenstown for nine years he has talked to thousands of visitors to the Upper Clutha and the overwhelming impression imparted to him is that the landscapes of Queenstown are wonderful and of national and international significance. He said that it is clear that the District's



[17] *Upper Clutha Environment Society Inc v Queenstown Lakes District Council* C12/98.

economy largely depends on the tourist industry and this in turn depends on the District's landscapes. Mr Haworth also submitted that it is interesting to note that Wanaka's recent economic success has been achieved without the need, by and large, to encroach on the icon landscapes in the area. The transitional plan mostly restricts development, other than farming, in key landscape areas and rural zones in general.

38. Mr Haworth finished his evidence by noting that the Minister of Conservation and the New Zealand Tourism Board accept the principle of zoning by ALIs. He also noted that the Consulting Surveyors of New Zealand in their submission to the notified plan said:

> *recognition and protection of significant natural features should not be left until such time that the process of land subdivision and development occurs. Such recognition and protection should be identified on planning maps or references in the district plan.*

39. The Council, the section 271A parties and the section 274 interested persons opposed WESI's reference in at least two fundamental ways. First, as we have said, they opposed the re-introduction of the areas of landscape importance. That issue has been adjourned in the hope it does not have to be resolved at all, although ultimately WESI will have to state whether it wishes to pursue that issue. Secondly, they opposed WESI's proposed amendments to the revised plan. No party expressly argued that the proposed plan should stay as it is; indeed every person who gave more detailed evidence about the objectives and policies conceded in their evidence-in-chief that various changes needed to be made to sections (1) and (2) of Part 4 of the revised plan.

40. Counsel for the parties opposing WESI's reference gave detailed submissions as to the interpretation of section 6(b) of the RMA. We refer to the most relevant parts of those submissions in the succeeding parts of this decision, and so do not need to say more here. Generally, the evidence opposing WESI's reference was either broad landscape and/or resource management evidence, or focused observations on conditions. We will concentrate on the former here since the latter are more conveniently referred to in the context of objectives and policies in Part 4 of the district plan[18].

41. The expert general landscape/resource management evidence for the parties opposing WESI was from:

- Ms R Lucas a landscape architect (called for the council)
- Mr P Rough, a landscape architect with 25 years experience (called for the council);
- Ms C Munro, a resource manager (called by the council);
- Mr A M Rackham, a landscape architect with extensive (and international) experience over the last 30 years (called for Crosshill and others);
- Ms S M Dawson, a resource manager with 20 years experience (called for Crosshill and others); and
- Mr J A Brown, a resource manager with 11 years experience (for Mr Todd's clients).

We also read the evidence of Mr P Baxter, a landscape architect, which was on the record by consent since no party sought to cross-examine

[18] See Chapters 9-12 below.

him. We do not overlook the other evidence we heard: we have considered it, but are of the view that the evidence of the witnesses above is most relevant to the general issues.

42. All the experts (and indeed counsel) accepted that the landscapes of the district are important, so we need not refer to extensive parts of their evidence in any detail. It was also common ground that many natural features of the district are outstanding within the meaning of section 6(b). Where the expert witnesses opposing WESI's case all struggled was in relation to the bounds of the landscapes which actually qualify under section 6(b).

43. Despite the fact that our directions[19] from the pre-hearing conference had expressly stated that the identification of areas of outstanding natural landscape was an issue in the references, none of the experts called for the parties opposing WESI directly dealt with the issue, until Ms L J Woudberg in her evidence for the MFE in the third week of the hearing – when we heard the cases on "urban growth".

44. Although we raised the issue with counsel again, at the end of the first week of the hearing, none of them dealt with the issue in their submissions except for Mr More in the last two days of the hearing. In fact, it was witnesses for the parties other than WESI who identified procedural problems arising out of not identifying the section 6(b) landscapes. For example, the Council's landscape consultant Mr Rough admitted in his summary:

[19] See paragraph 10 above.

Both the 1995 and 1998 Proposed Plans made reference to the outstanding landscapes in Environmental Results Anticipated yet neither plan particularly identified what are the outstanding landscapes in the District. In terms of Section 6 of the Resource Management Act 1991 this would seem to be a deficiency in both plans. It is my opinion that this deficiency could be overcome by including a list in the Proposed Plan of outstanding natural features and landscapes as identified in the Otago regional landscape study and add to that list other obvious highly recognised features and landscapes or examples of what is deemed to be, within the District, outstanding natural features and landscapes. Such a list would include those natural features and landscapes which are widely accepted by the community as being outstanding. It is my opinion that such a list need not be exhaustive but it would need to be explicit so that the list established a threshold as to what the Council regarded to be an outstanding natural feature or landscape.

In further oral evidence-in-chief he suggested that the district plan should contain a list of criteria by which the quality of a landscape could be assessed. The other landscape witnesses and resource managers who gave evidence after him all agreed with that suggestion. The criteria he suggested were not clearly articulated but roughly follow the factors referred to in the ***Pigeon Bay***[20] case to which we shall refer later. Similar factors were referred to by Mr Rackham.

45. Ms R Lucas' evidence was primarily designed to show various inconsistencies with the 'Areas of Landscape Importance' identified in

[20] ***Pigeon Bay Aquaculture Ltd v Canterbury Regional Council*** [1999] NZRMA 209.

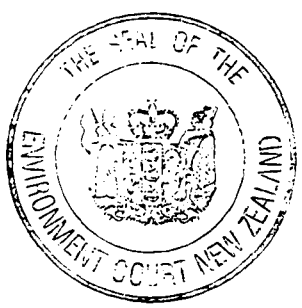
the notified plan. Her evidence largely succeeded in that, but we do not need to consider it further at this stage since we hope it will not be necessary to re-introduce (and correct) such a flawed method. The particular relevance of Ms Lucas' evidence was that she produced wide-angle photographs she had taken in July 1999 of three panoramas:

- the head of Lake Wakatipu looking past Glenorchy, and up the Rees and Dart Valleys;
- Lake Hayes looking west past Slope Hill, with vineyards in the foreground; and
- a view over grasslands towards Lake Wanaka (invisible in the photograph).

These were the subject of considerable cross-examination for a number of witnesses.

46. In the witness box Mr Rackham was a careful and thoughtful witness, although his written evidence did not go into the specifics. It was clear from his evidence that he has given a good deal of general consideration as to how to apply a landscaper's assessments to plans under the RMA. He stated:

> *My work with a wide range of Districts has led me to the view that in most instances, to be effective, a very thorough landscape investigation is necessary when the District Plan is to contain landscape maps and related rules. It is not adequate to patch together past studies and reinterpret past findings. Consequently, in the ... [district] my view is that if policies and rules are to be spatially defined (mapped), then a new and detailed landscape study would be required. This would be a major exercise and would be likely to result in a very detailed and complex set of*



landscape findings (given the complexity of the landscape). To be meaningful the scale at which landscape boundaries were defined would need to be very fine grained.

I have discussed with Ms Dawson the feasibility of preparing plan provisions based on such an exercise. She has impressed upon me the difficulties that a Plan drafter, and potentially the district Plan users, would be likely to encounter. I accept that this might well be the case in this District and that the usefulness of such a study could not be guaranteed.

In the circumstances (that the ALI are inappropriate and that the findings of a comprehensive landscape study would have serious difficulties in terms of the district Plan's preparation and functions), I have discussed with Ms Dawson the acceptability of relying on well-crafted objectives, policies and rules without reference to maps. I understand that these mechanisms could be used to protect landscape values and could enable development to be located in appropriate locations and with adequate design controls. I have reviewed Ms Dawson's evidence and consider the changes she has recommended to the policies would be a substantial improvement on both the current Proposed Plan and the district Plan were it to be amended to meet the reliefs sought by the Wakatipu Environmental Protection Society. I remain of the view that the district Plan should provide for the appropriate protection of Outstanding Natural Features and Landscapes. It should specify the characteristics and qualities that make them outstanding and it should have adequate provisions to ensure their protection.

47. Two aspects of that evidence concern us. The first is his concern about the use of landscape maps, and his conclusion that, in such maps, landscape boundaries would need to be shown at a large scale. It appears to us that, especially in rural areas, most maps in plans use a zoning technique. Zones are a mapping technique. If in this district zoning maps, for example showing the extent of the Rural zone, are to be used, then that is at first sight an even cruder tool than the ALI for protecting areas of national importance under section 6(b) of the Act. The rural zones appear to be defined by elimination – they are not urban or commercial zones. Mr Rackhams's way of looking at the issues suggests either very detailed mapping, or a case-by-case assessment are the only two proper methods of assessing landscapes under the RMA. We are not sure that is correct, and return to this issue in Chapters 6 and 7.

48. That leads to our second, major, concern which is Mr Rackham's reservation:

> *I remain of the view that the [p]lan should provide for the appropriate protection of outstanding natural features and landscapes. It should specify the characteristics and qualities that make them outstanding ...*

We take from this that, even with Ms Dawson's changes, the revised plan does <u>not</u> provide for the appropriate protection of section 6(b) landscapes. Our understanding seems to be confirmed by the statement in his conclusion:

> *I strongly recommend that the ... plan should address the issue of outstanding natural features and landscapes.*

Even if we misunderstand what he was saying, it is clear that neither the revised plan nor Mr Rackham identifies the outstanding natural landscapes. He suggests some relevant general criteria but that is as far as he goes.

49. We did find useful Mr Rackham's answers when being cross-examined by Mr Lawrence, and questioned by the Court. To the former he recognised the importance of foregrounds to views (as one component of landscape) and to us he suggested:

> *... that we have a three level landscape in terms of:*
> - *outstanding landscape*
> - *the special but not outstanding landscape; and*
> - *specific places that clearly don't raise landscape issues and those third areas ... are ... within the Wakatipu Basin and within the area described as the Dalefield area.*

50. Mr Baxter's evidence was largely directed at establishing the inadequacies of the ALI's. We note however, the strength of his statement of what he identifies as a fundamental issue in respect of protection of the landscape character of the Wakatipu Basin:

> *... there are highly visible and outstanding landscapes within the valley that would be unable to absorb change and the maintenance of those landscapes is critical to the landscape character of the area.*

51. The evidence of other witnesses we will refer to as we need to in our consideration of the issues.

Chapter 4 : Preparation of the district plan under the RMA

52. A district plan must provide[21] for the management of the use, development and protection of land and associated natural and physical resources. It must identify and then state[22] (inter alia) the significant[23] resource management issues, objectives, policies and proposed implementation methods for the district. In providing for those matters the territorial authority (and on any reference[24] the Environment Court) shall[25] prepare its district plan in accordance with:

- its functions under section 31,
- the provisions of Part II,
- section 32,
- any regulations

and must have regard to[26] various statutory instruments.

53. In this case there are no relevant regulations. The only statutory instrument of relevance is the Otago Regional Council's Regional Policy Statement, and that is of limited assistance to the issues we have to decide in these proceedings because it expresses good intentions, but goes little further. Therefore the key matters for us to consider in the appropriate way in this case are:

(a) the integrated management of the effects of land use in the district[27];

(b) the control of subdivision of land[28];

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21 Section 75(1) and Part II of the Second Schedule to the RMA.
22 Section 75(1)(a) – (d).
23 Section 75(1).
24 Under clause 14 of the First Schedule to the RMA.
25 Section 74(1): See ***Nugent Consultants Ltd v Auckland City Council*** [1996] NZRMA 481.
26 Section 74(2).
27 Section 31(a).
28 Section 31(c).

(c) the necessity for, and efficiency and effectiveness of, any particular objective and policy[29];

(d) Part II of the Act.

54. Broadly speaking there are three substantive stages (ignoring procedural steps in getting to, and at, a hearing) in deciding the contents of a district plan in accordance with the matters identified above. They are:

(1) Identification of the facts, the significant issues[30] for the district arising out of those facts and then sequentially, the other contents of the district plan[31];

(2) The section 32 analysis[32] of the proposed objectives, policies and rules generated by (1); and

(3) The 'broader and ultimate issue'[33] as to whether *"on balance, we are satisfied that implementing the proposal[s] would more fully serve the statutory purpose than would cancelling [them] ..."*: ***Countdown Properties (Northlands) Ltd v Dunedin City Council***[34].

55. The second and third stages identified above are effectively the two 'tests' identified by the High Court in ***Countdown,*** and expanded as a general recipe. The present case highlights the obvious fact that even proposed objectives and policies (and rules) do not come out of

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29 Section 32(1).

30 Section 75(1)(a) and section 74.

31 Section 75.

32 See ***Countdown Properties (Northlands) Ltd v Dunedin City Council*** [1994] NZRMA 145 (HC) at 179; ***Marlborough Ridge Ltd v Marlborough District Council*** [1998] NZRMA 73.

33 ***Countdown*** at 179.

34 [1994] NZRMA 145 at 179.

nowhere. There is a prior stage[35] which is the identification of the facts and of the significant resource management issues of the district. When facts are contested it is a fundamental part of the quasi-judicial process of a local authority to make findings of fact. Then the requirement to identify the 'significant issues' is an express requirement in section 75(1)(a) of the Act. Stating the issues can only be achieved if the relevant facts or most of them are ascertained at least to the point where issues can be formulated. On appeal, the Environment Court does not have to determine all the facts and/or issues: many will already be stated in a proposed plan and may be unchallenged by reference. Others may need to be determined on the evidence if they are contested, or if, for some other reason, they have not been adequately defined. Of course determining the 'facts' may be a broad issue in a case under the RMA especially when it relates to landscapes.

56. In respect of a district council's functions, including integrated management of land, the starting point for the first stage must be to identify the facts and the appropriate matters[36] to be considered. In particular it is fundamental to consider Part II of the Act. That means it is mandatory[37] to identify the matters of national importance[38]. We do not see how that can be achieved without identifying (necessarily with a broad pencil, but with as much accuracy as possible) the boundaries of the areas concerned. Once the coastal environment, wetlands, lakes, rivers, outstanding natural features or landscapes, areas of significant vegetation, significant habitats of indigenous fauna, or Maori ancestral

35 Stage 1 in the preceding paragraph.
36 Section 75(1).
37 Section 74(1).
38 Section 6.

lands, water, sites, waahi tapu, and other taonga[39] have been identified the general issues tend to be self-generating: how can those resources be protected from inappropriate use or development or have access to them maintained and enhanced, or be recognised and provided for, as the case may be? In practice, it may assist to focus the issues by posing more specific questions. Only then should the Council turn to the next sub-stages in the process: considering the appropriate objectives, policies and methods of implementation.

57. In this particular district – renowned for the quality of its scenery on which, it is common ground, a huge part of its economy depends – we hold that the Council should, as part of stage (1) in preparing its plan, have identified the outstanding natural landscapes and any other landscapes to which particular regard should be had. It needed to identify the landscapes that qualify under section 6(b) and/or section 7(c) and 7(f) of the RMA so that it could identify the issues relating to the management of effects on landscapes (amongst other values)[40].

58. In this case, in the revised plan, and in its evidence to us, the Council has failed to carry out an essential step in the process – the fact finding. None of the parties opposing WESI – Federated Farmers of NZ (Inc) ("Federated Farmers") excepted – have given the Court evidence as to the extent of the outstanding natural landscapes of the district. On the other hand, WESI has given such evidence (as has the UCES in a limited way) and we shall consider that in due course.

39 Section 6.
40 Clause 2(c) of Part II, Second Schedule to the RMA.

Chapter 5 : The Natural Environment of the District

Nature Conservation Values

59. There are several matters under the general heading of 'Natural Environment'[41] which we need to determine here in addition to those which are the subject of references by the Royal Forest and Bird Protection Society Inc and others[42] which are to be heard separately.

60. The list of nature conservation values in Objective 1[43] includes:

> *The protection of outstanding natural features.*

That wording raises the point why *"outstanding natural landscapes"* are not included in the list. Logically, it seems to us, both landscapes and features should be in; or both should be out on the ground they are dealt with in Part 4.2 (Landscape and Visual Amenity). The argument for having them both in is that outstanding natural landscapes (and features) may well have 'nature conservation' values as well as 'landscape and visual amenity' values. Arguably the natural values are a very important part of what makes an outstanding natural landscape or feature. We reserve leave to any party and interested person in this case to make an application (either way) under section 293 of the Act.

61. The Council's main resource management witness Ms Hume was concerned that there should be a link (in the district plan reflecting reality) between the values of landscape and their intrinsic values as ecosystems[44]. She considered that we should add two further policies

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41 Part 4.1 [Revised plan pp4/1 – 4/5].
42 RMA Nos: 1225/98; 1398/98; 1395/98; 1753/98.
43 Para 4.1.4 [revised plan p4/2].
44 Section 6(d).

1.18 and 1.19[45]. We agree that policies which emphasize the link are appropriate but again do not insert them until we have heard further argument on our jurisdiction to do so, or until we receive an application under section 293. In any event the policies as worded seem to be simply landscape policies, rather than linking areas.

62. WESI seeks two changes to the implementation methods[46] in respect of nature conservation values. These are the addition of:

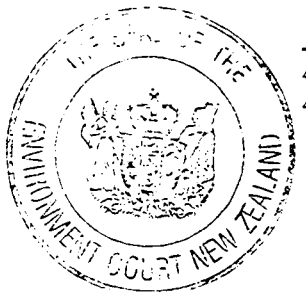
- *The provision of rules to control the clearance or felling of identified hedgerows*

...

- *In relation to geological and geomorphological features of scientific importance:*
  to control, by way of resource consents, activities which involve earthworks, vegetation clearance and plantings and have the potential to adversely affect these sites.

63. As for the hedgerows, these were identified by Mr Kruger as being hawthorn hedges along Speargrass Flat Road (amongst others). The evidence of Mr A D George – a policy planner giving evidence for the Council - was that WESI's amendment was inconsistent with the earlier policy:

> *1.5 To avoid the establishment of, or ensure the appropriate location, design and management of, introduced vegetation with the potential to spread and naturalise; and to*



45 To the revised plan on p4/3.
46 Part 4.1.4 [Revised plan pp4/3 and 4/4].

encourage the removal or management of existing vegetation with this potential and prevent its further spread. [47]

Further, hawthorn[48] is banned from sale, distribution and propagation under the Otago Pest Management Strategy. For both reasons we agree with Mr George that WESI's suggested method should not be inserted in the district plan. WESI's proposed amendments to Part 4.1.4's suggested site standards and assessment matters are, in consequence, not accepted.

64. This issue of wilding plants leads us to mention an inconsistency in the policies of the revised plan which seek to control the spread of introduced plants. In addition to the policy quoted above, there is a further objective and policy in Part 4 which state respectively:

- ***Wilding Trees***
  To minimise the adverse effect of wilding trees on the landscape by:
  - *supporting and encouraging co-ordinated action to control existing wilding trees and prevent further spread*[49].

- *The limitation of the spread of weeds, such as wilding trees*[50].

All the above seem inconsistent with the nature conservation policy which states:

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47 Part 4.1.4 Objectives and Policies [Revised plan p4/3].
48 *Crategus manogyna.*
49 Part 4.2: Landscape and Visual Amenity Policy 4.2.5(10) [Revised plan p4/8].
Part 4.3 Takata Whenua Objective 4(2) [Revised plan p4/13].

1.17 To encourage the retention and planting of trees, and their appropriate maintenance.[51]

65. It seems to us this would be an appropriate place to exercise our powers under section 292(1) of the RMA and insert the word *"native"* before *"trees"* in policy 1.17 since that seems the intention of part 4.1. But, in case we misunderstand the Council's intentions, we reserve leave for further submissions on that issue.

66. As for the second change to the methods of implementation of policies on nature conservation values, it does seem anomalous that there are various references in policies 1.1, 1.4 and 1.12 to geological and geomorphological features but no methods of implementation in respect of the general objective which is *"[t]he protection of outstanding natural features"*[52]. However, we see no need to have a separate method of implementation. The answer is to amend existing method (i)[53] by adding the words:

or in areas containing geological and/or geomorphological features of scientific interest.

Air Quality

67. WESI sought a new policy 2.2[54] reading:

To support reduced air emissions from transport through consolidation of urban activities.

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51 Part 4.1.4 Policy 1.17 [Revised plan 4/3].
52 Part 4.1.4 Objective 1 [Revised plan p4/2].
53 Part 4.1.4 Implementation method (i) [Revised plan p4/3].
54 To be added after policy 2.1 [revised plan 4/4].

We accept Ms Hume's evidence for the Council that there is no evidence that consolidation of urban activities will maintain or improve air quality. She even suggested the opposite might be true. We do not accept that this policy should be added. There are also difficulties with this policy under section 32 and we return to that in the penultimate chapter.

Chapter 6 : Landscape in the RMA

Introduction

68. New Zealand's landscapes are natural and physical resources which are required to be managed sustainably under the RMA. We now set out the important provisions in the Act dealing with landscapes. First, when preparing a plan a territorial authority has to consider the actual or potential effects of any use, development or protection on[55]:

> *natural, physical, or cultural heritage sites and values, including landscape, land forms, historic places and waahi tapu.*

It appears from that grammatically confusing clause that landscapes may have natural, physical and cultural values and are themselves resources. We infer that the three-way distinction is not intended to be hard edged for two reasons:

(a) the language of the clause is too loose for that; and

(b) in describing landscapes we recognize that they may contain all three qualities[56] simultaneously.

69. Secondly, the territorial authority is to recognise and provide for[57] (amongst other things):

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55 Second Schedule : Part II para 2(c).

56 Academic landscape experts almost regard as a truism the idea that 'nature' is a 'cultural construct'. Such statements are of some value in so far as they remind us of the cultural sensitivity of, and differences about, the issues (and even about what the issues are), but in the end they are not of much assistance in coming to practical decisions within the field of discourse constituted by specific legislation such as, in this case, the RMA.

57 Section 6.

(a) The preservation of the natural character of ... lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:

(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development ...

Both section 6(a) and 6(b) are relevant in this case. We note that they do not entail that the natural character of lakes and rivers or nationally important features and landscapes are to be preserved or protected at all costs: ***Trio Holdings Ltd v Marlborough District Council***[58] and ***New Zealand Rail Ltd v Marlborough District Council***[59]. Further it is only "inappropriate subdivision, use and development" from which they are to be protected. Finally, while only section 6(b) refers to 'landscape;' section 6(a) makes it clear at least by inference that lakes and rivers have a special place in landscape, in that even if the natural values of surrounding land have been compromised, they and their margins are still to be protected anyway.

70. Thirdly the territorial authority is also to have particular regard to[60] (relevantly):

(c) The maintenance and enhancement of amenity values:

(d) ...

(f) Maintenance and enhancement of the quality of the environment:

58 2 ELRNZ 532 [1997] NZRMA 97, 116.
59 [1994] NZRMA 70,85.
60 Section 7.

(g) Any finite characteristics of natural and physical resources.

We have already commented that landscapes are themselves resources, or groups of natural and physical resources. We discuss shortly the link between landscapes and the environment (including amenity values).

71. The legal issues raised in submissions and/or the evidence are:

(1) What is a "natural feature" and a "landscape"?

(2) If one assumes that "landscape" is a holistic concept how does one avoid taking relevant factors into account twice if they already occur somewhere else in Part II of the Act?

(3) Are the section 6(b) landscapes

(a) any landscape; or

(b) any outstanding landscape; or

(c) any outstanding natural landscape?

(4) Is a section 6(b) landscape assessed on a district, regional or national basis?

(5) If the correct interpretation of section 6(b)[61] refers to "outstanding natural landscapes" then are other important landscapes entitled to any consideration under the RMA[62]?

What is landscape?

72. In ***Pigeon Bay Aquaculture Ltd v Canterbury Regional Council***[63] the

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61 See question (3) above.

62 For example under section 7(c), 7(f) and/or 7(g).

63 [1999] NZRMA 209 at 231-232 (para 56) – based on a series of Marlborough aquaculture decisions by Environment Judge Kenderdine's division of the Court including: ***Trio Holdings Ltd*** 2 ELRNZ 353 (W103A/96); ***Browning*** W20/97; ***NZ Marine Hatcheries (Marlborough) Ltd*** W129/97; ***Kaikaiawaro Fishing Co Ltd*** 5 ELRNZ 417 (W84/99).

Court identified the following aspects as relevant to assessment of the significance of landscape:

(a) *the natural science factors – the geological, topographical and dynamic aspects of the landscape;*

(b) *its aesthetic values including memorability and naturalness;*

(c) *its expressiveness - how obviously the landscape demonstrates the formative processes leading to it;*

(d) *transient values - occasional presence of wildlife; or its values at certain times of the day or of the year;*

(e) *whether the values are shared and recognised;*

(f) *its value to tangata whenua;*

(g) *its historical associations.*

Roughly (a) and (d) correspond to what is seen or perceived; and (b), (c) and (e) to (g) to how people perceive it[64].

73. During the hearing of these references we raised with the parties the question whether some of those matters should correctly be omitted as aspects of landscape for the purpose of the RMA, for two reasons:

(a) at least some of the aspects identified are not 'natural';

(b) some aspects are expressly to be considered elsewhere in sections 6 and 7 of the Act.

Basically all counsel (but not Mr Lawrence) appeared to agree that the ***Pigeon Bay*** criteria were too widely framed because:

- aesthetic values fall to be considered when having particular regard to the maintenance and enhancement of amenity values[65];

64 See ***Browning v Marlborough District Council*** W20/97.

65 Section 7(c).

- value to tangata whenua is expressly stated to be of national importance elsewhere[66];
- historical associations are also recognised and provided for[67] as heritage values.

However, upon reflection, we consider that such an approach is over-simplistic for reasons we will endeavour to state shortly. In the light of counsel's submissions (not agreed to by Mr Lawrence for WESI) we have decided to look at what the RMA requires in respect of landscape.

74. The dictionaries define a landscape as:

- *1. natural or imaginary scenery, as seen in a broad view.*
- *2. a picture representing this ...*[68]

- *A portion of land which the eye can comprehend in a single view; a country scene*[69]*;*

We do not consider the dictionary definitions are determinative, especially since they are not consistent in themselves. Further, even if one considers landscapes in the loose sense of 'views of scenery' the first question that arises is as to where the view is from. One cannot separate the view from the viewer and their viewpoint. We also bear in mind that the word 'landscape' does not necessarily require a precise definition:

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66 Section 6(e) and this relationship is also relevant under section 7(h) and section 8 of the Act.

67 Section 7(e).

68 The Concise Oxford Dictionary Eighth edition (1990).

69 University English Dictionary cited by Mr Goldsmith.

> *[T]he very act of identifying ... [a] place presupposes our presence, and along with us all the heavy cultural backpacks that we lug with us on the trail*[70].

Discounting for a moment the undoubted existence of differing cultural viewpoints, it is obviously not practical or even possible to enumerate all views from all viewpoints. Fortunately the RMA does not require all landscapes to be taken into account as matters of national importance since there are some qualifying words in section 6(b). However, whilst a precise definition of 'landscape' cannot be given, some working definition might be useful.

75. In addition to the dictionary definitions, and the other use of the word 'landscape' in the RMA[71], we also have to bear in mind the broader context of the RMA. The word 'landscape' is used in Part II of the Act, of which Greig J. stated in ***NZ Rail Ltd v Marlborough District Council***[72]***:***

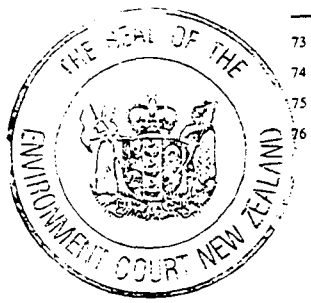
> *This Part of the Act expresses in ordinary words of wide meaning the overall purpose and principles of the Act. It is not, I think, a part of the Act which should be subjected to strict rules and principles of statutory construction which aim to extract a precise and unique meaning from the words used. There is a deliberate openness about the language, its meanings and its connotations which I think is intended to allow the application of policy in a general and broad way.*

70 ***Landscape and Memory*** Schama S, (Fontana 1996).
71 Second Schedule quoted in para 68 above.
72 [1994] NZRMA 70,86 (HC).

76. The definition of 'environment' – including the sub-definition of 'amenity values' states[73]:

> *'Environment' includes-*
>
> *(a) Ecosystems and their constituent parts, including people and communities; and*
>
> *(b) All natural and physical resources; and*
>
> *(c) Amenity values; and*
>
> *(d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters.*
>
> *'Amenity values' means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.*

77. The most important aspects of these definitions in this context, is their comprehensiveness and their cross-referencing quality. We consider it is useful to consider 'landscape' as a large subset of the 'environment'. We have already observed that 'landscape' involves both natural and physical resources themselves[74] and also various factors relating to the viewer and their perception of the resources. These aspects seem to fit within 'amenity values'[75] and into the category of *"social ... and cultural conditions which affect the matters in paragraphs (a) to (c) ... or which are affected by those matters*[76]*."*



73 In section 2 of the RMA.
74 Which fall into categories (a) and (b) of the definition of 'environment'.
75 Para (c) of the definition of 'environment': section 2 RMA.
76 Para (d) of the definition of 'environment': section 2 RMA.

78. We also regard 'landscape' as a link between individual (natural and physical) resources and the environment as a whole. It is a link in two ways: first in that it considers a group of natural and physical resources together, perhaps in an arbitrary cultural lumping as a 'landscape' rather than in any ecologically significant way; and secondly it emphasizes that our attitudes to those resources are affected by social, economic, aesthetic and cultural conditions.

79. It is wrong, in the end, to be overly concerned with 'double-counting', that is, whether the values identified in section 7 should also be taken into account under section 6. That is to adopt an over-schematic approach to sections 5 to 8 which is not justified. Those sections do not deal with issues once and once only, but raise issues in different forms or more aptly in this context, from different perspectives, and in different combinations. In the end all aspects go into the evaluation as to whether any issue being considered achieves the purpose of the Act.

80. Consequently, we have no reason to change the criteria stated in ***Pigeon Bay*** in any major way. We list them here for three reasons: first, in (a) to add 'ecological' components and to delete 'aspects' and substitute 'components', and secondly to correct the grammar in (c) and (d); and thirdly in (c) to give an alternative for 'expressiveness'. The corrected list of aspects or criteria for assessing a landscape includes:

> *(a) the natural science factors – the geological, topographical, ecological and dynamic components of the landscape;*
>
> *(b) its aesthetic values including memorability and naturalness;*
>
> *(c) its expressiveness (legibility): how obviously the landscape demonstrates the formative processes leading to it;*
>
> *(d) transient values: occasional presence of wildlife; or its values at certain times of the day or of the year;*

(e) whether the values are shared and recognised;

(f) its value to tangata whenua;

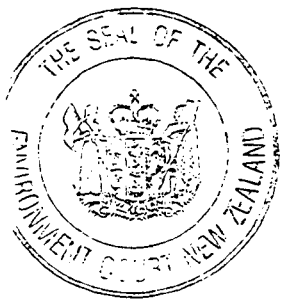
(g) its historical associations.

We should add that we do not regard this list as frozen – it may be improved with further use and understanding, especially of some of the issues we now explore. One aspect that troubles us in particular is that the dictionary senses of landscape as a view of scenery or, perhaps, a collection of views – while included in (b), is given less emphasis than we consider the RMA might suggest. Another matter that needs further consideration is whether (b) might be better expressed in terms of all the amenity values[77] rather than just one quality – aesthetic coherence.

Outstanding natural landscapes

81. We now turn to consider how landscapes come within section 6(b) of the Act. Section 6(b) refers to 'outstanding natural features and landscapes'. As a preliminary point, it was common ground between counsel that the words 'outstanding (and) natural' qualify 'landscapes' as well as 'features'. That is consistent with the way qualifying adjectives have been applied in the Act. For example:

(1) In both section 6(a) and 6(b) the phrase 'inappropriate subdivision, use, and development' occurs. That has always been interpreted to mean 'inappropriate subdivision, inappropriate use, and inappropriate development'.



[77] See definition in section 2 RMA.

(2) In section 6(e) the word 'ancestral' qualifies each of 'lands, water, sites, waahi tapu, and other taonga': ***Haddon v Auckland Regional Council***[78].

(3) In section 6(c) where the phrase 'significant indigenous vegetation' occurs, Parliament has made it clear that 'indigenous' does not qualify the following 'habitat' whereas 'significant' does, by repeating the word 'significant'. So 6(c) refers to:

> *(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*

The meaning of 'outstanding'

82. The word 'outstanding' means:

- "conspicuous, eminent, especially because of excellence"
- "remarkable in"[79].

As Mr Marquet pointed out, the Remarkables (mountains) are, by definition, outstanding. The Court observed in ***Munro v Waitaki District Council***[80] that a landscape may be magnificent without being outstanding. New Zealand is full of beautiful or picturesque landscapes which are not necessarily outstanding natural landscapes.

83. A subsidiary issue is whether an outstanding natural landscape has to be assessed on a district, regional or national basis. Mr Goldsmith referred

78 [1994] 2 NZRMA 49.
79 Concise Oxford Dictionary (1990) p.485.
80 C98/97.

to a number of inquiries the Court has held into various Draft National Water Conservation Orders. These inquiries related to section 199(1) of the Act which involves the word "outstanding". In ***Re an inquiry into the draft National Water Conservation (Buller River) Order***[81] the Court accepted that the test as to what is outstanding is a reasonably rigorous one. The Court also referred to the Mohaka River case[82] in which a differently composed Tribunal agreed that the test is reasonably rigorous and went on to accept the submission that before a characteristic or feature could qualify as outstanding it would need to be quite out of the ordinary on a national basis. This test was upheld by the Planning Tribunal in the ***Inquiry into the Water Conservation Order for the Kawarau River***[83].

84. However, as we understand Mr Goldsmith's argument, the use of the word 'outstanding' in section 6(b) depends on what authority is considering it. Thus if section 6(b) is being considered by a regional council then that authority has to consider section 6(b) on a regional basis. Similarly a district council must consider what is outstanding within its district. By contrast a water conservation order is made under Part IX of the Act which is really a self-contained code within the RMA: it contains its own purpose and procedures including public notification on a national basis.

85. We agree: what is outstanding can in our view only be assessed – in relation to a district plan – on a district-wide basis because the sum of the district's landscapes are the only immediate comparison that the territorial authority has. In the end of course, this is an ill-defined

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81 C32/96.
82 ***Re Draft Water Conservation (Mohaka River) Order*** W20/92.
83 C33/96.

restriction, since our 'mental' view of landscapes is conditioned by our memories of other real and imaginary landscapes in the district and elsewhere, and by pictures and photographs and verbal descriptions of them and other landscapes.

86. The local approach is consistent with an identification of particular places: the unique landscapes of the given district. There are districts without the vertical dimensions of the Queenstown-Lakes district, but that does not lead to the result they do not have outstanding (natural) landscapes. Flatter landscapes may qualify, even though the test is still a rigorous one. A district may have no outstanding natural landscapes or features.

The meaning of 'natural'

87. To qualify under section 6(b) a landscape must not only be outstanding, it must also be 'natural'. The dictionary definition of 'natural' is:

(a) *existing in or caused by nature; not artificial (natural landscape)*
(b) *uncultivated; wild (existing in its natural state)*[84]

That definition is a little simplistic in our view: much more landscape has been affected by human activity than is commonly understood. The revised plan itself recognises that:

...[T]he downland lake basins have undergone more extensive modification. Maori settlement did occur around the inland lake

[84] Concise Oxford Dictionary (1990) p. 906

basin areas and also during this time much of the original podocarp and beech forests in the basins were destroyed by fire. The arrival of European settlers and the introduction of sheep in the 1860's led to major burning of native vegetation and scrub to enable stock to graze ... [85]

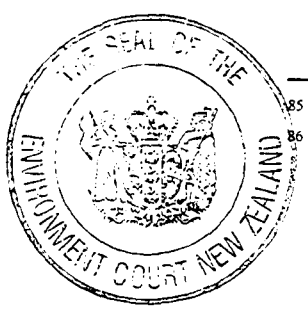
88. It is wrong to equate 'natural' with 'endemic'. In the context of section 6(a) the Planning Tribunal stated, in ***Harrison v Tasman District Council***[86]***:***

> *The word 'natural' does not necessarily equate with the word 'pristine' except in so far as landscape in a pristine state is probably rarer and of more value than landscape in a natural state. The word 'natural' is a word indicating a product of nature and can include such things as pasture, exotic tree species (pine), wildlife ... and many other things of that ilk as opposed to man-made structures, roads, machinery.*

We respectfully agree with that passage.

89. We consider that the criteria of naturalness under the RMA include:

- the physical landform and relief
- the landscape being uncluttered by structures and/or 'obvious' human influence
- the presence of water (lakes, rivers, sea)
- the vegetation (especially native vegetation) and other ecological patterns.



85 Para 4.1.3(i) [revised plan pp. 4/1].
86 [1994] NZRMA 193 at 197.

The absence or compromised presence of one or more of these criteria does not mean that the landscape is non-natural, just that it is less natural. There is a spectrum of naturalness from a pristine natural landscape to a cityscape.

Other important landscapes

90. Finally we should make it clear that while section 6(b) only protects outstanding natural landscapes that does not mean that lesser landscapes should not be considered and in some cases maintained. To the contrary, all landscapes need to be considered under sections 5(2) and 7(b), (c), (d), (f) and (g). Whether any resulting objectives, policies and methods pass the refining fires of section 32 is another issue.

91. An important point in respect of section 7 landscapes is that the Act does not necessarily protect the status quo. There is no automatic preference for introduced grasses over pine forest. Nor should it be assumed (on landscape grounds) that existing rural uses are preferable in sustainable management terms to subdivision for lifestyle blocks which could include restoration[87] of indigenous bush, grasses or wetlands, especially if predator controls are introduced. Just to show how careful one has to be not to be inflexible about these issues we raise the question whether it is possible that a degree of subdivision into lifestyle blocks might significantly increase the overall naturalness of a landscape (and incidentally reduce non-point-source pollution of waters from faecal coliforms, giardia etc). Logically there is a limit: the law of diminishing returns where too much subdivision leads to over-domestication of the landscape.

[87] See ***Di Andre Estates Ltd v Rodney District Council*** W36/97.

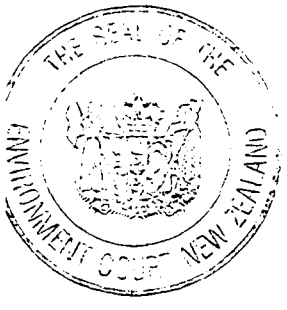
Chapter 7 : Landscapes of the District

92. In very broad terms we make a tripartite distinction in the landscapes of the district: outstanding natural landscapes and features; what we shall call visual amenity landscapes, to which particular regard is to be had under section 7, and landscapes in respect of which there is no significant resource management issue. We must always bear in mind that such a categorisation is a very crude way of dealing with the richness and variety of most of New Zealand's landscapes let alone those of the Queenstown Lakes District.

93. The outstanding natural landscapes of the district are Romantic landscapes - the mountains and lakes. Each landscape in the second category of visual amenity landscapes wears a cloak of human activity much more obviously - these are pastoral[88] or Arcadian landscapes with more houses and trees, greener (introduced) grasses and tend to be on the district's downlands, flats and terraces. The extra quality they possess that brings them into the category of 'visual amenity landscape' is their prominence because they are:

- adjacent to outstanding natural features or landscapes; or
- on ridges or hills; or
- because they are adjacent to important scenic roads; or
- a combination of the above.

These aspects mean they require particular regard under section 7. The third category is all other landscapes. Of course such landscapes may

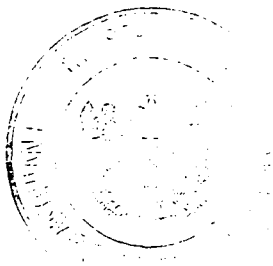


[88] Using 'pastoral' in the poetic and picturesque senses rather than in the functional ('pastoral lease') sense.

have other qualities that make their protection a matter to which regard is to be had[89] or even a matter of national importance[90].

94. It must always be borne in mind that all landscapes form a continuum physically and ecologically in the many ways they are perceived. Consequently we cannot over-emphasize the crudeness of our three way division - derived from Mr Rackham's evidence - but it is the only way we can make findings of 'fact' sufficient to identify the resource management issues.

95. We also consider it worth stating that landscapes outside the first two (section 6 and section 7) categories are not necessarily unimportant. The parties in this case are not just being chauvinistic when they state that all landscapes of the district are important. However it is important to realise that very often the best managers of landscape are landowners. It is difficult to manage landscape by committee - and most positive, imaginative landscaping comes from individuals left to work in their ways and with their own landscape architects. However retention of existing 'open space' qualities, especially those enjoyed passively by the public rather than landowners, are not so simply protected by the market, and hence the possible need for management under the RMA. Given that qualification the first stage in deciding these references is to find which landscapes of the district are outstanding natural landscapes and which deserve particular regard under section 7 as visual amenity landscapes.



89 Under section 7 RMA.
90 Under section 6 RMA.

Outstanding natural landscapes and features

96. We start our assessment by returning to the problem we identified briefly in the introduction to this decision. While almost everyone agrees that there are outstanding natural landscapes in the district, none of the parties other than WESI and Federated Farmers is prepared to say where they finish. Thus while the Remarkables mountains were on the whole agreed to be an outstanding natural landscape none of the witnesses for the other parties was prepared to say where the outstanding natural landscape terminated.

97. We consider that unwillingness has lead to a basic flaw in the case for all parties (other than WESI) in respect of landscape values. The RMA requires us to evaluate, as one relevant factor, the outstanding natural landscapes of the district so that appropriate objectives and policies (and implementation methods) can be stated for them. If the areas of outstanding natural landscape cannot be identified then how can objectives and policies (and methods) be properly stated for them?

98. Although we raised that issue with counsel at the end of the first week none of them dealt with it in their submissions at that time. Later[91] Mr More raised the same question. In fact it was witnesses for the parties other than WESI who identified the procedural problems we face. For example the Council's landscape consultant, Mr Rough, admitted in his summary:

[91] In the third week – he had not been present earlier.

Both the 1995 and 1998 Proposed Plans made reference to the outstanding landscapes in Environmental Results Anticipated yet neither plan particularly identified what are the outstanding landscapes in the District. In terms of Section 6 of the Resource Management Act 1991 this would seem to be a deficiency in both plans. It is my opinion that this deficiency could be overcome by including a list in the Proposed Plan of outstanding natural features and landscapes as identified in the Otago regional landscape study and add to that list other obvious highly recognised features and landscapes or examples of what is deemed to be, within the District, outstanding natural features and landscapes. Such a list would include those natural features and landscapes which are widely accepted by the community as being outstanding. It is my opinion that such a list need not be exhaustive but it would need to be explicit so that the list established a threshold as to what the Council regarded to be an outstanding natural feature or landscape.

99. One course for us to take would be to request further evidence from the parties. However, most take the view that what they see as the necessary studies would take months, perhaps years, and a great deal of money to carry out. In the meantime in our view the district needs a plan - especially for the Wakatipu basin - as a matter of urgency. Further, it seems to us that the attitude of the parties opposing WESI demonstrates a lack of understanding of what the RMA requires: ascertaining an area of outstanding natural landscape should not

(normally) require experts[92]. Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis. The question of what is appropriate development is another issue, and one which might require an expert's opinion. Just because an area is or contains an outstanding natural landscape does not mean that development is automatically inappropriate[93].

100. The simplest evidence on this issue came from Mr J H Aspinall who was a witness for Federated Farmers (NZ) Inc. He did not qualify himself as an expert; he is a farmer in the district (at Mt Aspiring station). On the other hand we do not consider that we should be precluded from considering his view since we do not consider that the question of whether there are outstanding natural landscapes in the district should be left solely to experts. In Mr Aspinall's view the district's truly outstanding landscapes are in the Upper Rees, Upper Dart, Upper Matukituki and Wilkin Valleys and thus are managed under the National Parks Act 1980.

101. In coming to our conclusions below, we generally prefer the evidence of Mr Kruger over those of the other landscape witnesses. That is not because we accept all of Mr Kruger's evidence – we do not – but because he at least was prepared to state where, in his opinion, some of the district's landscapes begin and end. His evidence related more to the general Wakatipu area, and the Wakatipu basin in particular. Even there he had some difficulties – he did not know, as Mr Marquet's cross-examination of him revealed, where the southern boundary of the district was.

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92 There may be exceptions where a landscape is flatter or such a large geological unit that an uninformed observer may have difficulty conceiving of it as outstanding, in the first case, or as a single landscape in the second.

93 Section 6(b).

102. The other landscape witnesses had a rather more sophisticated approach than Mr Kruger, and in theory we prefer the subtlety and richness of their approach to landscape assessment. However, in this case, all the landscape evidence other than Mr Kruger's and Ms R Lucas' (which was very limited in scope) was weakened by two problems:

(a) A failure to make findings of fact which were essential for the statement of issues, and resulting objectives and policies;

(b) The suggestion that no such findings could be made unless the plan first stated the criteria by which landscapes were to be assessed.

The difficulty with the latter point is that the suggested criteria were in essence some of the component aspects of 'landscape' identified in ***Pigeon Bay***[94]. Such a list is so general that we cannot see that it would assist much to have it specified in the plan. The real need is to apply those criteria to the landscapes and features of the district.

103. We do not consider WESI is correct in its assertion that the whole of the district is an outstanding natural landscape but neither do we consider that Mr Aspinall is correct in confining outstanding natural landscapes to the Mt Aspiring National Park.

104. We will shortly set out our findings in respect of outstanding natural landscape and features. Before we do, we record:

(1) that while we identify areas as landscapes of outstanding natural value or as important under section 7, these areas are <u>not</u> zones;

94 [1999] NZRMA 209 at 231-232; discussed in Chapter 6 above.

(2) that just because findings are made about the national importance or section 7 importance of some landscapes does not mean that development in those areas is inappropriate;

(3) that our decision only covers parts of the district[95];

(4) in respect of the areas not referred to in this decision we will need to hear further submissions and/or evidence, and make site inspections.

105. When considering the issue of outstanding natural landscapes we must bear in mind that some hillsides, faces and foregrounds are not in themselves outstanding natural features or landscapes, but looked at as a whole together with other features that are, they become part of a whole that is greater than the sum of its parts. To individual landowners who look at their house, pasture, shelterbelts and sheds and cannot believe that their land is an outstanding natural landscape we point out that the land is part of an outstanding natural landscape and questions of the wider context and of scale need to be considered. The answer to the question where the outstanding natural landscapes and features end is not a technical one. It is a robust practical decision based on the importance of foregrounds in (views of) landscape. We do not consider this over-emphasises the pictorial aspects of landscape, merely uses them as a determinative tool.

106. The district can be roughly split up into territorial sections:

(1) Mt Aspiring National Park

(2) Lake Wakatipu

(3) The Wakatipu Basin comprising a circle with Queenstown and Arrowtown on its circumference

(4) The Kawarau River east of the Kawarau Bridge

[95] Section 73(3) allows a district plan to be prepared in territorial sections.

(5) The mountains east of Lake Wakatipu across the Shotover, Arrow and Cardrona catchments to the eastern boundary of the district on the Pisa Range

(6) Lakes Wanaka and Hawea and the valleys of the rivers running into them

(7) The Clutha Flats below Lakes Wanaka and Hawea.

This interim decision does not deal with areas (5), (6) and (7) because of time constraints in issuing this decision, a lack of evidence, and a lack of opportunity to inspect the areas. We consider it is more important in the meantime to identify the obvious outstanding natural landscapes around Lake Wakatipu and those in the pressured Wakatipu Basin.

107. We find as facts that:

(1) Mt Aspiring National Park is an outstanding natural landscape;

(2) Lake Wakatipu, all its islands, and the surrounding mountains are an outstanding natural landscape. This area comprises all the land in the district south and west of the lake (planning maps 6, 10, 12, 13 in the revised plan) excluding Glenorchy, Kinloch, and Kingston;

(3) The Kawarau valley east of the Kawarau Bridge is not an outstanding natural landscape. Viticulture may be turning it into an outstanding landscape (but not a natural landscape). It is certainly an increasingly important landscape and its visual amenities require careful consideration;

(4) The Wakatipu Basin is dealt with below.

108. The Wakatipu basin:

(a) excludes all land zoned residential, industrial, or commercial in Queenstown, Arthurs Point and Arrowtown;

(b) excludes any ski area sub-zones;

(c) excludes the Crown terraces east of and above Arrowtown;

(d) is bounded on the outside by a rough circle (travelling clockwise):

- From Sunshine Bay north/northwest to Point 1335 in the south ridge of Ben Lomond;
- north to Ben Lomond (along the ridge);
- north east to Bowen Peak;
- north-north east down the leading ridge to the Moonlight Creek-Shotover River junction;
- north east up the ridge to Mt Dewar;
- down to Skippers Saddle
- north east along the ridge running north-east to Coronet Peak
- along the crest of the range through Brow Peak, Big Hill
- straight line across to Mt Sale
- south along the Crown Range to Mt Scott
- south in a straight line across the Kawarau River to Cowcliff Hill (557m)
- up the crest of the ridge to Ben Cruachen
- southwest to Double Cone (the Remarkables)
- south along the Remarkables to Wye Creek
- down Wye Creek to Lake Wakatipu
- north around the shore of Lake Wakatipu to Kelvin Golf course
- across to Sunshine Bay

109. Within the Wakatipu Basin there is an outer ring which we find to be an outstanding natural landscape. The outer edge of that ring is given in the previous paragraph and we consider is relatively uncontroversial since the land on the outside of the ring is probably mostly outstanding natural landscape also. Indeed in this chapter we have already found

some of the surrounding landscapes to be outstanding natural landscapes.

110. In terms of the amended ***Pigeon Bay*** factors, the criteria we consider as most significant in the exercise to establish the inside of the ring are:

(a) natural science factors - topographically the basin is bounded by a ring of mountains and Lake Wakatipu; and ecological factors - the mountains have a large component of rock and tussock grasslands. The lower or inner margin of the outstanding natural landscapes is constituted variously by:

(i) the change of slope from glacially cut hillside to terraces;

(ii) foregrounds (from roads) over land not excessively subdivided and domesticated;

(iii) the change from more 'natural' to pastoral vegetation patterns;

(iv) by linking the ecologically or topographical boundaries with practical defined lines.

(b) aesthetic values

The aesthetic qualities of the basin are well-known, although we note that the foreground of the chocolate-box and calendar views around Lake Hayes and Arrowtown (for example of willows, poplars, vineyards or larches) are less strongly natural. The views, which are part of the aesthetic/amenity values, are a strong determinant of inner margins, because public views and their foregrounds need protecting in the context of the basin as a whole.

(c) expressiveness (legibility)

It was WESI's case that the whole landscape (especially the glacially sculpted hills) shows the forces that created it. That was not challenged and we readily accept it.

(d) transient values

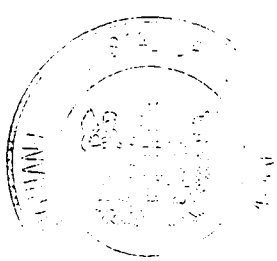
These are not relevant to our findings as to the inner edge of the outstanding natural landscapes.

(e) shared and recognized values

As we have repeatedly said, all parties recognized that the district's landscapes are important, but for unclear reasons most were unwilling to state where the nationally important landscapes ended. We find we can make determinations on factors (a) to (c) above. Factors (e) to (g) of the Pigeon Bay criteria are of little assistance here.

111. Applying those criteria as we have found them in this case, we hold that the inner edge of the ring - inside which the landscape is not an outstanding natural landscape but is at least in part visual amenity landscape – is the area inside the black lines marked on the attached Appendix II[96]. The edge runs approximately:

- Starting at Sunshine Bay, clockwise around Queenstown (as zoned) to Frankton
- doubling back around Ferry Hill to the north at the change of slope, and then
- west to Queenstown Hill Station (so that Queenstown Hill, Sugar Loaf, Lake Johnson, and Ferry Hill are included in the outstanding natural landscape)
- across the Shotover River immediately west of Queenstown Hill homestead
- up the Shotover River at the edge of the terrace to the next marked stream and up the stream to Littles Road
- west along Littles Road to the edge of the escarpment



[96] A copy of part Infomap Series 260 Maps E1 and F41. The dotted lines are:
(a) either where the boundary follows a zone boundary in the revised plan; or
(b) where we have some uncertainty as to where precisely to draw the line.

- north to Point 558m and then north east through Trig J (596m) to the formed end of Mountain View Road
- north to Malaghan Road
- along Malaghan Road to the point south of the tank at Map Reference[97] 768795
- north to the water race
- northeast around the water race to Bush Creek
- down Bush Creek to the Arrow River confluence and then downstream to the Arrow Bridge on SH6 (excluding the Whitechapel Flats)
- southeast along the Kawarau Gorge Road to approximately 300 m short of the Swift Burn
- southwest across the Arrow River and across the flats to the power lines
- west along the line of pylons past Trig T to the first 400m contour on Map F41
- northwest to the 400m contour on the eastern side of Morven Hill
- north round Morven Hill along SH6 (excluding existing residential land) to Hayes Creek
- west across Hayes Creek south of the side road
- south west (and up the Kawarau River and then the Shotover River) at the top of the lowest terrace on the northern bank of the Kawarau River (inside trig M above the existing homes)
- across the Shotover River at the power lines around the sewerage ponds and up to and south along the top edge of the Frankton Flats
- and up the Kawarau River to Riverside Road
- across and downstream to the 400m contour

[97] Map F41.

- south along the 400m contour to Remarkables Station homestead
- around three sides of the homestead - up to the tank and back down to the power lines
- south along the power lines until due east of Trig B
- due west to Lake Wakatipu
- inside Trig E (east of Jack's Point) to the two tanks and around the base of Peninsula Hill to SH6
- around Peninsula Hill excluding urban zoned land in Frankton
- then back to Sunshine Bay around the lake edge as shown on Appendix II

A separate area on Crown Terrace is excluded from the outstanding natural landscape and thus comprises an enclave of visual amenities landscape.

112. There are also three separate outstanding natural features in the Wakatipu Basin and marked "ONF" on Appendix II:
    (a) Trig 12391 at Arrowtown
    (b) Lake Hayes
    (c) Slope Hill

Morven Hill and Queenstown Hill (and its satellites), and Kelvin Peninsula's are also outstanding natural features, but since they are all contiguous to an outstanding natural landscape we only need include them in the latter. The area between Slope Hill and trig D (506m) to the north is of some concern to us because of its visual prominence from a distance. We reserve leave for any party to argue that area should be included in the outstanding natural features of the district. We should also state that our line defining the inner edge of the outstanding natural landscape in the basin is obviously not a surveyed boundary. We are

prepared to move the edge at some points (other than the dotted lines on Appendix II) if any party:

(a) can show us why it is necessary to do so as a matter of law (since zone boundaries will be the real issue); and

(b) calls cogent evidence on the matter

Visual amenity landscapes

113. We now consider the landscapes of the district which are not outstanding natural landscapes but which are visual amenity landscapes either because they are important in respect of visual amenities, or outstanding but insufficiently natural. There may be other reasons for significance, but the evidence did not identify any.

114. Landscapes may be important under section 7 of the RMA for a large variety of reasons. For example we find that the land to the south of Malaghan Road up to the crest of the ridge running parallel with the road is important both in respect of the maintenance of amenity values, and more generally of the quality of the local environment. Similarly, the land to the south of State Highway 6 along the Ladies Mile, and on the Frankton Flats is important as part of the approach to Queenstown[98].

115. We have also already identified an example of a landscape that is at least potentially outstanding but is not an outstanding natural landscape nor likely to be one: the Kawarau Gorge below the bungy bridge. Its landscape has been greatly modified over the last 1000 or so years, and at an exponentially increasing rate - first burning, followed by

[98] See revised plan part 4.9 "Urban Growth" to which we refer later.

goldmining, grazing, more burning, introduction of exotic grasses, trees, and weeds (elder, thistles, sweet briar, hawthorn are the larger species) and animals (sheep, rabbits, mustelids), farm houses and buildings, and fences. All these have occurred in a handsome gorge that when pristine may have been an outstanding natural landscape. Largely within the last decade the flats in the gorge have sprouted grape vines and lines - and it is the latters' posts, wires and tubular plastic shelters which reduce the naturalness of this landscape. Yet the meticulous orderliness of the vineyards makes (to some eyes) a most attractive landscape when contrasted with the wildness of the backdrop of sweet briar, shrubland and tussock. The vineyards are a useful example of the way human intervention through operation of the market can achieve largely beneficial environmental outcomes.

116. Looking at the Wakatipu Basin as a whole, we consider that there is a second ring of visual amenity landscapes inside the first ring of outstanding natural landscapes. Inside the inner (second) ring of visual amenity landscapes there is a core around four roads in which we consider there are lesser landscape values (but not insignificant ones) which may not be visual amenity landscapes.

It is the area around:

- Lower Shotover Road - Hunter Road
- Speargrass Flat Road
- Slope Hill Roads (west and east)
- Arrowtown - Lake Hayes Road

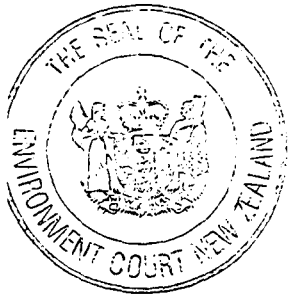
The area is rather larger than that description suggests, because it is roughly the land below the 400m above sea level contour (on Appendix II). We do not make findings on these matters because neither the category of 'visual amenity' landscapes nor the third category was described by any witness in detail - although both were identified by Mr

Rackham. We will need to hear further evidence and submissions before deciding where the visual amenity landscapes end, and what is sustainable management of the third category of landscapes.

117. Lastly the scenic rural roads as they were identified in the notified proposed plan[99] are (with our numbering):

(1) All state highways
(2) Queenstown-Glenorchy Road
(3) Glenorchy-Routeburn Road
(4) Hunter Road
(5) Lower Shotover Road
(6) Speargrass Flat Road
(7) Malaghan Road to Arrowtown
(8) Lake Hayes-Arrowtown Road
(9) Crown Range Road
(10) Mt Aspiring Road
(11) Hawea-Luggate Road
(12) Skippers Canyon Road
(13) Littles Road
(14) Centennial Avenue to Arrow Junction

We hold that numbers (4), (5), (6), (8) and (13) cannot be scenic rural roads since they are not in outstanding natural landscapes, nor on the edge of such landscapes or features. We return to the status of the others later, if we decide such a status should be reinstated in the district plan.



[99] Notified plan Appendix [pp.8/4-8/5].

Chapter 8 : Issues relating to landscapes

118. Having identified the outstanding natural landscapes, features and other important landscapes of some areas within the district we now have to identify the significant issues[100] in respect of those areas. As an aside in respect of drafting plans we can state here that our technique for identifying issues is to phrase them as questions. That may assist in guarding against them being simply objectives or policies in disguise.

119. For its part, the Council, in the revised plan identifies only two relevant issues. They are:

> ***4.2.4 Issues***
>
> *The District's landscapes are of significant value to the people who live, work or visit the District, and need to be protected. Increasing development and activity makes the District's landscape particularly vulnerable to change.*
>
> *Land use and development activities in the District are varied and intensive. The following significant resource management issues in respect of the landscape have been identified:*
>
> ***i Potential detraction of landscape and visual amenity of the District***
>
> - ***Development and activities may detract from the landscape***
>
> *The landscape provides both a backdrop to development as well as the economic base for much activity. Because of the quality of the landscape and*

[100] Section 75(1)(a).

the important role it plays in the District's economy it is necessary to ensure that buildings and developments are managed to mitigate any adverse effects resulting from location, siting and appearance.

ii ***Potential detraction of the Open Character of the Rural Landscape***

- ***A significant part of the District's visual character comes from the open expanse of its landscapes and the views these afford***

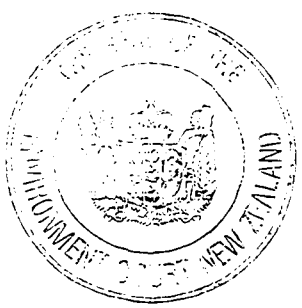
  Visual impact may be increased when the form and colour of structures contrast with the surroundings and when they are located in visually sensitive areas. The demand for housing and other developments in the rural area is growing and poor location, siting and appearance of these developments threatens to increase the level of modification in the rural landscape and to reduce its open character. The hill and mountain slopes surrounding the lakes assume greater importance because of their role in providing a setting for the lakes[101].

120. WESI sought a fuller statement of issues under the headings:

(i) General degradation of and detraction from the landscape and visual amenity of the district

(ii) Degradation of landscapes which have special characteristics and are highly visible

(iii) Degradation of special landscape features



101 Revised plan p.4/7.

(iv) Degradation of the visual and landscape amenity of the shorelines and adjoining hillslopes.

Fairly detailed descriptions of specific landscapes and features accompanied that statement of issues.

121. The Council did not support the addition of any of the new 'policies' sought by WESI. Ms C O Hume's written evidence for the Council, usually clear and accurate, is slightly confusing at this point because she refers to policies in part 4.2.4 when she is clearly referring to the issues.

122. On balance because its landscapes are a very significant issue for the district - as the introductory words for the issues in the revised plan state expressly - we consider that the brevity of the revised plan, recommended by Ms Hume and Ms Dawson is too skeletal. No expert resource manager gave evidence opposing the opinions of Ms Hume and Ms Dawson. However their suggestions for appropriate issues have two problems:

(a) they do not follow from a clear statement of the facts - in particular they have not identified the outstanding natural landscapes - they have simply identified all the landscapes of the district as important. As already explained we consider that approach is wrong, and even the landscape experts on whom they relied expressed a sense of unease about the approach in the revised plan.

(b) the brief issue statements they approve in part 4.2 - basically those in the revised plan - do not follow from either the facts or from the more general statements in part 4.1.

123. On the other hand we consider WESI's statement of issues is far too long to be useful. Further, many of their issues are, in effect, objectives

and policies. There is a happy medium. We consider that some more focused issues can be stated in respect to landscape and visual amenity. It might be useful to add the following subordinate issues to the statement of issues in paragraph 4.2.4 of the revised plan. However since none of the parties sought similar issues be added we will not do so, unless we receive an application to do so. It is appropriate for us to state that these are the sub-issues we have considered when deciding the appropriate objectives and policies. They are:

Issues

(1) What is inappropriate subdivision and development of the outstanding natural landscapes of the district?

(2) How far should the domestication and/or commercialisation/industrialisation of outstanding natural landscapes visual amenity landscapes and other rural landscapes be allowed to continue?

(3) How far should urban sprawl be allowed to run?

(4) Should foregrounds be protected?

(5) How far should farming, forestry and other rural activities be managed to maintain values of outstanding natural landscapes?

(6) Should there be landscape objectives, policies, methods (including rules) in rural areas (other than outstanding natural landscapes/neighbouring landscapes, rural scenic roads) e.g. in outstanding landscapes (but not outstanding ***natural*** *landscapes)?*

(7) To what extent do the activities identified in part 4.2.3 (Activities) need to be managed?

(8) Is there any need to define urban edges on landscape grounds?

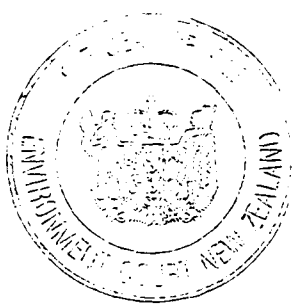
(9) Whether there is a need to maintain the open character of outstanding natural landscapes and of visual amenity landscapes?

124. We have considered whether, in the light of WESI's case and Mr Kruger's evidence in particular, we should state that one of the significant issues for the district is the freeholding of 'pastoral lease' land held under the Land Act 1948 and its companion the Crown Pastoral Land Act 1998. It is interesting to speculate how many of the open landscapes valued by the citizens of and visitors to the district have been retained in that largely unsubdivided and relatively indigenous ('unimproved') state just because they are subject to pastoral leases, rather than to any provisions or practice under district schemes under the Town and Country Planning Act 1977. In the end the form of land tenure is irrelevant. If land held under a pastoral lease is nationally important because it is contained within an outstanding natural landscape then that is a matter that the lessee should take into account when and if they freehold. If they subsequently find their options for use and subdivision limited, then section 85 of the RMA may come into play. In that case, a former lessee's knowledge (or imputed knowledge) that the land was in an outstanding natural landscape before freeholding may be of some relevance to the Environment Court in deciding whether the interest in land is incapable of reasonable use, or whether there is an unfair and unreasonable burden[102] on the freehold subdivider.

125. Ms Munro, for the Council, suggested some extra explanatory statements relating inter alia to land held under pastoral leases. We do not consider them necessary as such, but in a shortened amended form

[102] Section 85(3) RMA.

one will alert readers of the district plan to the issue, and so we add it as issue (iii) in Part 4.2 of the district plan.



126. This is the appropriate point to remember that we are to achieve the integrated management of the effects of the use, development or protection of land[103] in the district. That is particularly important in respect of such an uncertain and complex concept as landscape. Our conclusions below are a suite of interlinked policies which are connected to each other and to the existing district-wide policies in the revised plan that are unchallenged by references. The policies are stated in (roughly) greater degree of specificity, so specific policies over-ride general ones if they conflict: ***NZ Rail Ltd v Marlborough District Council***[104]. For example in this case the later specific policy on 'utilities' over-rides an earlier one on 'structures'.

127. Some general explanation of how we arrived at the policies we are setting may assist here. First we observe that there was a significant gap between what WESI sought on the one hand, and what the other parties considered appropriate on the other hand. None of the witnesses was unshaken in cross-examination, nor was anybody's evidence in chief wholly satisfactory. Consequently, we had to frame policies not sought by either party, but somewhere in between. As a further consequence our decision on these will only be final as to their spirit and intentions. We will reserve leave to the parties to improve our drafting.

128. Secondly, the guiding objective for Part 4.2 of the district plan refers to "subdivision and development". However only once do WESI's references refer to subdivision in respect of policies, so far as we can see. Consequently we have referred to subdivision in most of the

103 Section 31(a).
104 [1993] 2 NZRMA 449 at 460.

policies even though it was not expressly referred to. Our justifications for proceeding in that way are the two mentions of subdivision referred to above – especially in the guiding objective. Further, we accept as a matter of mixed fact, degree and law that subdivision can have an effect on the environment. That view was expressly opposed by Messrs Clark, Fortune & McDonald ("CFM"), a firm of surveyors opposing WESI and with their own reference in Part 15 of the plan. However it runs counter to ***Yates v Selwyn District Council***[105] to which CFM's counsel did not refer. That case stated:

> *Section 11 of the [RMA] recognises that allotments which are usually (but certainly not always) contained in one certificate of title are fundamental units in terms of the creation of property rights which of course include (from an economic point of view) rights in resource consents or certificates of compliance under the Act .... The smaller an allotment the greater the chances there are of causing external effects (or not being able to internalize effects) and of course this case is a classic example of that. Subdivision down to 2 hectares might mean that externalities in the form of sewage, pollution plumes or reverse sensitivity effects (such as complaints from what are, in effect, lifestyle units on the two hectare blocks about noise or spray or the other incidents of rural use) increase. In summary: subdivision of land tends to cause multiplication of complaints about effects.*

129. ***Yates*** was not particularly concerned with landscape issues. However we consider the principle it states is correct and does apply when landscapes are in contention. Subdivisions draw lines across the landscape, and in fact those lines tend to be marked by fences or trees or other changes in vegetation patterns. All those demarcations have

105 Decision C44/99 at p.21.

effects on the visual quality of the landscape and thus need to be taken into account.

130. Even Mr N T McDonald, one of the referrers, appears to recognize this. His written evidence states:

> *I acknowledge that Part 4 of the [revised plan] dealing with district wide issues does not adequately deal with section 6(b) issues as they relate to subdivision.*

His view was that, provided the Part II matters relating to subdivision were "adequately provided for" in Part 15 of the district plan there would be no need to deal with them in Part 4. However we are by no means satisfied that the agreed proposals by CFM and the Council begin to satisfactorily state subdivision policies in the light of Part II of the Act. We return to the subdivisional issues and that agreement in Chapter 11.

The parties' proposals

131. In the revised plan the general **objective** in Part 4.2 of the plan (dealing with landscape and visual amenity) read:

> *Subdivision, use and development being undertaken in the District in a manner which avoids potential adverse effects on landscape values*[106].

[106] Objective 4.2.5 [Revised plan p.4/7].

The only issues raised by the parties were:

(a) whether the words "remedies or mitigates" should be added after "avoids"; and

(b) the words "and visual amenity" should be added after "landscape" and before "values".

Everybody supported these changes except Mr Lawrence who was silent on the issue. We consider the changes are appropriate if rather vapid since, in effect, they merely co-ordinate and repeat parts of the requirements of Part II of the Act. There was little disagreement that the general objective should read instead:

> ***Objective:***
>
> ***Subdivision, use and development being undertaken in the District in a manner which avoids, remedies or mitigates potential adverse effects on landscape and visual amenity values.***

132. Nobody sought to retain, without amendment, the first three **policies**[107] of the revised plan which deals with future development, structures and new urban development. In the light of the concession by all parties that all of the landscapes of the district are important, we find that those policies are completely inadequate. Instead Ms Dawson, after considering Ms Hume's recommendations suggested the four policies which, after some further amendment in the course of cross-examination by Mr Todd, read:

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[107] Revised plan p.4/7.

Policies:

1. Future Development

To avoid, remedy or mitigate the adverse effects of new development in those areas of the District where the landscape and visual amenity values are vulnerable to potential detraction.

To encourage new development to occur in those areas of the District with greater potential to absorb change without detraction from landscape and visual amenity values.

2. Outstanding Landscapes

To avoid (remedy or mitigate) any adverse effects of development on the character and quality of the outstanding landscapes of the District.

3. Highly Visible Landscape Areas

To avoid, remedy or mitigate the adverse effects of development on the landscape and visual amenity values of those parts of the landscape which are highly visible from public places and other places which are frequented by members of the public generally.

4. Structures

To preserve the visual coherence of the landscape by:

- *encouraging structures which are in harmony with the line and form of the landscape.*
- *avoiding, remedying or mitigating the adverse effects of structures on the skyline, ridges and prominent slopes and hilltops.*
- *encouraging the colour of buildings and structures to complement the dominant colours in the landscape.*
- *encouraging placement of structures in locations where they are in harmony with landscape.*
- *promoting the use of local, natural materials in construction.*
- *providing for a minimum lot size for subdivision.*
- *limiting the size of corporate images and logos.*

133. In answer to a question from the Court she stated that the words 'remedy or mitigate' in her policy 2 might be removed. She deleted any policy for new urban development. For her part Ms Hume did recommend an amended policy for new urban development as follows:

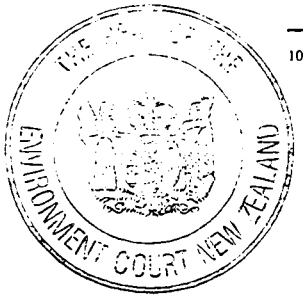
> *5. New Urban Development*
>
> *To maintain the open character of, and minimise the level of modification in the landscape, by avoiding sprawling or sporadic subdivision for residential or commercial activities outside of the areas already occupied or zoned for such use.*

134. For its part WESI sought more detailed policies to replace the three policies in the revised plan. It suggested policies for:

- *Future development (separately for*
  (a) Wanaka-Makarora-Hawea
  (b) Wakatipu Basin
  (c) Upper Wakatipu - Glenorchy area)
- *Highly Visible Landscape Areas*
- *Special Landscape Features*

Future development and landscapes

135. We consider that outstanding natural landscapes and features should be dealt with in (at least) two parts: the Wakatipu Basin and the rest of the district[108]. The residual policy is largely as the experts agreed in respect of the 'outstanding landscapes' of the district. We also agree with Ms



[108] We say 'at least' because this decision comes to no conclusions as to the outstanding natural landscapes outside the Mt Aspiring National Park and the greater Wakatipu basin.

Dawson and Ms Hume that there should be a general policy of avoiding, remedying or mitigating adverse effects of subdivision and/or development on outstanding natural landscapes. We consider that the words 'remedy or mitigate' should be added because there may be places in which some development could be allowed if some substantial remedial work enhancing the naturalness (e.g. by removal of fences or a house and planting of native tussock or grasses) was carried out.

136. The Wakatipu Basin is more difficult to manage sustainably. The outstanding natural landscapes and features of the basin differ from most of the other outstanding natural landscapes of the district in that they are more visible from more viewpoints by more people. The scale of the basin is also important as Mr Kruger pointed out. People in the basin are never more than 2-3 kilometres from an outstanding natural feature or landscape. Consequently, we find that it is generally inappropriate to allow any development for residential, industrial or commercial activities on the outstanding natural landscape or features. We accept Mr Kruger's evidence (and Mr Rough said something similar) that, for these reasons, the Wakatipu Basin needs to be treated as a special case and as a coherent whole. We find that there has been inappropriate urban sprawl in the basin - in particular on Centennial Road in the vicinity of Arrow Junction and again along parts of Malaghan Road on its south side. It is arguable from observation that the housing along McDonnell Road (on the top of a prominent terrace) is also inappropriate although we heard no evidence on that issue[109].

[109] This is not the first time this Court or its predecessor, the Planning Tribunal, has commented on this issue: ***Design 4 Ltd v Queenstown Lakes District*** (1992) 2 NZRMA 161 at 169.

We consider the cumulative effects have already gone further than is desirable. In the outstanding natural landscape[110] of the Wakatipu Basin, and on the outstanding natural features in it, any further structures are undesirable – they should be avoided. In the visual amenity landscape (inside the outstanding natural landscape) structures can be built, with appropriate remedial work[111] or mitigation down to some kind of density limit that avoids inappropriate domestication.

137. On this issue we prefer the evidence of Mr Kruger to that of Mr Rackham and the other landscape experts. The latters' argument that the capacity of the landscape to absorb development should be assessed on a case by case basis does not impress us. While there are dangers in managing subjective matters rather than letting the market determine how the landscape should be developed and altered, those factors are outweighed when the appropriate management is the status quo and there is statutory sanction for the protection of the outstanding natural landscape from inappropriate subdivision and development. Management under a plan may avoid inconsistent decisions, and cumulative deterioration of the sort that has already occurred.

Visual amenity landscapes

138. It is the middle tier landscapes – the visual amenity landscapes - which are difficult to define. These include both areas which border outstanding natural landscapes and other landscapes which are insufficiently 'natural' although they may still be outstanding. They are loosely the 'highly visible areas' described by WESI in its case. Mr Rackham in his evidence said of these:

---

110 In paragraph 108 we defined this to exclude the skifield areas (Coronet and The Remarkables).

111 e.g. removing inappropriate houses in the adjacent outstanding natural landscape or elsewhere in the visual amenity landscapes.

> *The WESI requests for changes to Policy 4 relate to visibility. In my opinion visibility, particularly from public viewpoints, does make a significant contribution to the appropriateness of a development in a particular location. However, visibility in itself is not the issue. A highly modified area may be eminently suited to development despite being highly visible. Conversely, a secluded location may be unsuited to development due to its other landscape qualities.* ***Consequently it is important that any such policy should convey the point that valued landscapes may become less suitable for development because of their high visibility. It is not correct to suggest that all highly visible areas are inevitably unsuited to development.***

139. Unfortunately he gave no examples of 'highly modified areas ... eminently suitable for development despite being highly visible'. We can think of no such areas on the perimeter of the Wakatipu basin although there may be some at its core. So while we agree with Mr Rackham in general terms - see ***Marlborough Ridge Ltd v Marlborough District Council***[112] - we disagree where there are modified areas adjacent to outstanding natural features or landscapes. Some kind of sensitive transition must be desirable. The question is whether the first policy suggested - "future development" - is enough. Our answer is that it is insufficient; and to have effective sustainable management more specific policies are necessary.

140. In this district we consider there are two further appropriate and complementary policies for visual amenity areas:

[112] 3 ELRNZ 483; [1998] NZRMA 73.

(a) specific policies for the visual amenity landscapes as 'highly visible landscapes';

(b) the scenic rural road concept (of course these run through outstanding natural and possibly other landscapes also).

Both issues relate in large part but not exclusively to the issue of urban sprawl so we deal with these issues in Chapter 10.

141. We find that the appropriate general landscape policies are 1-4 stated below:

Policies[113]:

1. Future Development

(a) To avoid, remedy or mitigate the adverse effects of development and/or subdivision in those areas of the District where the landscape and visual amenity values are vulnerable to degradation.

(b) To encourage development and/or subdivision to occur in those areas of the District with greater potential to absorb change without detraction from landscape and visual amenity values.

(c) To ensure subdivision and/or development harmonises with local topography and ecological systems and other nature conservation values as far as possible.

2. Outstanding Natural Landscapes (District-Wide/Greater Wakatipu)[114]

(a) To maintain the openness of those outstanding natural landscapes and features which have an open character at present.

(b) To avoid subdivision and development in those parts of the outstanding natural landscapes with little or no capacity to absorb change.

---

113 We have shaded all the policies which we decide are necessary in the district plan (and differ from the revised plan).

114 Whether this is "District-Wide" or confined to the "Greater Wakatipu" area (other than the Wakatipu basin) depends on the outcome of the adjourned hearing.

(c) To allow limited subdivision and development in those areas with higher potential to absorb change.

3. Outstanding Natural Landscapes (Wakatipu Basin)

(a) To avoid subdivision and development on the outstanding natural landscapes and features of the Wakatipu basin.
(b) To maintain the openness of those outstanding natural landscapes and features which have an open character at present.
(c) To remedy or mitigate the continuing effects of past inappropriate subdivision and/or development.

4. Visual Amenity Landscapes

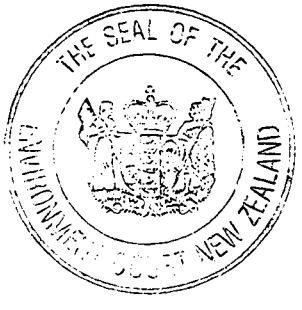
(a) To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:
- highly visible from public places and other places which are frequented by members of the public generally; and
- visible from scenic rural roads.

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

142. Policy 1(c) was not specifically sought by any party but we consider it derives from the compromise we are imposing on what WESI sought which was:

> *To avoid the adverse visual effect of development on the landscapes and visual values of ...*

By adding the words "remedy or mitigate" to 1(a) we give scope for further development, and in that case some guidance as to the remedial work or mitigation appropriate and we achieve that by adding policy 1(c). The policy also attempts to link the landscape policies back to the nature conservation policies. In relation to our policy 3 some counsel submitted that a policy should refer to effects of activities (or, by implication, buildings) rather than seek to control activities (or buildings) themselves. In general terms we agree it is often preferable to do so, but buildings may be a special case, especially when considering landscape issues. In such a case it is often the building



itself which is the adverse effect. To speak of the adverse effects of buildings is to make life (and causation) unnecessarily complicated.

143. We also hold that it would be useful to have a specific policy in respect of outstanding natural features, to emphasize their uniqueness. We consider WESI's policy is appropriate and thus we add:

> 5. Outstanding Natural Features
>
> **To avoid subdivision and/or development on and in the vicinity of distinctive landforms and landscape features, including:**
>
> - **in Wanaka/Hawea/Makarora; [....yet to be resolved by further hearing]**
> - **in Wakatipu; the Kawarau, Arrow and Shotover Gorges; Peninsula, Queenstown, Ferry, Morven and Slope hills; Lake Hayes; the Hillocks; Camp Hill; Mt Alfred; Pig, Pigeon and Tree Islands.**

Structures

144. As for structures we do not consider it appropriate to have general aesthetic criteria for all landscapes of the district, indeed we are reluctant to impose any at all. However we accept there is a case for such criteria in respect of the first two categories of landscape we have identified:

- outstanding natural landscape and features[115]
- 'visual amenity' landscapes[116].

115 Section 6(b).
116 Section 7.

However before we can come to any conclusions about structures we need to examine the issue of urban sprawl which is one subject in the next chapter.

Chapter 10 : Policies - Urban Growth

The parties' proposals

145. References by WESI[117] and the Minister for the Environment ("the MFE")[118] raised questions about policies on "new urban development" and "established urban areas". The policies challenged by WESI, MFE and various section 271A parties represented by Messrs More, Todd and Goldsmith stated[119]:

> ***(3) New urban development***
>
> *To maintain the open character of, and to minimise the level of modification in the landscape, by:*
>
> - *avoiding sprawling or sporadic subdivision for residential or commercial activities outside of the area already occupied or zoned for such use.*
>
> ***(4) Established urban areas***
>
> *To retain and enhance the distinctive identity of existing urban areas.*

146. For reasons explained earlier, much of the evidence to be called on this issue was actually heard in respect of the general references on Part 4 at the earlier part of the hearing. As stated earlier it was only part way through that hearing that counsel for the Minister for the Environment advised us that the MFE case should have been heard at the same time. Consequently these urban development issues were adjourned so that they could be heard at the same time as the MFE's reference. That had

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117 RMA 1043/98.
118 RMA 1194/98.
119 Paragraph 4.2.5 Objective and Policies [Revised plan p.4/7].

the result that the evidence of the following witnesses was carried forward:

- Mr Wild
- Mr Kruger
- Ms Dawson.

Also, with the consent of all other interested parties the evidence of Ms Buckland and Mr Glasson was carried forward from a Terrace Towers hearing[120] which relates to the Frankton Flats. At the reconvened hearing none of the parties sought to cross-examine any of the witnesses who had already given evidence. We then heard evidence from two further witnesses: Ms L J Woudberg (a policy analyst for the MFE) and Ms C O Hume for the Council and submissions from those parties' representatives.

147. For his part the Minister for the Environment wished policy (3) to be deleted and called Ms Woudberg. After cross-examination by Mr Todd she considered the appropriate wording for a policy on new urban developments would state:

> ***New urban development***
> *To maintain the open character of the landscape by avoiding, remedying, or mitigating any adverse effects of subdivision and development in rural areas.*

This was rather weakened by her concessions to Mr More that that policy could be subsumed within the general future development policy (1) so that her new policy is redundant.

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120 RMA 1028/98.

148. On the other hand WESI wanted to amend the wording of the policies so they read:

> ***New urban development***
>
> *To maintain the open character of, and minimise the level of modification in the landscape, by:*
>
> - *restricting major new residential development outside of areas identified on the plan*
> - *requiring the preparation of detailed structure plans which identify major activity areas and building development form for new residential areas*
> - *restricting housing development within the semi-enclosed rural valleys to help maintain the natural setting*
> - *avoiding sprawling or sporadic subdivision for residential or commercial activities outside ... the areas already occupied or zoned for such use.*
>
> ***Established urban areas***
>
> *To retain and enhance the distinctive identity of existing urban areas by:*
>
> - *strongly identifying the edges of the existing urban areas*
> - *retaining and enhancing the rural landscape approaches to the towns and urban areas along the main approach roads.*

149. WESI was opposed to the reductionist approach to the suggested 'new urban development' policy whereby it was subsumed in the general "future development" policy. Mr Lawrence submitted that:

> *under the guise of 'enabling', policy is being reduced to general platitudes and repetition of phrases from the Act. Our view is that the Plan is to articulate the RMA in this district, not just repeat the*

Act ... Under the guise of improving words (or lines on maps) which pose problems of definition, the suggested alternatives are so general they need no definition. Our submission is that several of the options being offered to you pretend to solve problems but are in reality ignoring them.

150. We have some sympathy for that submission. There is an observable trend from the notified plan to the revised plan, increased in suggested solutions to us, which is to adopt a standard policy formula, parroting section 5(2)(c) of the RMA: to "avoid, remedy or mitigate the adverse effects of ...". We consider that policies with more detail may be of more assistance in both determining the relative methods of implementation, and in applying the policies when the district plan is operating.

151. Before we assess the contrasting approaches to new urban development in respect of landscape, we agree with Mr More that we must first consider what the issue is that these policies are intended to address. This is especially so since there is a separate section of Part 4 - Part 4.9[121] - which deals expressly with urban growth so the issues we are now considering relate mainly to the effects of urban growth and 'urban sprawl' on landscape. We add that some of the unchallenged policies in section 4.9 of the revised plan are protective of outstanding landscapes, and we consider that any new policies should be consistent in respect of landscape as it relates to urban growth in section 4.9.

152. The landscape issue as stated in the revised plan is:

[121] Revised plan pp4/39 - 4/43.

(ii) Potential detraction of the open character of the rural landscape

- *a significant part of the District's visual character comes from the open expanse of its landscapes and the views these afford.*[122]

We record that no party sought in any reference to have that issue deleted. WESI's reference simply sought to add further, more specific issues.

153. The key parts of the stated issue are its references to:
- 'open character'
- 'open expanse of ... landscapes and the views these afford'.

While it is correct that large parts of the district are relatively open in that they are not covered by forest or towns it is important to recognize that situation is:

(a) not completely natural - there has been considerable human influence first by Maori burning, and latterly and with more impact, by pastoral and other European practices;

(b) dynamic and changing.

The evidence was that there are many more trees and much more conscious landscaping now than there were in the Wakatipu Basin 100 years ago. We conclude that open character is a quality that needs only be protected if it relates to important matters, otherwise it should be left to individual landowners (subject to not creating 'nuisances' or other unacceptable adverse effects to neighbours) to decide whether their land

[122] Paragraph 4.2.4. Issues (Revised Plan) [p.4/7].

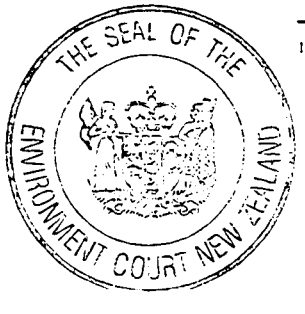
should be open or not. Of course in relation to section 6(b) landscapes which are outstanding simply because they are open, there is little difficulty in establishing need for protection. Similarly section 7(b) landscapes which are important because they give foregrounds to views of outstanding landscapes may also need protection.

154. While the open character of outstanding natural landscapes can be justifiably maintained, we do not see that it is appropriate to maintain the open character of all other landscapes. They may after all be improved:

- in an aesthetic sense by the addition of trees and vegetation; and/or
- in an ecological sense by the planting of native trees, shrubs, or grasses recreating an endemic habitat.

We consider that the protection of open character of landscapes should be limited to areas of outstanding natural landscape and features (and rural scenic roads).

155. Even in more closed-in landscapes there can be problems – and we agree with WESI's case about this – with what is loosely but understandably called 'urban sprawl'. We have stated that one issue is 'How far should urban sprawl be allowed to run?' Several counsel opposed the term 'sprawl' because of its emotive connotations. We think they overstate the difficulties: the words "urban sprawl" are a term referring to undesirable domestication[123] of a landscape. We also accept, as agreed by Ms Hume, under cross-examination by Mr Lawrence, that sprawl is 'development without an edge'.



[123] To extend the metaphor in ***Crichton v Queenstown Lakes District Council*** Decision W12/99 where the term was used of the chattels or fixtures (e.g. clotheslines/trampolines) that accumulate around dwellinghouses.

156. As far as new urban development is concerned we consider three landscape policies are needed - one for each of the general rural landscape categories:

(1) To maintain the open character of outstanding natural landscapes.

(2) To maintain and enhance the natural character of visual amenity landscapes.

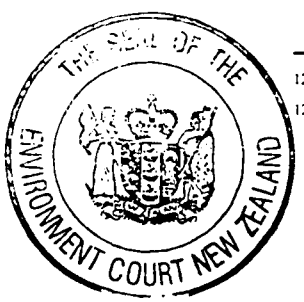
(3) We suggest, but do not decide, that an appropriate policy for other rural landscapes is to maintain rural character and capacity by providing 50m buffer strips (appropriately planted and landscaped) between any subdivision with lot sizes of less than 4ha and the adjacent land.

157. The distinction between (1) and (2) above is to encourage the planting of trees[124] as a way of maintaining natural character. This cannot be encouraged on most of the outstanding natural landscapes of the district because of the policy to maintain their 'openness'[125]. The justification for (3) in the preceding paragraph is only partly on grounds of protecting visual amenities. It also serves:

(a) to internalise the reverse sensitivity (to farming activities such as noise, smells, sprays etc) created by establishing residential activities in rural areas;

(b) to encourage efficient use of land by subdividing larger blocks (perhaps in more than one title or ownership) in a co-ordinated way rather than occasionally lopping pieces off single titles; and

(c) to encourage subdivisions to be self-contained in respect of services etc.



124 See policy 4.1.4 Policy 1.17 [revised plan p.4/3]
125 See our discussion of "Forestry" in Chapter 11 below.

158. We are also concerned that having density limits for subdivision in the third category of rural area, at least in the centre of the Wakatipu basin, sends the wrong signals. This is because a minimum lot size is inherently wasteful and needs to be justified, and secondly such a policy removes choices for landowners for no apparent environmental gain. Further, the character of this kind of landscape can be largely protected by private property rights e.g. by not subdividing, or by imposing restrictive covenants in respect of landscaping, or against further subdivision. Covenants can internalise 'nimby'[126] reactions at the time of subdivision. In such cases there may be no need for policies (let alone rules) specifying how to manage land on landscape grounds. There may, of course, be other issues as to services or ecological factors justifying restraints on subdivision.

159. At the same time we are mindful of the amenities of neighbours who might consider the qualities of naturalness and peace which they enjoy are ruined by what is in effect urban development next door. That is our reason for earlier suggesting 50m buffer strips between these subdivisions and rural neighbours. Also, without deciding issues under references we still have to hear, we consider there may be some merit in the Residential New Development sections contained in the notified plan[127] but dropped from the revised plan, and ask the parties to reconsider that in preparing for the relevant hearing.

160. We hold that the appropriate policies are a reworded compromise between the positions of the parties, as follows:

126 Nimby = not in my backyard.

127 Part 7.10 [notified plan p.7/69].

6. Urban Development

(a) To avoid new urban development in the outstanding natural landscapes of Wakatipu basin.

(b) To discourage urban subdivision and development in the other outstanding natural landscapes (and features) and in the visual amenity landscapes of the district.

(c) To avoid remedy and mitigate the adverse effects of urban subdivision and development where it does occur in the other outstanding natural landscapes of the district by:

- maintaining the open character of those outstanding natural landscapes which are open at the date this plan becomes operative;
- ensuring that the subdivision and development does not sprawl along roads.

(d) To avoid, remedy and mitigate the adverse effects of urban subdivision and development in visual amenity landscapes by avoiding sprawling subdivision and development along roads.

7. Urban Edges

To identify clearly the edges of:

(a) Existing urban areas;

(b) Any extensions to them; and

(c) Any new urban areas

- by design solutions and to avoid sprawling development along the roads of the district..

8. Avoiding Cumulative Degradation

In applying the policies above the Council's policy is:

(a) to ensure that the density of subdivision and development does not increase to a point where the benefits of further planting and building are outweighed by the adverse effect on landscape values of over domestication of the landscape.

(b) to encourage comprehensive and sympathetic development of rural areas.

(c) To adopt minimum lot sizes for subdivision in outstanding natural landscapes and visual amenities [except if a residential new development has been accepted by the Council].

Policy 8 is another policy not specifically sought, but because we are not adopting the rigorous relief sought by WESI and since we accept Mr Kruger's evidence about the dangers of cumulative adverse effects, we consider a policy in respect of avoiding cumulative degradation is important. The exception to policy 8(c) as to residential new development is a suggestion only since, as we have said, there are unheard references on whether that concept should be reintroduced to the district plan. If it is not then the exception will need to be deleted.

Frankton Flats

161. At the beginning of Chapter 9 we referred to relevant district-wide policies in the revised plan that are unchallenged. Some of these relate to urban growth – but more from the perspective of being in the urban areas looking out rather than, as in Chapters 9-10 to this point, being in the countryside gazing in to an urban area. We refer to section 4.9[128] which is headed "Urban Growth". The place where the urban growth issue meets from both directions (i.e. urban/rural and vice versa) most clearly is the Frankton Flats which is the site of the Queenstown airport, amongst other developments. Much of the land on the north side of the airport – between the airport and State Highway 6 – is zoned rural. We have already found as a fact that the rural land and the airport at Frankton are included in the visual amenity landscapes under section 7 of the Act. The Council obviously considers there are separate issues of

[128] Revised plan p.4/39.

importance in relation to Frankton because the revised plan states a specific "District-wide' objective and related policies as follows[129]:

> ***Integrated and attractive development of the Frankton Flats locality providing for airport operations, in association with residential, recreation, retail and industrial activity while retaining and enhancing the rural open landscape approach to Frankton along State Highway No. 6.***
>
> ***Policies***
>
> *6.1 To provide for the efficient operation of the Queenstown airport and related activities in the Airport Mixed Use Zone.*
>
> *6.2 To provide for expansion of the Industrial Zone at Frankton, away from State Highway No. 6 so protecting and enhancing the open space and rural landscape approach to Frankton and Queenstown.*

162. Mr More appeared for Terrace Towers NZ Pty Ltd ("Terrace Towers") in respect of future development of that part of the Frankton Flats which is owned by his client. Terrace Towers wishes to build a retail shopping complex between State Highway 6 and the airport. That aim is complicated by the objective and policy above. Mr More submitted that the 'open character' of Frankton has to be questioned as a matter of fact since:

- the western side and half the southern (Kawarau River) side are residential;
- the airport buildings and adjacent supermarket are larger complexes in the middle;

[129] Section 4.9, Objective 6 [p.4/43].

- there is Council's own recreation centre of the western end of State Highway 6;
- there is an industrial zone – to be enlarged significantly in the revised plan at the eastern end above the Shotover Terraces;
- various minor intrusions – a garden centre and several residences.

We agree: on the evidence we find that the Frankton Flats are not an outstanding natural landscape, and they are not particularly open. However, they are a visual amenities landscape and an important one because the objective and policies quoted above give it special emphasis.

163. There is no reference to this Court, of Objective 6 in Part 4.9 of the revised plan. Mr More submitted that we could rely on section 293 RMA to amend it although he did not go so far as to make such an application. In case it assists the parties we can state that while - consistent with our approach to visual amenities landscapes generally – we consider the openness of the Frankton Flats has been significantly compromised, we should not allow any further detraction from the amenities of the approach to Frankton. Our preliminary view is that 'openness' can be further compromised, but only if the naturalness can be maintained, or preferably enhanced. A landscape compromise that would allow Terrace Towers some use of its land, but improve the approaches to Frankton might be to use mounding and especially evergreen trees to screen any development (commercial or residential) behind. The trees might have to be set back up to 100 metres from the highway if State Highway 6 is to be a scenic rural road. These issues can be decided at the hearing of the Terrace Towers' reference which is to be reconvened at the end of November 1999.

Structures Revisited

164. Returning to the position of structures in the landscape, we consider the necessary policy is:

> 9. <u>Structures</u>
>
> **To preserve the visual coherence of**
>
> **(a) outstanding natural landscapes and features (subject to (b)) and visual amenity landscapes by:**
> - **encouraging structures which are in harmony with the line and form of the landscape;**
> - **avoiding, remedying or mitigating any adverse effects of structures on the skyline, ridges and prominent slopes and hilltops;**
> - **encouraging the colour of buildings and structures to complement the dominant colours in the landscape;**
> - **encouraging placement of structures in locations where they are in harmony with the landscape;**
> - **promoting the use of local, natural materials in construction;**
> - **providing for a minimum lot size for subdivision; and**
>
> **(b) outstanding natural landscapes and features of the Wakatipu Basin by avoiding construction of new structures for:**
> - **residential activities and/or**
> - **industrial and commercial activities; and**
>
> **(c) visual amenity landscapes**
> - **by screening structures from roads and other public places by vegetation whenever possible to maintain and enhance the naturalness of the environment; and**
>
> **(d) all rural landscapes by**
> - **limiting the size of corporate images and logos**
> - **providing for greater development setbacks from scenic rural roads.**

The wording in (a) is largely derived from Mr A D George's evidence for the Council. The policy in (b) reflects our decision that the outstanding natural landscapes and features of the Wakatipu basin are a special case requiring extra protection since almost all development is inappropriate. Policy (c) results from the matters discussed in Chapter

10 and results from our recognition that the visual amenity landscapes are no longer 'open' landscapes. Thus they can be developed to a degree but preferably in a way that potentially increases the 'naturalness' of the landscape. We reject WESI's other suggestions as to colour palette as too prescriptive. Mr George's wording on that issue seems more appropriate.

Scenic Rural Roads

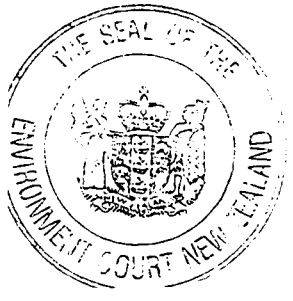
165. The main witness opposing the concept of scenic rural roads was Mr George who stated that the policy for structures preserving visual coherence of the landscape by:

> *- providing for greater development setbacks from scenic rural roads in order to retain their rural character*

- was flawed. He gave two reasons. First he said that:

> *there is little justification why particular roads have been given this status, other than that they are high usage roads, while others have not. [That] ... is contrary to the philosophy that the [revised p]lan has adopted; that being [that] the entire district is important in terms of landscape values.*

Secondly he stated that the Council has reserved controls over building platforms in its rules on subdivision[130]. In cross-examination by Mr Lawrence, Mr George conceded that development on flat land in the foreground could compromise landscape in the background, and that there was no specific policy dealing with this issue if WESI's suggestion was not reinstated.



130 Part 15: Zone subdivision standard 15.2.6.3.(iii) [revised plan p.15/17].

166. Mr George's first and general point is, in our view, another example of the fudging caused by the statement that all the landscapes of the district are important. The delusion caused by the statement is that it suggests general policies which in fact:

- do not protect what really needs protecting;
- cause policies and (potentially) methods of implementation to be set out when none are necessary.

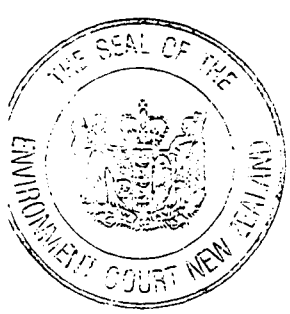
167. Mr George's second and specific point may not work either. If in some rural areas, subdivision is allowed as a controlled activity down to 4000m^2, then even a long thin section, say a 40m x 100m, must obviously necessarily entail a building on a platform within 100m of a road.

168. Nor do we think it is necessarily inconsistent resource management to isolate some roads as being scenic rural roads. There is admittedly a degree of arbitrariness, but we have to make a pragmatic decision. We consider the concept of protecting scenic rural roads should be reintroduced as WESI suggests, but limiting it to the following roads:

- **All state highways**
- **Queenstown Glenorchy Road**
- **Glenorchy Routeburn Road**
- **Malaghan Road to Arrowtown**
- **Centennial Avenue to Arrow Junction**
- **Crown Range Road**
- **Mt Aspiring Road**
- **Skippers Canyon Road**

[Any further roads in the Wanaka/Hawea/Makarora area that we are satisfied, after further hearing, should be added to the list].

We consider a reasonable case has been made to reinstate Appendix 8, as stated in the proposed plan[131], duly amended, in the district plan, under section 293 of the Act.



131 Appendix 8: Roading Hierarchy [notified plan p.8/1-8/5].

Chapter 11 : Policies - Utilities and Other Issues

[A] Utilities

169. There are issues as to how much control, if any, there should be over utilities (power and telephone lines, transmitters etc) in the district's landscapes. Transpower and Contact Energy each sought that the description of the 'activities' covered by 'utilities' include a statement recognising that the Council should when considering controls *tak[e] ... into account the needs of users and economics of providing for demands.* We consider such a statement is unnecessary in describing the activity and the issue it generates. Those matters are always relevant in terms of section 32, and, when considering resource consents, section 7(b) of the RMA.

170. For its part WESI wished to change the utilities policy by adding the underlined words in the following policy (and deleting those in brackets):

Utilities

To protect the visual coherence provided by the natural resources and open rural character by:

- *requiring utilities to be sited [where practicable] away from skylines, ridgelines, prominent locations, and landscape features*
- *encouraging utilities to be located along the edges of landforms and vegetation patterns*
- *encouraging utilities to be co-located wherever possible*

- *encouraging or requiring the alignment and/or location of utilities to be based on the dominant lines in the landscape.*
- *Requiring that structures be as unobtrusive as is practicable with forms appropriate for the landscape and finished in low reflective colours of dull grey, green or brown or derived from the background landscape.*
- *requiring that transmission lines [where technically and economically feasible] in the large towns, settlements and areas of landscape importance be placed underground.*

171. Telecom appeared and eventually filed a memorandum recording an agreed position with the Council. It sought to change policy 5 in the revised plan:[130]

- By deleting the words *"to protect"* in the phrase: *"To protect the visual coherence provided by the natural resources and open rural character ..."*
- And substituting

  "To avoid, remedy or mitigate ..."

That change makes no sense as it stands, and so we will not adopt it but modify the policy to achieve what we think the parties intended. We accept that this is a case where the policy should refer to the full panoply of section 5(2)(c) options.

172. The fundamental point in considering the siting of utilities in outstanding natural landscapes (at least in this district) is that it should not be as of right. A policy that states:

Siting, where practicable, utilities away from skylines etc ...

130 Policy 4.2.5 [revised plan 4/8].

always leaves the door open for a utility operator to argue that it is not practicable to site a utility anywhere else. That is not a correct approach. The policy should be one that gives the Council the final say on location within outstanding natural landscapes.

173. We consider there should be at least two different policies, one for landscapes and features in the Wakatipu basin and for outstanding natural features everywhere in the district, and the other for 'other' landscapes. This includes the rest of the district's outstanding natural landscape (subject to further submissions requesting different policies in the general Wanaka area). We consider that WESI's co-location policy has some merit – especially on Slope Hill – which should be an exception to the general policy on outstanding natural landscape. However, its colour palette policy is again unduly restrictive.

174. Therefore we decide the policy should <u>delete</u> the introductory words and the first bullet point and <u>substitute</u>:

10. <u>Utilities</u>

To avoid, remedy or mitigate the adverse effects of utilities on the landscapes of the district by:

- **Avoiding siting utilities in outstanding natural landscapes or features in the Wakatipu Basin (except on Slope Hill in the vicinity of current utilities).**
- **Encouraging utilities to be sited away from skylines, ridgelines, prominent locations, and landscape features**
- **Encouraging utilities to be co-located wherever possible.**

... [otherwise as in the revised plan]

In other respects we agree with Mr George's evidence that the policies in the revised plan under 'Utilities' are appropriate.

[B] Forestry and Amenity Planting

175. WESI seeks the reinstatement of the following Part 4 provisions for forestry and tree planting (as contained in the notified plan[131]):

4.2.5 Policies

Forestry

To maintain the open character of the landscape and avoid increasing its apparent level of modification by:

- encouraging forestry to be located on the outside edges of valley floors and that it be linked to an existing landform or vegetation edge.

- discouraging forestry on or around prominent ice sculptured ridges and features.

- encouraging planting to be located so that mature trees will not obstruct views from main roads and viewpoints.

- encouraging a limited range of species in each stand.

- encouraging interest be created by varying the density and spacing of the forestry trees rather than by the addition of ornamental planting.

131 Paragraph 4.2.5 policies 12 and 13 [notified plan p.4/24].

13 Amenity Planting

To protect the existing boldness and clarity of the natural landscape by:

- promoting the location of amenity planting only near settlements and in the immediate vicinity of structures in the rural environment,

- discouraging amenity planting in isolated stands away from urban or settlement areas.

176. Both those policies and Mr George's suggested improvements of the forestry policy (he opposed any amenity planting policy) suffer from their generality. They both refer to the 'open character' of the landscape, but as we have already discussed, some areas of the district are not 'open'. In particular, the lower areas of the Wakatipu basin are increasingly becoming a treed landscape. We do not see that there should be any policy against forestry in that area. Consequently, we consider the policy should state:

11. <u>Forestry and Amenity Planting</u>

Subject to policy 16, to maintain the existing character of openness in the relevant outstanding natural landscapes and features of the district by:

(a) encouraging forestry and amenity planting to be consistent with the patterns, topography and ecology of the immediate landscape.

(b) encouraging planting to be located so that mature trees will not obstruct views from scenic rural roads.

We exclude the policy from applying to visual amenity landscapes since these are landscapes which may benefit from the presence of trees. We do not consider there is any need for a separate amenity policy if amenity planting is included in the policy as stated above.

[C] Transport Infrastructure

177. WESI also sought to introduce a policy in respect of transport infrastructure which required that carparks in rural and natural areas be depressed below existing ground level and screened. We agree with Mr George that depressed car parks could cause ponding problems and that the existing policy of screening is adequate. The policy on transport infrastructure should remain unchanged.

[D] Subdivision

178. District-wide subdivisional issues were raised by Messrs Clark, Fortune & McDonald ("CFM") in respect of Part 15 (Subdivision etc) of the district plan. At the hearing we were handed a memorandum signed by their counsel and by Mr Marquet for the Council. The changes to the revised plan as agreed by those two parties were as follows:

Part 15.1.3 Policies 4.1 and 4.3

CFM and Council agree to the substitution of the words in Policy 4.1 with the following:

> ***"protect outstanding natural features and landscapes and nature conservation values from inappropriate subdivision"***

CFM and Council agree that in place of Policy 4.3 should be substituted the following:

> ***"To avoid, remedy or mitigate any potential adverse effect on the landscape and visual amenity values as a result of land subdivision."***

179. The policies are now rather too vague to be wholly desirable, especially since they do not sit easily with the policies in Part 4 of the district plan. We consider that it might be desirable to qualify those policies by adding introductory words to each:

> ***Subject to the landscape and visual amenity policies in Part 4.2 of the plan.***

We reserve leave for the parties to make submissions (and/or call evidence) on our suggestion.

Chapter 12 : Policies - Wellbeing and Energy

180. WESI and Central Electric Ltd also sought changes to other sections of Part 4 in their references. We now turn to these.

Social and Economic Wellbeing

181. First WESI requests a completely new section 4.9 on 'social and economic wellbeing'[132]. In the statement of 'resources and activities' at the beginning of its proposed section 4.9 WESI seeks a statement in the district plan stating:

> *Within [the Queenstown-Lakes District] environment recognition needs to be given to ensuring development and activities do not adversely effect (sic) community's economic and social wellbeing."*

Mr Lawrence made a similar submission:

> *The Society believes the purpose of the Act is the social and economic wellbeing of people and communities* ***while*** *looking after the environment and using resources with care.*

As Mr Goldsmith and Ms Ongley pointed out in their respective submissions, WESI's approach is misconceived. The purpose of the Act[133] is to promote the sustainable management of resources not the environment. We agree with Ms Ongley that the role of councils under the RMA in relation to social, economic and cultural activities is

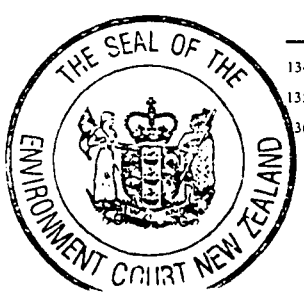
132 See paragraph 9 of this decision.
133 Section 5 RMA.

essentially a passive one. It is to enable[134] people and communities to provide for their wellbeing, not to direct how that is to be achieved. Consequently we do not have to consider the objectives and policies sought by WESI, or the evidence of its witness Mr M Wild in any detail on its proposed section 4.9 especially since, as we shall see, these proposals on wellbeing fail to pass the section 32 RMA tests in any event. WESI's failure to convince us on this section is not as damaging to it as it first appears, because the important policies it sought in its new section 4.9 related to landscape and we have been persuaded by its case (in parts) on some landscape issues.

Energy

182. WESI seeks to add explanatory statements to the energy issue[135]. Its first paragraph relating to consumption of fossil fuel is not a matter the RMA seeks to manage sustainably because minerals are expressly excluded: ***Winter and Clark v Taranaki Regional Council***[136]. As for the second policy this encourages new options of energy use, but we consider that the statement is too long to assist in the identification of the issue. It is unnecessary.

183. Central Electric Ltd in its reference sought a change seeking that on any plan change or resource consent application relating to hydro-electricity developments, the council should take into account, in addition to other listed factors: "the social and economic needs of the community". We do not consider that is appropriate for these reasons:



134 See ***Marlborough Ridge*** [1998] NZRMA 73 at 94-95.
135 Policy 4.5.2 [revised plan p.4/21].
136 (1998) 4 ELRNZ 506 at 512-513 referring to section 5(2)(a) of the RMA.

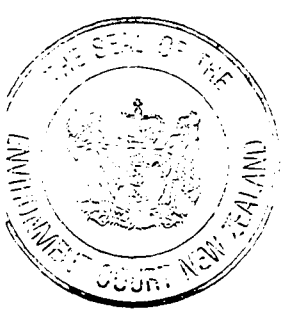
(a) this referrer seems to suffer from the same misconception as does WESI, that the Council has an active role in respect of social and economic needs;

(b) in any event efficiency must be had particular regard to[137];

(c) although the difficulties of assessing these matters should not be under estimated[138].

Summary

184. None of the changes requested and referred to in this chapter should be inserted on the district plan. On these matters the revised plan should stand without change.



137 Section 7(b) RMA.

138 ***Baker Boys Ltd v Christchurch City Council*** [1998] 10 NZRMA 433 at para 57.

Chapter 13 : Section 32 Analysis

185. Section 32 of the RMA imposes various duties to consider alternatives and assess benefits and costs of the proposals. These matters were put in issue by Mr Goldsmith's parties. Section 32 states:

> *(1) In achieving the purpose of this Act, before adopting any objective, policy, rule, or other method in relation to any function described in subsection (2), any person described in that subsection shall -*
>
> *(a) Have regard to -*
>
> *(i) The extent (if any) to which any such objective, policy, rule, or other method is necessary in achieving the purpose of this Act; and*
>
> *(ii) Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and*
>
> *(iii) The reasons for and against adopting the proposed objective, policy, rule, or other method and the principal alternative means available, or of taking no action where this Act does not require otherwise; and*
>
> *(b) Carry out an evaluation, which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs; and*

(c) *Be satisfied that any such objective, policy, rule, or other method (or any combination thereof) -*

(i) Is necessary in achieving the purpose of this Act; and

(ii) Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.

186. We have considered the matters in section 32(1)(a) earlier in our discussion of the need for the various policies. We add that we agree with Mr Goldsmith's submission that section 9 of the Act, and its underlying policy direction that landowners are free to use land as they wish unless the district plan imposes controls, is important. However, he went on to submit that the debate at the heart of this proceeding is the "enabling" regime promoted by the revised plan as compared to a "prescriptive" and "regulatory" regime being promoted by WESI. We do not consider that is entirely fair to WESI's case since at least in respect of section 6 matters it is a matter of national importance to consider the imposition of controls. For the reasons earlier stated we consider some objectives and policies are dictated by the issues and our findings of fact.

187. As for section 32(1)(b), in this case we totally lack any evidence that would allow us to carry out a cost/benefit analysis in monetary terms. Until recently we were unclear as to whether it was ever possible to carry out such a monetary analysis meaningfully under the RMA in respect of such a diffuse subject as landscape. However we now learn from our research that methodologies are being developed (admittedly with some heroic assumptions) that might be able to be applied in New Zealand. In particular we draw attention to a paper on 'The Welfare

Economics of Land Use Regulation'[139]. The introduction to that paper - which is concerned with the British Town and Country Planning system - and in particular policies for the provision of 'open space' - states:

> *The question of interest is not whether these public policies generate benefits, but rather what is the value of the benefit and how do these benefits compare with the costs associated with the policies. In this paper we develop and test an approach for such an evaluation of land use planning.*

188. Our reasons for accepting an absence of any rigorous benefit/cost analysis is first that the analysis are only required to be 'appropriate to the circumstances'[140]. In these proceedings where there are issues concerning 'open space' in the most general sense and matters of national importance the need for analysis is greatly reduced. That is especially so since the revised plan expressly recognises the importance of the district's landscapes to its economy[141]. Secondly, the costs/benefits we are to evaluate include non-monetary benefits and costs[142]. In the circumstances of this district, with landscape being such an important issue, we consider there is no need to consider a monetary evaluation of the landscapes and can rely on the non-monetary evaluations given to us by the expert witnesses.

189. However, that is not to say that a much more detailed monetary evaluation could not be undertaken even for this district. We consider an evaluation could be carried out. Even if it did not exhaust the values of the landscapes, such a study, if well designed and tested, might be

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139 Research Papers in Environmental and Spatial Analyses No. 42 (Department of Geography, London School of Economics) Cheshire, P and Sheppard, S (1997).

140 Section 32(1)(b).

141 Part 4.2.1 [Revised plan p4/5].

142 See Section 2 RMA: definition of 'benefits and costs'.

helpful for similar reasons to the utility of the English study we have already referred to. The authors concluded of their study that:

> *The results also reinforce the often repeated advice of economists that the provision of public goods by regulation has the additional disadvantage from a liberal viewpoint: the real costs are not directly visible, but require some effort and ingenuity even to approximate. That they are not visible, however, does not mean that they are not real nor ... that they cannot be substantial*[143].

190. As for section 32(1)(c) we consider:

(a) There is no need for the district plan to state policies for **all** the landscapes of the district;

(b) The corollary to (a) is that some landscapes (as landscapes) can be cared for by their owners, especially having regard to the presumption in section 9 of the RMA - see ***Marlborough Ridge Ltd v Marlborough District Council***[144]***;***

(c) Only outstanding natural landscapes and visual amenity landscapes require some kind of policies and methods of implementation in respect of, and on, landscape grounds alone. These are situations where WESI's evidence persuades us that some landscape policies are efficient and effective because market transactions fail to protect these landscapes sufficiently.

191. There are, however, other objectives and policies requested by WESI in its reference which we do not think can meet the tests in section 32. As we explained in earlier chapters of this decision WESI sought to add:

(a) a policy in air quality in section 4.1;

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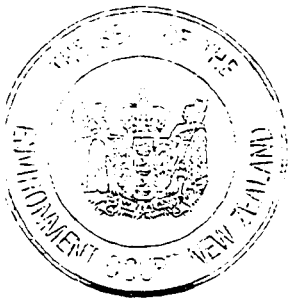
143 Research Papers in Environmental and Spatial Analyses No. 43 (Department of Geography, London School of Economics) Cheshire, P and Sheppard, S (1997).

144 (1997) 3 ELRNZ 483; [1998] NZRMA 73 at 90.



(b) a policy on energy to section 4.5; and

(c) an entirely new section 4.9 on "Social and Economic Wellbeing".

WESI did not attempt to justify its changes under section 32 and we accept in general terms and in the absence of argument to the contrary, Mr Goldsmith's argument that there was an obligation on WESI to produce evidence on the efficiency and effectiveness of its proposals including some kind of benefit/cost analysis.

Chapter 14 : Orders

192. We are satisfied that on the broad ultimate issue, the purpose of the Act will be met if we substitute in the district plan the proposals stated earlier in this decision. Accordingly, we make the following orders:

(1) Under section 292(1) of the Act

(a) we delete paragraph 4.1.2 of the revised plan and substitute a new paragraph 4.1.2 in the district plan as follows:

4.1.2 Resources, Activities and Values

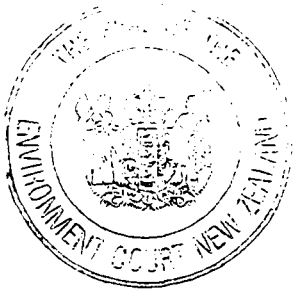
The resources and values of the natural environment of the District and the activities that interact with those resources and values are described in various sections of this Part of the District Plan, namely:

- **Section 2 Landscape and Visual Amenity**
- **Section 3 Takata Whenua**
- **Section 4 Open Space and Recreation**
- **Section 5 Energy**
- **Section 6 Surface of Lakes and Rivers**
- **Section 7 Waste Management**
- **Section 8 Natural Hazards**
- **Section 9 Urban Growth**

In addition Section 10 deals with Monitoring, Review and Enforcement.

(b) We add to Objective 1 - Nature Conservation Values - of Part 4.1.4 the words emphasized below in the following sub-objective:

The protection of outstanding natural features and outstanding natural landscapes.



(2) Under section 293(1) and clause 15 of the First Schedule to the Act the Council is directed to change Parts 4.1, 4.2, and 15 of the revised plan as follows:

(a) **Part 4.1: Nature Conservation Values**

By adding the words: *"or containing geological and/or geomorphological features of scientific interest"*
to method (i) on p.4/3 of the revised plan.

(b) **Part 4.2.4: Issues for Landscape**

By adding a third issue as follows:

iii The Department of Conservation also administers large areas of ex-State forests and retired pastoral leases within the Conservation Estate. In addition, the District contains vast areas of Crown land held under pastoral lease. Much of the land in these reserves and conservation areas, as well as land within the pastoral leases and private ownership, is used and enjoyed by residents and visitors to the District, both actively and passively. Some of the areas are intensively used and are a focus for many visitors to the District.

(c) **Part 4.2.5: Landscape and Visual Amenity**

By deleting Objectives and Policies 4.2.5 in part 4.2 of the revised plan in its entirety and substituting Objectives and Policies 4.2.5 as stated in Appendix III.

(3) **Part 15: Subdivision, Development and Financial Contributions**

These issues are adjourned for further hearing about how to reconcile them with Part 4.2.

(4) This decision is interim in respect of the following matters:

(a) It is limited territorially in that all persons appearing may make further submissions (and call further evidence) on the district plan as it relates to these areas of the district not in the catchment of Lake Wakatipu and the Kawarau River (other than the Arrow and Shotover rivers above the Wakatipu basin).

(b) We have made only very limited decisions as to the appropriate methods of implementation that might flow from the objectives and policies settled by this decision. Except where expressly decided all methods are open for argument.

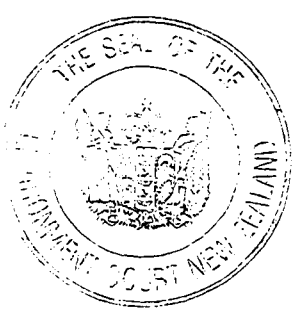
(c) We have adjourned the hearing in respect of "areas of landscape importance", and note that in due course WESI will have to elect whether it wishes to pursue the reinstatement of ALI's. Currently we do not favour that course.

(5) Leave is reserved to any party or interested person to apply to the Court in respect of Part 4 of the district plan:

(a) To correct any omissions or errors (both generally and in respect of outstanding natural landscapes or features);

(b) To make any necessary changes necessary to meet the spirit and intentions of our decision if the suggested changes do not achieve the same.

(c) To apply under sections 292 and/or 293 of the Act in respect of any matters on which leave has been expressly reserved



(including the matters in paragraphs 60, 61, 65 and 168 of this decision).

(6) All these proceedings (apart from those where the referrers have withdrawn) are adjourned to a further conference of the parties at Queenstown on **Monday 29 November 1999 at 2.00 p.m.** on the issues of:

(a) Whether there are any errors arising or other matters under order (5) above in respect of the amendments to part 4.

(b) Whether there are any outstanding matters under sections 1, 2 and 9 of Part 4 of the district plan.

(c) Whether a further hearing is needed in respect of
(i) the general Wanaka/Hawea area;
(ii) zone boundaries.

(d) Appropriate methods of implementation of the relevant district-wide issues.

(7) Costs are reserved. We note, without making any final determination as to relevance:

(a) That WESI made out its claim that the revised plan was completely inadequate in respect of landscape issues; and

(b) That without the involvement of WESI, that issue could not have come before the Court.

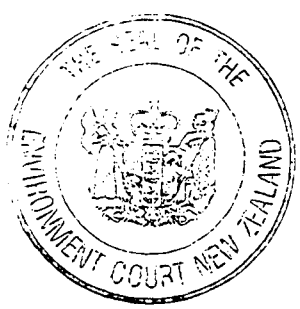
193. Although the question of zoning boundaries is as much a matter of policy as methods we have not in fact decided any zone boundaries as a result of this hearing. We hope the parties will be able to consider our three-way division of rural landscapes and suggest appropriate zone boundaries by agreement. Naturally if agreement cannot be reached we

will set those issues down for further hearing. We comment that we have tried to draw the lines for the outstanding natural landscapes so that they should be able to be defined with reasonable certainty without too much extra effort.

194. As far as the visual amenity landscapes of Wakatipu basin are concerned we remind the parties of Chapter 7 of this decision. It contains suggestions for defining the inner boundaries of the section 7 landscapes.

DATED at CHRISTCHURCH this 29th day of **October** 1999.

J R Jackson
Environment Judge



ORIGINAL

Decision No. A 41 /2001

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of references under clause 14 of the First Schedule to the Act

BETWEEN **ST LUKES GROUP LIMITED**

(RMA 1420/95, part of 917/98)

NATIONAL TRADING COMPANY OF NEW ZEALAND LIMITED

(RMA 1424/95, 1425/95, part of 1426/95, 926/98, 930/98, part of 931/98)

NEIL CONSTRUCTION LIMITED

(RMA 939/98, 940/98)

WAIRAU PARK LIMITED

(RMA 1330/95, 1446/98)

THE MINISTER FOR THE ENVIRONMENT

(RMA 1418/95, 1437/95, 1463/95, part of 920/98)

Appellants

AND **NORTH SHORE CITY COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge R J Bollard (presiding)
Environment Commissioner A H Hackett
Environment Commissioner I G McIntyre

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

retail references.doc (sp)

HEARING at **AUCKLAND** on 7, 8, 9, 10, 11, 14, 15, 16, 17, and 18 August; 6, 7, and 8 November, 2000

APPEARANCES

W S Loutit and W J Embling for North Shore City Council

J K MacRae and D R Clay for National Trading Company of New Zealand Limited

C N Whata and A W Royle for St Lukes Group Limited, Westfield (New Zealand) Limited, and Progressive Enterprises Limited

T C Gould and V Rive for Woolworths (New Zealand) Limited

S E Wooler for Neil Construction Limited and Neil International Limited

A Dormer for Wairau Park Limited

M M Bramley for the Minister for the Environment

DECISION

Introduction

[1] This decision concerns 16 references on chapters of the North Shore City Council's proposed district plan ("the plan"). The provisions of the plan relate to retail activity in terms of Issues and Goals (Section 5), Managing the Growth and Development of the City (Section 6), and Business issues (Section 15).

[2] Pre-hearing negotiations occurred between the Council and various parties over a sustained period. A substantial lessening of differences was achieved - to the point where we were presented at the outset of the hearing with an updated (18 May 2000) version setting forth the Council's amended position on the relevant chapters or parts of the plan, and indicating those additional amendments that were sought by other parties. A copy is attached as Appendix 1[1].

[3] Again at the outset, we were advised that the Council had reached agreement in principle at the eleventh hour with Wairau Park Limited ("WPL") represented by Mr Dormer. He was given leave to withdraw on the footing that a proposed order would be furnished without delay (anticipated to be on a consent footing), as soon as other parties had reviewed what WPL and the Council were proposing. That was

[1] Amendments sought were indicated in the text of the 18 May version by colour-coding. The copy of the 18 May version attached as Appendix 1 uses distinctions of plain, shaded, and highlighted text to indicate the different parties' requests.

duly done, and an order is now made by consent on WPL's proceedings contemporaneously herewith. We are satisfied that the order is appropriate and that it will not conflict with the determination we later come to in the present decision.

[4] Another point to mention, also canvassed early on in the hearing, is that we were assured that the 18 May document could be relied upon and adopted as representing the various parties' positions following the negotiation process above-mentioned. Those positions are deducible in terms of the amendments sought on various sides as indicated on the document. We were asked to consider and determine which, if any, of the proposed amendments to the Council's expressed position should be endorsed, and that we now do.

[5] The provisions of the plan under contention relate to a substantial area in the Wairau Valley comprising some 40ha, zoned for business purposes ("the identified area") – such area being shown on the map attached as Appendix 2. The major issues for consideration arise from discretionary activity provisions in the plan (in conjunction with modifications either agreed or sought under the 18 May document), regarding large scale retail activity (being premises with 2,500m^2 gross floor area ("gfa") or more) within the identified area.

[6] At the initial stage of the hearing, National Trading Company of New Zealand Limited ("NTC") was seeking introduction of provision for a supermarket of 5,000m^2 gfa or more on a limited discretionary activity basis within the identified area – the Council's reserved discretion to be limited simply to traffic effects within the vicinity of the consent application site.

[7] As matters unfolded, a seeming anomaly became apparent, in that other supermarkets between 2,500m^2 and 4,999m^2 gfa would require full discretionary activity consent in contradistinction to the supermarket sought by NTC of 5,000m^2 gfa or more on a limited discretionary basis. On seeking instructions, counsel for NTC indicated that, if the Court were to conclude that the 5,000m^2 threshold constituted an artificial constraint that should not be retained, then NTC would be content with provision being made within the identified area for any supermarket, 2,500m^2 gfa or more, on the limited discretionary footing contended for. We consider that the relief originally sought was indeed without a satisfactory rationale to explain it in district planning terms. There was a suggestion by counsel for NTC that a supermarket of 5,000m^2 gfa or more would have what was described as "a wider more thinly spread impact", but we fail to see any relevant distinction between

say a 4,900m^2 development and one of say 5,100m^2. We therefore approach the case by considering whether large scale retail development proposals 2,500m^2 gfa or more, including supermarkets in particular, should be discretionary activities or limited discretionary activities within the identified area. Counsel also indicated in the course of the hearing that the assessment of traffic effects was no longer sought to be limited to site vicinity effects only, but to embrace traffic effects of wider significance within the district as identified in a given case.

[8] The Council, as well as St Lukes Group Limited, Westfield (New Zealand) Limited and Progressive Enterprises Limited (referred to collectively as "the Group"), Woolworths (New Zealand) Limited ("Woolworths"), the Minister for the Environment ("the Minister"), and Neil Construction Limited and Neil International Limited (referred to together as "Neil"), consider that large retail proposals (whether for supermarkets or any other type of large retail outlet) should be a discretionary activity within the identified area. It is contended that the Council should be able to consider all aspects of effects that might arise in terms of any large retail application for land use consent within that area.

[9] The appeals by the Group and Woolworths go on to seek amendments to the 18 May document that would lend greater emphasis to the importance of existing retail and service centres. It is said that a need exists to maintain the viability of such centres in the interests of the social and economic wellbeing of people and communities within associated catchments. Again, it is said that such centres constitute focal points of social benefit and amenity, and reflect the commitment of very significant public investment in public facilities and other support infrastructure, quite apart from private sector input.

[10] Much evidence was adduced, particularly on behalf of the Group and NTC, regarding the different suggested amendments to the 18 May document. Many areas of the evidence were extremely detailed, to the point of unnecessary exploration of minutiae. One need hardly record that such evidence has proved of marginal assistance in approaching the essential issues. Other areas of evidence appeared more apt for consideration in a resource consent application context. As pointed out during the hearing, the proceedings are not concerned with any particular supermarket or other large scale retail proposal, but with provisions to be incorporated in the plan for large scale retailing, including supermarkets in particular, within the identified area.

[11] As the hearing proceeded, a major issue (if not the prime issue) emerged, namely, whether in the (non-limited) discretionary activity situation advocated by the Council and supported by others, the Council would be entitled to consider (inter alia) actual and potential effects of an economic nature that a large retailing proposal might have upon a centre or possibly more than one centre. The Council, and those in support, contended that such an approach would lie within the Council's ambit of consideration, depending on the nature of the case. NTC contended that such a consideration would be irrelevant and contrary to the Resource Management Act 1991 ("the Act" or "the RMA") - in particular to those provisions that require that regard not be had to trade competition.

[12] Another issue for mention at this juncture relates to the dates of filing of the appeals. Some were filed in 1995, prior to the 1997 amendment to the Act when s.74(3) was inserted in reference to trade competition. Others were lodged after the amendment was introduced. Whatever the filing date, we perceive no practical distinction in the way in which the appeals should be considered on the merits. As the Council and supporting parties were at pains to emphasise, their purpose is to urge the Court to endorse a planning framework that recognises the importance of centres, without infringing the Act's intent as to trade competition. The issues to be determined are essentially concerned with sustainable management of the district's natural and physical resources on a basis that conforms with Part II of the Act, particularly s.5, and does not infringe s.75(2)(c) by avoiding inconsistency with the Auckland Regional Policy Statement ("the ARPS"), or any regional plan in regard to any matter of regional significance or as to which the Act invests the Auckland Regional Council ("the ARC") with primary responsibility.

Position of the Council

[13] Evidence for the Council pointed to retail development on the North Shore having traditionally taken place in terms of centres, sub-regional and suburban, along with smaller local centres. Following enactment of the RMA, the Council embarked on extensive studies and consultation as to how the new plan should address retail development. As a result of that process and analysis of information gathered, the Council decided to adopt a function-based separation of commercial activities from other activities through zoning, in order to manage land use effects both actual and potential. In the upshot, the proposed district plan as notified in 1994 adopted a "centres-based" strategy, perceived as being appropriate for achieving the Act's purpose as regards the North Shore.

[14] The centres that have evolved as of today are well known. Takapuna is the established sub-regional centre within the City's broad southern sector, while Albany is emerging as the City's (duly planned) northern counterpart. There are seven recognised suburban centres comprising Browns Bay, Glenfield, Northcote, Devonport, Highbury, Milford and Mairangi Bay. Numerous local centres also exist, such as Sunnynook, Torbay, Hauraki and Belmont to name a few.

[15] While recognising the importance of centres to the communities within the catchments that such commercial nodes are designed to serve, and in terms of public investment in support infrastructure, the Council considered that the plan should also create opportunity for new retail activity in business zones outside of the centres, subject to assessment as limited discretionary or discretionary activities. Major retailing already exists beyond the "centre framework" within that part of the Wairau Valley that is colloquially described as Link Drive - in reference to that area's central street. The Link Drive area has proved a very popular shopping destination, featuring, as it does, large scale retailing (but excluding supermarkets) in buildings of somewhat more basic appearance than customarily encountered in the centres. Given Link Drive's lack of scope for further expansion and associated traffic difficulties, the 40ha identified area is proposed for additional significant retail activity (inter alia). However, the Council considers that for large retail development proposals (2500m^{2}gfa or more), discretionary activity assessment is appropriate, so that the Council may assess all the effects of such developments, whether on other centres, the transport network or other infrastructure, surrounding residential areas, and so forth.

[16] In terms of potential adverse effects on other centres, it is said that the Council should be able (depending on the circumstances) to consider and assess both social and economic effects of a large retail development proposal within the identified area. From the economic perspective, the Council might find itself having to evaluate a centre's continuing viability in the light of such development. The concern would not be with economic effects on individual trade competitors within the centre, but with the continuing viability of the centre itself as a collective physical resource of public benefit and interest – having regard to the centre's community function and status, its level of importance to the people within the surrounding area associated with it, and the co-ordinated provision of infrastructure such as street facilities, amenity improvements, other utilities, and transport services (including parking).

[17] Mr Loutit, appearing for the Council, submitted that section 5 of the Act is the starting point for a territorial authority in preparing district plan provisions, further relevant provisions being ss. 31, 32, 72, 74, 75 and 76. In reference to the prescribed need for consistency with regional planning provisions, it was submitted that in this instance the ARPS seeks to provide for urban intensification in selected locations, and to avoid, remedy or mitigate the effects of transport on the environment. The plan's centres-based strategy and the Council's approach to large scale retailing in the identified area were said to marry well with wider regional policies in conformity with s.75(2).

[18] Reference was also made to the oft-cited case of *Nugent Consultants Ltd v Auckland City Council* [1996] NZRMA 481 where it was observed that a district plan rule has to: be necessary (in the sense of being desirable) for achieving the Act's purpose; assist the Council in carrying out its function of control of actual or potential effects of the use, development or protection of land in order to achieve the purpose of the Act; be the most appropriate means of exercising that function; and, have a purpose of achieving the objectives and policies of the plan. It was contended that the rules proposed in the 18 May document by the Council fulfil those criteria.

[19] It was submitted that public facilities and infrastructure and public transport are matters that have been catered for, or are planned for, to support the City's centres. Against that background, it is appropriate that the Council have the ability to assess the effects of major retail development proposals within the identified area, including effects on such centres. In response to arguments that the Council's approach is interventionist, it was submitted that the Council's purpose is simply to enable people and communities served by centres to provide for those aspects contemplated under s.5(2). To that end, the viability of established and proposed centres is endorsed, while at the same time recognising the possibility that other major retail activities may establish out of centre, subject to assessment of all relevant effects without confinement to traffic effects alone as sought by NTC.

Positions of Others Generally Supportive of the Council

[20] For the Group it was submitted that the plan broadly achieves the objective of managing the City's resources in a way, or at a rate, which continues to enable people and communities to provide for their wellbeing and ensures that adverse effects will be avoided, remedied or mitigated. The plan, so it was said, properly addresses relevant issues facing the City in terms of the Council's resource

management role, subject nevertheless to amendments to the 18 May document sought by the Group, designed by and large to reinforce the importance of the well-known centres that feature within the City's urban framework. On the other hand, alternative strategies and methods suggested by NTC, reflected by amendments or deletions sought by it, were said to ignore the positive contribution made by the City's centres, and the wellbeing of the people and communities served by them. In short, it was contended that the adoption of NTC's position would undermine the plan's intent regarding the encouragement of retail activities in established and proposed centres, run counter to regional planning provisions, and lead to significant adverse effects upon social and economic conditions associated with the City's centres – whether consisting primarily of retail activity or a mixture of retailing and other business activity such as banking, postal services, travel agencies, hairdressers, cafes, real estate agents and medical rooms. Nor should one overlook community facilities such as libraries, plunket rooms, local policing and the like.

[21] While supporting the amendments sought by the Group, counsel for Woolworths contended that, by classifying certain retail operations as discretionary activities in "out-of-centre" zones, the Council has adopted a "middle ground" position. The Council's approach is seen as reasonable, in that it does not preclude out-of-centre retail activities where it can be established that such activities may be accommodated without significant adverse effects on other important community resources and amenities. On the issue of trade competition it was contended that, while s.74(3) of the Act prevents potential commercial impacts of activities on trade competitors from being treated as relevant effects in their own right, the Council is not precluded from considering the wider social and economic effects of those activities on centres overall and the potential effects on communities that look to and are served by them in the event of wind-down, or ultimately, closure.

[22] The position of the Minister for the Environment was to oppose all changes to the 18 May document sought by NTC, the Group, and Woolworths on the basis that:

> *(a) The changes will not lead to a coherent piece of law capable of general administration as-*
>
> *(i) the parties are trade competitors and the changes sought are not in the public interest but are for the purpose of securing a competitive advantage in trade:*
>
> *(ii) the parties are involved in a particular trade and the changes sought relate to the needs of the particular activity in relation to location:*

(b) The proposed additions to the 18 May version are not within the functions of the Council.

[23] Counsel for the Minister indicated that although the Minister was prepared to accept the 18 May document in the form propounded by the Council, the broad centres-based approach under the plan was nevertheless open to question, insofar as natural and physical resources are intended to be managed on an allocative basis in order to achieve social and economic goals. It was submitted that although the consideration of effects under the Act is wide in ambit, that ambit is nevertheless limited by the purpose of the Act - that purpose being to promote the sustainable management of natural and physical resources, not the management of people.

[24] As to Neil's position, Ms Wooler submitted that it is appropriate for the development of resources within North Shore City to occur in a manner similar to the rest of the Auckland Metropolitan area; also, for consistency to be maintained between the district plans of the four major urban areas (Auckland City, Manukau City, Waitakere City and North Shore City) and the objectives of the Auckland Regional Policy Statement. On the latter score, support was indicated for the planning assessment of Mr A O Parton, a witness called on behalf of the Group and Woolworths, to the extent that his evidence was supportive of the Council's planning strategy and position under the 18 May document. On the other hand, various amendments sought by the Group and Woolworths were claimed to be an unnecessary curb on the dynamic nature of development on the North Shore, without assisting sound resource management outcomes. In short, it was contended that the most appropriate response to the proposed amendments suggested by other parties would be to support the Council's "middle ground" position, arrived at after exhaustive consultation between a notable range of interests.

[25] As to the Council's role as the body responsible for preparing and promulgating the plan for the district, it was contended that the following course was a proper one for the Council to adopt:

> ... enable development whilst ensuring that the adverse effects of that development are avoided, remedied, mitigated – this role does not involve allocation of resources or prescription, but requires the Council to ensure that adequate and appropriate criteria are in place to fairly assess all development applications in an equal manner.

Position of NTC

[26] According to NTC the Council's centres-based strategy is over-protective. The recognition which the plan gives to environmental values associated with centres was said not to be in dispute. But the 18 May document in its unamended form was said to place undue emphasis on economic protection of existing centres and insufficient emphasis on the provision of retail development in the district as a whole. Mention has already been made of the change of activity status for large supermarkets sought by NTC in the identified (40ha) area in the Wairau Valley. Criticism was also directed to aspects of the Council's approach to the relationship between private and public transport and to roading provisions considered by the Council to be relevant to centres.

[27] Four propositions were advanced by counsel for NTC which were said to have a bearing on virtually all the amendments sought by the various parties. They are:

> *(a)* *The extent to which the plan continues protection for existing and proposed centres to the detriment of business development outside existing centres.*
>
> *(b)* *The extent to which the plan should be concerned with the economic effects of business development on centres.*
>
> *(c)* *The extent to which the plan should include policies or statements relating to the promotion of public transport and/or a reduction in the use of private motor vehicles.*
>
> *(d)* *The appropriateness of provisions relating to the management of the use of the roading network and the development of the roading network in the district.*

Legal Issues

[28] Extensive submissions were presented, particularly by counsel for Woolworths (supported by counsel for the Group), and on behalf of NTC, regarding legal issues pertinent to the broad questions for consideration of the kind posed for NTC above. Counsel for NTC, supported by Ms Bramley for the Minister, submitted that a recognised approach to applying s.5 of the RMA is set forth in *North Shore City Council v Auckland Regional Council* [1997] NZRMA 59 where another panel of this Court observed (p.94):

> *The method of applying s.5 then involves an overall broad judgment of whether a proposal would promote the sustainable management of natural and physical resources. That recognises that the Act has a single purpose ... . Such a judgment*

allows for comparison of conflicting considerations and the scale or degree of them, and their relative significance or proportion in the final outcome.

[29] It was further submitted by counsel for the Minister that the foregoing approach accords with views expressed by Greig J in the commonly-cited *NZ Rail* case [1994] NZRMA 70, where it was observed that the provisions of Part II of the RMA exhibit "a deliberate openness about the language, its meanings and its connotations"; further, that Part II should not be "subjected to strict rules and principles of statutory construction which aim to extract a precise and unique meaning from the words used" (p.86).

[30] Perhaps it is trite to note that the basic matters to be considered in preparing a district plan are set forth in s.74. Subsection (1) requires a Council to prepare its plan in accordance with its functions under s.31, the provisions of Part II, its duty under s.32, and any regulations. The provision for consultation in the plan preparation process under the First Schedule is also relevant. Apart from the requirement of avoiding inconsistency with regional planning instruments under s.75(2)(c), a Council must have regard to matters specified in s.74(2), including any proposed regional planning instruments specified in the subsection. Section 74(3) excludes the having of regard to trade competition.

[31] The ARPS it may be noted was notified in September 1995. It became operative in July 1999 after input was received from several parties in the present proceedings including the Minister for the Environment and NTC. We have no good reason to suppose that other than due regard was paid to it by the Council while the district plan process was proceeding.

[32] Counsel for NTC submitted that s.31 underpins the effects-related basis for district planning contained in the RMA. He contended that the two key functions relevant to the present appeals are contained in paragraphs (a) and (b) of that section:

> *31. Functions of territorial authorities under this Act –*
>
> *Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*
>
> *(a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
>
> *(b) The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the avoidance or mitigation of natural hazards and the prevention*

or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:

...

[33] It was submitted that these functions do not extend to, and should be distinguished from, the allocation of resources. *Boon v Marlborough District Council* [1998] NZRMA 305 was cited where the Court found that the respondent Council –

> *... appears to be in the process of allocating resources to establish this site which comes close to the "wise use" philosophy of the Town and Country Planning Act 1977 ... .(p. 331).*

For NTC it was contended that without amendments of the kind that it proposes, the 18 May document is liable to the same criticism that was levelled in the *Boon* case. In summary, the Council's centres-based approach was said to reflect out-moded thinking under the 1977 Planning Act, on a basis inconsistent with the Council's functions under s.31 of the RMA relating to the management and control of effects.

[34] Counsel for Woolworths pointed to the decision of the Planning Tribunal (as this Court was formerly named) in *Foodstuffs (Otago Southland) Properties Limited v Dunedin City Council* (1993) 2 NZRMA 497, a case taken on appeal to the High Court on over 20 separate points of law (see *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145). In the result, the Tribunal's decision was upheld on all points. The reported version, however, omits certain passages that were relied on by Mr Gould for present purposes (he having appeared as counsel in the *Foodstuffs* case) as follows (Decision W53/93 at pp. 114-116):

> *Counsel for the applicants had referred us to some principles about the location of retail development that had been developed by the Planning Tribunal for district planning under the Town and Country Planning Act 1977. He acknowledged that under that Act the relevant purpose had been the economic welfare of the people; but submitted that a similar purpose is to be found in the meaning given to sustainable management referring to the economic welfare of people and communities. Mr Gould maintained that the sense behind those principles has not changed, and that they remain relevant for measuring proposals against the purpose of the Resource Management Act.*
>
> *The principles that counsel referred to were that new retail developments should preferably be located alongside existing developments and closely integrated with existing shops for maximum convenience of the buying public, strengthening shopping centres as focal points in the community, and making use of the existing resource of commercial buildings (Nathan v Paeroa Borough, A94/87; that it is generally desirable to develop retailing in depth rather than in linear form so as to create a compact and cohesive centre (idem); that some retail uses (including supermarkets) are better located on the periphery of a commercial centre and have a complementary rather than a competitive role in relation to uses in the retail core*

(National Trading v Manukau City, A49/86); that healthy retail competition is to be encouraged (Progressive Enterprises v Mt Albert City, W72/88); and that it is sometimes appropriate to allow duplication of facilities to accommodate a new retailing trend if it is carried out in such a way that does not impair continuing viability of existing centres (Mercantile Development v Auckland City, 6 NZTPA 317.

And later:

The method for district planning is no longer the direction and control of development that was indicated by section 4 of the former Town and Country Planning Act 1977. The method indicated by the Resource Management Act is more one of managing the use, development and protection of natural and physical resources (section 5(2)) and their effects (section 31(1) and Part II of the Second Schedule), so enabling people and communities to provide for their own needs while meeting the aims of paragraphs (a), (b) and (c) of section 5(2). In that context we doubt that it is the respondent's duty, as submitted for Countdown, to protect the interests of those who have made investment decisions in reliance on the existing zoning.

Yet the dynamics of the retail market remain unchanged, and the observations about that market made by the Tribunal in earlier decisions (and dignified by Mr Gould as "principles") are, we think, still valid.

[35] The *Foodstuffs* case was determined prior to the insertion of s.74(3) concerning non-regard to trade competition by s.15(2) of the Resource Management Amendment Act 1997. Even so, the above-quoted remarks remain worthy of note in our view. The "method for district planning" (to use the Tribunal's phrase) under the RMA is based on the Act's single purpose expressed in s.5(1). Further to that, sustainable management as defined in s.5(2) involves two inter-related elements of "managing" and "enabling" - the first being formulated by reference to the means ("in a way, or at a rate") that is adopted to facilitate the latter. In determining what approach to the managing of effects should be followed within a district, planning concepts derived from old cases may be found helpful, depending on the circumstances, provided that their incorporation assists in fulfilling the RMA's purpose and the carrying out of the territorial authority's functions under s.31. The dictate of s.74(3) must, of course, be complied with as well. But that dictate as we conceive it does not preclude a territorial authority in preparing a district plan from considering wider social and economic effects of retailing and other commercial activities. A territorial urban authority such as the Council, for instance, may conceivably regard the due co-ordination of transport services, public facilities, and other urban-related infrastructure with retail/commercial centres within its district as a relevant area of concern in pursuing the Act's purpose. And in that context, we consider it lies within such an authority's domain to evince support and encouragement under its plan for a pattern of well-functioning centres - in turn

helping to facilitate efficient integration with such centres of services, facilities and infrastructure as described.

[36] In the present case, the Council, in formulating its centres-based strategy, contends that regard has not been had to trade competition, but to the importance of maintaining the viability of centres as overall entities. Such entities are viewed as significant resources within the district that fulfil an important role in enabling people and communities of the North Shore to provide for their wellbeing in the several senses recognised in s.5(2). The subsection refers in the context of enablement to economic as well as social and cultural wellbeing. Thus, when a territorial authority formulates its "managing" role in reference to the earlier part of s.5(2), attention may be expected to be directed to the way in which that role will relate to the "enabling" element of the subsection. At the same time paragraphs (a), (b) and (c) must be afforded due weight and applied.

[37] Here the Council takes the view that recognised centres of the North Shore are important entities in terms of their potential to meet the reasonably foreseeable needs of future generations – those centres being well-known to and valued by the various people and communities that look to them as focal points. Again, in terms of paragraph (c) it is considered that any adverse effects of large retail proposals within the 40ha identified area should be open to the Council to assess and evaluate. Recognition is afforded in the plan to large-scale "out-of-centre" retail activities, where it can be established that such activities may be accommodated without significant adverse effects, including effects on other important community resources and infrastructure.

[38] Considerable argument was addressed in relation to several South Island decisions of the Court, collectively described as the "economic thread" cases. Those cases include *Marlborough Ridge Limited v Marlborough District Council* [1998] NZRMA 73; *Queenstown Property Holdings Limited v Queenstown-Lakes District Council* [1998] NZRMA 145; *Baker Boys Limited v Christchurch City Council* [1998] NZRMA 433. And more recently, *Shirley Primary School v Telecom Mobile Communications Limited* [1999] NZRMA 66 and *Terrace Tower (NZ) Pty Limited v Queenstown-Lakes District Council* C111/2000. This series of decisions has emanated from panels of the Court differently constituted from ourselves and presided over by Environment Judge Jackson. Counsel for Woolworths contended that:

> *A cursory review of the decisions might lead one to surmise that the principles accepted by the Tribunal in Foodstuffs, and subsequent decisions (of other divisions of the Court), had been abandoned in favour of a "laissez faire" or market-driven approach to resource management generally, and retail resource management in particular.*

It was further contended, however, that a closer analysis of the decisions reveals that such a conclusion is incorrect.

[39] In *Marlborough Ridge*, the following passages were cited from *Imrie Family Trust v Whangarei District Council* [1994] NZRMA 453 where the Planning Tribunal stated:

> *We accept that the efficient use and development of natural and physical resources (referred to in section 7(b)) is an element of the statutory purpose of sustainable management. However we have not found language in the Act to indicate that Parliament intended territorial authorities to attempt quantitative allocation of retailing opportunities in their district plans according to an assessment of potential customer support, so as to avoid duplication of shopping, or under-utilisation of land and buildings intended to retailing. That would be approaching retail licensing which, in our understanding, is not authorised by the Resource Management Act (p.463).*

[40] And again in the *Imrie* case it was stated (ibid):

> *... although we need to consider the economic effects of the proposal on the environment, it is only to the extent that they affect the community at large, not the effects on the expectation of individual investors.*

[41] In *Marlborough Ridge*, the Court agreed "with that clear articulation of the planning principles". In reference to section 7(b) it was stated (pp.88-89):

> *In introducing s.7(b) Parliament must be taken as considering that the advantages of "efficient use" should be considered. It is the role of s.7(b) in assessing methods under the RMA which might make it a particularly powerful tool. We add that its inclusion in s.7 (which is otherwise a section dealing with substantive matters to be considered) shows that Parliament recognised (inter alia) that the substance/form distinction has a blurred edge, and wished to ensure that efficiency was recognised as a normative goal as well as a technique. As the High Court stated (in Telecom Corporation of N Z Ltd v Commerce Commission (1991) 3 NZBLQ 102,340) of different legislation (the Commerce Act):*
>
> > *"The more efficient use of society's resources in itself is a benefit to the public to which some weight should be given." (p.102,386)*
>
> *Curiously, the RMA by including s.7(b) is more explicit than the Commerce Act 1986 about the social desirability of the efficient use of resources.*

[42] The decisions in *Marlborough Ridge* and other cases usefully bring to mind issues concerning the economic dimensions of efficiency in reference to the RMA.

Yet as the range of evidence and submissions we heard illustrated, some would go further and argue that there is an all-embracing "economic" perspective and approach to sustainable management which the South Island cases, read collectively, effectively endorse. It appears, however, that a clear note of circumspection was sounded in *Marlborough Ridge*, as indicated by the following observation (p.86):

> *In fact our isolation of the economic jargon in the RMA may lead to incorrect confinement of economic issues and principles and misunderstanding of their relevance to the RMA.*

And that statement is then followed by this passage concerning use of the word "efficiency" in the RMA:

> *If, as we understand it, economics is about the use of resources generally, [see R A Posner Economic Analysis of Law 4th Edition (1992) p.7] then resource management can be seen as a subset of economics. Bearing that in mind will prevent unnecessary debates as to whether the use of the word "efficiency" in the RMA is about " economic" efficiencies or some other kind. All aspects of efficiency are "economic" by definition.*

[43] Plainly various "threads" may be discerned in the legislation, a number by chance (without purporting to be an exhaustive list) also commencing with the letter "e". While acknowledging the Act's effects-based thrust, mention may be made of the following along with economic aspects and efficiency – ecological, ethnic (in terms of Maori values), equitable (as between generations), (a)esthetic (in terms of amenity values), and ethical (as below). Collectively the several "threads" (with different degrees of emphasis or relevance in individual cases) contribute to maintaining the *ethic* of constantly striving for good *environmental* outcomes, including the *enabling* of wellbeing, all under the lodestar of sustainable management.

[44] Another point was raised in *Marlborough Ridge* as follows (pp.94-95):

> *... we question whether it is the role of this Court to make judgments about social, economic or cultural wellbeing (as opposed to creating circumstances which enable that wellbeing to be created by people in communities) except possibly in the clearest cases ... .Our role as we perceive it under s.5 is to enable people to provide for that wellbeing. In other words, the scheme of the Act is to provide the "environment" or conditions in which people can provide for their wellbeing.*

[45] If in the context of the present case, application of the foregoing passage would mean that the Council is restricted from forming a view on what people and communities in the district may have in mind or expect in terms of their wellbeing, in order to determine the sorts of conditions that will enable them to provide for such

wellbeing, then we must respectfully register our dissent. Inevitably, the Council has had to make judgments as to the way or the rate whereby the use, development and protection of natural and physical resources in the district should be managed; and, in so doing, the need has arisen to consider the enabling element (earlier alluded to).

[46] In seeking to promote the conditions in which people can provide for their wellbeing, it is unrealistic to place the notion of wellbeing in a holistic vacuum. Rather, because of the interconnection between the managing and enabling elements within the statutory definition of sustainable management, an understanding as to the forms or aspects of wellbeing that people and communities will be enabled to provide for (in a social, economic, and cultural context) is to be expected at the plan preparation stage. That is the case in order to assist in ascertaining what basis or means of approach in managing the use, development and protection of natural and physical resources will duly facilitate the enabling element.

[47] In summary, the Council is entitled to review the enabling element in determining the form and extent of its management role. That is not an arrogation of responsibility, but a common sense process aimed at planned integration in the pursuit of sustainable management. In the present instance (as earlier recorded at paragraph [13]) the Council undertook extensive studies and consultation. That process was not only appropriate under the Act's provisions, but a cornerstone in the plan's preparation. It was thus that the Council was able to ascertain and understand what the people and communities of the North Shore were seeking.

Discussion and Evaluation

[48] Diversity of land use occurs in the context of sustainable management of natural and physical resources. Subject to such management, changes arise as the market and people's preferences dictate. Retailing is of course part of the district's very wide overall spectrum of activities that link or interact so as to make up or produce the City's operational form and character. All the various land uses within the City including retailing combine to produce a framework or interweaving of *effects* upon the *environment* (using those emphasised terms having regard to the Act's wide definitions). Some of those effects may be of local nature whereas others may be relatively diverse and far-reaching.

[49] The framework of effects as described is of concern for district planning purposes because it is the plan's policy direction and guiding management that

influences how and where within the district different effects may be accommodated without undue impact upon the environment. Thus the aim is to promote sustainability of the district's natural and physical resources and enable the district's inhabitants and communities to provide for their wellbeing and for their health and safety.

[50] Obviously, in formulating broad policy direction, judgments are required – those judgments being distilled and refined by the consultative and analytical procedures provided under the legislation for formulating planning instruments, along with the public input process following formal notification. While, in approaching the Act, strong emphasis is often placed on the enabling factor within the context of sustainability, that needs to be viewed in reference to the whole definition of sustainable management and the planning regime which the Act provides for. As Barker J observed in *Falkner v Gisborne District Council* [1995] 3 NZLR 622 at 632:

> *The Act itself is perhaps not so much a code as such (in that it merely sets certain standards and delegates much to the local authorities); it does, however, represent an integrated and holistic regime of environmental management.*

And later (ibid):

> *The Act prescribes a comprehensive, interrelated system of rules, plans, policy statements and procedures, all guided by the touchstone of sustainable management of resources. The whole thrust of the regime is the regulation and control of the use of land, sea and air. There is nothing ambiguous or equivocal about this.*

[51] Hence, diversity is accommodated against a need for good environmental outcomes - not only in individual site cases, but in the broader public interest sense that zonings or other methods or techniques in a plan are designed to meet or facilitate. From this wider perspective, the current plan (formulated so as not to run counter to yet wider regional matters as directed by section 75) performs its intended function by indicating the district's basis of approach for managing its natural and physical resources sustainably.

[52] "Management" is a term to which public expectation attaches certain preferred standards such as clarity of outlook and expression. Ideally a district plan should be a straightforward document which sets forth clearly specified objectives and policies (cross-referenced as need be), with rules or other means of

implementation that are likewise readily understandable and practical to comply with. Here the plan is lengthy and detailed. It goes to considerable length in seeking to deal with the complex framework of effects that the City's manifold activities generate or may potentially generate. The Council acknowledges that it is a plan that actively seeks to manage the effects of many different land uses, principally by the use of zoning and associated means. Zoning as a method of course is incorporated and accepted in many district plans throughout the country. In terms of retailing provision, the plan provides appropriate opportunity to those within the retailing sector to develop new or expanded markets and different retailing techniques to accommodate public preferences and emergent trends. In the case of large scale proposals, however, retention of the ability to consider and assess related effects is considered necessary to assist in fulfilling the Act's purpose.

[53] In our judgment, the plan is not improperly aimed or directed as to succumb to criticism that it seeks to embrace a quasi-licensing regime contrary to the RMA. More specifically, the parts of the 18 May document that are under contention by NTC in particular do not appear to us to overstep the mark by entering the realm of management for management's sake. In so concluding, we found the evidence of the Council's planning witnesses, Ms J E Goodjohn and Mr D F Serjeant, convincing in explaining the thorough way in which the Council had proceeded with its processes of consultation, evaluation and analysis in relation to the plan's gestation; also, in explaining the reasons for seeking to maintain the 18 May document in the form endorsed by the Council following prolonged negotiations with various interests, including those who remain at odds in these proceedings.

[54] We also found the evidence of the traffic engineering consultant for the Council, Mr J D Parlane, helpful in explaining how the Council proposes to manage traffic effects of certain business activities under the 18 May document by classifying them as "High Traffic Generating Activities". Such activities are provided for as permitted activities in various existing and proposed centre zones, while requiring consideration as limited discretionary and discretionary activities within other Business zones. It is thus intended in Mr Parlane's words:

> *... to avoid, remedy, and mitigate adverse effects in the form of increased private vehicle travel by encouraging high traffic generating land use activities to establish in existing or planned centres where public transport can be provided in an effective manner and where the Council can budget for and implement road improvements in a planned manner. Where landowners seek to establish high traffic generating activities outside of main centres the rule allows for a discretionary activity application to be made.*

[55] Consideration was given to proposed rules 15.6.1.3 and 15.7.4.1 against the background of whether the tests in *Nugent* (refer above paragraph [17]) appeared to be satisfied. We do not disagree with Mr Parlane's analysis and affirmative conclusion for the reasons he gave. Neither do we see cause to dissent from his discussion of relevant regional issues bearing on transport, including matters under the ARPS and the Auckland Regional Land Transport Strategy ("the ARLTS"), the proposed Retail Activities objectives and policies under clause 15.3.3 of the plan having a bearing on transportation, and his views in opposition to various traffic-related amendments to the 18 May document sought by appellant parties.

[56] Expert evidence on traffic aspects was called for the Group via Mr P T McCombs, an experienced traffic engineering consultant, and for NTC from Mr R A Dickson, an equally experienced counterpart in the field with a planning qualification in addition. Each witness expressed support for amendments to the 18 May document proposed by the party calling him, and disagreement with amendments proposed from an opposing quarter, or with the Council's position. We have weighed the evidence on this branch of the case and basically consider that the Council's position should be endorsed on the strength of the evidence adduced on its behalf, but with the following refinements: Amend 6.2 policy 6 by replacing the words "or possibly in the future along selected transport corridors" with "or along selected main transport routes where appropriate"; amend 15.4.7 policy 2 by replacing the words "are no more than minor" to "will not be significant"; amend 15.4.7 Explanation and Reasons second sentence to read "The zones acknowledge the possibility of activities which generate high levels of vehicular traffic seeking to establish, such as some forms of retailing, but are concerned to maintain ... etc".

[57] The plan recognises the value and importance of the commercial centres that exist in the various suburbs and larger sectors of the city by incorporating a strategy of encouraging the centres' continued viability and upkeep. That is intended in the interests of people of the district who look to such centres as community focal points, or, in a suburban community sense, reside within catchments that the centres serve. The plan's centres-based strategy as we conceive it is not aimed at protecting vested interests as such, but at recognising the value to the district's people and communities of the City's centres, and the "enabling" benefits stemming from such centres now and for the future. We consider that the case is one where, despite the Act's generality of aspirations and principles which seems, as Cooke P (as he then was) put it in *Auckland Regional Council v North Shore City Council* [1995] NZRMA 424 at 426, to have led in the drafting to an accumulation of words verging

in places on turgidity, nevertheless (again to use his words) it has become possible to pass through the thicket without too much difficulty.

[58] The concept of service by centres towards communities within associated suburban areas or catchments relates to the provision of community focal points and the availability of ready access to ranges of goods and services, aided by modern urban support infrastructure. As Dr D J M Fairgray, a market analyst called for the Group, observed:

> *The functional roles of centres affect frequency of usage, so that functional and social roles are causally linked. Both functional and social amenity are influenced by the range and nature of retail and service activity in a centre, as well as by other features of the urban environment.*

[59] Encouragement of viable centres within the City is considered relevant to help ensure that the "focal and availability" factor as above is commensurate with contemporary living standards and expectations of the City's inhabitants, hence enabling them to provide for their wellbeing. We see nothing inherently wrong with that line of reasoning for the purpose of formulating a broad planning approach to sustainable management of the City's natural and physical resources, given the openness of the language employed in encapsulating the Act's purpose.

[60] Furthermore, the identification of such an extensive area as 40ha for future business activities, including large scale retailing development, may be expected to give rise to notable land use changes over the planning period and beyond, with consequential effects of significance both within or in the vicinity of the identified area itself, and upon other areas or parts of the City. It is therefore understandable in our view that the Council should wish to assess the effects of large retail proposals within the identified area on a discretionary activity footing, so that it can weigh the actual and potential effects of such developments, including of course cumulative effects.

[61] A suggestion was advanced by counsel for NTC that although the 18 May document (with its proposed deletions and additions) could be relied on as indicating the scope of the parties' outstanding differences, part of NTC's concern was founded on an allegation that the Council had not adequately fulfilled its responsibility under s.32 of the Act. We do not accept that that allegation is merited, having regard to the detailed consultative and other steps undertaken by the Council for the purposes of

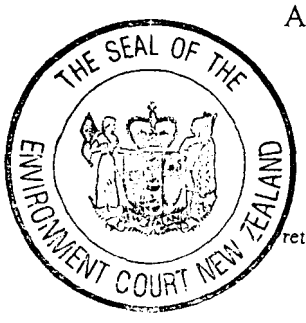
the plan's formulation and preparation. Moreover, having considered the extensive volume of material presented before us, against the background of the evidence adduced for the Council as to the course adopted as above, we are satisfied, on an examination of all aspects, that the position finally espoused by the Council under the 18 May document is necessary (in the sense of being desirable) for the North Shore district, and that the document's provisions, looked at in the context of the plan overall, fall within the Act's purpose and requirements.

[62] We were impressed with the thorough appraisal advanced by Mr Parton in reference to the ARPS and the ARLTS, as well as the Auckland Regional Growth Strategy ("ARGS") developed through the body known as the Regional Growth Forum formed in 1996 and made up of ten representatives from the seven territorial local authorities in the wider region and the ARC. The ARLTS and the ARGS are not themselves statutory instruments under the RMA, but the former is a statutory document under the Land Transport Act 1988. It is therefore a relevant plan in terms of s.74(b)(i) of the RMA.

[63] Reference was made to provisions bearing on strategic direction from the ARPS and traffic growth and transport strategy provisions from the ARLTS that are expressly supportive of the ARGS. An overview was also advanced of the three main Auckland territorial districts' broad approaches for retail development additional to North Shore (i.e. Auckland, Waitakere and Manukau Cities). That overview left us satisfied that the Council's approach is not inconsistent with the ARPS for the purpose of s.75(2) and not fundamentally at odds with other initiatives and general planning direction, whether from a regional or district perspective. Moreover, in the light of Mr Parton's total evidence, we accept his conclusion (compatible with that of another experienced planning witness, Mr M J Foster, also called for the Group) that –

> *... retailing activities should not be looked at in isolation but rather in terms of the wider role that the uses are likely to play in helping shape the urban form (as future nodes for population intensification) and in transportation planning (in helping reduce private vehicle usage, and encouraging greater use of public transport). In a nutshell what is called for is an overall integrated management approach, rather than an ad hoc approach.*

Also that:



The 'parent' planning document for the Auckland region, the ARPS, and to a lesser extent the more detailed ARGS and ARLTS, clearly indicate that district plans should encourage residential intensification around nodes (consisting primarily of existing commercial/shopping centres). If this objective is to be achieved, it will be necessary that the centres around which such population intensifications are encouraged to locate, continue to function as significant 'service centres' for their local communities and that the social, economic and aesthetic conditions that they provide are not unreasonably impaired.

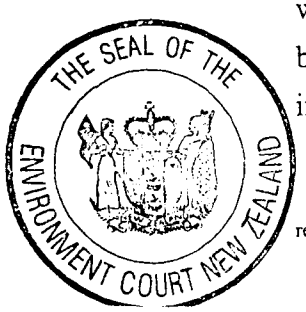
[64] In the course of the cases for the Group and Woolworths, the following provision in the plan, described as Major Issue 5.4.8 with accompanying explanatory statement, was emphasised – being a provision not under challenge in these or other proceedings. The provision reads:

5.4.8 How to ensure that business activities do not degrade the environment or the amenity of surrounding areas

A centres-based approach is an effective mechanism for preventing potential adverse effects of business activities. By grouping together activities which have high traffic generation rates, a centres-based approach can reduce vehicle trip lengths, congestion and vehicle emissions and improve road safety. It enables cost-effective controls to be developed which reflect the characteristics of different areas. A centres-based approach also recognises that the established centres in North Shore City are significant physical resources.

The significance attached to this statement by Mr Foster in evidence, and by counsel in their submissions, was understandable. We accept Mr Gould's submission that the above-cited provision not only specifies a perceived issue of importance under the plan, but goes on to explain an approach for meeting it. The existence of that unchallenged provision effectively assists in guiding and informing one over other provisions, including those under contention before us. On that footing, the provisions of the 18 May document as proposed by the Council (including accepted amendments referred to below at paragraph [67]) appear to blend appropriately.

[65] We have refrained from expatiating upon the many expert witnesses' evidence heard in these proceedings. Such a course would have added considerably and unnecessarily to the length of this decision. Suffice it to say, we have considered all of the evidentiary material in conjunction with the comprehensive submissions of counsel. Parts of the evidence, including that from economist witnesses for NTC and the Group, assumed quite technical levels on issues that were better left to be dealt with via submissions by counsel going to matters of statutory interpretation as to the ambit of the RMA and its purpose. Interesting as some of the

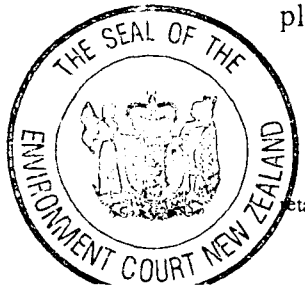


theoretical and abstract discussions of economic analysis were, at the end of the day, the Act, while having an acknowleged effects-based emphasis that is arguably linked to a notable extent with economic efficiency, also embraces factors and concerns such as social wellbeing, cultural issues, ecological protection and amenity values - areas where differing judgment criteria are characteristically invoked in pursuit of the Act's purpose. The Act is not purely "economically" based. Neither is it a statute that denies the possibility of regulatory control where that is found justified in achieving sustainable management within a district.

[66] The debate before us, reduced to its core, centred on a plea and counter plea in relation to what counsel for Woolworths described as a comparatively *laissez-faire* land use approach to retailing to that contemplated under the plan. For the reasons we have explained, we find that the Council's case has been successfully made out and defended. We conclude that a reasonable "middle ground" approach has been adopted via a planning framework that recognises the significance of centres and also allows discretionary activity opportunity for large-scale retailing proposals within the 40ha identified area. In the latter regard it will be for the Council to determine on an individual case assessment whether adverse effects (including any such effects upon a centre or centres) may be suitably avoided, remedied or mitigated.

[67] The 18 May document is accordingly upheld in the form proposed by the Council at the outset of the hearing, but subject to the limited alterations specified in paragraph [56] above, and incorporating certain amendments sought on different sides that Mr Loutit advised would be acceptable to the Council in terms of a table presented with his final submissions. We agree that cases were made out by NTC, the Group and Woolworths sufficient to support and justify those amendments, while maintaining or confirming the Council's basic approach in relation to centres, traffic-related aspects, and business opportunity generally inclusive of retailing. We also endorse the redrafting of various cross–referencing provisions regarding Section 15 of the plan as proposed. The table indicating the accepted amendments and the re-drafted cross-referencing provisions are attached as Appendix 3.

[68] The Council is requested to submit a "clean copy" of the 18 May document in the form intended by this decision for attachment to a formal order of the Court confirming it. Such copy ought also to include the amendments to Section 15 of the plan pursuant to the consent order made on WPL's references.



[69] Should any further matter not foreseen remain outstanding as to require the Court's further assistance or determination, leave is reserved to apply.

[70] Costs are reserved. If costs should be in issue despite the plan reference nature of the proceedings, memoranda may be filed and served within 15 working days, with reply memoranda being filed and served within a further similar period.

DATED at AUCKLAND this 20th **day of** April, **2001**

For the Court,

R J Bollard
Environment Judge

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Explanation: The base text for these sections is from the North Shore City Council's 18 May version. The changes sought by various parties are colour coded, additions are underlined and deletions are struck-through.
St Lukes – plain, National Trading – shaded, Woolworths – highlighted.

5. Issues and Goals

9. *The ability of North Shore City to develop into an environmentally sustainable city.*

In addition to Section 5 of the Act, other relevant provisions include:

- *Section 7*: the efficient use and development of natural and physical resources.
- *Section 7*: the maintenance and enhancement of amenity values.

North Shore City currently has an imbalance between the City's increasing population and the number of jobs available within the City. There are a large number of people who live in North Shore City but commute out of the City for work. For the North Shore to develop into an environmentally sustainable city requires the availability of greater employment opportunities within the City, which would reduce the need for residents to travel outside of the City for employment.

North Shore City also has a high level of reliance on private motor vehicles, which is unlikely to be environmentally sustainable in the long term. The adverse environmental effects of private vehicle trips include vehicle emissions, noise, inefficiency in energy use and the time involved in making the journey. ~~These effects can be minimised in part through encouraging greater use of public transport and in part by fostering urban forms that facilitate reduced use of private vehicles.~~ The availability of employment, shopping, business, recreation and cultural activities within a community is a significant issue for the Council. The availability of these activities can be evaluated at a range of scales, beginning with the City as a whole and working down to a local community focus. Some of these activities will only be available in larger centres while others will have more general availability in most centres and business areas.

The availability of these activities will be determined in a large part by the market. For example, at the regional scale the North Shore City is part of the larger conurbation of metropolitan Auckland and, as such, will continue to look towards the Auckland Central Business District to serve a role of primacy in respect to some functions.

The Council can influence the distribution of activities to minimise journey lengths and to increase the social, economic and cultural wellbeing of the community. However, this does not mean that each local area should provide for all of the local community's everyday needs. There is a trade-off between the availability of some activities and amenity values, since enabling a wide range of businesses, both service and employment orientated, to establish throughout residential communities could potentially result in adverse local effects, such as greater noise, emissions, higher traffic levels, visual impacts and loss of residential amenity.

The Council can encourage the multi-purpose use of local centres through non-regulatory support for the centres, regulatory methods and through more intensive residential development around existing centres.

There are also social advantages in establishing retail centres as focal points within the

community (as places to meet or interact and locate community services etc).

[Issue 9 above is an amendment of the deleted Issue 9 below]

10. *The extent to which the transportation network in conjunction with the district's urban form is environmentally sustainable.*

In addition to Section 5 of the Act, other relevant provisions include:

- Section 7: the efficient use and development of natural and physical resources.
- Section 7: maintenance and enhancement of the quality of the environment.

The Auckland Regional Policy Statement (July 1999) highlights a number of issues in relation to transportation and urban form:

- "The transport system can influence urban form in a way which detracts from wider resource management objectives. ...The transport system is recognised as being one of the major determinants of urban form. The way in which the transport system is developed is therefore one of the major instruments in guiding the form of urban development." (p.1, Chapter 4)

- "Auckland's transportation system is essential for the community's social and economic wellbeing and some parts of it are nearing significant thresholds. The transportation system may also give rise to adverse effects.(p.10, Chapter 2) There is growing recognition of the environmental costs of the transport system and of the low density urban form and lifestyle it supports." (p.11, Chapter 2)

- ~~"The existing form of urban development in Auckland, including the associated transportation system, is not sustainable in terms of current energy use. Urban Auckland is large in area and has a low population density by world standards. Its low density sprawl has been accelerated by the adoption of a motorway system and reliance on the private use of motor vehicles." (p.2, Chapter 5)~~

In the urban environment of North Shore City there is a very high level of investment in buildings and transportation infrastructure. The intensity of activities in parts of the City can place heavy demands on the roading network, parts of which are under significant peak period pressure. These are factors that need to be taken into account in determining the direction and timing of urban development.

North Shore places a strong reliance on its roading system for maintaining economic and social wellbeing. The physical and employment characteristics of the district combine to create some specific problems, particularly in relation to the harbour crossing corridor. A significant proportion of the land area is devoted to roading and traffic levels have increased substantially in recent years, as vehicle ownership levels have continued to rise. Approximately 40% of working residents commute out of the district for employment. Most of their travel is in single occupancy vehicles with the result that during peak periods, parts of the district's roading network is at or beyond capacity. This is particularly evident on the Northern Motorway approaches to the Harbour Bridge. The *Resident Preferences Survey* recorded that residents considered that the negative aspects of the North Shore environment are mainly related to transport and travel congestion. While most travel movements on the North Shore are likely to be by private transport, the Council strongly supports the high occupancy use of private vehicles and the provision of public transport as a means of encouraging greater resource efficiency and

reducing the congestion problems created by private transport.

11. How to manage the environmental effects associated with the provision of infrastructure, utility services and networks.

In addition to Section 5 of the Act, other relevant provisions include:

- Section 7: the efficient use and development of natural and physical resources.
- Section 7: maintenance and enhancement of the quality of the environment.

The Auckland Regional Policy Statement (July 1999) highlights a number of issues in relation to infrastructure including:

- "Regionally significant physical resources, including infrastructure, are essential for the community's social and economic wellbeing. The location, development and redevelopment of infrastructure is of strategic importance in its effects on the form and growth of the region." (p.8, Chapter 2)

- "Provision (or non-provision) of infrastructure is a major influence in the overall pattern and direction of regional development." (p.9, Chapter 2)

- "An absence of co-ordination between infrastructure providers and other agencies responsible for urban growth and development may increase the likelihood of adverse effects." (p.9, Chapter 2)

- ~~The need for expansion, replacement or upgrading of infrastructure in order to avoid environmental problems and/or in order to increase the capacity of infrastructure to accommodate growth~~

There is a significant investment in infrastructure , utility services and networks on the North Shore. The timing and location of infrastructure is both determined by and determines urban development and urban form.

Infrastructure can have adverse effects on sensitive areas of natural environment including the coastline and areas of remnant bush and by causing disruption to communities. Conversely, the viability of infrastructure can also be compromised by the adverse effects of other activities. For example, the cumulative effects of sensitive activities locating too close to airports, roads or waste treatment facilities.

The provision of infrastructure should therefore be carefully managed so as to avoid, remedy or mitigate adverse effects and to encourage an urban form which is efficient and maintains and enhances amenity values.

[Issue 11 above is new and is a consequential amendment as a result of changes to Issue 10]

~~*12. The ways in which and the extent to which the City can contribute to global conservation*~~

[There is no reference against this issue, therefore there is no change to the issue except to the numbering]

13. How to ensure that opportunities for diversity and choice are not restricted in the process of managing the district's resources.

Ref: 1463/95
[There is a reference against this issue, however there is no change to it except to the numbering]

14. The extent to which the accessibility of resources and facilities is maintained or enhanced in managing the district's resources.

There is a need to recognise that some members of the public, such as the disabled, the elderly, children and those without private transport, have restricted access. Urban development should be managed so as to maintain and if possible enhance the accessibility within the City, including opportunities to use a range of transport modes.

This is a broad strategic issue for the City. The Council recognises that there are a variety of methods of implementation for achieving the wider strategic issues for the City. Urban development methods include implementation through District Plan rules, Council works, provision of infrastructure, Council initiatives through Structure Plans, and education through information, education programmes and expert advise. Therefore, the Council's Strategic and Annual Plans have a substantial role to play in addressing this issue.

[Issue 13 has been amended and renumbered Issue 14]

5.5 Goals for North Shore

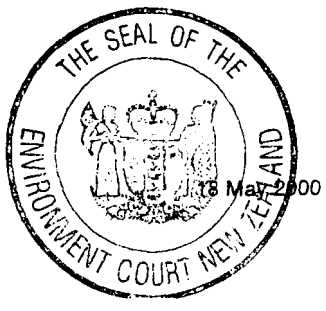
Ref: 1463/95

- *Urban Growth*: to enable urban growth and development in a sustainable manner which avoids, remedies or mitigates adverse effects on the environment.
  [This goal is amended]

- *Environmental sustainability:* to manage urban development in a way which seeks to achieve a city which is environmentally sustainable.
  [This goal is amended]

- *Diversity:* to manage natural and physical resources in a manner which enables diversity and choice in residential, business and leisure environments within the district, to accommodate a wide range of needs and values, and to take account of changing economic, social and cultural conditions.
  [This goal is amended]

- *Accessibility of Resources and Facilities:* to manage urban development in such a way that accessibility to the City's resources and facilities is maintained and if possible enhanced.
  [This goal is amended]



Managing the Growth and Development of the City

6.1 Introduction

Ref: 1418/95, 1424/95

This section sets out the policy framework for managing the effects of future growth and development of North Shore City in terms of the principles of sustainable management. It defines the general location, extent, and intensity of future urban development in terms of sustainable resource management objectives. These objectives provide for the integrated management of the large-scale effects of urban growth and development on the natural and physical resources of the City, in a way which will enable the people and communities of the North Shore to provide for their social and economic well-being.

The way in which the City grows, its urban form, can have a significant impact on its environment and the quality of life for its residents. Continued urban growth has brought with it concerns about the impact that intensification of development has upon physical resources such as residential amenity, and the impact that development at the periphery may have on natural resources such as coastal estuaries, and on the outward spread of the City. There is also a concern that urban growth, whether through intensification or peripheral expansion, will result in substantial increases in commuting by residents of the City, placing even greater pressures on the cross-harbour transportation corridor during peak periods, unless there is a commensurate increase in employment opportunities within the City.

The effects of urban growth should be managed so that the future form of the City has addressed these concerns and retains the environmental features and qualities of life which make the North Shore a desirable urban environment.

Particular sections of the Act which are fundamental to the management approach adopted in this section are as follows:

- Section 5: the sustainable management purpose of the Act.

- Section 7: the efficient use and development of resources, the maintenance and enhancement of amenity values and of the quality of the environment, and the protection of ecosystems.

The proposed Regional Policy Statement contains objectives and policies on urban development which also need to be taken into account in this section of the Plan. The regional objectives reflect the requirements of Sections 5, 6, 7 and 8 of the Act and the regional policies include the following matters:

Containing urban development within the metropolitan urban limits (which includes Albany Greenhithe, and part of Okura/Long Bay but excludes Paremoremo in the north of the City).

Promoting urban intensification at selected areas able to contribute to increasing the efficiency of urban transport and upgrading utility services.

The resource management goals that have particular application to urban form are Urban Growth, Environmental Protection, Efficiency, Global Conservation, Environmental Sustainability and Accessibility of Resources and Facilities. In bringing together these goals, this section provides the framework for the sustainable management of a range of urban activities dealt with in later sections of the Plan, especially Transportation (Section 12), Business (Section 15), Residential (Section 16) and Urban Expansion (Section 17).

6.2 Urban Growth and Development Issues

Ref: 1418/95, 1424/95

The rate of urban growth, and the nature and location of development to accommodate this growth, are key issues facing the North Shore over the next 20 years. Without careful management, urban growth could cause major adverse effects including the following:

- Harm to the amenity values of residential neighbourhoods.
- Damage to valued natural environments and habitats.
- Increased traffic congestion, vehicle emissions, and use of non-renewable fuel resources.
- A loss of features of heritage value.
- Harm to significant landscapes and associated features.

Achieving sustainable urban growth and development in the City will influence the extent to which these adverse effects can be avoided, remedied or mitigated.

Although longer than the 10 year life of this plan, a 20 year horizon is appropriate for assessing future growth options, given the long lead times associated with any changes to the pattern of urban development. It is important that the City develops towards an urban form which is sustainable in the longer term during the 10 yearlife of the plan.

Several options for the future growth of the City have been evaluated in the preparation of both the City's Strategic Plan and this Plan, including a limited growth option, the continuation of existing policies (of consolidation and peripheral growth), and options with a consolidation, peripheral growth and shared (consolidation and peripheral growth) emphasis. In respect of the latter three options, sub-options were evaluated relating to the extent to which the style of development is spread or allocated in higher and lower densities.

The criteria used in this evaluation can be grouped into four categories: achievability, environmental, economic and social considerations. The conclusions of the evaluation are presented below in terms of the main urban growth issues facing the North Shore.

1. Should urban growth on the North Shore be discontinued?

The curtailment of urban development, would address environmental concerns relating to the protection of both residential amenity values in built-up areas of the City from further infill development and valued natural environments on the periphery from further new development. However, there would be serious social and economic problems with pursuing this strategy, as follows:

- It fails to recognise the continued demand for housing arising from the likely significant growth in population through natural increase of the existing population and migration into the City. Even if population growth was to fall to nil, there would be a demand for over 6,000 dwellings during the next 20 years, due to changes in the structure of the population and resulting household trends.

- Business development in Albany would not flourish without growth in the residential market to support it and, as a result, there would likely be continued pressures on the traffic capacity of the Harbour Bridge until growth in the labour force levelled off in line with demographic projections of an ageing population.

- The residential market may respond by pursuing alternative growth options outside the North Shore, most likely on the Hibiscus Coast and in the intervening semi-rural environments In this event a more widely spread urban form would likely emerge generating a different pattern of work trips with associated adverse effects.

- The limit imposed on the supply of residential development opportunities would all things being equal, be likely to significantly increase the cost of land in the City, which has implications for housing affordability, especially for first home owners.

- It would be likely to result in "ad hoc" responses to particular growth pressures, without the opportunity to achieve desired resource management goals, objectives and policies through a sound management framework for growth and development.

In the *Resident Preferences Survey* (1992) residents acknowledged the benefit of growth, notably the potential for improved employment opportunities and public facilities, and for housing for young people.

2. *Should urban form reflect current commitments and expectations?*

Residents and property owners in the City have current commitments and expectations relating to property which are relevant to the form of the City, as follows:

- The expectation of housing demand being catered for through infill development in built-up areas and new development in Albany.

- The ability for a large number of residential property owners to subdivide or cross-lease their properties, while protecting the amenity values of individual properties, adjoining properties and the neighbourhood.

- The expectation of further urban expansion in Albany, through stated policies of the Council and recent zoning changes, and the significant commitments made on the basis of this management framework, including the provision of main roading and utility connections, the development of the Massey University Campus and North Shore Domain and Stadium, the zoning of large areas for general business and the purchase and partial development of land for the Albany Centre.

- The identification of large areas in Albany, Greenhithe and Okura/Long Bay as future residential development areas, which has given an indication of future development potential to rural property owners and nearby residents on the urban fringe.

A continuation of current commitments and expectations in urban form, through a combination of infill development and peripheral growth, would provide a consistent management framework for development and, as a result, enable confidence in major projects. Any significant change in direction may not find universal favour with the market and would need to recognise the current commitments and expectations. The need for consistency should not, however prevent the introduction of a revised management approach if that was necessary to achieve the purposes of the Act.

3. How to address residential amenity concerns while enabling urban growth?

Under the residential infill development provisions of the previous district plans, the potential exists for only an additional 7,000 dwellings to be accommodated when allowanceis made for properties which have significant physical constraints on further development or which owners choose not to subdivide. To reach this target, the remaining properties in the built-up areas would need to be developed to an average density of 1 unit per 450m^2.
While a greater number of dwellings could be accommodated, this would only be possible if a higher average density was achieved. For example, for an additional 12,000 dwellings to bedeveloped, the properties not affected by physical constraints or owners' desire to retain sites intact, would need to be developed at an average density of 1 unit per 350m^2.

There is evidence however, that there would be strong community reaction against residential intensification at a level in excess of that already provided for in the previous district plans. The *Resident Preferences Survey* (1992) indicates that the existing housing density in their area is "about right", and that increasing the overall housing density is one of the main effects of urban growth which residents most want controlled. Underlying this response, there appeared to be a number of concerns regarding the loss of character, views, openness, vegetation and privacy, and increased traffic congestion. While there is an acceptance of low rise, higher density housing, this only applies where the housing is limited to selected locations.

This response in part reflects the relative compactness of the established residential areas of the City due in part to the late release of Albany land for urban growth.

4. How to protect valued natural environments while enabling urban growth?

Considerable attention is given in the proposed *Regional Policy Statement* to protecting valued natural features such as harbours and estuaries. In this regard the upper Waitemata Harbour is clearly a regionally significant natural environment and yet both the areas identified for urban expansion on the North Shore, Albany and Greenhithe, lie within the catchment of the upper Waitemata Harbour. The environmental effects of urbanisation on these estuarine waters would be better managed if growth pressures in the catchment are reduced by enabling development activities to occur on a broader geographical basis, and thus at a slower pace and in a more spacious manner. This would assist in minimising recontouring of land through earthworks, and in the retention of natural landforms, bush cover and streams, and would bring about a significant reduction in sediments entering waterways and detrimentally impacting on the quality and ecology of sensitive harbour estuaries.

A more spacious development pattern would also allow ample land for detaining stormwater and trapping chemical contaminants from industry, roads and other activities when the area becomes an established urban environment.

Urban growth pressures in the catchment of the upper Waitemata Harbour can be reduced by including Long Bay as an area for urban expansion, in addition to Albany and Greenhithe. While the Okura River estuary is also sensitive to sediment pollution, the advantage gained from accommodating development pressures over a much wider area are considered to outweigh the disadvantages.

There are limited areas of highly productive soils in the Paremoremo, Greenhithe, and Albany areas. However, sustaining the life giving capacity of these soils may not be warranted

because they are not of significant scale and they are already compromised by development to some extent.

5. *How to enable urban growth which will minimise traffic congestion and the associated environmental effects.*

Urban growth, which provides for residential, business and other activities both within existing developed and new peripheral areas, will assist in minimising travel distances and vehicle trip generation, particularly in relation to peak commuter periods across the Harbour Bridge.

In the northern part of the City, the development of Albany as a focus for business together with residential growth on the northern periphery, will assist in addressing this issue. This residential growth will provide support for businesses wishing to establish in Albany. There is an emerging pattern of job self-sufficiency in North Shore City, which attains a higher level in the recently developing, northern parts of the City. This suggests that the provision of new housing and business opportunities together is likely to foster convenient home-work relationships, through improving the opportunities for new residents to gain work locally and new workers to reside locally. Strengthening this relationship is likely to be the preference for parts of Greenhithe and Long Bay as residential locations by people in managerial occupations, and the recognition given in studies that proximity to the home location of managers is a significant influence on business locations.

6. *How to enable urban growth and development which facilitates the orderly provision of in frastructure.*

The urban form of the City has implications for the provision of infrastructure provided by the Council (water, sewerage, stormwater, roading), by public agencies and network utility operators (highways, power, gas and telecommunications) and by private developers in new subdivisions. The provision of infrastructure has significant timing and funding implications for the City. For example, urban growth occurring in a dispersed and sporadic manner increases the costs of infrastructure provision. It is therefore desirable to ensure that the availability of development potential is aligned with the timing, funding and sequencing of infrastructure provision.

7. *How to enable choice and adaptability to changing circumstances within the urban environment?*

It is important that the plan maintains the flexibility to deal with changing circumstances arising from external influences on growth and development on the North Shore. These include the impact of Government policies on matters such as immigration, business growth, housing and land transport; social-economic and cultural influences on fertility, migration and housing preferences; and the effects of advances in technology.

Analysis of demographic trends suggests that enabling a diversity of housing styles within both infill and peripheral development is appropriate, and a range of housing types, which meet the demands of different population groups, and different life style choices would be beneficial.
In respect of business development, studies indicate that:

- The market for business is broadening, particularly for firms establishing in Albany.

- A restructuring in the retail sector has seen the emergence of large format stores and shopping centres now providing for a broader range of activities including entertainment activities.
- Manufacturing activity is declining, but there is an increase in distribution activity.
- There is a preference amongst newly established firms for the "clean green" image of Albany.
- There is a sharp increase in small business activity and a more flexible labour market, indicating an increased locational flexibility for business activity.
- There is an increased presence on the North Shore of some business sectors with significant growth prospects, notably education and new technology.

The above trends are likely to result in business development seeking a range of alternative locations in the future, and adistrict plan which enables both infill and peripheral development is more likely to provide these diverse locational preferences.

It is also necessary to take into account the needs and preferences of the community in response to the above and other influences and trends, especially where there are large scale effects on the environment.

6.3 Urban Growth Strategy
Ref: 1424/95

Objective

To manage the effects of urban growth in a manner which:

- Maintains or enhances amenity values for the existing built-up area.
- Avoids harm to valued natural environments and habitats.
- Protects significant elements and features of the North Shore landscape.
- ~~Enables choice in the extent of use of private motor vehicles and public transportation.~~
- Encourages a reduction in the use of private motor vehicles and increased use of public transportation.
- Enables the efficient use of natural and physical resources.
- Enables social, economic and cultural wellbeing.
- Has regard to the need to ease traffic congestion, particularly on the harbour bridge in the peak direction.
- Preserves items or areas of significant heritage value.
- Protects important coastal landscapes and features.

Policies

1. By enabling urban growth to occur through the consolidation of development in built-up areas and new development on the periphery, while establishing a long term boundary to development that separates the City from the Hibiscus Coast.

2. By enabling a differentiated pattern of residential development to emerge in built-up areas, ranging from higher density intensive housing adjacent to commercial centres, ~~or possibly in the future along selected transport corridors or on arterial routes and main roads~~, to lower density housing in areas of high natural and built amenity value.

3. By enabling a differentiated pattern of residential development to emerge on the periphery, that minimises impacts on environmentally sensitive landscapes and coastal estuaries, and occurs in an orderly manner and in a way that supports the development of proposed centres and the efficient extension or upgrading of roads and utility services.

4. By enabling the development of business activities in a wide range of locations, with a particular focus on Albany as an area for business development in the northern part of the City.
Ref: 1420/95

5. By enabling the establishment of a full range of retail facilities in the City, including both pedestrian-oriented and vehicle-oriented shopping environments, primarily in existing and proposed business centres.

6. By enabling efficient use of passenger transport by encouraging retail and related business activity to locate in existing or proposed centres~~, or possibly in the future along selected transport corridors~~/or on arterial routes and main roads.

7. By providing improved opportunities for residents to walk or cycle to work and shops.

Methods

- Policies 1,2 and 5 will be implemented by rules and Council works, through provision of infrastructure.
- Policy 3 will be implemented by rules, Council works, through provision of infrastructure, Council initiatives through structure plans, and education through information, education programmes and expert advice.
- Policies 4 and 6 will be implemented by rules, Council works through provision of infrastructure and Council initiatives through structure plans.
- Policy 7 will be implemented by Council works through provision of infrastructure, and education through information, education programmes and expert advice.

Explanation and Reasons

1. Preferred Strategy

The preferred urban growth strategy is one that enables new growth in both built-up and peripheral areas.. In built-up areas there is the opportunity for intensification of housing development at about the density levels provided for in the previous district plans, but with a greater emphasis on higher density development at locations adjacent to commercial centres, and on lower density development at locations where there are features of the natural or built environment that warrant protection. In the peripheral areas it is expected that a more varied pattern of housing development will emerge than has occurred to date, reflecting the diversity of landscapes and provision of community focal points.

This 'shared growth' strategy with a more differentiated pattern of residential development has the following advantages:

a) It provides for the projected growth of 13,000 to 19,500 dwellings in the next 20 years, located approximately as indicated in Table 6.1.

Table 6.1 North Shore City Projected Number of Dwellings, 2014	
Growth Area	**Number of Dwellings**
Infill development	6,000-8,000
New Development	
- Albany	3,000-4,000
- Greenhithe	1,500 – 3,000
- Okura/Long Bay	2,500 – 4,500

b) By providing for both infill development in built-up areas and new development on the periphery, it recognises that a balanced approach should be adopted which:

i) In built-up areas:

- Enables better use of existing community facilities, particularly schools, and utility mains.
- Minimises the potential for intensification to detrimentally impact on on-site, inter-site and neighbourhood amenity values.
- Reduces the pressure for residential growth on the periphery.
- Retains the qualities and characteristics which distinguish areas of natural and built heritage value, such as the bush-clad valleys of Birkenhead and Glenfield and the early European settlements of Devonport, Northcote and Birkenhead.

ii) On the periphery of the urban area:

- Recognises the role of some land on the periphery in providing affordable housing for young residents wishing to form households, due to lower land costs.
- Minimises the potential for residential growth to detrimentally impact on natural landforms, bush cover, streams and coastal estuaries.
- Reduces the pressure for intensification in built-up areas.
- Utilises the main roading and utility connections substantially in place to serve the business and residential growth areas.

c) By providing for higher density (intensive) housing based around commercial centres, it optimises the range of shopping and related business and community activities within walking distance of the population, and strengthens the role of these centres as community focal points, and the identity of the districts, which these centres serve. An exception to this pattern of intensive housing occurs on the Devonport peninsula. ~~Due to the capacity constraints on the Lake Road corridor and the heritage value of residential development in Devonport, generally it is not appropriate to provide for intensive housing in this part of the City.~~ Generally it is not appropriate to provide for intensive housing in the following areas:

- On the Lake Road corridor due to capacity constraints;

- In Devonport because of the heritage value of local residential development;
- In the Wairau Valley Business Zonings because of the potential adverse effects on functional and social amenity delivered by established centres.

d) By providing opportunities for intensive housing, business activities and community facilities within the structure plans for the residential growth areas, to achieve similar advantages as in (b) above.

e) By providing opportunities for a choice of housing locations , forms and environments, it enables the residents to respond to changes in population characteristics and housing preferences with minimum risk of an unattractive outcome. For example, if the opportunities for infill development were confined to intensive housing at selected locations and the market was slow to respond to this housing form, it is likely that the City's ageing population would have to rely more heavily on peripheral locations whereas, historically, older age groups have favoured areas such as Milford, Takapuna and Devonport which enjoy proximity to a wider range of facilities.

f) By reflecting current practice and commitments, it recognises existing business and residential areas as important physical resources , while at the same time acknowledging that community needs and preferences may change over time.

g) It reflects the views of North Shore residents. The Residents Preferences Survey (1992) indicates a strong preference for housing needs to be met by a combination of greenfield and infill developments, with the majority favouring an emphasis on greenfield developments.

h) By protecting the bush-clad escarpments adjacent to the estuaries and streams of the upper Waitemata Harbour through large-lot developments, these prominent landscape features provide a distinctive and attractive backdrop to urban growth.

i) It enables future growth of the North Shore to be accommodated within the prominent landscape features that define and contain the northern limits of the City, comprising the Paremoremo and Okura bush escarpments and the associated estuaries, together with the Albany hills. These landscape features create a strong physical and visual limit to urban growth on the North Shore and provide the opportunity to maintain a "greenbelt" between the North Shore and Hibiscus Coast, based on the rural areas of Paremoremo, Dairy Flat, Redvale and Weiti.

j) While it recognises the private motor vehicle as the main means of travel at present, through the development of Albany as a business focus within a wider area of residential growth and of cohesive commercial centres within areas of intensive housing, it promotes opportunities for :

- A greater proportion of trips of a local nature, rather than across the Harbour Bridge.
- More efficient passenger transport.
- Walking and cycling as a convenient alternative for a greater proportion of residents.
- A reduction in private vehicle use (through multi-purpose trips to grouped business activities within centres, and shorter trips resulting from increased densities around centres).

2. Albany Business Focus

The provision made for the development of Albany is important as it will enable this area to develop as a major focus for business activity, for residents of the North Shore and Hibiscus Coast. Albany is well placed to play this pivotal role. It is situated at the geographic centre of residential growth in the northern North Shore, at the convergence of the Northern Motorway with the City's main roading connections to the Hibiscus Coast and Waitakere City. As a result, Albany is readily accessible from all parts of the northern sector of the City, as well as from the Hibiscus Coast and Waitakere City for regional-type facilities, notably its employment areas, shopping centre, university and stadium. The Rosedale Wastewater Treatment Plant is also well located to serve the City's urban growth areas. Moreover, industrial growth is well under way, together with the development of the Massey University Campus and North Shore Domain and Stadium, and the first stage development of the Albany commercial Centre.

Albany's continued growth as a business focus is expected to have the following benefits:

a) Increasing the choice of job location for residents of the North Shore and Hibiscus Coast region. There is sufficient land zoned for business purposes in Albany to accommodate over 20,000 jobs and its development will provide the best opportunity in the City for achieving a higher level of self-containment, in jobs and other aspects of urban living. The present proportion of local jobs to local workers of 60% is expected to increase to over 70% by providing for a choice of business opportunities in Albany and the rest of the City.

b) If more residents of the North Shore and Hibiscus Coast choose to work locally this will have the effect of containing the demand for commuter travel across the Harbour Bridge in the peak direction and improving the utilisation of the roading network in the off-peak direction, through a redirection of travel demand. This approach is important because the present ratio of jobs to resident workers disguises a major imbalance between the largely white-collar labour force resident on the North Shore and appropriate jobs that are available locally, due to inward commuting to the North Shore and a higher level of job self-sufficiency locally amongst blue-collar workers. As a result there are large numbers of commuters crossing the Harbour Bridge and increasingly these commuters are going to destinations beyond downtown Auckland which are not easily accessed by passenger transport.

c) Enabling the grouping together of a wide range of activities, which in several instances will be interrelated, has the potential to reduce vehicle travel. The Albany business centre will accommodate some of the major stores which are having difficulty in finding suitable sites in the developed part of the urban area.

d) Strengthening the relationship between business and residential activity in the northern part of the City. Not only will the developing residential areas of Albany, Greenhithe, and Okura/Long Bay contribute to the growth of business and other major urban activities in Albany, but the development of Albany in this way will contribute to the attractiveness of the developing residential areas.

e) Recognising the limitations to the level of growth able to be accommodated at other major business locations in the City notably Takapuna and Wairau Valley due to roading and environmental constraints associated with these locations.

f) Nevertheless a focussed approach to roading projects on the North Shore will be necessary if the potential efficiencies in commuter travel are to be achieved. Priority should be given to projects which further enhance Albany's accessibility and supporting

road network, because of the potential benefits that flow from the development of Albany as a business focus: of making the most efficient use of the overall roading network; avoiding the need for additional expensive and environmentally damaging cross- harbour links; and reducing energy consumption.

3. Phasing of Growth

Infill housing development in built-up areas is likely to continue to dominate the provision of new residential development in the City during the life of the plan. As these opportunities change towards the end of the decade, growth on the periphery will assume greater importance and infill development in built-up areas is likely to be more focussed on selected locations.

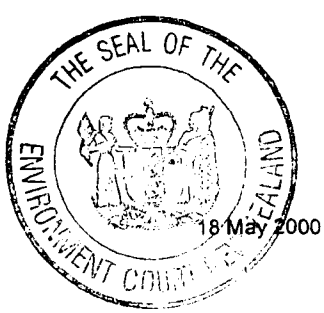
All three areas of residential growth on the periphery – Albany, Greenhithe and Long Bay – are served by bulk water and trunk sewer mains. After all necessary approvals have been obtained development may proceed in any of the three locations, provided that it occurs in an orderly manner that builds on existing communities or promotes the establishment of new community focal points, and does not give rise to the inefficient upgrading or extension of roads or utilities to serve the needs of the proposal. This approach, which enables development opportunities to occur over a wide area, is more likely to reduce the amount of land development activity taking place in one location and, together with the implementation of strict environmental protection measures, will minimise the impact of these activities on the sensitive estuaries of Lucas Creek and Okura River. It also enables a range of market needs to be met, especially those of different income groups and locational preferences.

Expected Environmental Results

- Future population growth accommodated within the City, as measured by indicators specified in Section 16 and Section 17.
- A range of housing choice options for City residents, as measured by indicators specified in Section 16.
- Protection of environmentally sensitive landscapes, as measured by indicators specified in Section 8, Section 17 and Section 18.
- Protection of coastal estuaries, as measured by indicators specified in Section 8.
- Achieving a range of centres which provide commercial and community services, as measured by indicators specified in Section 15 and Section 16.
- Business growth within the City, as measured by indicators specified in Section 15.
- Development of Albany as a focus of business activity, as measured by indicators specified in Section 15.
- Improved accessibility to large-scale specialist retail activities, as measured by indicators specified in Section 12, Section 15 and Section 16.
- Increased patronage of passenger transport, as measured by indicators specified in Section 12.

- Improved opportunities for residents to walk or cycle to work and shops, as measured by indicators specified in Section 12.

- A reduction in private vehicle use associated with increasing densities around existing commercial centres, and multi-use trips resulting from encouragement of inter-related business activities being grouped together into centres.



15. Business

15.2 Business Issues

Significant Business issues which need to be addressed in the objectives and policies of the Plan are:

- How to avoid, remedy or mitigate any adverse effects of network overloading and increases in vehicle trip lengths caused by a disparity between the size of the labour force and the availability of employment opportunities in the City.

The City's level of employment self-sufficiency is discussed in Section 5. The availability of suitably zoned land for business activities is fundamental to achieving an improved relationship between the number of workers and jobs within the City. In addition to the general availability of suitably zoned land, a number of other factors are critical to employment growth. These include location in relation to the transportation network, variety in respect of the types of business areas, land values, and the existence of an appropriate catchment in the case of retailing.

- How to avoid, remedy or mitigate any adverse effects of different scales and intensities of business activity throughout the City, with particular regard to cumulative effects such as traffic generation, discharges to air, land and water, noise, while maximising the efficiency of existing and proposed infrastructure investment.

Section 4 of the Plan describes the existing pattern of business development in the district. Section 6 discusses the need for efficiency of resource use. The Council's goal for efficiency is particularly relevant. Public investment in the roading system and other infrastructure suggests that activities which are high traffic generators, particularly retailing, need to be considered in terms of scale, intensity and location in relation to the ability of the existing or proposed network to accommodate them. Alternatively, there needs to be a public commitment to upgrading through Council's public works programme.

- How to maintain and enhance the character, heritage, amenity values and social ~~, economic~~ benefits of existing business centres.

Business centres serve broader functions than those of simply providing goods and services. They act as focal points for the community, centres of entertainment and social services, and they represent a substantial physical and community resource.
Ref: 1425/95

Inappropriate development can create adverse effects on the function served by and the amenity values of established centres. Examples of inappropriate development are:

a) buildings poorly integrated with their surroundings;
b) developments which cause the loss of heritage buildings;
c) ~~and~~ excessive signage out of character with shopping streets or impacting on neighbouring residential properties;
d) development which will cause a significant decline in the level and quality of the retail offer at established centres and thereby reducing the function served by those centres;
e) development which will cause a significant decline in the amenity of established centres for example by causing poor visual appearance, and loss of security, resulting from extensive building vacancies; and

f) development which will cause a decline in centres as focal points for population intensification, and the public and private transportation efficiencies which flow from such an urban land use pattern.

It is also relevant to consider the potential ~~adverse~~ effects of new business activity locating away from established centres. These effects include the effects of traffic generation on road capacity and effects on public and private transportation patterns and systems, ~~and~~ the overall availability and accessibility of commercial and community services, and the decline in the positive contribution made by these existing or proposed centres to the social and economic conditions of the people of the city. Competition arising from new business activity is not, in resource management terms, an adverse effect on existing businesses. However it is relevant to ensure that other adverse environmental, social, ~~economic~~ and amenity effects resulting from new developments are avoided, remedied or mitigated or offset by positive effects arising from the new development.
Ref: 1437/95

Many existing or proposed centres are intended to become the focus of future surrounding population intensification under the provisions of the district plan. It is important that their ability to continue to serve such roles is maintained.

- How to ensure that the effects of business activities on the environment are managed so as to avoid, remedy or mitigate significant adverse effects on the environment.

The Council has a duty under the Act to control adverse effects of activities on the environment. Potential adverse effects from business activities include noise, fumes, additional traffic generation, additional hazards, reduced safety, social, ~~economic~~ and amenity effects and effects from the establishment of activities which because of their nature are incompatible with neighbouring activities. Restricting ~~the majority of~~ business activities to business zones has the advantage of minimising the need for controls and thereby reducing costs on many business operators who are charged with the duty of 'avoiding, remedying or mitigating' adverse effects. However the Council needs to evaluate whether particular locational restrictions and controls on different aspects of business activities are justified and are the best means of managing potential effects.
Ref: 1420/95, 1425/95

- How to ensure that the valued attributes of residential and open space zones are not compromised by effects of business activity.

There is a potential for conflict between enabling businesses to locate in a manner which encourages community self-sufficiency, whether it be at the local or city level, and ensuring that the amenities of residential and recreational areas are protected. The approach adopted needs to reflect the potential for adverse effects of differing kinds, and to balance the trade-offs.

15.3 Business Objectives and Policies

15.3.1 Business Development

To manage the effects of activities within the City in a manner which maximises opportunities for business development and employment, consistent with the requirement to ensure that the adverse effects of activities are avoided, remedied or mitigated. ***(Amended July 1998)***

Policies

1. By using the techniques of zoning and environmental performance standards to enable the establishment of a wide range of business activities throughout the city in order to better manage the effects of differing levels of intensity and scale, and differing effects upon amenity values.
   Ref: 920/98, 1420/95, 1426/95

2. By ensuring that there is an appropriate supply of suitably zoned land for business activities in the short term, and sufficient reserved for the longer term, and by reviewing the availability from time to time.

3. By enabling a pattern of business activity which, on the basis of location, site characteristics, accessibility and existing activities, respects the distinction between: ***(Amended July 1998)***

   - Business centres which are able to offer a high level of pedestrian amenity, and/or provide for vehicle oriented activities; and ***(Amended July 1998)***

   - General business areas which offer a lesser quality business environment ~~lower level of amenity but which are~~ able to accommodate a wide range of manufacturing, warehousing and similar ~~business~~ activities ~~and their effects~~.

   Ref: 1426/95

4. .....
5. .....
6. .....
7. .....
8. By ensuring that new business development does not result in adverse social and economic effects by causing a decline in amenity in existing centres or the positive contribution made by existing shopping centres to the social and economic wellbeing of people and communities in the city.

Methods

- Policies 1, 2, 3, 4, 5 and 6 will be implemented by rules.

- Policy 7 will be implemented by Council initiatives in the form of advice, co-ordinating initiatives and advocacy.

Explanation and Reasons

The nature and range of business activities are constantly changing over time. During recent years significant and ongoing changes which the Plan needs to take into account include:

- Economic restructuring.
- Changes in communications systems.
- Manufacturing plants having less industrial-type processes while at the same time requiring higher standards of building design and site development.
- Changes in retailing patterns.

Ref: 1425/95, 1426/95

- The role of shopping centres as focal points for population intensification, and the public and private transportation efficiencies which flow from such an urban land use pattern.

Because of this, the traditional demarcation between commercial and industrial activities no longer seems appropriate. Rather an approach is required which enables as wide a range of opportunities as possible to encourage business growth, since business activities provide the economic basis of urban communities and are of critical importance to the social and economic welfare of the residents of the City. The Council has a range of means at its disposal by which it can encourage business activity in the City. The principal means is the regulatory powers of its District Plan, which are essentially confined to: managing the effects on the environment and resources, the location and manner of development, or operation of activities. Within the limits of the regulatory nature of the Plan, the provisions adopted for the City are designed to be as flexible as possible.

Zoning land for business activities provides some certainty of location and a cost-effective basis for environmental controls. By that means it is possible to differentiate between controls whose effect is internal to the zone, and those which are designed to protect the residential interface or wider areas. Once a technique of zoning is adopted, then the need to ensure an adequate supply of suitably zoned land is a necessary corollary.

Within the Business Zones, a non-restrictive approach to activities provides for maximum choice of location and avoids imposing undue costs on businesses. However this approach has been tempered by:

Ref: Consequential amendment

- ~~The need to encourage the vitality of retail commercial centres for economic, environmental, and social reasons.~~

Ref: 1420/95

- The need to restrict the location of some industrial processes and activities for which performance controls are an inadequate technique and which require assessment by the Council.
- A need to maintain amenity values in existing centres and accessibility to the range of services provided by existing centres.

Ref: Consequential amendment

- The need to co-ordinate business development and activities, with investment in public infrastructure.

The Business Rules have been developed on this basis. More positive means of encouraging business development than by regulation have been adopted by the Council and will continue to be pursued. The Council has allocated funding for staff resources and initiatives to promote development, particularly for the Business Grow programme.

Expected Environmental Results

- Over the 10-year time-frame of the District Plan, a sufficient supply of land with Business zoning available for future development, as measured by a five-yearly Business Zones land use survey.
- Employment opportunities for City residents that increase faster than labour force growth, as measured by an annual assessment of New Zealand Business Directory data, registered unemployed data from the New Zealand Employment Service and Statistics New Zealand's household labour force survey for the Auckland Region.

- That a direct reliance on effects controls, rather than on the listing of activities achieves the intended purposes and is beneficial to business, as measured by a five-yearly survey of business operators, and the Council staff administering business activity.

- Minimal residential development in the Business Park and General Business Zones, as measured by, an annual assessment of building consents issued and resource consent applications.

15.3.2 Transportation Network

Objective

To manage the effects of business activity so as to maintain a transportation network capable of effectively serving business activities, the needs of through traffic, and the wider transport and traffic needs of the city. ***(Amended July 1998)***

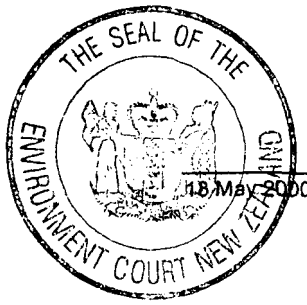
Policies

1. By ensuring that high traffic generating activities locate in areas which are best served by the transport network and by passenger transport services, and which promote multi-purpose rather than single purpose vehicle trips. ***(Amended July 1998)***

2. By providing for the upgrading of the transport network so that it can accommodate the cumulative traffic effects associated with business activities. ***(Amended July 1998)***

Ref: 926/98

3. .....



Methods

- Policies 1 and 3 will be implemented by rules.
- Policy 2 will be implemented by Council works within the agreed strategic framework for roading investment set down in the Council's Strategic and Annual Plans, and through works funded by financial contribution from developers. ***(Amended July 1998)***

Explanation and Reasons
Ref:926/98

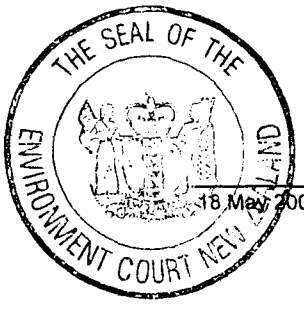
The roading network, and its operation, is a significant community investment which merits careful use. Traffic generated by business activity can produce significant adverse effects on the roading network so that the location of activities needs to be managed in a manner that ensures the safe and efficient use of the roading network. Controls are designed to promote efficient use of the street network. Vehicle trip generation rates are used as the basis of rules to encourage the location of high vehicle trip generating activities into areas which are well served by the road network and passenger transport, unless potential adverse effects on the network can be avoided, remedied or mitigated. The application of a control on high traffic generating activities is a means of controlling the scale and intensity of business activities to meet the urban form strategy, transport accessibility and environmental objectives of the District Plan. **(Amended July 1998)**

Data from the New South Wales Road Transport Authority, Guide to Traffic Generating Developments, December 1993 on vehicle trip generation rates is the basis for the control on high traffic generating activities. This data demonstrates that groups of activities often have common traffic generation characteristics. Therefore it is appropriate to limit the application of vehicle trip limits to groups of activities that tend to experience high traffic generation. In this way vehicle trip limits can be used as the second stage of a control designed to restrict activities in general business areas, business parks, and the intended office part of the Albany Centre frame, to activities which are functionally compatible with those areas. **(Amended July 1998)**

Where development of business activities meets the provisions of the Plan, but will result in localised effects on adjacent roads by overloading lane provisions or intersection design, the development will not be permitted unless mitigation works are undertaken or the costs of upgrading are met by the developer.

Expected Environmental Results

- Application of a control on high traffic generating activities which ensures the appropriate location of business activities on the roading network as measured by an annual assessment of roading service levels and an annual assessment of impacts on the Council's roading plan.***(Amended July 1998)***
- That the costs of any localised road upgrading required as a result of new development are met by the developer, as measured by an annual assessment of Annual Plan commitments.



15.3.3 Retail Activities

Ref: 1426/95, 1437/95, 917/98, 931/98

Objective

To enable a wide range of retail activities in business centres and in locations where they meet the needs and preferences of the community, avoid, remedy or mitigate adverse environmental effects and enhance community accessibility to a range of facilities.**Ref: 1426/95, 931/98**

Policies

1. By encouraging retail activities to locate in the existing and proposed business centres in the City which include ***(Amended July 1998)***
   Ref: 1426/95, 931/98

   a) Sub-regional centres at Takapuna and Albany.
   b) Suburban centres, ranging from Browns Bay, Glenfield and Highbury, to Devonport, Milford and Northcote, and to Albany Village, Greville Road, Mairangi Bay, Sunnynook and Unsworth Drive.
   c) Local centres distributed throughout the City

   and in the general business zones where appropriate.

2. By seeking to ensure that the overall size and range of activities at the proposed Greville Road and Unsworth Drive Centres is compatible with the nature of the activities in adjacent residentially zoned land, and that any adverse effects on the adjacent road network arising from business activities are appropriately avoided, remedied or mitigated.

3. By zoning a larger area of land than required for business purposes in the Unsworth Drive centre, in order to give flexibility in the precise location of retail and related activities. The Council will re-zone the land not required for retail purposes after a Comprehensive Development Plan has been approved.

4. By recognising the potential demand for some retail activity to establish in business zones outside the existing and proposed business centres and requiring this development, (in the Sub-Regional 6, Business Park 7, Business Special 8, General 9 and General 10 zones) unless otherwise exempted, to be subject to a thorough evaluation, particularly in terms of the effects of the activity on:

   - the roading network in which the activity is located, and
   - the amenity values of nearby residential areas, and
   - the character, heritage, and amenity values of the centres, and
   - the overall accessibility to the range of business and community facilities the centres provide in the district and
   - the pedestrian amenity in the vicinity of the proposed retail activity.

   Ref: 1426/95, 931/98

5. By the Council involving the local community, private investors and business people in consultation aimed at producing agreed Centre Plans which identify and build on the essential qualities of individual centres, including heritage aspects, renewal and diversification within those centres. ***(Amended July 1998)***

6. By progressively adopting Centre Plans, when they are agreed by relevant parties, and by introducing changes to the District Plan, where regulatory changes are required to implement such plans.

7. By the Council undertaking public works within centres in conformity with the Centre Plan proposals and as provided for by its Annual Plan process.

8. By enabling activities, which sell or provide services for motor vehicles to locate in areas outside of shopping centres in order to avoid adverse effects on pedestrian amenity. ***(Amended July 1998)***

Methods

- Policies 1, 2, 3, 4, 6 and 8 will be implemented by rules.
- Policy 5 will be implemented by Council initiatives in the form of advice, co-ordinating initiatives and advocacy.
- Policy 7 will be implemented by Council works for service and amenity improvements.

Explanation and Reasons
Ref: 1426/95, 931/98

Retail activity has traditionally congregated in the existing business centres. These centres comprise land and groupings of buildings, services and facilities and street and landscape improvements. In the context of the Act they are valuable physical resources which require sustainable management. In addition to the existing centres, the District Plan identifies new centres in the growth areas of the city, including a second sub-regional centre at Albany.

The benefits provided by existing centres include:

- Their value to the social and economic well-being of the surrounding communities, since they serve a wide range of functions.
- The opportunity they provide for access to a wide range of goods and services by means of multi-purpose trips, rather than single purpose trips to dispersed stores.
- Their accessibility to local residents with limited mobility.
- Their ability to adapt to changing needs either incrementally or by comprehensive redevelopment.

The Council recognises that the retail sector is dynamic and that a District Plan, unless constantly reviewed, will not be able to anticipate the range of new developments which are likely to occur over the life of the plan. So while the existing centres and the proposed new centres are expected to provide for the majority of new development, the Council recognises that some flexibility in retail location may be needed.

Retail activity responds to changes in the mobility of the population, the length of shopping hours, in retailing technology, the availability of discretionary spending power, in markets and demographics, and the needs and preferences of the community. Convenient access to retail

activity is of particular importance. The last decade has seen the emergence of more vehicle orientated shopping environments. The District Plan provides for ~~some~~ flexibility for retail location outside of the existing and proposed centres within other business zones.

Some retail activity, either in a stand-alone or combined format, can ~~include high~~ generate significant traffic ~~generating activities~~ that ~~have~~ has the potential to cause ~~for~~ adverse effects on the efficient functioning ~~and management~~ of the street network or utilise existing spare road capacity which requires preservation for future general traffic growth. For this reason, proposals for large developments and for activities which cumulatively have the effect of a large development outside the existing and proposed centres will need to demonstrate that their effects on both the local and city-wide traffic and roading environment are avoided or mitigated. The assessment criteria provided in Section 15.7.4.1 for both limited discretionary and discretionary activities aim to limit these effects ~~and ensure that the city-wide roading network is recognised as a valuable and finite community resource.~~

~~Large developments can also have adverse social and economic effects on existing and proposed centres.~~ In terms of Section 15.7.3.5, proposals will also need to demonstrate that significant adverse effects of this type are avoided or reduced by mitigation measures or by positive effects resulting from the new activity. ~~The social and economic benefits being considered here are not those which are excluded by Section 104(8) of the Act (trade competition). Large format supermarkets providing essentially from main order grocery shopping have become a normal part of the range of retail facilities expected by communities the size of the North Shore. In some parts of the southern sector of the city there is difficulty in identifying sites of a sufficient size in existing centres with appropriate access to a wider catchment. Traffic assessments show that the potential adverse effects of locating such activities in the Business 9 and 10 zones in an identified part of the Wairau Valley could be satisfactorily mitigated.~~

While the Council's role is largely to provide a framework within which private investment decisions can be made, there is scope for the Council to intervene to compensate in a positive manner by upgrading public facilities, or by conserving and enhancing heritage buildings. These interventions can act as a catalyst to private investment.

A fruitful way to encourage a sense of local identity, an increase in business confidence and an improved streetscape, is to engage the private sector, both property owners and retailers, and the local community in a partnership with the Council in the preparation of Centre Plans. These Centre Plans need to be agreed by all participants, after which they will be adopted by the Council as action documents for particular centres. The Plans can include a range of proposals which will need to be implemented in a number of ways, including District Plan controls, public works proposals, improved centre management techniques and agreed private sector initiatives. Centre Plans will provide an opportunity to include more specific design controls and assessment criteria for individual centres into the District Plan based on their essential characteristics and qualities.

Expected Environmental Results
Ref: 931/98

- ~~The majority~~ More than 90% of new retail developments established largely within the existing and proposed business centres, as measured by a biennial Business Zones land use survey and annual assessment of the NZ Business Directory.

- Maintenance and enhancement of the vitality and viability of sub-regional and suburban centres as measured by:

  - Annual analysis of Valuation NZ's commercial property yield data.
  - Annual pedestrian flow surveys.
  - Five-yearly resident surveys.
  - Five-yearly centre vitality surveys based on review of public spaces, activity patterns and quality improvements.
  - Biennial Business Zones land use surveys.

- Developments within suburban and local centres at a scale appropriate to their location and catchments as measured by biennial Business Zones land use surveys.

- Retailing at Link Drive does not develop into a commercial centre with a full range of merchandise, as measured by biennial Business Zones land use surveys.

- Retailing within the Business Park and General Zones predominantly small scale shops whose primary function is to serve the local area or larger shops of low intensity retailing, as measured by biennial Business Zones land use surveys.

- Progressive refinement of District Plan provisions through Centre Plans, so that controls affecting retail centres are differentiated to achieve the reinforcement and enhancement of the particular qualities of individual centres as measured by on-going review of Plan provisions.

- Resident satisfaction with the amenities of shopping centres, as measured by five-yearly residential zone land use surveys.

- Council assistance in the promotion of individual centres and works undertaken in conformity with Centre Plans, as measured by an assessment of Annual Plan commitments.

15.4.6 Business Special 8 Zone

Ref: 1426/95

Objective

To manage the effects of activities in part of the Wairau Valley where retailing has established and has been recognised as appropriate, in a manner which: ***(Amended July 1998)***

- Takes into account the limited capacity of the roading network.
- Avoids, remedies or mitigates any adverse social ~~and economic~~ effects, including cumulative effects, on existing and proposed centres.
-

- Maintains a moderate level of visual and environmental amenity.

Policies

1. By avoiding, remedying or mitigating any significant adverse effects that large new developments in the Business Special 8 zone may have on the character, heritage and amenity values of the existing or proposed centres, and the accessibility to a range of business and community facilities they provide.

~~1.~~2. By restricting the area that can be developed for high traffic generating activities to an extent consistent with the capacity of the roading network, and to an extent that there will be no more than minor adverse social ~~and economic~~ effects, including any cumulative effects, on any existing or proposed centres as a whole. ***(Amended July 1998)***

~~2.~~3. By discouraging the establishment of those activities which generate high levels of traffic and/or have significant adverse social ~~and economic~~ effects on existing or proposed centres. ***(Amended July 1998)***

~~3.~~ 4. By enabling a wide range of low to moderate intensity business activities to establish in the area ***(Amended July 1998)***

~~4.~~ 5. By ensuring that development maintains the standard of amenity in the area. ***(Amended July 1998)***

Methods

- All policies will be implemented by rules.

Explanation and Reasons

This zone is entitled a 'special' zone because it recognises a cluster of retail activities located along Link Drive within the Wairau Park area which is predominantly zoned General 9 and 10.

Beyond the limited retail provisions for the Business Special 8 zone, a wide range of activities having a moderate to low vehicle generation rate and which can meet the controls for the zone may establish there.

Expected Environmental Results

- Continued presence of a wide range of activities, as provided for within the Business 8 zone, as measured by biennial Business Zones land use surveys.

15.4.7 General 9 and 10 Zones

Ref: 1437/95

Objective

Ref: 930/98

To manage the effects of activities in the City's general business areas in a manner which: *(amended July 1998*

- Provides opportunities for a wide range of employment generating business activities to establish in the City.
- Maintains a moderate level of visual and environmental amenity.
- Makes efficient use of natural and physical resources.
- Reduces dependency on the private motor vehicle for travel.
- Avoids, remedies, or mitigates, the adverse effects of activities on the amenity of nearby residential properties.
- Achieves a moderate level of air quality generally, and a higher level in locations close to residential areas.
- Minimises the unintentional exposure of people to risk from hazardous activities.

Policies

1. By enabling a wide range ~~of moderate to low intensity~~ business activities to locate in the general business areas. ***(Amended July 1998)***

2. ~~By discouraging~~ To provide for some activities which have a high traffic generating characteristic ~~to from~~ locating in the City's general business areas ~~if it can be demonstrated, unless an assessment of traffic effects can demonstrate~~ that adverse effects on residential amenity, on pedestrian amenity in the vicinity of the proposed activity, and on the road network can be avoided, remedied or mitigated ~~to ensure that they are no more than minor~~.
   Ref: 930/98

3. By avoiding, remedying or mitigating any significant adverse effects that large new developments in the City's general business areas may have on the character, heritage and amenity values of the existing or proposed centres, and the overall accessibility to a range of business and community facilities they provide.
   Ref: Consequential amendment

4. By ensuring that development maintains the standard of visual and environmental amenity in the general business area, and does not adversely affect the amenity of adjacent residential areas. ***(Amended July 1998)***

5. By ensuring that the potential air pollution or hazardous aspects of business activities do not adversely affect the environment, with particular attention being paid to those areas close to residential areas. ***(Amended July 1998)***

6. By preventing residential development significantly reducing the scale of land available for business activities in the City's general business areas. ***(Amended July 1998)***

7. By ensuring that residential development in business areas is designed to avoid, remedy or mitigate adverse effects on residential amenity from business activities. ***(Amended July 1998)***

8. By ensuring that activities which are characterised by high traffic generation do not locate in Wynyard Street in Devonport, and by ensuring that this mixed business area continues to offer opportunities for moderate to low traffic generating business activities. ***(Amended July 1998).***

Methods

- All policies will be implemented by rules.

Explanation and Reasons
Ref: 930/98

These zones have been applied to established industrial areas and large areas of vacant land at Albany which are well suited to industrial type activity. The zones provide for discourage activities which generate high levels of vehicular traffic, such as some forms of retailing, subject to maintaining in order to maintain the safe and efficient development and operation of the road network and to protect amenity in nearby residential areas. The policies also recognise that large scale retail development could potentially have an adverse social and economic effect on the existing or proposed centres and that significant adverse effects will need to be avoided, remedied or mitigated. .

Wynyard Street in Devonport .....

Expected Environmental Results

- Establishment and maintenance of a wide range of business activities as measured by an annual assessment of the New Zealand Business Directory.

- Protection of land values at an affordable level which promotes a wide range of business activities as measured by an annual assessment of property valuations, property sales and rental rates for the Business Zones.

- Protection of business activities as the primary function of the zone as measured by a biennial Business Zone land use survey.

- Development of sufficient retail activities in the zones to service other business activities without attracting significant additional vehicle trips into the zone as measured by annual traffic counts, and biennial Business Zone land use surveys.

Ref: 930/98

15.5.1.2 Permitted Activities
Ref: Consequential amendments

Any activity shall have Permitted Activity status provided that it:

a)....
b)....
c)....
d)....
e) Can comply with a) to d) above and is listed as an exemption in Table 15.1.

15.5.1.4 Limited Discretionary Activities
Ref: Consequential amendments

Any activity listed in Table 15.1 shall be a limited discretionary activity unless:

(a) the activity is listed as an exemption in that table, in which case it is a permitted activity.

(b) the activity listed has a gross floor area greater than 2500m^2, either by itself or in combination with any other activities listed in Table 15.1 (~~excluding exempted activities~~ including any activity otherwise listed as a permitted activity within Table 15.1) located in a Business 6, 7, 8, 9 or 10 Zone within a 500m distance of the boundaries of the site of the activity, in which case it is a discretionary activity.

15.5.1.5 Discretionary Activities
Ref: Consequential amendments

Any activity shall have Discretionary Activity status provided that it: ***(Amended July 1998)***
a) Can comply with the controls in Rules 15.6.1.5 to 15.6.1.17 inclusive; and

b) Falls within any of the following circumstances:
- Any activity identified as a discretionary activity in Section 15.6.1.3. Refer to the Assessment Criteria in Section 15.7.3.5 and 15.7.4.1.
- Retail activity at Greville Road and Unsworth Drive in excess of the floor space limitations imposed in Rule 15.6.1.4.
- Any activity in the Local 1, Suburban 2.....

Ref: 1330/95, 1418/95

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

15.6 Rules: Business Controls

15.6.1.3 High Traffic Generating Activities

(AmendedJuly 1998)

Ref: 920/98, 930/98, 933/98, 939/98, 941/98, 1446/98

Any activity listed in Table 15.1 shall be a limited discretionary activity unless:

a) the activity is listed as an exemption in that table, in which case it is a permitted activity. Refer also to Sections 15.5.1.1 and 15.5.1.2 in relation to other rules in this section and the General Sections of the Plan; or

b) the activity listed has a gross floor area greater than 2500m², either by itself or in combination with any other activities listed in Table 15.1 (excluding exempted activities) (including any activity otherwise listed as a permitted activity within Table 15.1) located in a Business 6, 7, 8, 9 or 10 Zone within a 500m distance of the boundaries of the site of the activity in which case it is a discretionary activity. Notwithstanding the above, any activity listed in Table 15.1 which by itself or in combination with any other activities listed in Table 15.1 within a 500 m radius of the boundaries of the site of the activity, has a gross floor area greater than 2,500 m² shall be a discretionary activity – unless, however, the activities are listed as exemptions in that table, or are supermarkets with a gross floor area of 5,000 m² or greater located in those parts of the Business 9 and 10 zones in the Wairau Valley identified in Figure X.X in which case such activities should be permitted or limited discretionary activities respectively.

c)

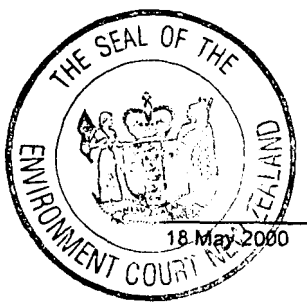
Refer to the assessment criteria in Section 15.7.4.1 for a limited discretionary activity and in Sections 15.7.3.5 and 15.7.4.1 for a discretionary activity.

[This rule will start on the date that the Court makes its' decision.]

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Table 15.1 High Traffic Generating Activities ~~Not Permitted~~ in Business 6, 7, 9 or 10 Zones		
Activity	SIC	Exemptions (these are permitted activities)
Food Retailing	51	Food retailing from a business unit mainly engaged in retailing automotive fuels, Supermarket and Grocery activities in Group 511 in a business unit with a gross floor area of no more than 200 m^2. Exemptions do not apply to sites within the General 9D zone.
Personal and Household Good Retailing	52	Personal and Household Good Retailing from a Business Unit mainly engaged in retailing automotive fuels. Furniture Retailing activities in Class 5231, Floor Covering Retailing activities in Class 5232, Garden Centres.
Automotive Fuel Retailing	5321	Activities on sites within the Sub-Regional 6, Business Park 7, General 9 (excluding 9D) or General 10 zones.
Accommodation, Cafes and Restaurants	57	Accommodation activities in Class 5710, Activities in Subdivision 57 in a business unit with a gross floor area of no more than 200m^2. Exemptions do not apply to sites within the General 9D zone.
Banks	7321	Activities on sites within the Sub-Regional 6, Business Park 7, General 9 (excluding 9D) or General 10 Zones.
Real Estate Agents	772	None
Health and Community Services	86 and 87	Medical and Dental Services Activities in Group 862 in a business unit with a gross floor area of no more than 200m^2. Exemptions do not apply to sites within the General 9D zone.
Motion Picture Exhibition	9113	None
Libraries, Museum and Arts	92	Parks and Gardens activities in Group 923, Sound Recording Studios in Class 9251.
Sport and Recreation	93	None.
Personal Services	95	Activities in Subdivision 95 in a business unit with a gross floor area of no more than 200m^2. Exemptions do not apply to sites within the General 9D zone.
Other Services	96	Activities in Subdivision 96 in a business unit with a gross floor area of no more than 200m^2. Exemptions do not apply to sites within the General 9D zone.

High Traffic Generating Activities ~~Not Permitted~~ in the Business Special 8 Zone		
Activity	SIC	Exemptions (these are permitted activities)
Food Retailing	51	Food retailing from a business unit mainly engaged in retailing automotive fuels, Supermarket and Grocery activities in Group 511 in a business unit with a gross floor area of no more than 200 m^2.
Personal and Household Good Retailing	52	Activities in the Business Special 8 zone are exempt except for Department Stores (521), Clothing Retailing (5221) and Footwear Retailing (5222).



Explanation and Reasons

The purpose of this control is to limit the size, intensity and location of land use activities in a manner that will protect and maintain the residential amenity and the continued amenity and available level of service of the road network as a valuable and finite community resource ~~effects of high traffic generating activities, such as some forms of retailing , on the roading network and residential amenity~~. The rule is not applied to the Local 1, Suburban 2 or Sub-Regional 3, 4 and 5 Zones as the Council is committed to facilitating development within existing and proposed centres through budgeted roading improvements in the Annual Plan.

High traffic generating activities in the Sub-Regional 6, Business Park 7, Special 8 and General 9 and 10 Zones will have their traffic effects assessed pursuant to a Limited Discretionary or Discretionary Activity application.

The rule makes exception for small scale high traffic generating activities which have functional relationships with particular business areas. Examples of these activities include food bars, banks and service stations. These exceptions are not provided for in the Business 9D zone in Devonport, because this area can rely on the adjacent Suburban 2 Zone for these services, and is subject to traffic and amenity constraints.

15.6.1.4 Retail Development at the Greville Road and Unsworth Drive Centres

Ref: 940/98

Retail floor space limitations are imposed on the following Suburban 2 business centres:

Centres	**Maximum Gross Retail Floor Space**
Unsworth Drive	4200m^2
Greville Road	4200m^2 provided that for Greville Road: ***(amended July 1998)***

a) No more than 3000m^2 of gross retail floor space (including any mezzanine, food preparation and staff amenity areas) is contained in food supermarkets.

b) The total area of retail use other than a food supermarket is no more than 1200m^2 of gross retail floor space (including any mezzanine, food preparation and staff amenity areas) contained is not less than four tenancies.

c) The area zoned Suburban 2 for the Greville Road centre is restricted to 2.2 hectares; and

For the purposes of this rule gross retail floorspace is defined as gross floorspace used by activities which are included in the following ANZSIC categories: ***(Amended July 1999)***

Food Retailing	SIC 51
Personal and Household Good Retailing	SIC 52
Motor Vehicle Retailing	SIC 531

Automotive Fuel Retailing	SIC 5321
Tyre Retailing	SIC 5324

Retail development in excess of the above limitations will require a discretionary activity resource consent and be assessed pursuant to the assessment criteria in Section 15.7.3.6.

Explanation and Reasons

The purpose of this control is to ensure that the overall size and nature of the retail development is compatible with the surrounding residential areas. While some flexibility is provided for by the resource consent process, it is expected that the developments at Greville Road and Unsworth Drive will make them similar to other Suburban 2 zone centres. Given their location in relation to the proposed Albany sub-regional centre, a maximum gross retail floor space of 4200m^2 is considered appropriate, because it would allow for a neighbourhood centre comprising a supermarket and associated shops, sufficient to serve the surrounding suburban area.

Development beyond the stated limits will be assessed for its traffic effects and its overall social and economic effects on other centres.

15.6.1.6 Minimum Floor Space Limits

Ref: 920/98

a) Any activity in the Sub-Regional 5 Zone which falls within any of the following ANZSIC categories listed below shall comply with a minimum gross floor space threshold of 500m2.

Wholesale Trade	-	SIC 45, 46 and 47
Retail Trade	-	SIC 51, 52 and 53
Finance and Insurance	-	SIC 73, 74 and 75
Property and Business	-	SIC 77 and 78
Cultural Recreational Services	-	SIC 91, 92, 93, 95 and 96

Control Flexibility

In the case of any proposed activity which would fall below the minimum floor space requirement for the Sub-Regional 5 Zone, a Limited Discretionary Activity application may be made for a gross floor space of not less than 400m2, and a Limited Discretionary Activity application may be made for service stations and vehicle orientated activities with drive through facilities which do not meet the 500m2 minimum floor space limit. ***(Amended October 1996).***

Explanation and Reasons

The purpose of a minimum floorspace control for the Sub-Regional 5 zone is to encourage all retailing activities, except for those which serve the functional requirements of the zone, ~~are~~ to be

large business units. The zone is designed for large stand-alone retail developments and this control is intended to complement the design controls for the zone in achieving this end.

The control needs to be seen as one element in a package of controls designed to implement the planned development of the Albany Centre. The retail focus of the Albany Centre is on the Sub-Regional 4 Zone, which provides for a full range of retailing, subject to design controls aimed at achieving an integrated shopping centre with a strong pedestrian flavour. The role of the Sub-Regional 5 Zone is to provide for 'retail warehouses' and 'discount store' type operations, which are predominantly of a car-oriented nature and for which there has been strong demand for sites within the city. The purpose of this control is to discourage small shops from establishing in the zone to the extent that there would be economic and social disbenefits. First, the establishment of small shops would preclude the zone's capacity to serve its retail warehouse type function. Second, its development for small shops could impede the development of an integrated centre with shared parking, which is intended to serve the whole of the northern part of the city.

15.7.3.5 Discretionary Activities identified in Rule 15.6.1.3

Ref: Consequential amendments

Without limiting the exercise of the Council's discretion, activities will be assessed to determine the extent of ~~any adverse social and economic effects, including~~ the following effects:

a) The extent to which the new activities would result in a significant adverse effect on the commercial and community services and facilities of any existing or proposed business centre as a whole.

b) The extent to which the overall availability and accessibility of commercial and community services and facilities will be maintained ~~in the district, in any existing business centre~~.

c) The extent to which the new activities would result in a significant adverse effect on the character, heritage and amenity values of any existing or proposed centre.

d) The extent to which the benefits of a new development are able to directly or indirectly mitigate any adverse effects in a), b) or c) above.

e) The extent to which the infrastructure supporting or serving centres will be maintained for any existing shopping centre.

f) The extent to which the role of existing or proposed centres as a focal point for population intensification, and the public and private transportation efficiencies which flow from such an urban land use pattern, is maintained.

15.7.4.1 High Traffic Generating Activities identified as Limited Discretionary or Discretionary Activities in Rule 15.6.1.3

(Amended July 1998)

Ref: 939/98

Activities will be assessed against the following criteria:

a) The extent to which any adverse effects of the activity on efficiency, safety and operational aspects of the adjacent and local road network, in particular the avoidance of adverse traffic effects on residential amenity, are able to be avoided, remedied or mitigated.

b) The extent to which the activity has adverse effects on private and public transport patterns and in particular the extent to which the proposal:

- results in an increase (or reduction) in overall travel distances
- encourages the use or maintains the integrity of the public transportation network.

c) Criteria listed under Clause 12.5.1.3 of the Transportation Section of the Plan.

d) the extent to which use of the site for the proposed activity is able to avoid any actual or potential effects on the city-wide roading network as a valuable and finite community resource.

15.7.3.6 Discretionary Activities at the Unsworth Heights or Greville Road centres as identified in Rule 15.6.1.4

Ref: Consequential amendments

Without limiting the exercise of the Council's discretion, activities will be assessed to determine the extent of any adverse social and economic effects, including the following effects:

a) The extent to which the new activities would result in a significant adverse effect on the commercial and community services and facilities of any existing or proposed business centre as a whole.

b) The extent to which the overall availability and accessibility of commercial and community services and facilities will be maintained in any existing business centre.

c) The extent to which the new activities would result in a significant adverse effect on the character, heritage and amenity values of any existing or proposed centre.

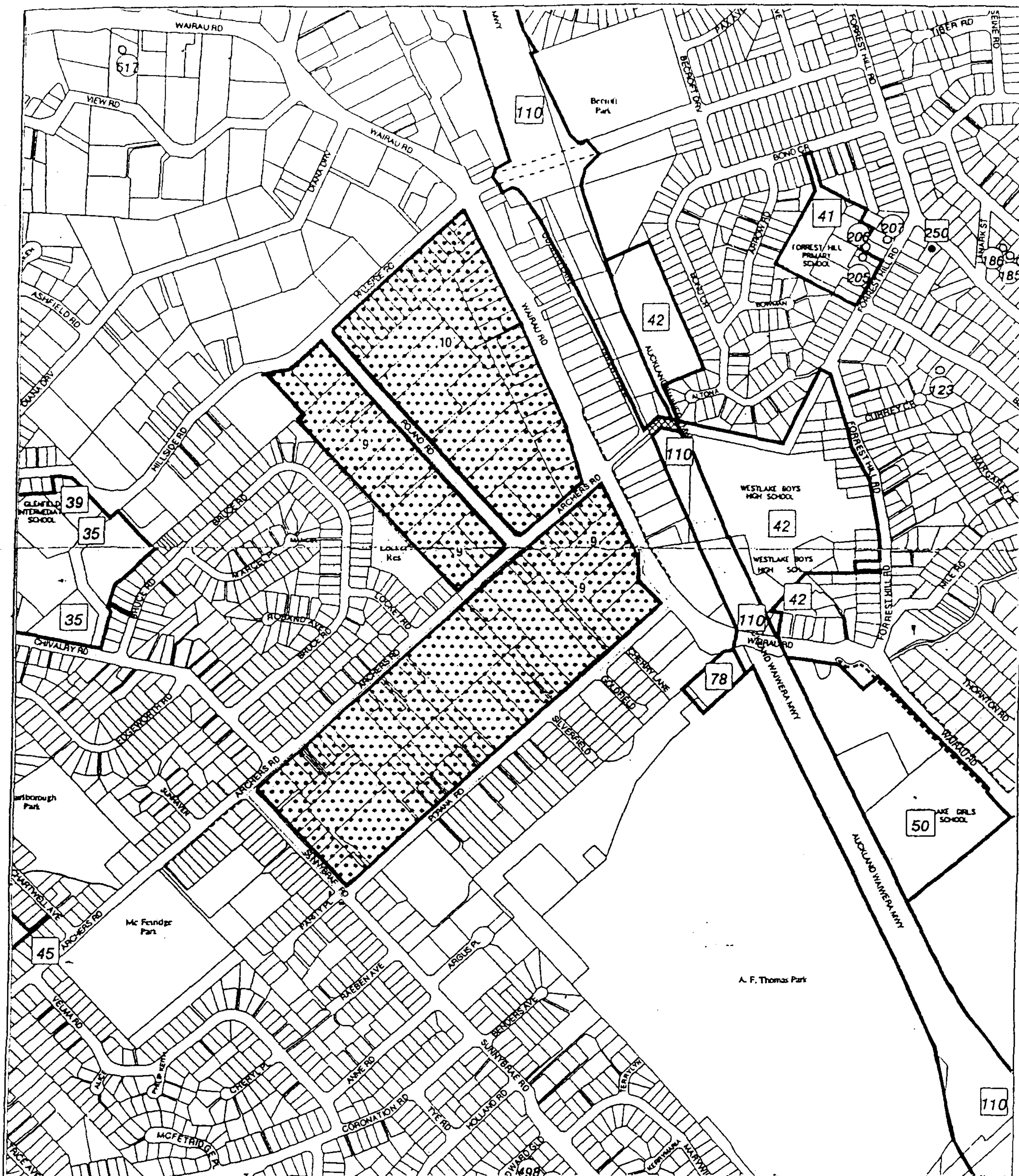
d) The extent to which the benefits of a new development are able to directly or indirectly mitigate any adverse effects in a), b) or c) above.

e) The extent to which any adverse effects of the activity on the efficiency, safety and operational aspects of the adjacent and local road network, in particular the avoidance of adverse traffic effects on residential amenity, are able to be avoided, remedied or mitigated.

f) The extent to which the activity has adverse effects on private and public transport patterns and in particular the extent to which the proposal:

- results in an increase (or reduction) in overall travel distances
- encourages the use or maintains the integrity of the public transportation network.

g) Criteria listed under Clause 12.5.1.3 of the Transportation Section of the Plan.



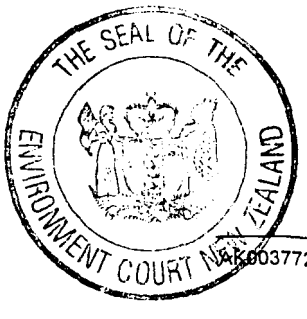
LEGEND

40-hectare identified area referred to in retail references decision of the Environment Court - North Shore City Council proposed district plan

APPENDIX 2

Appendix 3

	SECTION 5	
Amendment	**Party Suggesting Amendment**	**Council Position on Amendment**
5 Issues & Goals Issue 9 Page 1	NTC	Oppose deletion
5 Issues & Goals Issue 9 Page 1	St Lukes	Agree to addition
5 Issues & Goals Issue 10 Page 2	NTC	Oppose deletion
5 Issues & Goals Issue 11 Page 3	NTC	Agree to addition
	SECTION 6	
6.2 Urban Growth & Development Issues Page 2	St Lukes	Agree to addition
6.3 Urban Growth Strategy Objective Page 7	St Lukes	Agree to addition
6.3 Urban Growth Strategy Policy 2 and 6 Pages 7 – 8	NTC & St Lukes	Deletion and addition opposed
6.3 Urban Growth Strategy Explanation and Reason 1(c) Page 9	St Lukes	Deletion and additions opposed
6.3 Urban Growth Strategy Explanation and Reasons 1(j) 4th bullet pt Page 10	St Lukes	Agree to addition



6.3 Urban Growth Strategy Explanation and Reasons 2(e) Page 11	St Lukes	Addition opposed
6.3 Urban Growth Strategy Expected Environmental Results Page 12	St Lukes	Agree to amendment
	SECTION 15	
Section 15.2 Business Issues 3rd bullet point Page 1	NTC	Oppose deletion
Section 15.2 Business Issues 3rd bullet point Page 1	Woolworths	Oppose addition
Section 15.2 Business Issues Pages 1 – 2	St Lukes & NTC	Oppose deletions
Section 15.3.1 Business Development Policy 3 2nd bullet pt Page 3	St Lukes	Oppose
Section 15.3.1 Business Development Addition of Policy 8 Page 3	St Lukes	Agree with addition of new Policy 8
Section 15.3.1 Business Development Explanations and Reasons Page 4	St Lukes	Oppose addition of new bullet point
Section 15.3.1 Business Development Explanations and Reasons Page 4	NTC	Oppose addition of bullet point

Section 15.3.3 Retail Activities Policies 1 and 4 Page 7	NTC & St Lukes	Agree with amendments
Section 15.3.3 Retail Activities Explanation and Reasons Page 9	NTC & St Lukes	Oppose
Section 15.3.3 Retail Activities Explanation and Reasons Page 10	St Lukes	Oppose
Section 15.4.6 Business Special 8 Zone Objectives Page 10	NTC	Oppose
Section 15.4.6 Business Special 8 Zone Policy 1 Page 11	St Lukes	Agree
Section 15.4.6 Business Special 8 Zone Policies 2 & 3 Page 11	NTC	Oppose
General 9 & 10 Zone Policies 1 & 2 Page 12	NTC	Oppose
General 9 & 10 Zones Explanation and Reasons Page 13	NTC	Oppose
Rule 15.7.1.4 Limited Discretionary Activities Page 14	St Lukes	Agree
Rule 15.6.1.3 High Traffic Generating Activities Page 15	St Lukes	Agree

Rule 15.6.1.3 High Traffic Generating Activities Page 15	NTC	Oppose
Rule 15.6.1.3 High Traffic Generating Activities Table 15.1 Page 16	NTC	Agree to amendment that includes reference to "restricted discretionary and discretionary activities"
Rule 15.6.1.3 High Traffic Generating Activities Explanation and Reasons Page 17	St Lukes	Oppose
Rule 15.7.3.5 Discretionary Activity Identified in Rule 15.6.13 Page 19	St Lukes & NTC	Oppose
Rule 15.7.4.1 Page 20	St Lukes	Oppose

RE-DRAFTING OF SECTION 15 CROSS-REFERENCING

1. Addition to Section 15.5.1.1 - (shown underlined):

"**15.5.1.1 Determination of Activity Status**

Rules 15.5.1.2, 15.5.1.3, 15.5.1.4 and 15.5.1.5 specify the Permitted, Controlled, Discretionary, and Prohibited Activities for the Business Zones. The status of any activity may change according to Rules contained in the General Sections of the Plan, as listed in Section 15.6.4".

2. Insertion of new section:
(The existing Section 15.6.4 would become 15.6.5)

"**15.6.4 Other Relevant Rules**

In addition to the controls specified in Section 15.6, all Permitted and Controlled Activities shall comply with the relevant rules specified in the following General Sections:

Section 3:	General Rules
Section 8:	Natural Environment
Section 9:	Subdivision and Development
Section 10:	Pollution, Hazardous Substances and Waste Management
Section 11:	Cultural Heritage
Section 12:	Transportation
Section 13:	Signs"

3. Addition to Section 15.5.1.2 Permitted Activities - (shown underlined)

"**15.5.1.2 Permitted Activities**

Any activity shall have Permitted Activity status provided that it:

(a) ...

(e) Can comply with all the controls specified in the General Sections of the Plan, as listed in Section 15.6.4."

4. Addition to Section 15.5.1.3 Controlled Activities (shown underlined)

"**15.5.1.3 Controlled Activities**

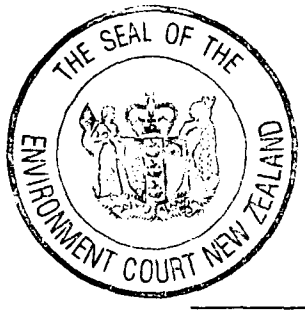
Any activity shall have Controlled Activity status provided that it:

(a) ...

(e) Can comply with all the controls specified in the General Sections of the Plan, as listed in Section 15.6.4."

(e)(f) Falls within any..."

[(e) would become (f) to ensure a more logical ordering]



QUEENSTOWN LAKES DISTRICT COUNCIL

DECISION ON AN APPLICATION FOR RESOURCE CONSENT

APPLICANT:	**SNOWLINE HOLDINGS LIMITED**
APPLICATION REFERENCE:	**RM 060587**
LOCATION:	**MOTATAPU VALLEY**
SITE DESCRIPTION:	**RUN 812, SECTION 3 BLOCK VI, MOTATAPU SURVEY DISTRICT, SECTION 1 SURVEY OFFICE PLAN 23260 AND PART SECTION 1-2 SURVEY OFFICE PLAN 22995, CONTAINED IN CERTIFICATE OF TITLE OT10C/688 AND PART RUN 333A, AND PART RUN 334B CONTAINED IN CERTIFICATE OF OT8C/243**
PROPOSAL:	**CONSTRUCT AND OPERATE A GONDOLA FROM A BASE STATION ON THE MOTATAPU VALLEY FLOOR UP TO THE TREBLE CONE SKI FIELD**
ZONING:	**PART RURAL GENERAL AND PART SKI AREA SUBZONE**
STATUS OF PROPOSAL:	**DISCRETIONARY ACTIVITY**
DATES OF HEARING:	**27TH – 30TH NOVEMBER 2006 AND 22ND OCTOBER 2008**
HEARINGS PANEL:	**DAVID W COLLINS, GILLIAN MACLEOD**
DECISION:	**CONSENT IS GRANTED, WITH CONDITIONS**

Under the Resource Management Act 1991

IN THE MATTER OF an application by Snowline Holdings Limited to the Queenstown Lakes District Council for consent to establish a gondola and other facilities serving the Treble Cone Ski Field.

Council File: RM 060587

DECISION OF A QUEENSTOWN LAKES DISTRICT COUNCIL HEARINGS PANEL COMPRISED OF DAVID W COLLINS AND GILLIAN MACLEOD, HEARINGS COMMISSIONERS APPOINTED PURSUANT TO SECTION 34A OF THE ACT

Background

1. This application seeks land use consent for the construction and operation of a gondola transport system between the Motatapu Valley and the Treble Cone ski area. The proposal was originally publicly notified on the 3rd August 2006 and attracted 938 submissions (881 in support and 57 in opposition). Full details of the proposal were provided. In essence the development would involve a base station with a cluster of seven buildings providing ski rental facilities, retail activities, a café, toilets, the gondola waiting and loading area, and storage space for gondola cabins. Carparking for 1,550 vehicles was proposed.

2. The application set out two alternative locations for the base station complex: Option 1 on the east side of the Wanaka-Mt Aspiring Road, and Option 2 on the west side of the Wanaka-Mt Aspiring Road. These options were put forward on the basis that consent was sought to allow the applicant company to build either, but it was acknowledged that consent could be granted for one or the other, or both, but only one would be built.

3. The gondola cableway would rise 945 metres over a total length of about 3.5 kilometres (for base station Option 1 on the far side of the Wanaka-Mt Aspiring Road) and would be of either Doppelmayr or POMA design. The Doppelmayr system would be supported by 18 towers between 5 and 24 metres in height with a single lattice tower 40 metres high and would carry up to 2,000 people per hour. The POMA design would require 28 towers of between 8 metres and 25 metres in height, with a lattice tower 34 metres in height, and would carry 1,800 passengers per hour. Both systems would use 8 person cabins and the trip up the mountain would take about 10 minutes.

4. A hearing was held on the 27th – 30th November 2006 and was adjourned at the request of the applicant company's counsel to allow for further information to be provided.

5. Following the hearing we made a further site visit and issued a Memorandum to the Parties on the 14th December 2006. In that Memorandum we indicated that we had come to the conclusion that the full development sought (either Option 1 or Option 2) would not meet the purpose of the Act:

> *"We consider that the adverse impact on the landscape (part of an Outstanding Natural Landscape under the District Plan) of a development involving a cluster of large buildings in addition to the gondola itself would outweigh the benefits of the proposal. If the applicant company is committed to the whole development that could be indicated now and we will provide a full decision setting out our reasons for coming to that conclusion.*
>
> *While there can be no doubt that the effect on the landscape is a major consideration (in our assessment the most significant consideration) we accept that there are other relevant factors to be balanced against the inevitable adverse landscape impact. Briefly we acknowledge that a gondola would enable people (section 5 of the Act) to access the skifield and the wider alpine area more conveniently and safely. We accept that although it is impossible to quantify this benefit to gondola users or to calculate the benefits to the greater community, these benefits would be considerable.*
>
> *This conclusion has led us to consider whether there could be a development that would provide most of the benefits of the proposal put forward without such an adverse effect on the landscape."*

6. The Memorandum then went on to discuss the possibility of relocating the base station so as to be further away from the public viewpoint of the road and nearer to the existing "disturbance corridor" created by the conspicuous skifield access road, and the possibility of substantially reducing the visual impact of the base station by reducing it to just those facilities that have to be located at the base of the mountain. The Memorandum also discussed the possibility of reducing the area of formed carparking, while expressing the view that the area of grassed "overflow" parking was of much less visual impact.

7. We were pleased that the applicant company did not respond to our Memorandum by simply asking for a decision refusing consent that could be taken to appeal, but by initiating further detailed investigations into the viability of our suggestions. A substantially revised proposal was submitted in August this year and submitters on the original application were invited to comment on it. Although for the record we will list appearances at the first hearing, this decision will focus on the application as it now stands. We are in no doubt that the revised application is within the scope of the application originally notified because the development is reduced in scale (specifically the base station) and the relocation of the base station and first part of the gondola alignment do not introduce any significant new adverse effects.

Original Hearing 27-30 November 2006

8. Prior to the original hearing reports provided by the Council's then regulatory agent, CivicCorp Limited, were circulated to the parties. These were prepared by Mr Stewart Fletcher – Principal: Resource Consents (Wanaka), Mr Antony Rewcastle – landscape architect, Ms Alice Hill – engineer, and Ms Linda Ferrier – Principal: Environmental Health. These reports were supplemented by reports by Dr Colin Boswell – ecologist, Mr Phil Osborne – economist, and Mr David Gamble – traffic engineer.

9. The applicant company was represented at the first hearing by Mr Warwick Goldsmith who presented a detailed explanation of the proposal and addressed various legal issues, before leading evidence from Mr John Darby – director of the applicant company with particular experience in ski area development, Dr Michael Copeland – economist, Mr Graeme Lester – civil engineer, Mr Royden Thomson – geologist (read by Mr Goldsmith), Mr Richard Hanson – director of the applicant company and project manager, Mr Allen Ingles – civil engineer, Mr Willem Groenen – president of Lake Wanaka Cycling Inc., Mr Allan Rackham – landscape architect, Ms Nicola Rykers – planner and Mr Mike Bayliss and Mr Don Spary – skiers who support the application.

10. Submitters who spoke at the initial hearing were: Mr Richard Hutchison, Mr John Pawson – chairman of the Upper Clutha Tracks Trust, Ms Tina Haslett, Mr John Hare, Mr Julian Haworth – president of the Upper Clutha Environmental Society and Ms Di Lucas – landscape architect, appearing for the Upper Clutha Environmental Society. A statement from submitter Ms Bridget Mackay was also tabled. Mr. Quentin Smith, planner, appeared for the Wanaka paraglider pilots group.

11. Reporting officers Mr Fletcher, Mr Rewcastle and Ms Hill attended the initial hearing and provided further advice following the presentation of the evidence and prior to Mr Goldsmith exercising his right of reply.

Reconvened Hearing, 22nd October 2008

12. The invitation for submitters to comment on the revised proposal attracted 14 further submissions: two in opposition, ten in support and two raising issues but not expressing support or opposition. Three of the submitters in support were from people who were not original submitters so technically they cannot be accepted as parties now.

13. For the reconvened hearing we had the benefit of pre-circulated reports provided by the council's new regulatory agent, Lakes Environmental Limited, prepared by Mr Christian Martin – Planning Team Leader (Wanaka), Ms Kerry Price – engineer, and Mr Antony Rewcastle – landscape architect. Mr Martin and Ms Price attended the hearing and Dr Marian Read – Principal: Landscape Architecture, attended on behalf of Mr Rewcastle who was overseas.

14. The applicant company was represented by Mr Mark Christensen who presented legal submissions before leading evidence from Mr Richard Hanson – project manager and director of Snowline Holdings Limited and Treble Cone Investments Limited, and Ms Yvonne Pfluger – landscape architect.

15. Submitters Ms Tina Haslett and Mr Julian Haworth (President of the Upper Clutha Environmental Society Inc) attended the hearing and discussed their remaining concerns. Some of the main points they made will be discussed below.

The Amended Proposal

16. As noted at the beginning of this decision, the application has now been substantially modified. Ms Haslett and Mr Haworth both commented that the proposal is better than the original proposal and Mr Rewcastle's landscape report expressed the view that "*....the amended application has been more sensitively designed and positioned...*". The most significant alterations are as follows:

Base Station Building

The base station buildings complex is now to be located against the base of the mountain about 320 metres from the Wanaka-Mr Aspiring Road. With the deletion of the café, shop, and ski hire facilities the complex has been reduced from seven buildings to four buildings, grouped in a tight cluster. The total building footprint has been reduced 2,173m^2 to 853m^2 and the maximum building height has been reduced from 10.43 metres to 6.375 metres. The apparent height of the buildings would be

further reduced by the proposed excavation of the buildings into the toe of the slope. The revised proposal does however require a mid-station at the point where the cableway changes direction and heads up the mountain along the alignment originally proposed. This additional building would be quite substantial - 39.5 metres by 8.4 metres and 6.5 metres in height - but like the base station buildings it would be finished in recessive colours.

Access and Parking

It is now proposed to provide access to the car park at the base station from the existing skifield access road, rather than from another access point to the Wanaka-Mt Aspiring Road. The number of sealed car parks has been increased from 50 to 81, but more significantly the 1,500 space gravel car park originally proposed has been replaced by a 480 space grassed area.

Landscaping

A completely different landscape proposal has been put forward, reflecting the reduced scale of the base station and parking and their location against the base of the mountain. Informal shaped planting at the south end of the car park is proposed with native shrubs and trees occurring naturally in the locality, and more formal lines of red beech nearer the buildings. Some of the planting would be on bunds which will provide immediate screening, and Ms Pfluger's landscape evidence for the applicant was that:

> *"At maturity red beech will grow to a height of 10-12 metres and will, in combination with the bund, fully screen both the car park and base buildings...when viewed from viewpoints to the south-west along Wanaka-Mt Aspiring Road."*

Status of the Application

17. All relevant provisions of the Partially Operative District Plan are operative. Consent is required under quite a number of rules. While the structures within the Ski Area Sub Zone have the status of controlled activities, all buildings within the Rural General Zone are discretionary activities – in both cases subject to meeting standards such as the height limit. The earthworks require consent as a restricted discretionary activity because they exceed various standards.

18. The original proposal required consent as a non-complying activity under several rules: the height of the base station buildings, the setback from road boundaries and signage. These aspects have been deleted in the revised proposal but there remains

a question of whether the height of the support pylons requires consent as a non-complying activity.

19. The base station buildings for the original proposal exceeded the 8 metre height limit, leading to non-complying status for the application as a whole, although part of the reason for the request for an adjournment was to allow the applicant to consider whether those buildings could be re-designed to comply. The revised proposal under consideration now has buildings that easily comply with the 8 metre height limit. Mr Martin's planning report however raises the question of whether the pylons supporting (or forming part of) the gondola system are "buildings" under the District Plan and are therefore non-complying.

20. This is quite significant because if they are buildings and the application as a whole has to be assessed as a non-complying activity, we have jurisdiction to grant consent only if the proposal overall can meet one of the "threshold tests" in section 104D of the Act. Those tests are whether the adverse effects on the environment will be minor, or whether the proposal will be contrary to the objectives and policies of the District Plan.

21. As discussed below, we consider the inevitable adverse effects on the landscape of the gondola and base buildings would be more than minor, and bearing in mind that for the purposes of this "threshold test" positive effects cannot be taken into account, we believe the application fails that test.

22. Whether the proposal also fails the alternative test is more complicated. If we had come to the view that the proposal could meet the test we could effectively avoid the issue of status by considering the application as a non-complying activity. As Mr Martin's report notes, the District Plan contains objectives and policies relating to transportation, economics and the use of existing skifields as well as the more familiar objectives and policies relating to landscape. We accept that the proposed development would promote those objectives and policies. The Queenstown Lakes District Plan has such a strong emphasis in the objectives and policies on the protection of landscape however that we are not at all sure that taking an overall view the direct conflicts with the landscape objectives and policies can be sufficiently countered by support for some other objectives and policies for us to come to the view that overall the proposal is not contrary to the objectives and policies.

23. We have therefore had to consider the question of status carefully because if the application was non-complying and cannot pass either of the "threshold tests" we

would have no jurisdiction to consider it further. We have had the benefit of a legal opinion dated 1st October 2008 from the Council's lawyers, MacTodd, for Mr Martin and counsel for the applicant, Mr Christensen, provided detailed submissions on the point at the hearing.

24. The District Plan includes the following definition:

"Building: shall have the same meaning as in the Building Act 1991....."

25. The Building Act 1991 has been replaced by the Building Act 2004 but there is no dispute that the definition in the Plan remains unchanged. Section 3 of the Building Act 1991 defines a "building" as excluding:

"(c) Cablecars, cableways, ski tows, and other similar stand-alone machinery systems, whether or not incorporated within any other structure; or..."

26. The MacTodd opinion misquoted this definition by omitting a comma after *"ski tows"* so assumed that for the pylons to be excluded as buildings they would have to be either *"cablecars"* or *"cableways"*. Mr Christensen's submission was that the support towers could be included under any one of the exclusions: *"cablecars"* or *"cableways" or "similar stand-alone machinery systems"*. None of these terms is defined in the District Plan or the Building Act 1991, however *"cablecar"* is defined in the Building Act 2004. We accept that this definition can be used as a guide. It begins:

"Cablecar:

(a) Means a vehicle: ...."

The MacTodd opinion, rightly in our view, interprets that as meaning that *"cablecars"* should be interpreted as including just the gondola cabins and not the supporting structures. Mr Christensen pointed out that later in the definition of *"cablecar"* it is clarified that parts *"... attached to or servicing a building"* are included, but that does not seem to be relevant to the pylons as they are remote from buildings.

27. We do however believe that what is proposed fits within the common understanding of a *"cableway"* so is not a *"building"* for the purposes of the District Plan. The MacTodd opinion gives three dictionary definitions of *"cableway"*. The Collins dictionary (always the most authoritative) defines " *cableway" as:*

"A system for moving people or bulk materials in which suspended cars, buckets, etc run on cables that extend between terminal towers."

The Oxford dictionary similarly refers to *"a transportation system"* (emphasis added), while the American Webster dictionary defines *"cableway"* as:

"A suspended cable used as a track along which carriers can be pulled."

28. The MacTodd opinion acknowledges that these definitions mostly focus on the *"complete package"*, but then suggests that a conservative approach should be taken because:

> *"It seems inconceivable that a 40 metre tower in a sensitive landscape would escape scrutiny when a much small (*sic.*) and less prominent "building" would not."*

29. As pointed out by Mr Christensen, that is not actually correct because the proposed gondola system (including pylons) probably falls to be considered as a *"ski activity"* located outside a Ski Area Sub Zone under Rule 5.3.3.3 (ix) - a discretionary activity. We are not entirely sure of that because this system is proposed to be used outside the ski season, but that was the approach taken by another Council Hearing Panel in the case of the recently consented gondola to serve the Snow Farm skifield above the Cardrona Valley (One Black Merino Limited, consent RM 070610 dated 15th May 2008). Unless there is some reason to believe that Hearing Panel misunderstood something, we consider we should follow that interpretation in the interests of consistency.

30. Mr Christensen also submitted that the gondola pylons could come within the definition of *"other similar stand-alone machinery systems"*. Again, the word *"systems"* is important as it suggests we should not separate components of what is clearly a system. After careful consideration of the alternative possible interpretations, we have come to the view that the support pylons can and should be regarded as part of a cableway or other similar stand-alone machinery system (or both) and is therefore not a building in terms of the District Plan and therefore not subject to the 8 metre height limit.

31. As a discretionary activity we have to consider the application under sections 104 and 104B of the Act. Section 104 directs us to have regard to the effects on the environment and relevant objectives and policies in the Partially Operative District Plan. Consideration is *"subject to"* the purpose and principles of the Act set out in Part II (sections 5 – 8) of the Act. Relevant Part II matters in this case are:

- the sustainable management of resources purpose of the Act set out in section 5,
- section 6(b) *"the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development"*, (one of the declared *"matters of national importance"*),
- section 7(b) *"the efficient use and development of natural and physical resources"*, and
- section 7(c) *"the maintenance and enhancement of amenity values"*.

Precedent

32. Before discussing these matters we should mention the matter of precedent. A number of submissions on the original application, and Ms Haslett in her presentation for the reconvened hearing, expressed concern that what is considered to be a major intrusion into an acknowledged outstanding natural landscape would set a precedent for other developments.

33. We accept that this is an important consideration. While there is no strict doctrine of precedent under the Resource Management Act system, the Courts have made it clear that consistency in decision-making is important: applicants should be able to expect "*equivalent treatment*". For this reason we have had regard to the Council decision in One Black Merino Limited (consent RM 070610), noting some similarities and some differences in the proposals.

34. Ms Haslett's particular concern was that consent in the present case could be seen as a precedent within the area that has particular significance as the gateway to Mt Aspiring National Park. The simple answer to that is that there is no other skifield, existing or proposed, in this area. It is extremely unlikely that something as intrusive as a gondola would have any chance of obtaining consent without the positive benefits associated with a skifield.

35. We do not see approval in this case as establishing any kind of precedent for buildings, because the proposed buildings have been pared down to just those essential for a gondola operation. The original proposal did include buildings for activities we did not consider had this clear linkage and we had a concern that they could provide a basis for an expanding commercial centre around the base station. To that extent we accept that there would have been a precedent issue.

Positive Effects

36. The purpose of the Act set out in section 5 of the Act is "*the sustainable management of natural and physical resources*". Section 5(2) states:

> "*In this Act, sustainable management means managing the use, development, and protection of natural and physical resources, in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while* – (meeting three stated provisos)."

The original application and the many submissions in support emphasised the social, economic and safety benefits that would flow from the proposed gondola development.

37. The evidence was that development of the Treble Cone Ski Field is constrained by the capacity and difficult nature of the access road and by the space available at the skifield for parking. The gondola would address both of these constraints. There are significant areas within the Treble Cone lease area that could be developed for skiing with further lifts and other facilities, allowing the skifield to cater for double the present peak capacity. The gondola would also facilitate opening of this high altitude area all year round, with activities outside the ski season including walking, mountain biking and simply enjoying the alpine experience and extensive views.

38. It is difficult to quantify the social and economic benefits of this expansion of skiing and other activities. The application included an economic assessment and a peer review of this was provided as part of the reports collated by CivicCorp. Although there is always scope to debate the assumptions and conclusions reached in this sort of economic evaluation because it must be somewhat speculative, (and some submitters in opposition did question it), we are satisfied that this major project would facilitate much greater use of the Treble Cone alpine area with very significant social and economic benefits.

39. The case for the applicant company also emphasised the safety benefits of replacing a tortuous road access with a gondola. The access road would remain, but the application is put on the basis that it would no longer be open to the general public. There have been fatalities and numerous accidents on the access road over the years, but it appears that the nature of the road is such that most people take care. Some submitters in opposition questioned the safety argument at the initial hearing, but it is clear to us that the new mode of access could only improve safety. The only question is the magnitude of that benefit.

40. In the course of the initial part of the hearing the applicant's counsel, Mr Goldsmith, emphasised the benefit of the lower standard of access road that would be possible once it was only required for emergencies and some types of servicing such as the transport of materials too big for the gondola cabins. This was of some interest to us because the access road creates an unfortunately obvious man-made scar across the side of the mountain. Over the years the access road has been improved from a functional perspective by widening, but the consequence has been increased height of the uphill batters, which are generally too steep to sustain vegetation and are therefore visually obvious from the valley floor, and large volumes of cleared material spilled over the downslope edges of the road. There was some discussion at the initial hearing about the prospects of a different management and maintenance regime that could lessen these effects as the road was allowed to narrow through natural slipping,

and the possibility of active re-vegetation in appropriate, mainly downhill, areas. The adjournment Mr Goldsmith sought at the end of that initial part of the hearing was partly to allow time for the applicant's advisors to consider this matter further.

41. We were disappointed at the re-convened hearing that Mr Christensen indicated that the applicant wished to withdraw the offer of narrowing the access road. We gather that since then there has been some discussion between the applicant's advisors and the Lakes Environmental officers resulting in the agreed condition about the access road attached to this consent (condition 29). We would be very surprised if the Department of Conservation require that the road is maintained to the present width, bearing in mind the cost and the environmental effect of this, so we feel able to treat reduction in the scale of the access road as a very likely positive environmental effect of this application. We appreciate that the access road will remain very visible, but if the practice of tipping spoil over the downside edge of the road is stopped, there is a good prospect of some natural re-vegetation with the effect of gradually making the road alignment less obvious.

Engineering Issues

42. Before discussing the central issue in this case, the effects on the outstanding natural landscape, we should record that we have considered the evidence and reports about engineering issues which also raise questions about potential adverse effects. We are satisfied that these engineering issues, particularly the matter of protecting the base station facilities from slips and/or flooding raised by the Otago Regional Council, will be properly addressed and the attached conditions are designed to ensure this.

Effects on the Landscape

43. As is normally the case with applications in the Rural General Zone of the Queenstown Lakes District effects on landscape have been the central issue in this case. The Queenstown Lakes District Plan has a strong emphasis on protecting the world renowned landscapes of the District, which are arguably the District's most significant resources and certainly provide the foundation for the District's tourism industry and attraction as a place to live.

44. The Motatapu Valley and the enclosing mountains and hills are part of a recognised Outstanding Natural Landscape, as that term is used in the Partially Operative District Plan. The proposed gondola and associated base station and car park would, in our opinion, introduce a major and long term man-made intrusion into this landscape so regardless of the benefits of the proposal, the landscape impact must be mitigated as

far as practicable. Section 5 of the Act – the stated purpose of the Act – specifically requires:

"avoiding, remedying, or mitigating any adverse activities on the environment."

45. The adverse effects on the landscape could be avoided by declining consent, but we are satisfied that they could also be sufficiently mitigated, and as discussed above the existing adverse effect of the access road could be somewhat remedied.

46. As stated in our Memorandum, we did not consider the landscape effects of the original proposal would have been adequately mitigated, because of both the scale of the base facilities and because of their location. Both of these aspects have now been modified significantly. We are now satisfied that the range of facilities and associated buildings, and the scale of parking areas (particularly the artificially surfaced parking areas that would be obvious all year round), have been reduced to the minimum reasonably necessary.

47. It is unfortunate that the base station could not be moved north to the general location we suggested in our Memorandum. At the re-convened hearing Mr Haworth, speaking on behalf of the Upper Clutha Environmental Society, indicated that the Society would have been happy with something *"entirely consistent with the Memorandum"* and urged us to insist on that location for the base station with corresponding realignment of the gondola more directly over the access road.

48. The applicant's case was that there are two major difficulties with this: firstly, there are engineering difficulties in relation to the stability of parts of that route for support pylons and secondly, the landowner will not make land further north available for a base station. Engineering difficulties might be resolved at a cost, but we accept Mr Christensen's submission that if the land for the base station is simply not available that is the end of the matter. Such a site becomes simply a hypothetical possibility and should not detract from the applicant's best endeavours to minimise adverse landscape effects within the constraints of the range of actual base station siting possibilities.

49. There is a consensus between the landscape architects that the access road creates what the applicant's landscape architect at the initial hearing, Mr Rackham, referred to as a *"disturbance corridor"*, and that the adverse effect of the pylons, cables and moving gondola cars is considerably less within this existing corridor than it would be if the same facilities were placed on a similar mountain side elsewhere. Apart from a suggestion at the re-convened meeting that the concrete bases supporting the pylons

should be painted the same colour as the pylons, (now a condition), there do not appear to be any other ways of further mitigating the inevitable adverse effect of these elements.

50. As Mr Haworth pointed out, the amended site for the base station does lead to an additional length of cableway running along the toe of the mountain side which will be visible from the Wanaka-Mt Aspiring Road. In spite of that, we consider the now proposed site for the base station is preferable to the original Option 2 site which did not require this additional cableway leg but because of its location next to the road would have been much more visible.

51. We have carefully considered the landscape assessments of the proposed buildings in this location provided by Ms Pfluger and Mr Rewcastle, walked all over the base station site and the length of the additional cableway leg, and considered the height poles erected from various view points along the Wanaka-Mt Aspiring Road. We accept that the much revised proposal mitigates the adverse effects on the landscape of the base station and car park as much as is practically possible. It can also be noted that the base station and additional leg of the cableway are within the area already modified by the access road, existing entrance to the skifield and existing lower car park.

Relevant Objectives and Policies

52. We have considered the detailed assessments of relevant objectives and policies provided by the applicant and in Mr Fletcher's report, and although these led us to reject the original proposal we are now satisfied that, on balance, and despite continuing conflict with important landscape objectives and policies, the purpose of the Act would best be met by granting consent, subject to some quite stringent conditions set out below.

DECISION

For the reasons set out above, consent is hereby granted pursuant to sections 104 and 104B of the Act to Snowline Holdings Limited to establish and operate a gondola serving the Treble Cone skifield area in accordance with the revised proposal submitted on the 21st August 2008 subject to the following conditions.

David W Collins
Gillian MacLeod
Hearings Commissioners
4th December 2008

RM060587 – Snowline Holdings Limited

Conditions of Consent

General Conditions

1. That the development be carried out in accordance with the plans **(stamped as approved)** and the revised application as submitted, with the exception of the amendments required by the following conditions of consent. The approved plans are as follows:

   a. Darby Partners, Location Plan;
   b. Darby Partners, Alignment Plan;
   c. Darby Partners, Alignment Plan – Lower Section;
   d. Darby Partners, Landscape Plan;
   e. Koia Architects, Ticket Building Design.
   f. Dopplemayr, Gondola Station Designs;
   g. Darby Partners, Building Set out;
   h. Darby Partners, Lighting Plan.

2. That unless it is otherwise specified in the conditions of this consent, compliance with any monitoring requirement imposed by this consent shall be at the consent holder's own expense.

3. The consent holder shall pay to the Council an initial fee of $240 for the costs associated with the monitoring of this resource consent in accordance with Section 35 of the Act.

4. The consent shall not lapse until ten years after the date of commencement of this consent.

Engineering

5. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.

6. The owner of the land being developed shall provide a letter to the Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.4 & 1.5 of NZS4404:2004 "Land Development and Subdivision Engineering", in relation to this development.

7. Prior to the commencement of any works on the land being developed the consent holder shall provide to the Queenstown Lakes District Council for review and approval, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition (5), to detail the following engineering works required:

   a) The provision of all parking, access and manoeuvring areas for the base station complex to Council's standards, except where specified otherwise by Condition 3(b).

   b) A detailed parking plan shall be submitted to Council for approval prior to works commencing on-site. The plan shall be in accordance with the amended application submitted, should clearly show the parking stall layout and include provision for

disabled parking as well as coach and taxi drop-off and parking areas and any necessary loading zones for service vehicles. The parking plan shall indicate:

i) 480 parks in the Main Parking Area constructed in gravel and reinforced grass; and

ii) 81 sealed parks in the northern area of the Main Parking Area constructed to Council's standards.

c) Copies of all necessary ORC consents for effluent disposal, bore construction, water supply, stormwater discharge (from buildings, access and parking area), defence against water structures and any works within a waterway as proposed for flood mitigation measures shall be forwarded to Council.

d) The provision of a stormwater disposal system, in accordance with Council's standards, that is to provide stormwater disposal from all impervious areas associated with the Base, Mid and Top Stations. The proposed stormwater system shall be designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 and subject to the review of Council prior to implementation.

e) The provision of a stormwater disposal system, in accordance with Council's standards, that is to provide stormwater disposal from the access and sealed parking areas (with grassed parks designed so as to avoid ponding). The proposed stormwater system shall be designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 and subject to the review of Council prior to implementation. The disposal system design shall incorporate a hydrocarbon and grit interceptor to ensure these contaminants are not discharged to land or any water courses.

f) The provision of an effluent disposal system for the Base Station designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004, in terms of AS/NZS 1547:2000, that will provide sufficient treatment/renovation to effluent from on-site disposal, prior to discharge to land. To maintain high effluent quality such a system would require the following:

- Specific design by a suitably qualified professional engineer.
- Regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of the system to undertake this maintenance.
- Intermittent effluent quality checks to ensure compliance with the system designer's specification.
- Disposal areas shall be located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore.
- The design shall take into consideration the potential for freezing of components within the system.

g) The provision of a potable water supply to the Base Station in terms of Council's standards that complies with the requirements of the Drinking Water Standard for New Zealand 2005. A suitably qualified engineer shall provide an assessment of the water supply demand for the base station complex, in terms of Council's standards, and confirm that the necessary abstraction rates can be achieved from the bore water supply to meet the expected water supply demand. The bore water supply shall be pump tested and the results submitted to Council along with the water supply assessment. In the event that the proposed bore water supply cannot meet the estimated water demand for the base station complex, then an additional potable water supply shall be secured. Details of any additional water supply must be submitted to Council for review and approval. Sufficient potable water storage shall be provided for within suitably sized tanks, to meet the estimated peak demand, in

accordance with Council's standards. Potable water storage shall be in addition to any fire fighting water storage requirements.

h) The drinking water supply is to be monitored in compliance with the Drinking Water Standards for New Zealand 2005, by the consent holder, and the results forwarded to the Queenstown Lakes District Council. The Ministry of Health shall approve the laboratory carrying out the analysis. Should the water not meet the requirements of the Standard then the consent holder shall be responsible for the provision of water treatment to ensure that the Drinking Water Standards for New Zealand 2005 are met or exceeded.

i) Fire fighting water storage is to be provided for the Top and Bottom Stations in accordance with the requirements of NZ Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 and the New Zealand Fire Service. The water storage volume and fire safety system design must be approved in writing by the NZ Fire Service, Dunedin Office.

j) A suitably qualified and experienced engineer shall monitor and confirm groundwater levels prior to any earthworks commencing on-site. In the event that these groundwater investigations indicate that the proposed earthworks may intercept the groundwater table, then all works shall cease until any necessary ORC consents have been obtained.

k) A quantitative hydrological and geomorphological analysis shall be completed for Catchment A, with a quantitative assessment of debris, flood and alluvial fan hazard derived from this catchment.

l) Details of the proposed bunding and/or other mitigation, including flow and depth calculations that have been used to dictate bund height/design. The designs for proposed mitigation measures for the original section of the gondola alignment shall be in accordance with the recommendations of the URS Report, dated 31 March 2006 and the Royden Thomson Report, dated February 2006, submitted with the original consent application. The designs for proposed mitigation measures for the revised section of the gondola alignment shall be in accordance with the recommendations of the URS Report, dated 7 July 2008 and the Royden Thomson Report, dated 15 July 2008 submitted with the Additional Information Application. These mitigation designs should consider the possibility of increased sediment supplies in the upper catchments of the alluvial fans that could result in significant proportions of sediment being supplied to the lower fan areas in the form of debris flow. The designs details shall be peer reviewed by a suitable qualified engineer to ensure the proposed mitigation provides an appropriate level of protection and meets the minimum requirements of Council's development standard, NZS4404:2004 and adopted amendments to that standard, and any Building Code requirements. Mitigation measures shall provide protection for up to a 1 in 10 year ARI event for the car park area and a 1 in 100 year event for the Base Station buildings and meet the Council's development standard, NZS4404:2004 and adopted amendments to that standard.

m) Details of the final locations of the gondola towers, base buildings and associated floor levels confirmed by a suitably qualified engineer, following a robust quantitative hazard assessment. A suitably qualified geological expert shall be engaged during the site selection process to ensure each tower location has been optimally selected. The final design of the tower foundations shall consider the risks associated with future fault ruptures in Central Otago and the Alpine Fault, as per the recommendations of Royden Thompson, with deference given to those towers founded on the valley floor.

n) An assessment of the integrity and detail of the design of all existing localised stream bunding and any other existing mitigation measures to be used in protecting the

gondola development from natural hazards by a suitably qualified and experienced engineer. In the event that these existing mitigation measures are found to provide inadequate or unreliable protection to the gondola development, then a suitably qualified and experienced engineer shall submit to the Council new designs for the necessary mitigation works prior to any works commencing on-site.

o) An ongoing and robust monitoring and maintenance regime for the proposed mitigation measures must be submitted to Council for review and approval. This monitoring and maintenance regime shall then be implemented to ensure that the level of protection provided by the recommended mitigation measures does not reduce over time as a result of flooding, avulsion, debris flow, stream aggradation, channel erosion or generation of new channels. Active stream channels should be constrained in existing positions and flowpaths in the area must be monitored to ensure that channels do not migrate over time as a result of accumulated sediments and gravels to positions that may endanger the protective bunding, pylons and base buildings.

p) Warning systems and evacuation strategies shall be prepared for the gondola facilities. A plan shall be prepared for the evacuation of the gondola in the event of its failure or for emergencies as a result of extreme events such as storms or earthquakes. This plan shall be developed in consultation with the Police and other emergency services.

8. Prior to the occupation of the buildings, the consent holder shall complete the following:

a) The submission of 'as-built' plans in accordance with Council's 'as-built' standards, and information required to detail all engineering works completed in relation to or in association with this development.

b) The completion of all works detailed in Condition (7) above.

c) The consent holder shall provide a suitable and usable power supply and telecommunications connection to the development. These connections shall be underground from any existing reticulation and in accordance with any requirements/standards of Aurora Energy/Delta and Telecom.

9. Prior to commencing works on site, the consent holder shall submit a Traffic Management Plan to Council for approval. This Traffic Management Plan shall ensure that during the construction period there is ongoing access for ski field users and access to neighbouring properties and shall ensure minimum disruption to traffic along Wanaka-Mt Aspiring Road. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor (certification gained by attending the STMS course and getting registration). All contractors obligated to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan.

10. Prior to commencing works, the consent holder shall submit to Council for review and approval a site management plan for the works.

11. The consent holder shall install measures to control and or mitigate any dust, silt run-off and sedimentation that may occur according to the proposed site management plan submitted under Condition (10). These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project. In addition to those identified in the site management plan submitted under Condition (10), site management measures required to be implemented ***PRIOR to any earthworks on site*** are:

Earthworks Staging Plan

- The consent holder shall submit a staging plan for the earthworks which specifies the maximum area of earthworks exposed at any one time. The maximum area of earthworks to be exposed at any one time will depend on the available earthworks mitigation measures and the consent holder's ability to provide sufficient mitigation for the exposed areas. Each stage of earthworks shall be reinstated, revegetated and/or otherwise permanently stabilised prior to exposing subsequent areas.

- Earthworks and construction works shall be completed in a progressive manner, where practically possible, to minimise adverse earthworks effects. Each tower area shall be reinstated and revegetated, or otherwise permanently stabilised, at the completion of each tower's construction to minimise exposed areas of earth.

Dust Control

- Sprinklers and/or water carts shall be utilized on all materials to prevent dust nuisance in the instance of ANY conditions whereby dust may be generated.

Stormwater Silt and Sediment Control

- Silt traps (in the form of fabric filter dams or straw bales) shall be in place prior to the commencement of works on site to trap stormwater sediments before stormwater is funnelled into any watercourses.

- Site drainage paths shall be constructed and utilized to keep any silt laden materials on site and to direct the flows to the silt traps.

- Silt traps shall be replaced or maintained as necessary to assure that they are effective in their purpose.
- The principle contractor shall take proactive measures in stopping all sediment laden stormwater from entering any watercourses. The principle contractor shall recognize that this may be above and beyond conditions delineated in this consent.

Roading Maintenance

- The consent holder shall ensure tyres remain free of mud and debris by utilising wheel washing equipment, constructing a gravel hardstand area of sufficient depth, or other similar measures.

Traffic Management

- Suitable site warning signage shall be in place on the road in both directions from the site entrance.

- Safety 'dayglo' vests or similar shall be worn by any staff working on the road.

- Safe sight distances and passing provisions shall be maintained.

The measures delineated in this consent are minimum required measures only. The principle contractor shall take proactive measures in all aspects of the site's management to assure that virtually no effects are realized with respect to effects on the environment, local communities, or traffic. **The principal contractor shall recognise that this may be above and beyond conditions delineated in this consent.**

12. The nature and extent of earthworks associated with the gondola development shall be submitted to Council for review and approval prior to any works commencing on-site, including depth of cut and fill and the proposed finished shape of the land. Any temporary or permanent retaining walls and batter slopes shall be designed by a suitably qualified and experienced engineer and shall be submitted to Council for approval prior to installation.

13. The earthworks shall be undertaken in a timely manner. Any excavation shall not remain open long enough to enable any instability (caused by over exposure to the elements) to occur.

14. The consent holder shall provide Council with the name of a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 who is to supervise the excavation and construction procedure. This engineer shall continually assess the condition of the excavations and implement any design changes / additions if and when necessary.

15. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at their expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.

16. Prior to construction of any buildings on the site a Chartered Engineer experienced in soils investigations shall provide certification, in accordance with NZS 4431 for all areas of fill within the site on which buildings are to be founded (if any).

17. Within four weeks of completing the earthworks the consent holder shall submit to Council an as built plan of the fill. This plan shall be in terms of New Zealand Map grid and shall show the contours indicating the depth of fill. Any fill that has not been certified by a suitably qualified and experienced engineer in accordance with NZS 4431 shall be recorded on the as built plan as "uncertified fill".

18. At the completion of each stage of earthworks, the earth-worked areas shall be top-soiled and grassed or otherwise permanently stabilised in a progressive manner, as soon as practicable. All earthworked areas must be reinstated within a maximum 12 weeks from completion of all earthworks.

19. No earthworks, temporary or permanent, are to breach the boundaries of the site.

20. Upon completion of the earthworks, the consent holder shall complete the following:

    a) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

    b) An engineer's design certificate/producer statement shall be submitted with regards to any permanent retaining walls on site (if any).

Lighting

21. No lighting shall be permitted at any time in or on the gondola cars or towers. (emergency lighting is permitted)

Parking.

22. The consent holder shall obtain Council's approval prior to upgrading any parks required to be constructed in reinforced grass as referenced in condition 7(b). The

consent holder shall provide a report prepared by a suitably qualified and experienced traffic engineer indicating that additional parking is required.

Ecological

23. The mechanical clearing process for the construction of the towers shall be restricted to the immediate vicinity of the towers and where applicable access to the towers.

24. Indigenous plants are stockpiled and replanted or replaced following the construction of the pylons in accordance with the application and in accordance with the Department of Conservation best practice guidelines.

25. Access tracks formed to facilitate construction of the towers shall be removed and revegetated in accordance with the application. Tracks shall not be visible from the Wanaka-Mt Aspiring Road five years after construction commences and shall be retained in that condition thereafter. The nature and scale of any further work necessary to satisfy this condition shall be determined by the Council in conjunction with the consent holder.

26. The consent holder shall formalise weed management practices in accordance with the application.

Landscaping

27. The approved landscaping plan shall be implemented within the first planting season following the construction of the base facilities, and shall thereafter be maintained and irrigated in accordance with that plan. If any plant or tree should die or become diseased it shall be replaced.

28. The main exterior colours for buildings 1, 2 and 4 shall be selected from Grey Friars, Ironsand and Karaka only. Detailing, not including roofs, may include Permanent Green or Mist Green. Alternative detailing colours may be submitted to Council for approval prior to construction.

29. The existing access road to the Treble Cone base facilities shall be maintained only to the standard necessary to allow passage by maintenance and emergency vehicles, except where superseded by a standard required by the Department of Conservation. In the course of any maintenance to the road, the consent holder shall ensure that no gravel gets tipped over the down mountain side of the road, so as to encourage natural revegetation.

30. Where concrete tower footings protrude 0.5 metres or more above ground level they shall be coloured the same colour as the tower they support.

Constructions and Operation

31. The gondola will be built and operated according to the provisions of the Approved Code of Practice for Passenger Ropeways in New Zealand.

Review

32. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of his resource consent for any of the following purposes:

a. To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.

b. To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.

c. To avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

Advice Notes

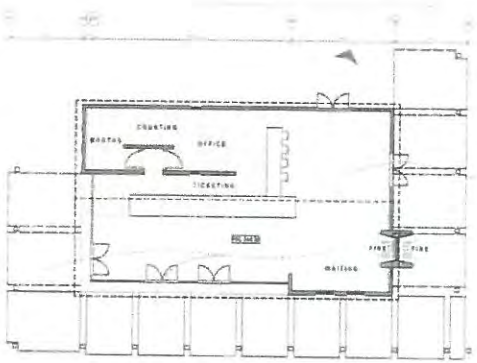
i. Development contributions will be required as part of this resource consent. A Development Contribution Notice', detailing how contributions were calculated, will be forwarded under separate cover.

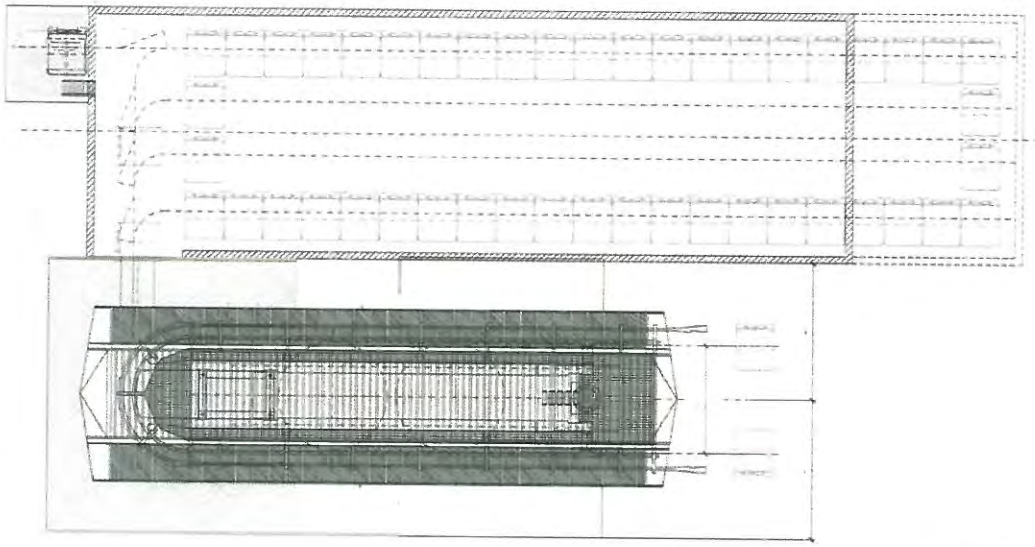
ii. The Council may elect to exercise its functions and duties through the employment of independent consultants.

HARRIS MOUNTAINS
TREBLE CONE SKI AREA
GONDOLA ALIGNMENT
LOCATION OF BASE STATION
QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLANS RM060587
Date
Initials
Treble Cone Gondola
LOCATION PLAN
darby partners limited
darby partners limited
darby partners limited
darby partners limited

Treble Cone Gondola
GONDOLA ALIGNMENT
TREBLE CONE SKI AREA BASE BUILDINGS
PROPOSED BASE STATION
WANAKA - MT ASPIRING ROAD
T20
T19
T18
T17
T16
T15
T14
T13
T12
T11
T10
T9
T8
T7
T6
T5
T4
T3
T2
T1
MEB 2
MEB 1
TOWER HEIGHT
TOWER HEIGHT
1 4.05m
2 18.10m
3 14.12m
4 9.05m
5 9.05m
6 9.05m
7 12.08m
8 9.05m
9 10.05m
10 21.14m
11 22.22m
12 14.12m
13 17.13m
14 21.13m
15 9.05m
16 20.18m
17 19.05m
18 16.18m
19 17.12m
20 14.12m

Treble Cone Gondola
Gondola Base Buildings Detail
1
2
3
4
1A
1B
2A
2B
2C
2D
3A
3B
4A
4B
4C
345.00





KOIA ARCHITECTS

TREBLE CONE
PROJECT ADDRESS

CLIENT NAME

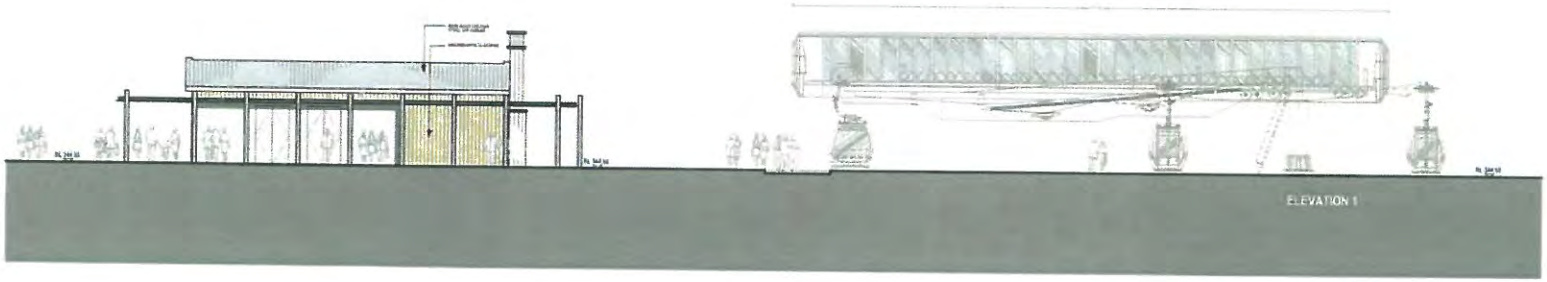
SURVEYOR DETAIL

ENGINEER DETAIL

OTHER DETAIL

PROP SITE LANDSCAPING

A1-03 A



KOIA ARCHITECTS

TREBLE CONE

PROJECT ADDRESS

CLIENT NAME

SURVEYOR DETAIL

ENGINEER DETAIL

OTHER DETAIL

PROPOSED ELEVATION

A2.04 A

Treble Cone Gondola
BASE STATION ACCESS ROAD AND CARPARK
Carpark
Base Station Detail Plan
Base Buildings
Gondola Alignment
Mid Station Plan
Wanaka - Mt Aspiring Road
T1
T2
T3
T4
T5
T6
T7
T8
T9
T10
RM/DP
17.10.08
darby partners limited
darby partners limited
darby partners limited
darby partners limited

KEY
DOWNLIGHTS UNDER BUILDING EAVES
LOW BOLLARD LIGHTS
1 OPERATION/STORAGE AND TOILETS
2 CABIN STORAGE AND MAINTENANCE
3 GONDOLA STATION
4 TICKETS AND CUSTOMER SERVICE
QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLANS: RM020287
4.12.02
Date
Initials
CARPARK
CARPARK
330
335
Treble Cone Gondola
Base Station and Carpark Lighting Plan
17.10.02
RM/JP

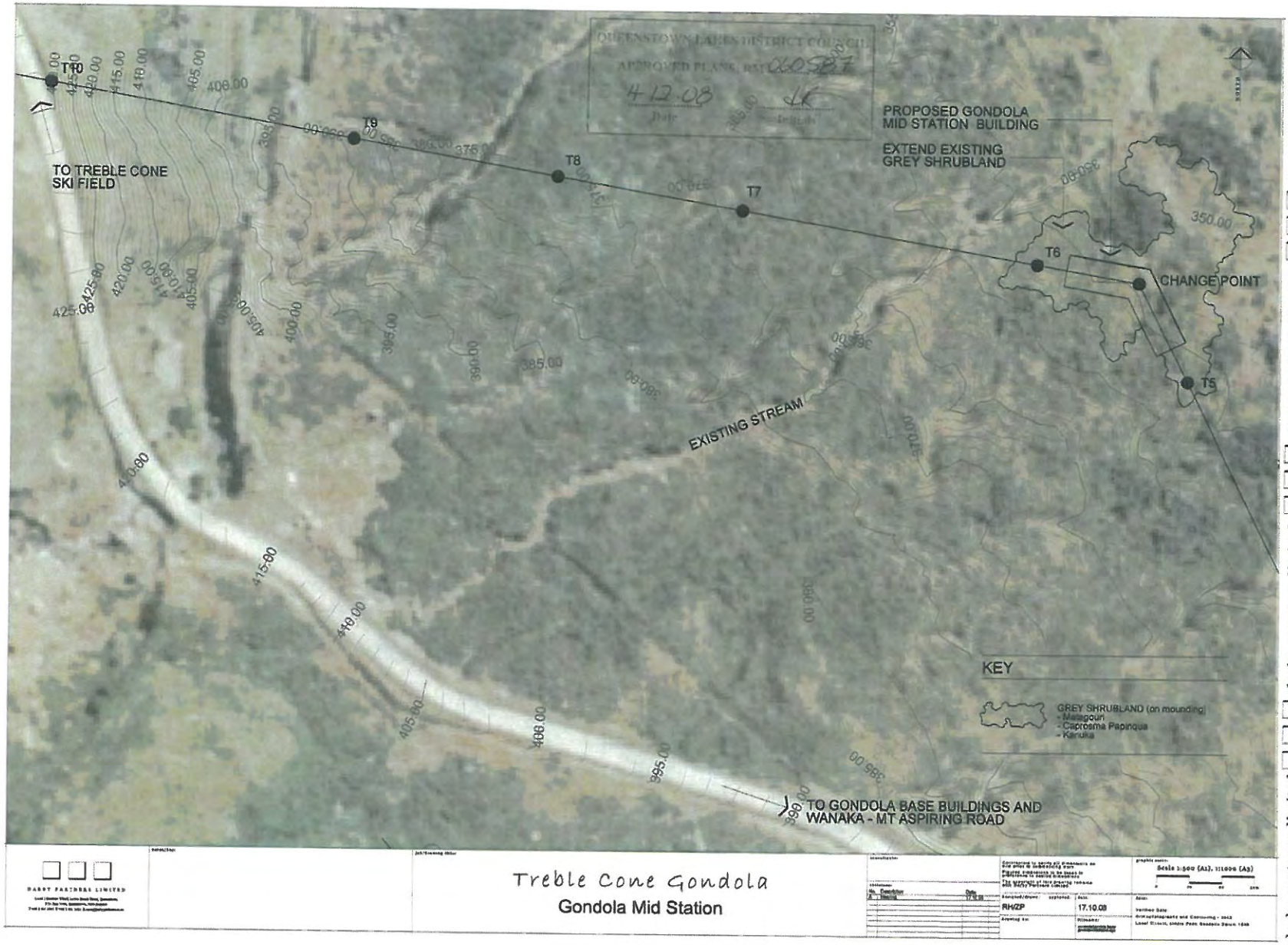
The reduction of alpine access road operational width, will not occur. The proposed rehabilitation works associated with this scenario will not occur.

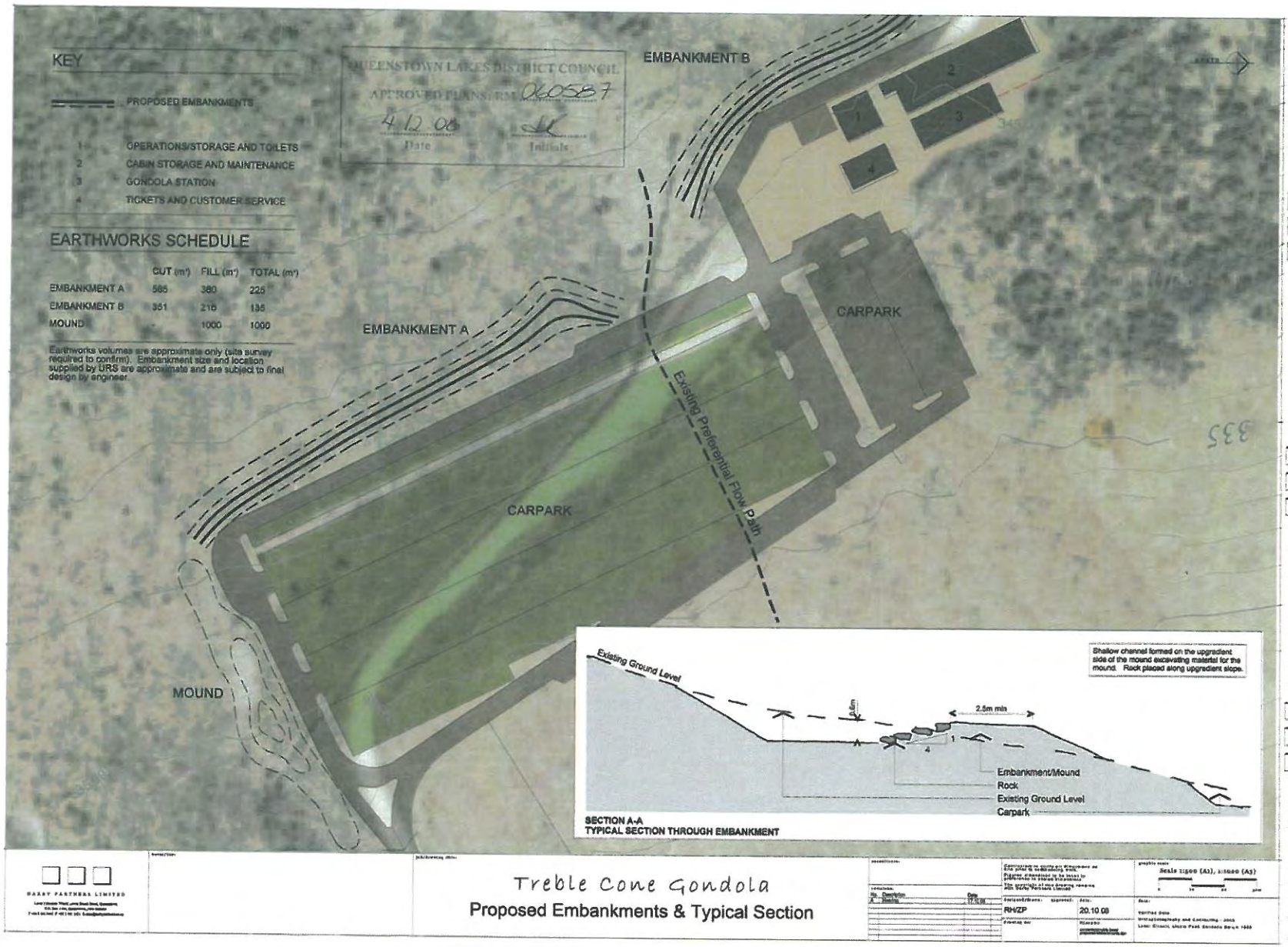
Treble Cone Gondola

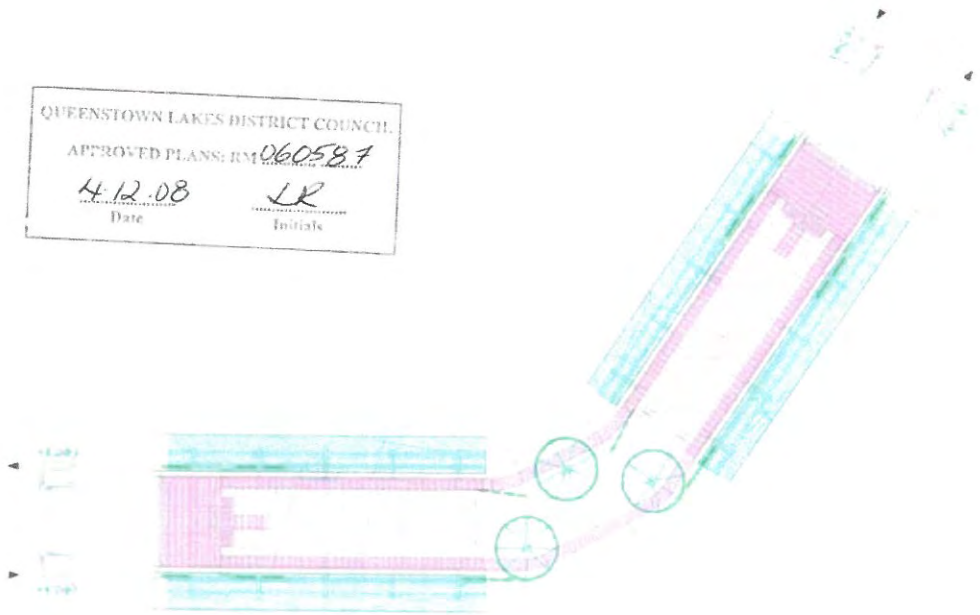
Base Station Access Road and Carpark Detail

RH/ZP 18.10.08

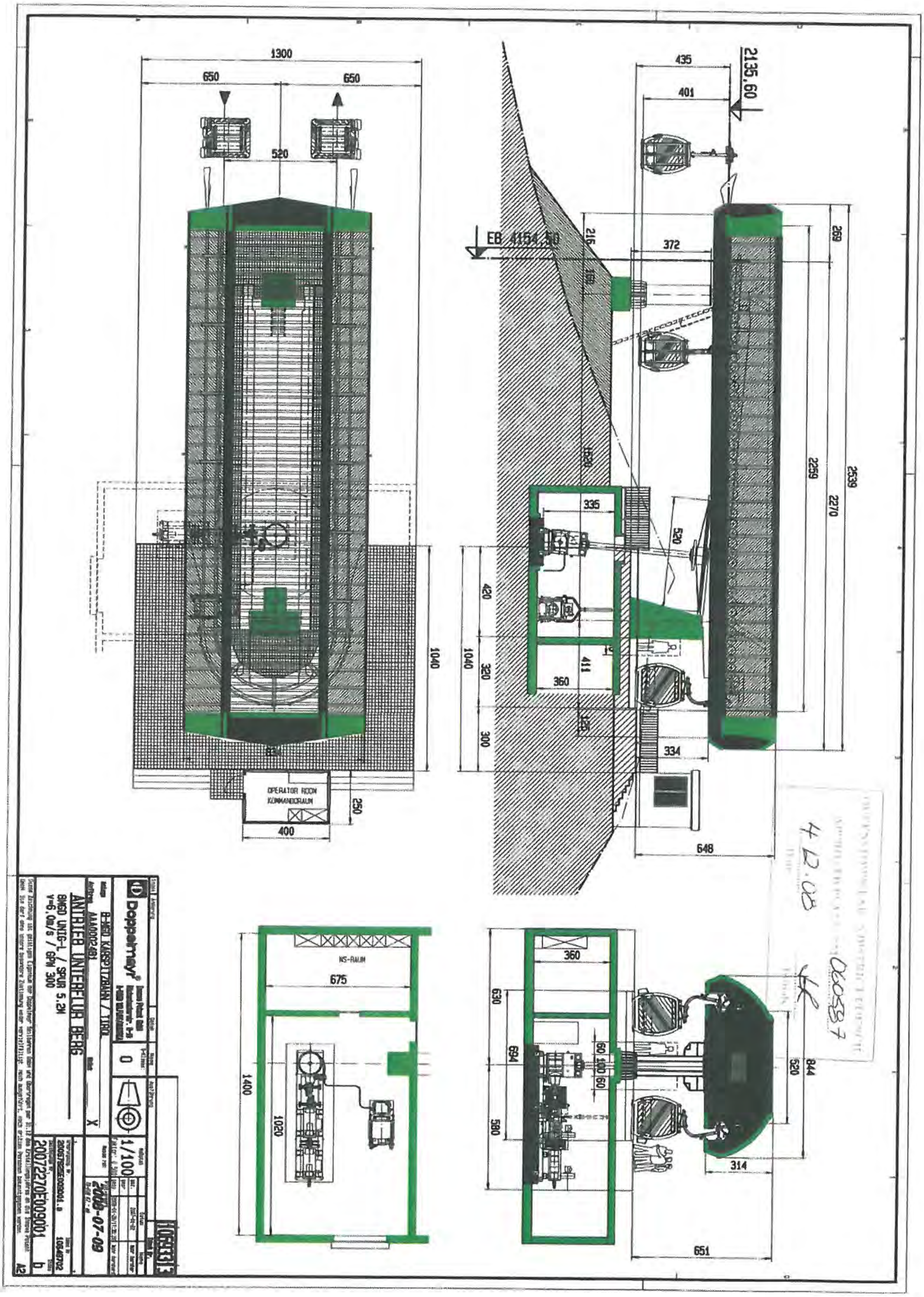
darby partners limited darby partners limited darby partners limited darby partners limited



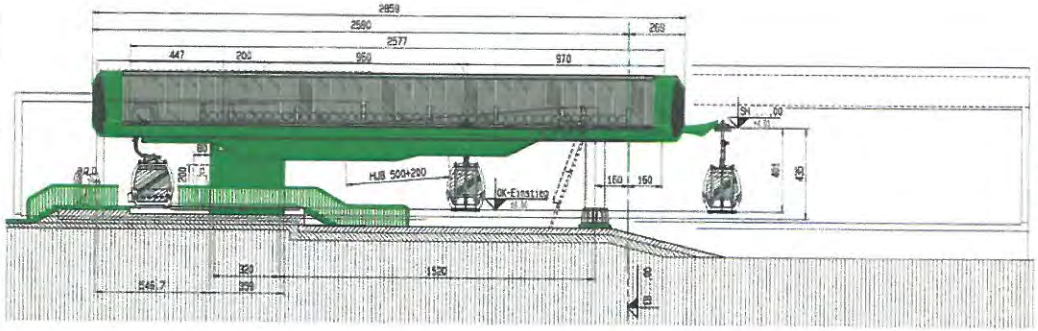


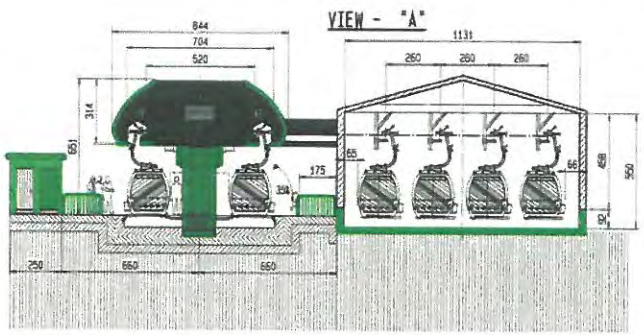


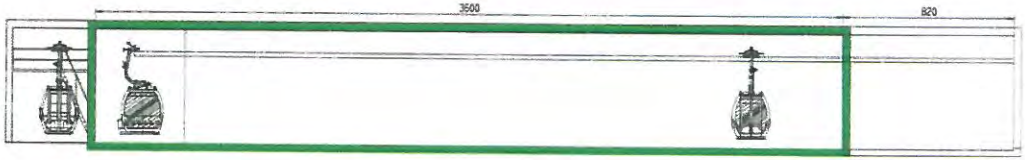
QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLANS: RM 060587
4.12.08 Date
LR Initials

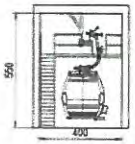


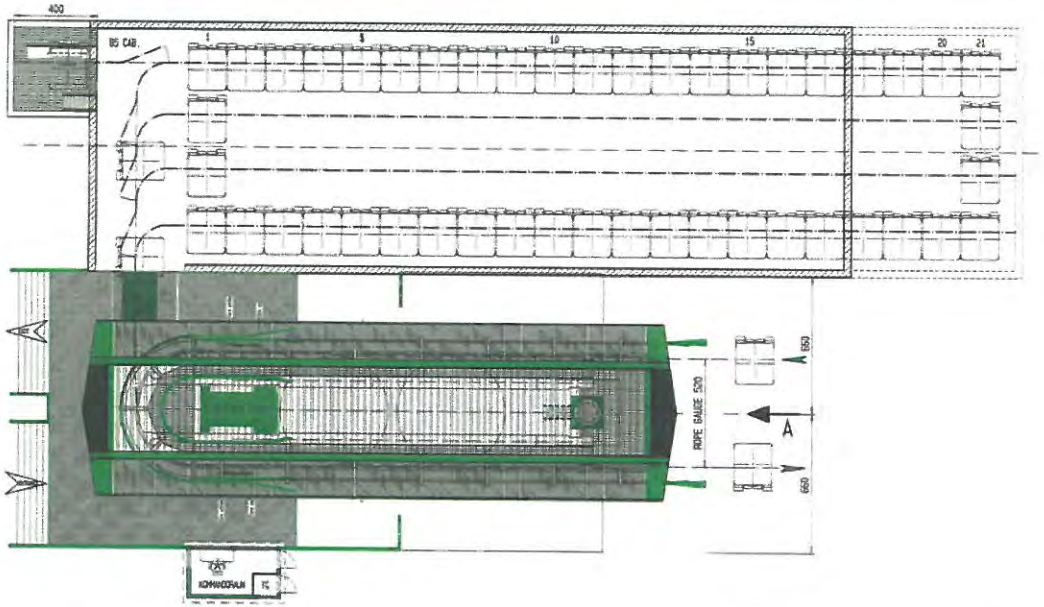
Doppelmayr
8-MGD KARSPITZBAHN / TIROL
ANTRIEB UNTERFLUR BERG
8MGD UNIG-L / SPUR 5.2M
v=6.0m/s / GPM 300
1/100
2008-07-09
OPERATOR ROOM
KOMMANDORAUM
NS-RAUM
EB 4154,50
2135,60











QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLANS RM 060587
4.12.08
Date
JK
Initials

ACHTUNG
VORABPLAN
DETAILPLANUNG
NUR MIT RÜCKSPRACHE

WARNING :
PRELIMINARY PLAN ONLY
NOT TO BE USED FOR
DETAIL PLANNING !

Doppelmayr		0	1/100
Anlage: B-MGD TC GONDOLA / NEW ZEALAND			Kg
Auftrag: MAAQ000252	Index:	X	2008-06-17

BOTTOM DRIVE TENSION
B-MGD UNIG-XL v=6.0m/s
GAUGE 5.2m / BM.85.2m

grundart 10797363
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A1

IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

CIV-2013-425-95
[2013] NZHC 1712

BETWEEN	SHOTOVER PARK LIMITED AND REMARKABLES PARK LIMITED Appellant
AND	QUEENSTOWN LAKES DISTRICT COUNCIL Respondent

CIV-2013-425-94

BETWEEN	FOODSTUFFS (SOUTH ISLAND) LIMITED Appellant
AND	QUEENSTOWN LAKES DISTRICT COUNCIL Respondent

Hearing:	24, 25 and 26 June 2013
Appearances:	R Somerville QC and S Schaepfer for Shotover Park Limited I Gordon and J B Orpin for Queenstown Central Limited N H Soper and A C Ritchie for Foodstuffs (South Island) Limited R S Cunliffe and J E MacDonald for Queenstown Lakes District Council
Judgment:	5 July 2013

JUDGMENT OF FOGARTY J

Table of Contents

Summary of judgment

[1] The appellants allege that one Environment Court failed to consider reasoning of another Environment Court on the same, or sufficiently similar, facts and issues. Justice requires that like cases should be decided the same way. That this was an error of justice and law, so that the Court who failed to consider the other should have its decision set aside.

[2] At the heart of these appeals is criticism of Judge Borthwick's division's decision to disregard the fact and merit of Judge Jackson's division's grant of resource consents to the Pak'nSave and Mitre 10 Mega proposals.

[3] The Court could have considered the reasoning of the other Court, allowing for the differences in the issues. The questions each Court were examining, however, were materially different. So different that in this case there was no duty of one to consider the reasoning of the other.

[4] The Court was not obliged to assume that the environment within PC19 contained the Pak'nSave supermarket and Mitre 10 Mega. This is because when deciding the content of a plan for the future, as distinct from the grant of a particular resource consent, the Court is not obliged to confine "environment" to the "existing environment", as defined in [84] of *Hawthorn*.[1]

[5] The appeals are dismissed.

Introduction

The objective of the operative plan

[6] The Queenstown Lakes District Council plan became fully operative in 2009. Approximately 69 hectares of rural land, zoned rural general, on the Frankton Flats adjacent to the airport is the last remaining greenfields site within the urban growth boundary of Queenstown. The operative plan has an objective:

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[1] *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA).

Objective 6 – Frankton

> ***Integrated and attractive development of the Frankton Flats locality providing for airport operations, in association with residential, recreation, retail and industrial activity while retaining and enhancing the natural landscape approach to Frankton along State Highway No. 6.***

[7] By Plan Change 19 (PC19), the Council proposes that this last remaining area of rural zoned land on the Frankton Flats yet to be rezoned for urban zoning be rezoned for urban development.

A brief chronology

YEAR	EVENT
2007	PC19 was first notified by the Council.
2009	In October 2009, hearing commissioners appointed by the Council released a decision recommending that PC19 be approved. In the same year, appeals were lodged, including by Foodstuffs.
2010	Foodstuffs also applied to the Council for resource consent for a Pak'nSave supermarket within the area of PC19.
2011	Foodstuffs' application for resource consent was declined. Cross Roads applied for resource consent for a Mitre 10 Mega adjacent to the proposed Pak'nSave supermarket.
2012	February - a division of the Environment Court, chaired by Judge Borthwick, began hearing the appeal against PC19. March – A month later, Cross Roads applied for direct referral of its resource consent to the Environment Court. 3 May - (After four sittings over four separate weeks, 19 days in all), Judge Borthwick's division reserved its decision on PC19. Later in May, another division of the Environment Court, chaired by Judge Jackson, began hearing the Foodstuffs 2010 appeal against the refusal of resource consent for the Pak'nSave supermarket, and Cross Roads' 2011 direct referral to the Environment Court for consent to a Mitre 10 Mega.

	July - Judge Jackson's division granted resource consent for the Pak'nSave supermarket,[2] and in August for the Mitre 10 Mega.[3] November - Judge Borthwick's division resumed hearing the PC19 appeal in order to hear oral argument on the relevance, if any, of Judge Jackson's division's decisions on Foodstuffs and Cross Roads. By this time both of those decisions were themselves the subject of appeal to the High Court.
2013	February - Judge Borthwick's division issued its judgment on PC19.[4] In this judgment, Judge Borthwick's division placed no weight on these consents. (This judgment is called the *PC19* decision.) On the same day that Judge Borthwick's division delivered its judgment on PC19 this High Court began hearing the appeals against the grant of the Pak'nSave and Mitre 10 Mega resource consents by Judge Jackson's division. Those appeals were successful. March - Foodstuffs, Shotover Park Limited and Remarkables Park Limited appeal Judge Borthwick's division's decision in PC19. In PC19, and so in this decision, both parties are referred to as SPL. April – The High Court allows the appeals against Judge Jackson's division's decisions, and remits the resource consent applications back to the Court, to be reconsidered against the current state of PC19.[5] June - This Court grants leave to Foodstuffs and Cross Roads to appeal the decision of this Court on the resource consents to the Court of Appeal.[6] On the same day, this Court starts hearing the appeals against Judge Borthwick's division's decision.

The allegations of error of law

[8] As already noted, there are two appeals; one by Shotover Park Limited and Remarkables Park Limited, together referred to as SPL, and the other by Foodstuffs. They take different, but complementary grounds of appeal.

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2 *Foodstuffs (South Island) Limited v Queenstown Lakes District Council* [2012] NZEnvC 135 (*Foodstuffs).*

3 *Cross Roads Properties Limited v Queenstown Lakes District Council* [2012] NZEnvC 177 (*Cross Roads*).

4 *Queenstown Airport Corporation v Queenstown Lakes District Council* [2013] NZEnvC 14 (*PC19*).

5 *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 815; *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 817.

6 *Foodstuffs (South Island) Limited & Anor v Queenstown Central Limited* [2013] NZHC 1552.

SPL's contention of error of law

[9] SPL contends that Judge Borthwick's division erred in concluding that the considerations in ss 31 and 32 of the Resource Management Act 1991 (the RMA) do not support significant weight being given to Judge Jackson's division's findings in the *Foodstuffs*[7] and *Cross Roads*[8] decisions. SPL relies on the following particular grounds:

(a) Judge Borthwick's division failed to act consistently with Judge Jackson's division in terms of relevant findings of fact and law concerning the proposed activities in activity areas E1, E2 and E3.

(b) It acted on the basis that before doing so the above decisions needed to be determinative of the PC19 proceedings (not pursued in oral argument).

(c) It failed to place weight on the findings of fact and law in terms of ss 5, 7, 31, 32 and 74 of the RMA (as found in Judge Jackson's division's decisions).

(d) It failed to put weight on Judge Jackson's division's decisions in *Foodstuffs* and *Cross Roads* in respect of the decisions version of PC19 (PC19 (DV)). This being the version of PC19 as it was when the Queenstown Lakes District Council adopted the commissioners' decision on the submissions to PC19.

(e) Judge Borthwick's division failed to consider the planning implications of the area of land being used by the activities covered by the Environment Court's decisions in *Foodstuffs* and *Cross Roads* when proposing objectives for that land.

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7 *Foodstuffs (South Island) Limited v Queenstown Lakes District Council* [2012] NZEnvC 135 (*Foodstuffs).*

8 *Cross Roads Properties Limited v Queenstown Lakes District Council* [2012] NZEnvC 177 (*Cross Roads*).

(f) Judge Borthwick's decision made factual findings that conflict with factual findings in the *Foodstuffs* and *Cross Roads* decisions, but did not explain the reasons for these conflicting findings.

(g) Judge Borthwick's division relied on the fact that some of the experts that appeared in *Foodstuffs* and *Cross Roads* did not appear before the Court, but did not acknowledge that there were many common witnesses, particularly in relation to matters of urban design and amenity.

(h) Judge Borthwick's decision failed to consider the implications of the Mitre 10 Mega and Pak'nSave decisions to its assessment under ss 31 and 32.

[10] SPL posed the question of law to be answered as:

> Did Judge Borthwick's division err in concluding that the considerations in ss 31 and 32 of the Act did not support significant weight being given to Judge Jackson's division's finding in the *Foodstuffs* and the *Cross Roads* decisions?

Activity areas E1, E2 and E3, the Eastern Access Road (EAR) and Road 2

[11] To understand the alleged error of law it is essential to explain at this point the above terms, as part of an explanation of the factual setting of this dispute within the 69 hectares of PC19.

[12] This dispute is over an area of approximately 10 hectares. This 10 hectare site is located at the intersection of two to be built roads. One is called the Eastern Access Road (EAR), which will run off State Highway 6 (SH6). In time the EAR will give access to the land south of the airport via this area.[9] SH6 is the main highway into Queenstown from Cromwell. Of its nature that state highway has few intersections in order to maintain its high level of traffic service. The EAR will itself have arterial road status. That means that the traffic engineers will have high expectations as to the quality of traffic flow along this road, and so will be inclined

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9 *PC19* at [26](d).

to take steps to minimise right hand turning on the road and the number of intersections on the road, and maybe, parking on the side(s) of the road.

[13] One planned intersection of the EAR is with Road 2. Road 2 is an important road. It is the proposed main road from the western end of PC19 to the east, to link up with the Glenda Drive industrial area to the east. It is expected to have significant traffic. Road 2 is the first intersection on the EAR after you leave SH6. As you come down the EAR you will come to the intersection with Road 2 and EAR. At that intersection, on your left and on the south side of Road 2, would be a large development containing a Pak'nSave, a Mitre 10 Mega and a significant car park in front of the two retail and trade retail businesses.

[14] From a commercial point of view, this site is an ideal location for a large supermarket and a very large hardware, outdoor supplies and garden centre business. Easily found, straight off main roads. The site is also proximate to the intended residential development immediately to the east, on the other side of the EAR. It is readily reached by the main roads from other parts of Frankton Flats and from Queenstown. It is quite understandable, to this Court, why the landowner (SPL), Foodstuffs and Cross Roads (the developer of Mitre 10 Mega) are vigorously litigating in support of this project.

[15] The location of this project does not fit the content of PC19 as released by the Council (PC19 (DV)). The Pak'nSave part of the project straddles two zones, E2 and E1. E2 is a zone which itself straddles the EAR. E2 is intended to be a "sleeve" on either side of the road. It would contain two-storey buildings, the ground floor being showroom trade related type retail, for example, a plumber merchant, with the upper floor available for residential use. Remember that to the west (closer to Queenstown) is an intended residential and commercial area. The E1 zone is a zone more dedicated to industrial activities. That is deliberately a vague sentence because the planning has not yet reached the state where the activities allowed within the zone can be set out with any great certainty. The Mitre 10 Mega is in the E1 zone, but abutting the Pak'nSave. The car parks, which customers of both businesses would share, straddle both the E1 and E2 zones.

[16] An immediate consequence of the Pak'nSave proposal is that it would eliminate part of the E2 sleeve, as the Pak'nSave operation will go right up to the boundary of the EAR. So it is, in part at least, a direct challenge to the E2 zone. This is partly because it is of a size (approximately 6,000 m^2 ground floor area (gfa)) much greater than the range of 500 to 1,000 m^2 ground floor area gfa preferred by Judge Borthwick's division.

[17] The Mitre 10 Mega, functioning as a major retail activity, presents a challenge to the notion of the E1 zone having a dominance of industrial activity. Before Judge Borthwick's division, Shotover Park Limited was recommending a new zone, E3. E3 was a zone containing the whole of the SPL property of about 40 hectares or so. In other words, four times the size of the Foodstuffs' and Mitre 10 Mega projects. This block includes those two, but is generally running on the east side of the EAR, being the side away from the direction of Queenstown and towards the Glenda Drive industrial area.

Refinement of SPL's error of law

[18] Mr Somerville QC for SPL argued that the effects on the environment of the future development of the urban form, amenity and function of the EAR and Road 2 (the proposed main road to the Glenda Drive industrial area) were critical issues for both divisions of the Environment Court, and that both divisions heard from some of the same witnesses on those issues.

[19] In this context, he argued that the deliberations of Judge Jackson's division, as revealed in its two decisions granting the resource consents for the Pak'nSave and Mitre 10 Mega, ought to have been considered by Judge Borthwick's division when it reconvened to hear argument after delivery of Judge Jackson's division's decisions, and particularly in the reasoning of its decision. I heard his contended error of law to break out into three propositions:

(1) That the reasoning and views of Judge Jackson's division on the merit of the Pak'nSave and Mitre 10 Mega projects and their associated impact/qualification of the E2 zone sleeve and the functioning of the EAR were relevant considerations which Judge Borthwick's division

was obliged by law to have regard to before it reached its decision on PC19.

(2) Either as an aspect of the first proposition or as a separate ground, the common law principle that like cases should be treated alike, required Judge Borthwick's division to consider with some care the reasoning of Judge Jackson's division, and only differ from it for good reasons.

(3) That Judge Borthwick's division failed to do this.

The response by Queenstown Lakes District Council and Queenstown Central Limited to SPL's error of law

[20] Queenstown Central Limited (QCL) is the other major property owner in the PC19 area. Its land is on the other side of the EAR, where a mix of residential and commercial uses are proposed to be located. It can be readily appreciated (the motivations are not part of the evidence) that QCL views the development of another retail centre on the other side of the road to the east as inimicable to its commercial interests to the west.

[21] Counsel for QCL and QLDC's essential response to the contended error of law by SPL was that:

(1) Judge Borthwick's division had a different function under the RMA from Judge Jackson's division. It was applying different sections of the Act, particularly ss 31, 32 and 33, so that it was asking different questions and applying different criteria than those being examined by Judge Jackson's division, which was applying ss 104 and 104D. This is notwithstanding that, as a common element to both statutory functions, Part 2 of the RMA (ss 5, 6 and 7) applied.

(2) That by the time Judge Jackson's division gave its decision the hearing on PC19 had been completed. The decision was reserved. Many of the witnesses were different. The task of Judge Borthwick's division was to resolve the conflicting evidence of the witnesses it

heard, and that it could not do this in natural justice to the parties before it by taking into account and giving weight to a different contest that took place before Judge Jackson's division, albeit over similar merit considerations of the Pak'nSave and Mitre 10 Mega proposals.

(3) While as a matter of law like for like considerations are desirable, in this case, for reasons (1) and (2) combined, Judge Borthwick's division's refusal to undertake a like for like analysis was not an error of law.

Foodstuffs' contended error of law

[22] Foodstuffs supports SPL's argument, but adds a separate point. This point relies on [84] of the Court of Appeal's decision in *Queenstown Lakes District Council v Hawthorn Estate Ltd*,[10] which provides:

> [84] In summary, we have not found, in any of the difficulties Mr Wylie has referred to, any reason to depart from the conclusion which we have reached by considering the meaning of the words used in s 104(1)(a) in their context. In our view, the word "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented. We think Fogarty J erred when he suggested that the effects of resource consents that might in future be made should be brought to account in considering the likely future state of the environment. We think the legitimate considerations should be limited to those that we have just expressed. In short, we endorse the Environment Court's approach.
>
> (Emphasis added)

[23] Counsel for Foodstuffs argued that Judge Borthwick's division erred by declining to consider the Foodstuffs resource consent as forming part of the environment, being (with the Mitre 10 Mega) resource consents which are likely to be implemented. Foodstuffs' counsel argued that [84] applies equally to consideration of applications for resource consents and consideration as to the future content of plans in an environment.

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[10] *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 (CA).

[24] Mr Soper for Foodstuffs argued that the fact that the resource consents were under appeal was irrelevant to the application of [84] of *Hawthorn*. As at the time Judge Borthwick's division reached its decision the appeals were pending only before the High Court, the resource consents were still afoot, they had not been stayed, they were likely to be implemented. Therefore, according to law, Judge Borthwick's division had no alternative but to face the reality of these consents as altering the future environment and thus being facts that had to be taken into account in the analysis of the future content of PC19. They were not, and so that is error of law.

[25] The submissions in reply from QLDC and QCL were predictably that, as a matter of fact, the appeals against those decisions had rendered it impossible to make a finding that the resource consents were likely to be implemented, and that that judgment (which was the judgment by Judge Borthwick's division) was vindicated by the appeals being allowed and the applications being sent back to Judge Jackson's division for reconsideration.

The reasoning of Judge Borthwick's division

[26] Judge Borthwick's division's decision addresses the two decisions of Judge Jackson's division under the heading:[11]

> **Part 3 Weighting to be given to recent Environment Court decisions**

[27] The reasoning opens by recording that, given the grant of the two resource consents and the fact that both decisions had been appealed, the Court had released a minute expressing the tentative view that, while the decisions were relevant and a matter to which the Court could have regard, as they were under appeal little or no weight should be attached to them.[12]

[28] Judge Borthwick's division's decision went on to note that apart from the appeal the consents could not be exercised until a third consent was available to subdivide SPL's land, and that a subdivision application had been lodged with the

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[11] *Queenstown Airport Corporation v Queenstown Lakes District Council* [2013] NZEnvC 14 (*PC19*).

[12] At [103].

Council in 2009. The Court did not regard this aspect and other consents contingent upon the upgrading of QLDC's potable water supply, storm and wastewater systems as a serious barrier to the likelihood of the consents being implemented.

[29] Judge Borthwick's division recorded Foodstuffs' submission that there was a commonality of issues, and that for this reason Judge Borthwick's division should give significant weight to the factual findings, particularly in *Foodstuffs*, concerning (a) landscape, (b) industrial land supply, (c) the amenity of the neighbourhood – particularly on the EAR and Road 2, and (d) urban structure. It recorded the submission by Foodstuffs that these same issues are to be considered by this Court under ss 5, 7, 31 and 74 of the RMA.

[30] It is then appropriate to set out a number of paragraphs of Judge Borthwick's division's Part 3 reasoning in full:

> [114] Further, SPL and Foodstuffs submit decisions made on the following topics should be accorded significant weight:
>
> (a) the court's findings in *Foodstuffs v QLDC* at [193, 194, 224, 254 and 283] in relation to AA-C2, assuming this Activity Area were to extend to the EAR as proposed by SPL in the PC19 proceedings and opposed by QLDC/QCL;
>
> (b) the court's findings in *Foodstuffs v QLDC* at [192] concerning the sleeving of retail activity along the EAR if car-parking is not allowed as proposed by SPL in the PC19 proceedings and opposed by QLDC/QCL; and.
>
> (c) the court's findings in *Cross Roads Properties Ltd v QLDC* at [176] in relation to a "trade retail centre" south of Road 2.
>
> [115] SPL, citing a line of case authority, submits that while this court is not bound by decisions of other Environment Court divisions, and is free to consider each case on its own facts and merits, the court is entitled to take into account decisions made in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* on similar facts. When deciding whether to consider the decision of another division, and the weight to be given to the findings made therein, this court must act reasonably and rationally. Failure to do so may be regarded as giving rise or contributing to irrationality in the result of the process. If this court were to come to contrary findings of fact or law than *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* then we should give reasons for our contrary decisions.
>
> [116] Disputing the District Council's submission that an appeal or direct referral of a resource consent application is more narrowly focused than these plan change proceedings, SPL submits the Environment Court in

Foodstuffs v QLDC and *Cross Roads Properties Ltd v QLDC* addressed the "very issues" to be determined on the plan change appeals including sections 31(l)(a), 32(3) and (4), 74(2) and Part 2 of the Act; there are no gaps in the analysis or evaluation of the relevant evidence; the Environment Court's decisions address the relevant potential adverse effects of land and the objectives and policies of the operative District Plan and PC19(DV).

[117] Foodstuffs submits that this court has two options, either:

(a) give "adequate" weight to [the] Environment Court's decision to grant consent to Foodstuffs; or

(b) await the outcome of the High Court proceedings.

...

The issues

[121] While submitting that the decisions of *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* are relevant (and we agree that they are), SPL and Foodstuffs gave scant regard to the *relevance* of the decisions to these proceedings. In the end two themes emerged:

(a) whether the grants of consent are relevant to an assessment of the environment?

(b) is the implementation of the consents relevant to an evaluation under section 31(1)(a) and section 32(3) generally and in particular, the efficiency and effectiveness of policies, rules and other methods which may anticipate a different environmental outcome?

Issue: Whether the grants of consent are relevant to an assessment of the environment?

[122] In a plan change proceeding, a grant of consent may be relevant to an assessment of the environment, which we find would include the future environment as it may be modified by the implementation of resource consents held at the time the plan change request is determined and in circumstances where those consents are likely to be implemented. Unlike *Hawthorn Estate Ltd* (cited to us by SPL and Foodstuffs) this court is not concerned with how the environment may be modified by the utilisation of rights to carry out permitted activities under the District Plan. Indeed the proposed modification of the existing environment is the subject matter of these plan change proceedings. *Hawthorn Estate Ltd* is therefore distinguishable on its facts.

[123] The likelihood of the consents being implemented is a question of fact and this is difficult to determine, but not because these particular consents are contingent upon the gaining of other consents and approvals. (While this will take time we were told of no compelling reason why these would not ultimately be forthcoming).

[124] Rather, the question is difficult because it involves speculation as to the outcome of the High Court appeals. Subject to the High Court's

decisions, it may be open to the other division of the Environment Court to confirm the grants of consent with or without modification or (possibly) to reject the applications. Given this, we are not in a position to determine the likelihood that these consents will be implemented.

[125] But even if we are wrong in finding this, any consent granted to the Foodstuffs and Cross Roads Properties Ltd may be exercised. This is so notwithstanding that the underlying zoning does not permit the activities authorised (and after all it was on this basis that they were granted). While Foodstuffs (South Island) Ltd and Cross Roads Properties Ltd may consider it preferable that the underlying zoning is enabling of the consents held, this would not preclude the exercise of their consents (see section 9 of the Act).

Issue: Is the implementation of the consents relevant to an evaluation under section 31(l)(a) and section 32(3) generally, and in particular the efficiency and effectiveness of policies, rules and other methods which may anticipate a different environmental outcome?

[126] The consideration of unimplemented resource consents as forming part of the future environment is important when we come to consider the integrated management of the effects of use, development or protection of land. Section 31(l)(a) provides:

> Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
>
> (a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.

The resource consents are also relevant under section 32 (which we summarised earlier).

[127] However, for the following reasons we reject Foodstuffs and SPL submission that the Environment Court findings (and obiter) are either relevant to issues for determination before this court and secondly, are matters to which significant weight attaches:

(a) the court in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* does not purport to determine any issue in these proceedings;

(b) the "factual findings" relied upon by SPL and Foodstuffs are conclusions given in their own policy context; namely PC19(DV);

(c) in contrast with *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC*, the evidence before this court, from largely different witnesses, sought different policy outcomes from PC19(DV);

(d) the issues considered and factual findings made in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* are not the same as in these proceedings albeit that they may

be grouped under the same topic headings with reference to sections 5, 7, 31 and 74; and

(e) to the extent that the matters at [114] above address relief sought by the parties in these proceedings, and are not provisions in PC19(DV), the comments are obiter.

[128] We find that there is nothing *inevitable* (as suggested) about the grant of consents to Foodstuffs and Cross Road Properties Ltd and the consequential approval of AA-E3 in these proceedings. The AA-E3 zone is enabling of a wide range of activities, including a supermarket and trade retailing. The Environment Court in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* did not consider SPL's proposed AA-E3 zone.

[129] We have concluded that sections 31 and 32 considerations, in particular the efficiency and effectiveness of policies, rules and methods, do not (in this case) support a submission that significant weight should be given to the Environment Court's findings. Firstly, and for reasons that we give later, we have determined that the land east and west of the EAR should be subject to its own ODP process. Secondly, while there are differences in the range of activities provided for within the different sub-zones supported by QCL/QLDC and by SPL, and differences also in the road frontage controls proposed by these parties, not dissimilar outcomes in terms of achieving an acceptable urban design response would potentially arise on the balance of the AA-E2 (being the land not subject to Foodstuffs' consent application).

[130] The artifice in the SPL and Foodstuffs submission is this; in *Cross Roads Properties Ltd v QLDC* the court also found, for urban design and landscape reasons, large format trade related retail should be confined to the south of Road 2, whereas SPL in these proceedings sought a zoning enabling of these activities both north and south of the Road. We are not prepared to alter the weight given to different findings (obiter) of the Environment Court in *Foodstuffs v QLDC* and *Cross Roads Properties Ltd v QLDC* to suit SPL and Foodstuffs. If we are to give significant weight to the factual findings made in *Cross Roads Properties Ltd v QLDC* then we would partially reject AA-E3 (and reject AA-E4) as they provide for these activities north of Road 2. That is not an outcome SPL or Foodstuffs would support.

Outcome

[131] While we find that the Environment Court decisions *Foodstuffs (South Island) Ltd v QLDC* and *Cross Roads Properties Ltd v QLDC* are relevant, we are unable to assess whether the consents (if upheld) will be implemented and therefore decline to consider the consents as forming part of the environment.

[132] We decline to defer our Interim Decision pending the release of the High Court's decisions on the consent appeals as the High Court decisions are not, in our view, determinative of PC 19.

SPL's criticism of Judge Borthwick's division's reasoning

[31] Mr Somerville QC noted that Judge Borthwick's division's summary of his client's argument, at [115], is accurate. He then went on to argue that the Court did not identify any findings in either the *Foodstuffs* or the *Cross Roads* decisions as being of relevance. Despite having listed the topics in [114]. Rather, Mr Somerville QC submitted that Chapter 3 of the decision focuses almost exclusively on the *Hawthorn* [84] considerations, not on the decision-making process, the findings or the reasoning in the *Foodstuffs* and *Cross Roads* decisions.

[32] Judge Borthwick's division heard from five expert witnesses who had also given evidence in the Foodstuffs and Cross Roads proceedings. Mr Barrett-Boyes gave urban design evidence in both the Foodstuffs and Cross Roads hearings. Mr Brewer gave urban design evidence in the Cross Roads hearing. Mr Heath gave retail evidence in the Cross Roads hearing. Mr Penny gave transport evidence in the Foodstuffs hearing; and Mr Dewe gave planning evidence in the Foodstuffs hearing. All of these witnesses gave evidence at the PC19 hearing.

[33] Mr Somerville QC submitted that notwithstanding the observation of Judge Borthwick's division, that the witnesses were largely different,[13] in terms of urban design issues and traffic evidence there were issues common to both the PC19 decision and the *Foodstuffs* and *Cross Roads* decisions. During the Foodstuffs and Cross Roads hearings, Judge Jackson's division heard from two urban design witnesses who gave evidence at the PC19 hearing (Messrs Barrett-Boyes and Brewer) and two who did not (Messrs Teesdale and Williams). In terms of traffic experts, the Court in the Foodstuffs and Cross Roads hearings had evidence from Mr Penny and comments from Dr Turner, both of whom gave evidence at the PC19 hearing.

[34] In the *Foodstuffs* decision the issue of street frontage controls along the EAR was considered by the Court, which found that the proposed Pak'nSave development

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13 *PC19* at [127].

was "complementary and sympathetic to Road 2 to the north, the EAR to the west, and the proposed Mega Mitre 10 to the east".[14]

[35] Mr Cunliffe for QLDC pointed out immediately that this finding was under the heading "Conclusions as to effects on landscape".

[36] Under the heading of "*Street frontage, presence and amenity*", after detailed consideration of evidence of Mr Teesdale and Mr Barrett-Boyes, and having noted that the location of the EAR is not settled, Judge Jackson's division commented with apparent approval of Mr Teesdale's opinion:[15]

> ... it is likely that the carparking and main entrances to these commercial buildings [in the sleeves alongside each side of the EAR] will either be behind or at the side because of the nature of the road.

The Court went on:[16]

> ... That is important evidence because it means that the "sleeve" concept behind the E2 activity area is unlikely to work in practice – the road is the wrong design for the concept and the activity in it is mainly vehicular, as Mr Barrett-Boyes agreed when the court put that to him. The EAR is, after all, proposed to be an arterial road.

[37] Mr Somerville QC argued that this was a very important piece of evidence and conclusion, both of which should have been taken into account by Judge Borthwick's division when they reconvened.

[38] Mr Somerville QC also relied upon findings by the Court in the *Foodstuffs* judgment that the proposed land use achieved integration and met the purpose of the Act. He relied on three paragraphs from the *Foodstuffs* decision:

> **4.5 Integrated management/comprehensive development**
>
> <u>Integration with surrounding land uses and zones</u>
>
> [239] The first important aspect of integrated management is identified by objective 12. It is to ensure that the Frankton Flats B zone is integrated with the surrounding uses and other Queenstown urban areas. There was little or no evidence to suggest that was not being achieved, as the joint statement of

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14 *Foodstuffs* at [91].
15 At [192].
16 At [192].

the traffic engineers/transportation managers (already referred to) establishes.

[240] Greater emphasis was placed by QCL and the council on an alleged failure to "comprehensively" develop Lot 20 in conjunction with surrounding land. However, analysis of the evidence of Foodstuffs' witnesses does not bear that out. For example, the joint statement of the transportation engineers records their agreement:

- ... that the Glenda Drive driveway upgrade project including the Eastern Access Road and Road 2, will be able to proceed as programmed during the 2012-13 construction season without requiring a decision on Plan Change 19.

- ... that the pedestrian facilities provided for access into and within the proposed sites will provide a good level of service. It is agreed that the pedestrian crossings of the right-of-way are adequate and do not provide the "dead end" suggested by Mr Denney.

- it does not interfere with the location and layout of the EAR and Road 2, thus connecting streets efficiently;

- it enables mixed uses within the Frankton Flats B zone while providing for travel demand management;

- it ensures that land use and public access and transport is integrated

...

5. Outcome

5.1 Under the operative district plan

[280] We have no difficulty with granting a resource consent under the operative district plan. Despite the fact that the area is zoned Rural General, we have found that it is surrounded by urban activities and falls into the third (lowest) of the district's landscape categories. Further, the rural objectives in Chapter 5 of the operative district plan are replaced by a specific urban growth objective in Chapter 4. The site is in an area (Frankton Flats) which is clearly marked for urban development under objective (4.9.3)6 of that plan. All potential adverse effects have been sufficiently mitigated so that the important district-wide objectives as to landscape and protection of airport functioning (by avoiding reverse sensitivity effects) are met. In regard to the latter, we note that the Queenstown Airport Corporation was not even a party to the proceedings. The proposal is integrated into the roading network (specifically the EAR and Road 2) as required by the first policy. Space for industrial activities in any expansion of the Glenda Drive zone is left to the east and south of the site and the proposal will help buffer those activities from the residential area also aimed for in the Frankton Flats objective. There would be a greater benefit under section 5 of the Act by granting consent, than there would from refusing it.

[39] In the *Cross Roads* judgment, Judge Jackson's division found large format retail (LFR) (known more colloquially as "big box retail") south of Road 2 is probably desirable in urban design terms and for landscape reasons.[17] As to integration, the same Court found:[18]

> [77] The residential growth objective seeks residential growth sufficient to meet the district's needs. The first implementing policy is to enable "... urban consolidation ... where appropriate", and the second is to encourage new commercial development (*inter alia*) which " ... is imaginative ... urban design and ... integrat[es] different activities". The first is met because, as we shall see shortly, the later objective 6 expressly contemplates urban development of the Frankton Flats. As for the second policy, while nobody could claim that the trade retail store building is particularly imaginative, the policy is merely encouraging, not directive. Further, the proposal does integrate different activities in several ways: it contains several different types of activities (as defined in the district plan and discussed earlier) on the site itself; as a trade retail operation it will supply to local industry; and it would integrate car parking with the proposed Pak 'N Save on the adjacent land to the west; and finally (but importantly) it fits into the now nearly fixed road network (the EAR and Road 2) in this corner of the Frankton Flats...

[40] Judge Jackson's division was comfortable about inserting trade retail uses over the E2 and E1 zones, because it knew that the QLDC then appeared to support (though QCL opposed) the introduction of a "trade related retail overlay" diametrically opposite from the proposed Pak'nSave and Mitre 10 Mega, on land enclosed by the EAR, SH6 and Road 2.[19]

[41] So Judge Jackson's division in *Cross Roads* saw themselves as resolving an issue as to whether trade related retail should be placed north or south of Road 2, and concluded:

> [175] ...This decision would determine that large format trade retail is south of Road 2 rather than north. As it happens, we have cogent evidence that is probably desirable in urban design terms, and for landscape reasons.
>
> [176] However, in the bigger picture for Frankton Flats (or at least the "B" zone) introduction of a trade retail centre either side of Road 2 (if that occurs) will not relevantly interfere with the development of a village/town centre further west. That is because "Town Centres are pedestrian orientated, and it is necessary to ensure these attractive environments are not degraded by retail activities that are incompatible with their amenities."

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17 *Cross Roads* at [175].
18 At [77].
19 *Cross Roads* at [175].

[42] As I will discuss further, one of the criticisms of this reasoning is that Judge Jackson's Court was embarking on planning, rather than resolving a resource consent application.

[43] Earlier in the *Foodstuffs'* decision the Court appeared to remind itself that it was not engaged in planning:

> [45] We remind ourselves here that while we heard some evidence about possible outcomes of the hearing on PC19(DV) we must strictly apply the objectives, policies and rules in the decisions version itself. We must not speculate on any witness' (in this proceeding) improvements on PC19(DV) and/or with one possible exception - when predicting the reasonably foreseeable future environment - whether this is likely to be accepted by the (other division of) the Environment Court. We were also advised by the parties that, apart from the location of the EAR, all issues about PC19(DV) are still open for the court that heard the appeals on it to decide. Obviously that will affect the weight to be given to PC19(DV) if the proposal passes the gateway tests and we get to consider the substantive merits of the proposal (and if questions of weight arise).

[44] In *Cross Roads*, it is apparent that Judge Jackson's division was aware that its rulings in [175] and [176] were intruding into planning issues as to the content of PC19, because in the next paragraph they explain why they are doing this:[20]

> [177] A further factor, which did not apply in the Foodstuffs case, is that this is a direct referral to the Environment Court. One of the principal points of the procedure is to have a speedy determination of the matter brought before the court. That would not be achieved if we adjourned this matter until 2013 while the appeals on PC19 are resolved. Further, we bear in mind that if the council had not agreed to the referral of CRPL' s application to the Environment Court, it would have had strict time limits within which to hear and notify the decision. Given that the direct referral was introduced in 2009 to streamline processes, it would be unusual if Parliament intended applicants or the Environment Court to wait until a plan change is resolved, when the consent authority would have been obliged to proceed. We consider this is a strong indicator that we should decide now rather than wait.

[45] Mr Somerville QC submitted that Judge Borthwick's division's decision, rejecting the location of the Pak'nSave and Mitre 10 Mega, was directly contrary to the findings in Judge Jackson's division's *Foodstuffs* decision that the proposed development was:[21]

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[20] At [177].
[21] *Foodstuffs* at [91].

> ... complementary and sympathetic to Road 2 to the north, the EAR to the west, and the proposed Mega Mitre 10 to the east.

Further, that the finding in the *PC19* decision, Judge Borthwick's division, that larger retail units are unlikely to give rise to a high quality landscape was contrary to the findings in the *Foodstuffs* and *Cross Roads* decisions, that the proposals achieve integration and meet the purpose of the RMA. The *PC19* decision is also inconsistent with the findings in the *Cross Roads* decision, that large format retail south of Road 2 is probably desirable in urban terms and for landscape reasons.

[46] I agree. The *PC19* decision favoured leaving the EAR in place. That finding is directly contrary to the finding in *Foodstuffs*, that the sleeving concept would not work in practice. Judge Borthwick's division found the activity area E2 (the sleeve) was:[22]

> ... the most appropriate way to achieve the purpose of the Act.

[47] It might also be noted that Judge Borthwick's division had at least two other reasons why it did not favour the Pak'nSave and the Mitre 10 Mega. They were: first, that they did not want to have another "town centre" in the PC19 area:

> [555] We conclude that AA-E3 would most likely develop as a fourth commercial centre and that its policies are strongly enabling of this result. However, there is nothing in its provisions that would ensure a mix of uses eventuates. At this location the Activity Area would be inconsistent with the District Council's policies which seek to keep the urban area compact (Section: District Wide Issues, clause 4.5.3, objective 1 and policies 1.1 and 1.2). We also find that the unmet growth demand in retail activities (such that there is) should be located in AA-E2 and in a manner that complements and (reinforces the form and function of AA-Cl and that this would be the most appropriate way to. achieve the purpose of the Act.
>
> [556] And we find the QLDC's Trade Retail Overlay would have the same result.

[48] The context needs to be kept in mind. On the west side of the EAR there was proposed to be a village with a mix of residence, retail and commercial uses. Judge Borthwick's division did not want a fourth commercial centre. Nearby, already established, is the Remarkables Park town centre. A second town centre was planned in PC19, west of the EAR. This Court is not sure what counts as the fourth – it could

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[22] *PC19* at [524].

be the existing commercial activities at Frankton, at the major intersection on SH6, accessing the airport and the Frankton suburb, the extension of the Remarkables centre in PC35, or the main town centre, downtown. It appears to this Court that Judge Borthwick's division was taking judicial notice that a large supermarket and a Mitre 10 Mega, east of the EAR, whether north or south of Road 2, would inevitably attract a very large number of shoppers, which fact would in turn attract efforts by other retail businesses to locate in the same area, and thus put pressure to create by way of a series of resource consents another town centre of retail activity.

[49] Second, that the QLDC plan already provides for large format retail, and specifically provides for it nearby in the Remarkables Park Scheme enabled by Plan Change 34:[23]

> [26] By way of further context it is relevant to note the following, additional features in the wider environment:
>
> ...
>
> (e) the approximately 150 hectares Remarkables Park Special Zone (RPZ)located on the southern side of Queenstown Airport adjoining the Kawarau River. RPZ is being developed progressively for a mix of urban activities including residential, visitor accommodation, recreational, community, education, commercial and retail activities in accordance with a structure plan. The RPZ contains the largest shopping centre outside the Queenstown central business district (CBD) with a further 30,000m2 retail development enabled by the recently operative PC34.

How Judge Borthwick's division could have responded

[50] In addition to the reasoning of Judge Borthwick's division's decision in Part 3, I agree that Judge Borthwick's division could have more directly engaged upon the reasoning of Judge Jackson's division. But it did not. In this respect it did decline the opportunity to directly consider whether or not to adopt the analysis and the conclusions of Judge Jackson's division as to the practicality of "sleeving", and the suitability of the proposed Pak'nSave and Mitre 10 Mega to the road network, to resolve the introduction of trade related retail east of the EAR, in the PC19, and either north or south of Road 2.

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[23] At [26](e).

[51] Before turning to a closer examination as to whether this failure was an error of law, it is important to note, before we leave the findings of the respective Courts, some of the phrasing of the conclusions of the Courts.

[52] The finding in [91] of *Foodstuffs* is that:

> ...the proposed development is complementary and sympathetic to Road 2 to the north, the EAR to the west, and the proposed Mega Mitre 10 to the east. (Emphasis added)

The finding as to the sleeve is that:[24]

> The "sleeve" concept behind the E2 activity area is unlikely to work in practice... (Emphasis added)

The finding as to amenities was:[25]

> ...there is not much in it aesthetically.

And:[26]

> ...the effects on the amenities of the likely future environment in general and street amenities in particular will not be adverse.

As to urban design, it was:[27]

> We are satisfied that overall a high standard of urban design has been achieved...

[53] This can be contrasted with the phrasing in the *PC19* decision, where Judge Borthwick's division's reasoning found that the E2 zone was:[28]

> ... the most appropriate way to achieve the purpose of the Act.
>
> (Emphasis added)

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24 *Foodstuffs* at [192].
25 At [194].
26 At [195].
27 At [202].
28 *PC19* at [524].

Resolution of the SPL appeal issues

Judge Borthwick's division's statutory task

[54] Judge Borthwick's division was exercising functions given to territorial authorities under the Act in ss 31 and 32, particularly ss 31(1)(a) and 32(3) which provide:

> **31 Functions of territorial authorities under this Act**
>
> (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
>
> (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
>
> **32 Consideration of alternatives, benefits, and costs**
>
> ...
>
> (3) An evaluation must examine—
>
> (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
>
> (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.
>
> (Emphasis added)

[55] Judge Borthwick's division was addressing the content of a scheme change in respect of the Frankton Flats, which change itself had to be fitted into the goal of achieving integrated management of the natural and physical resources of the QLDC's district. See s 31(a). This means that this division of the Environment Court was obliged by law to have a district-wide perspective addressing the function of PC19 in meeting the needs of the whole of the district, as well as a narrower focus of a good utilisation of the land within the bounds of PC19, undeveloped rural land to be urbanised.

[56] The RMA provisions do not provide only one right answer as to how to do that. Any number of solutions might achieve appropriate integrated management.

[57] The RMA objective is "the most appropriate way" to achieve the purposes of this Act. See above, ss 32(3)(a) and (b). The phrase "the most appropriate" acknowledges that there can be more than one appropriate way to achieve the purpose of the Act. The task of the territorial authority is to select the most appropriate way, the one it considers to be the best. That is inherently a decision, upon which reasonable persons can differ, known to lawyers as a question of degree. That task passed to Judge Borthwick's division on appeal. That task was never within the jurisdiction of Judge Jackson's division.

[58] This task of the territorial authority is taken on by the Environment Court because the statute gives a right of appeal to the Environment Court from judgments by the territorial authorities as to this matter. The Environment Court is not given the power to initiate any new plan change.

[59] That is why we read Judge Borthwick's division applying the standard "the most appropriate way" in its deliberations. It is also why we do not see Judge Jackson's division applying that standard.

Judge Jackson's division's statutory task

[60] Judge Jackson's division was applying two different sections of the RMA, ss 104D and 104. It is part of the scheme of the RMA that resource consents are not required if activities are permitted. They are only required for activities which are not permitted. This distinction between permitted activities and then a range of activities which have varying difficulties of being approved is a policy which dates back to the predecessor Act, the Town and Country Planning Act 1977, and before that to the Town and Country Planning Act 1953. Under the 1977 Act, one had permitted uses, controlled uses, conditional uses and specified departures.

[61] Under the RMA there is a broader range: permitted activities, controlled activities, restricted discretionary activities, discretionary activities and non-complying activities and prohibited activities.[29]

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[29] Section 77A(2).

[62] In common with all of the statutes, and particularly under the RMA, different tests apply depending on the classification of the activity under the operative and any proposed applicable plans.[30]

[63] All applications for resource consent have to be examined against the state of the plans as they are at the time the application is being considered. As Judge Jackson's division reminded itself in [45] of the *Foodstuffs* decision, set out above.

[64] But as we have seen, in the exigencies of the long delays in the *Cross Roads* decision, at [177], Judge Jackson's division consciously went beyond the normal bounds of restraint into resolving what were really planning issues as to whether there should be any trade related retail activity east of the EAR, and, if so, where? These being live issues before another division of the Environment Court, as Judge Jackson's division knew at the time they were considering the resource consent.

[65] In this regard, counsel for QLDC submitted that Judge Jackson's division was taking into account irrelevant considerations under s 104 when it took into account submissions to amend proposed plan PC19 (DV), which were a matter for evaluation and judgment by the territorial authority under ss 31 and 32, and on appeal to the Environment Court, but which were completely outside the jurisdiction given to a consent authority under s 104, or on appeal therefrom to the Environment Court.

[66] This context is not directly relevant to the question of whether there is any error of law on the part of Judge Borthwick's division. But is, in my view, a partial explanation of the reaction of Judge Borthwick's division to Judge Jackson's division's evaluations of planning issues that were placed before Judge Borthwick's division, where it called those views "obiter".[31]

The law - like for like – a relevant/mandatory consideration

[67] The critical issue in this appeal is whether or not Judge Borthwick's division was obliged by law to take into account Judge Jackson's division's examination of these common issues.

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30 Sections 104, 104A-D.
31 See *PC19* at [127] and [130].

[68] Whether or not Judge Borthwick's division had to take into account these common issues is a novel question. Counsel before me agreed that nothing like this set of circumstances has arisen before in New Zealand in any of the authorities. Counsel were not able to find authorities from any other jurisdiction which might assist the Court. The problem appears to be a consequence of two different divisions of the one Court addressing the same subject matter contemporaneously.

[69] It is necessary then to go back to first principles to place Mr Somerville QC's argument, that Judge Borthwick's division was obliged to consider the analysis and conclusions of Judge Jackson's division.

[70] Judge Borthwick's division was exercising a statutory discretion, given in ss 31 and 32, as to the content of PC19, albeit on appeal from the territorial authority's exercise of a statutory discretion. Its decision is now on appeal, limited to error of law. The principles guiding the exercise of statutory discretion do not differ depending on whether the exercise is being judicially reviewed, or heard on appeal.[32]

[71] The classic statement as to what considerations are relevant and mandatory is in the judgment of Lord Greene, Master of the Rolls, in *Wednesbury*[33] as set out by the Privy Council in the case of *Mercury Energy Limited v Electricity Corporation of New Zealand Ltd*.[34] Lord Greene MR in the *Wednesbury* case said at 228-230 that the Courts:

> ... can only interfere with an act of executive authority if it be shown that the authority has contravened the law. It is for those who assert that the local authority has contravened the law to establish that proposition. .. It is not to be assumed prima facie that responsible bodies like the local authority in this case will exceed their powers; but the court, whenever it is alleged that the local authority have contravened the law, must not substitute itself for that authority. It is only concerned with seeing whether or not the proposition is made good. When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged

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32 *Peters v Davison* [1999] 2 NZLR 164 (CA) at [181].

33 *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223 (the *Wednesbury* case).

34 *Mercury Energy Ltd v Electricity Corporation of New Zealand Ltd* [1994] 2 NZLR 385 at 389. The same passage is cited by Cooke J in *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172 (CA) at 181-182. *Countdown Properties (Northlands) Ltd v Dunedin City* [1994] NZRMA 145 (HC) at 153 is to the same effect and draws obviously from *Wednesbury*.

> in the courts in a strictly limited class of case. ... it must always be remembered that the court is not a court of appeal. ... the law recognizes certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion ... is an absolute one and cannot be questioned in any court of law.
>
> What then are those principles? They are well understood. ... The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters. ...

[72] These principles are extended in New Zealand by the judgment of Cooke J, as he was, in *CREEDNZ Inc v Governor-General*.[35] In that decision, Cooke J distinguished between mandatory considerations that have to be taken into account, and a consideration which can be taken into account but which is not mandatory. The context of that case was judicial review of an administrative order, called the National Development Order, applying the National Development Act 1979 to give approval to the construction of the aluminium smelter at Aramoana. One of the arguments before the Court was that the Government was determined to give authority for the go-ahead for the Aramoana smelter, even though the project would have dire effects on the New Zealand economy. When analysing what considerations were taken into account by the Ministers (and there was scant material), Cooke J said:[36]

> A point about the legal principle invoked by the plaintiffs should be underlined. It is a familiar principle, commonly accompanied by citation of a passage in the judgment of Lord Greene MR in [Wednesbury Corporation]: "If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters."

He then also cites in support Lord Diplock in *Secretary of State for Education and Science v Tameside Borough Council*.[37] Then Cooke J goes on:[38]

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35 *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172 (CA).

36 At 182.

37 *Secretary of State for Education and Science v Tameside Borough Council* [1977] AC 1014 at 1065.

38 *CREEDNZ Inc v Governor- General* [1981] 1 NZLR 172 (CA) at 182-183.

> What has to be emphasised is that it is only when the statute expressly or impliedly identifies considerations required to be taken into account by the authority as a matter of legal obligation that the Court holds a decision invalid on the ground now invoked. It is not enough that a consideration is one that may properly be taken into account, nor even that it is one which many people, including the Court itself, would have taken into account if they had to make the decision. And when the tests are whether a work is likely to be in the national interest and is essential for one or more of the purposes specified in s 3(3), it is not easy to assert of a particular consideration that the Ministers were legally bound to have regard to it.

[73] It is important in this context that review for error of law is confined to requiring the decision-maker to consider matters which expressly or by implication the decision-maker "ought to have regard to", or conversely "would not be germane".

[74] Refining the point, the issue becomes whether the reluctance of Judge Borthwick's division to engage with the analysis of Judge Jackson's division is a failure to take into account a mandatory relevant consideration?

The authorities on like for like

[75] The High Court has previously held that the Town and Country Planning Appeal Boards are

> ... not bound by its previous decisions, and is free to consider each case on its own facts and merits...[39]

[76] Mr Somerville QC argued that where two divisions of the same Court are examining the same issue, then, in principle, both Courts should strive to agree.

[77] Mr Somerville QC submitted that a failure to act consistently gives rise to a ground of review on these *Wednesbury* administrative law principles. In *Pharmaceutical Management Agency Ltd v Roussel Uclaf Australia Pty Ltd* Blanchard J said: [40]

> Inconsistency can be regarded as simply an element which may give rise or contribute to irrationality in the result of the process.

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39 *Raceway Motors Ltd and Others v Canterbury Regional Planning Authority* [1976] 1 NZLR 605 at 607.

40 *Pharmaceutical Management Agency Ltd v Roussel Uclaf Australia Pty Ltd* [1998] NZAR 58 (CA) at 67.

[78] In the same case, Thomas J, in his dissenting decision, agreed with the majority view in this respect, saying:[41]

> ...the notion that like should be treated alike has been an essential tenet in the theory of law.

Thomas J went on to say that he did:[42]

> ... not doubt ... for a moment that it is an established principle of administrative law that a statutory body must act consistently towards those in the same situation unless the unequal or different treatment can be justified on a rational basis.

Thomas J then went on to say:[43]

> ... that the principle in issue derives from the fundamental notion inherent in the rule of law that like is to be treated alike. In essence, a statutory body which fails to carry out its power or exercise its discretion even-handedly where there is no justification for acting otherwise abuses its powers or exercises its discretion wrongly.

[79] Mr Somerville QC cited the Privy Council in *Matadeen v Pointu*,[44] where the Privy Council were discussing the notion of even-handedness as one of the building blocks of democracy, and said:

> ...treating like cases alike and unlike cases differently is a general axiom of rational behaviour. It is, for example, frequently invoked by the courts in proceedings for judicial review as a ground for holding some administrative act to have been irrational.

[80] Mr Somerville QC's argument is also reflected by the practice of common law Courts of "coordinate jurisdiction", not to differ one from the other.[45] In the case of *In re Howard's Will Trusts*,[46] a Mr Howard had devised valuable properties to his trustees, on trust for his wife for life, and after her death, for his daughter, his only child, with remainders over his grandchildren. Mr Howard wanted to retain the surname and arms of Howard over generations. The trust had a complicated clause

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41 At 72.
42 At 92.
43 At 93.
44 *Matadeen v Pointu* [1998] 3 WLR 18 (PC) at 26.
45 *Halsbury's Laws of England* (4th ed, 2001) vol 37 Practice and Procedure at [1244], entitled "Decisions of Co-ordinate Courts".
46 *In re Howard's Will Trusts* [1961] Ch 507. Co-ordinate means at the same level, as the divisions were here.

which essentially required the grandchildren acquiring these estates to change their surname if necessary to Howard. At least one of the grandchildren had refused to do that, and the question was whether or not they had forfeited their entitlement to the property. This raised an argument that it was against public policy, to force a name onto a person, so these provisions were ineffectual. Wilberforce J, sitting at first instance, later to become Lord Wilberforce, said as an observation:[47]

> ...it is evidently undesirable that on a subject so much a matter of appreciation different judges of the same Division should speak with different voices.

[81] Wilberforce J did not have to explain what was "evidently undesirable". It goes to the question of public confidence. Two Courts of equal standing should not speak with different voices.

[82] In *Murphy v Rodney District Council,*[48] one of the issues was whether another resource consent application would be more likely to be granted, out of consistency with a decision consenting to the proposal before the Court – that is to say, the precedent effect. Baragwanath J said:[49]

> [39] It does not follow from the fact that rigid precedent is unattainable that no regard may lawfully be had to broadly similar decisions. To say that is not to import into environmental decision making the rigid doctrine of precedent... that would be impossible and indeed undesirable given the wide variety of facts, the number and range of decision makers, and the cost and delay of marshalling precedents. But "justice involves two factors – things, and the persons to whom the things are assigned – and it considers that persons who are equal should have assigned to them equal things" (Aristotle, *Politics* (1952), p 129). Human experience is that not to treat similar cases alike will give rise to suspicion and a deep sense of injustice which it is the duty of the Courts, as well as others who make decisions on behalf of the public, to avoid.

[83] There is no doubt that in this case Foodstuffs and Cross Roads have, in a broad sense, a right to have a sense of grievance after they have been granted resource consents for their proposals only to see that these proposals are not adopted and provided for in PC19. They are seeing, in a broad sense, one division of the

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47 At 523.
48 *Murphy v Rodney District Council* [2004] 3 NZLR 421 (HC).
49 At [39].

Environment Court supporting their proposals and another division being hostile to them. This does not encourage confidence in the judicial system.

[84] One of the central issues for judgment in this case is whether the distinction between ss 104 and 104D on the one hand (Foodstuffs and Cross Roads), and by ss 31 and 32 on the other (PC19), is sufficient to justify different merit judgments on the Pak'nSave and Mitre 10 Mega proposals.

Resolution of like for like issue

[85] As is apparent from the dicta cited above, like for like is a common law principle. It can be, and is, correctly applicable to the application of statutes. This is because all statutes are enacted into a common law legal system. The Courts bring to the interpretation of statutes the basic principles of justice which lie at the heart of the common law system, and will apply those subject only to directions from the contrary from Parliament.

[86] All Judges are very alive to the importance of maintaining public confidence in adjudication, both of common law and statutory cases. Much of the reasoning of Judges in cases compares previous decisions for their similarity to assist guiding the adjudication to the just solution of the problem.

[87] The issue in this case was to what extent the issues were so common as to make it relevant for Judge Borthwick's division to consider the reasoning and conclusions of Judge Jackson's decision.

[88] There is an aphorism used by practitioners of regulatory law, that *"the answer you get depends on the question you ask"*. It is critical when one applies a regulatory statute to apply the test set in the statute. Regulatory statutes are very carefully drafted with that in mind. They are drafted, of course, on political direction by the relevant Ministers of the Crown, but by professionals who understand the subject matter and choose language which sets very carefully the test to be applied.

[89] The RMA is a very complex statute. Significantly more complex than its predecessors, the Town and Country Planning Act 1977 and the Water and Soil Conservation Act 1967.

[90] The RMA, as enacted and amended, like its predecessors, reveals a compromise between regulating activities according to plans, and allowing departures from plans. As originally enacted, consent authorities were given an obligation to have regard to all planning instruments, whether operative or proposed.[50] As already noted in the RMA, activities are set on a graduating scale for ease of implementation, with or without regulatory consent, from permitted onto controlled activities (the first does not need consent and the second will get consent) and thereafter to a rising scale of restricted discretionary, discretionary, non-complying until prohibited activities.[51] The task of granting resource consents is treated as a separate task under the RMA, via s 104, than the task of determining the content of plans, ss 31 and 32. This distinction is material in this case, for the reasons which follow. Coupled with the particular context of this case, the distinction between these sections means that Judge Borthwick's division was not obliged by law to consider Judge Jackson's division's reasoning.

[91] In some contexts, when large scale proposals are pursued by way of resource consent, granting them consent can have enduring consequences for the content of plans. This is essentially the contextual setting in this case, because the establishment of a Pak'nSave and Mitre 10 Mega complex and associated car parking, east of the EAR, has to be seen in a wider framework, where PC19 is already proposing a town centre to the west of the EAR, and beyond Glenda Drive, on the other side of the airport, there is another town centre, the Remarkables Park. Now, of itself, of course, a Mitre 10 Mega and Pak'nSave would not be of itself a commercial or town centre, but, as already noted in [555], Judge Borthwick's division was concerned that allowing these retail activities to locate at the intersection of the EAR and proposed Road 2 could generate another commercial centre, indeed a "fourth".

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50 Section 104.
51 Sections 104A-D.

[92] Reading Judge Jackson's division's decision, there is no sense that it is deciding whether or not to grant the resource consent in a wider framework, embracing considerations as to the number of commercial centres to be seen as appropriate for Queenstown. Rather, Judge Jackson's division's decision focuses upon the objectives and policies of PC19, but does not address the function of PC19 relative to other parts of the Queenstown district. This is natural enough, as resource consent applications tend to be examined in the context of the immediate environment into which the proposed activity is to be placed.

[93] The sleeve of the EAR, and the associated traffic issues, was a common issue nonetheless that the two divisions had to examine. Integrated design, and particularly the bulk and location of buildings was another common issue. It was probably inevitable that Judge Jackson's division had to comment on the proposal of a Trade Retail Overlay nearby, in the PC19 issues.

[94] Judge Borthwick's division could have discussed Judge Jackson's division's reasoning and conclusions in regard to those two sub-topics of the sleeve and integrated design more expansively than it did.

[95] Paragraph [127] of Judge Borthwick's division does read as essentially dismissive. It includes implicitly a criticism that some of Judge Jackson's findings went beyond the proper scope of an enquiry as to the merit of a resource application. That is how I read the phrase "(and obiter)". But I think [127] should be read with the following paragraphs, [128], [129] and [130], which I think contain more reasons why Judge Borthwick's division did not find anything helpful in Judge Jackson's division's decision. The rejection is further explained by Judge Borthwick's division rejecting the proposal of a trade retail overlay zone, anywhere east of the EAR, that is on the same side of the EAR as the Pak'nSave and Mitre 10 Mega proposals. Judge Borthwick's division's decision was concerned about the proposed activity area E3 (which would absorb both the Pak'nSave and the Mitre 10 Mega and QLDC's proposed area for yard-based retail) as accommodating large format retail (LFR) activities in a non-town centre arrangement.[52] Judge Borthwick's division was satisfied that the growth demand for hardware, building and garden supplies

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[52] *PC19* at [536].

could be accommodated within the existing zones or consented development.[53] The Court was concerned that if E3 was intended to accommodate activities of this sort, then it would provide floor space supply which would exceed the unmet growth demand for all sectors of retail activity.[54] That led to important later conclusions, which I have been explaining are relevant ultimately to understanding [127] through to [132]; these conclusions are [557] to [560]:

> **Outcome**
>
> [557] On the evidence provided we are not satisfied that AA-E3 or the proposed Trade Retail Overlay would give effect to the objectives and policies of the operative District Plan, and if a fourth commercial centre node emerges then it is likely to be inconsistent with those provisions. In short, we conclude that the AA-E3 objective is not the most appropriate way to achieve the purpose of the Act.
>
> [558] We may have reached a different view on whether there should be provision for a Trade Retail Overlay had Remarkables Park Ltd (supported by SPL) not successfully applied for a private plan change enabling up to 30,000m^2 additional retail floorspace at the Remarkables Park Zone located near the periphery of its existing centre. PC34 (now operative) is to enable future expansion of the commercial centre, including large format retail activities. In making our determination on all activities areas we have taken into consideration that there is zoned land to accommodate large format retail activities in the Remarkables Park Zone.
>
> [559] It follows from all our findings that we reject SPL's relief to zone its land AA-E3.
>
> [560] And we reject the Trade Retail Overlay.

[96] I think there is no doubt that Judge Borthwick's division was very alive to the reasoning of Judge Jackson's division as to the merits of a Pak'nSave and Mitre 10 Mega, but did not agree, principally because of its reluctance to introduce trade retail activity on SPL's land, the subject of E3, which proposed zone includes the Pak'nSave and Mitre 10 Mega proposal. That judgment was made looking at a bigger picture than the naturally limited focus of Judge Jackson's division.

[97] In this context then, I think the correct classification is that it was permissible, but not mandatory, for Judge Borthwick's division to engage in the reasoning and resolution of Judge Jackson's division when examining these two resource consent applications. The extent of their engagement and the reasons they

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[53] At [538].
[54] At [539].

gave are a sufficient response, and do not amount to a refusal to take into account mandatory relevant considerations, and so are not an error of law.

[98] As a precaution, I turn to treat the like for like obligation as potentially separate from an identification of relevant considerations. If it is not already clear, the like for like obligation can in some contexts make relevant considerations mandatory. I have found that they are not mandatory. But if I am wrong, and there is a separate and independent like for like obligation, I am now considering that separately. In this context, I am putting *CREEDNZ* to one side, the *Wednesbury* dictum to one side, and focussing solely on the common law principle that a Court should not differ with the views of a peer Court (co-ordinate Court).

[99] For reasons I have already canvassed, the tasks set the two different divisions are, to an RMA lawyer, two quite distinct tasks. I readily acknowledge, however, that to non RMA specialists that has to be explained.

[100] Quite independently of the common law principle, depending on the context, there can be reasons within the scheme and structure of the RMA which would encourage, where the context makes it possible, and desirable, for common decision-making when a proposal is the subject both for consideration under a proposed plan change and consideration as a resource consent. I have found above that Judge Borthwick's division could have considered Judge Jackson's division's views on the "sleeve" of the EAR, and the reasonableness of a trade retail overlay east of the EAR. The issue is whether that is possible and useful in this context, and unilaterally mandatory.

[101] It is possible to draw a meaningful distinction between the architecture of the RMA and the detail. Like many regulatory statutes, the RMA has had a lot of detail poured into it since its enactment, which has to a degree obscured its architecture. But its architecture does essentially remain via ss 31, 32, 74 and 104.

[102] The hierarchy of the statutory instruments running off the RMA, are set out in sequence in s 104(1)(b):

104 Consideration of applications

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to–

...

(b) any relevant provisions of—

(i) a national environmental standard:

(ii) other regulations:

(iii) a national policy statement:

(iv) a New Zealand coastal policy statement:

(v) a regional policy statement or proposed regional policy statement:

(vi) a plan or proposed plan; and

[103] Just looking at s 104(1)(b), one can see at a glance that those are all standards, regulations, policies and plans for which there is political accountability.

[104] Political accountability is not only intended by the RMA, it is inevitable. For there is no coherent set of ethics or values which dictates when resources are to be developed, for what purpose, and how, or whether or not they should be left alone. The values collected in Part 2 conflict with each other. For example, there is no necessary or best resolution of the inevitable tension between conservation and development. It is the context which drives the weight given to one value over the other. All communities have to provide for activities which many people do not want in their back yard (NIMBY). The RMA does not leave development to market forces. It is no accident then that the question of granting consents or not is required by s 104 to be judged only after having had regard to the contents of all relevant plans, operative or proposed.

[105] Of course the contents of plans can reflect the origins of plan changes which might be private plan changes. And they can reflect provisions amended or inserted by the Environment Court on appeal. But, as I have already occasioned to mention, the Environment Court's jurisdiction is that of the territorial authority.

[106] It is in this context that there is normally a deference given by the Environment Court to the responsibilities of the territorial authorities, and where appropriate Central Government, to the policy decision reflected in the plans, operative or proposed.[55]

[107] In this case, one of the reasons why Judge Borthwick's division did not engage with Judge Jackson's division's decision is that it considered that Judge Jackson's division had gone too far beyond having regard under s 104, into expressing views on the desirable content of the proposed plan PC19 planning issues. That is the context of the use of the term "obiter". For example, whether or not there should be a sleeve concept on both sides of the EAR is fundamentally a planning issue. It extends well beyond the site of the Pak'nSave, which occupies only part of the proposed sleeve. Judge Borthwick's division regarded that as a concept which is still a work in progress.

[108] I think in the context of this case, Judge Borthwick's division was entitled to be essentially dismissive in [127] of the relevance of the reasoning of Judge Jackson's division, on the sleeve, on trade retail activity east of the EAR, and on the design management of the EAR neighbourhood – all being matters in issue as to the content of PC19. Second, to engage on these issues would be to be bedevilled by the complication of no clear overlap of witnesses, but most importantly by the different question asked by s 32 analysis from s 104 analysis.

Conclusion on SPL's appeal

[109] For these reasons, I find that SPL's appeal fails. There is no error of law by reason of a failure to have regard to a similar decision.

Foodstuffs' appeal

[110] Foodstuffs argue that [84] of *Hawthorn* required Judge Borthwick's decision to include in the environment of PC19 a supermarket and hardware retail activities on the proposed site. This is because resource consent had been granted to them, and the consents were likely to be implemented. Section 104(1)(a) expressly provides

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[55] *Canterbury Regional Council v Apple Fields Ltd* [2003] NZRMA 508 (HC) at [45].

that a consent authority must have regard to the environment before allowing any activity.

[111] The purpose of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the Act.[56]

[112] The purpose of a territorial authority's plan is to "establish and implement objectives, policies and methods to achieve integrated management... of the land and associated natural and physical resources of the district."[57] Where some of that land is already the subject of resource consents likely to be implemented, and the plan has not yet been made for that locality, it is natural enough that the territorial authority has to write a plan which accommodates the presence of that activity.

[113] For this reason, it is a very significant decision whether or not Judge Borthwick's division's decision settles the provisions of PC19, accommodating the Pak'nSave and Mitre 10 Mega activities as proposed by SPL and Foodstuffs, or not. Judge Borthwick's division declined to take these resource consents into account at all. It distinguished [84] of *Hawthorn* as having no application to its situation.

[114] There was some difference between counsel as to whether or not Judge Borthwick's division had found as a fact that the two resource consents were not likely to be implemented. Or rather had found that it was not possible to find it a fact whether or not they were not likely to be implemented, by reason of the uncertainty of the appeals.

[115] In my view, the Court of Appeal in *Hawthorn* intended [84] to be a real world analysis in respect of resource consent applications. The setting of the case was of application for resource consents, under s 104, not the application of ss 31 and 32. [58] That is also reflected in [84], "at the time a particular application is considered". The Court of Appeal in *Far North District Council v Te Runanga-O-Iwi O Ngati*

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56 Section 72.

57 Section 31(1).

58 Not so in the case of allowing for permitted uses, for as the Court of Appeal explained, both in the *Hawthorn* and the recent *Carrington* decision, the assumption that permitted uses will be taken advantage of is not a likelihood assumption.

Kahu recently applied *Hawthorn* [84], but again in the context of the application for resource consents, not in the planning context of ss 31 and 32.[59]

[116] When a territorial authority is deciding the plan for the future, there is nothing in the Act intended to constrain a forward-looking thinking. A similar point was made by Judge Borthwick's division, when distinguishing [84]. (See [122] of their reasoning set out above). Within that paragraph they said:

> [122] ...Unlike *Hawthorn Estate Ltd* (cited to us by SPL and Foodstuffs) this court is not concerned with how the environment may be modified by the utilisation of rights to carry out permitted activities under the District Plan. Indeed the proposed modification of the existing environment is the subject matter of these plan change proceedings. *Hawthorn Estate Ltd* is therefore distinguishable on its facts.

[117] In any event, if I am wrong on that point, the likely to be implemented test in [84] was intended to be a real world analysis, as is confirmed by [42] of the *Hawthorn* decision which ends with the word "artificial":

> [42] Although there is no express reference in the definition to the future, in a sense that is not surprising. Most of the words used would, in their ordinary usage, connote the future. It would be strange, for example, to construe "ecosystems" in a way which focused on the state of an ecosystem at any one point in time. Apart from any other consideration, it would be difficult to attempt such a definition. In the natural course of events ecosystems and their constituent parts are in a constant state of change. Equally, it is unlikely that the legislature intended that the inquiry should be limited to a fixed point in time when considering the economic conditions which affect people and communities, a matter referred to in para (d) of the definition. The nature of the concepts involved would make that approach artificial.

[118] Treated as a wholly practical issue, which is what I think Judge Borthwick's division did, the Court was faced with a very uncertain situation. It knew the resource consents were under appeal. As a result, it found that they could not assess likelihood. This is clear from [131], set out above, being the conclusion, because it involves speculation as to the High Court appeals ([124], set out above).

[119] Recognising this, Mr Soper argued that the law requires the fact of the appeal to be ignored. He relied on s 116(1) which provides:

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[59] *Far North District Council v Te Runanga-O-Iwi O Ngati Kahu* [2013] NZCA 221 *(Carrington).*

> **116 When a resource consent commences**
>
> (1) Except as provided in subsections (1A), (2), (4), and (5), or section 116A, every resource consent that has been granted commences—
>
> (a) when the time for lodging appeals against the grant of the consent expires and no appeals have been lodged; or
>
> (b) when the Environment Court determines the appeals or all appellants withdraw their appeals—
>
> unless the resource consent states a later date or a determination of the Environment Court states otherwise.

And on r 20.10(1)(a) of the High Court Rules, which provides:

> **20.10 Stay of proceedings**
>
> (1) An appeal does not operate as a stay—
>
> (a) of the proceedings appealed against; or
>
> (b) of enforcement of any judgment or order appealed against.

[120] He argued that *Hawthorn's* analysis extended to the obligations being met by a territorial authority in relation to district plans, as well as to considering whether to grant resource consents. He relied on [48] and [49] in *Hawthorn*:

> [48] The requirements of ss 5, 6 and 7 must be complied with by all who exercise functions and powers under the Act. Regional authorities must do so, when carrying out their functions in relation to regional policy statements (s 61) and the purpose of the preparation, implementation and administration of regional plans is to assist regional councils to carry out their functions "in order to achieve the purpose of this Act". Further, the functions of regional councils are all conferred for the purpose of giving effect to the Act (s 30(1)). Consistently with this, s 66 obliges regional councils to prepare and change regional plans in accordance with Part II.
>
> [49] The same obligations must be met by territorial authorities, in relation to district plans. The purpose of the preparation, implementation and administration of district plans is, again, to assist territorial authorities to carry out their functions in order to achieve the purpose of the Act. Similarly, the functions of territorial authorities are conferred only for the purpose of giving effect to the Act (s 31) and district plans are to be prepared and changed in accordance with the provisions of Part II. There is then a direct linkage of the powers and duties of regional and territorial authorities to the provisions of Part II with the necessary consequence that those bodies are in fact planning for the future. The same forward-looking stance is required of central government and its delegates when exercising powers in relation to national policy statements (s 45) and New Zealand coastal policy statements (s 56). The drafting shows a consistent pattern.

He also relied upon the decision of *GUS Properties Ltd v Marlborough District Council*,[60] where the High Court held:

> ... unless there is some good basis upon which a stay should be granted then it should be refused as the appeal of the appellant is from a decision of an experienced Tribunal which should be given effect to unless the appellant will lose the benefit of its appeal unless a stay is granted.

[121] For these reasons, Mr Soper submitted that Judge Borthwick's division was required to consider the likelihood of whether consents would be implemented on the basis of the factual evidence before the Court. The Court had already found there was no compelling reason why the other associated resource consents would not be obtained. In the absence of a stay there was no basis for the Environment Court to decline to determine whether consents would be implemented, and therefore exclude them from its consideration as to what constituted the relevant environment for PC19 purposes.

Analysis

[122] There was no suggestion that the holders of the resource consents were seeking to implement them pending the appeals. Judge Borthwick's division was in a very difficult position. If it did treat the environment the subject of the plan change as including a large supermarket and trade retail in that location, on the southeast side of the intersection of the EAR and proposed Road 2, then it would have had to adjust to all the ramifications of that. It would not make particular sense and was likely to be incoherent to have incompatible plan change provisions applicable to the land.

[123] It also took into account that, if the resource consents were upheld on appeal, they could be utilised, notwithstanding that the underlying zoning would not provide for the activity. They did this when considering whether their preferred E1 and E2 zoning rendered the SPL land incapable of reasonable use, an argument addressed to it under s 85 of the Act (not pursued on this appeal). In [864], they said:

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[60] *GUS Properties Ltd v Marlborough District Council* HC Wellington AP 230/94, 12 September 1994 at 5-6.

> [864] ... It is our understanding that, if upheld on appeal, the land use consents granted by the Environment Court may be exercised notwithstanding that the underlying zoning would not provide for this activity.

[124] It was suggested in argument that one of the options of Judge Borthwick's division would have been to delay completing its decisions on PC19 until it knew the outcome of the appeal in the High Court. But discussion on this point rapidly indicated that such an approach would also require allowing time for the Court of Appeal and the prospect that the issue might go through to the Supreme Court. Years could pass. All this has to be set against the context where PC19 started its life in 2007, nearly seven years ago.

[125] There are suggestions in Judge Jackson's division that this delay is already a concern and embarrassment.[61] It must be. Parliament could never have intended that a territorial authority having designed a plan change and publicly notified it would then take seven years to receive submissions and form a judgment as to the most appropriate way to achieve the purpose of this Act. It was not envisaged that appeals would unduly extend the process. On the contrary, there are a number of sections intended to achieve speedy resolution of appeals. Section 121(1)(c) provides:

> **121 Procedure for appeal**
>
> (1) Notice of an appeal under section 120 shall be in the prescribed form and shall—
>
> ...
>
> (c) be lodged with the Environment Court and served on the consent authority whose decision is appealed within 15 working days of notice of the decision being received in accordance with this Act

[126] This means that within three weeks any appeals from the territorial authority's decision should be lodged with the Environment Court. That presupposes efficient analysis of the issues arising by the appellant's advisers.

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[61] *Foodstuffs* at [267]-[269].

[127] Section 269 of the RMA gives the Environment Court the power to regulate proceedings in such manner as it thinks fit, and has a goal of a fair and efficient determination of the proceedings.[62]

[128] Section 272(1) provides:

> **272 Hearing of proceedings**
>
> (1) The Environment Court shall hear and determine all proceedings as soon as practicable after the date on which the proceedings are lodged with it unless, in the circumstances of a particular case, it is not considered appropriate to do so.
>
> (Emphasis added)

[129] Counsel before the Court partially explained the long delay. The Court knows it was significantly affected by airport issues. See *Foodstuffs* at [267]-[269]. Whatever the explanation as to why this PC19 was not resolved soon after October 2009, when the commissioners released a decision recommending PC19 be approved, and why it took until February 2012 before the appeal against the commissioners' decision was heard, the predicament facing both divisions of the Court is manifest come the end of 2012.

[130] It would be very hard for Judge Borthwick to have to justify in the public interest, let alone against the efficient policy of the RMA, abandoning delivering a decision on PC19 while awaiting appeals on the Foodstuffs and Cross Roads resource consents through the appellate Courts. She did not.

[131] On the other hand, if she was going to go ahead and assume that the resource consents were granted, and write a plan change, the provisions of which would adopt the logic and reasons of the grant of the resource consent, this could have nullified the outcome of the appeal process. For if, as a result of the appeal process and the referral back, the resource consents were not granted, the parties favouring that outcome would be thwarted by the adoption of the challenged outcome in PC19.

[132] I consider that Judge Borthwick's division had in fact no choice but to keep going.

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[62] See s 269(1) and (4).

[133] It also needs to be kept in mind that the decision under appeal is an interim "higher order" decision. There is still a lot of work left to be done, and a further hearing.

[134] This next stage may be able to continue consistent with the contingencies that follow upon the now Court of Appeal litigation. If the Court of Appeal reinstates the resource consents, then there may still be time for Judge Borthwick's division to take them into account as likely to be implemented. If the Court of Appeal dismisses the appeals, there may still be time for Judge Jackson's division to reconsider the matter in the light of directions from the High Court. If the Court of Appeal issues the decision between these two options, with further directions to Judge Jackson's Court, there may likewise still be time for an urgent hearing by Judge Jackson's division to accommodate that, before Judge Borthwick's division completes the lower order matters.

Conclusion on Foodstuffs' appeal

[135] There was no error of law on the part of the Environment Court declining to treat the resource consents as likely to be implemented. For these reasons, the *Foodstuffs* appeal fails.

General conclusion

[136] Both appeals are dismissed. Costs reserved.

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IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

CIV 2012-425-000576
CIV 2012-425-000566
CIV 2013-425-000242
[2013] NZHC 2347

	BETWEEN	QUEENSTOWN AIRPORT CORPORATION LIMITED Appellant (in respect of CIV 2012-425-000566)
		REMARKABLES PARK LIMITED Appellant (in respect of CIV 2012-425-000566 and CIV 2013-425-000242)
	AND	QUEENSTOWN LAKES DISTRICT COUNCIL Respondent
		AIR NEW ZEALAND LIMITED Interested Party

Hearing:	19-22 August 2013 (At Queenstown)
Counsel:	R J Somerville QC and R A Davidson for Remarkables Park D A Kirkpatrick and R M Wolt for Queenstown Airport Corporation JDK Gardner-Hopkins and E L Matheson for Air New Zealand Limited
Judgment:	12 September 2103

JUDGMENT OF WHATA J

INDEX

Introduction

[1] Queenstown Airport Corporation ("QAC") wants to:

> ... provide for the expansion of Queenstown airport to meet projected growth while achieving the maximum operational efficiency as far as possible.

[2] It has issued a notice of requirement ("NOR") seeking in effect an additional 19 or so hectares of land in order to achieve this objective. Remarkables Park Limited (RPL) owns property that is subject to the NOR. With this land QAC could enable, among other works, a precision instrument approach runway and a parallel taxiway. It also would be able to provide additional space for other aviation activity, including for relocation of smaller and private aviation operations and helicopters.

[3] The NOR was considered by the Environment Court.[1] The Court rejected that part of the NOR seeking to provide for a precision instrument approach runway and a parallel taxiway. As a result, the area of land subject to the NOR was reduced to 8.07 ha.

[4] Both QAC and RPL contend that the Environment Court got it wrong. QAC identifies five errors of law while RPL identifies 12 errors of law. RPL is supported in large part by Air New Zealand Limited ("ANZL").

[5] QAC says, in short, that the Environment Court exceeded its jurisdiction by revisiting the scope of the existing designation and erred in law also by imposing a limitation on the NOR based on an interpretation of civil aviation standards that might prove to be erroneous.

[6] The RPL appeal raises the following key issues:[2]

(a) Whether the Environment Court was empowered to cancel part only of the NOR;

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1 *Re Queenstown Airport Corporation Limited* [2012] NZEnvC 206.

2 There are other discrete issues dealing with s 16, cost benefit analysis, QAC's inconsistent approach and a substation.

(b) Whether the Environment Court erred by not adopting a threshold test of "essential" for the proposed works and designation;

(c) Whether the Environment Court wrongly failed to consider the unfairness of the NOR to RPL; and

(d) Whether the Environment Court wrongly treated an alternative site for the works located on existing QAC land as suppositious.

Structure of the decision

[7] I propose to address the appeal in four parts, namely:

(a) Part A – The background, jurisdictional, and statutory frame;

(b) Part B – The appeal by QAC;

(c) Part C – The appeal by RPL;

(d) Part D – Outcome.

Part A

Background

[8] The background to these proceedings is usefully summarised by the Environment Court which I largely adopt.

The parties

[9] QAC manages one of the busiest airports in New Zealand. There are on average 40,000 aircraft movements and over one million scheduled and non-scheduled passenger movements through the airport every year. The airport is owned by Queenstown Lakes District Council and managed by QAC. ANZL is a major user of the airport and is the largest scheduled service provider to and from the airport. RPL owns all of the undeveloped land within an area subject to the

Remarkables Park zone. A significant parcel of RPL land is affected by the NOR issued by QAC and then confirmed by the Environment Court.

The airport and existing designations

[10] The airport, the area subject to existing designations and the proposed designation, together with the surrounding land uses is helpfully depicted on a plan produced by RPL (by consent) and attached to this judgment as Annexure A.

Proposed designation

[11] The NOR was applied for on 21 December 2010 with the objective:

> To provide for the expansion of Queenstown Airport to meet projected growth while achieving the maximum operational efficiency as far as possible.

[12] Its key elements are:

- a helicopter facility;
- a general aviation (fixed wing) facility for up to Code B aircraft;
- a private and corporate jet facility for up to Code C aircraft;
- a fixed based operator (to service jets and possibly general aviation);
- a Code D parallel taxiway adjacent to main runway;
- a Code B parallel taxiway adjacent to cross-wind runway;
- a precision approach runway with a 300 metre width runway strip;
- ancillary activities, including landscaping, car parking, and an internal road network which includes two access roads to connect with Hawthorne Drive at the western end of the designation area and the Eastern Access road (EAR) at the eastern end.

[13] Significantly, for the purpose of these proceedings, the area included in the requirement for the designation includes Part Lot 6 DP 304345 and a portion of an unformed road adjacent to the south western corner of Lot 6 DP 304345, being land owned by RPL. The airport's southern boundary and the extent of the existing aerodrome designation adjacent to Lot 6 is located 201 metres south of the main runway centre line. The requirement is for a strip of Lot 6 approximately 160 metres

in depth, lying parallel to the entire one kilometre length of the common boundary of the QAC and RPL land.[3]

The interim decision

[14] Relevant to this proceeding the Environment Court made the following key orders in its interim decision:

> A That part of the NOR required for instrument precision approach runway and Code D parallel taxiway is cancelled. The court reserves its decision on the balance of the NOR.
>
> B By 5 October 2012 QAC is to file and serve:
>
> (1) an amended Figure 1 to the NOR reducing the extent of the requirement to exclude provision for a (sic) instrument precision runway and Code D parallel taxiway and any land no longer required for carparking, circulation and landscaping.
>
> ...

[15] The judgment is then framed by reference to key legal and evaluative issues. I detail here the findings that are relevant to this appeal. I note for completeness that the final decision is not subject to appeal and it is not necessary for me to address it here.

"Requirement"

[16] The Environment Court rejected RPL's submission that the term "requirement" in s 168 Resource Management Act 1991 should be construed in light of s 40 of the Public Works Act 1981. The Court found that the matter and subject of these provisions are not, as submitted, *in pari materia*. The Court observed:

> [46] ... In this case neither the relevant term nor subject matter addressed in section 168 RMA and section 40 PWA are the same and we do not accept RPL's submission that "a requirement" has the same meaning as "required" for the reasons we gave in [45] above.

[17] At [45] the Environment Court observed that the term "requirement" is a noun that is a term given to a proposal for a designation.

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[3] *Re Queenstown Airport Corporation Limited* [2012] NZEnvC 206 at [37].

Scope of evaluation under s 171(1)(b)

[18] The Court observed that the central issue under s 171(1)(b), dealing with the assessment of alternatives, is whether QAC gave adequate consideration to alternative sites, routes or methods. The Court then adopted the principles stated in the final report and decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project as follows:[4]

> a) the focus is on the process, not the outcome: whether the requiring authority has made sufficient investigations of alternatives to satisfy itself of the alternative proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate consideration does not mean exhaustive or meticulous consideration.
>
> b) the question is not whether the best route, site or method has been chosen, nor whether there are more appropriate routes, sites or methods.
>
> c) that there may be routes, sites or methods which may be considered by some (including submitters) to be more suitable is irrelevant.
>
> d) the Act does not entrust to the decision-maker the policy function of deciding the most suitable site; the executive responsibility for selecting the site remains with the requiring authority.
>
> e) the Act does not require every alternative, however speculative, to have been fully considered; the requiring authority is not required to eliminate speculative alternatives or suppositious options.

Scope of evaluation under s 171(1)(c)

[19] The Court also adopted the summary provided by the Board of Inquiry dealing with the Upper North Island Grid Upgrade Project for the purposes of its assessment under s 171(1)(c) dealing with whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority. Of particular relevance to this appeal, the Court adopted the following passage:[5]

> In paragraph (c), the meaning of the word necessary falls between expedient or desirable on the one hand, and essential on the other, and the epithet reasonably qualifies it to allow some tolerance.

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4 *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* Ministry for the Environment, Board of Inquiry, 4 September 2009 at [117] and [186].

5 At [51].

[20] The Court added that it may consider the extent to which the work is reasonably necessary for achieving the requiring authority's objectives and may limit the extent of the designation accordingly.[6]

Section 171(1)(d) and the Public Works Act

[21] The Court agreed with submissions by QAC and QLDC that the compulsory acquisition process not having commenced s 24 PWA is not directly relevant to its determination. The Court noted:

> In particular, the three overlapping criteria in section 24(7) of fairness, soundness and the [reasonable] necessity for achieving the objective of the local authority (here QAC) are not matters we need to decide.

[22] The Court then goes on to observe:

> Even if we are wrong, and the issue of fairness (in particular) is relevant under section 171(1)(d), there is no evidence upon which we could find that QAC agreed, as submitted by RPL counsel, not to designate the land. Apart from the fact that QAC and RPL entered into contractual arrangements we have no evidence from RPL as to its reliance on the contracts or any representation made by QAC when subsequently planning to develop its land or that it held a legitimate expectation its "buffer" ie Activity Area 8, would not be reduced. (The contracts were handed up to the court as a bundle attached to counsel for RPL's opening submissions, which we were told "not to read".)

Best practicable option – s 16 of the Resource Management Act

[23] The Court held that s 16 is not to be applied as if it were an additional criterion to subs (1)(a)-(d) of s 171. The Court said in some cases adopting the best practicable option may be a useful check for the decision maker, particularly when assessing the adequacy of the alternatives under consideration, but not in every case.

Statutory plans

[24] The Court then reviewed the various statutory planning documents applicable to the region, including the Regional Policy Statement (RPS) and the Queenstown Lakes District Plan, including the structure plan dealing with Activity Area 8, where RPL's land (Lot 6) is located. Reference is made to the fact that this activity area is a

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[6] Citing *Bungalo Holdings Limited v North Shore City Council* EnvC Auckland AO52/01, 7 June 2001.

"buffer" area and the Court observes that while "buffer" is not explained in the District Plan, there was general agreement that these policies mutually benefited the RPL and QAC.

Section 171 evaluation

[25] The Court observes that QAC has commissioned no less than eight reports since 2003 dealing with its existing land and site facilities at the airport. It observes:

> [76] The reports produced in 2005, 2006, 2007 and 2008 consider sites for a new general aviation/helicopter precinct located within the existing aerodrome designation north of the main runway. In four of the eight reports produced, consideration was given to relocating the general aviation/helicopter precinct south of the main runway. However, in each case the site of the proposed southern precinct is different from that supported by QAC in its NOR, albeit part of Lot 6 is included.

[26] The Court then deals with various master planning documents between 2005 and 2010. It notes that the 2005 Master Plan considered alternative locations within Lot 6 but they were dismissed because:[7]

> (a) these options required protracted negotiations and change of designations without guarantee of outcome;
>
> (b) there were no significant operational benefits; and finally
>
> (c) the options were highly distracting to QAC management.

[27] The Court then refers to an April 2007 South East Zone Planning Report observing that it is the only report to consider possible use of the designated land south of the main runway. The assumed planning parameters the Court said include a Code C aircraft design and a non-precision approach to the main runway. The Court observes that the report concluded:

> the northern side was a better location for future helicopter facilities

And the report also recommended:

> ... that general aviation flightseeing operations be grouped north of the main runway.

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7 *Re Queenstown Airport Corporation Limited* [2012] NZEnvC 206 at [79].

[28] The Court then refers to the 2010 Master Plan which listed five developments that it said has a significant bearing on the NOR provision for a general or aviation/helicopter precinct on part of Lot 6. The Court noted that these are:[8]

(a) the protection of airfield runway/taxiway/object separation distances for a precision approach runway;

(b) planning for a parallel taxiway;

(c) consideration of protection for aircraft with wider wingspans;

(d) accelerated traffic growth; and

(e) the decision to consider Lot 6 as an option for the general aviation/helicopter precinct.

[29] The Court considered that (a) through (c) above were critical in determining the spatial requirements of the designation. The Court observes that the 2010 Master Report evaluated two alternative locations for a general aviation/helicopter precinct:

(a) To the north east comprising 22 ha of land owned by QAC; and

(b) 19.1 ha to the south east located on part of Lot 6. The Master Plan concluded that the north east precinct is distinctly inferior.

Adequate consideration of alternative sites?

[30] The Court describes the five alternative sites as follows:[9]

(a) locating the general aviation/helicopter precinct on land north of the main runway including on undesignated land owned by QAC and/or QLDC;

(b) locating the general aviation/helicopter precinct on land north of the main runway within the aerodrome designation;

(c) whether RPL land should have a building restriction strip placed on it for a distance of 15.5m from the common boundary to satisfy taxiway separation distance requirements for a new southern taxiway or whether CAA dispensation could be obtained for this;

(d) the relocation of some or all of the general aviation and helicopter facilities off the Airport;

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8 At [82].
9 At [87].

(e) consideration of individual components of the work being accommodated within the existing aerodrome designation.

[31] The Court then found:

> We consider (a), (c) and (e) to be entirely suppositious for reasons that we set out next. However this is not true for (b) and (d) which we consider in more detail.

[32] Most relevant to this appeal, the Court treated option (a) as suppositious for the following reasons:

> [89] The Conceptual plans prepared by RPL for a general aviation/helicopter precinct north of the main runway included undesignated land owned by QAC within the area of PC19. Under these plans a general aviation/helicopter precinct would displace up to 4.52 hectares of industrial land within PC19. In proposing this option, RPL witnesses did not address the scarcity of industrial land within Queenstown (an important issue that PC19 *inter alia* seeks to address). There was some suggestion by the RPL planner, Mr M Foster, that aerodrome activities are industrial activities for the relevant activity areas within PC19.
>
> [90] We doubt Mr Foster's interpretation is correct and in the absence of any evidence in this proceeding or PC19 addressing the applications of an aviation precinct within PC19, particularly in relation to the urban form and function, we do not consider that PC19 land should be available as part of an alternative location. Activities relating to an aviation precinct appear to be outside those contemplated by the District Council when promulgating PC19.

[33] Before addressing the other mooted alternatives the Court makes the following initial findings of fact:

(a) there is insufficient land within the aerodrome designation to develop an instrument precision approach runway and southern parallel taxiway for Code D aircraft and to develop a general aviation/helicopter precinct; and

(b) QAC has no firm development plans for designated land north of the main runway.

[34] Dealing then relevantly with the alternative precinct on land north of the main runway within the area of the aerodrome designation the Court observed:[10]

> ... Several issues present themselves against a northern precinct, including the transportation of dust into helicopter hangars carried by the prevailing westerly winds and the stronger lower frequency southern winds, increased

[10] At [103].

> exposure to the winds from the south and west during helicopter take off and landings, increased runway occupancy by helicopters to minimise or reduce exposure to prevailing winds; the geographical constraints north of the cross wind runway and the desirability for flight paths over TALOs to be unobstructed by stacked (parked) helicopters. All these are important factors which lead to the adoption by QAC of a southern precinct.

[35] After considering the remaining alternatives, the Court then makes an overall conclusion, stating a summary of reasons as to why it considered that other alternatives had been given adequate consideration. The Court observed:

> [112] We conclude that there is an array of factors, including safety, which militate against a northern location for a helicopter facility. Of these cost (to the helicopter operator and other users of the Airport) is an important consideration, but it is not determinative. Section 171(1)(b) is satisfied as we find that adequate consideration was given to alternative location of the helicopter facility.
>
> [113] Likewise we are also satisfied that adequate consideration was given by QAC to alternative locations for corporate jets and that it is operationally efficient to locate these adjacent to the proposed Code C taxiway south of the main runway.
>
> [114] Apart from the April 2007 study, none of the studies looked at the option of splitting the various aeronautical businesses north or south of the main runway within the existing aerodrome designation. But in the absence of any contrary evidence we conclude, like corporate jets, it is operationally efficient to locate fixed wing operators adjacent to a proposed Code C taxiway.
>
> [115] We are also satisfied that under section 171(1)(c) that a general aviation/helicopter precinct south of the main runway is reasonably necessary for achieving the NOR's objective.

"Reasonably necessary"?

[36] The Court identified two key decisions made by QAC in terms of the area plan required for the designation, namely:

(a) The type of runway (whether an instrument non-precision or instrument precision runway); and

(b) The aircraft design parameters (whether a Code D aircraft would operate at the Airport).

[37] As to the first issue, the Court accepted Mr Morgan's evidence that:

> ... because of the terrain constraints inhibiting ILS approaches the final stage of an approach needs to be conducted by assuming a visual approach at 400 ft above ground level, which also means no more than a 150m runway strip width is needed.

[38] The Court also appeared to accept the evidence of ANZL and RPL and that there is no suggestion of Code C aircraft being phased out and indeed the converse appears to be the case.

[39] The Court then observed whether the works or designation, like these findings, is reasonably necessary for achieving the objective of QAC. The Court observed:

> [139] On the issue of whether the works or designation is reasonably necessary for achieving the objective of QAC the evidence is clear: within the planning horizon under negotiation there is no nexus between the NOR objective and enablement of Code D aircraft operating at Queenstown Airport. The predicted growth is able to be achieved using Code C aircraft.
>
> [140] For the same reason we find that there is no nexus between the NOR's objective and the provisioning for an instrument precision approach runway.

[40] Significantly, for the purposes of identifying the scope of the designation the Court observes:

> The consequences of the findings are this: the provision of an instrument non-precision approach runway and Code C parallel taxiway would reduce the lateral extent of the land required by 97.5m along the approximately 1,000m length of the common boundary with RPZ, being a total land area of about 9.75 hectares. Put another way, the land required for the designation would be reduced from around 160m into the RPZ to around 60m. We are not, however, required to approve the Code C parallel taxiway. Land within the existing designation is available for this purpose and it is a matter for QAC to decide whether to construct the same.

[41] And further:

> [142] Subject to what we say at [164] in all other respects we conclude that the work and designation is reasonably necessary for achieving QAC's objective. We prefer Mr Munro's assessment of the comparison of area requirements for the northern and southern precincts as it comprehensively addresses the proposed building and infrastructure. We found limited assistance in the area requirements produced by RPL's witnesses as these do not include all components of the aviation precinct or use different measurements to assess the components. ...

Effects on the environment

[42] The Court identified three categories of effects, namely noise, landscape and amenity, and traffic and transportation.

[43] As to noise, the Court was satisfied that with the resolution of PC35, the extension of the airport will not preclude opportunities for future development within the Remarkables Park Zone. The Court therefore concluded that this aspect of the NOR to locate the helicopter precinct on the southern side of the airport was not in tension with the planning instruments.[11]

[44] Other issues were said to be manageable by reference to operational plans or via an outline plan of works.

[45] Traffic management and access are not a feature of this appeal and I do not address them further. Nor do I address the Court's summaries in relation to landscape effects as they are not a matter subject to appeal.

Minister's reasons for direct referral

[46] The Court agreed with the Minister's statement that:

> Queenstown is a world renowned tourist destination and expansion of the Airport is likely to affect Queenstown, which is considered to be a place or area of national significance.

[47] The Court also observes that the NOR should be considered in the wider context of other far reaching proceedings before the Environment Court, including QAC's privately initiated PC35 and a second NOR also to amend Designation 2 and PC19.[12]

Part 2 of the Act

[48] The Court's decision focused on s 7(b), (c) and (f).

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11 Refer to [157].
12 Refer [207].

[49] Dealing first with s 7(b) (efficient use of resources), the Court observed that in this case the economists agreed that it was not possible to monetarise all the benefits or costs associated with the NOR. The Court observed that decisions on costs and economic viability or profitability of a project are not matters for the Court.[13] The Court then observed that a cost benefit analysis may be relevant and informative of matters in s 171(b) and s 7(b) but that does not elevate that matter to a criterion to be fulfilled. The Court then assesses the evidence produced by other parties, including that of Dr T Hazeldine, Professor of Economics at the University of Auckland, Mr Ballingall, an economist employed by the New Zealand Institute of Economic Research, and Mr Copeland.

[50] The Court observed that Professor Hazeldine's evidence was focused on whether the designation was reasonably necessary to achieve its objective, and having taken a different view found his concluding remarks of limited assistance.

[51] It then observes that the key difference between Mr Ballingall and Mr Copeland lies in the relevance of a cost benefit analysis for options which have been considered and discounted by requiring authorities. It says that Mr Copeland's approach is like an economic assessment considering the use of the aerodrome with or without Lot 6.

[52] The Court agrees with Mr Copeland that QAC is not subject to any requirement of NZ Treasury or any other government agency when presenting its NOR. It observes that a cost benefit analysis of the alternatives may be relevant and informative of the matters in s 171(1)(b), and in particular whether adequate consideration was given to alternatives in circumstances where a requiring authority either does not have an interest in the land or the work will have a significant adverse effect on the environment.[14]

[53] But as the Court did not have any cost benefit analysis the Court reached various conclusions qualitatively on operational efficiency and externality costs. The relevant conclusions were as follows:

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13 Citing *Friends and Community of Ngawha Inc v Minister of Corrections* [2002] NZRMA 401 (HC).

14 *Re Queenstown Airport Corporation Limited* [2012] NZEnvC 206 at [220].

Operational efficiency

(a) an instrument precision runway and a Code D taxiway is an *inefficient* use of part of the Lot 6 land when it is unlikely these uses will establish;

(b) a general aviation/helicopter precinct including air and landside buildings, infrastructure and landscaping is an *efficient* use of part of the Lot 6 land;

(c) it would be an *efficient* use of land to co-locate the Code C corporate jets south of the main runway in proximity to the Code C taxiway on the basis that QAC elect to build a Code C taxiway in this location;

(d) a hybrid alternative would be *inefficient* in that it would compromise the benefits which would accrue from the collocation of all operations on one site, including for example, shared support services, shared parking, shared accessways within the precinct, proximity for day to day interactions among operators and for customers, many of whom will be unfamiliar with the Airport, knowing that all flightseeing and helicopter operations are located in one precinct.

[54] As to externalities, the view is expressed that the western access imposes an unacceptably high cost on the public. It also said that:

> ... inadequate level of landscape mitigation proposed by QAC would create externality costs to the public using the airport facility and RPL in the development of its land.

[55] It concluded however that the effects are able to be adequately mitigated.

[56] As to s 7(c) and (f), the Court observed that even with conditions, the amenity values and quality of the environment within RPZ will not be fully maintained and that is an outcome to be taken into consideration when making an ultimate determination.

[57] The Court then turned to s 5, "the purpose of sustainable management" and adopted the longstanding approach recommended by the Court in *North Shore City Council v Auckland Regional Council (Okura)*,[15] namely that it is necessary to compare the conflicting considerations, their scale and degree and relative significance or proportion in arriving at the final outcome.

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[15] *North Shore City Council v Auckland Regional Council (Okura)* (1996) 2 ELRNZ 305, [1997] NZRMA 59 (EnvC).

[58] The key conclusion is then drawn:

> [231] For the reasons we have given, an insufficient nexus has been established between fulfilling the QAC's objective and making provision for an instrument precision approach runway and Code D parallel taxiway to support the use of RPL's land for these purposes. The balance of the work will be achieved at the cost to RPL of not being able to use the affected resources it owns for purposes authorized by the district plan. This is recognized and if required there is legislation to deal with any related considerations which may arise (such as compensation).

[59] The Court then concludes:

> [236] ... Overall we find the significant benefits to QAC and the wider community of developing and using the affected resources in the manner proposed, subject to the modifications and the conditions we have identified to avoid, remedy or mitigate adverse effects on the environment, to be consistent with the sustainable management purpose of the Act.

Jurisdiction on appeal

[60] Section 299 of the RMA confers a right of appeal on questions of law only. As stated in *Countdown Properties (Northland) v Dunedin City Council*:[16]

> …this Court will interfere with decisions of the Tribunal only if it considers that the Tribunal:
>
> - applied a wrong legal test; or
> - came to a conclusion without evidence or one to which, on evidence, it could not reasonably have come; or
> - took into account matters which it should not have taken into account; or
> - failed to take into account matters which it should have taken into account.
>
> Moreover, the Tribunal should be given some latitude in reaching findings of fact within its areas of expertise: see *Environmental Defence Society Inc v Mangonui County Council* (1987) 12 NZTPA 349, 353.
>
> Any error of law must materially affect the result of the Tribunal's decision before this Court should grant relief: *Royal Forest and Bird Protection Society Inc v W A Habgood Ltd* (1987) 12 NZTPA 76, 81-82.

[61] Plainly also, I am not concerned with substantive merits of any conclusion. Rather, I must be satisfied that the conclusion has been arrived at by rational process.[17]

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[16] *Countdown Properties (Northlands) Limited v Dunedin City Council* [1994] NZRMA 145 (HC) at 153.

Statutory frame

[62] In order to properly frame the appeals, it is necessary to explain the legislative scheme as it relates to NORs.

[63] This proceeding came before the Environment Court by virtue of the exercise of powers by the Minister under s 147 of the Resource Management Act, after receiving a recommendation from the Environmental Protection Authority (EPA). In reaching a decision to refer, the Minister is required to apply s 142(3) dealing with whether the matter is, or is part of a proposal of national significance. This provides a cue to the importance of the underlying proposal.

[64] Section 149U sets out the relevant gateway tests for approval or otherwise of a notice of requirement. It states:

> **149U Consideration of matter by Environment Court**
>
> (1) The Environment Court, when considering a matter referred to it under section 149T, must-
>
> (a) have regard to the Minister's reasons for making a direction in relation to the matter; and
>
> (b) consider any information provided to it by the EPA under section 149G; and
>
> (c) act in accordance with subsection (2), (3), (4), (5), (6), or (7), as the case may be.
>
> ...
>
> (4) If considering a matter that is a notice of requirement for a designation or to alter a designation, the Court—
>
> (a) must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority; and
>
> (b) may-
>
> (i) cancel the requirement; or
>
> (ii) confirm the requirement; or
>
> (iii) confirm the requirement, but modify it or impose conditions on it as the Court thinks fit; and

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[17] Refer also *Stark v Auckland Regional Council* [1994] NZRMA 337 (HC) at 340.

(c) may waive the requirement for an outline plan to be submitted under section 176A.

...

[65] The reference at subs (4) to s 171(1) incorporates the criteria ordinarily applicable to designation processes.

[66] The key criteria in s 171 are as follows:

> **171 Recommendation by territorial authority**
>
> (1A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.
>
> (1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to-
>
> (a) any relevant provisions of-
>
> (i) a national policy statement:
>
> (ii) a New Zealand coastal policy statement:
>
> (iii) a regional policy statement or proposed regional policy statement:
>
> (iv) a plan or proposed plan; and
>
> (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if-
>
> (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
>
> (ii) it is likely that the work will have a significant adverse effect on the environment; and
>
> (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
>
> (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.
>
> ...

[67] The power to cancel, confirm, or confirm but modify under s 149U(4)(b) mirrors the equivalent power enjoyed by the Environment Court under s 174(4) in respect of appeals from decisions of requiring authorities.

[68] It will be seen that the focal point of the assessment is, subject to Part 2, consideration of the effects of allowing the requirement having particular regard to the stated matters. The import of this is that the purpose, policies and directions in Part 2 set the frame for the consideration of the effects on the environment of allowing the requirement.[18] Indeed, in the event of conflict with the directions in s 171, Part 2 matters override them.[19] Paramount in this regard is s 5 dealing with the purpose of the Act, namely to promote sustainable management of natural and physical resources.

[69] Part 2 also requires that in achieving the sustainable management purpose, all persons exercising functions shall recognise and provide for identified matters of national importance;[20] shall have regard to other matters specified at s 7 and shall take into account the principles of the Treaty of Waitangi.[21]

[70] The reference at s 171(1)(d) to "any other matter" is qualified by the words "reasonably necessary". Given the Act's overarching purpose, however, the scope of the matters that may legitimately be considered as part of the effects assessment must be broad and consistent with securing the attainment of that purpose.

Part B

[71] QAC raises five separate questions of law, namely:

1. Did the Court wrongly interpret cl 3.9.9 and Table 3/1 of Civil Aviation Authority Advisory Circular AC139-6?

2. Is the minimum separation distance between a runway and a parallel

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18 See Briar Gordon and Arnold Turner (eds) Brookers Resource Management (looseleaf ed, Brookers) at 1-1470 and *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC).
19 *McGuire* at 594.
20 Section 6.
21 Section 8.

taxiway for Code C aircraft (in the absence of an aeronautical study indicating that a lower separation distance would be acceptable) 93 metres or 168 metres on the true construction of AC139-6?

3. Did the Court err in failing to have regard to whether its conclusion that a parallel taxiway for Code C aircraft should be 93 metres from the runway would not be able to be implemented unless the Director of Civil Aviation found it to be acceptable after considering an aeronautical study?

4. Did the Court err in directing QAC as to the purpose for which land within the existing aerodrome designation can be used?

5. Did the Court err in holding that there needed to be a nexus between QAC's NOR objective and the provision for an instrument precision approach runway at Queenstown Airport?

The CAA standards

[72] The underlying and critical issue in relation to the first three questions is whether the Environment Court could impose conditions based on an interpretation of Civil Aviation Authority (CAA) standards for separation distances that ultimately might prove to be erroneous and thereby disenable the efficient operation of the designation. The significance of this and the separation distances is shown by an illustration produced by Mr Gardner-Hopkins. I attach this to the judgment as Annexure B.[22] It will be seen that the overall space requirement increases from 119m to 194m, depending which separation distance for Code C aircraft is adopted. If the latter separation distance applies, then a considerably larger encroachment into RPL's land might be needed. I propose to resolve this issue first.

[73] Mr Gardner-Hopkins submits that the Environment Court had no option but to assess the effect of the standards because they drove the land requirements of the

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[22] Mr Kirkpatrick disputed the subtitle references to "Non Precision" and "Precision", but otherwise consented to the production of Annexure B.

airport. Significantly QAC's counsel, having taken expert advice accepted in the Environment Court that 93m was a sufficient separation distance between the main runway and the parallel taxiway under the standards for Code C aircraft. There was therefore no other basis upon which the Environment Court could resolve the factual evaluation of QAC's land requirements. It was an evaluation of agreed fact and one that is not amenable to challenge in this Court.

[74] Mr Kirkpatrick immediately accepts that he must resile from the position he adopted in the Environment Court. He accepted the evidence of Mr Morgan that the appropriate separation distance for Code 4/C aircraft is 93m and that the Environment Court relied on that evidence (being the only evidence available to it). However he submits that immediately after the interim decision was released he advised the Court of the potential difficulties with Mr Morgan's and the Court's assessment, namely that the CAA might insist on a greater separation distance with the result that a key component of designation would be disenabled, as QAC would not have sufficient land to make a parallel taxiway. He says that the requisite separation distance could be as much as 168m. He contends that there is no bar to counsel seeking to resile from a concession where it is in the interests of justice to do so.

[75] Mr Kirkpatrick also submits that the interpretation of the standards is an assessment of law, not fact. In short, he says that the Court is engaged in an assessment of the separation distance required by law, but that the jurisdiction to make that assessment is reposed with the Director of CAA.[23]

Assessment

[76] I agree with Mr Kirkpatrick that the efficacy of the separation distance of 93m is dependent on the approval of the Director of Civil Aviation. If s/he does not approve the 93m separation distance and requires a greater separation distance, a key component of the designation works cannot then be enabled. A condition with that disenabling effect cannot be lawful unless it is the product of a thorough evaluation

[23] Civil Aviation Rule 139.51(c).

in terms of s 171, because it is, in substance, a condition derogating from the grant.[24] Regrettably, the Environment Court did not appear to turn its mind to the potentially disenabling consequences of a 93m limitation prior to the interim decision. Accordingly, the Environment Court did not discharge its duty to consider the effects of the designation in terms of s 171.

[77] In saying this there can be no criticism of the Environment Court. It logically assumed that the proper separation distance was 93m given the agreement of all parties. Ordinarily I would refuse to grant relief in circumstances where the Environment Court has proceeded to a decision on an agreed factual basis. But here the impugned spatial limitation might preclude a significant component of the designation activity and therefore render nugatory a key enabling justification for it. In the absence of the assessment of the effects of this potentially significant outcome, the decision is flawed.

[78] It is also reasonably apparent that Mr Kirkpatrick was agreeing to the evidence about separation while focused on Code D rather than Code C aircraft. Further, he sought to have the matter addressed by the Environment Court prior to the final decision, but the Court ruled that it had already decided the evidential issue. But with respect to the Court's reasoning on this, the Court had not, on the face of the decisions, assessed the significance of the disenabling effect of a negative decision from the Director of Civil Aviation. Whatever the Court's finding of fact or law about the standards, that evaluation needed to be made. Against a backdrop where we are dealing with a project of national significance, this 'error' is significant.

[79] Given the foregoing it is not necessary for me to address the interpretation of the standards and I refuse to do so. In short, there are major problems with this Court, on an appeal under the RMA, purporting to inquire into the interpretation of the standards that must still ultimately be applied by the Director of Civil Aviation. It quickly became abundantly apparent to me that the interpretation of the standards would need to be premised on a sufficient understanding of their practical effect, in

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[24] As to the principle of non derogation refer *Tram Lease Ltd v Croad* [2003] 2 NZLR 461 (CA) at [24].

context, and the interrelationship of the various standards. It appears from submission from the Bar that they are disputable matters and that the Court would be assisted by expert evidence on them. Normally on an appeal like this I would have the benefit of a detailed discussion about the key issues in the decision of the Environment Court, or in terms of my supervisory jurisdiction, an assessment from the Director. I have neither. Furthermore, whatever I say here could not bind the Director, or if it could, runs the risk of usurping the statutory function reposed in the Director and then without the benefit of the Director's assessment of those standards in context.

Existing rights

[80] Questions 4 and 5 relate to the effect of the modified designation on existing rights. Mr Kirkpatrick initially claimed that the Court incorrectly altered the scope of the existing designation by purporting to exclude the potential for instrument precision approaches. He says that the present NOR did not seek to revisit any existing grant. Therefore while the Court could refuse to enlarge the designation to enable an instrument precision approach, it could not thereby extinguish an existing right to pursue that course if QAC deems it feasible to do so in the ordinary operation of its business. He says that the Court was also wrong to resolve there was no nexus between the instrument approach and the objective of the NOR to the extent that this might preclude such an approach in the future.

[81] On closer examination Mr Kirkpatrick accepted that observations made by the Court about nexus and necessity did not translate into conditions or limitations on the internal operations of the Airport.

Assessment

[82] The decision is not purporting to limit the internal operations of the Airport in any material way beyond the existing limits of the current designation and the extent of the designation area. I was not taken to any changes to the designation that had this effect. I do not think therefore that there is anything against which to attach the points of law raised for the purpose of relief. In short, the points of law do not call for a remedy so I see no need to address them.

Part C

[83] RPL claims that the Environment Court acted outside its jurisdiction by purporting to cancel part only of the NOR. It also raises the following questions of law:

1. Should the term 'requirement' in s 168(2) of the Act be defined as meaning 'essential'?

2. Should the term 'requirement' in s 168(2) of the Act be construed in light of s 40 of the PWA?

3. Is the principle of fairness and equitable issues (estoppel) relevant under s 171(1)(d)?

4. Should the duty under s 16 of the Act have formed part of the Court's assessment of alternative locations for FATOs (Final Approach and Take Off)?

5. Did the Court fail to consider relevant alternatives under section 171(1)(b) of the Act?

6. Should the Court have given weight to the absence of any assessment by the QAC of alternatives raised by RPL and Air New Zealand Limited (ANZL) under section 171(1)(b) of the Act?

7. Would a strict application of the "reasonably necessary" test necessitate a determination of the best site for the works?

8/9. Having found that it should reject land required for works associated with a Code D taxiway and a precision approach runway, did the Court subsequently err in:[25]

[25] Items 10.8 and 10.9 of the appeal were consolidated and recast as above.

(i) Finding that the QAC had given adequate consideration to alternatives (section 171(1)(b))?; and

(ii) Finding that the remainder of the works were reasonably necessary (section 171(1)(b))?

10. Did the Court err in determining that the NOR was efficient in the absence of any cost benefit analysis?

11. Does the inconsistency between the QAC's position at the hearing that it could undertake the work and meet the NOR's objective on 8.07 ha of land and the content of its High Court appeal and Public Works Act Notice render the NOR hearing process unfair?

12. Did the Court err by including an existing substation within the land to be designated for airport purposes?

Jurisdiction and procedural fairness

[84] On the question of jurisdiction under s 149U(4) Mr Somerville QC submits:

(a) The Court decided to cancel part and to confirm part of the NOR (refer interim decision cited at [15] above);

(b) Referring to *Takamore Trustees v Kapiti Coast District Council*[26] s 149(U)(4)(b) empowered the Court to cancel or confirm or confirm with modification but it does not expressly empower the Court to mix and match these alternatives;

(c) The scale of the cancellation (a 50% reduction) logically precludes confirmation of the balance – the NOR has been altered so fundamentally that even QAC says that the balance will not achieve the stated objective of the NOR;

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[26] *Takamore Trustees v Kapiti Coast District Council* [2003] 3 NZLR 496 (HC) at [37]-[38].

(d) The Court erroneously relied on *Bungalo Holdings Limited v North Shore City Council*[27] to the effect that the Court had jurisdiction to reduce the scale of the proposed designation when that decision concerned the scope of the discretionary assessment under s 171, not the power to grant relief under s 174;

(e) Part cancellation carries the risk of procedural unfairness in that affected persons may have challenged the altered NOR and did not do so;

(f) There being no power to confirm part only of the NOR, that part of the decision may be set aside without the need to refer the decision back to the Environment Court.

Assessment

[85] I do not accept that the interim decision to cancel part only of the NOR was flawed for want of jurisdiction for the following reasons.

[86] First, the meaning of s 149U(4)(b) from its text and in light of its purpose is reasonably clear.[28] The power to "modify it or impose conditions on it as the Court thinks fit" literally and logically includes the power to modify the scale of the NOR as occurred here; and there is no obvious reason to read down those words to preclude a reduction in scale.[29] This interpretation better serves the overt scheme of the requiring provisions to enable necessary works with appropriate effects, having regard to the criteria expressed at s 171. Further, a flexible power to modify will, in my view, better enable decision makers to carry out their functions in a manner that is consistent with the broad purpose of sustainable management. Conversely, a narrow interpretation of the power may unduly inhibit the capacity of functionaries to achieve that purpose.

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27 *Bungalo Holdings Limited v North Shore City Council* EnvC Auckland A052/01, 7 June 2001.

28 Interpretation Act 1999, s 5(1).

29 Cf by analogy see *West Coast Regional Council v Royal Forest & Bird Protection Society of New Zealand* (2006) 12 ELRNZ 269, [2007] NZRMA 32 (HC) (cited by Mr Gardner-Hopkins). See also *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC) – the Privy Council said in the designation context that "a full right of appeal on the merits is contemplated" and the Environment Court had "wide powers of decision" at 595.

[87] Second, no legitimate question of procedural unfairness arises in this case – the scope of works and envelope of effects is substantially reduced as a consequence of the modification. The prospect of affected parties not having submitted because a much larger proposal was notified is, in my view, highly unlikely.

[88] Third, the reliance placed on *Takamore Trustees v Kapiti Coast District Council* by RPL is misplaced. The Court in that case was confronted with a submission that part of a road route could be cancelled and redirected with the result that an altogether different proposal from that notified would have been enabled. The observation of the Court therefore that "cancellation of a significant piece of the NOR is well beyond modifying a proposal" is understandable, but altogether removed from the present facts. Unlike *Takamore*, the revised designation falls entirely within the envelope of the notified proposal.

[89] Finally, to the extent that the Court decided that the NOR was part cancelled, rather than modified, the error was not sufficiently material to warrant referral back. The difference in this context is semantic.

[90] Accordingly this ground of appeal is dismissed.

Essentiality, PWA, Best Option

[91] Questions 1, 2, 7, 8 and 9 concern the meaning of the terms "requirement" and "reasonably necessary". I deal with them together.

[92] Mr Somerville submitted:

(a) The Environment Court erred when it held that "requirement" under s 168 and the phrase "reasonably necessary" under s 171 meant something less than essential (refer [94]).

(b) Given that the NOR was a precursor to compulsory acquisition of private land, the Court should have instead adopted a narrow meaning of requirement or reasonably necessary, namely essential as this would accord with the common law approach to interpretation where

property rights might be subject to the coercive powers of the State.[30]

(c) The Environment Court further erred by refusing to interpret the meaning of "requirement" in the same way as the term require or required has been interpreted under s 40 of the PWA.[31]

(d) The requiring provisions of the RMA and the acquisition powers under the PWA touch and concern the same underlying subject matter and should be applied consistently. And, as the Court of Appeal said in *Seaton* (not overruled on this point), s 24(7) of the PWA provides an appropriate guide to the legislative policy in terms of decision making involving derogation from and the taking of property for public purposes.

(e) Furthermore, with the rejection of the requirement for a precision runway and Code D aircraft taxiway, the taking of private land is not reasonably necessary in the sense of essential.

Assessment

[93] The language of "requirement" and "reasonably necessary" in ss 168(2) and 171(1)(c) (and in s 24(7) of the PWA) are standards used in everyday language. They should require no undue elaboration. But in the present context, involving the coercive powers of public authorities for public purposes, the words "requirement" and "reasonably necessary" are statutory indicia that any proposed works must be clearly justified by reference to the objective of the NOR. This aligns with the threshold identified by the Court of Appeal in *Seaton* when dealing with the concept of "required" and given the prospect of compulsory acquisition.[32] Whether the scope of the NOR is clearly justified, in context, is of course a question for the Environment Court.

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30 Referring to *Edmonds v Attorney-General* HC Wellington CIV 2000-485-695, 3 May 2005; *Deane v Attorney-General* [1997] 2 NZLR 180 (HC).

31 Referring to *Minister for Land Information v Seaton* [2012] 2 NZLR 636 (CA).

32 *Minister for Land Information v Seaton* [2012] 2 NZLR 636 (CA) at [31]. Note the substantive decision of the Court was overturned by the Supreme Court, but these observations were not tested or criticised. See *Seaton v Minister for Land Information* [2013] NZSC 42.

[94] The Environment Court adopted what might be called the orthodox threshold test of reasonably necessary namely:[33]

> In paragraph (c), the meaning of the word necessary falls between expedient or desirable on the one hand, and essential on the other, and the epithet reasonably qualifies it to allow some tolerance.

[95] The inbuilt flexibility of this definition enables the Environment Court to apply a threshold assessment that is proportionate to the circumstances of the particular case. This is mandated by the broad thrust of the RMA to achieve sustainable management and the inherently polycentric nature of the assessments undertaken by the Environment Court. Provided therefore that the Environment Court was satisfied that the works were clearly justified, there was no error of law in applying this orthodoxy.

[96] I acknowledge that in *Seaton* the Court of Appeal used the concepts reasonably necessary and essential interchangeably.[34] I also accept that a NOR that will derogate from private property rights calls for closer scrutiny.[35] Further, I think that the Environment Court was mistaken when distancing the PWA from the designation powers under the RMA. Both statutes deal with the coercive powers of public authorities to derogate from private property rights. They should be interpreted in a consistent way. This suggests that the Environment Court erred by adopting a threshold test of falling between essential and desirable. But the Environment Court's rejection of RPL's submission that "requirement" and "reasonably necessary" mean "essential" must be understood in the sense that the Court was using that word. As Mr Kirkpatrick highlighted, the Court equated "essential" with the proposition that the "best" site must be selected.[36] And I agree with him that this would set the test beyond the required threshold of "reasonably" necessary. Indeed to elevate the threshold test to "best" site would depart from the everyday usage of the phrase "reasonably necessary" and significantly limit the capacity of requiring authorities to achieve the sustainable management purpose. If

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33 *Re Queenstown Airport Corporation Limited* [2012] NZEnvC 206 at [51].
34 *Minister for Land Information v* Seaton [2012] 2 NZLR 636 (CA) at 644-645.
35 *Deane v Attorney-General* [1997] 2 NZLR 180 (HC); and is to be distinguished from planning regulation simpliciter: *Falkner v Gisborne District Council* [1995] 3 NZLR 622 (HC); *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112.
36 *Re Queenstown Airport Corporation Limited* [2012] EnvC 206 at [94].

that was the intention of Parliament then I would have expected express language to that effect (as it has done in relation to s 16 and the duty to use the "best" practicable option for noise mitigation).[37] I therefore discern no error in the Court's adoption of a threshold test that falls below this benchmark.

[97] If I then turn to the substance of the Court's assessment, it is evident that the Court carefully evaluated whether the works were clearly justified. In this regard, the Court was aware that NORs that affect private property must be afforded "less tolerance".[38] I also agree with Mr Kirkpatrick that the various passages of the judgment illustrate that the Court sought clear justification for the scope of the NOR.[39] And it is important to view the judgment as a whole. When this is done, very careful consideration was plainly given to whether the works were justified.

[98] Accordingly, I see no definitional flaw of substance. This ground also fails.

Fairness and substantive legitimate expectation

[99] Question 3 concerns the relevance of fairness in designation proceedings. Mr Somerville contends:

(a) The Environment Court erroneously did not consider the unfairness to RPL resulting from a NOR, deeming it to be irrelevant as a matter of law and factually (refer [54]-[55]).

(b) Fairness is a mandatory relevant consideration as a matter of common law principle, and at the very least is a relevant consideration under s 171(1)(d).

(c) The previous dealings between RPL and QAC involved land transfer and other agreements concerning the use of the land now subject to the NOR, including the following clauses:[40]

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37 Refer also to discussion in *Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482 (HC) at [118]-[120].

38 *Re Queenstown Airport Corporation Limited* [2012] NZEnvC 206 at [94].

39 For example at [112]-[115], [139]-[142], [226], [236].

40 Deed Settling Resource Management Issues Between Queenstown Airport Corporation Limited

> 3.3 The land transferred to RPH pursuant to clauses 3.1 and 3.2 and other RPG holdings shown on Figure 6-1R and Figure 6-3R referred to below, shall not thereafter be the subject of any claim or requirement by QAC other than Air Noise Boundary and Airport Approach and Land Use Controls and aerodrome purposes designations/requirements QAC needs to maintain for the continuing operation of Queenstown Airport in accordance with agreed present and future layout.
>
> ...
>
> 6.3 RPG shall after the land exchange, utilise the buffer land only for rural and/or recreational uses and infrastructural utilities not of a noise sensitive nature in terms of NZS6805. ... This limitation shall be the subject of a registrable restrictive covenant in favour of QAC which shall enure during the life of this airport at its present location. The term "recreational uses" expressly allows for provision of a golf course and associated facilities.

(d) In a subsequent agreement, the parties agreed:

> 15.2 ... To the extent that the QAC's aerodrome purposes designation has not already been uplifted, QAC shall modify that designation to remove it from Areas A, B, C and D and all legally vested roads along with the other parcels of land described in clauses 3.3 and 6.4 of the 1997 deed.

(e) As a minimum, these dealings gave rise to a legitimate expectation on the part of RPL that QAC (as the requiring authority) and the Environment Court (as the confirming authority) would give due consideration to alternatives that did not involve the taking of RPL's land recently acquired from QAC as part of the transfer agreement.

(f) Contrary to the findings of the Environment Court, there was direct reference of the existence of the land transfer agreements and the reliance on them by RPL. For example RPL's submission stated:[41]

> 3.21 By way of background, it is important to note that the QAC exchanged land with RPL under a series of formal contractual agreements. This raises estoppel issues. The land now owned by the QAC on the northern side of the airport that it is seeking to rezone to enable urban activities

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and Remarkables Park Limited, October 1997.

41 Refer also to the Statement of Evidence of M Foster at 7.6, Statement of Evidence of S Sanderson at 71, and transcript at Vol. 4 p 1156, Vol. 5 at 1405 and 1415, and see the covenant attached to the notice of requirement.

> was previously owned by RPL. RPL exchanged that land for much of the land that is now the subject of the QAC;s NOR. In short, QAC seeks to keep the land it acquired from RPL through the contractual agreements and take back the land it agreed RPL should acquire.
>
> 3.22 The land swap referred to above was part of a comprehensive zoning settlement including consent orders endorsed by the Environment Court, to which the QAC and the Queenstown Lakes district council was a party. The QAC is effectively seeking to unravel those agreements and zonings, despite previously consenting and committing to them. In doing so, the QAC is undermining a sustainable and integrated zoning pattern already endorsed by the Court.

(g) The finding also that the prospective use of QAC's land in preference to RPL's land was suppositious was, in light of the historical position up to 2010, not an available conclusion on the evidence.

(h) The reference to PC19, and the scarcity of industrial land, could not justify a finding that the use of QAC land was suppositious (refer [89] and [90]) – and the Court could not properly fill the gap left by QAC's assessment of alternatives with its own supposition about future use of QAC's land.

(i) The Environment Court's approach to s 24(7) and that the question of fairness need not be decided was flawed (referring to [55]).

[100] Mr Kirkpatrick submits that the key evidence relied upon by RPL was never produced to the Court and there are no findings of fact upon which I can reasonably graft a legitimate expectation. He says that the key cl 3.3 was not referred to at the Environment Court hearing and there is no evidence that QAC bound itself to exclude RPL's land from a future designation. He also says that to the extent that there was any contractual right of the nature claimed, it could not fetter the proper exercise of a statutory discretion; though he accepted that whether there was a proper exercise of discretion depended on the circumstances.[42] He also accepted that, if QAC did contract to avoid the use of RPL's land, that this might give rise to a legitimate expectation that RPL's rights would be considered before any final

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[42] Citing *The Power Co Ltd v Gore District Council* [1997] 1 NZLR 537 (CA) at 548.

decision is made and that this might require an assessment of alternatives not involving RPL's land. He said however that in any event the alternatives were thoroughly considered, either before the NOR and during the Environment Court hearing.

[101] Mr Kirkpatrick also rejects the suggestion that assessment at s 24(7), namely whether the works are "fair, sound, and reasonably necessary", should be applied in the context of s 171(1)(b). He says that the Environment Court is bound, like all Courts, to securing fair process, and that substantive fairness is an element of sustainable management. He also accepts that the language used in both sections should be interpreted consistently. But that does not mean that the criteria expressed at s 171 are overlaid by the fairness and soundness assessments contemplated at s 24(7).

[102] As to the finding that the alternatives were "suppositious", Mr Kirkpatrick says this was a finding available to the Court (and I address the substantive issue below at [115]-[126]). The Court I am told also put various questions to Mr Foster concerning the issues confronting PC19 and provided the parties with an opportunity to comment. Therefore he says, no clear procedural unfairness arises.

Assessment

[103] This ground of appeal brings into focus the fairness of a requirement affecting RPL's land in light of QAC's previous dealings with RPL. RPL's basic contention is that it held a legitimate expectation that Lot 6 would not be used for aerodrome designation purposes, or if it is used, all alternatives not using RPL land would be thoroughly explored. The Court appeared to decline to entertain this argument because fairness is not an express criterion under s 171 and in any event there was no evidence to support a legitimate expectation.[43]

[104] The resolution of this appeal point is vexing because of the way it appears it was argued in the Court below by analogy to s 24(7) of the PWA and the focus of the

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[43] *Re Queenstown Airport Corporation Limited* [2012] NZEnvC 206 at [54]-[55].

Court in light of that argument. Nevertheless I consider that the Court erred for the following reasons.

[105] Parliament will be presumed to legislate consistently with minimum standards of fairness, especially when dealing with coercive powers of the State.[44] Moreover, the scheme of the Act dealing with designations is purpose built to secure a fair outcome having regard to the broad criteria specified at s 171 and in light of Part 2, with full rights of participation and then appeal rights on points of law. Indeed, as the Privy Council stated in *McGuire v Hastings District Council*,[45] the jurisdiction of the Environment Court under the RMA is broad, with the administrative law jurisdiction of the High Court very much a residual one. The Environment Court therefore plays the key role in providing judicial oversight in relation to the designation process. The central issue therefore is not whether fairness is a mandatory relevant criterion (as per s 24 of the PWA) but whether fairness or any alleged unfairness is relevant to the evaluation under s 171 in the circumstances of the case. The Court erred because it did not address this central issue.

[106] As to whether RPL's claimed unfairness is prima facie relevant, the doctrine of legitimate expectation is also not new to resource management law. In *Aoraki Water Trust v Meridian Energy Ltd*[46] the High Court recognised that the doctrine of legitimate expectation might be applied in the RMA context.[47] The Court in that case was dealing with the expectation of water rights holders that the regional council would not derogate from their water rights grants unless specifically empowered to do so by the RMA.[48] The application of the doctrine will however depend entirely on the facts of the particular case. But a key ingredient is whether there has been reliance on an assurance given by a public authority, made in the lawful exercise of the authority's powers. If so, the affected person may legitimately expect compliance with that assurance subject only to an express statutory duty or

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44 Refer: Lord Steyn in *R v Secretary of State for the Home Department, ex parte Pierson* [1998] AC539 (HL) at 591.
45 *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC) at [25].
46 *Aoraki Water Trust v Meridian Energy Ltd* [2005] NZLR 268 (HC).
47 At [39]-[42].
48 At [46].

power to do otherwise.[49] In the present case, that must mean satisfaction of the criteria expressed at s 171 and in particular at subs (1)(b) and (c), having regard to any relevant legitimate expectations, properly established. Fairness would then implore an outcome which is consistent with those expectations provided that the outcome met the statutory criteria and achieved the statutory purpose. Conversely, the Court, like QAC, cannot be bound to give effect to those expectations where to do so is inconsistent with the requirements of s 171.[50] In short the Court's jurisdiction, though wide, is framed by the scheme and purpose of the RMA.[51]

[107] Unfortunately the Court's substantive fairness assessment was diverted by the approach taken to the production of the contracts relied upon by RPL. The Court appeared to assume that it did not need to consider the contracts themselves based on submission of counsel. On closer inspection of the record I accept Mr Somerville's contention that the Court was not invited to "interpret" the contracts, there being no serious dispute about the key representations, but that they remained central to the assessment of unfairness.

[108] I also accept Mr Somerville's basic contention that the contracts were themselves evidence of reliance. In short, the contracts represented the exchange of mutually enforceable promises, for valuable consideration with consequences for breach. The contracts recorded land swaps, that future airport development would accord with agreed plans and not otherwise (and I understand no agreed plan was produced showing Lot 6 would be developed for aerodrome purposes), that QAC would withdraw the aerodrome designation from Lot 6 and that Lot 6 would act as a "buffer" zone, i.e. as between airport activities and RPL's activities. Also attached to one of the contracts were plans showing "potential Helicopter Area 7 Hectares" to the north of the main runway."[52] Effect was given to these contracts by the parties, including the imposition of a covenant over Lot 6 and the withdrawal of the aerodrome designation over Lot 6. I understand that these facts were not challenged.

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49 Refer *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC).

50 *The Power Co Ltd v Gore District Council* [1997] 1 NZLR 537 (CA).

51 Furthermore, the Environment Court does not have jurisdiction to examine the legality of the decision to notify a NOR. Any challenge to legality of QAC's decision to notify must still be brought by way of judicial review. *Waitakere City Council v Estate Homes Limited* [2006] NZSC 112 at [38].

52 See transcript at 1406.

It is therefore at least arguable that on the face of the agreements it was the expectation of both parties that Lot 6 would remain a buffer zone.

[109] The outcome of all of this is that the Court never correctly assessed the claim based on legitimate expectation to the extent that it might be relevant to the s 171 evaluation.

[110] I deal with the materiality of this error below at [146].

Section 16

[111] Mr Somerville claims that the Court erred by not holding that s 16 applied as if it were an additional criterion. Section 16 imposes the following duty:

> **16 Duty to avoid unreasonable noise**
>
> (1) Every occupier of land (including any premises and any coastal marine area), and every person carrying out an activity in, on, or under a water body or… the coastal marine area, shall adopt the best practicable option to ensure that the emission of noise from that land or water does not exceed a reasonable level.
>
> (2) A national environmental standard, plan, or resource consent made or granted for the purposes of any of sections 9, 12, 13, 14, 15, 15A, and 15B may prescribe noise emission standards, and is not limited in its ability to do so by subsection (1).

[112] He said that it is commonsense to adopt an approach that is consistent to the performance of this duty, that is to take a best practical option approach to the assessment of alternatives for Final Approach and Take Off (FATO) locations. He said that while s 16 was not triggered in every case, it should have been in this case. RPL claims that sites on QAC's land are more likely to meet the best practicable option (BPO) requirement than the proposed sites on Lot 6.

Assessment

[113] I reject this ground. It is necessary to record the key part of the decision:

> [58] We hold section 16 is not to be applied as if it were an additional criterion to subsection (1)(a)-(d) of section 171. In some cases adopting the best practicable option may be useful check for the decision-maker,

> particularly when assessing the adequacy of the alternatives under consideration, but not in every case.

[114] The refusal to apply s 16 as an additional criterion must be read together with the observation that "in some cases adopting the best practicable option may be useful check for the decision-maker". Plainly the Court considered whether the s 16 duty and BPO was relevant to the evaluative exercise and decided that it was not. For my part this is an orthodox approach to the assessment of effects. Moreover, the s 16 duty imposes a minimum BPO requirement in circumstances where the effects of the noise are not reasonable. It is not a duty that applies where the noise effects are reasonable to their context. Whether or not noise levels can be mitigated to reasonable levels is a matter for the Court to assess, and whether BPO is required to achieve those levels is an assessment of fact, in each case, for the Court. Accordingly, the Court made no error of law by not insisting on adopting a BPO approach to the assessment of alternatives.

Assessment of Alternatives

[115] Questions 5, 6, 8 and 9 raise concerns with the assessment of alternatives.

[116] Mr Somerville submits that:

(a) The Court erroneously rejected an alternative site involving QAC owned land to the north of the existing designation on the basis that it was suppositious.

(b) The Court should have given weight to the absence of an assessment of this alternative by QAC.

(c) Further, as two of the five major reasons for the designation have been rejected, the alternative assessment by QAC proceeded from a false premise.

(d) Similarly, as the modified position was never assessed as an alternative, it could not possibly satisfy the adequacy criterion at s 171(1)(b). This is linked to the issue of jurisdiction and fairness,

and the implicit requirement that any modification must be one of the assessed alternatives.

[117] Turning to the merits, Mr Somerville says that the finding that the alternative to the north was suppositious was not available to the Court on the evidence. In fact he said that background showed that until 2010 the land was considered as appropriate for expansion. He also says that the Court placed improper reliance on PC19 and the scarcity of industrial land in Queenstown, there being no evidence or submission on the relevance or significance of these matters. He said that the Court must have relied on its own knowledge of those matters, but never afforded the parties the opportunity to comment other than through some questions from the Court to RPL's witness, Mr Foster, about the nature of the aviation activities and whether they might qualify as industrial.

[118] He points to the language of s 171(1)(b) which specifically requires the Court to consider "whether adequate consideration has been given to alternative sites". Thus, he submits, by failing to give weight to the absence of the assessment by QAC of the merits of the use of its own land, the Court has not discharged this statutory duty under s 171(1)(b).

[119] Mr Kirkpatrick responds that the Court had before it various master plans, including proposals to use QAC land to the north and outside of the existing designation. Plainly therefore QAC had previously considered various alternatives, including the one now raised by RPL. He says that there was evidence on which the Court might find that expansion to the north was suppositious.[53] He accepts that the Court did not raise with the parties the significance of the scarcity of industrial land in light of PC19, but that Mr Foster was tested on the proposition that aerodrome uses include industrial activity. In any event, he says the Court made a detailed examination of the alternatives, including on sites to the immediate north and rejected them. He specifically referred me to [112]-[115] of the decision (noted above) to demonstrate the careful assessment undertaken of alternatives by the Court. There was therefore no failure in terms of s 171(1)(b).

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[53] See submissions of Mr Kirkpatrick at [25] in reply to RPL's submissions. Mr Kirkpatrick cited evidence of P West and B Macmillan.

Assessment

[120] It is important to commence this analysis by referring to the language of s 171(1)(b) relevant to this ground of appeal. The Environment Court was required to have particular regard to:

> "whether adequate consideration has been given to alternative sites... if ... the requiring authority does not have an interest in the land sufficient for undertaking the work..."

[121] The section presupposes that where private land will be affected by a designation, adequate consideration of alternative sites not involving private land must be undertaken by the requiring authority. Furthermore, the measure of adequacy will depend on the extent of the land affected by the designation. The greater the impact on private land, the more careful the assessment of alternative sites not affecting private land will need to be.

[122] It is beyond doubt that the extent of private land subject to the proposed designation is significant. As notified 19 ha would be affected. The modified version still encompasses 8 ha. The Court had to be satisfied that the assessment of alternative sites was adequate having regard to this impact. There is authority however that a suppositious or hypothetical alternative need not be considered.[54] But given the statutory requirement to have particular regard to the adequacy of the consideration given to alternatives, it is not sufficient to rely on the absence of a merits assessment of an alternative or on the assertion of the requiring authority. Provided there is some evidence that the alternative is not merely suppositious or hypothetical, then the Court must have particular regard to whether it was adequately considered.[55]

[123] RPL insisted that the Court was required to assess whether adequate consideration was given to locating the general aviation/helicopter precinct on land north of the main runway, including the undesignated land owned by QAC and/or QLDC. The Court responded that this option was suppositious for the following reasons (repeated here for ease of reference):

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[54] *Waitakere City Council v Brunel* [2007] NZRMA 235 (HC) at [29].

[55] Cf by analogy, *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556 (HC) at [36] and [37].

> [89] Conceptual plans prepared by RPL for a general aviation/helicopter precinct north of the main runway included undesignated land owned by QAC within the area of PC19. Under these plans a general aviation/helicopter precinct would displace up to 4.52 hectares of industrial land within PC19. In proposing this option, RPL witnesses did not address the scarcity of industrial land within Queenstown (an important issue that PC19 *inter alia* seeks to address). There was some suggestion by the RPL planner, Mr M Foster, that aerodrome activities are industrial activities for the relevant activity areas within PC19.
>
> [90] We doubt Mr Foster's interpretation is correct and in the absence of any evidence in this proceeding or PC19 addressing the implications of an aviation precinct within PC19, particularly in relation to the urban form and function, we do not consider that PC19 land should be available as part of an alternative location. Activities relating to an aviation precinct appear to be outside those contemplated by the District Council when promulgating PC19.

[124] There are two immediate issues with this reasoning. First the Court introduces the scarcity of industrial land as a reason for rejecting QAC's land to the north of the designation. I am told that scarcity of industrial land was not mentioned in submissions or evidence and Mr Kirkpatrick said that reference to it cannot be found anywhere in the transcript. Second, the Court appears to shift the burden of demonstrating the efficacy of the suggested alternative to RPL in light of PC19. But the task of persuading the Court as to the adequacy of the consideration of alternatives always rested with QAC for the orthodox reason that QAC is seeking to persuade the Court that all relevant alternatives were adequately considered.[56]

[125] Having said all of that, as the Canadian Supreme Court said in *Housen v Nikolaisen*:[57]

> Appeals are telescopic in nature, focussing narrowly on particular issues as opposed to viewing the case as a whole

[126] And, it is too easy to alight on isolated passages in a judgment and to dismiss the full evaluation undertaken by the Court, based on detailed information, including expert evidence, about the assessment (and efficacy) of the various alternatives.

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[56] Cf *Shirley Primary School v Telecom Mobile Communications Ltd* [1999] NZRMA 66 (EnvC). And see *Ngati Maru Iwi Authority v Auckland City Council* HC Auckland AP18/02, 7 June 2002.

[57] *Housen v Nikolaisen* [2002] 2 SCR 235 at 250, cited with approval by the Supreme Court of the United Kingdom in *McGraddie v McGraddie* [2013] UKSC 58.

[127] In this regard, the judgment also refers to reports produced in 2005, 2006, 2007 and 2008 considering sites for a new general aviation/helicopter precinct located within the existing aerodrome designation north of the main runway. The 2005 Master Plan expressly rejects such a precinct within Lot 6. It then records that QAC's advisor recommended in a 2007 report that general aviation flight-seeing operations be grouped north of the main runway.[58] However, in 2010, QAC's advisor changed its recommendation, concluding that a north-east precinct "is distinctively inferior".[59] While this north-east precinct appears to be located within the existing designation (and so is not synonymous with RPL's suggested alternative), it identifies problems with a northern location as distinct from a southern location and relevantly that: [60]

> ... the southern site would not require helicopters or fixed wing to cross runway 23/05 when departing to the south or east (a very common flight path), if departing north or west from the proposed northern site, it appears aircraft would still need to track south initially (crossing the main runway....

[128] The point of this observation is not to shore up an alleged deficiency in QAC's or the Court's assessment, but to illustrate with one example the detailed information before the Court and the reason why this Court must be slow to interfere with findings of fact by telescope.

[129] Problematically however, the Court identified "scarcity of industrial land" and PC19 as a key reason for treating the site to the north as suppositious. As there was no evidence about this, and no argument directly addressing its merits, the Court fell into procedural, if not substantive error. It may be that the Court treated scarcity of industrial land in Queenstown as a matter of uncontroverted fact.[61] Certainly recent decisions of the Environment Court and this Court about PC19 refer to the significant need for industrial land in Queenstown.[62] And the Court could not be criticised for referring to PC19 as it was a mandatory relevant consideration.[63] But

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58 *Re Queenstown Airport Corporation Limited* [2012] NZEnvC 206 at [76]-[81].

59 At [86].

60 Refer Assessment of Environmental Effects, 5.3.4; and Appendix T.

61 While the Environment Court is not strictly bound by rules of evidence, the capacity to take into account uncontroverted facts is allowed by s 128 of the Evidence Act 2006.

62 *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 817 at [25]; *Foodstuffs (South Island) Ltd v Queenstown Lakes District Council* [2012] NZEnvC 135 at [563].

63 Section 171(1)(a)(iv) and s 43AAC.

RPL should have been invited to submit on the factual issue of scarcity if it was going to be the reason for rejecting RPL's alternative site as suppositious. As a minimum, and in the absence of any party raising the issue of scarcity of industrial land, RPL was entitled to notice of the Court's conclusions about that issue before it was used as a reason to reject RPL's objection. While I would ordinarily afford the Court a significant amount of latitude for the reasons mentioned at [125]-[126], an issue of procedural justice arose when the Court resolved a substantive issue relying on its own knowledge and without notice to the parties.[64]

[130] Accordingly the appeal on this point is allowed. I deal with materiality and relief below. It must be considered in light of my findings on the question of fairness.

Cost benefit analysis

[131] Mr Somerville submits that the Court erred by determining that the NOR was efficient in the absence of a cost benefit analysis.

[132] There is nothing in the language of ss 7(b) or 171(1)(b) that imposes a legal duty on the requiring authority to prepare a cost benefit analysis or requires the Court to consider a cost benefit analysis. As the Court noted, such an analysis may be very helpful and the failure to do one may mean that the Court finds that the assessment of efficiency and/or alternatives is inadequate. But rarely will the failure of the Court to require a cost benefit analysis amount to an error of law. Indeed the full High Court in *Meridian Energy Ltd v Central Otago District Council* considered that the Environment Court erred by requiring a cost benefit analysis.[65] Moreover, it is inherently part of the evaluative function for the Environment Court to determine whether there has been adequate consideration of alternatives or whether the proposal is an efficient use of resources and whether there is a sufficient basis to draw a robust conclusion. In short, the assessment of efficiency and/or alternatives is essentially an assessment of fact, on the evidence, not readily amenable to appeal on a point of law.

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64 Cf *Treaty Tribes Coalition v Urban Maori Authorities* [1997] 1 NZLR 513 (PC) at 522.

65 *Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482 (HC) at [116].

[133] Mr Somerville's submissions sought to distinguish leading authority eschewing the requirement to assess the viability of a project. The submissions also sought to distinguish the observations of the full High Court about cost benefit analysis in *Meridian*. I readily accept the proposition that the case law dealing with viability has nothing to do with cost benefit analysis. Viability is essentially concerned with profitability and the Courts in this context have never been concerned with profitability.[66]

[134] Cost benefit analysis is however concerned with quantifying, in economic terms, whether the costs of a proposed use of a resource exceed the benefits of that use. It is therefore a recognised method for assessing efficiency and/or the relative merits of alternatives, especially in circumstances where the ordinary operation of the market to achieve allocative efficiency cannot be assumed. But, as to the requirement to undertake a cost benefit analysis, the Court in *Meridian* observed:

> [111] Parliament has not mandated that the decisions of consent authorities should be "objectified" by some kind of quantification process. Nor does it disparage, as a lesser means of decision making, the need for duly authorised decision-makers to reach decisions which are ultimately an evaluation of the merits of the proposal against relevant provisions of policy statements and plans and the criteria arrayed in Part 2. That process cannot be criticised as "subjective". It is not inferior to a cost-benefit analysis. Consent authorities, be they councillors, commissioners or the Environment Court, and upon appeal the High Court Judges, have to respect that reality and approach decision making in accordance with the process mandated by the statute. It is not a good or bad process, it simply is the statutory process.

[135] I do not think this reasoning can be readily distinguished, as it is a general statement of principle about the functioning of the RMA. To that extent, it remains apposite to this case. However, unlike s 7(b), the Court under s 171(1)(b) must decide whether "adequate" consideration has been given to alternatives. It may be that a Court might find that the assessment was inadequate without a cost benefit assessment. But whether that is so is an evaluative matter for the Court and is not a mandatory requirement in every case.

[136] I have also reviewed the reasons given by the Environment Court in relation to cost benefit analysis, and I cannot identify any obvious flaw that might warrant

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66 *Friends and Community of Ngawha Inc v Minister of Corrections* [2002] NZRMA 401 (HC).

further investigation by me or suggest a reviewable error of law. Quite the opposite, the Court assembled the information available to it, examined key considerations of operational efficiency and externalities, and formed a conclusion that was available to it on the evidence.[67] Accordingly, there being no general or specific duty at law to require a cost benefit analysis, this ground of appeal must fail.

Inconsistency of position

[137] Mr Somerville submits that QAC advised the Court that 8.07 ha was sufficient to enable it to undertake its operation, yet it has now sought to exercise powers of acquisition for 15 ha under the PWA. He says the Court relied on the QAC's representation in finally resolving that the modified position was appropriate. He therefore contends that had it known that in fact QAC needed more than 8.07 ha, the Court would have had to cancel the designation in its entirety, because it would not then have had a sound basis for the grant of a designation affecting that land.

[138] Mr Kirkpatrick responds that the PWA process was triggered to provide surety that, in the event that QAC was successful in this appeal, it could acquire the land it needed. He says there is no need to have the designation in place before commencing the PWA procedures. He also indicated that QAC would not seek to complete the PWA process without first having resolved the final scope of the designation.

Assessment

[139] I reject this ground. I do not accept that QAC represented to the Court that 8.07 ha was sufficient. I have the transcript of the relevant passage. I will not lengthen this judgment by quoting it. In short, Mr Kirkpatrick plainly indicated to the Court that compliance with Civil Aviation Authority standards might demand a greater amount of land to accommodate Code C aircraft. He simply confirmed that 8.07 ha was sufficient for general aviation and helicopter aircraft.[68] Accordingly there is no inconsistency of position.

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67 *Re Queenstown Airport Corporation Limited* [2012] NZEnvC 206 at [226], [235] and [236].
68 Transcript at pp 1419 and 1420.

The substation

[140] Question 12 deals with the inclusion of a substation within the designation. RPL is concerned to ensure that the substation is not affected by the designation, presumably as it is useful infrastructure. Mr Somerville submitted that the substation was beyond the designation boundary.

[141] Mr Kirkpatrick says that it is simply efficient to include the substation within the designation because of access issues. But there is no intention to affect its usual operation.

[142] I was not taken to the original designation to understand its areal extent. But assuming the substation was not contained within the literal boundary of the notified designation, Mr Kirkpatrick advises that there was a great deal of evidence about the substation, so plainly RPL had an opportunity to deal with any prejudice to it. Mr Kirkpatrick also advises that if the substation is relocated before any works are undertaken in respect of the designation, then it may be possible to re-align the boundary of the designation.

[143] To the extent therefore that there might be an issue arising out of the areal extent of the notified designation (which is not clear to me), I do not consider that a material issue of law arises warranting relief given the representations made by Counsel for QAC in its written submissions.[69]

Part D – Outcome

[144] I have identified the following errors (in summary):

(a) The Environment Court did not have regard to the potential disenabling effect of a maximum separation distance of 93m between the main runway strip and the taxiway;

(b) The Environment Court incorrectly excluded fairness as an irrelevant consideration;

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[69] See paragraphs 65-67 of outline of submissions on behalf of QAC in reply to RPL.

(c) The Environment Court did not correctly assess RPL's claims based on legitimate expectation;

(d) The Environment Court did not provide RPL with an opportunity to address the issue of scarcity of industrial land and its relevance or otherwise to the adequacy of the assessment of alternatives under s 171(1)(b).

[145] The first error, raised by QAC, is plainly material. If the Director of Civil Aviation does not approve the 93m separation distance, there may be insufficient land subject to the designation to enable both a Code C taxiway and a general aviation precinct. A key justification for the designation and its coercive effect over Lot 6 may then not eventuate. I cannot dismiss the prospect that the Court, properly apprised of this potentially disenabling effect, might allow more land to be subject to the designation or cancel the designation altogether rather than simply confirm the interim decision.

[146] The three remaining errors, raised by RPL, are interrelated. The central concern is that the Environment Court, by rejecting the relevance of fairness and RPL's asserted legitimate expectations, did not properly frame the alternatives or reasonableness assessment. The Court proceeded on the assumption that it could treat RPL's suggested alternative as suppositious even though the contractual background envisaged that QAC's land to the north might be used for aerodrome expansion, and while RPL's land to the south would remain a buffer zone. Yet there is at least an arguable case that RPL could legitimately expect that Lot 6 would remain a buffer zone, and/or alternatives not involving RPL's land would be thoroughly explored before the decision to designate was notified or confirmed. As a minimum RPL could expect that clear justification for using Lot 6 would be established prior to confirmation.

[147] One real difficulty for RPL is that the Environment Court has closely assessed the effects of the NOR in light of the criteria at s 171 and found clear justification for it. To the extent therefore that there has been any unfairness in the process leading up to the issuance of the NOR, it could be said to have been

remedied by the subsequent Environment Court process. The tipping point however is that the Court referred to scarcity of industrial land to disregard RPL's alternative. RPL was never afforded the opportunity to address the scarcity of industrial land and whether that provided a proper basis for the Court's conclusion. This was procedurally unfair and compounded the failure to have regard to RPL's asserted expectations. I cannot foreclose the possibility that the Court might be persuaded that scarcity of industrial land is not a valid issue, or if it is, that scarcity was and is not a proper reason to foreclose consideration of RPL's alternative, especially in light of the previous contractual arrangements.

[148] I therefore allow the appeals in part, and refer the application back to the Environment Court to reconsider:

(a) Whether the requirement should be cancelled or modified after it has provided the parties with an opportunity to be heard in relation to the separation requirements for a Code C taxiway and the process for confirming those requirements.

(b) The assessment of the adequacy of alternatives and reasonable necessity under s 171(1) (b) and (c) after it has provided the parties with an opportunity to be heard in relation to RPL's legitimate expectation claims and the scarcity of industrial land.

[149] Beyond these specific directions, it will be for the Environment Court to determine how it proceeds to reconsider the above matters and any consequential relief that might follow, if any, including but not limited to further modification or cancellation of the designation.

[150] I note that none of the parties have sought to challenge the findings about the improbability of a precision runway and Code D aircraft. Nothing in this judgment or the relief granted affects those findings or the substantive reduction in areal extent of the designation based on those findings.

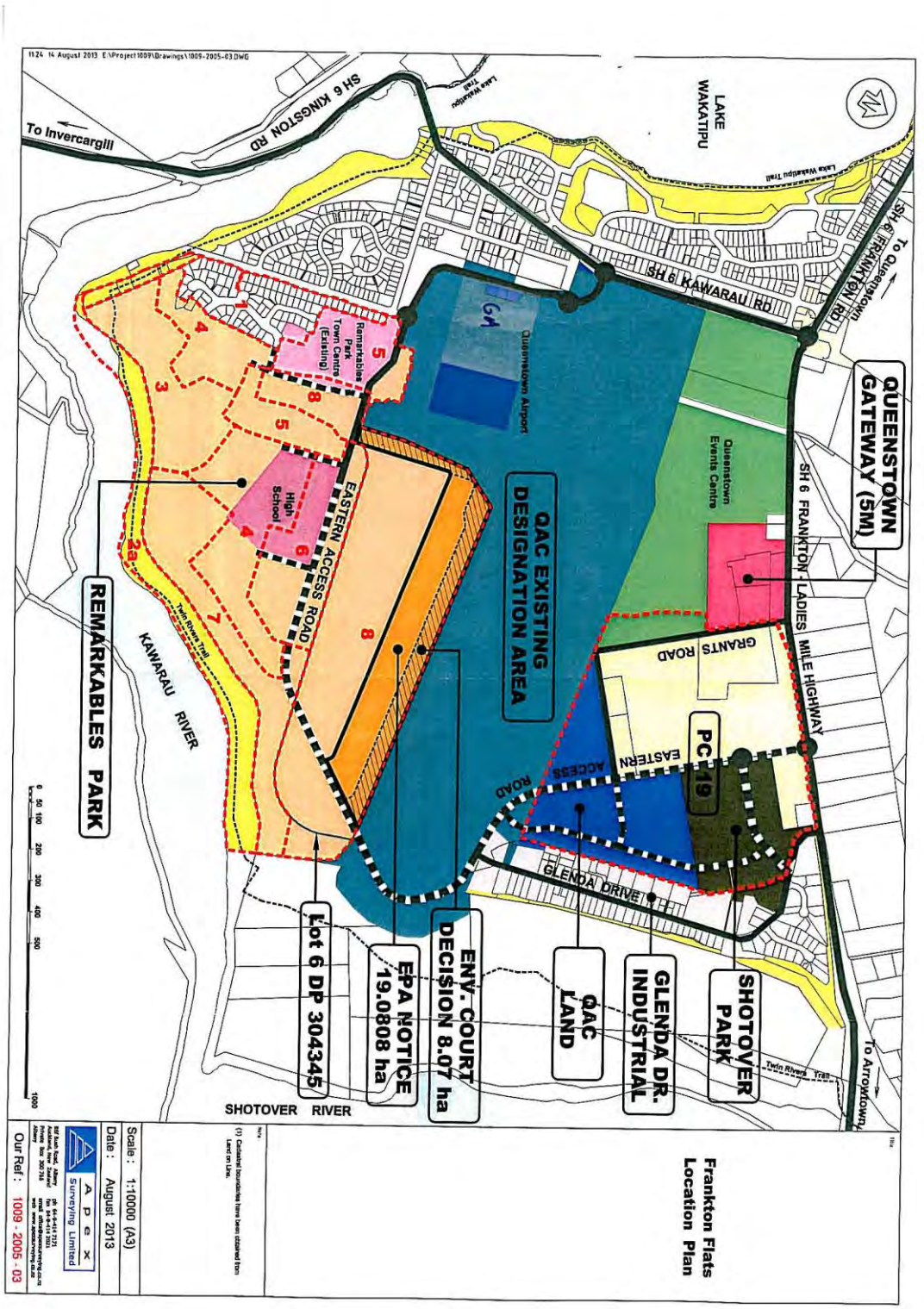
[151] Leave is granted to the parties to seek clarification of my orders if that is necessary. I will separately minute my availability in this regard.

Costs

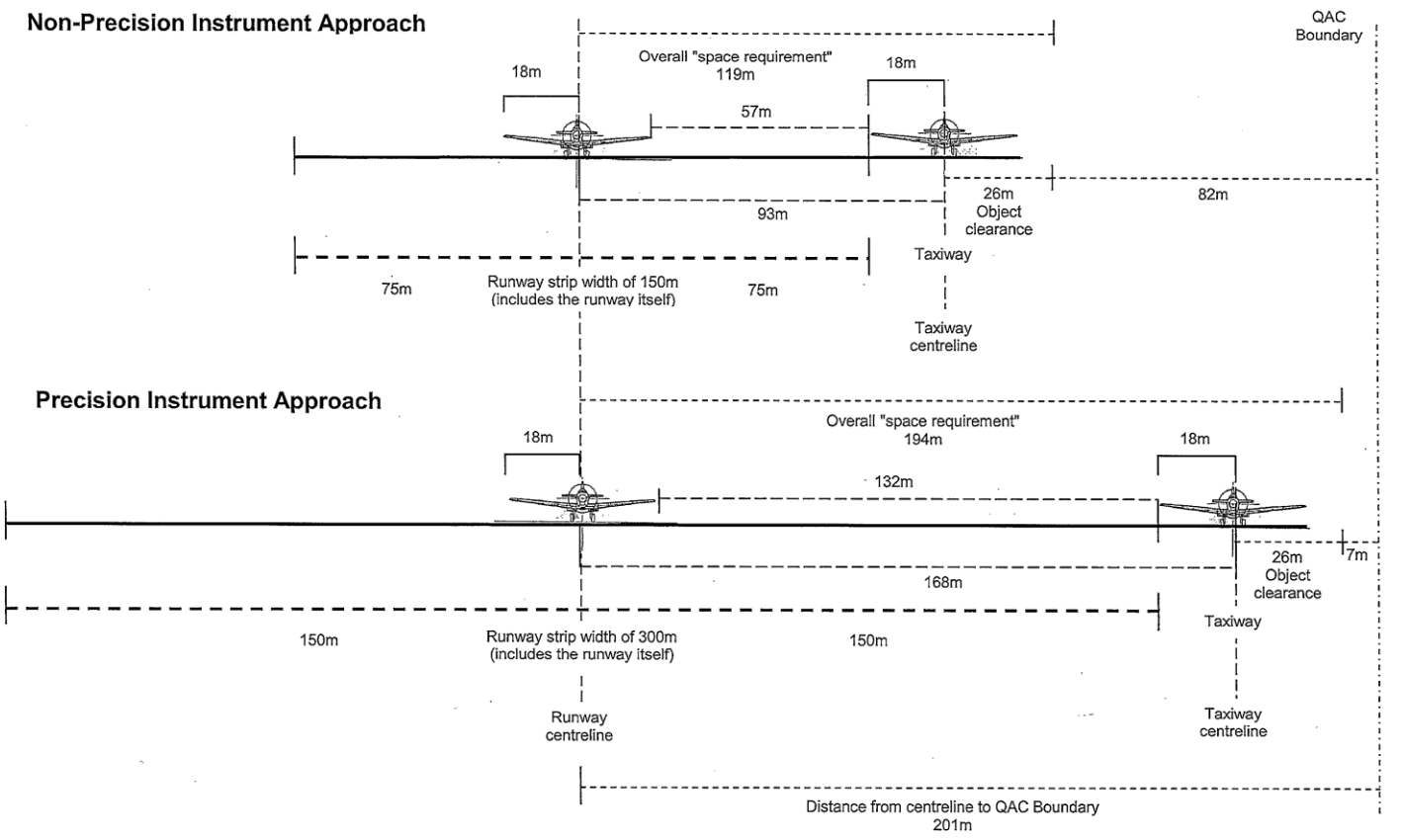
[152] Both appellants have had partial success on their appeals. I am minded therefore to let costs lie where they fall. If the parties do not agree they may file submissions, of no more than three pages in length.

Solicitors:
Brookfields, Auckland
Lane Neave, Christchurch
Russell McVeagh, Wellington

ANNEXURE A


QUEENSTOWN GATEWAY (5M)
SH 6 KINGSTON RD
To Invercargill
LAKE WAKATIPU
Lake Wakatipu Trail
SH 6 FRANKTON RD
To Queenstown
SH 6 KAWARAU RD
Queenstown Airport
Queenstown Events Centre
SH 6 FRANKTON LADIES MILE HIGHWAY
GRANTS ROAD
EASTERN ACCESS ROAD
PC 19
QAC EXISTING DESIGNATION AREA
Remarkables Park Town Centre (Existing)
High School
EASTERN ACCESS ROAD
REMARKABLES PARK
KAWARAU RIVER
Twin Rivers Trail
GLENDA DRIVE
SHOTOVER PARK
GLENDA DR. INDUSTRIAL
QAC LAND
ENV. COURT DECISION 8.07 ha
EPA NOTICE 19.0808 ha
Lot 6 DP 304345
SHOTOVER RIVER
To Arrowtown
Twin Rivers Trail
Frankton Flats Location Plan
Scale : 1:10000 (A3)
Date : August 2013
Our Ref : 1009 - 2005 - 03
Apex Surveying Limited

ANNEXURE B
SEPARATION DISTANCES FOR CODE C AIRCRAFT



2597650 v1

BEFORE THE ENVIRONMENT COURT

Decision No. [2012] NZEnvC 206

IN THE MATTER	of the Resource Management Act 1991 (**the Act**) and of an application under section 149T of the Act
BETWEEN	QUEENSTOWN AIRPORT CORPORATION LIMITED (ENV-2011-WLG-41) Applicant

Hearing:	at Queenstown on 16-20 July, 23-26 July 2012 at Christchurch on 30 and 31 July 2012
Court:	Environment Judge J E Borthwick Environment Commissioner R M Dunlop Environment Commissioner D J Bunting
Appearances:	D A Kirkpatrick and R Wolt for Queenstown Airport Corporation Ltd D A Nolan and M M E Wikaira for Air New Zealand Ltd J G A Winchester for Queenstown Lakes District Council (regulatory) J E Macdonald for Queenstown Lakes District Council (non-regulatory) – present on 16 July 2012 Dr R J Somerville QC and J D Young for Remarkables Park Ltd
Date of Decision:	25 September 2012
Date of Issue:	25 September 2012

INTERIM DECISION OF THE ENVIRONMENT COURT

A: That part of the NOR required for instrument precision approach runway and Code D parallel taxiway is cancelled. The court reserves its decision on the balance of the NOR.

B: By **5 October 2012** QAC is to file and serve:

(1) an amended Figure 1 to the NOR reducing the extent of the requirement to exclude provision for a instrument precision runway and Code D parallel taxiway and any land no longer required for carparking, circulation and landscaping.

(2) proposed conditions for inclusion in Designation 2 which give effect to the court's decision at [200]. These are to require:

(a) the preparation of an integrated design and management plan which states:

(i) the landscape and visual amenity objectives for building and infrastructure design and location and outcomes in relation to:

- landscape planting, staging and maintenance plan;
- the management of signage;
- management of stormwater (including if relevant earthworks, retention ponds and landscaping); and
- the standards for an acceptable range of building materials, colour, tones and reflectivity.

(b) the proposed assessment matters for outline plan(s) of works.

(3) subject to [E]:

(a) a condition for inclusion in Designation 2 restricting the use of the western access to entry only access;

(b) a cross-section for inclusion in Designation 2 of the proposed western access;

(c) a condition for inclusion in Designation 2 requiring QAC to form access connecting with Red Oaks Drive, in the event that Red Oaks Drive is extended to the boundary of the designation (yet to be confirmed) and to close the entrance to western access.

(4) a condition that requires consideration at the outline plan of works stage of whether noise attenuation is required in addition to measures in the District Plan.

(5) an additional purpose statement for Designation 2 (to be included in the District Plan) that land shown in amended Figure 1 is to be used for a general aviation/helicopter facility, and associated air and landside buildings, infrastructure and landscaping.

(6) the extent of land not required for carparking, circulation and landscaping and whether land previously required for this purpose is to be cancelled in part is to be confirmed.

C: QLDC (regulatory) is to file and serve a memorandum responding to QAC at [B] by **12 October 2012.**

D: If any party takes a different position to QAC or QLDC (regulatory) then they are to file and serve a memorandum by **19 October 2012.** Further directions will then likely follow.

E: Leave is reserved for the parties to call expert evidence addressing the management of traffic at the western access. If further evidence is to be called the parties are to file a memorandum by **19 October 2012** advising the court. The hearing will be reconvened on **7 December 2012** in Christchurch.

F: The requirement for an outline plan of works is not waived under section 176A of the Act.

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REASONS

Introduction

[1] This proceeding concerns Queenstown Airport Corporation Limited's notice of requirement to alter an existing designation in the Queenstown Lakes District Plan. The notice of requirement was referred to the Environment Court by the Minister for the Environment.

[2] Quite simply, the notice of requirement seeks to alter Designation 2 of the District Plan by extending the aerodrome at Queenstown Airport by 19.1 hectares. The activities enabled by Designation 2 are to remain the same.

[3] Queenstown Airport is owned by the Queenstown Lakes District Council and the Auckland International Airport Ltd.[1] It is one of the busiest airports in New Zealand, and is the country's largest regional airport. Each year, there are on average 40,000 aircraft movements and over 1 million scheduled and non-scheduled passenger movements through the Airport. The airport controllers handle upwards of 400 aircraft (domestic and international) movements per day, with growth in aircraft movements projected to increase over the next 25 years.

[4] To accommodate growth the existing passenger terminal and associated airside and landside facilities will be expanded. While the expansion of the passenger terminal and associated facilities can occur within the existing designation this will displace the general aviation from its present location.

[1] These companies own 75.1% and 24.9% of shares respectively.

[5] The notice of requirement facilitates the relocation of general aviation to enable the expansion of the passenger terminal and its associated facilities. The notice of requirement is also important, as it will determine the final location of the air noise boundary and outer control boundary that are the subject of Plan Change 35.

Attached documents to this decision

[6] Attached to this decision as Annexure 1 is a copy of a plan showing the subject land. While this plan records the total requirement of 19.08 hectares, at the commencement of the hearing counsel for QAC corrected this requirement to 18.4 hectares, the adjustment being made following the re-survey of the site and minor boundary adjustments.[2]

[7] Technical terms and abbreviations used in this decision are set out in Glossaries attached as Annexures 2 and 3.

The parties

[8] Four parties gave notice to be heard in relation to the proceeding. They are:

- Air New Zealand Ltd (**ANZL**);
- Remarkables Park Ltd (**RPL**);
- Queenstown Lakes District Council (in its regulatory capacity); and
- Queenstown Lakes District Council (in its non-regulatory capacity).

Air New Zealand Ltd (ANZL)

[9] ANZL filed a submission opposing the notice of requirement (**NOR**). ANZL supports the objective of the NOR, but submits the NOR does not, in its present form, achieve that objective.[3]

[10] ANZL has five areas of concern. These are:

(a) the proposal to designate part of Lot 6 to accommodate a Code D parallel taxiway has no foundation;

[2] QAC Opening submissions at [7].
[3] ANZL Opening submissions at [2.1].

(b) the proposal underlying the NOR that forward planning be based on a 300m main runway strip width, likewise has no foundation;

(c) there has been inadequate consideration of alternatives, especially off-airport sites (other than Lot 6);

(d) there has been an omission to consider, or the inadequate consideration of, economic aspects of the NOR;

(e) there is already sufficient land available within QAC's existing designation to accommodate the relocation of the helicopters and general aviation.[4]

[11] ANZL submits that the NOR objective can be met within the existing designation and seeks that the NOR be cancelled.

Remarkables Park Ltd (RPL)

[12] RPL accepts that general aviation will need to move from its present location.[5] In common with ANZL, RPL contends that the objective of the NOR can be met within the existing designation and likewise seeks that the NOR be cancelled. More generally, RPL submits the location of the work on its land is contrary to sections 149U and 171(1)(a)-(c) of the Act.

[13] Pursuant to section 171(1)(d), RPL submits the court should have particular regard to two matters which it says are reasonably necessary in order for the court to make a determination on the requirement. They are:

(a) against the earlier background of extensive land dealings between RPL and QAC, RPL's legitimate expectation that QAC would not seek to remove the benefits conferred to RPL under the contractual arrangements arising from these dealings; and

(b) in the context of those contractual arrangements RPL alleges a cause of action in estoppel.

[4] ANZL Closing submissions at [1.3(b)].
[5] RPL Closing submissions at [4.1].

QLDC (regulatory)

[14] QLDC in its regulatory capacity (**QLDC (regulatory)**) sought leave to become a party late in the proceeding. Counsel for QLDC (regulatory) describes its role "as assisting the court to ensure that the notice of requirement (**NOR**), if approved, achieves the purpose of the RMA and results in an appropriate environmental outcome".[6] (We note that the NOR cannot be approved if it does not achieve the purpose of the Act).

[15] QLDC (regulatory) called evidence on the topics of landscape/amenity, statutory planning, traffic and noise. Its witnesses supported additional conditions required to address effects on the environment of allowing the requirement. Subject to those conditions, QLDC (regulatory) did not raise any issue that would support the cancellation of the NOR.[7]

QLDC (non-regulatory)

[16] QLDC in its non-regulatory capacity (**QLDC (non-regulatory)**) filed a submission in support of the NOR, which we have considered. While counsel for QLDC (non-regulatory) entered an appearance on the first day of the hearing, it took no further part in the hearing.

Description of the Queenstown Airport and the surrounding area

[17] Queenstown Airport is located at Frankton, some 7 kilometres by road to the centre of Queenstown. The Airport is situated in Frankton Flats which is bordered by The Remarkables to the south-east, Lake Wakatipu and Peninsula Hill to the west. More distant is Queenstown Hill, Sugar Loaf and Ferry Hill to the north-west, Slope Hill to the north-east and Queenstown Range to the north.[8]

[18] Immediately to the north of the Airport is the Frankton Golf Course (partly located within the aerodrome designation), the Event and Aquatic centres and outdoor playing fields (these facilities are partly located on land subject to two designations, including the earlier in time aerodrome designation), the Glenda Drive industrial area

[6] Winchester Opening submissions at [2].
[7] Winchester Closing submissions.
[8] General Aviation and Helicopter Precinct updated review report December 2010 at [2.1].

and land that is the subject of Plan Change 19 (**PC19**). To the north-west is the settlement of Frankton.

[19] In the south-west is the Remarkables Park zone with its town centre and residential areas. This partly developed zone provides for commercial, residential and visitor accommodation, community and recreational facilities. The land (part of Lot 6) which is the subject of the NOR is zoned Remarkables Park (**RPZ**) Activity Area 8, and is presently used for grazing. Within RPZ and south of the Airport, and including Lot 6, is a large area of open space extending from the confluence of the Kawarau and Shotover Rivers to the boundary of the aerodrome designation.[9]

[20] The Airport and its immediate neighborhood are situated within an urban environment albeit one that has retained visual connection to the outstanding natural landscapes of the surrounding mountains. It is an environment which is undergoing rapid change with the runway extension, approval of the eastern access road, approval of Plan Change 34, and with the continuing development of the RPZ. This is to say, nothing of the development that would be enabled through PC19.

Description of the airfield

[21] The Queenstown Airport's aeronautical business falls into two main categories – scheduled airline passenger service and non-scheduled aircraft operations. Non-scheduled aircraft operations include helicopters, flightseeing and training, and smaller fixed wing aircraft and also private and military aircraft operations. Presently, scheduled airline services account for approximately 82% of overall passenger traffic.[10]

[22] The Airport operates a two runway system. The main runway, for most of its 1909m length, is 30m wide and has a runway strip width of 150m. This runway is used by scheduled airlines and non-scheduled operators. The main runway is an instrument non-precision approach runway which can accommodate up to Code C aircraft. A parallel chip sealed taxiway to the south of the main runway is not able to be used by Code C aircraft.

[9] There is a single building, a substation in Lot 6. It is not known whether this building will remain.
[10] General Aviation and Helicopter Precinct updated review report December 2010 at [2.2].

[23] Nearly all general aviation and helicopter operations are located in the grass area south of the passenger terminal. Referred to as the "general aviation zone" it accommodates both fixed wing and helicopter operators with facilities and associated flight operations occurring in close proximity, and interspersed with each other. There is a second smaller general aviation precinct immediately north of the passenger terminal. The shorter 994m cross-wind runway is used by general aviation (up to Code B) and helicopters.

[24] We understand that the accommodation of corporate jets is an informal arrangement.

Description of existing designations

[25] Three designations relevant to airport operations were drawn to our attention and these are:

(a) Designation 2 (the Aerodrome designation);
(b) Designation 3 (Air Noise Boundary designation); and
(c) Designation 4 (Approach and Land Use Controls).

[26] The purpose of Designation 2 is given in the District Plan as being:

> ... to protect the operational capability of the Airport while at the same time minimising adverse environmental effects from aircraft noise on the community at least to the year 2015.

[27] The extent of the aerodrome designation is shown on planning map 31a, and it is proposed in separate proceedings before the court (**PC35**) to amend this map.

[28] The purpose of Designation 3 is to identify the area of airport operations where noise sensitive activities are prohibited. QAC intends to uplift Designation 3 upon approval of PC35. A final decision on PC35 is to be released in conjunction with these proceedings.

[29] Designation 4 limits the construction of any structure or facility which may inhibit the safe and efficient operation of Queenstown Airport. The designation describes the obstacle limitation surfaces in place for the Airport, which consist of an

approach and takeoff surface, a transitional surface, an inner horizontal surface and a conical surface.

Description of the works

[30] While the exact configuration of development on land the subject to the NOR has not been finalised (and there is nothing unusual in this), the key elements of the NOR are:

- a helicopter facility;
- a general aviation (fixed wing) facility for up to Code B aircraft;
- a private and corporate jet facility for up to Code C aircraft;
- a fixed based operator (to service jets and possibly general aviation);
- a Code D parallel taxiway adjacent to main runway;
- a Code B parallel taxiway adjacent to cross-wind runway;
- a precision approach runway with a 300 metre width runway strip;
- ancillary activities, including landscaping, car parking, and an internal road network which includes two access roads to connect with Hawthorne Drive at the western end of the designation area and the Eastern Access Road (**EAR**) at the eastern end.

[31] These works are to meet QAC's objective for the NOR which is:

> ... to provide for the expansion of Queenstown airport to meet projected growth while achieving the maximum operational efficiency as far as possible.[11]

[32] As presented to the court the layout for the general aviation precinct occupies approximately 1 kilometre frontage of the existing aerodrome south and parallel with the main runway.[12]

[33] Access to the NOR area is off Hawthorne Drive at the western most end of Lot 6, adjacent to the boundary of QAC land. A second access is proposed at the eastern most end of Lot 6 to the proposed Eastern Access Road (**EAR**), although the timing of this

[11] NOR Annexure 2, Clause 2.1.4.
[12] NOR, Annexure 3.

depends upon the construction of the EAR.[13] An internal road would link the new general aviation/helicopter precinct to the passenger terminal.[14]

[34] In evidence QAC proffered three new conditions for the aerodrome designation, addressing the protocol for archaeological discovery, a landscape plan and building design control. Otherwise, no other changes are made to the aerodrome designation.

[35] Forecasting of growth in scheduled airline operations was given in the NOR documentation and updated in the evidence of QAC's airport planner, Mr I Munro. This evidence was uncontested and we accept it, as we do the evidence that in order to accommodate growth the passenger terminal and associated facilities will need to be expanded. The appropriate location for the expansion of the passenger terminal and its associated facilities is south of the current terminal, and includes part of the area where general aviation/helicopters presently operate. Growth entails also the need to expand airside facilities including a parallel taxiway for scheduled airline passenger services, at a location south of the main runway. Because of this we accept that the general aviation/helicopter precinct will need to be relocated; remaining in-situ is not an alternative.

The area of the requirement for the designation

[36] The area for the requirement is located adjacent to the aerodrome's main and cross-wind runways with access to the area off Hawthorne Drive (in the west) and secondly, the eastern access road (to be formed). Designation 2 (**the aerodrome designation**) is to be altered to include part of Lot 6, DP 304345 and a portion of an unformed road adjacent to the south-western corner of Lot 6, DP 304345.[15] Planning map 31a of the District Plan would also be amended.[16]

[37] The Airport's southern boundary and the extent of the existing aerodrome designation adjacent to Lot 6 is located 201m south of the main runway centerline.[17]

[13] The EAR is an extension of Hawthorne Drive.
[14] NOR, Form 18 at [2.5-2.6].
[15] Kyle, Supplementary evidence 18 May 2012 Appendix H, clause D. The NOR does not require any proposed amendment to the designation. These changes were proffered in Appendices E and H of the supplementary evidence of Kyle dated 18 May 2012.
[16] NOR Appendix U.
[17] Munro EiC at [45].

The requirement is for a strip of Lot 6 approximately 160m in depth, lying parallel to the entire 1 kilometre length of the common boundary of the QAC and RPL land.[18]

The law

[38] The NOR was referred to the Environment Court by the Minister for the Environment pursuant to section 147(1)(b) of the Act. Section 149U requires the Environment Court to consider certain matters, being:

(a) the Minister's reasons for making the direction;
(b) the information provided by the EPA; and, as this case requires
(c) to act in accordance with subsection (4).

[39] Section 149U(4) provides:

> (4) If considering a matter that is a notice of requirement for a designation or to alter a designation, the Court-
>
> (a) must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority; and
>
> (b) may –
>
> (i) cancel the requirement; or
>
> (ii) confirm the requirement; or
>
> (iii) confirm the requirement, but modify it or impose conditions on it as the Court thinks fit; and
>
> (c) may waive the requirement for an outline plan to be submitted under section 176A.

[40] Section 171(1A) and (1) provides:

> 171 Recommendation by territorial authority
>
> (1A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.
>
> (1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to-
>
> (a) any relevant provisions of-

[18] Kyle, EiC at [4.2]. In NOR, Appendix N: General Aviation and Helicopter Precinct Updated Review Report the depth of land is given as 160m.

(i) a national policy statement:
(ii) a New Zealand coastal policy statement:
(iii) a regional policy statement or proposed regional policy statement:
(iv) a plan or proposed plan; ...

(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if-
(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
(ii) it is likely that the work will have a significant adverse effect on the environment; and

(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and

(d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

[41] The relevant Part 2 provisions are the purpose of the Act (section 5) and section 7(b), (c) and (f). Section 7 provides that in achieving the purpose of the Act we are to have particular regard to:

(b) the efficient use and development of natural and physical resources;
(c) the maintenance and enhancement of amenity values;
...
(f) the maintenance and enhancement of the quality of the environment ...

[42] We set out the law in relation to sections 168 and 171, as the meaning of these sections were the subject of submissions.

Section 168

[43] Section 168, notice of requirement to the territorial authority, relevantly provides:

(2) A requiring authority [for the purposes] approved under section 167 may at any time give notice [in the prescribed form] to a territorial authority of its requirement for a designation-
(a) For a project or work; or
(b) In respect of any land, water, subsoil, or airspace where a restriction is reasonably necessary for the safe or efficient functioning or operation of such a project or work.

...

(4) A requiring authority may at any time withdraw a requirement by giving notice in writing to the territorial authority affected.

(5) Upon receipt of notification under subsection (4), the territorial authority shall-

(a) Publicly notify the withdrawal; and

(b) Notify all persons upon whom the requirement has been served.

[44] RPL urged upon us a definition of "requirement" under section 168(2) that means "essential" as opposed to "desirable, feasible, practicable or preferable". [19] We do not accept this submission.

[45] The term "requirement" is not defined in the Act, but in context it appears in section 168 as a noun - the term given to a proposal for a designation.[20] In subsections (2)(a) and (b) of section 168, the full term is given as "a requirement for a designation". In subsection (4) this term is abbreviated to "a requirement". Our interpretation is consistent with the definition of designation in section 166; designation means a provision made in the district plan to give effect to a requirement made by a requiring authority under section 168 or section 168A or clause 4 of Schedule 1. Moreover, if RPL's interpretation were correct this would render section 171(1)(c) otiose.

[46] Finally, we do not accept RPL's submission that the term "requirement" in section 168 RMA should be construed in light of section 40 Public Works Act 1981 (**PWA**). The matter and subject of these provisions are not, as submitted, *in pari materia*.[21] While the meanings of terms in one Act may sometimes be held to apply to the same terms used in another Act on the same subject, as the learned author of *Statute Laws in New Zealand* observes this is by no means an inevitable conclusion: "It is always dangerous to assume that words bear the same meaning in different Acts: the contexts and purposes may be different enough to make such analogies inapplicable".[22] In this case neither the relevant term nor subject matter addressed in section 168 RMA and section 40 PWA are the same and we do not accept RPL's submission that "a requirement" has the same meaning as "required" for the reasons we gave in [45] above.

[19] RPL Opening Submission at [4.3].
[20] See also *Ferrum Engineering Ltd v Otago Regional Council* [2008] NZMA 233 at [15].
[21] RPL Opening submissions at [18] on the same matter.
[22] J F Burrows *Statute Law in New Zealand*, 4th edition at p 249.

[47] We comment next on section 171(1)(b), (c) and (d), but before doing so, we note that section 171(1A) is not relevant to these proceedings.

Section 171(1)(b)

> **(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if -**
>
> **(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or**
>
> **(ii) it is likely that the work will have a significant adverse effect on the environment**

[48] As QAC does not own an interest in the subject land section 171(1)(b) is relevant. Indeed a central issue in this case is whether QAC gave adequate consideration to alternative sites, routes or methods.

[49] The *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* summarises the principles derived from case law interpreting this section 171(1)(b). We adopt what is said there as follows:

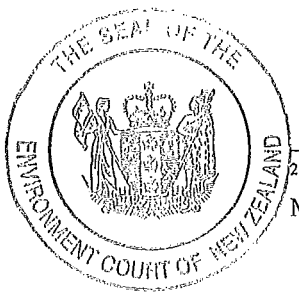
a) the focus is on the process, not the outcome: whether the requiring authority has made sufficient investigations of alternatives to satisfy itself of the alternative proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate consideration does not mean exhaustive or meticulous consideration.

b) the question is not whether the best route, site or method has been chosen, nor whether there are more appropriate routes, sites or methods.

c) that there may be routes, sites or methods which may be considered by some (including submitters) to be more suitable is irrelevant.

d) the Act does not entrust to the decision-maker the policy function of deciding the most suitable site; the executive responsibility for selecting the site remains with the requiring authority.

e) the Act does not require every alternative, however speculative, to have been fully considered; the requiring authority is not required to eliminate speculative alternatives or suppositious options.[23]



[23] *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* Ministry for the Environment, Board of Inquiry, 4 September 2009 at [117] and [186].

[50] Furthermore, section 171(1)(b) does not confer authority on us to substitute our own choice amongst the alternative sites, routes or methods for undertaking the work of the requiring authority.[24] The territorial authority (or on direct referral the Environment Court) is not required to test each alternative against Part II.[25] It is sufficient for QAC to show that it did not act arbitrarily in its selection of alternatives.[26] We keep in mind the warning given by Judge Kenderdine in *Quay Property Management Ltd v Transit New Zealand* – the territorial authority (here the Environment Court) should not cross the line into the adjudication of the merits, determining the best use of the alternatives and, by that measure, deciding whether the chosen alternative was reasonable.[27]

Section 171(1)(c)

> **(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought**

[51] Again, we respectfully adopt the summary given in the *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* as to relevant considerations arising under section 171(1)(c) of the Act. These are:

a) The consideration is limited to the requiring authority's objectives for which the designation is sought, rather than an enlarged examination of alternatives (the subject of section 171(1)(b)).

b) In paragraph (c), the meaning of the word necessary falls between expedient or desirable on the one hand, and essential on the other; and the epithet reasonably qualifies it to allow some tolerance.

c) The paragraph does not impose some higher threshold or standard of proof that would require a requiring authority to demonstrate that the project and designation would better achieve its objectives than an alternative project or means of seeking authorization; nor that they absolutely fulfil its objectives.

d) The Act neither requires nor allows the merits of the objectives themselves to be judged by the territorial authority.

e) On whether a designation is the preferable planning method to be used, the relevant factors may include that a designation signals potential for future changes; provides a

[24] *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* ibid at [183].
[25] *Auckland Volcanic Cone Society v Transit New Zealand* [2003] NZRMA 316 at [60-61].
[26] *Quay Property Management Ltd v Transit New Zealand* Decision No. W028/2000, Kenderdine J. at [152].
[27] *Quay Property Management Ltd v Transit New Zealand* at [152].

clear method for those changes to occur (including the outline plan procedure where applicable); provides a uniform approach through various territorial authority districts and that it may not otherwise be possible to 'freeze' the existing plan provisions.

f) A designation may also be a desirable planning method to establish a clear corridor for mitigation of some effects; to restrict conflicting uses and structures pending completion of detailed design (especially for a long-term project); and a precursor to compulsory acquisition of land under the Public Works Act.[28]

[52] To this we add that the Environment Court on direct referral may consider the extent to which the work is reasonably necessary for achieving the requiring authority's objectives and may limit the extent of the designation accordingly.[29]

Other legal issues

Findings in relation to section 171(1)(d) and the Public Works Act

[53] The PWA governs the acquisition of land for public works by local authorities. Pursuant to section 18(1) of the PWA, QAC gave notice to RPL and the District Land Registrar on 30 November 2011 of its desire to acquire part of Lot 6. No steps have been taken by QAC in relation to the compulsory acquisition process of the PWA.[30] The NOR has a direct bearing on the outcome of other proceedings before the Environment Court, including PC19, PC35 and the associated notice of requirement to alter Designation 2.

[54] We agree with counsel for QAC and QLDC (non-regulatory) that the compulsory acquisition process not having commenced, section 24 PWA is not directly relevant to our determination.[31] In particular, the three overlapping criteria[32] in section 24(7) of fairness, soundness and the reasonably necessity for achieving the objective of the local authority (here QAC) are not matters we need decide.

[55] We do not dismiss the opportunity yet open to the parties to reach agreement on the acquisition of land pursuant to sections 17-24 PWA or pursue other processes that

[28] *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* ibid at p [198].
[29] *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* ibid at p 204, *Bungalo Holdings Ltd v North Shore City Council* Decision No. A055/01 at [67] and [70].
[30] Lane Neave letter to the EPA dated 3 February 2011.
[31] QAC Closing Submission at [90-97].
[32] *Waitakere City Council v Brunel* [2007] NZRMA 235 at [47].

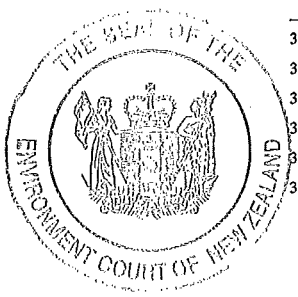
may be available to them. Even if we are wrong, and the issue of fairness (in particular) is relevant under section 171(1)(d), there is no evidence upon which we could find that QAC agreed, as submitted by RPL counsel, not to designate the land.[33] Apart from the fact that QAC and RPL entered into contractual arrangements we have no evidence from RPL as to its reliance on the contracts or any representation made by QAC when subsequently planning to develop its land or that it held a legitimate expectation its "buffer" ie. Activity Area 8, would not be reduced. (The contracts were handed up to the court as a bundle attached to counsel for RPL's opening submissions, which we were told "not to read").[34]

Findings in relation to the best practicable option (section 16 RMA)

[56] Referring to section 16 RMA, RPL criticises QAC for not using the best practical option as a method to assess the impact of alternate FATO locations.[35] *Ngataringa 2000 Inc v Attorney General*[36] was cited as authority that when seeking to achieve the best practical option this could include consideration of alternative sites, buffers to minimise noise emission, and the design of buildings or other works to incorporate the best practical option for noise mitigation features. A reading of the decision reveals that this was not the decision of the Planning Tribunal, but a submission of the applicant (for a declaration).[37]

[57] In *Ngataringa 2000 Inc* the Planning Tribunal held that those occupying designated land and responsible for activities on designated land are subject to section 16 of the Act.[38] Notwithstanding subsequent amendments to section 16, we accept that this interpretation remains correct. However, *Ngataringa 2000 Inc* is distinguishable from this case in that the requirement for a designation was confirmed and the requiring authority was in occupation of the land.

[58] We hold section 16 is not to be applied as if it were an additional criterion to subsection (1)(a)-(d) of section 171. In some cases adopting the best practicable option may be useful check for the decision-maker, particularly when assessing the adequacy of



[33] RPL Opening Submissions at [9.8].
[34] Transcript at [75].
[35] RPL Opening submissions at [7.5-7.10], RPL Closing submissions at [2.2.14-2.2.21].
[36] Planning Tribunal Auckland, Judge Sheppard, A16/94, 11 March 1994.
[37] At p [11].
[38] Decision at pp [16] and [28].

the alternatives under consideration, but not in every case. The effect of RPL's submission would be to require the Environment Court to determine the "best" alternative in respect of helicopter noise emissions. This approach is inconsistent with the scheme of the Act, but in any event belies the complexity of decision-making by QAC having regard to the competing alternatives. Subject to Part 2, the effects of noise on the environment of allowing the requirement are relevant as are a range of other environmental effects in contention in this proceeding.

Statutory Plans

[59] We set out next the policy context relevant to this notice of requirement; in particular the Regional Policy Statement and the Queenstown Lakes District Plan (section 171(1)(a)).

Regional Policy Statement (RPS)

[60] The RPS contains the objective to promote the sustainable management of Otago's foreseeable needs of its communities (objective 9.4.2). Policies elaborate on what is meant by "sustainable" and importantly in this case policy 9.5.2 is:

> To promote and encourage efficiency in the development and use of Otago's infrastructure through:
>
> (a) Encouraging development that maximizes the use of existing infrastructure while recognising the need for more appropriate technology; and

[61] The explanation for this policy emphasises sustainable use through consolidation and improved use of existing infrastructure prior to extensions or new development. This approach will "help reduce the costs to the community for providing and maintaining infrastructure and promote its more efficient use in the long term". In doing so, these provisions directly import considerations of efficient use and development of physical resources.

[62] Also relevant is the policy to maintain and where practicable enhance the quality of life for people and communities within Otago's built environment through, amongst other measures, the identification and provision of a level of amenity which is acceptable to the community (policy 9.5.5.).

Queenstown Lakes District Plan

[63] Frankton Flats is regarded as an important area in terms of providing for future urban growth. The Plan has a specific objective for Frankton in its District Wide Issues Chapter which is for:

> Integrated and attractive development of the Frankton Flats locality providing for airport operations, in association with residential, recreation, retail and industrial activity while retaining and enhancing the natural landscape approach to Frankton along State Highway No. 6.[39]

[64] The related policy is broadly stated in terms of providing for the efficient operation of the Queenstown Airport and related activities in the Airport Mixed Use Zone (policy 6.1).

[65] The Transport Chapter contains an objective and policies addressing specifically air transport. In this chapter the Queenstown Airport is recognised as a physical resource important to the social and economic wellbeing of the community and secondly, an important factor in the rate of growth in the District. The explanation and reasons for the objectives and policies recognises that there is a balance between airport operations and the community needs that are to be achieved:

> The District's airports must be able to operate effectively and in a manner which provides for the District's well being. At the same time any adverse effects on the community, particularly the resident community, must be mitigated. The Council is of the view that the operation of Queenstown Airport should not preclude opportunities for further development of activities in close proximity, provided that appropriate controls are implemented.[40]

[66] Responding to this, objective 8 provides that there are to be effective and controlled airports for the District, that are able to be properly managed as a valuable community asset in the long term.

[67] Several policies are relevant and include efficiency considerations relating to the use and development of the airport resource. These are:

[39] Chapter 4, District Wide Issues, Objective 6 at [4-56].
[40] Chapter 14, Explanation and principal reasons for adoption at [14-11].

8.1 To provide for appropriate growth and demand for air services for Queenstown.

8.2 To avoid or mitigate any adverse environmental effects from airports on surrounding activities.

...

8.6 To ensure buildings at both airports have regard for and are sympathetic to the surrounding activities, and landscape and amenity values by way of external appearance of buildings and setback from neighbouring boundaries.

...

8.8 To manage noise sensitive activities in areas with existing urban development surrounding the airport, while ensuring future noise sensitive activities in areas currently undeveloped and adjacent to airports are restricted.

[68] Relevant to these proceedings also is the underlying zoning for the land that is subject to the notice of requirement. Lot 6 is located within the RPZ's Activity Area 8. The RPZ is introduced as an area comprising "approximately 150 hectares of perimeter urban land in the vicinity of Frankton and occupies a strategic position".[41]

[69] Objective 1 for the zone is broadly stated as providing for the integrated management of the effects of residential, recreation, commercial, community, visitor accommodation, educational and Queenstown Airport activities.

[70] Several related policies address the relationship of the zone with the Queenstown Airport:

(1) to require development to be undertaken in an integrated manner which maximises environmental and social benefits.

...

(4) to ensure that development takes place in a manner complementary to the operational capability of Queenstown Airport.

...

(5) to establish a buffer between the airport and noise sensitive activities in the Remarkables Park zone.

[71] Objective 2 provides for urban development to occur in a form which protects and enhances the surrounding landscape and natural resources. This is achieved through

[41] Chapter 12, Remarkables Park zone at [12-65].

a series of Activity Areas identified in the zone's Structure Plan including Activity Area 8 where Lot 6 is located. This Activity Area is described in the following terms:

> Activity Area 8
>
> - To enable the establishment of activities of a rural/recreational nature, infrastructural utilities and parking, which are not sensitive to nearby airport operations.

[72] The explanation and principal reasons for adoption of these objectives and policies states:

> A significant "buffer" area of land formerly partly owned by Queenstown Airport Corporation Limited, this land is suitable for development for rural, recreational infrastructural facilities not of a noise sensitive nature. Much of it falls in close proximity to the airport and within higher noise control areas. As such residential activities, visitor accommodation and community activities are prohibited in this area within the Outer Control Boundary.

[73] While "buffer" is not explained in the District Plan, there was general agreement that these policies mutually benefited the RPZ and Queenstown Airport.

[74] Finally, an issue was raised by Mr Foster (RPL's planner) as to whether Designation 4's transitional surface provisions would need amending if provisioning for a 300m width runway strip was approved. While we agree with the interpretation of the relevant provisions given by Mr Kyle in response, there is no issue arising in relation to the transitional surfaces as it is our decision to cancel part of the NOR.

Section 171 Evaluation

Introduction

[75] In 2003 QAC initiated a review of its existing land and airside facilities at Queenstown Airport. Since then it has commissioned no less than eight reports from airport planning consultants Airbiz Aero, Woodhead and Landrun and Brown.[42]

[76] The reports produced in 2005, 2006, 2007 and 2008 consider sites for a new general aviation/helicopter precinct located within the existing aerodrome designation north of the main runway. In four of the eight reports produced, consideration was

[42] These reports are attached to the NOR Appendix G, N and S.

given to relocating the general aviation/helicopter precinct south of the main runway. However, in each case the site of the proposed southern precinct is different from that supported by QAC in its NOR, albeit part of Lot 6 is included.[43]

[77] When preparing the reports at no time prior to the NOR did QAC consult with scheduled operators, and then not at all with its principal operator ANZL.

Master planning between 2005 and 2010

[78] Up until the 2010 Master Plan, the airport planning parameters assumed that Code C aircraft were the design aircraft for the main runway and that Queenstown Airport would remain an instrument non-precision approach runway. In the first report produced by Airbiz (the 2005 Master Plan) Code D aircraft were considered but discounted due to the terrain and runway length constraints.[44] The retention of the 150m runway width strip was considered appropriate for Queenstown Airport as terrain would always be a limiting factor. Noting CAA's acknowledgement that due to significant terrain infringements to the Airport's obstacle limitation services, the report concludes that Airport would never be able to comply with the requirements for having an instrument runway.

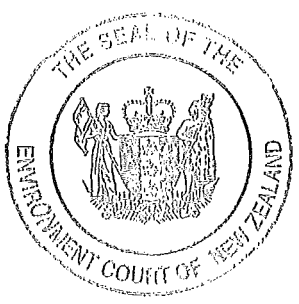
[79] The 2005 Master Plan considered alternative locations for a general aviation/helicopter precinct within Lot 6 but these were dismissed because:

(a) these options required protracted negotiations and change of designations without guarantee of outcome;
(b) there were no significant operational benefits; and finally
(c) the options were highly distracting to QAC management.[45]

April 2007 South East Zone Planning Report

[80] The South East Zone Planning Report is important in that it is the only report commissioned by QAC to consider possible uses of designated land south of the main

[43] See report dated April 2007 by Airbiz entitled *South East Zone Planning Report; a* report dated 11 February 2009 by Airbiz entitled *General Aviation and Helicopter Location Review*; A report dated 13 February 2009 by Landrun and Brown, entitled *General Aviation and Helicopter Location Review – Peer Review;*[43] and the Woodhead Master Plan produced 2008.[43] Woodhead Master Plan contains no text but is a single plan recording a southern general aviation precinct. The location of helicopter facility is not shown.
[44] NOR Appendix G pp [13-14] and Table 3.1.
[45] NOR Appendix G at p [35].



runway. The assumed planning parameters include a Code C aircraft design and a non-precision approach to the main runway.

[81] Airbiz concludes that within an area approximately 74m deep a range of developments were appropriate south of the main runway including corporate jets, private hangars, flightseeing and general aviation. However, there was likely to be insufficient land available to accommodate growth in helicopter businesses. For operational reasons associated with the interface of helicopters with other users of a proposed Code C parallel taxiway south of the main runway, Airbiz concluded the northern side was a better location for future helicopter facilities.[46] Airbiz also recommended that general aviation flightseeing operations be grouped north of the main runway.[47]

2010 Master Plan

[82] Finally, the 2010 Master Plan reports on five developments that had a significant bearing on the NOR provision for a general aviation/helicopter precinct on part of Lot 6. These being:

(a) the protection of airfield runway/taxiway/object separation distances for a precision approach runway;
(b) planning for a parallel taxiway;
(c) consideration of protection for aircraft with wider wingspans;
(d) accelerated traffic growth; and
(e) the decision to consider Lot 6 as an option for the general aviation/helicopter precinct.

[83] Of these five developments, three (a-c) are critical in determining the spatial requirement for the designation.

[84] The 2010 Master Report evaluates two alternative locations for a general aviation/helicopter precinct:

[46] South-East Zone Planning Report, April 2007 at p [9].
[47] The reasons for this are given in the Helicopter and General Aviation Facilities planning report, dated November 2006.

(a) a north-east option comprising 22 hectares of land owned by QAC situated north of the main runway and east of the cross-wind runway; and

(b) a 19.1 hectares south-east option located on part of Lot 6.

[85] The Master Plan reports that as a consequence of adopting the revised planning parameters, land was no longer available for development within the existing aerodrome designation south-east of the main runway (as it had reported in the South East Zone Planning Report).[48]

[86] Finally the 2010 Master Plan also reports on on-going stakeholder consultation with the majority of tenants and operators at the airport (principally helicopter operators) and their concern that the new precinct not compromise operational safety and efficiency. A qualitative evaluation of the two alternative precincts is provided and in the executive summary Airbiz concludes that the north-east precinct is distinctively inferior.[49]

Issue: Was adequate consideration given to alternative sites, routes or methods of undertaking the work (section 171(1)(b))?

[87] RPL[50] and ANZL[51] identified five alternative sites or methods which they say were not adequately considered; these being:

(a) locating the general aviation/helicopter precinct on land north of the main runway including on undesignated land owned by QAC and/or QLDC;

(b) locating the general aviation/helicopter precinct on land north of the main runway within the aerodrome designation;

(c) whether RPL land should have a building restriction strip placed on it for a distance of 15.5m from the common boundary to satisfy taxiway separation distance requirements for a new southern taxiway or whether CAA dispensation could be obtained for this;

(d) the relocation of some or all of the general aviation and helicopter facilities off the Airport;

[48] 2010 Master Plan at p [13].
[49] NOR Appendix N 2010 Master Report at [1.6].
[50] RPL Opening Submissions at [7.4].
[51] ANZL Opening Submissions at [2.74].

(e) consideration of individual components of the work being accommodated within the existing aerodrome designation.

[88] We consider (a), (c) and (e) to be entirely suppositious for reasons that we set out next. However this is not true for (b) and (d) which we consider in more detail.

Locating the general aviation/helicopter precinct on land north of the main runway, including on undesignated land owned by QAC and/or QLDC

[89] Conceptual plans prepared by RPL for a general aviation/helicopter precinct north of the main runway included undesignated land owned by QAC within the area of PC19.[52] Under these plans a general aviation/helicopter precinct would displace up to 4.52 hectares of industrial land within PC19. In proposing this option, RPL witnesses did not address the scarcity of industrial land within Queenstown (an important issue that PC19 *inter alia* seeks to address). There was some suggestion by the RPL planner, Mr M Foster, that aerodrome activities are industrial activities for the relevant activity areas within PC19.

[90] We doubt Mr Foster's interpretation is correct and in the absence of any evidence in this proceeding or PC19 addressing the implications of an aviation precinct within PC19, particularly in relation to the urban form and function, we do not consider that PC19 land should be available as part of an alternative location. Activities relating to an aviation precinct appear to be outside those contemplated by the District Council when promulgating PC19.

[91] The conceptual plans for a general aviation/helicopter precinct located partly on land designated for the Event Centre were not supported by Mr Foster. We agree with him that the presence of the Event Centre's designation would cause "serious trouble" and should be discarded.[53]

Locating the aviation/helicopter precinct on land north of the main runway within the aerodrome designation

[52] Sachman EiC at Appendix E, concept plans 1 and 1a, and Exhibits 11A-D.
[53] Transcript at [939].

[92] The crux of RPL's case is that if there is designated land on which QAC may develop a general aviation/helicopter precinct then it cannot be said this work or designation is reasonably necessary for achieving its objective (section 171(1)(c)). QAC responds submitting that "the existence of an alternative does not render a chosen option unnecessary and the choice of neighbouring land that is suitable can be reasonable where the requiring authority's land is less suitable."[54]

[93] The issue, and QAC's response to the issue, is framed in a way that concerns both the process (section 171(1)(b)) and secondly, the manner in which QAC's objectives are proposed to be given effect (section 171(1)(c)). It is practicable to respond to the issue in the manner it is framed, but in doing so we resist the invitation that is implicit in the evidence of RPL's aviation planner, Mr D Sachman, to adjudicate the merits of the alternative sites and, to paraphrase Judge Kenderdine in *Quay Property Management Ltd*, by that measure decide whether the chosen alternative is reasonable.

[94] The suitability or otherwise of existing designated land is a question of fact and degree and where suitable designated land exists there will be less tolerance around the issue of whether the work or designation is reasonably necessary to achieve the objective of the requiring authority. However, we do not go as far as to construe "reasonably necessary" to mean "essential" as submitted by RPL as this would ignore the qualification "reasonably" and secondly, it would necessitate the local authority (or Environment Court) to determine the best site for the works whereas this is a decision for the requiring authority (section 171(1)(b)).

[95] Before we commence our discussion of the central factual matter in contention, we give the following initial findings of fact:

(a) there is insufficient land within the aerodrome designation to develop an instrument precision approach runway and southern parallel taxiway for Code D aircraft and to develop a general aviation/helicopter precinct; and

[54] QAC Closing at [70].

(b) QAC has no firm development plans for designated land north of the main runway.[55]

Discussion and findings

[96] RPL and ANZL submit QAC failed to give adequate consideration to a general aviation/helicopter precinct on land north of the main runway within the aerodrome designation.

[97] Mr Sachman gave conceptual evidence that reflected his comprehensive airport planning experience, but at times demonstrated a lack of local knowledge. He canvassed several possible permutations for a northern precinct and while we refer here only to his key points we have considered all of his evidence. Mr Sachman supported a northern precinct as it would separate scheduled and non-scheduled aircraft operations on either side of the main runway. In his opinion the separation of these services would have greater operational efficiency [56] and would entail less risk of foreign object debris on the taxiway.[57] We note that he was critical of the aircraft type selected as the basis of planning building and infrastructure requirements, and secondly the forecasting undertaken for components of the aeronautical businesses.[58]

[98] It was his evidence that use by general aviation, helicopter and corporate jets of the southern parallel taxiway would cause delays both to scheduled airlines and also to helicopters using the proposed southern FATOs. Delays would also be experienced as a consequence of:

(a) 60% of all helicopter departures involving flight paths to the north and across the main runway;
(b) the co-location of the helicopter facility within the fixed wing operating area;
(c) the location of a second passenger terminal (FBO) between the general aviation and corporate jet facilities entailing complicated aircraft operations; and

[55] Transcript at [995] where QAC's former Chief Executive Officer, Mr S Sanderson discusses about maintaining the land for a buffer or perhaps to develop activities not sensitive to noise.
[56] Sachman EiC at [18-28].
[57] Sachman EiC at [35].
[58] Sachman EiC at [29–65].

(d) use by scheduled and non-scheduled operators of the new parallel taxiway.

[99] Finally Mr Sachman expressed the opinion that the proposed southern FATOs and parallel taxiway would not comply with the Civil Aviation Authority's advisory circulars. Because these allegations were not directly addressed by QAC in evidence or in the joint conferencing of expert witnesses, the Environment Court commissioned a report from the Civil Aviation Authority in response. A report was prepared by Mr M Haines, the manager of the Aeronautical Services Unit of CAA, who was then summonsed to attend the hearing.

[100] In his report Mr Haines confirmed that the proposed parallel taxiway complies with the separation distances in the CAA advisory circular (the advisory circulars being guidance materials). If simultaneous visual meteorological conditions operations are not allowed then the separation distance of a FATO from a runway or taxiway would not apply.[59] He foresaw no safety based reason which would prevent QAC from obtaining the appropriate certification should the southern precinct be developed.[60]

[101] Furthermore Mr Haines presented a quite different evaluation to that of Mr Sachman on certain key points of evidence. In his opinion locating general aviation north of the main runway could increase vehicle traffic across the main runway and could increase the risk of foreign object debris being deposited and separately the risk of runway incursions.[61] Air traffic controller, Mr B Macmillan, evidence was that helicopters departing the Airport in any direction from the southern and northern precincts would initially occupy the main runway.[62]

[102] While Mr Sachman gave detailed evidence comparing the flight paths for helicopters from northern and southern FATOs, we find this evidence to be of limited assistance as we have not accepted his concept plans for a precinct north of the main runway. All airport planners agreed that there are two peak periods of air traffic movement (early morning and mid to late afternoon). Outside of these periods there

[59] Report dated 9 July 2012 at [14-17].
[60] Transcript at [246].
[61] Report dated 9 July 2012 at [12-25].
[62] Macmillan Rebuttal (29 May 2012) at [15].

would be five to ten scheduled airline movements per hour during which helicopter operations could occur provided that there is no simultaneous use of the runway.[63]

[103] It is noteworthy that Mr Sachman (or RPL) does not give a substantive response to the operational reasons given by QAC for locating a helicopter facility south of the main runway.[64] Several issues present themselves against a northern precinct, including the transportation of dust into helicopter hangars carried by the prevailing westerly winds and the stronger lower frequency southern winds, increased exposure to the winds from the south and west during helicopter take off and landings, increased runway occupancy by helicopters to minimise or reduce exposure to prevailing winds; the geographical constraints north of the cross wind runway and the desirability for flight-paths over TALOs to be unobstructed by stacked (parked) helicopters.[65] All these are important factors which lead to the adoption by QAC of a southern precinct.[66]

[104] Having considered Mr Sachman's evidence, we gained no clear impression as to the relative operational efficiencies of locating a helicopter facility on either the north or south side of the main runway.

[105] For QAC we heard from Mr A Shaw of Oceania Aviation Ltd and Mr P West of Helicopters Queenstown Ltd who gave evidence as to why a northern helicopter facility was not suitable, and in Mr West's opinion, potentially unsafe.[67] The evidence Mr West gave in cross-examination impressed upon us the need not to over generalise when considering the operational efficiency of the two alternative precincts. Mr West's opinions were on matters well within his competence and experience as a helicopter pilot and on operational matters we prefer his evidence to that of Mr Sachman. (RPL did not call evidence from a helicopter operator).

Restricting the use of RPL land for a 15.5m distance from the common boundary

[106] While explored in cross-examination with QAC witnesses, no evidence was led on behalf of RPL as to what restrictions were proposed on this 15.5m strip of designated land including its intended purpose – although it is our understanding that this area would be to accommodate part of the obstacle clearance width for a Code D parallel

[63] Transcript at [357, 378].
[64] Sachman EiC at [76].
[65] West EiC and Rebuttal (in general).
[66] Morgan Rebuttal at [102-105].
[67] West EiC at [14], and Rebuttal in general.

taxiway. The relevance of this issue is moot given our decision is to cancel in part the NOR.

[107] That said, section 176 RMA would, subject to QAC approval, allow RPL to use designated land, although its use seems unlikely given Mr Morgan's advice that an airport security fence would be erected around the perimeter of the aerodrome as it is a security requirement of an international airport. And secondly, that a ring road, whether formed or not, is required for maintenance and inspection vehicles.[68]

The relocation of some or all of the general aviation (including flightseeing) and helicopter facilities from the Airport

[108] RPL and ANZL submit QAC failed to give adequate consideration to a possible relocation of general aviation (including flightseeing) and helicopter facilities from the Airport.[69] ANZL supports its submission relying on the evidence of Mr Morgan who said that the increased demand for scheduled passenger services would eventually constrain the airspace. ANZL did not identify any alternative locations for general aviation or a helicopter facility but said QAC should now consider any future land and airspace constraints and prioritise the elements of its business that it wishes to retain.[70]

[109] It was not suggested that the airspace constraints are such that there is an immediate need to relocate general aviation/helicopter facilities.[71] ANZL has not undertaken work to identify when any future airspace constraints may impact the operational efficiency of the Airport, rather it was Mr Morgan's "perception" that these constraints may arise.[72] We are not satisfied on the basis of his evidence that either the airspace is, or will be at some stage in the future, constrained. Airspace management is the responsibility of Airways New Zealand and we anticipate there could be a number of responses including, but not limited to, relocating elements of the aeronautical businesses from, or constraining their development at, Queenstown Airport. We do not consider QAC remiss for not exploring off-site locations for part of its aeronautical business.

[68] Transcript at [276-279, 325].
[69] RPL Opening Submissions at [7.4].
[70] Transcript at [218-219].
[71] Transcript at [220].
[72] Transcript at [223-4].

Consideration of individual components of the work being accommodated within the existing aerodrome designation

[110] Mr Munro's evidence was that the aeroclub and flight-training operators presently located on the northern side of the main runway have greater flexibility around where they locate and that these activities could operate on or off the Airport.[73] Their location would affect, to some small extent, the area required for the designation.[74] Mr Sachman gives similar evidence.[75] QAC does not appear to have given consideration in its NOR to whether the aeroclub and flight-training operators can locate within the existing aerodrome designation.

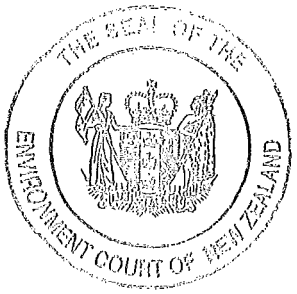
[111] Furthermore, there appears to be no consideration given by QAC as to whether the provisioning for a future instrument precision approach runway or Code D aircraft operations can be made within the existing aerodrome; no doubt this is because it considered these facilities in conjunction with the proposed southern precinct.

Overall Conclusion

[112] We conclude that there is an array of factors, including safety, which militate against a northern location for a helicopter facility. Of these cost (to the helicopter operator and other users of the Airport) is an important consideration, but it is not determinative. Section 171(1)(b) is satisfied as we find that adequate consideration was given to alternative location of the helicopter facility.

[113] Likewise we are also satisfied that adequate consideration was given by QAC to alternative locations for corporate jets and that it is operationally efficient to locate these adjacent to the proposed Code C taxiway south of the main runway.

[114] Apart from the April 2007 study, none of the studies looked at the option of splitting the various aeronautical businesses north or south of the main runway within the existing aerodrome designation. But in the absence of any contrary evidence we conclude, like corporate jets, it is operationally efficient to locate fixed wing operators adjacent to a proposed Code C taxiway.



[73] Transcript at [338].
[74] Transcript at [338].
[75] Sachman EiC at [68].

[115] We are also satisfied that under section 171(1)(c) that a general aviation/helicopter precinct south of the main runway is reasonably necessary for achieving the NOR's objective.

Issue: Is the work and designation reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought (section 171(1)(c))?

[116] Two sub-issues arise:

(a) the extent to which the work and designation are reasonably necessary for achieving the objective of QAC; and more generally

(b) whether the works or designation are reasonably necessary for achieving the objective of QAC.

Extent of works or designation

Introduction

[117] The area of land required for the designation was influenced by two key decisions by QAC:

(a) the type of runway (whether an instrument non-precision or instrument precision runway); and

(b) the aircraft design parameters (whether Code D aircraft would operate at the Airport).

[118] We heard from Mr Morgan, for ANZL, who addressed, amongst other matters, the likelihood of Queenstown Airport runway becoming an instrument precision approach runway and of Code D aircraft operating at this Airport. His evidence is important in that it highlights QAC's assumptions that he says are wrong and, if he is correct in this, these assumptions may have had a significant bearing on the decision-making by QAC. QAC's 2010 Master Plan records:

> However, on the basis of the recent recommendation that QAC should, in future, progressively adopt planning parameters for a precision approach runway, a recent decision has been made to revise the location for the future parallel taxiway to be at precision separation.

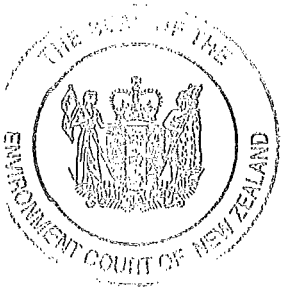
> This greater separation (75m) will position the taxiway significantly closer to the airport boundary at the southern side, adjacent to Lot 6, consuming all of the potentially available land for a SE Zone (74m) shown in **Figure 3-3**, and negating any possibility for limited precinct development for fixed wing GA that was indentified in the 2007 study.

[119] And later:

> It is considered quite possible that some future [aircraft] types that develop from the current B737 and A320 families may be well suited to operate on the relatively short Queenstown runway but will have wider wingspans to improve lift and fuel efficiency, "creeping" beyond Code C dimensions into the next category, Code D.
>
> Therefore, QAC has decided to adopt Code D precision runway separation and clearance distances for the taxiway, being:
>
> - Runway-taxiway separation 176.0m
> - Taxi-way-object clearance 40.5m[76]

[120] If, as ANZL contends, the appropriate main runway strip width is that for an instrument non-precision runway, that is 150m, then the separation distance between the runway centre line and the taxiway centre line for Code C aircraft is 93m, and for Code D aircraft, 101m.[77] Taken together with a taxiway object clearance of 26m or 40.5m for Code C or Code D aircraft respectively, the parallel taxiway for Code C or Code D aircraft can be located well within the existing aerodrome designation. In the case of a Code C parallel taxiway, an 82m wide strip of land would still be available outside of the taxiway and within the airport designation (and boundary) and for Code D there would be a 59.5m wide strip available.

[121] If Queenstown Airport's main runway were to become an instrument precision runway with a runway strip width of 300m, then the runway and taxiway separation distance including the object clearance for Code C aircraft would be 194m or 216.5 for Code D aircraft. As Lot 6 is situated some 201m from the main runway centerline, a



[76] 2010 Master Plan at p [13].
[77] Mr Morgan gave his supplementary evidence on 25 July 2012, after Messrs Morgan and Sachman. The line of cross-examination pursued by Mr Nolan in relation to Mr Munro proceeded upon a different understanding of the separation distance between the centreline of the main runway and taxiway (Transcript at [316-321]).

Code C parallel taxiway including the object clearance could be accommodated within the existing aerodrome designation. However, under a Code D parallel taxiway and object clearance scenario, the aerodrome designation would extend 15.5m into Lot 6.[78]

Precision approach runway

[122] Queenstown Airport is an instrument non-precision approach runway. CAA define a non-precision approach runway as being an instrument runway served by visual aids and a non-visual aid providing directional guidance adequate for a straight-in approach.

[123] A precision approach runway is an instrument runway served by (relevantly) Instrument Landing System (**ILS**) and visual aids intended for operations with a decision height not lower than 60m (200ft) and either a visibility of not less than 800m or a runway visual range not less than 550m.[79] An ILS controlled approach is a precision approach system and typically uses a combination of radio signals and high intensity lighting arrays to guide an aircraft approaching and landing on a runway.[80] This ground-based approach system requires a wider runway strip than a non-precision approach runway.[81]

[124] Three scheduled Queenstown Airport airline operators use the flight navigation system, Required Navigation Performance (**RNP**) technology. RNP is an aircraft based flight navigation system that is not designed to assist pilots during the landing phase and therefore cannot be described as a near precision technology.[82] Pilots, at the predetermined decision height establish visual contact with the runway when making their approach; if visual contact with the runway is not established the landing must be aborted.

[125] It was Mr Morgan's evidence for ANZL that Queenstown Airport would not become an instrument precision approach runway because of *inter alia* terrain constraints inhibiting ILS controlled approaches.[83] However, QAC is not suggesting

[78] Morgan Supplementary at [5.28]. All planning aviation witnesses agree that the Code D parallel taxiway and object clearance would extend 15.5m into Lot 6.
[79] Morgan EiC at [7.7] and supplementary evidence at [5.24].
[80] Morgan EiC at [7.14].
[81] Morgan EiC at [7.8].
[82] Morgan EiC at [7.24].
[83] Transcript at [199-200].

that an ILS controlled approach will be made operational at Queenstown Airport. Indeed, Mr Munro accepts Mr Morgan's description of RPN and ILS technology.[84] Rather it is his advice that QAC protect for the possibility of a precision approach runway in the future.[85] As Mr Munro considers a RNP approach to be a "near-precision" approach, he recommends that airports with RNP operations adopt standards equivalent to those for a precision approach runway (i.e. as if ILS were installed).[86] His evidence was that a recent CAA circulatory advice strongly supports the adoption of standards for an instrument precision runway.[87]

Discussion and findings - precision approach runway

[126] No evidence was adduced that the scheduled airline operators flying into Queenstown Airport using RNP technology would (or sometime in the future could) operate down to 60m (200ft) decision height – being the standard for a precision approach runway, (Category I).[88] As we have no evidence to the contrary we accept ANZL's submission that similar landing outcomes as would occur with ILS technology do not, and would not, occur at Queenstown Airport for safety reasons.[89] While the approved decision height for RNP is 300 feet, for its own operating procedures, Air New Zealand has decided to use 400 feet as an additional safety precaution which is well above the minima specified for instrument precision runways.[90] The introduction of RNP technology has not displaced what Mr Munro describes as the "long-standing practical reality" that flight operations in and out of Queenstown Airport are conducted with visual procedures due to the proximity of mountainous terrain.[91] It follows that we accept Mr Morgan's evidence that:

> ... because of the terrain constraints inhibiting ILS approaches the final stage of an approach needs to be conducted by assuming a visual approach at 400ft above ground level, which also means no more than a 150m runway strip width is needed.[92]

[84] Morgan Rebuttal at [156].
[85] Munro Rebuttal at [153].
[86] Munro EiC at [157].
[87] Munro EiC at [158-9] discussing CAA AC 139-6, Rebuttal at [76].
[88] Morgan Supplementary at [5.24], referring to AC139-6.
[89] Nolan, Closing Submissions at [4.41].
[90] Transcript at [200].
[91] Munro EiC at [151].
[92] Morgan Supplementary at [5.40].

Code D aircraft

[127] In QAC's application, the centerline separation distance between the main runway and the proposed southern taxiway is based on the largest Code D wingspan.

[128] Jet aircraft operating at Queenstown Airport fall into the Code C category, meaning that they have a wingspan of between 24 and 36m (but not including 36m). In his evidence-in-chief Mr Munro expands on the need to plan on the basis for aircraft with wider wingspans. He considers it plausible that future types of aircraft will be developed from the current Code C B737 and A320 families to aircraft that will have wider wingspans to improve lift and efficiency, thus "creeping" beyond the Code C dimensions into the next category, Code D.[93]

[129] Code D aircraft fall into two categories, those with smaller or larger wingspan between 36m to 52m. Code D aircraft with a larger wingspan would not likely operate at Queenstown Airport because of the physical size of the aircraft. However, Mr Munro considered it likely that at some time in the future a smaller Code D aircraft would operate and gave the timeframe for this to be towards the end of the 2020s or into the 2030s.[94]

[130] If planning is to consider not only what is known about the future, but also what is unknown but realistically possible, then Mr Munro recommended, and QAC adopted, precision runway separation and clearance distances for the Code D parallel taxiway.[95] In that regard Mr Munro emphasised the need to future-proof the Airport.[96]

[131] That said, Mr Munro agreed in response to the court that there is no nexus between the use of Code D aircraft and the attainment of the NOR objective.[97] Indeed "growth projections are, in the timeframes we are looking at, based on aircraft growth size, which is broadly expected to be achievable through aircraft up to a Code C size".[98]

[132] While it is not discussed in the NOR or evidence of QAC witnesses, the existing airside facilities would likely need to be upgraded to accommodate Code D aircraft.

[93] Munro EiC at [93-105, 167-173].
[94] Transcript at [330].
[95] Munro EiC at [171].
[96] Munro Rebuttal at [83].
[97] Transcript at [341].
[98] Transcript at [341-2].

This would include increasing both the width of the runway and its bearing capacity which would involve the reconstruction of the runway.[99] Code C aircraft operating at Queenstown Airport do so with CAA approval as the required runway width is 45m; not 30m as presently exists. Mr Morgan picks up on this also when answering the court's questions. For Code D aircraft to operate at Queenstown Airport the runway may need to be reconstructed, and possibly lengthened to accommodate the bigger planes.[100] He was unaware of any airport in the world where Code D aircraft operated on a 30m wide runway (with the exception of military aircraft) and at the very least the runway would need to be widened to 45m.[101] He said that in order to operate a Code D aircraft the runway would need to be widened and that, depending on the aircraft flying into Queenstown, the runway may also need to be lengthened and strengthened with fillets being provided at each end of the runway.[102] A reconfiguration of the terminal apron to accommodate the larger wingspan of these aircraft may also be required.

[133] Agreeing with Mr Morgan's evidence, RPL's aviation planner Mr Sachman recommended adopting Code C as the relevant planning parameter for aircraft design.[103] He noted the respect held by aircraft manufacturers for the Codes when designing airplanes in order to avoid impact on airport infrastructure.[104] He recommended planning for Code C aircraft, and if the use of Code D aircraft eventuates then to seek approval from CAA to operate the aircraft at this Airport.[105] Mr Munro accepted that it was one option to seek CAA approval, noting that if given, approval would involve restriction on the concurrent use of the runway and taxiway.[106]

Discussion and findings – Code D aircraft

[134] A smaller Code D aircraft of the type described by Mr Munro does not presently exist. (We exclude from our consideration the B757s which do not fly into Queenstown route and we were told are being phased out to be replaced by new generation Code C B737s and A320s).[107] Mr Munro's evidence proceeds very much on the basis that the

[99] Morgan EiC at [7.20-7.21].
[100] Transcript at [228-9].
[101] Transcript at [229].
[102] Transcript at [306].
[103] Transcript at [353].
[104] Transcript at [354].
[105] Transcript at [353-4].
[106] Transcript at [331].
[107] Transcript at [355].

Airport should plan for new generation aircraft which might emerge sometime in the future. While this might include airlines seeking to operate Code D aircraft at Queenstown Airport (and the evidence tends against the proposition), there is no suggestion of Code C aircraft being phased out – indeed the converse appears to be the case. On this matter we prefer the evidence of Mr Sachman that manufacturers will respect existing Codes when planning new and upgraded aircraft so that these can operate within the constraints of existing infrastructure at airports around the world, including Queenstown.

[135] If smaller Code D aircraft with improved lift and fuel efficiency were realistically possible, then we would have expected ANZL to support provision within the designation for this or at least explain why it could not. ANZL, while supporting within reason the need to "future proof" airports, does not consider it necessary (or appropriate) to provide for Code D aircraft at Queenstown.[108]

Sub-issue - whether the works or designation is reasonably necessary for achieving the objective of QAC

[136] The objective of the NOR is stated thus:

> ... QAC's specific objective for the NOR is to provide for the expansion of Queenstown airport to meet projected growth while achieving the maximum operational efficiency as far as possible.[109]

[137] QAC's planning witness, Mr J Kyle, gave evidence that the NOR has a single objective and we accept his evidence.[110] The objective is amplified upon in the NOR where it is stated that the NOR is required to ensure the continued safe and efficient functioning of the Queenstown Airport through expansion of the aerodrome to meet projected growth.[111] Growth means projected passenger and operational growth.[112]

[138] Mr Kyle conceded no connection was made by QAC's airport planner with an instrument precision runway. The provisioning is made because it was considered

[108] ANZL Opening Submissions at [2.6].
[109] NOR Annexure 2, Clause 2.1.4.
[110] Counsel for QAC in closing submitted that there were two objectives; we do not accept this submission. Moreover the submission is not supported by the evidence or the NOR.
[111] NOR Form 18 at [1.3].
[112] NOR Form 18, Annexure 1, Clause 1.1.1.

"sensible" to do so.[113] While acknowledging that it fell to him to say how these works fit with the objective, we can find no considered evaluation of this matter. Expressed in general terms he concludes that the designation is reasonably necessary to "enable QAC to meet its stated objective".[114]

Conclusion

[139] On the issue of whether the works or designation is reasonably necessary for achieving the objective of QAC the evidence is clear; within the planning horizon under consideration there is no nexus between the NOR objective and enablement of Code D aircraft operating at Queenstown Airport.[115] The predicted growth is able to be achieved using Code C aircraft.[116]

[140] For the same reason we find that there is no nexus between the NOR's objective and the provisioning for an instrument precision approach runway.

[141] The consequences of the findings are this: the provision of a instrument non-precision approach runway and Code C parallel taxiway would reduce the lateral extent of the land required by 97.5m along the approximately 1,000m length of the common boundary with RPZ, being a total land area of about 9.75 hectares. Put another way, the land required for the designation would be reduced from around 160m into the RPZ to around 60m. We are not, however, required to approve the Code C parallel taxiway. Land within the existing designation is available for this purpose and it is a matter for QAC to decide whether to construct the same.

[142] Subject to what we say at [164] in all other respects we conclude that the work and designation is reasonably necessary for achieving QAC's objective. We prefer Mr Munro's assessment of the comparison of area requirements for the northern and southern precincts as it comprehensively addresses the proposed building and infrastructure.[117] We found limited assistance in the area requirements produced by RPL's witnesses as these do not include all components of the aviation precinct or use

[113] Transcript at [871].
[114] Kyle EiC at [7.72-7.76].
[115] Transcript at [340-1].
[116] Transcript at [342].
[117] Munro Rebuttal, Table 3.

different measurements to assess the components. When reconciled, as Mr Munro has done, we are satisfied that any difference between the witnesses' assessments is at best inconsequential.[118]

[143] Finally, we find the proposal to extend the designation to accommodate an instrument precision approach runway and Code D parallel taxiway is inconsistent with objective 9.4.2 and policy 9.5.2 of the RPS which encourages development that maximizes the use of existing infrastructure while recognising the need for more appropriate technology. Furthermore, QAC has land within its existing designation which, undeveloped, could accommodate a instrument precision approach runway and Code D parallel taxiway.

Effects on the environment of allowing the requirement

[144] Section 171 provides that when considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement whilst having regard to the matters in subsection (1)(a-d).

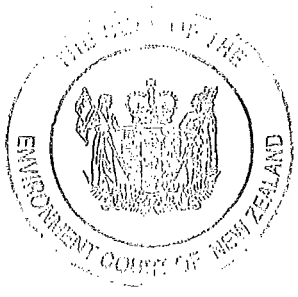
[145] There are three categories of effects. These are:

(a) noise;
(b) landscape and amenity; and
(c) traffic and transportation.

Noise

General aviation and helicopter noise

[146] The noise generated by helicopters was the focus of evidence given by three very experienced noise experts – Mr Hunt who gave evidence on behalf of RPL, Mr C Day for QAC and Mr N Hegley for QLDC. While the noise model inputs used by the witnesses were agreed, Mr Hunt and Messrs Day/Hegley differed on the relevance of the model outputs when considering the degree and relative effect of helicopter noise if one or other of the general aviation/helicopter precincts are developed.



[118] See Munro Rebuttal dated 29 April 2012 (in general).

[147] In his evidence-in-chief, Mr Day describes the Miedama and Oudshorn methodology used by the noise experts to compare the noise effects on local residents from three different precinct locations.[119] This methodology has been derived from a large number of studies undertaken to establish the relationship between aircraft noise levels and residential responses to this noise. The outcome of these studies is a graph which plots the percentage of people highly annoyed (over a range of 0 to 50%) against aircraft noise levels (over a range from 40 dBA Ldn to 75 dBA Ldn).

[148] The noise experts, assisted by the planners, arrived at agreed densities for the type of development proposed in each activity area around the Airport. They then applied predicted occupation levels for each type of development to calculate the number of people who would end up living in each area for the three bands of aircraft noise (50 – 55 dBA Ldn, 55 – 60 dBA Ldn and 60 – 65 dBA Ldn). In the final step, they used the Miedama and Oudshorn graph to predict the number of highly annoyed people in each band of each area.

[149] Following a number of iterations, Mr Day and Mr Hunt finally produced an agreed table of the numbers of people predicted to be highly affected within each noise band in the three precinct options.[120]

[150] Based on Mr Day's approach irrespective of the location of the general aviation/helicopter precinct, there will be people within the wider Frankton Flats area (in particular Frankton and PC19) predicted to be highly annoyed by noise. While the number of people who will be highly annoyed will be slightly less with a northern precinct, in his opinion the difference in those affected between the precincts is not significant.[121]

[151] Mr Hunt's evidence proceeded on the basis that noise would concentrate in the vicinity of the TALOs – the actual point that helicopters land and depart.[122] In contrast with Mr Day, Mr Hunt does not include the number of highly annoyed persons who will live in the 50-55 dBA Ldn noise band. He considers that the noise in this band will be dominated by the sound of aircraft from the main runway, and that these people would

[119] Day EiC at [8.0].
[120] Exhibit 5.
[121] Day EiC at [61]. While the outputs in the EiC subsequently changed, we did not understand this to have affected Mr Day's opinion.
[122] Transcript at [796].

not be sensitive to the noise generated from the general aviation/helicopter precinct.[123] Mr Hunt finds it to be counter-intuitive that the number of highly annoyed persons in the 50 to 55 dBA Ldn noise band south of the main runway will increase if the general aviation/helicopter precinct is located north of the main runway. Again he says this points to the greater effect of noise from runway aircraft.[124] (Mr Day points out that the reason for this increase is that aircraft operations in the northern precinct result in a much wider 50 to 55 dBA Ldn band to the south and that as a result, more people are affected. This increase is offset by fewer people living in the much narrower 55 to 60 dBA Ldn band).[125]

[152] It is also Mr Hunt's opinion, that the noise generated by helicopters along agreed flight paths has an inconsequential effect on the overall shape of the 50 and 55 dBA Ldn noise contours[126] because helicopter noise is dispersed along the different flight paths.[127] Mr Day disagrees, pointing out that except for at the eastern border, the noise levels in the RPZ are being determined by the general aviation and helicopters using the cross-wind runway.[128]

[153] Taking a disaggregated approach and concentrating on RPZ, Mr Hunt concludes that if the general aviation/helicopter precinct was located south of the main runway, then more people would be highly annoyed within the RPZ than compared with those who would be highly annoyed in Frankton (if the precinct is retained in its present location) or PC19 (if the precinct was located north of the runway). On that basis, in his opinion, the southern precinct is the least preferable option.[129]

Discussion and findings – general aviation and helicopter noise

[154] The noise from helicopters travelling along the flight paths has been modelled and these levels are reflected in the noise contours in PC35.[130] The modelling includes with or without the Lot 6 option. The noise contours in the vicinity of the RPZ (including Lot 6), are a record of noise emanating from both the main runway and

[123] Transcript at [791, 798].
[124] Transcript at [791].
[125] Transcript at [800].
[126] Transcript at [794].
[127] Transcript at [797].
[128] Transcript at [800].
[129] Hunt EiC at [65].
[130] Transcript at [579].

general aviation and helicopters using the cross-wind runway.[131] Modelling includes, but is not limited to, the noise and energy levels generated at the proposed FATOs and TALOs. Noise levels increase in proximity to the FATOs and TALOs and the air noise boundary show this change to be relatively localised.[132] Irrespective of where the aviation/helicopter precinct is located noise will be generated from this source. When under or near a flight path persons within the Frankton Flats area generally will be exposed to noise from general aviation and helicopters; the effects of noise are not restricted to the FATOs or TALOs.

[155] The incidence of residents within the 50-55 dBA Ldn noise band who are predicted to be highly annoyed by noise, even if the percentage is less than those who live in the higher noise bands, is of no less relevance than those highly annoyed people who live in these higher noise bands. Irrespective of where they live a percentage of people will be highly annoyed by noise.

[156] Of relevance also are the differences between the numbers of people predicted to be highly affected from noise if the general aviation precinct was to be retained in its present location compared with the precinct being located at the two alternative locations. On Mr Day's approach for the total number of people highly annoyed with the precinct in its current location, a greater number of people within the RPZ are predicted to be highly annoyed than compared with the people located at PC19 or Frankton. But this would be the case irrespective of the location of the precinct. Messrs Day and Hegley's opinion is that when the total number of people who are highly annoyed are aggregated there is little difference where the precinct is located.

Overall Conclusion – general aviation and helicopter noise

[157] In PC35 (before this division of the Environment Court), RPL proposed, and the other parties agreed on mitigation measures for the attenuation of noise in defined areas inside of the 55 dBA Ldn contour in Activity Areas 6 and 7 of the RPZ to allow for residential and educational buildings. We are satisfied that with these measures in place, together with the amendments proposed by the Environment Court in the Interim Decision on PC35, the extension of the Airport will not preclude opportunities for future development within the RPZ. When compared with people living either now or in the

[131] Transcript at [800].
[132] Transcript at [800].

future in Frankton or in residential areas north of the main runway, more people living within RPZ are predicted to be highly annoyed by noise as a consequence of growth in aircraft movements and this is so irrespective of the location of the general aviation/helicopter precinct. Overall we do not find this aspect of the NOR to locate the helicopter precinct on the southern side of the airport to be in tension with the planning instruments.

Other noise matters

A single event level approach

[158] RPL is also concerned with the amenity effects of single event noise levels from helicopters and fixed wing aircraft on short take off along the cross-wind runway. Through cross-examination counsel explored with Mr Day the usefulness of the single event level as an assessment method.[133] Mr Day's response was that while single event levels are used to assess sleep disturbance effects at night (and that is its purpose), it is not a tool employed by noise experts to evaluate either the effects of noise on amenity nor is it an appropriate response to amenity effects. Mr Day did not support RPL's proposition that it could or should be used for this purpose and he did not see it assisting the evaluation of the best practicable option to mitigate noise.[134] Mr Hunt did not give evidence supporting the use of the single event levels for these purposes.

[159] In the absence of evidence to support the proposition that single event levels may be used as an alternative method to assess the effects of daytime noise, we accept the evidence of Mr Day.

Unplanned engine testing

[160] We accept Mr Day's evidence that unplanned engine testing is not a significant issue. The incidence of this is not expected to be higher than once per year and is to be managed through the Noise Management Plan provisions that are the subject of PC35.

Earth Bund

[161] The reinstatement of an earth bund on the south side of the aerodrome was supported by Mr Hunt as a form of mitigation should buildings within the extended

[133] Transcript at [98].
[134] Transcript at [464-479].

aerodrome designation not be constructed in a manner to form an acoustic barrier.[135] Mr Day's evidence was that the difference with or without the extant bund would be 1 dBA, a sound level which is not detectable. If additional mitigation is required he recommended an acoustic fence be built.[136]

The need for additional noise attenuation is to be assessed at the outline plan of works stage, and directions will be given that QAC include a condition in the designation to give this effect.

Traffic management

[162] We heard from three expert witnesses on the topic of traffic management: Mr N Williams (QAC), Mr S Woods (QLDC) and Mr T Penny (RPL). At the commencement of their evidence a second joint witness statement was tabled recording their agreement on all outstanding traffic management issues.[137]

[163] In particular the witnesses were agreed on the following:

(a) the cross-section of the western access road connecting the general aviation and helicopter precinct with Hawthorne Drive;
(b) that 450-600 car park spaces are required to service the 25,000m^2 floor area of the proposed precinct's buildings;[138]
(c) in addition to land required for the western access and its associated landscaping, 1.3 – 1.7 hectares of land is required for carparking, circulation and landscaping and not 5.6 hectares as previously estimated; and
(d) the balance 2.7 – 3.1 hectares along the 1 km frontage to the RPZ (being some 27-31m in depth), is no longer required for carparking, circulation and landscaping.

Land surplus for carparking, circulation and landscaping

[164] The traffic witnesses appeared to be of the view that this 5.6 hectares of land at clause (c) differed from an estimate given by Mr Munro. We are not sure that is the case,

[135] Hunt Rebuttal at [20-12].
[136] Day Rebuttal at [20-24].
[137] Dated 20 July 2012.
[138] This is estimated on the basis that 1.8-2.4 spaces per 100m^2 floor area.

but irrespective of that it appears that the area in the NOR required for carparking, circulation and landscaping (excluding the western access) is too large and not all of the land required is reasonably necessary to meet QAC's objective. The evidence is conflicting and it is not possible for us to reach a view as to the amount of surplus land. Consequently directions have been given that the parties file memoranda addressing whether the designation is to be cancelled in part by reducing the land area required. This should be considered in tandem with the landscape directions which may have a bearing on this extent of land required.

Western access

[165] The witnesses addressed a potentially quite problematic issue concerning the western-most access to the proposed general aviation/helicopter precinct. Since February 2012 RPL and the Minister of Education have entered into a contractual arrangement to buy land in the RPZ adjacent to Red Oaks Drive south of Hawthorne Drive for the purpose of establishing a secondary school.

[166] Hawthorne Drive is yet to be formed in the vicinity of the western access. When it is, the southern precinct's traffic movements will likely be restricted by a concrete median strip to left in and left out turns. Drivers wanting to turn right will be required to do a U-turn at one of two intersections controlled by traffic lights.[139] To the east, some 70m distance from the access, the intersection between Red Oaks Drive and Hawthorne Drive is very likely to experience significant pedestrian movement associated with children from the future secondary school crossing Hawthorne Drive. The desire to control movement across Hawthorne Drive (which will be a four lane road) is the reason for the traffic witnesses' recommendation that this intersection become signalised. The second signalised intersection is to be located some 200m west of the access in the vicinity of the Remarkables Park Town Centre and would be used by west bound Hawthorne Drive traffic wishing to enter the precinct.

[167] We have noted the heavily qualified joint statement made by the traffic witnesses – that U-turns at these intersections would be less than desirable, but technically feasible, "at least in the short term". Mr Penny acknowledged that the U-turn would increase risk [we interpose of conflict between pedestrian and vehicular movements] and

[139] Transcript at [620].

confusion at the intersections.[140] In his view, while physically feasible this movement is not desirable.[141]

[168] Critically, the traffic experts have not modelled the distribution (and timing) of traffic movement at the intersections.[142] Added to the traffic movement associated with the proposed southern precinct is traffic generated by PC34 – which while under appeal no change is expected to the additional 30,000m^2 gross floor area for retail activity that it enables.[143] It was faintly suggested that the risks associated with the U-turns may be managed by constructing a right turn bay at the Hawthorne Drive/Red Oaks Drive intersection. However, there has been no assessment of this facility and in any event it is beyond the scope of the NOR. Also a right turn bay would not address the ability of traffic to safely cross two lanes to reach the right turn bay over a relatively short distance between the western access and Red Oaks Drive.

[169] Because of the concerns shared by the traffic witnesses about the management of traffic, particularly in relation to Red Oaks Drive intersection, it was their view that access to the designation area would be considerably improved if the access was to connect directly to an extension of Red Oaks Drive north of Hawthorne Drive.[144] This would entail an extension to Red Oaks Drive over land owned by RPL - although we note that the court has no jurisdiction to direct this outcome. However, counsel for QAC agreed that the court could require the access to connect with Red Oaks Drive if this road was extended to the boundary of the aerodrome designation.

Discussion and findings

[170] All this leaves the management of traffic in proximity to Red Oaks Drive in a most unsatisfactory state of affairs. Given this we were surprised by the evidence of QAC and QLDC planning witnesses. Ms Baker (for QLDC) gave evidence that from a planning perspective this outcome is acceptable. The potential environmental effects were "less than minor" and the proposal would meet "Part 2".[145] There is no evidence before the court on which the court could possibly reach this conclusion. Mr Kyle for

[140] Transcript at [623].
[141] Transcript at [620].
[142] Transcript at [624].
[143] While PC34 enables has capacity for 30,000m^2 gfa, we note that in PC19 Messrs Heath and Tansley agreed that within the next 20 years the likely floorspace development would be 20,000m^2.
[144] Transcript at [613] (Williams), [619] (Penny) and [630] (Woods).
[145] Transcript at [973].

QAC while characterising the recommendation by the traffic experts to signalise the intersections as "game changing",[146] concluded the proposed access was not necessarily inconsistent with the District Plan.[147] Neither witness proffered an evaluation of the plan to substantiate their opinions. In fairness to Mr Kyle and Ms Baker the issue of traffic management around the proposed school was raised for the first time during the hearing, but we would have thought these witnesses had sufficient time to consider the proposal in light of the District Plan and offer a considered opinion to the court.

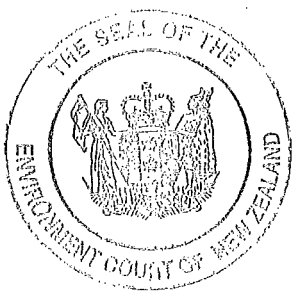
[171] We find that the proposal is inconsistent with Part 14 Transport, objective 1 – efficiency and associated policies 1.1 and 1.10 and also objective 2 – safety and accessibility, and its policy 2.6. The findings are not contingent on the secondary school establishing. We consider each of these provisions in turn:

> **Objective 1 - Efficiency**
> *Efficient use of the District's existing and future transportation resource and of fossil fuel usage associated with transportation.*
>
> Policy 1.1
> *To encourage efficiency in the use of motor vehicles.*

[172] Depending on the direction of their approach and their intended destination along the length of the designation, some vehicles could be required to travel nugatory distances in excess of 1 km to reach their destinations if an access/egress restriction is in place at the western access intersection with Hawthorne Drive. Factored up for multiple journeys, the resulting inefficiencies would clearly be at odds with Policy 1.1.

> Policy 1.10
> *To require access to property to be of a size, location and type to ensure safety and efficiency of road functioning.*

[173] Safety and efficiency would be severely compromised if vehicles wishing to travel west from the western access exit at Hawthorne Drive were required to turn left,



[146] Transcript at [878].
[147] Transcript at [881].

cross two lanes of traffic over a very short distance and then complete a U-turn at the Red Oaks Drive intersection in order to achieve their objective.

Objective 2- Safety and Accessibility

Maintenance and improvement of access, ease and safety of pedestrian and vehicle movement throughout the District.

Policy 2.6

To ensure intersections and accessways are designed and located so:

- ...
- *they can accommodate vehicle manoeuvres.*
- ...
- *are separated so as not to adversely affect the free flow of traffic on arterial roads.*

[174] There would be considerable risks for the safety of pedestrian and vehicle movements if the only way for vehicles wishing to travel west after exiting the western access was to do a U-turn at the Red Oaks Drive/Hawthorne Drive intersection.

[175] The explanation and reasons for this objective also note that ... *the Council is committed to investigating the opportunity for new roads on Frankton Flats....to reduce the impact of development on State Highway No 6 and improve access to the airport and other activities.*

[176] The link between Frankton Flats and the Airport (as well as Remarkables Park) will be via the EAR and Hawthorne Drive. It seems highly likely that the EAR will be afforded arterial road status. The court is concerned that if vehicles were permitted to exit the aerodrome's western access east bound onto Hawthorne Drive this would adversely affect the free and safe flow of traffic on Hawthorne Drive because of:

- the western accesses proximity to the Red Oaks Drive intersection;
- vehicles wanting to turn right into Red Oaks Drive or do a U-turn to get back to Frankton changing lanes over a short distance; and

- the potential for U-turns to cause crashes.

[177] Similar safety and disruption concerns arise in respect of west bound vehicles on Hawthorne Drive making U-turns at a (to be) signalised intersection at (or near) Riverside Road in order to get back to the western access.

[178] These concerns are compounded by the likelihood that some drivers using the general aviation/helicopter precinct may be visitors unfamiliar with local roads and, in some cases, driving on the left hand side.

[179] We have formed the preliminary view that there should be a condition that the western access be used for left hand entry turns only and that egress should be via the eastern access only. We recognise that there may be timing issues around construction of the latter for exercising the designation. Because this subject arose only during the course of the hearing and the evidence may have been incomplete we have extended the parties the further opportunities made in our directions. We have also formed the view that the optimal solution might be for the general aviation/helicopter precinct to have ingress and egress to an extension of Red Oaks Drive north of Hawthorne Drive to the aerodrome boundary. However we understand that as no certainty attaches to this possibility it cannot be relied on.

[180] If there are difficulties with this proposal then leave will be reserved for the parties to call further evidence addressing traffic management this time in an holistic fashion having regard to the relevant traffic factors; and there are a number. The evidence is to include future volumes [vehicles/pedestrians including from any future secondary school, RPZ (including PC34), and southern precinct], intersection spacing, signalisation, Red Oaks Drive extension, EAR construction timing, the function of the site's eastern access onto the EAR, street pattern legibility and driver familiarity.

Landscape and visual amenity

Introduction

[181] The relevant visual and amenity effects of the NOR are those experienced from within the RPZ and from public places including the Airport. In this regard we heard from three landscape architects; Mr D Miskell (QAC), Mr B McKenzie (RPL) and Dr M

Read (QLDC). The issues arising from the proposed development are best captured by QLDC's landscape architect, Dr M Read, as follows:

> Currently the most striking aspect of Lot 6, traversed by Mr McKenzie in his evidence, is the expansive views which can be gained to the outstanding natural landscapes which ring the Wakatipu Basin. This serves, in my opinion, to underline that the landscape importance of the Frankton Flats as a platform from which these views can be appreciated rather than for any qualities which it may so far have retained itself. It is the case, however, that the current expansive views from Lot 6 will become less expansive and with greater evidence of urban development in the fore and mid-grounds regardless of the consequences of this notice of requirement.[148]

[182] We understood Dr Read to refer to development enabled by PC19 on the northern side of the aerodrome.

[183] Mr Miskell prepared an assessment of landscape effects attached to the NOR. In it he concluded that the potential adverse landscape effects resulting from the development would be "less than minor".[149] While he did not consider the viewing population within the RPZ site to be particularly sensitive to landscape change, he recommended a buffer of grasses, shrub and tree planting at the southern boundary of the NOR. As it transpires the NOR did not include any conditions addressing the built form, bulk and location of buildings within the proposed general aviation/helicopter precinct.

[184] In his evidence-in-chief Mr Miskell reviewed this earlier opinion. Upon reflection he now found the views to the north within Activity Area 8 to be an important consideration and recommended that landscape design controls be established; in particular conditions requiring:

(a) a 1.2 m high hedge planting on both sides of the proposed access road;
(b) an avenue planting at 20m spacing of trees capable of growing up to 10m as part of the access road development on the southern boundary of the designation; and

[148] Read EiC at [3.2], McKenzie EiC at [23].
[149] NOR Appendix D at [25].

(c) native beech planting within car-parking areas.[150]

[185] Mr Miskell also recommended that a landscape buffer be maintained between any infrastructure and buildings on the designated land and the balance of Lot 6. And finally, that there should be "thoughtful" siting and design of all buildings and infrastructure to create a high standard of visual amenity from public viewpoints.[151] While QAC's planner proposes a landscape condition in his evidence-in-chief, this does not fully pick up on all the recommendations made by Mr Miskell.

[186] The need for the precinct to appropriately address the environment in which it is to be located only really gained traction with QAC after the QLDC (non-regulatory) joined the proceedings in June 2012. That is so notwithstanding the recommendations made by RPL's landscape architect in his evidence and in the report prepared by the EPA.

Views from within Remarkables Park zone

[187] Unmitigated, the concerns arising from within the RPZ are:

(a) a possible built development that involves lineal arrangement of large, industrial scale buildings extending approximately 1 kilometre along RPZ boundary;
(b) the obstruction of views to the surrounding mountains;
(c) the disruption of the current sequence of an undeveloped foreground to more distant mountainous views;
(d) the reduced opportunity for future development within the RPZ, through open space, to connect visually with the surrounding mountainous landscape; and
(e) adverse visual effects associated with extensive car-parking.

[188] Mr Miskell estimated the viewing distance from the boundary of the NOR to RPZ's Activity Areas 6 and 7 to be between 200 to 250m.[152] At this distance the southern general aviation/helicopter precinct would not intrude on the views of the

[150] Miskell EiC at [108].
[151] Miskell EiC at [107].
[152] Miskell EiC at [30].

skyline from either Activity Area. Views to the northern mountains from within RPZ become obscured at distances 125-150m or less from the precinct.[153] If there are gaps between buildings the degree of this effect will be less again.[154]

[189] The extent to which the NOR car-parks and buildings are visible from these activity areas will depend on future development north of the EAR, including Activity Area 8. In that regard, the Structure Plan produced by RPL landscape architect, Mr B McKenzie, shows intensive residential development immediately north of the EAR within the RPZ.

[190] That said, RPL is less concerned with maintaining a view to a skyline than it is with maintaining visual connection with the surrounding mountainous landscape. Mr McKenzie's response to the proposed landscape design controls was that they would have limited effect in addressing the visual effects of the proposal, because of its built form.[155]

Views from within Queenstown Airport

[191] The views from Queenstown Airport to the surrounding mountains are expansive, and views south along the Coneburn Valley are rightly described by Dr Read as exceptional.[156] Dr Read's evidence was that the southern precinct would partly obscure the base of the Remarkables Range (but not its "ice scoured face"), as it would also the Crown Terrace Escarpment. The development would narrow the field of vision and reduce the naturalness of the view.[157]

[192] Mr Miskell evaluated the effect on views and visual amenity as a consequence of this development. In his opinion The Remarkable mountains would "dwarf" the precinct development in the foreground.[158] At a distance of 300m [we take that to be from areas which are accessible by the public] it is unlikely that the buildings within the southern precinct would significantly reduce the positive visual impact of the surrounding mountains.[159] Further, in his opinion the views towards Coneburn Valley

[153] Miskell EiC at [22].
[154] Miskell EiC at [22].
[155] McKenzie at [101].
[156] Read EiC at [4.2.3].
[157] Read EiC at [4.3.2.2].
[158] Miskell EiC at [68].
[159] Miskell EiC at [67].

from within the Airport would be disrupted by the proposed precinct, as they would also be by development within the RPZ, albeit development within RPZ may have a lesser effect. He concludes the presence of aircraft related activities and structures within close proximity to the Airport is not an unexpected addition to the landscape and conditions can be imposed to ensure that any adverse landscape effects are successfully addressed.[160]

Discussion and findings

[193] All three witnesses agreed that from a landscape perspective a location north of the main runway would be a better option for the proposed precinct; a northern location would have greater absorptive capacity as it would appear in the foreground of PC19's proposed industrial and yard based activities.[161] However, the adjacent Events Centre and sports fields would give rise to similar amenity issues as could occur if the development was adjacent to RPZ's Activity Area 8.

[194] We agree with Dr Read and Mr McKenzie that the lack of control in the designation conditions over the form, bulk, location and exterior appearance of buildings could, unmitigated, create a significant adverse effect on the visual amenity of those parts of the RPZ located adjacent to the aerodrome. This is particularly so given that Designation 2's building height restriction of 9.0m does not apply to hangars. We agree also with Dr Read that a lineal pattern of development along the 1km boundary with the balance of RPZ would be a new and notable pattern within the landscape and without mitigation this would be neither pleasant nor attractive.[162]

[195] While development within the RPZ, including Activity Area 8, may obstruct views towards the north and, in the nature of any development, the remnant natural character of RPZ's undeveloped land will be diminished; this does not detract from the relevance or significance of the views and the derived visual amenity for this zone. We find this to be the case even without assuming that any particular pattern of development will emerge in Activity Area 8 (such as a golf course and other recreational facilities as discussed by several witnesses).

[160] Miskell Second Supplementary Statement at [9-10], Transcript at p [720].
[161] Read EiC at [7.4], McKenzie Rebuttal at [35], Miskell EiC at [35], Transcript at [720].
[162] Read EiC at [4.2.8].

[196] However, we are satisfied that if development of the precinct, its land and buildings, addresses the surrounding environment including the Airport and the adjacent RPZ Activity Areas, these effects can be satisfactorily managed and would serve to visually integrate the precinct within the surrounding urban area in a manner which achieves the outcomes of the relevant objectives and policies of the District Plan.

Outline Plan of Works

[197] Pursuant to section 176A QAC is directed to file an outline plan of works in accordance with that section.

[198] We do not impose an additional requirement that QAC consult with QLDC or other interested parties prior to lodgment. It is plainly in QAC's interests to do this and consultation accords with sound resource management practice. A condition requiring consultation is unnecessary, given the directions requiring QAC to directly address the landscape and visual amenity objectives for its buildings and infrastructure design, an integrated design and management plan and the assessment matters relevant to an outline plan of works.

Conditions on landscape and visual amenity

[199] The conditions proposed by the QAC and QLDC (regulatory) planners were not supported, and we find that is with good reason. The conditions essentially provide tools by which to address the visual and amenity effects of the development but with no objectives articulating the intended outcomes. So that these outcomes are brought into account we have made directions that QAC is to propose the landscape and visual amenity objectives for building and infrastructure design and location.

[200] QAC is also to prepare for the court's approval:

(1) the proposed conditions for inclusion in Designation 2 which give effect to the court's decision which will require:

(a) the preparation of an integrated design and management plan which states:

(i) the landscape and visual amenity objectives for building and infrastructure design and location and outcomes in relation to:

- a landscape planting, staging and maintenance plan addressing:
  - roading, car-parking and buildings; and
  - the extent to which the landscape planting complements existing landscaping within the aerodrome designation and adjoining RPZ activity areas;
- management of stormwater (including if relevant earthworks, retention ponds and landscaping);
- the management of signage, including the use of building colour as a corporate logo; and
- standards for an acceptable range of building materials, colour, tones and reflectivity.

[201] For avoidance of doubt the content of the various plans (for example the planting plan) are not required, and we doubt this would be possible without knowing the proposed layout of the precinct.

(2) QAC is to propose conditions which require QLDC at the outline plan of works stage to consider the extent to which:

(a) the outline plan of works gives effect to the integrated design and management plan and achieves the stated landscape and visual amenity objectives for building and infrastructure design and location;

(b) buildings appear recessive within the surrounding environment;

(c) buildings complement existing or consented development within the Airport and adjacent RPZ activity areas;

(d) buildings provide visual permeability;

(e) views of surrounding mountainous landscape are maintained;

(f) clustering of buildings may reduce a lineal arrangement of the precinct; and

(g) the use of landscape mounding as a tool to attenuate the bulk and form of the precinct buildings.[163]

Overall conclusion on landscape and visual amenity

[202] QAC has prioritised its operational requirements without giving adequate consideration to how the development of the southern precinct addresses the surrounding landscape and urban context.

[203] There is considerable potential for large scale utilitarian buildings to be developed within the designation, particularly in the absence of maximum building height controls in relation to hangars. The effect of this would be to reduce the views and visual amenity enjoyed by both persons arriving and departing from this airport and from within the RPZ. The deficiencies in the management of landscape and visual amenity do not reflect the importance attributed to Queenstown by the Minister for the Environment; that it is a world renowned tourist destination and a place of national significance.

[204] The fact that the precinct's buildings will have a functional purpose does not obviate the need to address the development in its context, although plainly the functionality of the buildings is a relevant consideration. Our concerns are such that we are unable to conclude that the NOR's confirmation as proposed by QAC achieves the purpose of the Act.

Direct referral to the Environment Court

[205] Finally, we are to have regard to the Minister for the Environment's reasons for making the direction and also any information provided by the Environmental Protection Agency.

[206] We understand that QAC initially requested the NOR be directed to a Board of Inquiry and that the EPA, finding that the NOR was a proposal of national significance, made this recommendation to the Minister for the Environment.[164] We have considered the EPA's report to the Minister, and note the advice that the NOR could be determined

[163] While Mr Miskell in rebuttal at [54] did not consider the bund necessary and was a "land hungry" device, he was not opposed to it. This condition is not the same as a bund.
[164] Recommendation of the EPA to the Minister for the Environment dated 2 February 2011.

independently of other proceedings before the court.[165] As recorded in this decision and elsewhere, we do not share this view.

[207] Immediately following the EPA's recommendation to the Minister, QAC requested the matter be referred to the Environment Court as it had been unable to acquire the land from RPL.[166] The Minister for the Environment decided to refer the NOR to the court and his reasons for this included that there were a number of matters already before the court related to this NOR and that the direction to the court would facilitate an integrated decision-making process for Queenstown Airport.[167] In his ministerial direction, the Hon. Dr N Smith stated "Queenstown is a world renowned tourist destination and expansion of the Airport is likely to affect Queenstown, which is considered to be a place or area of national significance."[168] We agree with Dr Smith as to the role the Airport has in supporting and expanding Queenstown as a tourist destination and secondly, that the NOR should be considered in the wider context of other far reaching proceedings before the Environment Court. (As mentioned earlier these proceedings are QAC's privately initiated PC35 and a second NOR also to amend Designation 2 and PC19).

Part 2 of the Act

[208] We commence our evaluation of the NOR under section 7 (no sections 6 and 8 matters are directly in play). Section 7 informs the purpose of the Act and we are to have particular regard to and accord such weight as we think fit to its provisions. Section 7 plays an important role but should not be approached in a way that obscures the purpose of the Act.

Section 7(b)

[209] RPL submits that it is not an efficient use of resources to seek to designate land owned by a third party for airport purposes, where QAC owns land that is designated for the same purpose.[169] The submission is relevant to:

[165] Recommendation of the EPA to the Minister for the Environment dated 2 February 2011, at [17].
[166] Letter from Lane Neave to EPA dated 3 February 2011.
[167] Letter from Minister for the Environment to QAC dated 15 February 2011.
[168] Ministerial Direction dated 14 February 2011.
[169] RPL Closing Submissions [7.12].

(a) the objective for the designation, which includes the statement "achieving the maximum operational efficiency as far as possible";

(b) section 7(b) of the Act which provides that in achieving the purpose of this Act we are to have particular regard to the efficient use and development of natural and physical resources; and

(c) section 5.

[210] Counsel for QAC and RPL referred to the High Court decision of *Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482 where the court observed that on each occasion the Resource Management Act has imposed an obligation on the consent authority to consider alternative locations or methods, that obligation has been carefully spelt out in the Act.[170] Over time, a relatively narrow approach had been taken to section 7(b) in the context of a requirement for a designation. The courts have reviewed the decisions of territorial authorities with regard to whether alternatives have been properly considered, rather than whether alternatives had been excluded or the best alternative chosen. Justice Fogarty in *Meridian Energy Ltd v Central Otago District Council* reflected that it is difficult, if not impossible, to express some of the Part 2 criteria in terms of quantitative values.[171] In this case, the economists agreed that it was not possible to monetarise all the benefits or costs associated with the NOR.

[211] Decisions on costs and economic viability, or profitability of a project are not matters for the court. As Justice Wild in *Friends and Community of Ngawha Inc and Others v Minister of Corrections*[172] said, these matters should:

> ... sensibly be regarded as decisions for the promoter of the project. Otherwise, the Environment Court would be drawn into making, at least second-guessing, business decisions. That is surely not its task.

[212] The economists engaged by QAC and RPL considered it reasonable, if not essential, that we assume QAC would act rationally when making investment decisions.

[170] *Meridian Energy Ltd* at [77-78].
[171] At [108].
[172] High Court Wellington AP 110/02, Wild J., 20 June 2002 at [20].

[213] RPL referred us to the Environment Court decision of *Port Gore Marine Farm v Marlborough District Council* [2012] NZEnv C72 at [119] where, obiter dicta, the court commented that while a cost-benefit analysis is not a compulsory consideration under section 7(b) of the Act it may be very useful. The court goes on to state that without it an assessment of efficiency under section 7(b) tends to be rather empty.

[214] We find, for reasons that we give later, a cost-benefit analysis may be relevant and informative of matters in section 171(1)(b) and section 7(b), but that does not elevate the matter into a criterion to be fulfilled.

The evidence

[215] Dr T Hazeldine, Professor of Economics at the University of Auckland, gave evidence on behalf of RPL which proceeds on the basis that QAC has not made out the case whether the designation is reasonably necessary to achieve its objective.[173] As that is not our conclusion, at least in relation to the general aviation/helicopter precinct, we found his concluding remarks to be of limited assistance.

[216] Mr Ballingall, an economist employed by the New Zealand Institute of Economic Research Inc, gave evidence on behalf of ANZL. He sets out his understanding that these proceedings require consideration of alternatives and the cost-benefits issues, although he states correctly that a section 32 analysis is not required.[174] QAC did not present a cost-benefit analysis in support of the NOR.[175]

[217] Mr Ballingall supports a cost-benefit analysis as providing a "formal, structured method of systematically assessing proposals in terms of their outcomes relative to their use of resources".[176] For these proceedings he suggests an analysis at the level of a regional perspective is required as this is where the majority of costs and benefits would accrue.[177] With reference to the cost-benefit analysis framework produced by the New Zealand Treasury, he analysed the NOR documentation in terms of (a) its definition of the problem – that is the challenge to be addressed, (b) the objective of the NOR and (c) the identification and analysis of the options which address the challenge. All of this he

[173] Hazeldine EiC at [17, 55].
[174] Ballingall EiC at [3.4].
[175] Transcript at [633].
[176] Ballingall EiC at [3.19].
[177] Ballingall EiC at [3.22].

found inadequately detailed, commencing with the vague nature of the NOR objective. The NOR, he concludes, fails to explain how the capital costs of acquiring Lot 6 would be funded, and how this might affect the charges to scheduled airlines and non-scheduled operators and demand for their services.

[218] A key difference between Mr Ballingall and QAC's economist, Mr M Copeland, lies in the relevance of a cost-benefit analysis for options which have been considered and discounted by a requiring authority.[178] Mr Copeland's approach is like an economic impact assessment considering the use of the aerodrome with or without Lot 6.[179] Even then his focus is on the benefits of the proposal, excluding consideration of the opportunity cost to RPL in not being able to use this land and the cost of the land. He concludes that an increase in ticketing prices as a consequence of acquiring Lot 6 is not an externality but rather an imperfection in the market place – i.e. people perceive that the price for airline tickets is too high or too inefficient.[180]

Discussion and findings

[219] We agree with Mr Copeland that QAC is not subject to any requirement of NZ Treasury or any other government agency when presenting this NOR. However, the value of Mr Ballingall's evidence is that it presents a tool for structured decision-making by a requiring authority. (There may of course be other tools.) In this regard, we would have been better assisted had the witnesses agreed in their expert conference on a costs-benefits tool for use in these proceedings. As it was several assessments were presented with different witnesses employing different metrics which made parts of their evidence impossible to compare. QAC's simple cross/tick method was inadequately described and conveyed no understanding of the parameters of each of the categories assessed.

[220] A cost-benefit analysis of the alternatives may be relevant and informative of matters in section 171(1)(b) in particular whether adequate consideration was given to alternatives in the circumstances where a requiring authority either does not have an interest in the land or the work will have a significant adverse effect on the environment. This could be presented in a qualitative or quantitative format (or a mixture of both) and

[178] Copeland Rebuttal at [10].
[179] Copeland EiC at [29].
[180] Transcript at [637].

could include consideration of the opportunity cost of the Airport using its own land versus the opportunity cost to RPL should the NOR be approved. Secondly, it has the advantage of increased transparency of decision-making and here we refer to RPL's concern that QAC's decision-making was weighted to maximise its other business opportunities within the existing designation.

[221] In these proceedings efficiency can be understood in terms of allocative, social and operational efficiency. Allocative efficiency seems to accord with a general rule of economics given by Mr Ballingall – that an efficient level of any activity occurs where its marginal costs matches its marginal benefits[181] and social efficiency, where the externality costs are identified and if possible, quantified and brought to account. While we are not concerned with the financial effect on QAC, the effect on people and communities which use the services provided by Queenstown Airport is relevant. Also relevant is the use of the existing designation for some or all of the proposed works when compared with the use of RPL land.

[222] We do not understand Mr Copeland's conclusion that higher ticketing costs, should they transpire, may be regarded as an imperfection in the market when he says the Airport is unlikely to employ monopolist pricing.[182] This response does not directly address the ANZL's concern about the effects on people and communities who would bear these costs. That said, except in the most general sense the sensitivity of the Queenstown tourism market to higher pricing charges was not addressed in evidence. In order to reach a view, this matter would need to be considered in the wider context of any welfare enhancing benefits associated with increased levels of economic activity[183] and the opportunity for effective competition between scheduled airline operators with the expansion of the passenger terminal.[184]

[223] The use and development of natural and physical resources may be inefficient where they do not avoid, remedy or mitigate the adverse effects of the activity on the environment and as a consequence impose costs on neighboring landowners or the community in general. Here we are concerned with the effects associated with the proposed use and development of land.

[181] Ballingall EiC at [3.7-3.8].
[182] Transcript at [638].
[183] See Copeland EiC at [49] where a range of benefits are discussed.
[184] Copeland EiC at [66].

[224] In this case there may be a negative opportunity cost to RPL if it is unable to use or develop its land in the manner enabled under the District Plan prior to the NOR (we refer to the possible displacement of a golf course to more valuable land zoned AA-4 and 7).[185] There may also be externality costs imposed on RPL as a consequence of unmitigated adverse effects emanating from the southern precinct. And externality costs imposed on the public in general if vehicle movement in the vicinity of the signalized intersections, particularly at Red Oaks Drive, is unsafe for pedestrians and motorists.

[225] While the compensation payable for the acquisition of land and any injurious affection to the balance are matters for the PWA forum, and we tend to the view that this is where the opportunity cost to RPL should be addressed, in the context of section 7(b) we can consider any inefficiency caused by the failure to avoid, remedy or mitigate adverse effects of activities on the environment as these may disenable people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety. When exercising our broad overall judgment under section 5 it is the scale and significance of any inefficiency that is to be brought into account, together with the benefits of the NOR. We consider this approach consistent with the High Court's findings in *Meridian Energy Ltd v Central Otago District Council* at [210].

[226] We have had to make what we can of all of the evidence presented. As we do not have any cost-benefit analysis our findings do not concern this measurement. Instead, we have reached the following conclusions qualitatively on operational efficiency and externality costs:

Operational efficiency

(a) an instrument precision runway and a Code D taxiway is an *inefficient* use of part of the Lot 6 land when it is unlikely these uses will establish;

(b) a general aviation/helicopter precinct including air and landside buildings, infrastructure and landscaping is an *efficient* use of part of the Lot 6 land;

(c) it would be an *efficient* use of land to co-locate the Code C corporate jets south of the main runway in proximity to the Code C taxiway on the basis that QAC elect to build a Code C taxiway in this location;

[185] Given our decision to reduce the extent of the NOR we do not know whether this remains an issue.

(d) a hybrid alternative would be *inefficient* in that it would compromise the benefits which would accrue from the collocation of all operations on one site, including for example, shared support services, shared parking, shared accessways within the precinct, proximity for day to day interactions among operators and for customers, many of whom will be unfamiliar with the Airport, knowing that all flightseeing and helicopter operations are located in one precinct.

Externality costs

If the development were to proceed in the manner proposed by QAC then it is our preliminary view that use of the western access imposes an unacceptably high cost on the public in general, these costs being associated with the safety of pedestrians and motorists in the vicinity of two signalised intersections, particularly the intersection at Red Oaks Drive. Likewise, the inadequate level of landscape mitigation proposed by QAC would create externality costs to the public using the airport facility and RPL in the development of its land. However, the effects of noise are able to be adequately mitigated in the manner proposed by the Environment Court in its Interim Decision on PC35.

Section 7 (c and f)

[227] Our findings in relation to the effect on the environment of confirming the requirement are relevant to section 7(c) and (f), and do not require any further elaboration.

[228] Without the imposition of conditions the quality of the environment is likely to be appreciably affected by the closer proximity of aircraft operations to the RPZ. In particular, there is likely to be significant adverse effects on the visual amenity and views of activity areas adjacent to the extended aerodrome if conditions addressing the form, bulk, location and exterior appearance of buildings are not imposed. Even with such conditions, the amenity values and quality of the environment within RPZ will not be fully maintained and that outcome we take into consideration when making our ultimate determination on the NOR.

Section 5

[229] We remind ourselves that the single purpose of the RMA as expressed in section 5(1) is to promote the sustainable management of natural and physical resources. This case has raised considerations to which we must attach statutory weight that argue both for and against the NOR. In exercising our judgment it has been necessary to carefully weigh these matters and in the words of *North Shore City Council v Auckland Regional Council (Okura)*[186] compare the conflicting considerations, their scale and degree and relative significance or proportion in arriving at the final outcome.

[230] The designation amended in the manner we have intimated will enable the QAC, Queenstown Lakes and wider national and international communities to provide for their social and economic wellbeing by using the natural and physical resources concerned in ways that fulfill the QAC's objective of providing for expansion of the aerodrome to meet projected growth and, as far as possible, achieving maximum operational efficiency. We judge these to be major benefits in the context of the affected resources and having regard to the likely effects on the environment when avoided or mitigated by conditions.

[231] For the reasons we have given, an insufficient nexus has been established between fulfilling the QAC's objective and making provision for an instrument precision approach runway and Code D parallel taxiway to support the use of RPL's land for these purposes. The balance of the work will be achieved at the cost to RPL of not being able to use the affected resources it owns for purposes authorized by the district plan. This is recognized and if required there is legislation to deal with any related considerations which may arise (such as compensation).

[232] We have satisfied ourselves as carefully as is possible relying on the evidence and submissions made, that the aviation activities enabled by the designation provide for those aspects of the communities' safety which can properly be dealt with under the Act. Similarly, we have formed the view that the health of potentially affected people, and more particularly the degree to which they are subjected to noise as a result of the location of the aviation activities enabled by the amended designation, can be

[186] *North Shore City Council v Auckland Regional Council (Okura)* (1996) 2 ELRNZ 305, [1997] NZRMA 59.

appropriately managed through the finalized provisions of PC35, if approved.[187] We have only been able to make these findings in the knowledge that adverse effects on the environment likely to result from the activities authorised can be avoided, remedied or mitigated to a degree consistent with the Act's purpose.

[233] The adverse landscape and visual amenity effects of the linear general aviation/ helicopter precinct, which would otherwise result, can be avoided or mitigated by the imposition of more effective conditions than those proposed by the QAC and the District Council. Such conditions are necessary to recognise and provide for the protection of views to the outstanding natural landscapes and features in which the development will sit and to manage anticipated effects on RPZ amenities in neighbouring Activity Areas. The integrated design and management plan to be produced by QAC for the court's approval prior to a final decision can secure these matters. We are not confident that the probable effects of concern would otherwise be managed effectively or the purpose of the Act necessarily fulfilled if these aspects were left solely to future outline plans of works.

[234] Potential adverse traffic effects identified during the course of the hearing are more difficult to assess in terms of their severity. We are confident however that the potential effect of exiting traffic on the free and safe flow of traffic in the vicinity of the proposed western access can be managed by the imposition of a condition limiting its use to entry only. Egress would be via the proposal's eastern access. We retain an open mind on whether the effects of concern may be able to be avoided or mitigated sufficiently by other means to secure the Act's purpose. To this end the parties are afforded the opportunity should they wish to submit alternative control measures based on a holistic understanding and assessment of existing and likely future traffic conditions on the local network.

[235] From the "other matters" specified for achieving the purpose of the Act we have identified sections 7(b), (c) and (f) as relevant. The latter two matters go generically to the effects on noise, landscape and visual amenity and traffic conditions which we have taken into account in our overall judgment in preceding paragraphs. We have

[187] *Air New Zealand Ltd and Ors v Queenstown Lakes District Council* Decision No [2012] NZEnvC 195.

previously reviewed the degree to which the NOR allows for the efficient use and development of natural and physical resources (section 7(b)) and found that efficiency is not the sole preserve of monetarised costs/benefits and may also be assessed in terms of operational efficiency or indeed social efficiency (in particular relation to externality costs). Faced with incomplete information we are satisfied on the basis that QAC can reasonably be assumed to act rationally in its own interest that the NOR is consistent with aerodrome operational efficiency. We assume also that QAC will act rationally in respect of allocating its sovereign natural and physical resources. The extension to the aerodrome can equally be expected to efficiently meet (at least in part) social needs through the disposition and range of activities allowed for – but we can go no further than that absent evidence addressing any externality costs. Regrettably we were not assisted by a common approach on how economic efficiency might be appropriately assessed. A cost benefit analysis using a mix of quantitative and qualitative measures as appropriate may have lent an enhanced understanding of the relative degree of economic efficiency between alternatives for meeting QAC's objective by the use of airport and non airport land. Be that as it may, there is no statutory requirement for such and we do not find its absence material to the ultimate outcome in this case. We are concerned, however, that QAC satisfactorily address the externality costs associated with the adverse effects on landscape, and the adverse effects of noise and traffic as discussed in this decision.

[236] Overall we find the significant benefits to QAC and the wider community of developing and using the affected resources in the manner proposed, subject to the modifications and the conditions we have identified to avoid, remedy or mitigate adverse effects on the environment, to be consistent with the sustainable management purpose of the Act.

Outcome

[237] Pursuant to section 149(U)(4)(b)(iii) the land required for a precision approach runway and Code D parallel taxiway is cancelled.

[238] The decision on the balance of land required for the designation is reserved pending confirmation as to the practicality of restricting the western access to allow for entry only or otherwise satisfactorily addressing the court's concerns about the

management of traffic at this location, approval by the court of an integrated design and management plan and finally the formulation of revised designation conditions as directed by the court as to the proposed assessment matters for an outline plan of works.

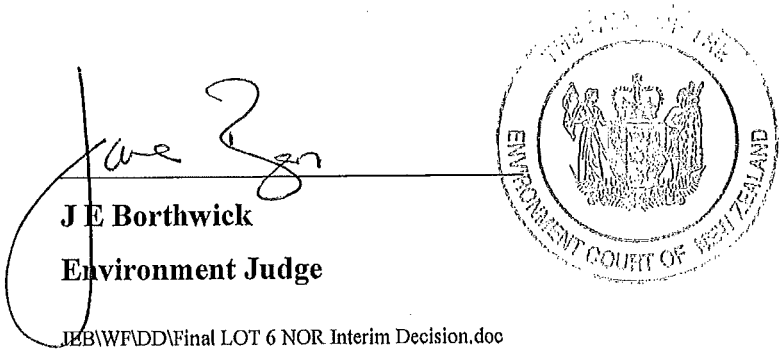
[239] Any decision to extend the aerodrome is for the purpose of establishing a general aviation/helicopter precinct. Other activities enabled by Designation 2 within the area of the extended aerodrome have not been considered by the court.

[240] The lapsing period will be addressed in the final decision subject to the court confirming the modified designation. For the lapsing clause to be effective, it is our tentative view that the Designation 2 should be amended by the inclusion of a statement that land within the aerodrome extension is to be used for the purpose of a general aviation/helicopter facility, and associated air and landside buildings and infrastructure and landscaping. This area will need to be separately identified in planning map 31a and Figure 1. In anticipation that QAC can address the court's concerns a direction has been given it propose a suitably worded statement.

[241] Consideration needs also to be given to the surplus land identified by the traffic witnesses at [164] and whether this is to be confirmed or cancelled (cancelled as this part of the work and designation is not reasonably necessary for achieving QAC's objective).

[242] Finally, confirmation of the modified designation will entail consequential changes to planning map 31a. If approved, the planning map will need to identify separately the area of the extension and amended air noise boundaries. Further directions will follow.

For the court:

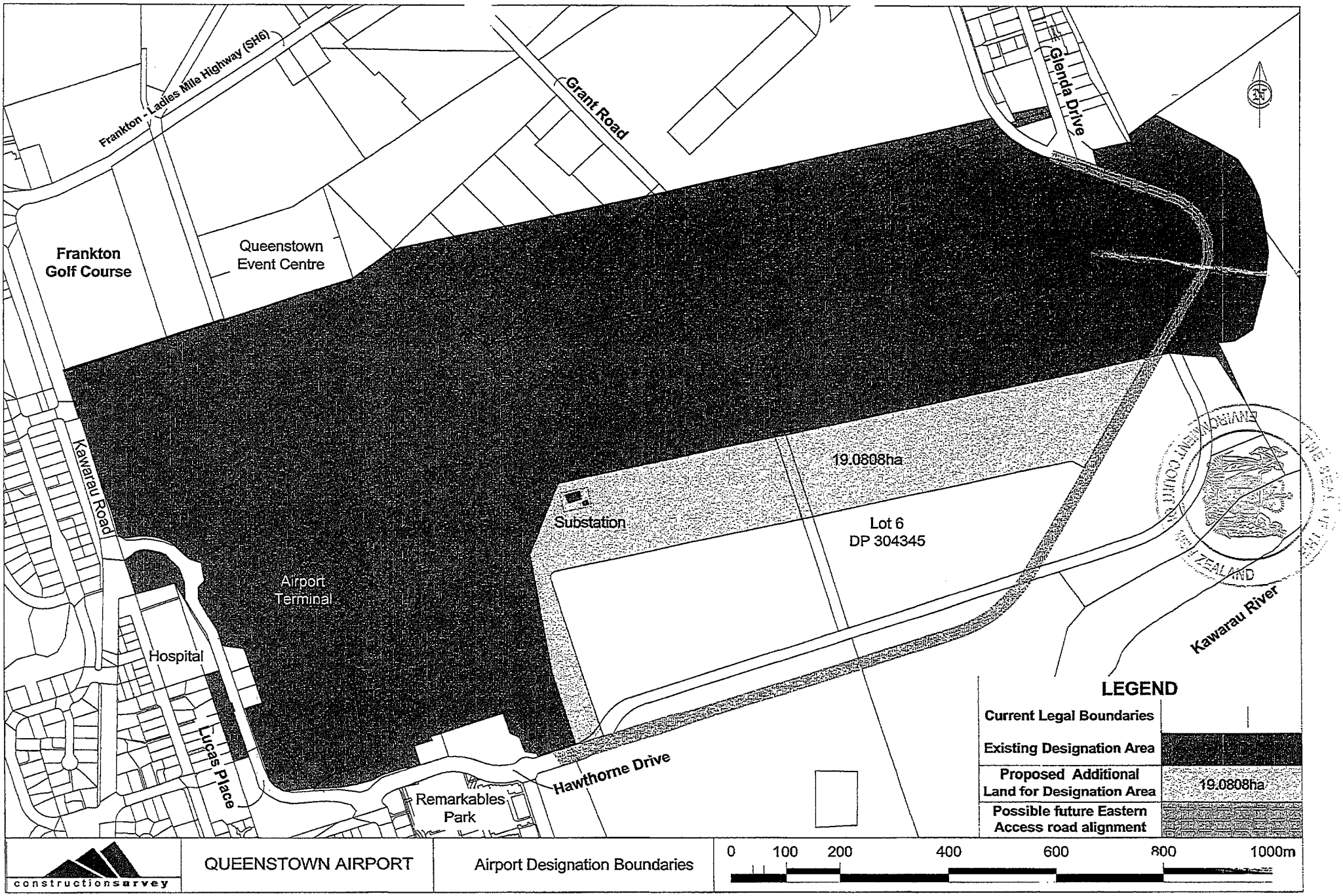


J E Borthwick

Environment Judge

JEB\WF\DD\Final LOT 6 NOR Interim Decision.doc

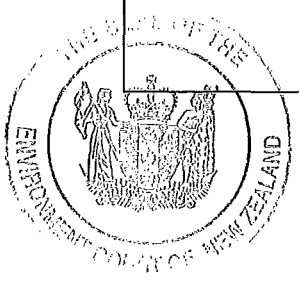
Annexure 1


Frankton - Ladies Mile Highway (SH6)
Grant Road
Glenda Drive
Frankton Golf Course
Queenstown Event Centre
Kawarau Road
Airport Terminal
Hospital
Lucas Place
Remarkables Park
Hawthorne Drive
Substation
19.0808ha
Lot 6
DP 304345
Kawarau River
LEGEND
Current Legal Boundaries
Existing Designation Area
Proposed Additional Land for Designation Area
19.0808ha
Possible future Eastern Access road alignment
0 100 200 400 600 800 1000m
constructionsurvey
QUEENSTOWN AIRPORT
Airport Designation Boundaries

ANNEXURE 2

GLOSSARY OF TERMS

Area Navigation (RNAV)	RNAV is a method of Instrument Flight Rules (IFR) navigation which permits aircraft navigation along any desired flight path within the coverage of either station-referenced navigation aids or within the limits of the capability of self-contained aids, or a combination of both methods.
Aerodrome	A defined area of land used wholly or partly for the landing, departure, and surface movement of aircraft, including any buildings, installations and equipment on or adjacent to any such area used in connection with the aerodrome or its administration.
Aircraft stand	An aircraft stand is the term used to refer to a defined parking position for an aircraft.
Airfield	The network of runways and taxiways at an airport.
Airport	The broader environs of an aerodrome and its associated non-aviation commercial and industrial activities.
Airside	The movement area of an aerodrome, adjacent terrain and buildings or portions thereof, access to which is controlled.
Apron	A defined area on an aerodrome, intended to accommodate aircraft for the purposes of loading or unloading passengers or cargo, refuelling, parking or maintenance.
Capacity	The measure of an airport system's capability to accommodate a designated level of demand.
Decision Height	A decision height is a specified height or altitude in an aircraft approach at which a missed approach must be initiated if the required visual reference, such as the runway, to continue the approach has not been acquired. This allows the pilot sufficient time to safely re-configure the aircraft to climb and execute the missed approach procedures while avoiding terrain and obstacles.
Final Approach and Take-off areas (FATOs)	A defined area over which the final phase of a helicopter approach manoeuvre to hover or land is completed and from which the takeoff manoeuvre is commenced and, in some circumstances, including the rejected takeoff area available.
General Aviation (ga)	Refers to all civil aviation flights other than scheduled airline and regular cargo flights, and in these proceedings are grouped into three aircraft types; helicopters, fixed wing (principally flight school and sight-seeing) and corporate jet aircraft (principally Code C).
General aviation/helicopter precinct	In these proceedings QAC proposes the general aviation/helicopter precinct accommodate the three (ga) aircraft types. There are three general aviation precincts under consideration: the existing precinct; QAC's proposed southern precinct located south of the main runway; and a proposed northern precinct (located north of the main runway).



Helicopter	An aircraft whose lift is generated by the action of a rotary wing.
Instrument Approach Runway	A runway equipped with visual and electronic navigational aids for which a precision or a non-precision approach has been approved.
Instrument Flight Rules (IFR)	Rules governing flight in certain limited visibility and cloud conditions.
Instrument Landing System (ILS)	An Instrument Landing System (ILS) is a ground-based instrument approach system that provides precision guidance laterally and vertically to an aircraft approaching and landing on a runway.
Landside	Areas of an airport to which the travelling and non-travelling public have generally unrestricted access.
Movement area	The part of the aerodrome used for the take-off, landing and taxiing of aircraft, consisting of the airfield and the aprons.
Movement (passenger)	One passenger movement is one arrival or one departure of a passenger at an Airport.
Movement (aircraft)	One aircraft movement is one arrival or one departure of an aircraft at an Airport.
Non-instrument Approach Runway	A Non-instrument Approach Runway is a runway intended for the operation of aircraft using visual approach procedures.
Non-precision Approach	A non precision approach is an approach to an instrument runway served by visual aids and a non visual aid providing at least directional guidance adequate for a straight-in approach.
Non-scheduled Aircraft operations	Generally synonymous with "General Aviation".
New Zealand Civil Aviation Authority (NZCAA)	The New Zealand Civil Aviation Authority is responsible for the administration of Civil Aviation Regulations promulgated under the Civil Aviation Act 1990.
Precinct	Has the same meaning as general aviation/helicopter precinct.
Passenger Terminal	The building and its immediate surrounds in which facilities are provided for processing the departure, arrival or transit of passengers and their baggage.
Precision Approach	A precision approach is an approach to a runway where an instrument approach system provides guidance laterally and vertically to an aircraft approaching and landing on a runway.
Required Navigation Performance (RNP)	RNP is a statement of the navigation performance standards necessary for operation within a defined airspace, in the context of Area Navigation (RNAV).
Runway	A defined rectangular area on an aerodrome prepared for the landing and takeoff of aircraft.
Runway incursion	A runway incursion is "any occurrence at an aerodrome involving the incorrect presence of an aircraft, vehicle, or person on the protected area of a surface designated for the landing and take-off of aircraft".

Runway strip	A runway strip is a defined graded area surrounding and including the runway, intended to reduce the risk of damage to aircraft running off a runway; and to protect aircraft flying over it during take-off or landing operations.
Scheduled airline operators	"Scheduled" airline passenger services refers to the regular scheduled movements operated by major airlines; and scheduled aircraft refers to the aircraft operated by such airlines.
Taxiway (and taxi, taxiing)	A defined path on an aerodrome for the taxiing of aircraft and intended to provide a link between one part of the aerodrome and another.
Terminal Precinct	The wider environs surrounding and including the Passenger Terminal including aircraft aprons, kerbside, car parking, road circulation, and hotels and commercial facilities drawing business from being in close proximity to the Passenger Terminal.
Visual Flight Rules (VFR)	Rules governing flight in during periods of generally good visibility and limited cloud cover.

ANNEXURE 3

GLOSSARY OF ACRONYMS

ANB	Air Noise Boundary
ANZL	Air New Zealand Limited
ASAN	Activity Sensitive to Aircraft Noise
CAA	New Zealand Civil Aviation Authority
dBA	Decibel
EAR	Eastern Access Road
EPA	Environmental Protection Agency
FATO	Final Approach and Take-off Areas
FBO	Fixed Base Operator
GA	General Aviation
ILS	Instrument Landing System
OCB	Outer Control Boundary
NOR	Notice of Requirement
PC19	Plan Change 19 – Frankton Flats (B)
PC34	Plan Change 34 – Remarkables Park
PC35	Plan Change 35 – Queenstown Airport Aircraft Noise Boundaries
PWA	Public Works Act 1981
QAC	Queenstown Airport Corporation
QLDC	Queenstown Lakes District Council

RESA	Runway End Safety Areas
RMA	Resource Management Act 1991
RNP	Required Navigation Performance
RPL	Remarkables Park Limited
RPS	Regional Policy Statement
RPZ	Remarkables Park Zone
TALO	Touch-down And Lift Off area

DOUBLE SIDED ORIGINAL

Decision No. C 4 /2002

IN THE MATTER of the Resource Management Act 1991 ("**the Act**")

AND

IN THE MATTER of reference pursuant to Clause 14 of the First Schedule of the Act

BETWEEN **PORT OTAGO LIMITED**

(RMA 902/99, RMA 904/99 RMA 907/99, and RMA 908/99)

Referrer

AND **DUNEDIN CITY COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith – (presiding)
Environment Commissioner I G C Kerr
Environment Commissioner N Burley

HEARING at **DUNEDIN** on 17-21 September and 24 September 2001

APPEARANCES

Mr L A Andersen and Mr P J Page for Port Otago Limited
Mr S W Christensen for the Dunedin City Council
Ms J Duff for Te Runanga Otakau (in relation to RMA 902/99)
Mr C J Hilder for himself, Careys Bay Association Incorporated and D and A Knewstubb
Ms N Wilson in person (in relation to RMA 902/99)

DECISION

Introduction

[1] These are four discrete references relating to the Port of Otago. They are 902/99 Shipping channels; 904/99 Storage of logs; 907/99 Wording of Issue 11.1.4 and Policy 11.3.6 Protection of Careys Bay; and 908/99 Height rules at Careys Bay Boiler Point extension and Back Beach.

Shipping Channels

[2] At the commencement of these proceedings the parties produced a consent memorandum in relation to RMA 902/99. In this reference Port Otago Limited (**Port Company**) is seeking that the rules relating to areas of significant conservation value be amended to provide for the excavation of Goat Island and Quarantine Island for widening of the shipping channel as a permitted activity. After a discussion the Port Company have revised its position seeking acknowledgement in the Plan of the importance of the shipping channel but no specific provisions in the rules for channel widening. In a consent memorandum the parties have agreed to minor changes to policy 11.3.1. The referrer also specifically records its acknowledgement of the cultural importance of Rakiriri (Goat Island) and the role of Kai Tahu as kaitiaki. The referrer acknowledges that this means it needs to make full disclosure to Kai Tahu of any works it intends to undertake which affect Rakiriri and that Kai Tahu must be consulted and its views are to be taken into account concerning any such proposals.

[3] Accordingly we direct the following amendments be made to policy 11.3.1 in the Ports Section of the Proposed District Plan:

> ***Recognise and provide for the use of land and facilities to enable ports to serve the City and the region.***
> ***Explanation Port facilities contribute to the ability of the City and Otago to provide for their social and economic wellbeing. Ports are a physical resource of the City and it is necessary to provide for their future use and management. That includes providing for the maintenance and development of facilities associated with ports such as breakwaters, the Aramoana Mole, and the shipping channel passing between Quarantine and Goat Islands.***

[4] In all other respects that reference is to be disallowed. There is no issue of costs arising in respect of RMA 902/99.

The Three Remaining Issues Requiring Hearing

RMA 904/99 Storage of logs

[5] The referrer seeks a provision in the Plan that the storage of logs be a permitted activity in the south-eastern part of the Port 1 (Port Chalmers) zone. The parties have agreed that woodchip storage and log storage should be a discretionary (restricted) activity in the north-western part of the Port 1 (Port Chalmers) zone.

[6] In respect of woodchip and log storage as a discretionary (restricted) activity in the north-western part of the Port 1 zone, we understand the existing provisions of the Plan can remain unchanged. The zone is divided by an imaginary line extending George Street to the sea. To the south of this line the Council have now agreed that woodchip storage should be a permitted activity subject to compliance with performance standards. No party objected to this

course and accordingly we direct that the Plan be modified to include woodchip storage as a permitted activity in this portion of the Port 1 zone.

[7] The only remaining issue is whether or not log storage should be a permitted or controlled activity in the south-eastern part of the Port 1 zone. The Council's primary concern related to log storage and the noise associated with handling the logs. The Council's position was that if the resolution of the noise reference to be heard by this Court was satisfactory, then the Council would accept the storage of logs as a permitted activity. In final reply counsel for the Council went on to say that the rules as they are currently promulgated by the Council and included in the Plan are inappropriate and hence their reason for seeking controlled activity status.

RMA 907/99 Wording of Careys Bay Issue 11.1.4 and Policy 11.3.6

[8] Several issues arise in respect of this reference, the first being that the Port Company made submissions in respect of Policy 11.3.6. In determining that submission the Council decided to consequently alter the underlying Issue 11.1.4. For the Port Company, Mr Andersen says this is a matter of the tail wagging the dog. More substantively the Port Company argues that Policy 11.3.6 appears to give a special status to the existing character of Careys Bay without a full consideration of all of the issues which arise in terms of the Resource Management Act and Part II in particular. More specifically, the Port Company is concerned that the Policy could raise expectations of Careys Bay residents to unrealistic levels that amount to a guarantee by the Council that the community will not suffer adverse effects from Port activities. Finally the Port Company says that the Anticipated Environmental Result 11.8.4 affects the protection language of Policy 11.3.6 and a consequential amendment to that should follow from a change to Policy 11.3.6.

RMA 908/99 Height Rules

[9] Although this matter was originally presented to the Court on the basis of height limits for buildings, structures and stored goods (Rule 11.5.2(ii)(a)), it became clear through the witnesses that the particular concern did not relate to buildings themselves but rather to the height to which containers could be stacked on both Boiler Point and Back Beach. In final reply, Mr Page for the Port Company made this clear by noting that the limits they sought for both Boiler Point and Back Beach were up to 5 containers high, and buildings, structures and other stored goods to 12 metres. Their evidence however related specifically to problems with container handling and the need for flexibility in stacking heights for containers. Having discussed the scope of the various matters before the Court we now address the background.

Background

The development of Boiler Point and Back Beach

[10] The Port of Otago Limited has developed the Port Chalmers complex in response to demand for deeper berthage and facilities. Over recent years there

has been a shift to both containerisation of cargoes and to berthage requirements of 12.5 metres draught. We were told that this has led to a significant shift in the percentage of shipping lines visiting Port Chalmers to such an extent that Port Chalmers is now the major container port in the Lower South Island. It has the only two fully equipped deep draught container and multi-purpose berths in the lower South Island, together with two deep draught forestry berths. Dunedin still handles some general cargo, LPG, petroleum and deep sea fishing boats. There was no dispute between the parties that Port Chalmers has undergone significant expansion in the early to mid-1990's. This has led to greater demand on its facilities and has led to two reclamations - being Back Beach and Boiler Point (which adjoins Careys Bay). This has involved excavating part of Flagstaff Hill which is between Back Beach and Port Chalmers in order to extend the operational areas. There has been significant litigation relating to these issues with a series of decisions from the Planning Tribunal (as it then was), the High Court and the Court of Appeal. In Decision A184/96 it was determined that the Port of Otago Ltd was able to rely on the Otago Harbour Board designation included in the first review of the Port Chalmers district scheme (made operative in 1992) to carry out its activities in part of the operational area of the Port until the Proposed District Plan becomes operative. In this area the Port Company is not subject to the controls in the transitional plan or the proposed plan.

[11] In respect of the reclamation consents there were some relevant conditions inserted as part of the conditions of consent. These included:

Back Beach Reclamation Consent

B Following completion of construction ...

(2) The use of the area shall be restricted to the following ...

(b) The storage of goods and materials (except the bulk storage of woodchips and fertiliser) and the consolidation and distribution of these goods and materials ...

(5) Storage of any materials or goods on the site shall be so ordered that there shall be no contamination of adjacent sites, roads and water areas ...

(10) Stored goods and other materials or parts thereof may not exceed a height of 8 metres above ground level.

(11) No buildings, structures or parts thereof may exceed a height of 10 metres above ground level ...

Boiler Point Reclamations (Inner and Outer)

B Following completion of construction ...

(2) The use of the area shall be restricted to the following ...

(c) *The storage of goods and materials and the consolidation and distribution of those goods and materials except that the following goods and materials are excluded:*

(i) Woodchips;
(ii) Fertiliser;
(iii) Logs ...

(5) Storage of any materials or goods on the site shall be so ordered that there shall be no contamination of adjacent sites, roads and water areas ...

(10) No buildings, structures, stored goods and other materials or parts thereof may exceed a height of 8 metres above ground level ...

[12] The current position is shown relatively clearly in maps 22 and 23 of the district plan. The heights shown are those imposed as a result of the plan process which adopted a height of 10 metres in respect of Back Beach (the same as the height for structures in the original consent) and 8.5 metres in respect of Boiler Point (0.5 metre higher than the structures under the original consent).

Log handling

[13] Log handling has been traditionally associated with the operation of log ship berths which are situated below Flagstaff Hill adjacent to Back Beach. Woodchip has traditionally been stored near to the berthage itself in the wind shadow of Flagstaff Hill. Logs have been stored throughout the Back Beach area into the log ship berthage area. Logs generally arrive by rail or road and are then moved using large log loaders. The loaders are used to load and unload logs from the truck/train or vessel. They are then stored in stacks at various points in the Port 1 zone around Back Beach. Various other operations appear to include restacking the loads for particular orders; sorting logs; moving logs for operational requirements and the like.

[14] It was clear to us having heard the evidence that the issue is not the storage of the logs per se (which is silent) but the noise generated in handling these logs while in storage especially when they are sorted, stacked, restacked and loaded onto vessels.

Policy issues in relation to Careys Bay

[15] In respect of the policy issue there is some considerable background to the reclamation of Boiler Point. It was clear through the progress of this hearing that there is a real concern by residents that the Port Company may at some time in the future seek to reclaim a further area of Careys Bay for port related purposes. The original application by the Port Company for development of Boiler Point included a much greater reclamation than that eventually undertaken. The Port Company officers however stated quite clearly that there were no proposals for expansion of the Port into Careys Bay at this stage, nor

had any design or initiative been commenced in this regard. After some considerable argument between counsel it was agreed by all parties that the application for reclamation of the Port zone into Careys Bay would require not only District Council but Regional Council consents.

Container Storage

[16] In relation to the storage of containers on Boiler Point and Back Beach evidence made it clear that the demand for increased storage of containers related to the development of "super shipping" (a vessel around 280 metres or more in length) and its potential impact upon Port Chalmers. This would involve much higher "exchange rates" of containers than had occurred in the past, with peak demand for container space close to the berthage for the container vessels. We were advised that the containers are of varying heights at 2.44 metres, 2.6 metres and 2.9 metres. They vary in length from 20 feet to 40 feet long.

Operational background

[17] Much evidence was given by the Port as to its economic importance to the region. No party disputed this evidence which was at best marginally relevant to the issues before the Court. It is also not disputed by the parties that there is significant demand on the Port resources and that the Port has limited land area available for its activities. Mr Bakx indicated that the Port really requires around 10 hectares to support the type of operation and cargo volumes as they exist at the site to date. It has currently available to it 9.5 hectares. However it is unclear from the evidence whether this includes the containerisation activities (packing goods into containers for customers) undertaken by the Port on site.

[18] From the evidence given the Port Company operates very much a ***one stop shop*** for customers providing storage and packing facilities, marshalling, handling and loading facilities in respect of containerised goods. This has enabled the Port Company to develop what we consider, having heard the evidence, very effective methods for stock control and allocation of resources generally within the Port.

[19] The operations have also been constrained by the fact that the Back Beach area is approximately 1.5 km from the main container berthage. It is accessed past the woodchip piles and the forestry berthage areas. Accordingly, the Back Beach area itself has to date been largely undeveloped and not utilised to the same extent as the container berthage area.

[20] No party disputed that the Port Company is an effective and efficient competitor for shipping services. From the evidence we have no reason to doubt that the Port Company will continue to offer an efficient and effective shipping service for the foreseeable future. Although the Port Company tried to approach the matters (particularly relating to height restrictions in Careys Bay at Boiler Point and Back Beach) on the basis of greater heights being essential for their operation, we have concluded that this significantly overstates the position

for the Port Company. In our view the test to be applied in respect of the provisions to be adopted for the Plan relate to that which is necessary in the sense of desirable or expedient – see ***Countdown Properties (Northlands) Ltd v Dunedin City Council***[1].

[21] We accept that the Port Company is going to be faced with the demand to provide a high rate of exchange of containers at peak periods in the season. This is driven in part by the fact that there are significant numbers of empty containers to be unloaded from ships. Port Chalmers is a net exporter of full containers. The other major influence is the size of the super ships with a move to 4,100 TEUs (standard container unit equivalents) and 1300 reefer (refrigerated containers). Currently the largest existing vessels visiting the port have a capacity of some 2,800 TEUs and 1100 reefer slots. Mr Bakx opines that this may lead to an extra 1000 TEUs being exchanged at the peak periods.

The Legal Position

[22] The parties did not appear to be in contention that sections 9 and 32 of the Act read together oblige a Council or the Court in respect of land use controls to satisfy themselves that imposing the rule restricting the use of the land is necessary in achieving the purpose of the Act and in addition is the most appropriate means of exercising the Council's function. In respect of such land use control the Port Company submits, and we do not understand other parties to demur, that there is a presumption in favour of a less restrictive method over a more restrictive method - unless that more restrictive method can be shown to be necessary in a section 32 sense. We note that although those comments hold in respect of RMA 904/99 storage of logs and 908/99 height rules, the issues in RMA 907/99 relating to Policy 11.3.6 are more broadly based.

[23] In respect of policy 11.3.6 it is our view that there is no presumption as to the form of the policy and Part II of the Act is the overriding consideration. Sections 74 and 75 particularly identify that that policy *"in regard to issues and objectives"* must be included in the plan. Where the rules can be seen as achieving or implementing the policies and objectives of the plan the policies and objectives themselves are intended to achieve the purpose of the Resource Management Act.

[24] In ***Terrace Tower v Queenstown Lakes District Council***[2] the Court suggested a method of simplifying the complexities and peculiarities of section 32 and the evaluation was expressed in the following terms at paragraph 49 of the decision:

> *Carry out an evaluation of:*
> - *benefit and costs (whether monetary or not)*
> - *effectiveness in achieving objectives and policies*
> - *whether the proposed provisions are appropriate to the circumstances.*

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1 ***Countdown Properties (Northlands) Ltd and Ors v Dunedin City Council & Ors*** [1994] NZRMA 145 at 178-179.

2 ***Terrace Tower (NZ) Pty Ltd v Queenstown Lakes District Council*** C111/2000.

[25] It was suggested by Mr Andersen for the Port Company that there was overwhelming argument against any measures which would interfere with the efficient operation of the Port. This was on the basis of the economic value of the container terminal being at least 10 times greater than the total capital value of properties in the vicinity affected by its operation.

[26] With respect, we consider such an approach to be a misunderstanding of the evaluation proposed in ***Terrace Tower.*** To suggest that the evaluation of benefit is measured only in monetary terms on equivalent land values in our view significantly overstates the position. A significant number of non-monetary benefits and costs are involved in most resource management matters. A financial approach would suggest that other matters recognised in section 5(2) relating to social, cultural wellbeing, health and safety, have less relevance in comparison to the economic matters under section 5. Similarly it would afford a primacy to economic matters which are simply not sustainable by reference to the provisions of Part II as a whole. Although many (if not all) of the issues in section 5(2) can be restated in economic terms this involves fixing values to subjective issues i.e. cultural wellbeing or the value of a view. Such an approach is fraught and leads to a restatement of section 5(2) in other ways without advancing the essential balancing test required. In this case the comparison of property values highlights the dangers of this economic approach.

[27] In the end we conclude that the tests in section 32 should be read in the context of Part II of the Act and in particular the enabling provisions of section 5(2). We cannot accept that the consideration of this matter by economic reductionism becomes a comparison of the value of the Port as compared with the value of the surrounding properties. We now turn to each of the relevant references for consideration.

RMA 904/99 Status of log storage and handling

[28] Rule 11.5.1 specifies permitted activities under the plan. It notes relevant to the question of log storage and handling:

> *The following are permitted activities within the Port 1 Zone, provided that they comply with the relevant conditions in Rule 11.5.2:*
>
> *(i) The storage of cargo passing through the port, except for the open air storage of fertiliser, woodchips and logs. ...*
>
> *(iii) Loading and unloading of goods and materials to and from ships and associated handling, consolidation and distribution. ...*

[29] The only issue before this Court on reference RMA 904/99 is the status of log storage in the portion of the Port 1 zone to the south-east of the George Street line. Ms S J McIntyre a planner for the Council, although initially identifying the status of log storage as the issue, then deals in her evidence with the question of handling of logs and the noise associated with moving, stacking

and loading logs. She also identifies several activities relating to log storage and handling as sources of noise.

[30] Mr D R Anderson, a planner called by the referrer noted that the primary difficulty is that the activity of loading and unloading of logs to and from ships and their associated handling, consolidation and distribution is difficult to distinguish in practical terms from the activities associated with the storage of logs. Having regard to the wording of the two provisions above, it could be argued that all activities which involve the loading and unloading of logs from vessels are permitted activities, as is their associated handling, consolidation and distribution, whereas the storage of logs is not.

[31] The reason for the importance of this distinction is that the controls are not in fact being sought in respect of the storage of the logs in itself, although this is how the evidence has been presented. Rather controls are being sought in relation to work associated with the handling of the logs particularly by the log loaders. These are large machines capable of handling a number of logs at one time and are particularly noisy, especially when involved in close manoeuvring to consolidate or sort logs. Dropping of logs is noticeably noisy.

[32] The Council's position is further compromised by their acceptance that if appropriate standards were in place relating to noise generally for the area then they would accept that the storage of logs should be permitted. Noise standards are the subject of a reference before this Court which if they are not resolved by the parties will require to be heard by the Court. In our view it is not appropriate to use these proceedings to address concerns that the Council now has about its own Plan provisions relating to noise at the Port.

[33] Furthermore we are strengthened in our view that control of effects occurring outside the zone by use of the status of the activity is inappropriate by reference to the provisions of the Plan itself. The Plan recognises zoning as a method intended to provide for uses and developments which are compatible within identified areas. The explanation of Policy 4.3.7 notes:

> *People and communities within Dunedin City seek a high degree of certainty as to the amenity within different parts of the City. This necessitates the adoption of zoning as a technique to provide such certainty and to ensure that the adverse effects of incompatible activities are avoided, remedied or mitigated.*

Further, under Policy 4.3.9 the explanation includes:

> *The District Plan provides for permitted activities where the effects of those activities and anticipated demand are known and can be managed by appropriate conditions applying to those parts of the City which are considered suitable for those activities ...*

[34] We accept the submission of counsel for the Port Company that although the policy does not directly distinguish between whether such effects are intra or inter zone, the zoning technique would be seriously undermined if activity status

within zones was determined by activities in other zones. The purpose of the zoning as noted in Policy 4.3.7 is to group compatible activities within identified areas. There is no evidence as to conflict between the activities within the Port 1 zone. The issue therefore, is the performance criteria that should be adopted in respect of this zone as it relates to the nearby residential zones.

[35] We accept the evidence and submissions of counsel for the Port that residents would not be able to distinguish whether noise received at their homes was the result of handling of logs to and from berthage (which is a permitted activity) or from the handling of logs associated with storage. We doubt that such a distinction can even properly be drawn in any realistic and enforceable way. In our view the proper course of action is to examine the performance standards of the Plan in terms of the references still to be dealt with by this Court relating to noise. We can see no proper basis to classify this activity as a controlled activity in order to exercise a level of control over performance standards not already incorporated in the Plan or covered in terms of decisions yet to be made by this Court in due course. In our view the proper place for the Council and other parties to argue the question of the performance standards for log handling and/or storage is in terms of the noise references.

[36] Accordingly, we conclude that the referrers must succeed on this reference 904/99 and we direct that the Plan be altered to reflect the status of the activity of woodchips and log storage as permitted for the south-east part of the Port 1 zone.

RMA 907/99 Policy 11.3.6

[37] It was the position of the Port Company that it was inappropriate for the Council to adopt Policy 11.3.6 to:

> *Protect the existing character of Careys Bay from the adverse effects of port activities at Port Chalmers.*

There are a number of complaints by the referrer relating to this policy which can be summarised as follows:

1. That the general obligation under section 5 to avoid, remedy or mitigate is limited by the use of the word "protect";
2. That the word "character" has no particular meaning in terms of the Resource Management Act and is adopted from particular meanings given in terms of the Plan;
3. That Careys Bay has been singled out for particular treatment not afforded to any other coastal area on the peninsula;
4. That the policy structure seeks to limit the Port in favour of protecting adjacent residential amenity values.

Finally, and in summation of this, the Port Company says it is implicit in the adoption of the policy that the Council and/or residents may assume that if there are to be any adverse effects of development in Careys Bay then the activity

should be directed elsewhere. This gives a pre-eminence to Careys Bay which may not be justifiable on a proper assessment of an application for resource consent under the full provisions of the Resource Management Act.

[38] A further submission which is contradictory with the previous is that the policy may not have any particular meaning. It appears to be argued that it may have no particular meaning beyond the meaning of Part II of the Act. To that extent it may be otiose.

[39] Mr Andersen for the referrers submitted that **protection** was a matter addressed under section 6(b) of the Act but not under section 7. Further he believes the substitution of the word **character** for **amenity** removes the provision from the statutory meaning of amenity values in section 7. He and others also noted that the policy itself did not refer to the preservation of natural character of the coastal environment under section 6. Although the explanation of Policy 11.3.6 refers to amenity, there is no explicit or implicit reference to section 6(b) of the Act.

[40] Mr Hilder in helpful submissions addressed at some length the wording of the policy which he supported. His position is that the Council is entitled particularly under section 7 to recognise the amenity of this area and to provide for it in terms of the Plan. He says the Council is entitled, if it considers an area is under particular threat because of the Port of Otago nearby, to make provision for it where it has not made provision elsewhere in the Peninsula.

Meaning of 'protect'

[41] Mr Hilder was of the view, supported by the District Council, that the use of the word 'protect' was a sub-meaning used in section 7(c) and section 7(f). He referred to the ***Environmental Defence Society Inc v Mangonui County Council***[3] which noted that protection, or keeping safe from injury, did not have as strong a meaning as prevention or prohibition. He notes the use of the word 'protection' in section 5(2) *'... protection of natural and physical resources ...'* and under section 6(a). We adopt the ***keep safe from harm or injury*** meaning of ***protect***. In our view this does not carry with it maintenance of the continuing original or existing state in perpetuity. ***Maintain*** on the other hand has meanings in The New Oxford Dictionary of English 1998 to *'cause or enable to continue, keep at the same level or rate, and keep in good condition'*. The Collins Concise Dictionary Plus 1990 meanings are to *'continue or retain, keep in existence, to keep in proper or good condition'*.

[42] We accept Mr Hilder's submission that the word **maintain** includes the meaning of protect. In consequence and having concluded that the Proposed Plan should maintain or enhance amenity values the Council may determine that it will protect those rather than preserve or enhance them. Whether the wording in Part II is used with the degree of precision suggested by counsel in this case is a matter on which we do not wish to express a final opinion. Even if the word is used with that level of precision, the use of the word **protect** by the

[3] [1989] 3 NZLR 257 at 262.

Council is a method by which the Plan can have regard to amenity values under section 7(c). It may be that the words used in sections 6 and 7 particularly are not intended to be used with the level of chancery draughtsmanship suggested by the parties in this case. The words *preserve*, *protect*, *maintain* may be referable to the overall purpose of the Act contained in section 5(2) of sustainable management. On either approach the Council is able to seek to ***protect*** as a policy to achieve the purpose of the Act.

[43] Similarly Mr Hilder suggests that ***character*** is defined in the Dunedin district plan as a specific subset of the section 2 meaning of amenity values. He submits that it identifies the specific qualities and characteristics that make the place distinct and further limits the definition to physical qualities and characteristics as opposed to the full range of meaning given to amenity values under the Resource Management Act.

[44] ***Character*** as defined in the definition section of the proposed Dunedin City district plan means:

> *The combination of traits and qualities, including buildings, the spaces between buildings, structures, trees, landforms and other elements of natural topography, which makes one place distinct from another.*

[45] ***Amenity values*** as defined in the Act means:

> *Those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.*

[46] We have no hesitation in concluding that the use of the word *character* is within the meaning of amenity values and is likely to be more restrictive than that referred to in the Act. It was also accepted by the parties that *character* as defined in the Plan would include the built environment at Careys Bay, including the existing port activities, and the activities conducted on the Port Company site. Accordingly, we again conclude that the use of the word *character* in itself does not create a difficulty for the Council and that in terms of preparing the Plan they are entitled to adopt a more restrictive meaning than that in the Act.

[47] The question then is whether the provisions of Policy 11.3.6 better meet the purpose of the Act than those suggested by the referrer. Mr Andersen for his part provisionally recommended a Policy 11.3.6:

> *To manage the effects of port activities should that activity be expanded further into Careys Bay.*
>
> *Explanation*
> *It is recognised that Careys Bay together with its adjoining residential areas has existing amenity values arising from the area's relationship to the Bay, small scale maritime uses, its aspect, and its topography. Careys Bay is presently generally less affected by port activities than other residential areas closer to the operational port area. These amenity*

values would change if port development was ever to extend further into Careys Bay. Council will be actively involved in any future proposals to reclaim additional land within Careys Bay for port purposes, in order to manage the resultant effects on the environment.

[48] Mr Andersen accepted that there were problems with the change in the Policy as proposed. Firstly by using the word ***manage*** there is no presumption that the matters will be managed to meet the purpose of the Act. It could be argued that fulfillment of the policy could be undertaken by managing it for the maximum advantage of the Port Company. There is also an implicit assumption that the Port activity may be expanded into Careys Bay. Furthermore, Mr Andersen accepts that the new suggested wording has not recognised any change to the activities conducted at Boiler Point as having potential to impact on residents at Careys Bay.

[49] In the end we conclude that the suggested amendments by Mr Andersen go significantly too far. We conclude that the wording of the Plan provisions as they stand are appropriate in general terms in considering the relevant policies of the Act, section 5 and Part II generally. The policy recognises that the existing Port activity is an important contributor to the existing character of Careys Bay and would need to be considered if and when the policy came to be considered. We agree with Mr Christensen that the provision is not a line in the sand. It does not preclude in appropriate circumstances changes to the activities conducted at the Port or even applications for consent for other works at or near Careys Bay. The policy will require careful consideration of the impact of any such activity on the existing character of the area and how that existing character may be maintained.

[50] The Port Company also argued that the consequential amendments to Issue 11.1.4 were not appropriate. In the circumstances we cannot agree. The only amendment required is to the explanation to the Issue to provide a linkage between that provision and the Policy now adopted. The change is minor and inconsequential and we agree with the Council that it should properly be made.

[51] In further discussion with the parties we understand that the purpose of the Policy may be more explicitly recognised by a slight re-wording of it, although no particular change in our view is necessary to the explanation. Accordingly we propose that Policy 11.3.6 be changed to read:

Protect the character of Careys Bay from the adverse effects of change of use or development of the Port activities at Port Chalmers.

We direct that any comment on this change be made to the Court within 15 working days of this decision.

[52] In our view this would make it clearer that the Policy is aimed at any change in activities or development of the Port in the future.

RMA 908/99 Height Controls

[53] Conditions of consent for Boiler Point imposed an 8 metre limit at the time of reclamation on buildings or storage of goods. There has been a large shed constructed over part of the reclamation which is less than 8 metres in height. The balance of the site has been used for the storage of containers which are currently stacked to three high. The proposed district plan in Rule 11.5.2(ii)(a) imposes a maximum height for all permitted activities at Boiler Point of 8.5 metres. The stacking of three "high cubed" containers would come to some 8.7 metres, slightly in excess of the 8.5 metre height limit. On Back Beach the resource consent limited the height for stored goods or materials to 8 metres above ground level and buildings to 10 metres. The proposed district plan has imposed a maximum height for all permitted activities of 10 metres. We are told that the applicant has obtained a building consent and let the contracts for the construction of a building at Back Beach to a height of 10 metres and it is not intended to build higher. The balance of the Port has a 15 metre height restriction for all permitted activities.

[54] The Port Company originally sought the 15 metres maximum height limit over the entire Port 1 zone. However, in final submissions counsel for the Port Company accepted a distinction in respect of these two areas with containers to be five high at Boiler Point and Back Beach, and buildings 12 metres.

[55] The first question is whether these sites should receive separate treatment or be treated in common with the rest of the Port 1 zone. We have concluded that the two sites do need separate treatment because they are effectively extensions which protrude into the visual amenity areas of the respective residential areas nearby. The Planning Tribunal in considering both the original consents clearly came to the same view in imposing the limits. We conclude that there is considerable merit in maintaining a lower height limit than the 15 metres used in the balance of the Port - for both the Back Beach area and Careys Bay area.

[56] Evidence given for the submitters by Mr Tim Heath, a landscape architect, opined that the vertical cut off point on the edges of horizontal landscapes created a particular demarcation. Although in practical terms this might be good reason for a recession plane from boundaries, this is not before this Court on reference nor do we believe in practical terms it would be appropriate. It is however appropriate for the Court to consider a lower height limit for both Boiler Point and Back Beach than elsewhere in the Port. As we have said, this has been acknowledged by the Port Company when suggesting lower heights for both.

[57] In light of the operational requirements of the Port and its witnesses positions before this Court, we are not satisfied that there is any evidence to support a greater height limit in respect of buildings. We have concluded that these should be treated separately to other stored goods because of their permanence and solidity of their structure. Accordingly we have concluded that Back Beach should have a height limit of 10 metres for buildings and structures as in the original resource consent, and that the Back Beach provision should

have included in it that no building, structures (or parts thereof) or stored goods or other materials (excepting containers) may exceed a height of 10 metres above ground level.

In respect of Boiler Point, the Council has adopted a figure of 8.5 metres which we accept along with the additional amendment that no buildings, structures, (or parts thereof) or stored goods or other materials (excepting containers) may exceed a height of 8.5 metres above ground level.

[58] This does not deal with the stacking of containers which we conclude should be dealt with separately. We again direct that any comment by the parties be made within 15 working days as to final wording in the plan.

Containers

[59] The majority of evidence given to this Court related to the question of the stacking of containers. This is the critical issue for the Port Company. It relates firstly to the storage for the exchange period at berthage to enable the maximum number of containers to be stored on Boiler Point (and elsewhere) to five containers high. There is also an operational requirement to stack containers at Back Beach adjacent to the container packing shed to be constructed. To gain operational efficiency the Port Company seeks to stack up to five high when necessary for their operational requirements. That is based on the maximum safe stacking height and the maximum ability of their container lifts.

[60] There was significant evidence given on this matter by landscape and other witnesses. It transpired that certain of the witnesses were mistaken in their evaluation as to the heights of the containers shown stacked in certain photographs. Although it was assumed that they were stacked to around 14.5 metres, evidence indicated that the containers were probably of the smaller variety stacked to around 12.2 metres high. We prefer the evidence as to height of containers of Mr Tim Heath, landscape architect for the residents, who prepared photo montages which were not challenged by the other parties as to height. Mr Heath's depictions of the stacking at Careys Bay however showed a solid block in a single colour appearing as the wall of an industrial building and are misleading in that respect. For this reason we prefer the evidence on visual effect of the witnesses for the Port Company and the photographic evidence of Mr Compton-Moen showing that there is a considerable mosaic of colours constantly changing in dimensions depending on shipping requirements.

[61] In particular we accept the evidence of the Port Company that maximum stacking at Boiler Point or Back Beach is unlikely to continue for longer than one week, being a period prior to and immediately after an exchange with a super ship. In practical terms the Port Company or the shipping companies are unlikely to leave a large number of containers stacked for lengthy periods because of the necessity to repack and export them as soon as possible. To that extent the stacking up to five containers high is likely to be transitory in nature and to have limited impact on residents above that already experienced with the current height limits. In that regard we accept that a provision in the Plan allowing container stacking up to five high is desirable or expedient for the

proper functioning of the Port, is sustainable in terms of section 5 of the Act, and that the adverse effects are short term.

[62] In respect of Back Beach Mr Heath's montages showed a solid building covering the entire reclaimed area. In light of the decision of this Court to limit the building height to 10 metres (as is the building being constructed) the impact of the extra stacking height of containers would be minimal. In particular it would only constitute an impact to residents in the Back Beach area if they are situated above the 10 metre height of the building. The impact on residents who have a line of sight above the 10 metre line would be limited. To persons using the Back Beach bay area itself it is unlikely that they would have a clear view of the container areas which are stacked on the seaward side of Back Beach behind the proposed 10 metre storage building. In any event such persons would voluntarily be able to shift their focus elsewhere compared to residents who have static views.

We make the same comments in respect of the transitory nature of any effect. In the end we conclude that the effects from the increase in height for container stacking would be minimal on the residents in Careys Bay and Back Beach. We accept however, there would be significant operational advantages to the Port Company in being able to operate the Port to the maximum efficiency allowed by machinery at times of peak demand.

Assessment of potential changes

[63] In respect of the changes to building height and storage of goods to 10 metres for Back Beach and 8.5 for Boiler Point, these seem to have little practical impact. Existing and proposed buildings seem to be within these height limits and it was not indicated to us that storage of goods in the open occurred beyond these heights. The issue effectively turns on the stacking height of containers. Particularly we recognise issue 11.1.2 as recognition of the shortage of suitable land adjacent to the Port's objective 11.2.1 and managing Port's resources to sustain the future potential use. More particularly policies 11.3.1:

> *Recognise and provide for the use of land and facilities to enable ports to serve the City and the region.*

Policy 11.3.2:

> *Provide flexibility in the use of port facilities where these do not give rise to adverse effects on amenity values.*

Particularly the explanation:

> *The efficient operation of port areas relies on multi-purpose utilisation of available areas, particularly for storage and cargo aggregation. Where no differences arise from the effects of storing and aggregating different cargos, there is no justification for differentiating the areas where such*

activities are undertaken. Where effects differ, some control may be warranted, for example in terms of visual impacts or noise.

In relation to Back Beach we are unable to conclude that allowing containers to be stacked up to five high will make any appreciable difference to neighbouring residences in terms of visual amenity or noise. The interpolation of the building for which a building consent has been issued, the distance of the houses from the stacking area, and the fact that the houses are built on the escarpment rather than at sea level (with one exception) are factors reducing the visual impact.

[64] The plan recognises the tension inevitable in the port having the flexibility and space demands that it has. We take the view that the changing mosaic of the containers constitutes a significant visual difference between that and a solid building of the same height. There are likely to be long periods where there are few containers stacked and those that are there would be stacked well below the five container limit. The build up of containers is likely to be focused around the key exchange periods, particularly when the new super ships become operative through the Port of Otago.

[65] Accordingly in recognising the balance between potential visual impacts in this case and the need for space and flexibility by the Port, a practical limit must be given to the height at which containers can be stacked. We are minded to adopt five containers as the limit for the following reasons:

(1) This is the maximum height to which containers can be stacked in terms of safety and with the container lifts that are available;
(2) The height seems to vary between 12 and 14.5 metres;
(3) The period during which stacking at this height would be likely to be limited to those periods when exchange with super ships was occurring, otherwise the logistical difficulty of reorganising containers from five high would militate against them being stored to this height. By preference they appear to be stored on the site at around two to three containers high;
(4) Permanent buildings or other stored goods would be at a lower maximum height than stacked containers;
(5) We accept that there is demonstrable need for the ability to stack containers to maximum heights during periods of peak demand.

Viewing this matter in another way the benefits of the port being able to maximise the use of its space is significant over several peak periods. On the other hand, the cost of doing so is a visual intrusion for a limited period of time without any other permanent or demonstrable impacts on the environment. It also maximises the use of the existing land area available, giving rise to visual impacts which because of their temporary nature are acceptable.

Conclusion as to height rules

[66] Accordingly we conclude in respect of both Back Beach and Careys Bay the provision should be amended. We suggest the following wording:

That containers may be stacked on a short term basis to five high or 15 metres high whichever is the lesser.

[67] Rule 11.5.2 in its final form with amendments we propose will read:

Rule 11.5.2 Conditions Attaching to Permitted Activities ...

(ii) Height

The maximum permitted height as shown on District Plan Maps 22 and 23 is as follows:

(a) Building, structures (or parts thereof) or stored goods or other materials other than containers:

Back Beach	*10.0 m above ground level*
Boiler Point	*8.5 m above ground level*
Other areas	*15.0 m above ground level*

(b) Containers:

All areas	*5 high or 15.0 m whichever is the lesser on a short term basis*

Maps 22 and 23 will also need to be altered accordingly.

Achieving the Purpose of the Act

[68] Finally under section 32 we consider whether as a whole the suggested provisions achieve or better achieve the purpose of the Act. This involves a balancing exercise between the key issues here of the amenity of residents in Careys Bay and Back Beach compared with the economic and other benefits we have identified.

[69] In our view the district plan has undertaken a balancing in respect of the various items identified under Part II of the Act. The proposed plan has acknowledged the critical nature of the port activity to the economy of Otago in the Port Chapter 11 introduction where it says in part:

The deep draught berths are a critical factor in respect to the nett return to the region's primary producers. These berths provide the means for container vessels, log carriers and woodchip vessels to depart fully laden from a single port of call.

The operational requirements for port areas are changing. There needs to be some flexibility in the amount and type of space that is available for port operations. Ports require a high level of accessibility by both roads and railways.

[70] In respect of log handling, we conclude that noise issues are best dealt with directly in the plan by way of performance standards rather than activity status. It is clear that the handling of logs is an integral and recognised part of the port activities and should be permitted as such.

[71] In respect of policy issues we agree that the Council in policy 11.3.6 recognised the particular inter-relationship of Careys Bay and the port. Policy 11.3.6 is sufficiently flexible in its application and meaning to reflect intentions inherent in the development of the port close to residential activities.

[72] In looking at the height rules, we conclude that the recognition of Back Beach and Boiler Point as having different rules as to height, is one method of seeking to mitigate adverse visual effects on residents in the area. To that extent the previous consent decisions, the Council decisions, and our own view reflect an approach to reduce the visual bulk on the periphery of the port areas, particularly when viewed from residential areas. We conclude that the special rule for container stacking to 5 high recognises that intention while accepting that for short-term periods there may be some impact which is similar to that of the general port area maximum height rules. On the other hand for the more substantive periods and in respect of permanent structures the impact is likely to be significantly less than that for the balance of the port areas in visual terms.

Directions

[73] We direct that the Council is to prepare, file and serve the proposed plan provisions for consideration by the Court along with any explanatory memorandum within fifteen working days.

[74] If that is not a joint memorandum other parties have ten working days for comment. The Council are to file any final reply within 5 working days thereafter.

[75] Costs have not been raised by any party in relation to this reference. In our view the Court has indicated that costs are generally not appropriate in respect of references. We tentatively see no reason to depart from that view in this case. Furthermore we note that all parties have been partly successful in respect of matters before the Court on the references. Accordingly, we tentatively conclude this is not an appropriate case to consider the award of costs and that costs should lie where they fall. Any applications are to be filed within fifteen working days, replies ten days thereafter, and final reply five working days thereafter.

DATED at CHRISTCHURCH this 22nd day of January 2002.

For the Court:

J A Smith
Environment Judge

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Issued: 23 JAN 2002

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by **ONE BLACK MERINO LIMITED** to construct and operate a gondola transport system to provide access between Cardrona Valley Road and the Waiorau Snow Farm Ski Area Subzone, including associating car-parking, earthworks and landscaping.

Council File: RM070610

DECISION OF A QUEENSTOWN-LAKES DISTRICT COUNCIL HEARINGS PANEL COMPRISING JANE TAYLOR AND CHRISTINE KELLY, INDEPENDENT HEARINGS COMMISSIONERS APPOINTED PURSUANT TO SECTION 34A OF THE RESOURCE MANAGEMENT ACT 1991

Site and Environment

1. One Black Merino Limited ("the Applicant") has sought resource consent for the construction and operation of a gondola transport system to provide access between the main arterial route of Cardrona Valley Road and the Waiorau Ski Sub-zone, which presently contains the Snow Farm, Snow Park and Southern Hemisphere Proving Ground. The property is located predominantly in the Rural General Zone, with approximately 500 hectares of the site comprising the Waiorau Ski Sub-zone. The existing mountain access road runs through the site.

2. The application site comprises one title, Lot 2 DP 341711 and Section 2-4, 6-9 Survey Office Plan 24173 and Part Section 10 Survey Office Plan 24173 (CT 171612) and is 2,698 hectares in size.

3. The application describes the site as follows:

> *"The subject site runs from Cardrona Valley Road over the peak of the Pisa Range. It includes river flats, pastoral hillsides and rocky mountain outcrops. The site contains elements that reflect the historic uses of the area. Rural activity has resulted in a predominance of pasture and exotic planting on the site while the modified river flats and the altered, channelised river reflect the historic mining use of the area. The upper ranges of the site contain more recently developed economic and recreational alpine*

activities that are continuing to expand as tourism replaces pastoral activities as the base economic activity in the district."

4. The surrounding area is described at paragraph 2.2 of the application, summarised as follows:

> *"The area is a well-defined valley following the Cardrona River that forms the main arterial route of the Cardrona Valley Road and Cardrona River from Wanaka to Queenstown. The area is classified as an Outstanding Natural Landscape (District wide). The valley north of Cardrona is open, providing wide views up the valley with the valley south of Cardrona, towards Queenstown, becoming narrower as the observer enters the more remote and natural part of the valley. Vegetation in the southern portion is less diverse with tussock grasses being the predominant cover, whereas north of Cardrona, the predominant vegetation is pasture grasses with many more trees present, primarily exotic willow and pine."*

5. The majority of the site is used for pastoral farming activity and is grazed throughout the year as climatic conditions allow. The vegetation comprises a more or less continuous cover of introduced grasses at low levels, with native tussocks becoming more dominant as altitude increases. Consent has been granted to earthworks for the removal of gravel from a 25 hectare area of the river flat located on the site to improve this area for pastoral farming. We will return to this consent (RM 050942) later in our decision.

6. The Waiorau Ski Field Sub-zone is currently occupied by the following facilities:

- Snow Farm cross-country skiing area and high altitude training facilities with 150 car parks.
- Snow Park International Terrain Park with one fixed grip quad chairlift and offices, café, first aid and rental facilities with 600 car parks.
- Four accommodation units, with 20 more planned to be established, together with 44 bunk beds.
- Bar and restaurant.

- Proving ground activities comprising several testing tracks, workshop buildings and handling flats.

- Summer mountain bike operations.

7. Other areas of the site (external to the Ski Field sub-zone) contain the monster truck activity with administration buildings. A variety of rally and truck tracks associated with this and other tourist activities have been constructed on the Cardrona River Flats.

8. Paying customers, employees and service vehicles currently access the Ski Field sub-zone via a gravel access road that adjoins the Cardrona Valley Road immediately adjacent to the confluence of the Cardrona River and Tuohy's Gully. The mountain road is a double carriageway unsealed road of 13.5km with an average gradient of 1:13 (although many parts are much steeper) and contains ten hairpin corners.

9. We understand that the Snow Park and Snow Farm activities currently attract an average of 420 visitors per day during operation of the ski facilities, increasing to an average of 2,500 visitors per day during special events such as the Burton Open Snowboarding Event held in August. The site has also attracted a high number of visitors for the filming of movies and commercials. The Applicant expects such activities to continue on the site in the future. In total, it is estimated that the Ski Field sub-zone currently attracts total visitor numbers in excess of 48,000 per annum.[1]

Proposal

10. The application states that the primary objective of the gondola is to offer better, safer, cleaner sustainable access for the public to the existing and future recreational facilities in the Ski Sub-zone. The proposal contains only those facilities necessary for the operation of the gondola, station buildings and appropriate car-parking at the base of the gondola, which have been designed primarily for the safety and convenience of passengers and to ensure the efficient

[1] This figure relates to the Snow Farm and Snow Park only and does not include other visitors to the Ski Area Sub-zone.

operation of the system. There is no other development associated with the proposal.

11. The gondola development, as originally proposed, consists of the following elements:

- A base building in the area known as Rabbit Flat, located just out of the Cardrona township towards Wanaka. The base building is 6.5m high and contains areas essential for customers utilising the gondola. This includes ticket booths, a waiting area and toilet facilities.

- A top station building for the unloading of guests and the storage of gondola carriages when not in use. The building also includes a waiting area, public storage lockers and ablution facilities.

- Permanent car-parking area for 500 cars, located behind an existing raised berm that will be extended and enhanced to screen the proposal.

- Overflow parking area for 300 cars, to be finished in reinforced grass so that this area will appear similar to the surrounding pasture area.

- A passenger drop-off and pick-up loop adjacent to the base building with a separate bus parking area.

- Access from Cardrona Valley Road. A previously consented access to the south will be amalgamated with the new access to prevent a visual and operational proliferation of accessways in the area.

- Landscaping of the carpark and surrounding area in trees in a pattern that replicates the existing surrounding vegetation.

- The gondola cable system, which is 3,880m in length and rises 965m in elevation. The system consists of 18 towers, ranging in height from 4.05m (tower one) to 20.18m (tower eight). The average height of the towers is 12.48m.

- The gondola line will carry up to 50 carriages at one time, each accommodating up to eight people. The carriages will move at 6m per second, resulting in a total trip time of 12 minutes 8 seconds from the base station to the top.

12. The gondola base station and top station buildings were designed by Sarah Scott Architects to blend with the natural surroundings. Each station was designed recognising the constraints of landscape amenity values, building function and protection from the weather. External materials proposed for the base station buildings include stacked schist walls, glass walls, corrugated Colorsteel coloured "Grey Friars", timber accents and steel work coloured "Ironsand". External materials for the top station building include glass viewing walls (some bronze tinted), transparent polycarbonate glazing, hardwood posts and timber weatherboards, stonework and timber accents. Both buildings will utilise aluminium joinery and expose steelwork coloured "Satin Black" and Colorsteel roofing coloured "Ironsand". The prefabricated steelwork ball wheel housing at the top and base stations will be coloured "Ironsand". The gondola cars and towers are also proposed to be coloured "Ironsand".

13. Approximately 70,000 cubic metres of earthworks are required to form a screening bund adjacent to Cardrona Valley Road, car-parking areas, to locate the base and top buildings, gondola towers and for access tracks to the gondola towers.

14. A full description of the proposal is set out in the application, which is extremely comprehensive, and in the written brief of evidence of Mr Espie at section 4.

Submissions

15. Public notification of the application drew 114 submissions: 109 submissions in support of the application; 3 submissions in opposition; and 2 neutral submissions.

Late submissions

16. Of the 114 submissions received, three submissions were received after the closing date, all in support of the application. The Applicant advised at the hearing

that there was no objection to acceptance of the late submissions by the Commission.

17. Pursuant to s.37 of the Act, the Commission considered it appropriate to waive the requirement for the three late submitters to make a submission within the statutory time period in accordance with the considerations set out in s.37(4). The Commission was satisfied that there was no prejudice suffered by the Applicant as a result of the late submissions.

Summary of issues raised by submitters

18. The Upper Clutha Environmental Society Incorporated's ("UCESI") submission in opposition is essentially concerned with the adverse landscape effects which UCESI considers cannot be avoided, remedied or mitigated by the proposal. UCESI made the following points:

- The application does not demonstrate the gondola as necessary in safety and convenience terms, nor necessary for the continued operation and expansion of commercial businesses in the Waiorau Ski Sub-zone.

- The development will be visible from important public places; visual and amenity effects will be significantly adverse.

- The site is part of a nationally significant landscape, which the proposal does not protect.

- The proposal will result in cumulative effects that will exceed the threshold that can be absorbed by the surrounding Outstanding Natural Landscape ("ONL").

- Positive economic effects are dubious and may not eventuate. Alternative methods (for example, road fencing) are not fully explored.

- The proposal will set a precedent for large scale commercial development in ONLs.

- Energy savings associated with the gondola will be minimal at best.

- Building design controls are supported, but these will not meaningfully mitigate adverse effects.

- The proposal is contrary to the objectives and policies of the District Plan and conflicts with the character of the Rural General Zone.

- The application does not maintain or enhance the quality of the environment, nor amenity values. The gondola is not an efficient use and development of natural and physical resources.

19. The New Zealand Historic Places Trust ("NZHPT") filed a submission in opposition to the application, citing the less than adequate addressing of the development's real and/or potential impacts on historic and cultural heritage as the principal reason. The NZHPT commented that the assessment of environmental effects provided by the application was inadequate in this regard and listed a number of specific concerns. However, at the hearing a letter from NZHPT dated 5 October 2007 was tabled expressing NZHPT's revised view that, based on the report obtained by the Applicant titled "*Archaeological Assessment of the Waiorau Snow Farm Gondola Proposal (October 2007)*" by Chris Jacomb and Richard Walter of Heritage Associates, there will be no impact on archaeological sites or values. The letter noted that the above report had been reviewed by Dr Mathew Schmidt, Regional Archaeologist, Otago/Southland, NZHPT, who believed it to be well researched and surveyed. However, the NZHPT submitted that the following recommendations should be included as appropriate conditions of consent:

    - Care must be taken in the construction of any roads or access tracks to avoid damaging the 1930s gold workings identified on Fig. 1 (page 4 of the report); and

    - If any archaeological or historical features are discovered during the course of the construction of the proposed gondola system, an archaeologist must be contacted immediately for advice.

The Applicant advised at the hearing that these proposed conditions of consent were acceptable.

20. The Upper Clutha Tracks Trust neither supported nor opposed the application, but sought conditions and amendments relating to public access. In particular, the Trust outlined the potential for creating new tracks, particularly a track from the top station to Tuohy's Saddle that, in its view, would comprise beneficial environmental compensation. The Trust also requested a reverse sensitivity condition to prevent the Applicant from opposing any walking tracks that may utilise the Cardrona River marginal strip. At the hearing, the Applicant offered to construct the walking track along the Cardrona River (in conjunction with the Department of Conservation as necessary in relation to the marginal strip); accordingly, this concern has been fully alleviated. In addition, the Applicant has volunteered pedestrian access from the top station to Tuohy's Saddle on the proviso that the Applicant retains full control over the access to, use and management of this track on reasonable terms.

21. The proposal was also opposed by M and K Curtis of 2256 Cardrona Valley Road, Cardrona, who consider the proposal will introduce visual pollution of an ONL, in particular, the towers and their access tracks. They consider that the existing road serves the required purpose.

22. The submissions of the 109 submitters in support of the application are summarised as follows:

- Reduced dust and pollution from the use of the road.
- The gondola will provide an alternate means of transport, which will reduce the likelihood of serious road accidents on the current mountain access road.
- The enhancement of recreation opportunities (such as mountain biking, the extension of the ski areas, tramping).
- Positive impacts on tourism and enhancement of the Cardrona Valley as a year-round destination.

- Economic benefits associated with growth in visitor numbers to the region.

- Improvement for ambulance access.

- Alignment of the standard of access to the ski fields located in the northern hemisphere. The proposal will meet the expectations of international visitors, who are not used to gravel ski field roads.

- Increase in employment opportunities in the Cardrona Valley.

23. Of the above, safety concerns relating to the use of the access road during winter months, the associated dust pollution and the desire to improve the ski field access to an international standard were the main focus of supporting submissions.

24. No consultation was undertaken by the Applicant or written approvals provided that require consideration by the Commission.

The Hearing

25. A hearing to consider the application was convened on 9 and 10 October 2007.

Site Visits

26. Immediately prior to the hearing, the Commissioners undertook a visit to the site and the surrounding area. A further site visit was taken approximately three weeks following the hearing to clarify several of the issues raised at the hearing, and to examine the location of the tracks offered by the Applicant.

Appearances at the Hearing

27. The Applicant was represented at the hearing by Mr Michael Garbett and Ms Annabel Ritchie of Anderson Lloyd, who called evidence from the following persons:

- Mr John Lee, the Managing Director of the Applicant;

- Mr Sam Lee, the General Manager for Snow Park New Zealand Limited and Operations Manager for the Applicant;

- Ms Eliska Lewis on behalf of Sarah Scott Architects Limited, a registered architect and member of the architectural team that designed the proposed base and top station buildings and car-parking facilities;

- Mr Gert van Maren, a shareholder of Data Interface Technologies Limited, which develops computer software and provides information technology services including the three-dimensional special modelling software called K2Vi (Key to Virtual Insight);

- Mr Don McKenzie, a chartered professional engineer, currently employed as a traffic engineer by Traffic Design Group;

- Mr Jeff Bryant, an engineering geologist and principal of Geo Consulting Limited;

- Mr Colin Boswell, an expert witness on ecology issues. Mr Boswell holds post-graduate degrees in ecology and a PHD in soil and agronomy;

- Mr Chris Jacomb, an archaeologist and co-director of Southern Pacific Archaeological Research, a research group based in the Anthropology Department of the University of Otago. Mr Jacomb is also a principal of Heritage Associates, a commercial consulting group based in Dunedin;

- Ms Daniela Edwards, an environmental science consultant with qualifications in environmental science and engineering;

- Mr Ben Espie, a landscape architect and principal of Vivian & Espie Limited, a specialist resource management and landscape planning consultancy based in Queenstown; and

- Ms Nicola Sedgley, a director of MPC Planning Limited and Orion Development Consultants, a qualified planner and member of the New Zealand Planning Institute.

28. The following submitters attended the hearing and spoke to their written submissions:

- Mr Julian Haworth, representing UCESI;
- Mr Tim Scurr;
- Mr S Williams, representing Lake Wanaka Cycling Incorporated;
- Ms Hil Stapper;
- Mr John Wellington, representing the Upper Clutha Tracks Trust; and
- Mr Ross Hawkins, on behalf of Mount Cardrona Station.

29. The Commission acknowledges the valuable assistance provided by the above submitters who expressed their views in a considered and helpful manner.

Section 42A reports

30. Prior to the hearing, the Commission had the benefit of comprehensive s.42A reports provided by the Council's regulatory agents, Lakes Environmental Limited; prepared by Mr Christian Martin (Planner), Mr Antony Rewcastle (Landscape Architect) and Mr Mark Townsley (Engineer). Mr Martin, Mr Rewcastle and Mr Townsley attended the hearing and provided further comment following the presentation of evidence and submissions prior to Mr Garbett's exercise of his right of reply.

31. In his planner's report, Mr Martin recommended that the application be refused pursuant to s.104 of the Resource Management Act 1991 ("the Act") for the following reasons:

(i) The proposal will result in significant adverse effects in terms of landscape character;

(ii) On balance, the proposal is inconsistent with the objectives and policies of the District Plan when taken in their entirety, primarily due to the primacy of the protection of ONLs; and

(iii) The proposal does not promote the purpose of the Act.

32. However, in his report Mr Martin noted that his assessment was finely balanced, and was influenced by the uncertainty surrounding the extent of positive and cultural effects promoted by the application resulting from the lack of relevant expert opinion.

Modifications to the Application presented at the hearing

33. At the hearing, the Applicant proposed the following modifications to the application as a result of the Lakes Environmental reports and recommendations, together with submissions received:

(i) The hours of operation were originally proposed as 6:00 am to 3:00 am, seven days a week, with the ability to operate until 4:00 am on 15 days per year. This has been modified to the following:

- 7 days per week, 6:00 am to 11:00 pm.

- Extended hours from 11:00 pm to 4:00 am on 25 days of the year to allow for special events.

The Applicant submitted that the late operating hours are necessary to enable those accessing the mountain to return to the base station following special events (such as the Burton Open) and filming, which occurs at night. The reduced hours will provide for the reasonable needs of people wishing to access the ski zone facilities (such as being able to return to accommodation after dinner in Cardrona or for people to enjoy dinner in the Snow Park restaurant and then return to their car via the gondola) and will ensure there is no risk of the movement of carriages creating an adverse effect on the night-time environment after 11:00pm.

(ii) The Applicant proposes to modify the planting plan to incorporate the recommendations of Council's landscape architect, Mr Rewcastle. This will involve adding more indigenous species, such as native beech and *Kowhai*; replacement of willows shown on the plan with upright poplars (*Populus nigra italica*); replacement of evergreen trees on the lower terrace area (near the car park) with native beech, and the addition of a new clump of beech/native shrubs to the east of car-parking terrace 4. The area to the east of the new mounding and the watercourse that leads into the wetland area (outside the planted areas) is to be grazed.

(iii) A further 130 car parks located in the permanent car parking area are to be finished in reinforced grass to reduce their visibility from the Cardrona Valley Road.

34. The Upper Clutha Tracks Trust, together with a number of other submitters, raised the potential for creating walking tracks through the site. The Applicant has accepted that this proposal creates an opportunity to enhance public access and is an appropriate form of mitigation for this activity. As a result, the Applicant proposes to form a public walking track from the current Snow Farm access road, preferably along the marginal strip beside the river to the gondola base building. As the Applicant is aware that there has been a significant amount of work done by various groups on the preferred nature and location of walkways in the Cardrona area, a condition of consent was suggested that requires a plan showing the walkway and detail of its formation to be designed in consultation with the Upper Clutha Tracks Trust and the Department of Conservation and submitted to Council for approval prior to construction. If agreement cannot be reached with the Department of Conservation, the walkway shall be created over the Applicant's land and reserved by way of an easement in gross.

35. The Applicant has also volunteered to make access to Tuohy's Gully available to the public who use the gondola and ski field area activities. As part of the 8km walking track is leased to another high country farmer, the Applicant is unable to volunteer unrestricted public access, but is prepared to allow the public to utilise the track as its guests while the facilities are open.

The Applicants Case

36. In his opening address, Mr Garbett submitted that the purpose of the gondola is to provide improved access for staff and customers to the facilities located in the Waiorau Ski Area Sub-zone. Further, the gondola will provide a unique point of difference in the market and an opportunity for the Applicant to improve and build on existing facilities for winter sports. As a result, the gondola will assist the Snow Farm and Snow Park to remain viable in the long term and allow owners and staff to provide for their social, economic and cultural well-being. Any spin-offs for local and district business growth that occurs will in turn provide for the economic well-being of the wider community.

37. Mr Garbett submitted that in particular, the gondola will provide:

- Safer access - particularly during winter months when the existing access road is subject to a range of surface conditions including dust, mud, ice and snow.

- Easier access – less risk of delays due to road climatic conditions including snow and ice, which delay staff and customers arriving at the Snow Farm and Snow Park.

- Avoidance of wear and tear on vehicles travelling on gravel for the 27km return trip to the summit. The gondola will also enable staff to use this facility and avoid lengthy bus rides to the facilities.

- Quality of access – a gondola will provide quality access similar to that experienced by overseas customers in Europe/USA/Canada. The Applicant maintains that many overseas customers are intimidated by travelling on New Zealand's ski field roads.

- Transporting of accident victims – the gondola will enable a stretcher and attendants to travel by gondola to the base station without the delay of waiting for an ambulance to reach the facilities. The gondola will also allow patients to be moved with a minimum of vibration to the base station to meet the ambulance. As a result, ambulances will no longer need to drive up and down the Snow Farm Road to collect patients.

38. The expert evidence provided by the Applicant is summarised in the discussion of each of the relevant environmental effects beginning at paragraph 65.

Post-hearing Events

39. During hearing, the Commission commented on several occasions that the Applicant had failed to provide expert evidence in relation to the positive economic effects claimed to be associated with the proposal, notwithstanding that these positive effects were heavily relied on by the Applicant by way of environmental compensation.

40. Subsequent to the hearing, the Commissioners thoroughly considered the material and evidence presented by the Applicant. On 22 January 2008, the Commission issued a memorandum to the parties, which is **attached** as Appendix "A" to this decision ("the Memorandum").

41. The Memorandum identified that the crux of this decision lies in the extent to which the landscape effects of the proposal may be successfully avoided, mitigated or remedied and, correspondingly, whether the positive effects resulting directly from the proposal are sufficient to outweigh any adverse landscape effects that are unable to be totally remedied or mitigated. In addition, whether the proposal promotes sustainable management under s.5 of the Act is of central importance.

42. The Memorandum essentially summarises the central issues and competing considerations material to the application, concluding that without expert evidence in relation to the economic benefits (to which the Commission was at that time unable to ascribe any significant weight), the application was "very finely balanced". Exercising our discretion under the Act, we granted the Applicant the opportunity to provide substantiating economic evidence, acknowledging that if the Applicant chose not to do so, a decision would be made on the basis of the evidence adduced.

43. On 26 February 2008, the Applicant tabled economic evidence prepared by Mr Michael Copeland, a consulting economist based in Wellington and Managing

Director of Brown, Copeland & Co. Limited. For procedural reasons, the evidence was circulated to all submitters, who were given 10 working days to file any submissions in response to the evidence. The Commission was advised on 18 March 2008 that no comments had been received from submitters by Lakes Environmental. Being satisfied that all relevant evidence had been provided, we closed the hearing shortly following that date, and retired to consider our decision.

44. We are aware that there has been substantial media interest in the outcome of this application. Of particular concern, there has been considerable, and at times unhelpful, media comment on the alleged "delays" associated with the delivery of this decision. For the record, we note that had the Applicant provided economic evidence at the hearing, any delay, whether perceived or actual, would have been largely avoided.

45. We also record that had the Applicant chosen not to eventually provide economic evidence, the application would have been declined in its entirety by this Commission for the reasons expressed in the Memorandum, and which will become clear from the following discussion.

District Plan Provisions

46. The site is zoned predominantly Rural General under the Partially Operative District Plan ("the District Plan"), with the top station and part of the gondola located in the Ski Area Sub-zone.

47. Under Part 5.3.1.1, the purpose of the Rural General Zone is stated as follows:

> The purpose of the Rural General Zone is to manage activities so they can be carried out in a way that:
>
> - protects and enhances nature conservation and landscape values;
> - sustains the life-supporting capacity of the soil and vegetation;
> - maintains acceptable living and working conditions and amenity for residents of and visitors to the zone; and
> - ensures a wide range of outdoor recreational opportunities remain viable within the zone.

> The zone is characterised by farming activities and a diversification to activities such as horticulture and viticulture. The zone includes the majority of rural lands including alpine areas and national parks.

48. The key objectives and policies of the Rural General Zone seek 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.

- Retain the life-supporting capacity of soils and/or vegetation in the rural area so that they are safeguarded to meet the reasonable foreseeable needs of future generations.

- Avoid, remedy or mitigate adverse effects of activities on rural amenity.

49. The purpose of the Ski Area Sub-zone is to:

> "… enable the continued development of ski field activities within the identified boundaries, where the effects of those activities are anticipated to be cumulatively minor."

50. The specific objectives and policies that are relevant to the Ski Area Sub-Zone are found in Part 5.2 of the District Plan:

> **Objective 6: Ski Area Sub-Zone:**
>
> *To encourage the future growth, development and consolidation of existing Ski Areas, in a manner which mitigates adverse effects on the environment.*
>
> **Policies:**
>
> 6.1 To identify specialist sub-zoning for Ski Area activities.
> 6.2 To anticipate growth, development and consolidation of ski fields within Ski Area Sub-Zones.

51. Resource consent for this proposal is required for the following reasons:

- A **controlled activity** consent pursuant to Rule 5.3.3.2(i)(c) for the construction of a new building associated with ski area activities within a Ski Area Sub-zone. Control is restricted to:

(i) Location, external appearance and size;

(ii) Associated earthworks, access and landscaping; and

(iii) Provision of water supply, sewerage treatment and disposal electivity and communication services (where necessary).

- A **controlled activity** consent pursuant to Rule 5.3.3.2(iii)(c) for commercial recreation activities.

- A **discretionary activity** pursuant to Rule 5.3.3.3(i)(a) for the construction of a building not contained within an approved building platform.

- A **discretionary activity** pursuant to Rule 5.3.3.3(ii) for commercial activities ancillary to and located on the same site as recreational activities.

- A **discretionary activity pursuant** to Rule 5.3.3.3(ix) for ski area activities not located within a Ski Area Sub-zone.

- A **restricted discretionary activity** pursuant to Rule 5.3.3.3 as the activity breaches Site Standard 5.3.5.1 (iii)(a) that restricts the maximum gross floor area of all buildings on the site which may be used for activities other than farming, factory farming, forestry and residential activities, activities ancillary to ski area activities within Ski Area Sub-zones, and visitor accommodation, to 100m².

- A **restricted discretionary activity** pursuant to Rule 5.3.3.3 as the activity breaches Site Standards 5.3.5.1(vii)(1)(a), (1)(b) and (2)(c) as they relate to the area and volume of earthworks and the depth of fill.

- A **restricted discretionary activity** pursuant to Rule 5.3.3.3 as the activity breaches Site Standard 5.3.5.1(ix) for commercial recreation activities involving more than five people per group.

- A **restricted discretionary activity** pursuant to Rule 5.3.3.3 as the activity breaches Site Standard 5.3.5.1(x) for the removal of more than 0.5

hectares of indigenous vegetation. Council's discretion is restricted to effects on nature conservation, landscape and visual amenity values and the natural character of the rural environment.

- A **restricted discretionary activity** pursuant to Rule 5.3.3.3 as the activity breaches Site Standard 5.3.5.1(xii) for the clearance of indigenous vegetation on land with an altitude higher than 1070m above sea level. Council's discretion is restricted to effects on nature conservation values, the natural character of the rural environment and landscape and visual amenity values.

- A **discretionary activity** consent pursuant to Rule 14.2.2.3(i) for car-parking for non-identified activities.

52. In the application, Ms Sedgley concluded that the proposal requires consideration overall as a **discretionary activity**, noting that buildings within the Ski Sub-zone are, however, controlled activities. We concur with this analysis, which was endorsed by Mr Martin in his report.

53. It is worth noting that the District Plan has a strong emphasis on protecting landscapes, noting that the world-renowned landscapes of the district are what makes the district attractive to both residents and visitors. At Part 4.2.1, the District Plan states:

> "The district relies, in large parts for its social and economic well-being, on the quality of the landscape image and environment and has included provisions in the District Plan to avoid development which would detract from the general landscape image and values. The district is a series of landscapes distinctive in their formation. Buildings, tree planting and roading can all change the character of an area and provide for social, recreational and economic activity."

54. The relevant objectives and policies of the District Plan in relation to this application are discussed in detail at paragraph 178.

Statutory Assessment Framework

55. As previously discussed, the proposal requires consent as a **discretionary activity**. The Consent Authority is required to have regard to s.104 and s.104B of the Act when considering a discretionary application for resource consent. The assessment under s.104 is subject to Part 2 of the Act, which includes s.5 (Purpose and Principles), s.6 (Matters of National Importance), s.7 (Other Matters) and s.8 (Treaty of Waitangi).

56. Subject to Part 2 of the Act, s 104(1) sets out the matters to be considered by the Consent Authority when considering a resource consent application. Considerations of relevance to this application are:

> *(a) Any actual and potential effects on the environment of allowing the activity; and*
>
> *(b) Any relevant provisions of -*
>
> *(i) a national policy statement;*
> *(ii) a New Zealand coastal policy statement;*
> *(iii) a regional policy statement or proposed regional policy statement;*
> *(iv) a plan or proposed plan; and*
>
> *(c) Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

Section 104B provides that:

> *After considering an application for a resource consent for a discretionary or non-complying activity, a Consent Authority:*
>
> *(a) May grant or refuse the application; and*
>
> *(b) If it grants the application, may impose conditions under section 108.*

The purpose of the Act is to promote the sustainable management of natural and physical resources. The definition of sustainable management is:

> *Managing the use, development and protection of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety while:*

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil and eco systems; and

(c) Avoiding, remedying or mitigating any adverse effect of activities on the environment.

Section 6 of the Act requires that the consent authority shall recognise and provide for matters, including the following, as matters of national importance:

(b) The protection of outstanding natural landscapes from inappropriate subdivision, use and development.

Particular regard must also be had to section 7 of the Act – Other Matters as follows:

In achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –

(b) The efficient use and development of natural and physical resources;

…

(c) The maintenance and enhancement of amenity values;

…

(f) Maintenance and enhancement of the quality of the environment;

...

(i) The effects of climate change.

Section 108 empowers the Council to impose conditions on a resource consent.

Assessment of Effects on the Environment

<u>The Receiving Environment</u>

57. The subject site is zoned Rural General with the upper reaches within the Waiorau Ski Area Sub-zone. We concur with Mr Garbett's submission that as all structures in the Rural General Zone require discretionary resource consent, the permitted baseline is of limited relevance in this particular application.

58. However, the wider receiving environment is a legitimate consideration. This encompasses what already exists and what is enabled by consent in the area surrounding the subject site.

59. Mr Martin has noted that the following facilities are legally established on the subject site within the Waiorau Ski Area Sub-zone:

- Snow Farm cross-country skiing area, high altitude training facility, café, car parks and associated buildings.

- Snow Park International Terrain Park and associated buildings, café, bar/restaurant, chairlift, visitor accommodation and car parks.

- Southern Hemisphere Proving Ground facilities including testing track and associated buildings.

60. In addition, various buildings associated with the rally track activity are located on the flats adjacent to the Cardrona River. The majority of the property remains pastoral in appearance other than the ski field access road, which is a 13km two-way gravel road from the Cardrona Valley to the top of the Pisa Range.

61. There are a number of yet unimplemented resource consents that are of particular relevance to this application:

(a) RM 050942, which grants approval for 317,500m³ of earthworks for the extraction of 200 to 300m² of gravel per year, together with the clearance of indigenous vegetation in the vicinity of the base facilities. The Applicant has volunteered to surrender this consent should this application be granted;

(b) RM 061036 - approval for the construction of an 8 km effluent disposal area, the construction of three associated buildings and the upgrade of an accessway. This consented area is located just south of the proposed gondola car-parking area and runs up to and along Cardrona Valley Road for approximately 450m;

(c) RM 041173, which grants consent to establish, operate and maintain a new activity base building, including commercial activity, and to construct a new machinery workshop building. This activity is located at the current "monster truck" operation;

(d) RM 030379, which grants consent for the erection of a helicopter hanger; and

(e) RM 000579, which approves the commercial operation of a rally adventure activity.

62. Ms Sedgley has noted that in addition to the existing development in the area, the Mt Cardrona Station area to the west of the application site is zoned Rural Visitor Zone, which enables and anticipates a high level of development. In particular, two resource consents have been approved (RM 070276 and RM 070277) for the construction of 472 residential units, 325 hotel rooms and 47 visitor accommodation units, together with associated earthworks. Mt Cardrona Station has filed a submission in support of the proposal.

63. We also note that the proposed base station is in reasonably close proximity to the Cardrona township, which is increasingly, with recent development, taking on the character of an alpine ski village. The proposed developments on Mt Cardrona Station, which is approximately 1km from the subject site, will further add to the developing "alpine village" character of the township. We concur with Ms Sedgley's submission that the site of the proposed gondola (in particular the base station and associated car-parking) is not a pristine rural environment or typical of an area of ONL. Rather, the area is currently utilised by both the community and visitors to the district by providing for their recreation and entertainment, future housing development and infrastructure services.

64. We note that the base building and car park are located on land that would otherwise be completely earth-worked as part of RM 050942. Importantly, the Applicant has volunteered to relinquish this consent should resource consent for this application be granted.

Section 104(1)(a) – Actual and Potential Effects on the Environment

65. A number of actual and potential effects on the environment were identified in the application and the planner's report. In general, there is a high degree of consensus amongst the experts in relation to the expected actual and potential effects on the environment as a result of the proposed activity, the most important being the impact on landscape and visual amenity values.

66. As was noted in our earlier Memorandum, it is apparent that the crux of this decision lies in the extent to which the landscape effects of the proposal may be successfully avoided, mitigated or remedied and, correspondingly, whether the positive effects resulting directly from the proposal are sufficient to outweigh any landscape effects that are unable to be fully remedied or mitigated.[2]

67. Accordingly, we propose to structure our assessment as follows:

- Discussion of the actual and potential effects on the environment (excluding landscape and visibility effects).
- Discussion of effects on landscape values.
- Positive effects.

68. Consideration of the objectives and policies of the District Plan, and Part 2 matters will follow.

Assessment of Actual and Potential Effects (excluding landscape and visibility effects)

(a) Earthworks

[2] In addition, whether the proposal promotes sustainable management under Part 2 of the Act is of central importance.

69. Mr Martin notes that approximately 70,000m³ of earthworks are required to form the proposed screening bund adjacent to Cardrona Valley Road, car-parking areas, to locate the base and top buildings and the gondola towers, and to form access tracks to gondola towers. He notes that, in general, the earthworks required for the top and base buildings will be obscured once construction is complete and will not result in adverse visual effects.

70. It became apparent at the hearing that the most significant earthworks are those associated with the screening bund and the car-parking areas. Mr Martin observed that the landform resulting from the bund will not appear natural; however, screening provided by the bund and proposed landscaping will significantly reduce the visibility of the car park. We note that the overflow car-parking area is to be finished in reinforced grass, which will enable a higher degree of integration into the surrounding landscape than a sealed surface.

71. At the hearing, the Applicant volunteered to reduce the size of the permanent car-parking by 130 parks and to finish this section of the car park, which is in the most visible location (when travelling towards Cardrona from Wanaka), in reinforced grass to reduce visibility. We are satisfied that this proposed modification will reduce the environmental impact and visibility of the car park to a level that is less than minor. A condition of consent has been included to give effect to this modification. In addition, the amendments to the landscaping plan suggested by Mr Rewcastle will further assist to reduce the visibility of the car park and more appropriately integrate it into the surrounding pastoral landscape.

72. We are satisfied that management of the development of the car-parking area in a staged manner is appropriate. The conditions of consent will provide for monitoring of car-parking spaces and development of the overflow areas should demand increase to this level.

73. We note that should existing resource consent RM 050942, which allows for 317,500m³ of earthworks and the extraction of 2,000 to 3,000m² of gravel per year over a 25 year period be given effect to, the appearance of this site would be substantially altered. The surrendering of this consent will, in our view and the view of Mr Rewcastle, have an extremely positive environmental effect.

(b) Ecology

74. Mr Boswell gave extensive evidence on the ecological effects of the proposed gondola development. He concluded as follows:

> *"The vegetation at Waiorau Station is highly modified, and provided the construction techniques are environmentally sensitive and the replanting of vegetation is not delayed, the construction of the gondola is likely to have only a very limited effect on indigenous vegetation on the mountainside."*

75. Mr Boswell noted, as did Mr Howarth, that the most obvious need for sensitivity is in access of machinery to tower sites and, in this regard, a condition requiring towers 14 and 15 to be installed by helicopter has been imposed. The Lakes Environmental experts are satisfied that providing installation is conducted in a sensitive manner, the ecological effects of the proposal will not be significantly adverse. In this respect, conditions have been included to ensure that all temporary access tracks are removed and re-grassed in accordance with the application.

76. There was considerable discussion in relation to the proposed landscaping at the base station and car-parking areas. Mr Espie, on behalf of the Applicant, acknowledged Mr Rewcastle's suggestions, which have been incorporated into a revised landscaping plan to ensure that the effects on fauna and flora are mitigated to the maximum possible extent. We are satisfied that the revised proposal will enhance the rural character of the area and natural features, thereby reducing the perceived domestication that Mr Rewcastle considers was exhibited by the original application.

(c) Openness and character of the landscape

77. Ms Sedgley submitted that the immediate area of the application site has been previously modified and has lost a degree of naturalness. These human-induced changes include the Cardrona Valley Road, ski field roads, pastoral use of hillside slopes, historical mining activities, rural dwellings and unimplemented resource consents that allow 472 houses plus hotel complexes in the vicinity, together with consents for earthworks and the installation of effluent disposal fields in a 33-hectare area in close proximity to the gondola base station.

78. Notwithstanding this analysis, we concur with Mr Martin that the overall character of the Cardrona Valley is predominantly natural as reflected in its ONL classification. The capacity of development to be absorbed within the landscape is highly dependent on its location and the nature and scale of the activity. Mr Martin notes that the gondola line is advantageously located in the same area of disturbance as the current access road. However, he concludes (based on the recommendations of both Lakes Environmental and Mr Espie) that the proposal, when viewed in its entirety, exceeds the ability of the landscape to absorb it.

79. We agree with Ms Sedgley that the potential visual effects of the gondola transport system have been minimised by the carefully considered design, colour and positioning of all built elements. We accept Ms Lewis' evidence that the designs for the bottom and top stations have resulted in proposed structures that blend in with the environment to the fullest extent possible while adequately serving the function that they were designed for – to provide adequate shelter and to facilitate the efficient operation of the gondola transport service. We concur with Mr Martin and Mr Rewcastle that the buildings are subtle in design and appropriate for their intended use, and that the design will ensure that the buildings integrate well with the surrounding environment.

80. Ms Sedgley acknowledges that the gondola line will be visible from a relatively wide area and will appear as an interruption to the openness of the landscape. We concur with Mr Espie that such "interruptions" will not enclose or block the openness of the landscape and that the degree of openness that the landscape currently displays will remain largely unchanged.

81. Importantly, the gondola transport system is located in what is well known to be an alpine recreation area. We concur with Ms Sedgley and Mr Espie that while the gondola will be visible from the road, it is an "expected phenomenon" associated with alpine recreation and, accordingly, is unlikely to be perceived as out of character with the area by passing motorists and visitors. The visual impact of the gondola is, in this sense, no different from that of the current access road, which creates a visual scar on the landscape but is also an expected element in that it is necessary to provide access to the ski field area. In this respect, we note that the access road generates a number of additional adverse effects; in particular,

significant amounts of dust, which are both visually unpleasant and a pollutant of the immediate environs.

82. In his report, Mr Martin queried the necessity of the proposed operating hours (between 6:00am and 3:00am) in the original application, which he considered would detract from the character and amenity of the surrounds. In response, the Applicant has reduced the proposed hours to between 6:00am and 11:00pm, with extended hours only as required (up to a maximum of 25 days). We are satisfied that this modification strikes an appropriate balance between the needs of the gondola operation and the impact on the character of the surrounding area.

(d) Infrastructure

83. Mr Martin notes that the proposal requires limited servicing. The Lakes Environmental engineer has not raised any concerns with regard to infrastructure that cannot be appropriately addressed by conditions of consent. At the hearing, evidence was provided from Connor Consulting Limited, Electrical Engineers, that the electrical infrastructure at the existing Snow Farm and Snow Park has sufficient capacity to provide the required power for the proposed gondola. Accordingly, we have concluded that the proposal will not generate any adverse effects on the environment in relation to infrastructure that are more than minor.

(e) Traffic generation and vehicle movements

84. Mr McKenzie gave evidence in relation to the implications of travel to and from the proposed gondola on the surrounding transport network, comparing this to the current situation that utilises the existing unsealed ski field access roads. He also assessed the transport effects of the proposed gondola on the surrounding road network, including the existing access road to the Waiorau Ski Sub-zone and the measures that have been incorporated into the gondola proposal. He concluded that, in his professional opinion, the proposed gondola transport system will fit easily and effectively into the surrounding transport environment such that the effects of this proposal will be less than minor. Mr McKenzie also considers that there will be some positive road safety effects arising from removal of casual and unfamiliar road users from the current unsealed, steep ski area access road.

85. As Ms Sedgley has noted, there is a high level of agreement between Council's traffic expert and Mr McKenzie. Traffic generation is estimated to be 1500 two-way vehicle movements per day with a peak hour two-way volume of 500 vehicle movements. The Traffic Design Group report concludes as follows:

- Access arrangements are appropriate and will not adversely affect the safe and efficient functioning of the Cardrona Valley Road.

- The gondola may increase traffic volumes over time; however, this is difficult to quantify. Any increases are expected to remain within the capacity of the Cardrona Valley Road.

- The anticipated reduction in cars travelling up and down the ski access road will reduce the possibility of accidents, therefore increasing safety.

- The proposed car-parking area will be easy to use, functional and is an appropriate size for the expected number of cars. The overflow area will cater to times of peak demand such as special events.

86. GHD, on behalf of Council, has recommended a specific intersection upgrade and internal access road standards together with the provision of a road safety audit to be imposed as conditions of consent. We concur with these recommendations and appropriate conditions have been included to address the issues raised. In summary, we are satisfied that the traffic generation and vehicle movements associated with this proposal will be less than minor.

(f) Natural hazards

87. Mr Jeff Bryant, an engineering geologist, gave extensive evidence in relation to his geotechnical assessment of the tower and terminal station positions. He also evaluated the environmental impacts relating to the construction and long-term effects of the gondola operation.

88. Mr Bryant concluded that there are no hazards of significant consequence that relatively simple engineering solutions cannot be found for. Some minor up or down slope changes in tower position are proposed to facilitate construction. He

commented that the proposed alignment is the preferred option after an earlier alignment (Line B) was rejected due to geotechnical difficulties. For the most part, the alignment traverses a very old landslide with minor distances crossing alluvial terraces and in situ bedrock. Accordingly, he concludes that any environmental impacts are likely to be minor and be limited to the short-term construction period.

89. Similarly, Lakes Environmental's engineer does not raise any significant natural hazard concerns that cannot be addressed by appropriately worded conditions of consent. We are satisfied that any actual or potential effects associated with natural hazards will, accordingly, be less than minor.

(g) Cultural and historical effects

90. Mr Chris Jacomb presented evidence in relation to his archaeological assessment of the proposed gondola site. The purpose of his assessment was to assess the areas where construction activities might impact on archaeological or historical features.

91. Mr Jacomb presented a comprehensive account of the historical background to the Cardrona Valley, which was likely to have been visited by Maori during the late 13th to 14th Centuries and to have remained important within Maori communication and trade networks from that time. With the influx of Europeans in the late 1850s, initially for pastoral farming but later for gold mining, both pastoralism and gold-mining have left their mark on the landscape in the form of archaeological sites.

92. Mr Jacomb concluded that there are no direct effects of the proposal on archaeological sites. There are, however, some potential indirect effects, namely visual effects on the archaeological landscape of the gondola passing close to the sluice face and the 1930s gold workings. However, he considers these to be minor in the context of this part of the Cardrona Valley which has already undergone significant modification through dredging, road construction and other activities.

93. Mr Jacomb recommended that it is not necessary for the Applicant to apply for an archaeological authority under the Historic Places Act, provided that:

- Care be taken in the construction of any roads or access tracks to avoid damaging the 1930s gold workings identified in his report; and

- If any archaeological or historical features are discovered during the course of the construction of the proposed gondola system, an archaeologist is contacted immediately for advice.

94. Accordingly, we are satisfied that with the inclusion of these conditions, the effects on the cultural and historical aspects of the site are less than minor. As previously discussed, this position is supported by the NZHPT.

(h) Cumulative effects

95. In his report, Mr Martin concluded that the proposed gondola development will exacerbate overall cumulative effects in this location. He considered that the area immediately surrounding the base building has reached a threshold, and concludes that significantly adverse cumulative effects in terms of landscape character will result. The proposal, in his view, will effectively enlarge the size of the commercial node of activity that has incrementally evolved in the area – such activity is not contemplated or encouraged within rural zones. These concerns were shared by Mr Howarth, who considers the application does not fully assess the effects of clutter and sprawl associated with the proposed development.

96. Mr Espie concluded that existing development and existing zoning in the area has already changed the naturalness of the environment. Future development therefore has the potential to combine with existing development to result in cumulative degradation. However, we agree with Mr Espie that the gondola itself will be a "quite different" element in the general landscape. It is not, in our opinion, a domestic element which will combine cumulatively with other effects; rather, it will represent an entirely new element in the landscape, one that is expected in an area that exhibits the character of an alpine recreation village. The gondola is essentially a means of conveyance, with more in common with a road or other access way than buildings associated with human occupation. Although plainly access ways can and do contribute to cumulative development, in our view the unique nature and function of the gondola *in this particular location* isolates its

effects from other forms of development. Accordingly, we do not consider that the gondola will exacerbate the current level of domestication of this area.

97. We further agree with Ms Sedgley that the visible connection that the gondola will create between the Ski Field Sub-zone and the Cardrona Valley Road is not necessarily an adverse one, and as such will not contribute to cumulative effects of development in this area.

98. We note that no other development is planned as part of this proposal. Had there been any ancillary development proposed in this application, such as residential dwellings or visitor accommodation (whether required to justify the financial cost of the gondola or not), we would have considered the threshold at this location to have been exceeded.

(i) Amenity

99. The Act defines "amenity" as the qualities and characteristics that people perceive to exist in an environment that contributes to their enjoyment of its pleasantness and recreational attributes. Ms Sedgley submitted that people's perception of amenity is influenced by the existing activities in the area and future changes expected in the area. She notes that the main aspects of amenity in the vicinity of the site are landscape, clean air and alpine recreation.

100. The present policy documents for the Cardrona area encourage the consolidation of activities in the Ski Zones, with emphasis on management of the growth of the two Rural Visitor Zones in Cardrona. We concur with Ms Sedgley's view that the gondola is consistent with people's expectations for future growth, and will promote consolidation of the Ski Zone activities. Due to the sensitive design of the gondola, including the base and top stations, we accept that the proposal will create a less than minor effect on the amenity of the area as it currently exists.

(j) Summary of actual and potential effects on the environment (excluding landscape effects)

101. From the analysis above, we are satisfied that the actual and potential effects on the environment of the effects identified above will, with appropriate conditions of consent, be remedied or mitigated to an extent that they are less than minor.

Landscape Assessment

(a) Landscape Classification

102. Environment Court decisions C147/2003 (*Robertson v QLDC*) and C60/2005 (*Scurr v QLDC*) acknowledge that the landscape of the Cardrona Valley is an Outstanding Natural Landscape ("ONL") – Districtwide. Both Mr Rewcastle and Mr Espie agree that this is the relevant landscape classification for the proposed site.

103. The objectives and policies regarding ONL (Districtwide – Greater Wakatipu) are outlined as follows[3]:

(a) To maintain the openness of those outstanding natural landscapes and features which have an open character at present;

(b) To avoid subdivision and development in those parts of the outstanding natural landscape with little or no capacity to absorb change;

(c) To allow limited subdivision and development in those areas with higher potential to absorb change; and

(d) To recognise and provide for the importance of protecting the naturalness and enhancing amenity values of views from public places and public roads.

104. Mr Espie describes the landscape context in considerable detail at paragraph 2 of his evidence:

> *"To an observer travelling up the Cardrona Valley from the north, the aesthetic pattern on the floor of the valley is similar to that of the*

[3] District Plan Part 4.2.5(2)

farming landscape of the Wanaka/Upper Clutha basin floor, although it also features the obvious willow-lined water course of the Clutha River. The mountain slopes that enclose this valley floor on either side contain views from the floor. A traveller on the Cardrona Valley Road is never more than 600m from the foot of steep, glacially-sculptured mountain slopes. These slopes are very open, allowing natural topography to dominate their appearance.

To the south of Cardrona township, the floor of the valley disappears. An observer in this (higher) part of the Cardrona Valley landscape feels they are in a more remote and more natural part of the valley. This experience continues until the Crown Terrace.

Within the Cardrona Valley there is visible evidence of historic large-scale sluicing of the sandstone-rich gravels, as well as areas of colonial tree planting.

In more recent decades, tourism has been the main driver of the local economy in the valley. Cardrona ski area, Waiorau Snow Farm and the Snow Park are internationally-renowned facilities. Most travellers on the Cardrona Valley Road are aware of these facilities; they form part of the perceived character of the valley.

There are two areas of Rural Visitor Zone in the vicinity of Cardrona township. The remainder of the Cardrona Valley is zoned Rural General Zone."

(b) Visibility of development

105. Visibility analysis was enabled using a combination of modelling by K2Vi Data Interface Technologies Limited and ground assessment on and surrounding the site. Although we recognise the limitations of visual modelling technology, this has proved extremely helpful in assisting the Commission to interpret the visibility aspects of this proposal.

106. Mr Espie has submitted that the proposed top station building is not visible from the Cardrona Valley Road. However, the proposed base building will be visible from a stretch of Cardrona Valley Road that totals 550m in length. In these views the building will be visually softened to a degree by the proposed bunding, tree planting and landscaping.

107. Mr Espie notes that the gondola towers (and the cars travelling between them) are in a line of sight from a broader visual catchment, particularly the towers on the central and upper parts of the mountain slope. There is a potential line of sight to

at least part of the gondola operation from an approximately 9.5km stretch of Cardrona Valley Road, although some of these potential views are over long distances.

108. Mr Espie concludes that none of the proposed changes to the landscape will be visible from Little Criffel walking route or Tuohy's Gully Road, which is a public walking track. However, there will be visibility from parts of the Cardrona River and its margins, although this will be significantly less than visibility from Cardrona Valley Road due to topography. Mr Espie also acknowledges there will be some visibility from unformed paper roads adjacent to a boundary creek and the Cardrona ski area access road; however, in general these paper roads follow locally low topography and are, hence, visually contained.

109. In general, Mr Rewcastle agrees with Mr Espie's analysis. He comments that although the gondola in its entirety will not be visible from many of the positions discussed above (as individual components of the application will be screened), an awareness of the presence of the proposed development (in its entirety) will be maintained from most positions within the visual catchment of the Cardrona Valley. Mr Rewcastle considers the proposed base station building is relatively subtle in design and appropriate for its intended use.

110. As previously discussed, Mr Rewcastle has suggested some changes to the proposed landscaping plan for the base station and car-parking area which have been adopted by the Applicant and will be reflected in the conditions of consent. In particular, lighting resulting from night-time operation of the gondola, which Mr Rewcastle noted has the potential to create further adverse visual effects, will be minimised. No lighting will be permitted in or on the gondola cars or towers.

111. Importantly, Mr Rewcastle considers that the subject property has diverged from traditional farming activities to focus on tourism and ski field operations. The proposed gondola will, in his opinion, visually link the semi-rural tourism operations on the valley floor with the alpine ski field operations at the Waiorau Snow Farm Ski Area Sub-zone. He notes that some visual link currently exists between the node of activities on the valley floor and those within the Ski Area Sub-zone: these include signage, entrance features and the access roads associated with both the Cardrona Ski Field and the Snow Farm/Snow Park. In Mr Rewcastle's view, the

proposed gondola will have the effect of contributing to and strengthening the rural/alpine "theme park" character, exaggerating the shift away from traditional farming operations.

112. Although Mr Rewcastle does not express any opinion on the nature of this direction, we accept that it is an inevitable consequence of the location of two Ski Area Sub-zones in this area, together with existing and future consented development. In our view, the priority is to manage future development in such a manner that the predominant features of the ONL are preserved to the greatest possible extent to ensure that the unique alpine village character of Cardrona is maintained and enhanced. In this respect it is anticipated that, in time, some of the existing activities, which are plainly inconsistent with this alpine tourism theme (such as the monster trucks operation), will eventually be replaced by activities which support the Ski Zone and which further enhance this area as an alpine village.

113. Mr Rewcastle also submitted that the proposed gondola provides increased opportunity for users to interact with this ONL and the environment. In particular, the gondola ride from the top station to the base station will enable passengers to enjoy and appreciate the surrounding environment. At the hearing, the Applicant volunteered to place signage in the gondola cars describing the environment and vegetation, which will enhance the experience of viewers and contribute to an understanding of the wider landscape.

(c) Assessment of landscape effects

114. Part 5.4.2.2(2) of the District Plan lists the assessment matters with regard to ONLs (Districtwide) under the following headings:

(a) Potential of the landscape to absorb development;
(b) Effects on openness of landscape;
(c) Cumulative effects on landscape values; and
(d) Positive effects.

115. We consider each of these in turn as follows.

- *Potential of the landscape to absorb development*

116. Mr Espie stated at paragraph 6.3 of his evidence that he considers the landscape will not absorb the proposed development in a visual sense. Although the base building will be absorbed to a moderate degree and the visibility of the gondola itself will be mitigated in some ways, it will remain prominent to a specific visual catchment that includes approximately 3km of the Cardrona Valley Road. The base building will be "experienced" in a location that is characterised by farmed flats and riparian willows, recognising that there is a degree of human modification that distinguishes this area from the dramatic, natural mountain slopes to the east.

117. Mr Espie has noted, however, that most observers in the Cardrona Valley landscape are aware of the recreational use of the valley and the ski area operations that exist at the top of both of its sides, which form part of the perceived character of the valley. In particular, prominent signage exists for the ski areas and the existing roads to them are plainly visible. Mr Espie observed that this knowledge will mitigate the impact of the gondola on the perception of the valley's landscape quality to a degree.

118. We accept Mr Espie's proposition in this regard. While it is plain from Mr Espie and Mr Rewcastle's evidence that the gondola will remain prominent to a specific visual catchment in the Cardrona Valley, this is an area that is characterised by a developing alpine village at its base and two major southern hemisphere ski fields of international importance located on the tops of the adjacent mountain slopes. Visitors to the area are already aware of a connection to the ski field zones by the current access roads which create a very visible scar on the landscape.

119. Although it is not possible to fully mitigate the visual impact of the gondola, we accept Mr Espie's argument that the existing use of the natural resources of the area, together with existing signage and access roads, do assist to mitigate the impact that the gondola will have on the perception of the valley's landscape quality.

120. Mr Haworth drew our attention to the substantial visual and amenity effects of the proposed gondola development. We concur with his submission that the gondola will be visible from a number of important public places including the Cardrona Valley Road, the Waiorau Ski Area Sub-zone ski field access road, the marginal

strip of the Cardrona River and from a number of public unformed legal roads. This has not been disputed by either of the landscape architects. On the contrary, it was generally agreed that the gondola will have a substantial impact on visibility that cannot be fully avoided, remedied or mitigated.

121. We also accept that the Cardrona Valley has a high degree of naturalness in its current state, particularly when viewing the sides of the valley. However, we disagree that consent to this proposed development will necessarily weaken future protection of the natural character of the landscapes adjacent to the Cardrona Valley Road and the landscapes of the Cardrona Valley in general. In this respect, the proposed development has been kept at an absolute minimum and comprises the gondola structure, top and base buildings and associated car parks (part of which will be retained in a natural state until and unless required for future expansion). Due to its unique function; that is, to provide access to the Waiorau Ski Field Sub-zone, the gondola will not, in our opinion, set a precedent for general development in this area. Rather, it is a means of conveyance that is strongly associated with access to the ski field, an activity that has been accepted and incorporated into the District Plan.

122. Notwithstanding the above discussion, we accept the expert opinion that the landscape does not have the ability to fully absorb the adverse effects associated with the proposed structure. Accordingly, the application falls to be assessed on whether the positive effects associated with the development outweigh the adverse landscape and amenity effects that are generated by this proposal.

- *Effects on openness of landscape*

123. It is plain from the evidence of both landscape experts that the slopes that will contain the proposed gondola currently exhibit a high degree of openness. We accept that due to the somewhat insubstantial nature of the gondola structures (in relation to the wide expanse of landscape), they will not significantly block views of the open landscape; that is, while the gondola towers and the transient gondola cars will be visible to observers, they do not, in themselves, take up much space and will not screen visual access to the open slopes in a way that a large building or solid structure would. Mr Rewcastle's analogy of a spider web that touches the surface at various points is apposite.

124. In terms of openness, Mr Espie considers that most of the gondola towers and the transient gondola cars will be seen in the context of a broadly visible expanse of open landscape. Accordingly, he concludes the degree of openness that the landscape currently displays will remain largely unchanged. Similarly, Mr Rewcastle notes that the topography offers some containment, particularly within the river escarpments of the valley floor and within the upper section of the proposed cableway. However, he considers the lower section of the proposed cableway involves ascending spurs and ridges and that, in this regard, the gondola structure may dominate the natural land form through this section and as a consequence may adversely affect open space values.

125. In summary, it is our view that the visible elements of the proposal will be viewed as an interruption to existing openness or an inconsistency with existing openness, rather than creating a reduction in the degree of openness or a screening of openness. The current degree of openness will, accordingly, largely be retained, albeit that this may be less so in the lower section of the cableway.

- *Cumulative effects on landscape values*

126. Mr Rewcastle considers that the series of towers and cableway is not consistent with the natural character of the landscape and that the proposed car park and vehicles using the park have the potential to detract from the natural and pastoral character of the site. However, he also acknowledges that the existing ski field access roads (on either side of the valley) result in adverse landscape effects which detract from the natural character of the landscape. These effects include scarring of the landscape and the glare and dust caused by vehicles using the road. Accordingly, in his opinion, a reduction in road usage as a result of the proposed gondola is likely to reduce existing adverse effects associated with glare and dust from vehicles using the road.

127. Mr Espie notes that existing development in the vicinity of the subject site takes the form of dwellings, roads, commercial farm buildings and so on. The gondola proposal will not continue or expand this type of development, although it will be an obviously unnatural element. In his opinion, the gondola will create an entirely new element in the landscape and its effects on the appreciation of landscape will stem from its own qualities rather than from any combination with existing

elements in the landscape. For this reason, he considers that its effects will not be cumulative effects; rather, they will be individual effects.

128. In her evidence, Ms Sedgley supported Mr Espie's conclusions, adding that as the gondola is a necessary element for alpine recreation that is known to and is already visually apparent in the general location, the possibility of an observer experiencing a negative response to the gondola structures will be reduced. We consider there is merit in this argument. The Cardrona Village and surrounding environs is, following the development of both the Cardrona and Snow Farm ski fields, a location that is plainly associated with winter sports. Its use for summer sports and sight-seeing is increasing. It is expected that further development planned for this area will strengthen this association. In this regard, the submissions of the local residents and businesses in support of the proposed gondola, which in their view forms an integral part of this overall transition, are an important factor in our consideration.

129. We concur with Mr Espie's view that the proposed gondola development is quite different to the existing development in the vicinity of the subject site and that it will not continue or expand this type of development. Although it will be an obviously unnatural element in the landscape, it will not add to the cumulative effects of development in this area, many of which have only recently obtained resource consent. We also concur with Mr Espie's view that the gondola is not a "domestic" element in the landscape; rather, it is a specific form of infrastructure required for access and, in this sense, does not have a domestic character. Signage and other forms of identification will be strictly controlled as outlined in the application and it is intended that the proposed gondola will blend with the natural environment to the greatest degree possible. All domesticating type effects (such as those associated with curtilage for example) will be minimised.

130. Finally, we accept Mr Espie's submission that the Ski Field Sub-zones provide for intense development associated with ski and associated activities. Consolidating these activities within the district's few Ski Area Sub-zones will assist to bring about a positive landscape goal. We concur with his assessment that the proposed gondola will assist in the achievement of this goal and, in particular, will facilitate the better utilisation of the Ski Area Sub-zone by allowing expansion of

the ski field activities without the constraints imposed by access and parking issues.

131. We concur with Mr Espie's comment that the continual addition of dwellings, buildings or roads in this area will breach the vicinity's ability to absorb change at some time in the future. However, we in part accept his submission that the vicinity is not currently at a threshold point beyond which any change to the landscape is automatically unacceptable. Notwithstanding this, we are of the view that once the gondola structures and associated car-parking are established, any further development in this area has the potential to exacerbate cumulative effects in this particular vicinity.

132. Mr Espie has observed, importantly, that the gondola alignment is in relatively close proximity with (and at several points, crosses) the configuration of the road. The visual effects of the gondola are therefore confined to the same general corridor that accommodates the existing access road; they are not seen in a pristine area of mountainside. In other words, the visual effects on the landscape are confined to an area which is already modified by human disturbance.

133. We note also that the proposed development will potentially remedy a number of existing adverse landscape effects in relation to the subject property. The proposal will remove and re-grass a number of existing vehicle access tracks. Further, the consent order of the Environment Court in relation to the monster trucks operation will remedy some of the existing adverse effects in this vicinity: conditions of this consent require that restorative earthworks and re-grassing are implemented, tree planting carried out to screen buildings, the prohibition of outdoor signage and the removal of the collection of monster trucks visible from Cardrona Valley Road. We concur with Mr Espie that in a small (but relevant) way, this consent reduces the degree of accumulation of adverse effects in the existing environment.

134. We note that as a result of Mr Rewcastle's suggestions, the proposed planting has been amended to include additional areas of native beech/shrub community planting and the addition of kowhai trees to the riparian strips in order to bolster the bulk of native riparian areas. This enhancement of native planting will provide additional habitat and food for indigenous animal species, as well as increasing the

native biodiversity on the subject property and within the landscape. The proposed native planting has been designed to generally follow areas of lower topography, ephemeral water courses and hydrological patterns. Mr Espie notes that the area of proposed native riparian planting totals approximately 6,800m³ in area.

135. It should be noted also that existing resource consent RM 050942, which permits gravel screening and extensive visual disturbance over a long period, will be surrendered if the current proposal is consented. Although we understand that if this consent was to proceed the landscape must be returned to its natural state, we concur with Mr Espie that, in practice, this is rarely achievable. While the consent is operational, there will be significant adverse visual effects associated with the very long-term operation (25 years). Accordingly, we accept the Applicant's submission that the surrendering of this consent has valid weight as a form of environmental compensation.

136. In conclusion, we find that there are a number of substantial points of agreement between Mr Rewcastle and Mr Espie in relation to landscape matters. The Applicant has addressed the valid concerns raised by Mr Rewcastle in relation to the proposed landscaping of the base station area and the access tracks. Both experts agree, importantly, that the line of the gondola is located in the part of the mountain slope that already accommodates the visual alignment of the access road, not in a pristine area of the surrounding ONL.

137. Both landscape experts agree that the location and design of the gondola, which includes the top and base stations, colours and associated landscaping, have been designed and located as sensitively as possible to minimise adverse visual and landscape effects to the maximum extent. However, the proposed gondola will bring about change that will not be visually absorbed by the landscape. In this sense, the gondola will, to some extent, undermine the natural character of the ONL in which the development is located (albeit that this is in an existing corridor of visual disturbance). The associated adverse environmental effects on the landscape are unable to be totally mitigated due to the nature of the proposed structure. It is therefore necessary to consider whether the positive effects resulting directly from the proposal are sufficient to outweigh any landscape effects

that are unable to be fully remedied or mitigated and whether, overall, the proposal meets the definition of sustainable management in Part 2 of the Act.

Positive effects

138. We note that the subject property has diverged from traditional rural use in that a rural/alpine "theme park" character has developed (per Mr Rewcastle's evidence). The associated activities have been considered appropriate in recent resource consent decisions and, together with the gondola proposal, will continue the development of this theme. Mr Rewcastle also notes that the subject property contains the potential to enhance the ONL character with the use of indigenous planting, and that the proposed gondola provides an opportunity for visitors to interact with this unique environment. We concur with both of these sentiments and are satisfied that the Applicant has designed the proposal with the appropriate degree of sensitivity required for this location.

(a) Effects on People and Communities

139. We note that the District Plan does not contain any assessment criteria relating to the positive effects of activities on the social, cultural and economic well-being of people and communities. However, s.104(1)(a) of the Act requires all effects on the environment to be considered, whether positive or negative. The definition of "environment" in the Act is:

> "(a) Eco-systems and their constituent parts **including people and communities**; and
>
> (b) All natural and physical resources; and
>
> (c) Amenity values; and
>
> (d) The social, economic, aesthetic and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters …"

140. Accordingly, we concur with Ms Sedge's submission that the social and economic effects on people and communities are relevant matters to assess in this application. Ms Sedgley has summarised the positive effects arising from the proposal as follows:

- Encouraging the safe and efficient future use of the Waiorau ski area.

- Providing safer and more convenient access to the summer and winter recreational area of the Waiorau Ski Sub-zone.

- Providing for the future growth of recreational activities within an appropriately zoned area.

- Enabling future competitiveness of the alpine activities and therefore the growth of tourism, the base industry of the local and wider district economy.

- Assisting the sustainability of the Cardrona community by providing increased opportunity for related businesses to establish in the area and providing opportunities for local family members to return to and work in Cardrona.

- By enabling the capacity of this Ski Sub-zone and current mountain activities to be achieved through the provision of a transport system that has less environmental effects than would occur if the same number of people travelled via the current road. In particular, this includes:

  – vehicle emissions including C02;
  – dust levels resulting from road use;
  – visual effects resulting from frequent mountain road upgrading;
  – visual effects from vehicles travelling up and down the existing road (glare, noise, activity); and
  – safety risks on the mountain road.

- Ensuring the environmental effects of mountain activity infrastructure are consolidated into existing areas. Ms Sedgley submitted that this consolidation may have subsequent environmental benefits of enabling improved sewerage systems, water use and energy use in the current Sub-zones.

- Reduced transport times for injured persons to be transported from the mountain to healthcare facilities. The journey will be more comfortable with less risk of the occurrence of further pain or injury.

(b) Sustainability of Rural Communities

141. Mr Copeland submitted, and we accept, that the reference in the Act to "people and communities" highlights that in assessing the impacts of a proposal, the impacts on the community (not just the Applicant or particular individuals or organisations) must be taken into account. In the case of the proposed gondola, he considers it appropriate to adopt a District viewpoint in assessing the proposal's impact on the community's economic well-being, which comprises the relevant economic impacts on all businesses, organisations and residents in Wanaka and the wider Queenstown-Lakes district.

142. We accept Ms Sedgley's submission that an increasingly large number of people in the Queenstown district rely on the tourism industry for their social and economic well-being. The success and availability of the Ski Sub-zones is a key contributor to the number of tourists in the region, particularly during the winter season. It is also apparent that the summer use of these sub-zones for activities such as mountain biking is becoming increasingly popular, as has been the trend in Europe and North America.

143. Ms Sedgley acknowledges that the gondola alone will not provide for sustainability of the rural community; however, the opportunities for growth that it will potentially facilitate may have consequent downstream effects for the District.

144. We accept the submission that other New Zealand ski fields with easier road access or international alpine destinations with gondola access and/or on-snow accommodation may become preferable destinations in the future, particularly as road users become less and less familiar with the standard of roads that lead to the Ski Sub-zone.

(c) Consolidation of ski activities and zone capacity

145. Provision for future growth of ski activity development within areas zoned for these activities is a priority identified by the District Plan. There are a number of Ski Area Sub-zones in the district, two of which are accessed from Cardrona Valley Road (Cardrona Ski Field and Waiorau Ski Zone). All of these sub-zones have capacity for further development and expansion of recreational facilities, which the District Plan strongly indicates should occur within the existing sub-zones.

146. The gondola will provide access to a Ski Area Sub-zone of 500 hectares in size, of which currently only 120 hectares is utilised. Accordingly, Ms Sedgley submits that the gondola will facilitate the consolidation of activities and allow the environmental effects of mountain infrastructure to be localised into this node of existing modification. The Applicant's evidence is that without the gondola, only limited expansion and utilisation of the remainder of the Ski Field Zone is possible due to the limitations of the current access road and car-parking. Although we are not in a position to assess the merits of this statement, we accept that the proposed gondola will facilitate further expansion and use of the sub-zone in the future.

147. We also accept that improved infrastructure and facilities in the Ski Sub-zones is necessary to ensure that New Zealand continues to meet the changing expectations of international alpine visitors, recognising that investment in improved infrastructure is only possible where sufficient visitor numbers occur to make this possible. In this respect, we were not provided with any evidence in relation to the economic viability of the gondola, as this is not a requirement under the Act. However, we note Mr Haworth's submission that at the current levels of patronage, a gondola is, in his view, unlikely to be financially viable. It follows that the gondola development may not proceed until such time as the expansion of the Ski Sub-zone is planned and facilitated, followed by a corresponding increase in visitor numbers. In this respect, the gondola application is, as Mr Haworth points out, potentially "putting the cart before the horse"; however, in a practical sense, we accept the Applicant's argument that approval for the gondola transport system is necessary before any serious planning for expansion can confidently proceed. Whether or not the gondola is ultimately established is entirely at the discretion of the Applicant; however, this decision will in our opinion almost certainly be grounded in a positive projected financial outcome.

148. A condition of consent has been imposed that will require the removal of the gondola structure in the event that it is not utilised for commercial operations for a period of not less than 12 months. This condition will, in our view, protect the landscape from the prospect of a "white elephant" should the gondola not prove to be financially viable in the longer term and hence no longer deliver the positive benefits that comprise the environmental compensation.

(d) Efficient use of Ski Zone resources

149. We concur with Ms Sedgley's submission that efficient long-term use of the Ski Zone resources requires transportation facilities to match the terrain capacity. The gondola will improve the quality of access to this resource. We accept that the gondola will provide the following advantages:

- Transport more people in a given time period;
- Safer transport, generating less vehicle emissions and dust;
- Reduced visual effects associated with the constant road upgrading required during the snow season; and
- Improve the attractiveness of the ski area to both local and international visitors.

(e) Economic and flow-on community benefits

150. Mr Copeland has submitted comprehensive written evidence in relation to the economic impacts of the gondola for access to and from the Waiorau Ski Area Sub-zone. He states in his introduction that the gondola will provide faster, safer and more comfortable and convenient access to skiers in winter, as compared to the current mountain road access. In addition, the gondola will be an additional attraction for visitors to Wanaka during summer months and will potentially enable sustainable development of the remaining Ski Area. Mr Copeland notes that the current facilities at the Snow Park, Snow Farm and Southern Hemisphere Proving Ground have capacity for up to 3,000 people per day (during the winter season); however, any future growth will be restricted by car-parking constraints. Currently,

on peak days during the winter season a maximum of 2,500 people can be accommodated at the Snow Park: on such days car-parking spills out of the car park, lining the road up to the ski field. Accordingly, Mr Copeland concludes that unless a solution is found to car-parking constraints, growth in annual skier days at the ski field can only be accommodated by increasing skier numbers on non-peak or shoulder season days, which are constrained by the non-availability of suitable snow and the preferences of skiers as to when they visit ski fields.

151. Mr Copeland notes the annual skier numbers at the Snow Farm and Snow Park peaked at 48,000 in 2007. Because of the car-parking constraints, the Applicant expects only small increases above this figure will be possible in future without the gondola.

152. Mr Copeland has assessed the impacts of the proposal in terms of economic efficiency (and community economic well-being) by comparing two scenarios – what is likely to occur "with" the proposal, as against what is likely to occur "without" the proposal. Hence, the economic efficiency and economic well-being implications of the gondola project have been considered relative to the implications of the ski field continuing to operate with road access only. Mr Copeland notes that the investment in the proposed gondola is to be part of an integrated package of investment projects to enhance the access to and the range of facilities and attractions within the Waiorau Ski Area Sub-zone. The gondola will help facilitate additional ski field activities and accommodation within the Ski Field Policy Zone, which will assist to underpin the financial viability of the gondola investment. Because the additional attractions and accommodation do not yet have resource consent, Mr Copeland's analysis focuses principally upon the additional economic benefits resulting from the gondola project only in terms of its impact in relation to the existing attractions within the Ski Area. To the extent that the gondola contributes to the development of additional facilities and accommodation, the quantified economic benefits are understated.

153. Mr Copeland notes that as with "economic well-being", economic efficiency impacts must be considered from the viewpoint of the community at large and not just from the perspective of the Applicant. In having regard to the efficient use of resources, it is necessary to adopt a district or region-wide perspective.

154. We summarise Mr Copeland's findings as follows:

- *Construction impacts*

(i) Gondola Investment

Mr Copeland considers that the aggregate direct construction impacts during the initial construction phase will be the creation of 13 jobs for nine months, wage and salary payments of $937,500.00, and the purchase of other goods and services from within the local economy of $4.2 million. In addition to this direct employment, income and other expenditure impacts of the gondola's construction on the local economy, additional employment, income and expenditure impacts will arise in the district as a result of:

- The demand for additional inputs by suppliers of goods and services to the gondola project from within the district; and

- The demand for goods and services by employees of the project and those engaged in supplying goods and services to the project.

(ii) Other potential investment

Mr Copeland details evidence of the Applicant's investment programme, which will enable expansion into more traditional ski resort facilities. In particular, the proposed Roaring Meg Resort has potential for the installation within the Ski Area Sub-zone of five chairlifts, with three of these being high speed; three magic carpets and one learner's platter. This will provide an estimated total uphill capacity of well over 12,000 skiers per hour. Overall, the gondola is intended to facilitate significant additional investment in additional ski field facilities and accommodation, estimated to cost in excess of $100 million. This investment expenditure is planned to be spread out over a period of approximately 10 years and will help to underpin the financial viability of the investment in the gondola project (Mr Haworth's valid concerns).

- *Operational impacts*

Mr Copeland estimates that there will be ongoing operational economical impacts of 108 additional jobs, $1.8 million additional income and $4.8 million additional expenditure. This is based on the gondola enabling annual skier days to increase from 48,000 to 70,000. However, with the planned additional investment in ski field facilities and accommodation, the Applicant believes skier days could increase to up to 300,000 per annum with consequent greater employment, income and expenditure impacts. In addition, there will be ongoing operational economic impacts to the extent that the gondola attracts an additional number of visitors to Wanaka.

Mr Copeland concludes that additional economic benefits will be generated to the extent that the gondola, by attracting additional visitors to Wanaka and the Queenstown-Lakes District, will help to underpin and broaden Wanaka and the district's economic base and create efficiency gains from economies of scale for the public and private sector providers of goods and services.

In addition, Mr Copeland considers there will be economic efficiency benefits relating to savings in snow-clearing and road maintenance costs; savings in vehicle operating costs; savings in travel time costs; increased comfort and convenience for users of the gondola; and net benefits for additional winter and summer visitors to the ski field. Such economic impacts are consistent with "community economic well-being" and "the efficient use of resources".

155. We accept the evidence and conclusions provided by Mr Copeland which, in our view, enables us to place considerable weight on the economic benefits of the gondola to both users of the ski field and the local and district communities. It is beyond doubt that the snow sports industry in this district is a demonstrably important source of visitors to this area in relatively large numbers. The Ski Field Sub-zones provide for recreational activities for a wide number of participants and it is apparent that more diverse activities are now being facilitated during the summer months. Accordingly, the benefit of the Ski Area Sub-zones to the local and district economy is proven and substantial. We are satisfied that the gondola, if constructed, will facilitate the expansion of activities in the Waiorau Ski Field Sub-zone that may otherwise be restricted due to the limitations associated with the access road and, in particular, car-parking in the zone.

156. We note Ms Sedgley's submission that the main reason for the gondola is to offer better, safer and cleaner access to the existing Snow Farm and Snow Park facilities for current and future visitors.

157. We further accept that the continued attractiveness of the Ski Zone activities is important to the future economy of the local area and wider district. Ms Sedgley referred us to the New Zealand Tourism Research Institute study on "*The economic significance of the Southern Lakes Ski Areas – 2005 Winter Season*", which highlights the importance of the ski areas for the winter tourism market within the Southern Lakes. The following findings are relevant to this proposal:

- 80% of respondents regard snow sports as a major factor in the decision to visit Queenstown and Wanaka over the winter season.

- Tourism activity is replacing pastoral activities as the base-driving factor of the economy.

- The average daily spend for overseas visitors is $47.26 on the mountain and $149.65 off the mountain (an approximate ratio of 1:3).

158. This analysis demonstrates the positive economic flow-on effect of the snow industry, where money spent in the townships provides income and employment within the area. Continued increases in tourist numbers as a result of the further proposed activities to be facilitated by the gondola will assist to underpin future economic prospects for the local area and the wider district. We also accept that based on international trends (and to a certain extent, emerging local trends), it is highly likely that the establishment of the gondola transport system to the mountain will more rapidly encourage the growth of summer alpine activities such as tramping, mountain biking and sight-seeing.

(f) Recreation benefits

159. As has been previously mentioned, the gondola will provide enhanced recreation opportunities. In particular, the gondola will provide improved opportunities for mountain bikers, paragliders and trampers to access the alpine area in the summer months without the need for often repetitive daily vehicle movements.

This view was supported by the submission of the Wanaka Cycling Club, which drew our attention to similar developments in Ski Field Zones in both Europe and North America.

(g) Reducing the use of private vehicles and emissions

160. The Applicant submits that the gondola will plainly reduce the need for visitors to use the ski access road. Although there is an easement to the Snow Farm which provides for public access (at a charge to be agreed with the Department of Conservation), all future visitors to the Snow Park will be required to use the gondola as there is no public easement to this facility.

161. Evidence in relation to the environmental effects of the gondola, in particular the effects on pollution and $C0_2$ reduction, were provided by Ms Daniela Edwards. Ms Edwards estimates that based on a reasonable set of assumptions, the total estimated $C0_2$ produced during the 2008 year by vehicle transport to the Snow Park will be 137.5 tonnes. In comparison, it is estimated that the gondola will produce 48.9 tonnes of $C0_2$ in 2008. The difference of 88 tonnes per annum is, in our view, significant, particularly if future growth is considered. We accept that the $C0_2$ emissions associated with the gondola will be significantly less than those associated with the continuation of vehicles as the main mode of transport to the Waiorau ski area. We concur with Ms Edwards' submission that the gondola is *"an innovative approach to reducing $C0_2$ emissions and will contribute to New Zealand's climate change solutions"*.

162. We further accept Ms Edwards' evidence, which was supported by a number of submissions by both local residents and businesses in the district, that the gondola will produce less dust than the current mode of transport, which comprises vehicles travelling on gravel road. It is well-known that gravel roads can produce unacceptable levels of dust, particularly as visitors to the resort increase. We accept that dust reduces the visual amenity of the area quite substantially at peak times (as was evidenced by the photographs provided by Mt Cardrona Station at the hearing) and that the reduction in dust associated with road use will assist to offset any potential adverse effects of the gondola on the landscape and visual amenity of the Cardrona Valley.

163. We note Mr Haworth's submission that the gondola may attract an increased number of visitors to the Cardrona Valley, many of these driving considerable distances, in order to access the activities at the Ski Field Zone. This will potentially, in his view, result in considerable additional energy usage and CO_2 emissions. Whilst we accept that there is validity in these statements, these sentiments apply equally to other forms of recreational activity that may or are likely to be developed at this and other Ski Field Zones. It is, in our view, incumbent on the Applicant, in conjunction with transport operators, to provide public transport services to the base station from both Queenstown and Wanaka in order to assist to reduce overall $C0_2$ emissions as a result of increased visitor numbers. While the wider issue of the extent to which tourism (which is encouraged by specific policies in the District Plan) impacts on the sustainability of the district in terms of climate change initiatives is outside the scope of this decision, we anticipate that rising petrol prices, together with other government and local body policies that will ultimately ensure that alternative means of pooled transport are actively encouraged, will further contribute to the proposal's positive effect on climate change as compared to the status quo.

(h) Safety and convenience

164. We accept the evidence of Ms Sedgley that many visitors to the Ski Field Sub-zones have difficulty driving on the access roads; in particular, the wide range of unusual driving conditions that may be presented ranging from dry roads, to greasy muddy surfaces, to snow and ice. A study carried out by Otago University, referenced by Ms Sedgley in her evidence, states that:

> *"… 54.5% of (winter) tourists have problems with slippery/loose/bumpy gravelled roads either in general or on ski field access roads. Notably, some tourists stated they felt a lack of safety barrier on ski field access roads and mountain roads was dangerous and some had problems fitting snow chains."*

165. It is beyond doubt that the gondola transport system is intended to provide a safe and more convenient access method to the ski area, which we accept will increase the attractiveness of the area to visitors. This view is reflected in the 41% of submissions that cited the danger of the current access road as a reason for their support of the proposal. Both Mr John Lee and Mr Sam Lee described various issues that have been experienced by the Applicant in relation to the safety of the

road. While we agree with Mr Haworth that this particular access road is probably one of the better in the region in terms of width and steepness, it nonetheless does pose a safety risk to inexperienced drivers. In this respect, we note that the Snow Park, in particular, is frequented by a large number of younger patrons who may not possess the winter driving skills of more mature drivers.

166. We concur with Mr Haworth's views that the safety of the road could potentially be improved by the installation of fencing, better grading and safety barriers. However, we consider that virtually all of these alternative methods could have a potential adverse effect on visual amenity that would require appropriate assessment.

167. We note, also, the submission of the Applicant that the gondola will provide improved access for victims of accidents, who may be transported from the ski zone to the base station more easily, safely and in more comfort. This will also save time and costs associated with lengthy ambulance rides to and from the ski field.

(i) Other positive benefits

168. We have already commented in this decision on a number of other positive benefits that will result from this proposal which include:

- The provision of new walking tracks along the Cardrona River and from the top station to Tuohy's Gully.

- The surrendering of resource consent RM 050942 for earth-working of a 25-hectare of property, which will remove the threat of 25 years of land disturbance on the river flat.

- The enhancement of the appreciation of the ONL by visitors to the area resulting from the opportunity to travel in the gondola, the signage to be placed in the gondola cars describing the environment, together with signage in relation to native species to be placed in the vicinity of the top station loop track.

(j) Conclusion on Positive Effects

169. As has been discussed, there are a significant number of positive effects generated by the proposal. The positive effects that have been supported by expert evidence include:

- Improved access to the Ski Field Sub-zone;
- Potential for the expansion and consolidation of activities in the Ski Field Zone;
- The potential expansion of recreational benefits and opportunities, including summer mountain biking;
- The reduced usage of private vehicles and the resulting decrease in pollution and $C0_2$ emissions;
- Substantial improvements in safety and convenience;
- Significant potential for ecological enhancements (noting the area of proposed native riparian planting totals approximately 6,800m² in area);
- Promotion of the appreciation of the outstanding natural landscape.
- Reduction of pollution in the form of dust;
- Positive economic effects created by the construction and operation of the gondola; and
- The increased sustainability of the Cardrona township in the longer term.

170. In addition, the Applicant has volunteered the following measures:

- Removal and re-grassing of a number of existing vehicle access tracks;
- Surrendering of resource consent RM 050942 in relation to earthworks and gravel extraction over a 25-year period;

- Commitment to the existing programme for removal and control of exotic weed species on the balance land;

- Two new public walkways to be developed on the Applicant's land, together with a loop track to be established in the vicinity of the top station.

Balancing of Effects

171. On balance, we find that the considerable positive benefits generated by this proposal, in particular the substantial economic effects described above, provide sufficient environmental compensation to outweigh the adverse landscape and visual effects associated with the gondola, particularly given the location of the gondola in a current area of disturbance and its association with activities that are expected in this location.

172. The concept of environmental compensation has been discussed in several Environment Court cases – *Remarkables Park Limited v QLDC* (C161/2003); *J F Investments Limited v QLDC* (C132/2004); the *Hillend* case (W088/2006) and *White v Waitaki District Council* (C066/2006).

173. In *Remarkables Park* the Environment Court first addressed the question of environmental compensation. The Court stated at paragraph [34]:

> *"Indeed, one of the useful tests for sustainability under the RMA, applying the appropriate standards in the hierarchy of s.5(2)(a) to (c) and ss.6 to 8, is whether development and use would lead to a net conservation benefit."*

The term "environmental compensation" is not a term used in the Act but was defined by the Environment Court in *J F Investments Limited v Queenstown Lakes District Council* (C28/2006) as:

> *Any action (work, services or restrictive covenants) to avoid, remedy or mitigate adverse effects of activities on the relevant area, landscape or environment as compensation for the unavoidable and unmitigated adverse effects of the activity for which consent is being sought.*

In our opinion, a principled approach is required to evaluate environmental compensation and to determine whether it will lead to a net conservation benefit sufficient to offset development effects on the natural landscape and visual amenities, and to promote the sustainable management of the natural and physical resources of this area of ONL. Based on our analysis of existing case law, the following criteria are useful for the purpose of evaluating the compensation offered (which we understand were developed for the *Hillend* case – *Upper Clutha Environmental Society Inc. v Queenstown Lakes District Council* (WA 88/2006)):

(a) Whether there is a link between the environment effects of the proposed development and the conservation gain from it;

(b) Whether the area of impact from the proposed development compares with the area of environmental compensation; and

(c) Whether the benefits from the proposed development enhance the existing environment.

174. In our view, the Applicant's voluntary offer of environmental benefits in this case meets all of these criteria.

175. We re-iterate the view expressed in the Memorandum that the economic justification for the gondola is paramount in our analysis of the environmental compensation inherent in this application. Without evidence of the economic benefits to members of the public and the wider community, there is nothing to distinguish this application from one submitted for, say, largely private use. For example, if the application was intended to benefit only a limited subset of private users, such as the vehicle testing operations, it is potentially unlikely that the positive economic effects would, in our view, outweigh the adverse landscape effects associated with a gondola on this site (acknowledging that these cannot be avoided, remedied or mitigated any further). It is the potential of the gondola to provide enhanced recreational access to the ski field subzone to a wide variety and number of public users (both domestic and international) in an economically efficient way, and the associated flow-on economic effects to the wider local and regional community, that is the key positive compensatory effect.

176. However, we note that environmental compensation is only relevant to the exercise of our discretion under s.104 and s.104B. The adverse effects of the activity on the landscape do not cease to be more than minor simply because they may be "offset" by the positive effects associated with the development.

177. Finally, it is appropriate to comment on the submissions of UCESI in this respect. We consider the emphasis placed by the Society on protection of the ONL in this location to be well grounded in the objectives and policies of the District Plan. In general, we agree with many of the submissions made by Mr Howarth in this respect. However, we differ in relation to the extent to which the gondola may be considered to be appropriate development in this particular area, given the degree of modification that already exists, the emerging character of Cardrona as an alpine village and the expectation that ski field activities will be grown and consolidated in the existing Ski Area Sub-zones. While we agree with Mr Howarth that the collective weight attributable to many of the positive effects may, without the benefit of economic evidence, be insufficient to outweigh the adverse landscape effects due to the emphasis placed on these in the District Plan, we are satisfied that overall the proposal, as modified by the conditions, will result in the sustainable management of this resource for the reasons we have expressed.

Section 104(1)(b) - Objectives and Policies of the District Plan

178. Under s.104(1)(b), the Commission must have regard to the objectives and policies of the District Plan when assessing applications for discretionary activities. Once assessed, the final determination of the application is made pursuant to Part 2 of the Act: whether the proposal achieves the sustainable management of natural and physical resources.

179. Ms Sedgley submitted, and we accept, that in assessing whether a proposal is contrary to the objectives and policies of a Plan, guidance is given by the *Monowai Properties v Rodney District Council* (A215/03) case, which established that for a proposal to be contrary to the objectives and policies of a plan it must be opposed or repugnant to them rather than simply not finding support for them.

180. Both Ms Sedgley and Mr Martin have thoroughly assessed the proposal against the key objectives and policies of the District Plan. Ms Sedgley concludes that the proposal is inconsistent with some of the objectives and policies that relate to avoiding buildings and structures on ridgelines or in landscapes that are classified as ONL and which have a low ability to absorb change. However, she considers the proposal is not prima facie contrary to all of the policies that relate to maintaining such landscapes, as many of these require the avoiding, remedying and mitigating of effects and maintaining the openness of the landscape. The proposal, in her view, maintains the openness of the landscape and does not affect the pristine remote landscape of the wider district. Ms Sedgley concludes that the proposal cannot be considered to be contrary or repugnant to the collective body of objectives and policies of the District Plan, notwithstanding their inherent focus on landscape values.

181. Mr Martin's analysis finds that the proposal is not consistent with the objectives and policies relating to landscape, visual effects and rural character. However, he concludes the proposal is generally consistent with the objectives and policies relating to nature conservation values, efficient use of energy, efficient use of recreation resources, natural hazards, earthworks, transportation and the Ski Sub-zone.

182. The District Plan discusses outstanding natural landscapes and features as follows:

> "(2) **Protection of Outstanding Natural Landscapes and Features**
>
> The Outstanding Natural Landscapes are the romantic landscapes – the mountains and the lakes – landscapes to which s.6 of the Act applies. The key resource management issues within Outstanding Natural Landscapes are their protection from **inappropriate** subdivision, **use and development**, particularly where the activity may threaten the landscape's openness and naturalness." [My emphasis]

The issue for the Commission is, therefore, whether the proposed gondola is an *appropriate* use and development of the outstanding natural landscape in this particular location.

183. Both Mr Martin and Ms Sedgley (in the application) quoted at some length the relevant provisions of the District Plan. We do not propose to unduly lengthen this decision by repeating all of them here. In summary:

- The objectives and policies seek to avoid, remedy or mitigate the adverse effects of development and subdivision on those areas of the district where the landscape or visual amenity values are vulnerable to degradation (see Policy 4.2.5.1(a)).

- The District Plan seeks to maintain the existing openness of ONLs (Policy 4.2.5.2(a)).

- The District Plan recognises that the landscape provides a backdrop to development while at the same time it provides an economic base for activity (Part 4.2.4(1)).

- The District Plan provides for limited subdivision and development even within an ONL in those areas with higher potential to absorb change (Policy 4.2.5.2).

- The landscape theme of the districtwide landscape objectives and policies is taken up in the Rural General Zone when considering subdivision and development (Policy 5.2.1.1). These policies also seek to protect rural character and amenity and avoid the productivity of rural land being compromised (Policies 5.2.1.2, 5.2.1.3 and 5.2.1.4).

184. Mr Martin has concluded the proposal is inconsistent with the objectives and policies that generally concern landscape, visual effects and rural character. In his view, the gondola proposal is of a nature and scale that is unable to be successfully absorbed into the ONL of the Cardrona Valley. He also considers that the gondola will exacerbate a character not anticipated or encouraged in rural areas due to its prominent visual effects. Mr Martin notes, however, that the location of the proposal "is largely the most appropriate".

185. In his concluding remarks at the hearing, Mr Martin stated that although there will be adverse landscape effects, these effects have been reduced by the additional

changes to the application offered by the Applicant immediately prior to and during the hearing. He concluded that what is required is a balancing of positive and adverse effects and that notwithstanding the lack of expert evidence on the economic effects (at the hearing), he was comfortable that the positives provided outweighed the negative landscape effects. Accordingly, he advised that he had changed his recommendation and was now of the opinion that it is appropriate for the Commission to grant consent.

186. Importantly, Ms Sedgley submitted that the proposal's inconsistency with the objectives and policies that generally concern landscape, visual effects and rural character relate to the "human perceived" effects of structures within the landscape, not to effects on the sustainability of natural or physical resources. She referred us to the decision in *NZ Rail Limited v Marlborough District Council* where Judge Skelton stated:

> *"The preservation of natural character is subordinate to the primary purpose of the promotion of sustainable management. It is not an end or an objective on its own but is accessory to the principal purpose."*

Landscape policies and objectives

187. Ms Sedgley, in her evidence, stated that while the proposal is inconsistent with several of the specific landscape policies and objectives, it finds favour with many of the others and is not contrary or repugnant to the objectives of the District Plan overall. She bases her conclusion on Mr Espie's evidence in relation to landscape effects. Mr Espie has concluded that:

- The proposal will be seen as an "interruption" to the current openness of the landscape and although inconsistent with it, will not block or enclose its openness. The degree of openness that the landscape currently displays will remain unchanged.

- The proposal will be an entirely new element in the landscape and will not combine with other existing elements to create cumulative effects that are more than minor.

- The proposal will bring about change that will not be visually absorbed by the landscape in total; however, the base building will be absorbed to a moderate degree and will only be visible from a 550m stretch of the Cardrona Valley Road.

- Only parts of the gondola system will be visible from most viewing places, which will reduce the effect for the observer. The effects of viewing the gondola will be reduced by observers' expectations of the Cardrona experience, i.e. that of an alpine village.

- The gondola is located in area of existing visual disturbance, not in pristine ONL.

188. We are persuaded by Ms Sedgley's argument in this regard. While it is plain that the proposal does not find support for several of the specific landscape policies and objectives in the District Plan, it is not, in our view, entirely opposed or repugnant to them. In particular, while the gondola will be a visible structure in the landscape, the openness and naturalness of the ONL will, to a large degree, be maintained. Further, as the gondola is designed to provide access to and from the Waiorau Ski Sub-zone, we do not find the development to be inappropriate in this location.

189. As Ms Sedgley has pointed out, the existing Ski Zones within the region require suitable access to achieve their purpose of providing for recreation in consolidated areas in order to avoid similar effects elsewhere. We agree that this proposal will encourage consolidation and growth within an existing Ski Area Sub-zone through the provision of safer and more convenient access.

190. In summary, we conclude that while the proposal does not find support in all of the relevant objectives and policies of the Plan due to the adverse landscape effects, it is not opposed or repugnant to them as a whole. As a large number of the District Plan objectives relate to maintaining the landscape, this is in large part a finely balanced assessment. However, it is plain that the objectives and policies do not exclude appropriate development from all areas of ONL: limited development is

permitted in those areas with a higher potential to absorb change.[4] We concur with Ms Sedgley that the proposal is located in an area with a greater ability to absorb change due to the degree of modification that has already occurred in the area, noting that the gondola line passes through an existing corridor of visual disturbance.

191. Further, it is plain that this proposal actively supports other objectives and policies of the District Plan; in particular, those to relating to open space and recreation and the effective use and functioning of open space and recreational areas in meeting the needs of the district's residents and visitors.

192. The proposal will also support objectives and policies relating to the Ski Area Sub-zone and the efficient use of transport. Objective 6 – Ski Area Sub-Zone, is recorded as follows:

> "To encourage the future growth, development and consolidation of existing ski areas, in a manner which mitigates adverse effects on the environment.
>
> Policies:
>
> 6.1 To identify specialist sub-zoning for ski area activities.
>
> 6.2 To anticipate growth, development and consolidation of ski fields within Ski Area Sub-zones."

193. The gondola will encourage future growth within the Waiorau Ski Area Sub-zone by providing unique, safe and efficient access between the ski area and the Cardrona Valley Road. Future growth and consolidation within the existing Ski Sub-zone is also encouraged by the proposal. We concur with Ms Sedgley that these policies are important in terms of the sustainable management of Ski Area resources for future generations.

194. Overall, we conclude that while the proposal does not support the landscape polices and objectives of the District Plan, it is not opposed or repugnant to the objectives and policies of the plan overall. However, as previously noted, this is a finely balanced assessment due to the considerable proportion of the District Plan objectives and policies which relate to the maintenance and protection of the landscape.

[4] Objective 2(c).

Other Matters

Precedent Effect

195. In *Russell v Dunedin City Council* (C92/2003), a precedent effect was defined as being a decision that will have the effect of:

(i) Undermining the objectives, policies and rules of a District Plan; and

(ii) Making consistent administration of the District Plan difficult.

196. We concur with Mr Martin's assessment that the proposed gondola is a very specific development that is unlikely to be replicated on its facts and which, in any event, will require a site-specific assessment in each case. Accordingly, it is, in our view, highly unlikely that this decision will result in a precedent effect. This conclusion is supported by the detailed balancing of the adverse effects on landscape and the positive environmental compensation considerations, which are very specific to this particular application.

Part 2

197. Part 2 of the Act is concerned with the use, development and protection of natural and physical resources which are to be managed in a way, or at a rate which enables people and communities to provide for their social, economic and cultural well-being, and for their health and safety while:

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil and eco-systems;

(c) Avoiding, remedying or mitigating any adverse effects of activities on the environment.

198. The proposal contains many initiatives that will undoubtedly assist the community to provide for their social, economic and cultural well-being. We accept that the social and economic well-being of the Cardrona community, and indeed the wider district, are appropriate considerations under the enabling aspects of s.5(2).

199. In our opinion, this is one of those rare cases that primarily falls to be determined under s.5 of the Act, largely because of the impact and focus of the assessment matters, objectives and policies of the District Plan which are highly landscape oriented. The "enabling" part of s.5(2), which is essentially concerned with economics, is as important in any analysis as the "while" in s.5(2)(a), (b) and (c) (see above) which focus primarily on protection of the environment. We are satisfied that the enabling aspects of this proposal, which have been fully discussed under positive effects, are sufficiently meaningful to compensate for the adverse impact of the gondola development on landscape values and amenity.

200. This conclusion is further supported by our analysis of the objectives and policies of the District Plan: while the proposed development is inconsistent with several of the landscape objectives and policies, it does, on the whole, support the policies relating to energy efficiency, transport, recreation resources, ski area sub-zones, natural hazards and earthworks.

201. In our view, the gondola will sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations while safeguarding the life-supporting capacity of air, water, soil and eco-systems. Although the proposal is unable to fully mitigate the adverse effect of the development on the landscape, we consider that the positive benefits offered by way of environmental compensation outweigh the adverse effects in this particular case. As a result, we are satisfied that the net conservation benefit is such that the development represents sustainable management in terms of s 5(2).

202. Our discussion of environmental effects was largely concerned with the protection of natural landscapes, which we are required to provide for under s.6(b). As has previously been stated, we consider that this particular development is not

inappropriate in this location and for this purpose. Accordingly, on balance, taking into account the environmental compensation that forms part of this application, we consider the proposal is not contrary to the spirit and intent of s.6(b) when considered in the overall context of sustainable management.

203. In summary, we consider that, on balance, the compensation offered by way of positive benefits, in particular the economic benefits to the local and district communities, outweighs the adverse effects posed by the visual and landscape effects of the gondola. In terms of s.6, we find that the net conservation gain reduces the effects on the ONL to an acceptable level. In this respect, the inclusion of a condition requiring the removal of the gondola and re-instatement of the environment should it cease to be utilised for commercial operations affords some level of protection to the landscape in the longer term. Notwithstanding this, we are of the opinion that our decision to grant consent is a finely balanced one and has only been achieved through our ability to give suitable weight to the positive benefits, in particular the economic benefits, offered by the application.

Conclusion

204. For the reasons outlined above, we consider the gondola to be a potentially important factor in the long-term viability and expansion of the limited resource of the Waiorau Ski Sub-zone, which is one of the few alpine areas available to be developed sustainably for recreational activities. Through appropriate development facilitated by the gondola, which will provide safer, more convenient access to the Ski Area Sub-zone, business and economic opportunities will be provided that will in turn support the communities of the area and district. We are satisfied that the net conservation gains offered by this application are sufficient to outweigh the adverse effects of the gondola on landscape and amenity. As such, in our opinion the gondola promotes the sustainable management of natural and physical resources of this area for future generations.

205. Accordingly, we exercise our discretion in terms of s.104 and s.104B to **grant consent** to this application, subject to the conditions imposed in accordance with s.108 below.

Jane Taylor and **Christine Kelly**
Hearings Commissioners

Date: 15 May 2008

RM070610 One Black Merino Limited
Conditions of Consent

General Conditions

1. That the development be carried out in accordance with the plans **(stamped as approved)** and the application as submitted, with the exception of the amendments required by the following conditions of consent. The approved plans as drawn by Sarah Scott Architects dated 19 April 2007 (except where indicated otherwise) are as follows:

   (a) Location Plan
   (b) Aerial Photo Plan
   (c) Cover Page/Drawing Schedule
   (d) Base Site Plan/Landscape Plan (dated 28 September 2007)
   (e) Base Station Site Sections
   (f) Base Station Elevations
   (g) Base Station Floor Plan
   (h) Top Site Plan/Landscape Plan
   (i) Top Station Floor Plan
   (j) Top Station Elevations
   (k) Preliminary Layout (drawn by Traffic Design Group, dated 28 March 2007)

2. That unless it is otherwise specified in the conditions of this consent, compliance with any monitoring requirement imposed by this consent shall be at the consent holder's own expense.

3. The consent holder shall pay to the Council an initial fee of $240 for the costs associated with the monitoring of this resource consent in accordance with Section 35 of the Act.

4. The consent shall not lapse until ten years after the date of commencement of this consent.

Engineering

5. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.

6. The owner of the land being developed shall provide a letter to the Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under sections 1.4 & 1.5 of NZS4404:2004 "Land Development and Subdivision Engineering", in relation to this development.

7. Prior to the commencement of any works on the land being developed the consent holder shall provide to the Queenstown Lakes District Council for review, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition (5), to detail the following engineering works required:

   a) The provision of access to and from Cardrona Valley Road in compliance with standards set out in Austroads Part 5 – Intersections at Grade and Austroads Rural Road Design. The final design of the intersection is to be approved by Council.

   b) The provision of access to the base station car park from the intersection with Cardrona Valley Road in accordance with NZS4404:2004 with QLDC's amendments and modifications and Austroads Rural Road Design. The width of the carriageway shall be 7m in accordance with recommendations made in the GHD report, dated 11/09/2007.

   c) The provision of access to the Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme. The Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme and the gondola shall share access to Cardrona Valley Road. Access to the Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme shall branch off the gondola access way once the shared access way has dropped to the terrace below the level of Cardrona Valley Road.

   d) The provision of all parking and manoeuvring areas to Council's standards, except where specified otherwise by condition 26.

   e) The provision of a road safety audit in accordance with the Land Transport New Zealand Policy and Procedures for both detailed design and pre opening stages for the intersection and access road.

   f) The provision of alterations to any existing water courses in association with the report prepared by Geoconsulting Ltd, dated 31/01/2007 and any relevant ORC consents.

   g) Relevant ORC consents for the disturbance of natural water courses associated with the tower bases.

   h) The provision of a stormwater disposal system that is to provide stormwater disposal from all impervious areas associated with the Base and Top Stations. The proposed stormwater system shall be designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 and subject to the review of Council prior to implementation.

   i) The provision of an effluent disposal system for the Base Station designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004in terms of AS/NZS 1547:2000 that will provide disposal of effluent to the Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme.

      Alternatively, should the Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme not be operational prior to the opening of the gondola, the provisions of an effluent disposal system to the Base Station designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004in terms of AS/NZS 1547:2000 that will provide sufficient treatment / renovation to effluent from on-site disposal, prior to discharge to land. To maintain high effluent quality such a system would require the following:

- Specific design by a suitably qualified professional engineer.
- Regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of the system to undertake this maintenance.
- Intermittent effluent quality checks to ensure compliance with the system designer's specification.
- Disposal areas shall be located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore.
- Provision to divert the system into the Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme at the time it becomes operational.

The design shall take into consideration the potential for freezing of components within the system.

j) The provision of an effluent disposal system for the Top Station designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004in terms of AS/NZS 1547:2000 that will provide disposal of effluent to the Snow Park Treatment Facility.

Alternatively, should the Snow Park Treatment Facility not be operational prior to the opening of the gondola, the provisions of an effluent disposal system to the Top Station designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004in terms of AS/NZS 1547:2000 that will provide sufficient treatment / renovation to effluent from on-site disposal, prior to discharge to land. To maintain high effluent quality such a system would require the following:

- Specific design by a suitably qualified professional engineer taking into consideration recommendations made in the report prepared by Geoconsulting Ltd, dated 31/01/2007. In general, imported gravels shall be used to form the soakage field to accommodate for the existing poor draining soils.
- Regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of the system to undertake this maintenance.
- Intermittent effluent quality checks to ensure compliance with the system designer's specification.
- Disposal areas shall be located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore.
- Provision to divert the system into the Snow Park Treatment Facility at the time it becomes operational.
- The design shall take into consideration the potential for freezing of components within the system.

k) The provision of a water supply to the Base Station in terms of Council's standards. The building shall be supplied with a minimum of 6400 litres per

day of potable water that complies with the requirements of the Drinking Water Standard for New Zealand 2005.

l) The provision of a water supply to the Top Station in terms of Council's standards. The building shall be supplied with a minimum of 4800 litres per day of potable water that complies with the requirements of the Drinking Water Standard for New Zealand 2005.

m) The provision of fire hydrants with adequate pressure and flow to service the development with a Class W4 fire risk in accordance with the NZ Fire Service Code of Practice for Firefighting Water Supplies 2003. Any lesser risk must be approved in writing by Fire Service NZ, Dunedin Office.

n) The drinking water supply is to be monitored in compliance with the Drinking Water Standards for New Zealand 2005 for the presence of E.coli, by the consent holder, and the results forwarded to the Queenstown Lakes District Council. The Ministry of Health shall approve the laboratory carrying out the analysis. Should the water not meet the requirements of the Standard then the consent holder shall be responsible for the provision of water treatment to ensure that the Drinking Water Standards for New Zealand 2005 are met or exceeded.

8. Prior to the occupation of the buildings, the consent holder shall complete the following:

a) The submission of 'as-built' plans in accordance with Council's 'as-built' standards, and information required to detail all engineering works completed in relation to or in association with this development.

b) The completion of all works detailed in condition (7) above.

c) The consent holder shall obtain any necessary consents from the Otago Regional Council for the water bore and effluent disposal. A copy of this consent shall be forwarded to Council.

d) The consent holder shall provide a suitable and usable power supply and telecommunications connection to the development. These connections shall be underground from any existing reticulation and in accordance with any requirements/standards of Aurora Energy/Delta and Telecom.

9. Prior to commencing works on site, the consent holder shall submit a traffic management plan to Council for approval. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor (certification gained by attending the STMS course and getting registration). All contractors obligated to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan.

10. Prior to commencing any work on the site the consent holder shall install a vehicle crossing, which all construction traffic shall use to enter and exit the site. The minimum standard for this crossing shall be a minimum compacted depth of 150mm AP40 metal. This crossing shall be upgraded in accordance with Council's standards, at the time the base building is constructed on the site.

11. Prior to commencing works, the consent holder shall submit to Council for review and approval a site management plan for the works.

12. The consent holder shall install measures to control and or mitigate any dust, silt run-off and sedimentation that may occur in accordance with the approved site

management plan. These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project.

13. The consent holder shall undertake the excavation, temporary works, retaining walls and batter slopes in accordance with the report prepared by Geoconsulting Ltd, dated 31/01/2007.

14. The consent holder shall provide Council with the name of a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 who is to supervise the excavation procedure. This engineer shall continually assess the condition of the excavation and implement any design changes / additions if and when necessary.

15. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at their expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.

16. Prior to construction of any buildings on the site a Chartered Engineer experienced in soils investigations shall provide certification, in accordance with NZS 4431 for all areas of fill within the site on which buildings are to be founded.

17. Within four weeks of completing the earthworks the consent holder shall submit to Council as built plan of the fill. This plan shall be in terms of New Zealand Map grid and shall show the contours indicating the depth of fill. Any fill that has not been certified by a suitably qualified and experienced engineer in accordance with NZS 4431 shall be recorded on the as built plan as “uncertified fill”.

18. At the completion of the earthworks all earth-worked areas shall be top-soiled and grassed or otherwise permanently stabilised within 4 weeks and in association with recommendations set out in the Ecological Report prepared by Colin Boswell dated May 2007.

19. No earthworks, temporary or permanent, are to breach the boundaries of the site.

20. Upon completion of the earthworks, the consent holder shall complete the following:

    a) The completion of all works detailed in condition 7 above.

    b) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

    c) An engineer’s design certificate/producer statement shall be submitted with regards to any permanent retaining walls on site (if any).

21. A lighting plan shall be submitted to the Council for approval. The lighting plan shall provide sufficient lighting to enable vehicle and pedestrian traffic to manoeuvre safely throughout the car park and base building but shall be low level in keeping with the rural surroundings.

22. No lighting shall be permitted at any time in or on the gondola cars or towers.

23. The consent holder shall surrender resource consent RM050942 Little Bo Peep Limited as volunteered as part of the proposal.

24. Towers 14 and 15 shall be constructed with the use of helicopters rather than requiring the formation of tracks to the tower sites.

25. All tracks formed to facilitate construction of the towers shall be removed and re-grassed within one year of the towers being constructed. Other existing tracks shall be removed and re-grassed in accordance with the application.

Parking

26. The consent holder shall re-submit a parking plan to Council for approval. The parking plan shall accord with the amended parking plan tabled at the hearing and shall indicate:

    (a) 348 parks in the Main Parking Area constructed to Council's standards;

    (b) 130 parks in the north-east of the Main Parking Area constructed in reinforced grass; and

    (c) 287 parks in the Overflow Parking Area constructed in reinforced grass.

27. The consent holder shall obtain Council's approval prior to upgrading any parks required to be constructed in reinforced grass as referenced in condition 26. The consent holder shall provide a report prepared by a suitably qualified and experienced traffic engineer indicating that additional parking is required.

28. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review condition 26, relating to the parking plan, for any of the following purposes:

    (a) To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.

    (b) To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.

    (c) To avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

Archaeological

29. The consent holder shall take due care in the construction of any roads or access tracks to avoid damaging the 1930s gold workings identified on Figure 1 of the Archaeological Assessment of the Waiorau Snow Farm Gondola Proposal Report prepared by Chris Jacomb and Richard Walter and submitted as part of the application.

30. If any archaeological or historical features are discovered during the course of the construction of the proposed gondola system, an archaeologist must be contacted immediately for advice.

Ecological

31. The consent holder shall submit sufficient details and/or plans to Council for approval of the following works to be implemented, as volunteered at the hearing:

    (a) The formation of a walking track from the base building to the existing Snow Farm access road, including the approval of the landowner upon whose land the track is located. The walking track is to be sited after consultation with the Upper Clutha Tracks Trust and the Department of Conservation.

    (b) The consent holder shall provide a plan detailing the 1000 metre (approximately) loop track beginning and ending at the top building to Council for approval. At least five interpretive boards prepared by suitably qualified and experienced persons detailing ecologically significant or interesting information shall be installed.

    (c) The consent holder shall formalise weed and pest management practices currently undertaken, in accordance with the documents provided with the application.

    (d) The consent holder shall install interpretation boards prepared by suitably qualified and experienced persons providing vegetation and historic heritage information in the gondola carriages. The content of the interpretative boards shall be forwarded to Council for approval prior to installation.

    (e) The consent holder shall mark a route between the top building and the Tuohy's Gully track and shall make available public pedestrian access along this route during the gondola's hours of operation. The route shall not be considered a public place in terms of the RMA for the purpose of future resource consent applications.

32. The consent holder shall provide Council with a copy of the approval from the Department of Conservation for any works over Cardrona River marginal strip.

33. Hours of operation shall be between 6am to 11pm only, year round.

34. Notwithstanding condition 33, the consent holder may operate between 6am to 4am on 25 days per year. The consent holder must notify the Council of those occasions operations will extend after 11pm at least seven days in advance, and keep a record of the times operation continues after 11pm.

Landscaping

35. The approved landscaping plan shall be implemented within the first planting season following the construction of the base facilities, and shall thereafter be maintained and irrigated in accordance with that plan. If any plant or tree should die or become diseased it shall be replaced.

36. The consent holder shall remove any rubbish and undertake a general 'tidy-up' of the area surrounding the base building within the subject site prior to implementation of the landscaping plan.

Cessation of Operations

37. Should the gondola be abandoned or cease commercial operations for a period of greater than 12 months all infrastructure associated with the gondola shall be disassembled and removed from the site. The site shall be re-contoured and vegetation rehabilitated to appear consistent with its surrounds. The works required by this condition shall be completed within six months of the gondola being abandoned or ceasing operations for a period of greater than 12 months.

Review

38. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:

    (a) To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.

    (b) To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.

    (c) To avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

Notes

(i) No signage has been proposed as part of this proposal. Should a sign be required in the future, a sign permit from Queenstown Lakes District Council should be obtained PRIOR to erection.

(ii) Development contributions will be required as part of this resource consent. A 'Development Contribution Notice', detailing how contributions were calculated, will be forwarded under separate cover.

(iii) The Council may elect to exercise its functions and duties through the employment of independent consultants.

APPENDIX A – Commissioner's Memorandum (24 January 2008)

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by **ONE BLACK MERINO LIMITED** to construct and operate a gondola transport system to provide access between Cardrona Valley Road and the Waiorau Snowfarm Ski Area Subzone, including associating car parking, earthworks and landscaping.

Council File: RM 070610

MEMORANDUM TO THE PARTIES

206. We were appointed under section 34A of the Resource Management Act 1991 ("the Act") to hear and determine this application.

207. The hearing was held on 9 and 10 October 2007. During the course of the hearing, we indicated that we proposed to undertake a further site visit to inspect the location of two walking tracks volunteered by the Applicant at the hearing, together with the area identified in Mr Sam Lee's evidence as suitable for an expansion of the existing ski field activities.

208. Since the adjournment of the hearing and our further site visit to the proposed development site, we have had the opportunity to thoroughly consider the material and evidence presented by the Applicant.

209. It is apparent that the crux of this decision lies in the extent to which the landscape effects of the proposal may be successfully avoided, mitigated or remedied and correspondingly whether the positive effects resulting directly from the proposal are sufficient to outweigh any landscape effects that are unable to be totally remedied or mitigated. In addition, whether the proposal promotes sustainable management under s.5 of the Act is of central importance.

210. In his s.42A report prior to the hearing, the Lakes Environmental planner, Mr Martin, concluded that the proposal will result in adverse landscape effects that will undermine the natural character of the outstanding natural landscape in which the development is located. He based this conclusion on the Applicant's own landscape assessment (prepared by Vivian & Espie), together with the assessment prepared by Lakes Environmental's landscape architect, Mr Rewcastle. Due to the unique characteristics and nature of the proposed gondola, Mr Martin was of the view that the associated negative effects on the landscape are unable to be totally mitigated.

211. Mr Martin further noted that the proposal results in positive effects, such as improved traffic safety and access to the ski area subzone, economic benefits both during construction and operation that will potentially enhance the sustainability of Cardrona as a township, and the potential enhancement of ecological values. He noted that while he was satisfied that positive benefits may stem from the proposed development, he was restricted in his ability to confidently measure the extent of such benefits as there were no expert reports provided with the application.

212. At the hearing, we were provided with expert evidence in relation to positive effects associated with traffic safety and improvements; the enhancement of ecological values as a result of measures volunteered by the Applicant; environmental effects associated with pollution in the form of dust and CO2 reduction; and the promotion of the objectives and policies of the District Plan, including provisions which aim to mitigate the effects of ski area growth through providing for and encouraging consolidation of existing ski areas.

213. It is useful at this stage to briefly summarise the essential issues in relation to the landscape effects and the counterbalancing positive effects of the proposal.

Assessment of Landscape Effects

(i) The potential of the landscape to absorb development

214. Mr Espie, the Applicant's landscape expert, stated at paragraph 6.3 of his evidence that he considers the landscape will not absorb the proposed

development in a visual sense. Although the base building will be absorbed to a moderate degree and the visibility of the gondola itself will be mitigated in some ways, it will remain prominent to a specific visual catchment that includes approximately 3km of the Cardrona Valley Road. The base building will be "experienced" in a location that is characterised by farmed flats and riparian willows, recognising that there is a degree of human modification that distinguishes this area from the dramatic, natural mountain slopes to the east.

215. Mr Espie notes, however, that most observers in the Cardrona Valley landscape are aware of the recreational use of the valley and the ski area operations that exist at the top of both of its sides, which form part of the perceived character of the valley. He noted that prominent signage exists for the ski areas and that the existing roads to them are plainly visible. He further observed that this knowledge will mitigate the impact of the gondola on the perception of the valley's landscape quality to a degree. We accept Mr Espie's proposition in this regard.

216. At paragraph 8.5, Mr Espie notes that the visual effects from the gondola are confined to the same general corridor that accommodates the existing access road. They are not seen in a pristine area of mountainside. The visual effects on the landscape from the gondola are therefore confined to an area which is already modified by some human disturbance. Again, we accept that this is the case, and that this assists this particular landscape to absorb the proposed development. A gondola in this location will not have the same impact as a gondola on similar terrain not already modified by a visually apparent access road.

(ii) Effects on openness of landscape

217. In terms of openness, Mr Espie believes that most of the gondola towers and the transient gondola cars will be seen in the context of a broadly visible expanse of open landscape. Accordingly, he concludes the degree of openness that the landscape currently displays will remain largely unchanged. Although the gondola will be plainly visible at distances of up to 3 km, we concur with this conclusion in the broad sense.

(iii) Cumulative effects on landscape values

218. Mr Espie notes that existing development in the vicinity of the subject site takes the form of dwellings, roads, commercial farm buildings and so on. The gondola proposal will not continue or expand this type of development, although it will be an obviously unnatural element. In his opinion, the gondola will create an entirely new element in the landscape and its effects on the appreciation of landscape will stem from its own qualities rather than from any combination with existing elements in the landscape. For this reason, he considers that its effects will not be cumulative effects; rather, they will be *individual* effects.

219. In her evidence, Ms Sedgley supported Mr Espie's conclusions, adding that as the gondola is a necessary element for alpine recreation that is known to and is already visually apparent in the general location; this will reduce the possibility of an observer experiencing a negative response to the gondola structures. We consider there is merit in this argument. The Cardrona village and surrounding environs is, following the development of both the Cardona and Snow Farm ski fields, a location that is plainly associated with winter sports. It is expected that further development planned for this area will strengthen this association. In this regard, the submissions of the local residents and businesses in support of the proposed gondola as forming an integral part of this overall transition are an important factor in our consideration.

Lakes Environmental Evidence

220. There was a considerable degree of consensus on landscape effects between Mr Espie and the Lakes Environmental Landscape expert, Mr Rewcastle. Mr Rewcastle acknowledged that the main effect of the proposal is the visual impact of the proposed gondola on landscape values. He agreed with Mr Espie that this effect is more than minor. Although the Applicant has put together a proposal which mitigates the impact of the gondola on the landscape to the greatest degree practicable, it has not been possible to avoid, remedy or mitigate all of the negative visual effects.

221. Mr Rewcastle similarly was of the opinion that the overall decision reduces to a balancing of the positive effects offered by the proposal against the negative effects associated with landscape values.

222. At the conclusion of the Applicant's case and after hearing from submitters both in support and opposed to the application, Mr Martin advised that although it was acknowledged that there will be adverse landscape effects, these have, in his opinion, been reduced since the application was lodged by measures proposed at the hearing. Having heard the evidence in relation to the positive effects of the proposal, noting the omission of any economic evidence together with additional positive benefits offered by the Applicant at the hearing (including access tracks), Mr Martin advised that he was comfortable that the positive measures provided outweighed the negative measures associated with the landscape. Accordingly, he recommended to the Commission that consent be granted, subject to appropriate conditions.

Assessment of Positive Effects

223. Mr Espie, Ms Sedgley, Mr Rewcastle and Mr Martin have all commented to some degree on the positive effects generated by the proposal. As previously mentioned, expert evidence has been provided to support and substantiate many of the positive effects expected to be accrued, which has allowed the Commission to place appropriate weight on these anticipated outcomes as appropriate.

224. We summarise the positive effects of the proposal briefly as follows:

(a) Positive effects supported by expert evidence:

- Potential for the consolidation of activities in the ski field zone.
- The potential expansion of recreational benefits and opportunities, including summer mountain biking.
- Reducing use of private vehicles and CO2 omissions.
- Safety and convenience.
- Significant potential for ecological enhancements.
- Reduction of pollution in the form of dust.

(b) Positive measures volunteered by the Applicant:

- Removal and re-grassing of a number of existing vehicle access tracks.
- Surrendering of resource consent RM050942 that provides for gravel screening (this consent provides for extensive visual disturbance on the Cardrona Valley floor over a long period).
- Proposed native planting, noting that the area of proposed native riparian planting totals approximately 6,800m² in area.
- The removal and control of exotic weed species.
- The two public walkways offered to be developed on the Applicant's land.
- A covenant on the upper terrace, which is to be retained in pastoral form.

(c) Positive effects not supported by expert evidence:

- Economic effects during the construction and operation of the gondola due to the creation of employment and related activities.
- An evaluation of the net economic impacts of the proposed development on users of the ski field and the wider community.
- The level of economic efficiency brought about by the utilisation of identified resources.
- Efficient use of ski zone resources, including the economic benefits associated with consolidation of ski activities and zone capacity.

225. Ms Sedgley commented, at paragraph 36 of her evidence, that:

> *"We know that there will be positive economic effects during the construction and operation of the gondola due to the creation of employment and the sustained growth and visitors to the area. We do not know the extent of the economic benefit, but a qualified economist will not be able to tell us this with certainty either. This is because economic quantification would be based only on assumptions on growth that the Applicant would provide."*

226. Both Mr John Lee and Mr Sam Lee gave some details as to the potential growth of the ski field that would be facilitated by the development of the gondola. Mr Sam Lee stated, at paragraph 9 of his submission, that:

> *"The current ski area policy zone extends far to the south and to excellent terrain for beginner and intermediate facilities, into terrain where we know we can install three chairlifts which will allow us to cater to 200,000 additional skiers and snowboarders per season. While this growth won't be instant, we do foresee a rapid growth for this business like the one seen for Snowpark NZ."*

227. Notwithstanding Ms Sedgley's comments on the potential value of expert economic evidence, we remain concerned that this is a vital omission in the Applicant's case. Whilst we accept that logically there will be positive economic benefits arising from the proposed gondola development, both in the short and longer term, we are unable to assign any significant weight to the anticipated positive effects (as subjectively described by many of the Applicant's experts and submitters) due to the absence of any supporting expert evidence. For example,

Ms Sedgley commented that the gondola will be an important factor in determining the long-term viability and expansion of the limited resource of the Waiorau Ski Subzone, which is one of the few alpine areas available to be developed for recreational activities. Similarly, Mr Sam Lee discussed the potential for development of a further downhill ski field, which we accept (following our site visit) is feasible from a practical point of view (ignoring potential financial hurdles). However, we were not presented with any evidence of the economic benefits which might arise to either ski field users or the wider community as a result of such developments. Consequently we have no objective sense of the longer-term economic impacts of further ski field and associated development that may be facilitated by the gondola on the sustainable management of the physical and natural resources of this area. It is our preliminary view that the benefits to ski field users and the community (both presently and as a result of further possible development) are potentially significant, and may add considerable weight to the proposal, particularly in terms of a Part 2 analysis. The potential availability of the subzone resources to a wider number and range of users at a similar cost, in conjunction with the other positive benefits that would be delivered by the gondola, is considered to be a potentially compelling argument if sustainable.

228. Put simply, without evidence of the economic benefits to members of the public and the wider community, there is presently nothing to distinguish this application from one submitted for, say, largely private use. For example, if the application was intended to benefit only a limited subset of private users, such as the vehicle testing operations, it is potentially unlikely that the positive effects would, in our view, outweigh the adverse landscape effects associated with a gondola on this site (acknowledging that these cannot be avoided, remedied or mitigated any further). It is the potential of the gondola to provide recreational access to the ski field subzone to a wide variety and number of public users (both domestic and international) in an economically efficient way, and the associated flow-on economic effects to the wider local and regional community, that is the key positive effect in mitigation. In our view, there is insufficient evidence of this critical positive effect to give it any more than nominal weight in our analysis.

229. In contrast to Ms Sedgley's views as expressed earlier, we do not consider that economic benefits need to be quantifiable (in the sense that she is referring) to be given weight by the Commission. We are fully aware that economic forecasts are often based on assumptions and that it is often impossible to accurately quantify the economic benefits of a proposal or the benefits to the greater community. However, it remains that in evaluating a proposal where economic benefits are an important factor, both in terms of direct positive benefits and in supporting a s. 5 analysis, expert evidence will assist a Commission to objectively identify benefits and to assign these appropriate weight in the overall analysis. Accordingly, there should ideally be some independent, objectively derived economic foundation to support the economic claims made by the Applicant, based on the most reliable information and forecasts available. Further, we consider that the economic benefits associated with the construction and operation of the gondola are reasonably quantifiable. Similar evidence was provided at the Treble Cone gondola project hearing, RM 060587.

Current Position of the Commission

230. We have come to the conclusion that as we are unable to ascribe any significant weight to the potential positive economic effects of the proposal, the application remains very finely balanced. However, if expert evidence was provided to substantiate the Applicant's assertions in relation to the positive economic effects associated with the potential growth of the ski field for users, the construction and operational costs of gondola, the sustainability of the local and wider community as a result of the forecast continued increase in local and international visitors to the ski field facilitated by the gondola and the corresponding economic and flow-on community benefits, we anticipate that we would be comfortable to grant consent to this development.

231. Accordingly, we wish to give the Applicant the opportunity to provide such economic evidence if it chooses to do so.

232. We note that the hearing stands adjourned. The Applicant is entitled to a decision on the case as it stands and that can be given if requested. The purpose of this memorandum is to summarise the main issues as we have distilled them from the evidence and to provide the Applicant with the opportunity to submit further

information to address our concern in relation to the weight that we are able to assign to the positive economic aspects of the proposal. However, we reiterate that the proposal as it currently stands is very finely balanced and a decision by the Applicant not to provide any further economic evidence does not necessarily mean that consent will be refused. Rather, the provision of expert evidence that supports the assertions made by Ms Sedgley, Mr J Lee and Mr S Lee in relation to economic benefits will, in our view, make the difference between a reasonably persuasive case and a very finely balanced one.

233. In terms of process, we envisage that if the Applicant wishes to submit further information, this should be done through Lakes Environmental which will make it available to submitters for their written comment within 10 working days. Lakes Environmental experts may also wish to provide us with assessments of any further information. Comments from submitters and assessments from Lakes Environmental would be made available to the Applicant for a reply. We stress that we do not envisage a need to reconvene the hearing but would consider a request for that from any party.

234. It would be helpful if the Applicant would advise us, through Lakes Environmental, whether further information is going to be submitted and the anticipated timeframe for that, or whether a decision is required on the case as it stands. If the latter course is elected, we expect that the decision will be issued within 15 working days from the date of such advice.

Jane Taylor and **Christine Kelly**
Hearings Commissioners

Dated 24 January 2008

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by **ONE BLACK MERINO LIMITED** to construct and operate a gondola transport system to provide access between Cardrona Valley Road and the Waiorau Snow Farm Ski Area Subzone, including associating car-parking, earthworks and landscaping.

Council File: RM 070610

ADDENDUM TO DECISION
Dated 16 May 2008

1. Unfortunately, as a result of the considerable time pressures the Commission faced in finalising the decision to grant consent to this application, an important discussion relating to the meaning and content of "environmental compensation" in terms of the Resource Management Act 1991 ("the Act") was omitted from the final draft released on 14 May 2008.

2. While this technical point is not in any way material to the overall decision to grant consent, we consider it necessary to explain our approach more fully to avoid any confusion.

3. The approach of the Commission to the analysis required, set out at paragraph 66, was to first determine the extent to which the landscape effects of the proposal may be avoided, remedied or mitigated. At paragraph 137 we concluded that, having regard to the expert evidence, the gondola will bring about change that will not be visually absorbed by the environment. The associated adverse environmental effects on the outstanding natural landscape are, as a result, unable to be remedied or mitigated.

4. We then considered whether the positive effects of the proposal are sufficient, on balance, to "outweigh" the adverse landscape effects, and, overall, whether the proposal comprises sustainable management in terms of Part 2 of the Act.

5. Consideration of "positive effects" is specifically mandated under the assessment criteria relating to outstanding natural landscapes, set out in part 5.4.2.2(2) of the District Plan. As noted at paragraph 139, section 104(1)(a) of the Act requires all effects on the environment to be considered, whether positive or negative. Accordingly, the positive social and economic effects generated by an application are a relevant consideration in the assessment of a discretionary activity.

6. In our discussion of positive effects, beginning at paragraph 139, we set out all of the relevant matters relating to this application to which we were able to ascribe weight. At paragraph 171, we discussed the "balancing" of the positive effects generated by the proposal against the adverse landscape and visual effects that are unable to be fully remedied or mitigated. We concluded that the positive effects were sufficient to outweigh the adverse landscape effects, and that accordingly it was appropriate to grant consent.

7. During the discussion of balancing of effects, and indeed, the remainder of the decision, we used the term "environmental compensation" as a synonym for the contribution made by all of the positive effects in the balancing exercise. However, we acknowledge that not all of the positive effects may necessarily comprise environmental compensation in the sense that concept has been developed by the fledgling case law in New Zealand. Accordingly, we consider it necessary to clarify our approach for the avoidance of any confusion.

8. It is generally accepted that environmental compensation is recognised as a means to address negative environmental impacts in the wider context of the sustainable management debate.[1] The term "environmental compensation" has been defined as: "*The provision of positive environmental measures to off-set, balance or otherwise atone for the adverse environmental impacts of some action, particularly development projects*".[2] However, it is not entirely clear if the term "positive environmental measures" is intended to comprise all positive measures, including social and economic gains. For example, the Environment Court has used the term to draw a distinction between financial contributions imposed by section 108 and other positive effects, which were described as environmental compensation.[3]

[1] See paragraphs 172 and 173 of the decision.
[2] Memon and Skelton, "*The Practice of Environmental Compensation under the Resource Management Act 1991: A Comparison with International Experience*", RMLA website.
[3] Remarkables Park Limited v QLDC (C161/2003).

9. Having reviewed very limited the case law in this area, the term "environmental compensation" generally appears to refer to positive effects associated with environmental outcomes such as measures offered for the protection of areas with high ecological values, the avoidance of other adverse environmental effects (such as dust and pollution) and potentially the protection of alternative land with high conservation values (*J F Investments*). Accordingly, while positive social and economic effects remain critically important in the balancing exercise, on one school of thought these effects may not be considered, on a purely technical analysis, a form of "environmental compensation". However, by the inclusion of "people and communities" as a constituent part of "eco-systems" under the definition of "environment" in section 2 of the Act, it is equally arguable that in the New Zealand context, environmental compensation does include positive effects on people and communities, which in this case includes the safety, convenience and economic effects generated by the proposal.

10. We have adopted the latter approach for the purposes of this decision. Accordingly, while on a strict academic interpretation, positive effects that generate environmental gains connected to the land (which include the reduction in dust and pollution, the tracks, ecological protection and surrendering of resource consent RM 050942) should perhaps be separated from social and economic effects in our discussion, for efficiency and clarity we have included *all* positive effects connected with the environment (as defined in the Act) in the term "environmental compensation".

11. While we acknowledge that this is an evolving area of law in which the principles are not entirely clear, it is to a large degree a matter of semantics: notwithstanding the approach adopted, it is plain that all positive effects that are not a direct form of mitigation (whether included in the term "environmental compensation" or not) are required to be balanced against the adverse environmental effects of a proposal when reaching a decision.

12. The same approach has been applied to the related term "net conservation gain" in our decision.

13. As this is an evolving area of law, and one that is central to this decision, we consider it important to clarify our approach for the avoidance of confusion. We re-iterate that this technical debate does not in any way affect our decision to grant

consent to this application. However the term “environmental compensation” is ultimately defined by the Courts, it is plain that all positive effects are required to taken into account in reaching a considered decision.

Jane Taylor
16 May 2008

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

12/11

AP No. 169/93

UNDER the Resource Management Act 1991

A N D

[redacted]

IN THE MATTER of an appeal under section 299 of that Act against an interim decision, and report and recommendation, of the Planning Tribunal dated 11 June 1993

BETWEEN NEW ZEALAND RAIL LIMITED a duly incorporated company having its registered office at 4th Floor, Wellington Railway Station, Bunny Street, Wellington, transport operator

Appellant

A N D MARLBOROUGH DISTRICT COUNCIL a territorial authority pursuant to section 37N of the Local Government Act 1974

First Respondent

A N D PORT MARLBOROUGH NEW ZEALAND LIMITED a duly incorporated company having its registered office at 14 Auckland Street, Picton, port operator

Second Respondent

Hearing: 27, 28 and 29 September 1993

Counsel: P T Cavanagh QC and D H Jenkins for Appellant
R D Crosby for First Respondent
R A Fisher and M MacLean for Second Respondent
Sally Brown for Coal Corporation of New Zealand Ltd

Judgment:

JUDGMENT OF GREIG J

This is an appeal by New Zealand Rail and a cross-appeal by Port Marlborough against the decision of the Planning Tribunal dated 11 June 1993. It concerns the proposals and plans of Port Marlborough to develop and expand the port of Picton into the neighbouring Shakespeare Bay and to construct and establish there a port facility to service the export of bulk products, including timber and coal. New Zealand Rail has opposed the proposal in its entirety throughout. It appealed to the Tribunal against the original decisions of the local authorities concerned giving approval to the development, as far as it related to the expansion of the port for the purpose of the export of timber. That appeal was disallowed by the Tribunal. The Tribunal went further than the original approvals and recommendations and allowed the appeal by Port Marlborough against the refusal at the local authority's level to approve the extension and expansion of the port as a coal export service and approved that subject to some terms. New Zealand Rail appeals against the whole of the decision of the Planning Tribunal. Port Marlborough cross-appeals against that part of the decision which determines some conditions of review which are to be contained in the latter.

The decisions given by the Tribunal were not final but comprised interim decisions subject to amendments, modifications and the settlement of the terms of conditions which were necessary to comply with the rulings and observations of the Planning Tribunal in the course of its decision. Furthermore, a part of the decision is a report pursuant to s 118 (6) of the Resource Management Act 1991 directed to the Minister of Conservation as to the recommendations made by a joint hearing committee. Nothing turns on the formal nature of the decision or the inquiry made by the Planning Tribunal or undertaken by the Planning Tribunal. It was common ground that this Court was properly seized of the issues of law raised on the appeal.

Port Marlborough is a limited liability company established under the Port Companies Act 1988. It has two shareholders, the Marlborough District Council as to 92% of the shares and the Kaikoura District Council as to 8% of the shares. Port Marlborough operates the Picton Harbour which caters for a wide range of recreational and tourism activities, and commercial fishing fleets. It also caters for bulk shipping cargoes including, particularly, outgoing cargoes of logs, sawn timber, salt, tallow, meat and coal, and incoming cargoes of cement. Most importantly, however, it is the railhead for the top of the South Island with a ferry terminal for the New Zealand Rail Service between Wellington and Picton for passengers, roll-on/roll-off cargo, stock and other general cargo. Approximately

99% of the tonnage of cargo going through the port is carried through the rail ferries.

Shakespeare Bay is adjacent to Picton Harbour, separated by a peninsula. The bay, which is said to comprise between 60 and 70 hectares, is described in the decision as something of a backwater. Upon the isthmus of the peninsula in a saddle there is a derelict freezing works. There are a few dwellings but the greater part of the area seems to be taken up by reserves and rural uses. The bay has natural deep water. The Port Marlborough proposal is to excavate the saddle on the isthmus to provide road access from the Picton Harbour to Shakespeare Bay, to reclaim an area of some 8 hectares at or near the base of the peninsula. That will, in the end, provide a total area of flat land of approximately 11.4 hectares. It is then intended to provide storage, marshalling back-up areas and other facilities for two deep water berths, one to be dedicated to the export of timber and the other for bulk products generally but in particular for coal.

To obtain the necessary approvals under the Act, Port Marlborough made application to what was then the Nelson/Marlborough Regional Council and to the Marlborough District Council for a number of resource consents. They included applications for coastal permits for the reclamation and development and for the disposal of storm-water into Shakespeare Bay. An application was made for a discharge permit to discharge contaminants to the air and land use consents for the various earthworks and land clearance and for non-complying activity. These applications were duly notified.

In the course of the procedure, beginning with these various applications, the Director-General of Conservation, acting pursuant to s 372 of the Act, issued a direction which required the activities for the two coastal permits to be treated as applications for restricted coastal activities. This transferred the decision to grant these consents to the Minister of Conservation after considering the recommendations of a committee of the Regional Council made pursuant to s 118. As a result it was decided that a joint hearing committee should deal with all the applications and in due course a public hearing was held by that joint hearing committee on 2 and 4 March 1992. Evidence and submissions from a large number of bodies and persons, who had given notice of their desire to take part in the procedure, were heard. The joint hearing committee made its recommendation to the Minister of Conservation that the two coastal permits should be granted except insofar as the consent was sought for the construction of a coal berth and

an associated mooring dolphin. Other consents, as applied for, were granted subject to detailed conditions which were then promulgated. The matter came before the Planning Tribunal by way of appeal against the grant of consents and inquiries against the recommendation of the restricted coastal activity which is treated in all respects as if it was an appeal pursuant to s 118 (6) of the Act.

The distinctive nature of the various appeals and inquiries posed some potential problem to the Planning Tribunal, but if I may say so, with respect, they decided sensibly and properly that all matters should be considered together and be reported upon in one document. As was made clear in their decision, the principal issue in the case was whether land use consent should be granted to allow the port facilities to be established.

After a number of pre-hearing conferences which assisted in clarifying the issues and the parties who remained interested in the matter, the substantive hearing before the Tribunal took place between 1 and 18 February 1993. The principal parties were all represented by counsel. The Tribunal heard detailed evidence from 39 witnesses who were subjected to cross-examination by counsel. As the Tribunal in its decision was able to say, with confidence, "... this proposal has now been the subject of close scrutiny in the course of two detailed hearings, ..." The decision of the Tribunal is set out in 203 pages and deals fully and in close detail with every issue, whether of fact or law, which had been raised before it.

The appeal and the cross-appeal are brought pursuant to s 299 of the Act. They are limited to a point or points of law and that must never be lost sight of. It is often appropriate and necessary for an understanding of the issues at law that the facts should be canvassed but the decisions on the facts are for the Tribunal and not for this Court. It is seldom the case that a decision on the facts can qualify as a question of law or a point of law. In particular, the weight to be given to the evidence is especially a matter for the Tribunal alone.

New Zealand Rail raised a number of points of appeal which, as is not unusual, became refined in the course of submission and one of the points originally raised was not pursued at all. I will deal with each of the points in order but not necessarily the order in which they were presented by Mr Cavanagh Both the District Council and Port Marlborough opposed the appeal, supported the Tribunal's decision and made independent submissions. Coal Corporation joined

the appeal late and without opposition. It adopted the agreement and submissions of the other respondents.

The first point, as presented in Mr Cavanagh's submissions, was "whether the Planning Tribunal misdirected itself or erred in law when holding that a relevant resource management instrument for the purposes of its decision, and report to the Minister of Conservation, was the proposed Regional Coastal Plan as it existed prior to Variation 3."

It was common ground on this appeal that the Tribunal correctly dealt with all the five resource consents as integral parts of the one development, all as non-complying activities, and that the tests to be applied in respect of each are substantially the same except for two small particulars. In that event, therefore, s 105 (2) (b) of the Act applied as a threshold or a prerequisite to the Tribunal's consideration of the other matters to be considered pursuant to s 104. Sections 104 and 105 have been amended by the Resource Management Amendment Act 1993 (see ss 54 and 55 (2)) but the original versions of these sections still apply to this appeal. Section 105 (2) (b) is as follows:

> " 105. (2) A consent authority shall not grant a resource consent— ...
>
> (b) For a *non*-complying activity unless, having considered the matters set out in section 104, it is satisfied that—
>
> (i) Any effect on the environment (other than any effect to which subsection (2) of that section applies) will be minor; or
>
> (ii) Granting the consent will not be contrary to the objectives and policies of the plan or proposed plan; .... "

The Port conceded, as clearly was the case, that the effect on the environment by the proposed development would not be minor so that the objectives and policies of the plan or proposed plan became important.

There were five planning instruments against which the applications were to be considered under this subsection. The first of these was the Marlborough Regional Planning Scheme. On the coming into force of the Act on 1 October 1991 the scheme ceased to have effect pursuant to s 366A except that pursuant to s 367 (1) in carrying out its functions under ss 30 and 31 of the

Act, a territorial authority shall have regard to its provisions. The second was the Marlborough County District Scheme and the third was the Picton Borough District Scheme Review No. 1. Those were deemed to be transitional district plans by virtue of s 373 (1) of the Act, for the Marlborough District Council and divided into the two sections. The last and most relevant to this particular point of appeal, was what was the former proposed Marlborough Sounds Maritime Planning Scheme which was being undertaken pursuant to Part V of the Town and Country Planning Act 1977. Under s 370 of the Resource Management Act that became a Proposed Regional Coastal Plan.

That scheme was publicly notified in July 1988 by the Marlborough Sounds Maritime Planning Authority. The Planning Authority was, at the time, the Marlborough Harbour Board which was the predecessor of Port Marlborough. From November 1989 until 30 June 1992 the scheme was administered by the Nelson/Marlborough Regional Council and thereafter has been administered by the Marlborough District Council. There were a number of objections made to the scheme as originally notified. Some of these objections and submissions were heard by the Planning Authority and appeals were lodged with the Planning Tribunal in some instances. In September 1991 a document described as Variation No. 3 to the proposed maritime scheme was publicly notified. The purpose of this variation was to withdraw all those parts of the scheme that were still the subject of objections that had not been heard. Among other things, parts of the scheme that were withdrawn were those parts which included proposals and policies for port development generally and particularly in relation to Shakespeare Bay. In October 1992 the Marlborough District Council, as Planning Authority, resolved, pursuant to s 104 (6) of the Town and Country Planning Act, to withdraw all proposed variations including Variation 3. By that means it purported to reintroduce into the proposed Regional Coastal Plan the proposals originally included for port development in Shakespeare Bay.

In essence, it is the appellant's contention that the Planning Authority had no jurisdiction to withdraw Variation 3 for two reasons. The first is that, in accordance with s 104 (6) of the Town and Country Planning Act, the Planning Authority's jurisdiction was limited to withdrawal of the whole of the proposed scheme and not just a part of it. The second reason is that, pursuant to Reg 48 (3) of the Town and Country Planning Regulations 1978, the variation had merged with the proposed Regional Coastal Plan. In other words Variation 3 had ceased to be an independent document and could only be withdrawn by withdrawal

of the whole of the proposed scheme or by another variation which was not the step taken.

Under Part V of the Act, after the constitution of a maritime planning area and its planning authority, a preliminary statement of intention to prepare a maritime planning scheme was to be published within six months or within such further time as the Minister might allow. Unlike District Schemes, there was no express obligation to provide and maintain a scheme. Under that part of the Act there was no power for the District Authority to withdraw a proposed scheme in its entirety. The next step was the preparation and public notification of the Draft Scheme pursuant to s 104. The scheme had to make provision for the matters referred to in the Second and Third Schedules of the Act and to be prepared in accordance with regulations. Under s 105 of the Act the provision of ss 45 to 49 of the Act were applied so far as they were applicable and with the necessary modifications. Those sections provided for submissions and objections, alterations and variations of the schemes and the way in which consideration and hearing of submissions and objections should be made and, finally, a right of appeal to the tribunal.

Section 47 (4) of the Act, dealing with variations, provided that:

> " The Council may at any time before a proposed variation is approved, or (if an appeal has been lodged in respect of it) before the Tribunal has made a decision on the appeal, withdraw the proposed variation. "

Following the hearing of the submissions and objections, in accordance with the regime applicable to District Schemes and subject to any amendments required, the Planning Authority then approved the scheme and it became operative.

Section 109 provides authority or jurisdiction to alter by way of change, variation and review of any planning scheme Subsection (4) of s 109 provides:

> " All the provisions of this Part of this Act relating to the preparation and approval of maritime planning schemes shall, so far as they are applicable and with the necessary modifications, apply to every review "

And subs (1) provides likewise in respect of any variation or change.

On a proper reading of the Act the Planning Authority had jurisdiction to change and vary and to withdraw a variation at any time. By reference, the power to withdraw a variation contained in s 47(4) was incorporated into the scheme of maritime planning and applied, expressly, pursuant to s 109 (1) and 105. The provision of s 104 (6) as to withdrawal of the whole of the scheme was an additional right or authority, a right which was not available to District Councils or other Authorities under the earlier part of the Act, whose obligation was to provide and maintain a scheme. It is not the intention of subs (6) of s 104 to limit but is to extend the jurisdiction and rights of the Maritime Planning Authority so that it could withdraw the whole of a scheme and start anew.

Regulation 48 of the Town and Country Planning Regulations 1978 provides as follows:

> " 48. (1) Where the Maritime Planning Authority wishes to vary the draft maritime planning scheme or to change an operative scheme it shall, so far as it is applicable and with the necessary modifications, follow the procedure set out in regulations 46 and 47 of these regulations:
>
> Provided that the time for receiving submissions and objections shall be not less than 6 weeks after the date of public notification.
>
> (2) Every variation and every change shall include a report setting out the reasons for the variation or change and the likely economic, social and environmental effects. Copies of the report shall be included with the public notice and a copy of the variation or change sent to the bodies and persons referred to in regulation 46 (5) of these regulations.
>
> (3) Every variation of a draft scheme shall be merged in and become part of the scheme as soon as the variation and the scheme are both at the same stage of preparation:
>
> Provided that, where the variation includes a provision to be substituted for a provision in the scheme against which an objection or appeal has been lodged, that objection or appeal shall be deemed to be an objection or appeal against the variation. "

Paragraph (3) is to be compared with the corresponding regulation about the variation of district schemes, that is to say reg 28 (3). That opens with the words, "Except as expressly provided in the Act," and instead of referring to the stage of preparation speaks of the same procedural stage. The authority and effect of reg 48 is procedural but it cannot alter or amend the effect of the statute to which it is subordinate. There is nothing in the regulation which expressly provides against a withdrawal of a variation. It is implicit, so it is said, that by requiring merger then the withdrawal is no longer possible but that does not follow dramatically or logically. Although a variation has merged it can still be extracted and excised from what has gone before.

In any event the powers of regulation-making under s 175 of the Town and Country Planning Act were limited to those regulating the procedure to be adopted with respect to the preparation, recommendation, approval, variation and change of maritime planning schemes. That would not permit a regulation which provided substantively for the or against the withdrawal of a variation once made.

There was an argument as to whether, in the circumstances of this case, the scheme, as far as it had gone, and the Variation 3 were at the same stage of preparation. However I have already noted the distinction in the regulations and the reference on the one hand to the stage of preparation and the procedural stage. In Part V there is particular reference to preparation and approval in various sections, as I have already cited, and that seems to point to a particular distinction. It is not necessary to make a decision on this point but I would incline to the view that the variations and the scheme itself were at the same stage of preparation although not at the same factual procedural stage.

In the result the Authority had jurisdiction to withdraw Variation 3 and there being no further challenge to what it did that variation was properly withdrawn and the Tribunal made no error of law in considering that planning instrument in its condition with Variation 3 withdrawn, that is to say in its original terms.

The next point of appeal was whether the Planning Tribunal misdirected itself as to the interpretation of the relevant objectives and policies of the relevant plans when holding that the development was not contrary to those objectives and policies. In its decision the Tribunal, having identified the relevant

resource management instruments and dealt with the question of Variation 3, then undertook a lengthy discussion of the particular parts of those instruments and the evaluations proffered in evidence by the planning witnesses. There is a detailed comparative discussion of the evidence, in particular of Mr R D Witte, Senior Planner with the Marlborough District Council and later Senior Strategic Planner with the unitary authority on the one hand, and on the other of Mr D W Collins, Planning Consultant called by New Zealand Rail.

The Tribunal gave its summary and conclusions at p 164 to 166, referring to each of the planning instruments and coming to a conclusion as to their overall effect, concluding at p 167:

> " It is our judgment that, taken overall, the relevant objectives and policies earlier discussed support such a development in this locality. Indeed, in the proposed regional coastal plan which is relevant to the land use consent because it refers specifically to port development as well as an associated reclamation, it is indicated that Shakespeare Bay might be developed to a much greater extent than Port Marlborough's present proposal. "

And concluded that the -

> " ... the consent to port development ... would not be contrary to those objectives and policies. "

Mr Cavanagh, in the course of his submissions, dealt in some considerable detail with the provisions of the various resource management documents, drawing attention to various parts of them and contending for their meaning and effect. By way of submission he interpreted and demonstrated the various policies and objectives, either expressed or implied in those various documents, analysing each of them and making submissions overall about them individually and collectively. He conceded that the appellant cannot challenge the Tribunal's factual findings in themselves or any value judgment, as he put it, that the Tribunal made as a result. The way he put it, however, was that this was not a challenge on the facts or the findings on the facts, but asserted that the Tribunal had misdirected itself in its interpretation of the relevant objectives. It was the appellant's submission that a proper consideration of the totality of the objectives

and policies in the relevant resource management documents did not support the establishment of such a major project as that proposed by Port Marlborough.

It was not suggested that the Planning Tribunal had failed to have regard to any of the documents or the content or any part of the content of them. It was not contended that the Tribunal had made any error in law in construing s 105 (2) (b) (ii), or that it had incorrectly construed the words "objectives and policies" and the word "contrary", or at least there was no challenge to that. It was not suggested that this was a case of unreasonableness in the *Wednesbury* sense (*Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223) although Mr Cavanagh did express himself in his submissions that the finding by the Tribunal was not one open to a reasonable tribunal properly directed as to the correct interpretation of the objectives and policies in the various relevant documents.

In the end what the appellant submitted was that the proposed development is contrary to the policies and objectives of the relevant resource management documents and that the Tribunal was in error in reaching the opposite conclusion. That was no more and no less than a challenge on the factual findings. It was a challenge as to the inferences and the conclusions drawn by the Planning Tribunal from the facts before it. It was for them to give the weight that they thought fit, both to the evidence that was given and to the very words and meanings of the documents before them. That they attended to the evidence and the documents is plain. That they came to conclusions upon them without error in law is equally plain.

I have myself considered the various words and documents and the tenor of the conclusions reached by the Tribunal. Among the matters that have to be borne in mind, and which I think was clearly in the minds of the Planning Tribunal, as the essential question was whether the consent to the proposed use and development was "contrary" or not to the relevant objectives and policies. The Tribunal correctly I think, with respect, accepted that that should not be restrictively defined and that it contemplated being opposed to in nature different to or opposite. The Oxford English Dictionary in its definition of "contrary" refers also to repugnant and antagonistic. The consideration of this question starts from the point that the proposal is already a non-complying activity but cannot, for that reason alone, be said to be contrary. "Contrary" therefore means something more than just non-complying.

It is relevant here to observe what was said by the Court in *Batchelor v Tauranga District Council (No. 2)* (1992) 2 NZRMA 137 at p 140:

> " There are likely to be difficulties in reconciling the regime of the new Act to an operative district scheme created under and treated as a transitional plan, for plans under the new Act are intended to be different in concept and form from the old district schemes. Yet during the transitional period, the old must be treated as if it were the new. That is a necessary consequences of the statutory situation and must be dealt with in a pragmatic way. "

In my view this point is not a point of law at all but is a question of fact. Insofar as it might be described as a point of law, I am satisfied that there was ample material before the Tribunal which justified the factual finding and the conclusion that it came to, namely, that the proposal and the development was not contrary to the policies and objectives of the plans and the documents.

The next point of appeal was whether the Planning Tribunal misdirected itself in holding that the Act "does not require the proposed development to be dealt with by way of plan change procedure". This issue was a fundamental plank of New Zealand Rail's position in its opposition to the proposed development. It had submitted, as it did before the Court, that it was inappropriate that a proposal of this magnitude and nature should be advanced and concluded by way of a resource consent application as a non-complying activity. As a major development with substantial impact on Picton, Marlborough and the whole of the South Island it was said that it needed to be assessed in the context of a plan change procedure under which, in particular, the provisions of ss 74 and 32 would have been important matters for consideration and disposal.

This was dealt with at some length by the Planning Tribunal. In particular the Planning Tribunal compared the provisions which apply to the plan change procedure under the new Act with the former provisions under the Town and Country Planning Act and concluded at the top of p 458 as follows:

> " Whereas under earlier legislation a disappointed developer had no recourse if consent to a specified departure was refused, unless the territorial authority was prepared to take the initiative by promoting a

> scheme change. Now, if a resource consent is refused, a disappointed developer can itself take steps to have the Plan changed. This is entirely consistent with a finding that to grant a resource consent would be contrary to the relevant objectives and policies of the Plan. "

The Tribunal concluded that the Act does not exhibit a preference for plan change procedures over resource consent procedures.

I think that little assistance is to be gained in this regard from a consideration or a comparison with the previous legislation. This is new legislation which, as the full Court in *Batchelor* said, imposes a significantly different regime for the regulation of land use by territorial local authorities. The Court went on to refer to the concept of direction and control under Town and Country Planning Act and distinguished the movement towards a more permissive system of management focussed on control of the adverse effects of land use activities. The Act expresses importantly the objectives and the purposes of the Act in Part II which sets the scene overall for the construction and application of the Act.

What the appellant submitted was that, where a planning consent application will have implications of significance beyond the proposed site, the matter should be dealt with by way of plan change or review. As noted by the Tribunal and in the submissions before the Court, the Resource Management Act now authorises any person to request a change of a district plan: see s 73 (2). At the same time application for resource consent may be made in accordance with the particular procedure set out in Part VI of the Act. There is nothing in that part of the Act or elsewhere which provides any limitation but, as is crucial in this case, a resource consent application which fails to meet s 105 (2) will not be granted. Thereafter the applicant, if the matter is to be pursued, would have to proceed by way of a request for a change of the plan. That is not to say, however, that that shows any tendency to require an application for plan change in cases in which that threshold might not be passed or where, although it was passed, there could be said to be some significant impact otherwise in the scheme. The legislation authorises the distinct procedures. I agree, with respect, with the conclusions of the Tribunal.

In any event it must be recognised that in this case the proposals and the opposition to them was given a very close and detailed consideration by two tribunals over an extensive period of time. Many, if not all, of the various

considerations which would be relevant to a change of plan procedure were canvassed before the Tribunal and were considered by it. The Tribunal identified ten particular topics for discussion and consideration in the course of the decision and these were each given careful consideration. The ten topics were:

Forestry
The Coal Trade
Log Marshalling and Stevedoring
Coal Transportation
Construction of a Bund Wall and Reclamation
Wharf Construction
Visual Air Quality and Water Quality Effects
Shipping and Navigation
Tourism
Economics

The Tribunal correctly concluded that, although the application had not been the subject of s 32 procedures, it had not suffered as a result. Alternatives were considered, as were economic consequences. It is, I think, difficult to see what other matters or considerations could be effectively pursued simply by adopting the change of plan procedure.

The next point of appeal that I deal with, though not in the order that was presented, is whether the Planning Tribunal in holding that the provisions of Part II of the Resource Management Act are not to be given primacy when considering resource consent applications pursuant to s 104 of the Act. Section 104 sets out the matters to be considered in an application for a resource consent. Part II is particularly referred to and is one of the matters which the consenting authority should have regard to. It is referred to in subs (4) (g) which is the second last of that list, the last being any relevant regulations. That section is now made expressly subject to Part II by virtue of s 54 of the Resource Management Amendment Act 1993, but the Act must be construed for this case in its original form. It was suggested that the 1993 amendment made explicit what was previously implicit in the Act generally and in s 104 specifically. Equally, however, it may be contended that such an amendment is intended to remedy a defect in the Act and is intended to alter what was there before.

Part II of the Act sets out the purpose and the principles which include, among other things, matters of national importance and the Treaty of Waitangi. This matter was the subject of submission and it is an issue in *Batchelor's* case. At p 141 the Court said:

> " In carrying out that exercise, [namely, the regard to the rules of a plan and its relevant policies or objectives], regard must also be had to the other relevant provisions of s 104, including the general purpose provision as set out in s 5. Although s 104 (4) directs the consent authority to have regard to Part II, which includes s 5, it is but one in a list of such matters and is given no special prominence. "

Citing that view the Planning Tribunal in this case noted also the distinguishable decision in *Environmental Defence Society Inc v Mangonui County Council* [1989] 3 NZLR 257 which depended upon the provisions in the Town and Country Planning Act which made the matters, to which regard was had, subject to the provisions in ss 3 and 4 of the 1977 Act which related to the matters of national importance and the general purposes of planning. Here, in the present Act as it was, in the absence of any such provision and with the provisions of Part II merely being one of a number of matters to which regard was to be had, it could not be said that any primacy was given to Part II over all the other Parts. That, I think, must follow from an ordinary reading of the Act.

Mr Cavanagh went on to submit that s 5 and the other sections in Part II set out the central theme of the Act, declaring a specific purpose and principles. This was, he argued, an unusual provision setting a statutory guide-line creating a primary goal and a basic philosophy which controlled and governed any and all exercise of functions and powers under the Act. It was said that the opening words of ss 6, 7 and 8 emphasised that imperative with the words, "In achieving the purpose of this Act, all persons exercising functions and powers under it, ... shall" recognise and provide for the matters of national importance (s 6), have particular regard to the matters in s 7 and take into account the Treaty of Waitangi (s 8).

Reliance was placed on the decision of the Court of Appeal in *Ashburton Acclimatisation Society v Federated Farmers of NZ Inc* [1988] 1 NZLR 78. That was a case under the Water and Soil Conservation Act 1967 to which was added, in an amendment in 1988, a section setting out the object of the Act.

The Court, in a judgment delivered by Cooke P, at p 87, having noted the unusual step of declaring a special object, said, at p 88:

> " A statutory guide-line is thus provided; and I think that the code enacted by the Amendment Act is to be administered in its light. With all respect to the contrary arguments, to treat s 2 as surplusage or irrelevant or mere window-dressing would be, in my opinion, as cynical and unacceptable a mode of statutory interpretation as that which was rejected in *New Zealand Maori Council v Attorney-General* [1978] 1 NZLR 641. The duty of the Court must be to attach significance to and obtain help from this prominent and unusual feature of the Parliamentary enactment. "

I am told that that case was not cited to the full Court in *Batchelor.*

That case is, however, distinguishable because there there was no reference back to the object of the Act in the matters for which consideration had to be given. In this case, however, Part II is specifically referred to as one of a number of items. Whatever its importance and its guidance in the Act generally, s 104 must be taken to have deliberately brought it in as one of the matters without any indication whatsoever that it was to be given any particular primacy and, indeed, it does not even head the list let alone a section which begins with the necessity to have regard to actual and potential effects of allowing the activity. I am in respectful agreement with the view of the full Court and with that of the Tribunal in this case.

The next point was whether the Planning Tribunal misdirected itself as to the interpretation of s 6 (a) of the Act by holding that natural character of the coastal environment could justifiably be set aside in the case of a nationally suitable or fitting use or development.

The Tribunal's decision on this topic noted the wording of the present section and its difference from that of the previous corresponding section. The section now requires that persons exercising the functions and powers under the Act in relation to development shall recognise and provide for -

> " 6. (a) The preservation of the natural character of the coastal environment (including the coastal

> marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development: "

Section 3 of the 1977 Act set out the matters which were declared to be of national importance which shall "in particular be recognised and provided for" including, in s 3 (1) (c), "The preservation of the natural character of the coastal environment and the margins of lakes and rivers and the protection of them from unnecessary subdivision and development:". Having referred to the construction of that previous provision in *Environment Defence Society v Mangonui County Council* and after discussing the meaning of the word "appropriate" the Tribunal said, at p 465:

> " Having regard to the foregoing, it is our judgment that s 6 (a) of the Act should be applied in such a way that the preservation of the natural character of the coastal environment is only to give way to suitable or fitting subdivision, use, and development. Here, of course we only have to consider development. But this does not mean to say that *any* suitable or fitting development will qualify. Although the threshold, as Mr Camp put it, may be passed earlier when considering appropriateness as distinct from need, it has to be remembered that it is appropriateness in a national context that is being considered. It is not, for example, appropriateness in either a regional or a local context. This is made clear by Somers J in the passage from his judgment in *Environmental Defence Society v Mangonui County Council* that we referred to earlier.
>
> Consequently, the development being considered for the purposes of s 6 (a) of the Act would have to be *nationally* suitable or fitting before preservation of the natural character of the coastal environment could justifiably be set aside. "

Later the Tribunal concluded that the provision of log and coal export trade facilities in Shakespeare Bay was suitable or fitting on a national level and the setting aside of the preservation of the natural character of the bay was thus justified to the extent required by the development.

The appellant contended that s 6 and in particular para (a) must be read with reference back to s 5, the purpose and the promotion

> of sustainable management of natural and physical resources. It was suggested that Parliament intended that the primary object is that the effect of any modification to natural character must be adequately mitigated wherever possible and development is to occur only where it is appropriate. It was the environment which was placed in a pre-eminent position in light of the purpose of sustainable management. Preservation of natural character must be achieved even in the case of appropriate development. As Mr Cavanagh put it, an appropriate development must require the coastal location chosen for that activity to be such that it cannot be accommodated elsewhere; its effect can be so mitigated as to minimise its impact on the natural character of that environment and that the permanent modification of a coastal environment can only be justified if the development in question has significance of national importance and the economy of the nation as a whole.

I have somewhat extensively, but I hope accurately, expressed the submissions made in this matter. I have done so because I found some difficulty in understanding precisely what the appellant's contention is, particularly as the last part of the submission that I have described appears to coincide with the tenor of the Tribunal's view that national suitability would justify the setting side of the preservation of the natural character of a coastal environment. The recognition and provision for the preservation of the natural character of the coastal environment in the words of s 6 (a) is to achieve the purpose of the Act, that is to say to promote the sustainable management of natural and physical resources. That means that the preservation of natural character is subordinate to the primary purpose of the promotion of sustainable management. It is not an end or an objective on its own but is accessory to the principal purpose.

"The protection of them", which in its terms means and refers to the coastal environment, wetlands, lakes, rivers and their margins, the items listed, but the protection is as part of the preservation of the natural character. It is not protection of the things in themselves but insofar as they have a natural character. The national importance of preserving or proteceting these things is to achieve and to promote sustainable management.

"Inappropriate" subdivision, use and development has, I think, a wider connotation than the former adjective "unnecessary". In the *Environmental*

Defence Society v Mangonui County Council case that expression was construed by considering "necessary" and the test therefore was whether the proposal was reasonably necessary, although that was no light one: see Cooke P at p 260 and Somers J at p 280 when he said that preservation, declared to be of national importance, is only to give way to necessary subdivision and development and to achieve that standard it must attain that level when viewed in the context of national needs.

"Inappropriate" has a wider connotation in the sense that in the overall scale there is likely to be a broader range of things, including developments which can be said to be inappropriate, compared to those which are said to be reasonably necessary. It is, however, a question of inappropriateness to be decided on a case by case basis in the circumstances of the particular case. It is "inappropriate" from the point of view of the preservation of natural character in order to achieve the promotion of sustainable management as a matter of national importance. It is, however, only one of the matters of national importance, and indeed other matters have to be taken into account. It is certainly not the case that preservation of the natural character is to be achieved at all costs. The achievement which is to be promoted is sustainable management and questions of national importance, national value and benefit, and national needs, must all play their part in the overall consideration and decision.

This part of the Act expresses in ordinary words of wide meaning the overall purpose and principles of the Act. It is not, I think, a part of the Act which should be subjected to strict rules and principles of statutory construction which aim to extract a precise and unique meaning from the words used. There is a deliberate openness about the language, its meanings and its connotations which I think is intended to allow the application of policy in a general and broad way. Indeed, it is for that purpose that the Planning Tribunal, with special expertise and skills, is established and appointed to oversee and to promote the objectives and the policies and the principles under the Act.

In the end I believe that the tenor of the appellant's submissions was to restrict the application of this principle of national importance, to put the absolute preservation of the natural character of a particular environment at the forefront and, if necessary, at the expense of everything except where it was necessary or essential to depart from it. That is not the wording of the Act or its intention. I do not think that the Tribunal erred as a matter of law. In the end it

correctly applied the principles of the Act and had regard to the various matters to which it is directed. It is the Tribunal which is entrusted to construe and to apply those principles, giving the weight that it thinks appropriate. It did so in this case and its decision is not subject to appeal as a point of law.

The next point of appeal was whether the Planning Tribunal misdirected itself or erred in law in holding that financial viability of the proposed development was not relevant to consideration of the application for resource consents or, alternatively, in failing to take into consideration the financial viability of the proposed development when considering the application for resource consents.

One of the planks of New Zealand Rail's challenge of the proposed development was a claim which it supported by evidence and cross-examination that the cost of the whole development was likely to be significantly greater than had been estimated. The result of this would mean that, in order to service the costs, port fees would have to be increased but because, for competitive reasons, it would be necessary to hold the costs to the users of the timber and coal berths the costs would therefore fall on other port users and, in particular, on New Zealand Rail as the predominant and principal user of the port.

The Tribunal was satisfied that it was feasible from an engineering point of view to construct and complete the necessary reclamation and wharf constructions. There was no suggestion that Port Marlborough would be unable to complete the works or to obtain the necessary finance for it. Thus there was no suggestion that the development would not take place for lack of funds or because of engineering or other construction difficulties. The Tribunal did express itself, however, that the port might have under-estimated the costs of achieving the results and that it would be advised to reconsider and to review its costings.

Under the heading of economics the Planning Tribunal discussed and considered the evidence of Dr R R Allan who was called as the witness by New Zealand Rail to demonstrate, from his calculations and evaluations, the thesis that New Zealand Rail might, in the end, be required to subsidise the costs of the use of the timber and coal facilities. The Tribunal noted, as they said, Dr Allan's impressive credentials in the field of transport engineering and economics and found him to be a sound, careful witness to whose opinions they paid a good deal of attention. It was noted, however, that the economic analysis depended upon the

proper calculation as to the costs and the variations which were involved in that. The Tribunal returned to this topic and, at p 172 of its decision and thereafter, said this:

> " On the matter of additional port charges, which of course applies to both timber and coal, although Dr Allan presented an attractive argument to support NZ Rail's case in this regard, in the end we do not think it was sufficiently persuasive to justify refusing consent on economic grounds.
>
> Whether increased port charges will occur depends on several variables, including importantly the final cost of the development. Then too there was no evidence about how Port Marlborough proposes to go about setting its charges for the use of these facilities, except to the extent that with regard to the log trade it intends to be competitive with the port of Nelson. However, by the time this development comes to fruition what that will mean in practical terms is unknown.
>
> It is possible as Dr Allan demonstrated to construct a scenario from which one might conclude that NZ Rail, being the single most important port user at the present time, could face increased port charges to subsidise this development. However, again as his evidence and his cross-examination demonstrated, Dr Allan's scenario is no more than one possibility. We think too that Mr Camp made a strong point when he submitted that the financial viability of a development, as distinct from its wider economic effects, is more properly a matter for the boardroom than the courtroom. "

It was the appellant's submission that financial viability, in the words used by Mr Cavanagh, is a relevant consideration under Part II of the Act. Mr Cavanagh said if the proposal is not viable then it is in conflict with Part II. With comparative reference to the decision in *Environmental Defence Society v Mangonui County Council* it was submitted that there was an onus on an applicant to establish the economic practicability of the proposal. In the result, it was said, the evidence before the Tribunal which showed some doubts as to the costings and the possibility of increased port charges, resulting in undue charges and subsidy by New Zealand Rail, put in doubt the financial viability of the proposal. It was

submitted that the Tribunal had been dismissive of the economic topic and therefore had not taken appropriate consideration of it into account.

It was Mr Cavanagh's contention that, in order that the Court should have a proper understanding of this question, it was necessary that it should consider the evidence given by Dr Allan. To that end Mr Cavanagh applied for leave to produce, as evidence, the transcript of that part of the evidence which included Dr Allan's evidence-in-chief and his cross-examination. That application was opposed by the respondents. I rejected the application on the ground that it would not be necessary or helpful in deciding the question of law, if any, involved in this topic to read or to consider the particular evidence given in the matter. The tenor of the evidence and the material before the Tribunal was, in my view, adequately described in the Tribunal's decision.

Financial viability in those terms is not a topic or a consideration which is expressly provided for anywhere in the Act. That economic considerations are involved is clear enough. They arise directly out of the purpose of promotion of sustainable management. Economic well-being is a factor in the definition of sustainable management in s 5 (2). Economic considerations are also involved in the consideration of the efficient use and development of natural resources in s 7 (b). They would also be likely considerations in regard to actual and potential effects of allowing an activity under s 104 (1). But in any of these considerations it is the broad aspects of economics rather than the narrower consideration of financial viability which involves the consideration of the profitability or otherwise of a venture and the means by which it is to be accomplished. Those are matters for the applicant developer and, as the Tribunal appropriately said, for the boardroom. In the *Environmental Defence Society* case the particular consideration to which Mr Cavanagh referred was the absence of any evidence that the proposed development would actually take place. There was no developer, there was no evidence as to any actual development proposal or their costs. In this case plainly there was a considerable body of evidence given on each side as to the costs and as to the economics and the potential viability of the proposal for the reclamation and construction of all works and buildings required.

The contention that the Tribunal was dismissive of this economic evidence is, I think, to misunderstand what the Tribunal was doing. Clearly it considered all the evidence that was put before it but in the end it dismissed the contentions and opinions of Dr Allan and set them aside It was not satisfied, on

the evidence before it, that the apprehensions of that witness and thereby of New Zealand Rail would be realised. This was a judgment on the facts, on the weight of the evidence before it. The Tribunal took into account economic questions, as it was bound to do, in a broad sense and in a narrower sense upon the projected development itself. In the result they came to the conclusion that that evidence was not "sufficiently persuasive to justify refusing consent on economic grounds". That does not raise a question of law but is a decision on the merits after considering the material before it. It is wrong to suggest, as Mr Cavanagh did, that the economic effects were not addressed. The Tribunal addressed the evidence and came to a conclusion contrary to that of New Zealand Rail. New Zealand Rail has no appeal in law against that finding.

The final point of appeal was directed to the Tribunal's decision upholding the appeal by Port Marlborough and granting resource consents for the provision for the coal export trade. The ground of appeal was expressed, in terms, as to misdirection by the Tribunal of the interpretation of ss 5 and 6 which enabled it to grant the resource consents. The essence of the case of the appellant on this ground was its submission that it is an inappropriate use or development of a coastal environment to impose a development of this nature and significance in circumstances where there is no evidence that the facilities will be used once built.

It was common ground that the proposed development involved reclamation which would be suitable for both the timber and coal facilities although the coal berth and its associated dolphin mooring would not be constructed until it was required. There was therefore no immediate intention to proceed with the coal terminal construction though the whole of the reclamation would take place to provide the necessary flat land for the further expansion into the coal berth. It was the contention of New Zealand Rail that if the coal was excluded the size of the reclamation could be reduced and thus the effect on the land could be reduced proportionately.

The Tribunal gave, as it did to all other aspects of the case, extensive consideration to the coal trade, describing and assessing the evidence given on each side in that regard. As the Tribunal said in its concluding paragraphs on its discussion of this evidence at p 47:

> " ... we have referred at times to some of the evidence about the transportation of coal because that

> evidence is relevant to the principal question here, namely whether there is sufficient justification for granting resource consents to enable a dedicated coal export berth and back-up area to be established in Shakespeare Bay. "

The Tribunal noted the submission on behalf of New Zealand Rail that this was a "straw" proposal, simply a device to enable coal exporters, principally Coal Corporation, to drive a harder bargain with New Zealand Rail for the cartage of coal by rail using the threat of a dedicated coal berth at Shakespeare Bay as a bargaining point in New Zealand Rail's need to maintain the Midland Line for the transport of coal between the West Coast and Lyttelton. The Tribunal noted, however, the evidence on the other side that, while there was no clear-cut intention as was the case with the log exporters, Coal Corporation was looking for a convenient alternative export port facility. The Tribunal concluded that it was unable to say with any degree of confidence that New Zealand Rail's view of the matter was correct. The Tribunal went on, at p 48:

> " The evidence about the need for a dedicated coal berth is less convincing than the evidence about the need for additional log exporting facilities in the Picton/Shakespeare Bay area, but the reasons for this are largely to do with the uncertainties that surround future markets. This no doubt is the reason why Port Marlborough does not propose constructing a coal berth immediately, but it does not follow from this that it is unnecessary to make provision for such a facility. Whether provision should be made as a matter of overall resource management evaluation is of course another question and one that we are not attempting to answer here. On balance, we think that the case made by Port Marlborough and Coal Corp is just sufficient to justify further consideration of this part of the proposed development under later headings. "

The Tribunal returned to this topic, and having noted that it had entertained some reservations about granting consent to provide the opportunity for the coal part of the proposed development to take place, and having referred to the Midland Line as a resource for the purpose of s 5 and making a conclusion as to that, the conclusion made was, at p 172:

" ... we think that permitting provision to be made in Shakespeare Bay for a coal export trade which we also accept is important nationally, is justified. The additional environmental impacts associated with such a development over and above those that will already occur with the timber trade are not such as to warrant refusing consent on those grounds. To the extent that they are different from those arising from the timber trade, and here we are referring in particular to the matter of coal dust, we are satisfied that they can be mitigated by management practices that can be required to be put in place through the conditions of a consent.

On the matter of additional port charges, which of course applies to both timber and coal, although Dr Allan presented an attractive argument to support NZ Rail's case in this regard, in the end we do not think it was sufficiently persuasive to justify refusing consent on economic grounds. "

Once again this is a finding of fact in which the Tribunal has assessed the evidence before it and reached a conclusion in favour of the applicant and against the opposition. This is not a case where there is no evidence, although the evidence was to the effect that there would be no immediate use of the proposed facility. It was the Rail case that this was a prospective application without any real expectation of use. The Tribunal, after considering the matters put before it, concluded that was not the case but that the case made by Port Marlborough and the Coal Corporation was sufficient to justify the further consideration which the Tribunal gave to the matter. I can see no question of law in this and so it too must fail.

I turn then to the cross-appeal by the Marlborough District Council. Only one of the points raised in the notice of cross-appeal was pursued. That was against the terms of a review condition proposed by the Tribunal which it required be incorporated in each of the resource consents. This is a requisite of s 128 which provides as follows:

" 128. A consent authority may, in accordance with section 129, serve notice on a consent holder of its intention to review the conditions of a resource consent—

> (a) At any time specified for that purpose in the consent for any of the following purposes:
>
> (i) To deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or
>
> (ii) To require a discharge permit holder to adopt the best practicable option to remove or reduce any adverse effect on the environment; or
>
> (iii) For any other purpose specified in the consent; .... "

I omit the remaining parts of this section as being irrelevant to the question in issue here.

There had been proposed review conditions which were couched as to their relevant parts in these terms:

> " 5. Review of Conditions
>
> At any time after the first six (6) months of the exercise of any resource consents granted for the development of a port facility at Shakespeare Bay by Port Marlborough New Zealand Limited, the Marlborough District Council may review the conditions of consent(s) for any of the following purposes: ... "

The Tribunal took the view that the condition did not comply with s 128 because it did not specify a time with the precision required under the proper meaning of the Act. The Tribunal referred to a decision of the Planning Tribunal in *W P van Beek trading as Christchurch Pet Foods v Christchurch City Council*, Decision No. C 9/93, in which a review condition, pursuant to s 128, was worded as follows:

> " That the Council may review condition (ii) by giving notice of its intention so to do pursuant to section 128 of the Resource Management Act at any time within the period commencing one year after the date of this consent and expiring six months thereafter, for the purpose of ensuring that condition (ii) relating to vibration is adequate. "

The Planning Tribunal, in this case, then said:

> " In our view a condition authorising a consent authority to review should contain this degree of specificity, both as to time and if possible as to purpose. "

It was then left for the parties to review and to rewrite the review conditions.

It was the contention of the District Council on its cross-appeal that the Tribunal had construed s 128 and the phrase "at any time specified for that purpose" incorrectly and that the proposed terms which referred simply to "at any time after six months" was sufficient as it specified any and every day after the expiry of that first period. It was said that, contrary to the approach required under s 5 (j) of the Acts Interpretation Act 1924 and the need to ensure the Council's power to review and monitor the construction and operation of the development on a continuing basis, the Tribunal's decision was unduly restrictive.

No other party took part in this cross-appeal, it being left entirely to the cross-appellant. There was, therefore, no contrary argument put to the Court.

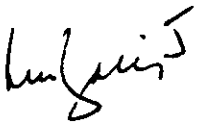
In *Sharp v Amen* [1965] NZLR 760 the Court of Appeal construed the words in s 92 of the Property Law Act 1952 "a notice specifying ... a date on which the power will become exercisable" so as to require the precise time or date to be specified. As a result the notice which expressed the date as "within one calendar month from the date of the receipt of this notice by you" was insufficient. As was said in that case, the construction of a particular statute will be controlled by the text of it and its subject matter. But it cannot be said that an expression which means that every day after a particular time complies with the meaning or purpose of this statute. Review, as the word implies, requires a consideration from time to time but the parties and the persons concerned should not be subject to the daily possibility of review under this provision. I think the Tribunal was perfectly correct in requiring a specification with greater specificity than is provided for in the draft. The proposal that has been made by the Tribunal appears to provide a reasonable guide-line. It would give scope for repeated review in months or years to come.

I think care has to be taken to ensure that what is set down by this condition is not just another policing provision to ensure compliance with the

conditions and the terms of the consent granted. It is for the purpose of reconsidering the conditions of the consent to deal with matters which arise thereafter in the compliance exercise of the consented activity. It is not, I think, in place of the other provisions in the Act for the control and enforcement of the conditions of consent.

In the result, then, the appeal and the cross-appeal are dismissed.

The respondents are entitled to costs which I fix in the sum of $5,000 for each of the first and second respondents together with reasonable travelling and accommodation expenses for counsel and all other disbursements and necessary expenses to be fixed by the Registrar. I make no order for costs in respect of Coal Corporation which took no active part in the matter.



Solicitors: Rudd Watts & Stone, WELLINGTON, for Appellant

Gascoigne Wicks & Co., BLENHEIM, for First Respondent

Radich Dwyer Hardy-Jones, BLENHEIM, for Second Respondent

Phillips Fox, WELLINGTON, for Coal Corporation of New Zealand Ltd

IN THE COURT OF APPEAL OF NEW ZEALAND CA84/01

BETWEEN	ARRIGATO INVESTMENTS LIMITED and EVENSONG ENTERPRISES LIMITED	
	Appellants	
AND	AUCKLAND REGIONAL COUNCIL	
	First Respondent	
AND	RODNEY DISTRICT COUNCIL	
	Second Respondent	
AND	GREGORY McDONALD	
	Third Respondent	

Hearing:	25 July 2001
Coram:	Gault J Keith J Tipping J
Appearances:	R B Brabant and K R M Littlejohn for Appellants B I J Cowper and J A Burns for First Respondent W S Loutit and A J Bull for Second Respondent R E Lawn for Third Respondent
Judgment:	11 September 2001

JUDGMENT OF THE COURT DELIVERED BY TIPPING J

Introduction

[1] This appeal from Chambers J in proceedings under the Resource Management Act 1991 (the Act) involves two questions of law. The first is whether the Environment Court misconstrued or misinterpreted the applicable objectives and policies of the second respondent's plan. Chambers J held that the Environment

Court had done so. The question for this Court is whether he was correct in law in coming to that conclusion.

[2] The second question concerns what has come to be called the permitted baseline approach to assessing adverse effects on the environment: see *Barrett v Wellington City Council* [2000] NZRMA 481, 494 per Chisholm J. Such approach derives from the decision of this Court in *Bayley v Manukau City Council* [1999] 1 NZLR 568 – see also *Smith Chilcott Ltd v Martinez and Auckland City Council*, CA267/00, judgment 26 June 2001 at para [8]. The Environment Court regarded a right to pursue an activity in accordance with an earlier but as yet unimplemented resource consent as relevant to the baseline approach. Chambers J held the Court to have erred in law in that respect. The issue for us is whether the Judge's view or that of the Environment Court is the correct one.

[3] The appellants, to whom we will refer collectively as Arrigato, own a property of some 148 hectares at Pakiri beach on the eastern coast of the Auckland region just north of Cape Rodney. The property is within the district of the second respondent, the Rodney District Council (RDC), and that of the first respondent, the Auckland Regional Council (ARC). The property was in 7 titles and an earlier resource consent allowed a subdivision into 9 lots. Arrigato applied to the Rodney District Council for a resource consent allowing it to subdivide the property into 14 lots. The application was declined. The Environment Court allowed Arrigato's ensuing appeal and, in an interim judgment, granted the resource consent as sought, subject to conditions to be settled. It was on the ARC's appeal on points of law to the High Court from that decision that Chambers J came to the conclusions now in issue in this Court.

The questions of law

[4] The two questions of law in respect of which the Judge gave leave to appeal are whether the High Court erred:

(1) In holding that the Environment Court had misinterpreted or misunderstood the objectives and policies of the district plan in the

overall context of Part II of the Resource Management Act 1991 and the statutory documents formulated under the Resource Management Act with the consequence that Arrigato's application was wrongly assessed under ss104(1) and 105(2A)(b).

(2) In holding that in terms of s105(2A)(a) the proposed subdivision should have been assessed on the basis of its effects on the environment as it exists or would exist if the land were used in a manner permitted as of right by the district plan and that the Environment Court had erred in taking into account Arrigato's existing resource consent.

The relevant background

[5] Arrigato's application for consent to subdivide was an application for consent to a non-complying activity. Hence in terms of s105(2A) of the Act, the resource consent it sought could not be granted unless the RDC or then the Environment Court as consent authority was satisfied that either:

[a] The adverse effects on the environment would be minor; or

[b] The application was for an activity which would not be contrary to the objectives and policies of the relevant plan.

These alternative requirements can be described as gateways to ss104 and 105(1)(c). Unless an application for a non-complying activity can pass through one or other of the two gateways, it will fail at the outset. If it does pass through either gateway, the consent authority must then have regard to the matters set out in s104(1) before deciding under s105(1)(c) whether, on an appraisal of all the relevant circumstances, the application should be granted or refused.

[6] The first of the matters specified in s104(1) also relates to any actual or potential effects on the environment of allowing the activity the subject of the consent application (para (a)). The fourth matter to which regard must be had, as set out in para (d), is concerned with any relevant objectives, policies, rules or other

provisions of a plan or proposed plan. The link between paras (a) and (d) of s104(1) is that objectives and policies in a plan are to be taken into account to the extent they are relevant; that means relevant to the effects spoken of in para (a): see *Smith Chilcott* at para [31]. There is similarly a link between para (d) of s104(1) and gateway (b) in s105(2A). Each is concerned with the objectives and policies of the plan in question. Hence a misconception of those objectives and policies when considering gateway (b) necessarily involves a similar misconception when the consent authority is considering para (d) of s104(1).

[7] Chambers J held that the Environment Court had misinterpreted or misunderstood the relevant objectives and policies. He said at para 29 of his judgment:

> Taking into account the various statutory documents and in particular Change 55, I find it difficult to see how the court could conclude that this proposal was in any way consistent with them. I appreciate that the Environment Court ultimately has an overall discretion under s 105(1)(c) and that pursuant to that discretion, in the absence of statutory restraints such as are provided by s 105(2) and (2A), a resource consent might be granted even though inconsistent with the statutory documents. The court, however, did not seem to consider that its decision was contrary to the statutory documents. That leads me to conclude that it must therefore have misunderstood them.

[8] It is clear from his judgment that Chambers J did not rely upon any specific identified misunderstanding but rather upon the proposition that in reaching the conclusion it did the Environment Court must have misunderstood the objectives and policies of the plan. To reach that view the Judge had to be satisfied that the objectives and policies of the plan ought not to have been construed in such a way as to allow the Environment Court to come to the conclusion it did.

[9] The relevant part of the plan is what is called Change 55 and it is appropriate to set out the whole of the Environment Court's discussion of Change 55 under its heading s104(1)(d).

> Change 55 was publicly notified in October 1995; submissions closed in March 1996; and the Council's decisions on them notified in December 1997 and January 1998. As already noted, although subject to appeals yet to be heard, none directly affect this application. We

also record here that the applicants did not make any submissions regarding the Change.

The Change identifies ten activity areas of which this Mangawhai-Pakiri Special Character Activity Area is one:

" (it) applies to the beach at Pakiri extending from just south of Mangawhai Heads to Te Rere Bay, north of Goat Island and from the area inland approximately between 2 and 3 kilometres from the coast."

It is described, in part, as:

"The area (that) contains the longest non-urbanised beach on the east coast of the District and this, coupled with the rural backdrop, engenders a feeling of "remoteness" over the entire activity area. There are few built structures in close proximity to the beach, and a lack of formal structures in the rural backdrop, giving rise to a non-urban and natural character. …

This location forms part of an area with a landscape rated as being regionally significant and outstanding in terms of quality, and outstanding in terms of quality, and outstanding in terms of sensitivity, in the proposed Auckland Regional Policy Statement."

As for the "Specific issues within the Activity Area", Change 55 states that they are:

(i) Within its extensive open coastline and remote, non-urban, character the location is an attractive one for the increasing number of people seeking to live in an alternative environment to that offered in other parts of the District. However, the introduction of further dwellings and related infrastructure has the potential to alter (that character), given that (it) is relatively sensitive to change.

(ii) The area has high natural environment value, and high landscape quality. These features make an attractive living environment and an attractive recreation/tourism destination. However, one of the contributing factors … is the relative lack of urban-type structures and activities. The introduction of further living opportunities and other non-rural production-based activities has the potential to detrimentally affect the high natural environment values and the landscape quality of the area.

The general objective of the Change is:

"To retain the open, and remote coastal/non-urban character of the area and the high landscape and natural environmental values

present whilst enabling the continued operation of the productive activities undertaken."

The "*productive purposes*" referred to are, in particular, farming, both pastoral and arable, and forestry and both, therefore, continue to remain as permitted uses as does horticulture.

Subdivision is limited to three main types:

"Firstly, as an incentive for native bush and natural feature protection subdivision enabling the creation of a rural-residential site where native bush or natural features are protected is provided for."

The other two are not relevant to this appeal.

A specific objective is: "To protect and retain the natural, coastal, non-urban and remote character of the Pakiri Coastline and surrounding rural backdrop."

We note here, that the Change states that: "Rate relief is offered to landowners who voluntarily protect natural features within their holding, such as areas of bush." But that, as with the Transitional Plan, there appears to be no positive statement encouraging the indigenous vegetative restoration of degraded lands.

The restorative component of the applicants' proposal was put forward as major environmental gain. It was supported by pointing to not only the large area that would be set aside, but also to the very considerable financial contribution already made, namely, some 290,000 plants, at a conservative gross figure of some $3 per plant, already in the ground. We shall return to that submission in a moment.

Relevant permitted uses (excluding buildings) include pastoral and arable farming, forestry, horticulture and "farmstay or homestay accommodation and related activities for not more than ten people … provided that the activity does not require the provision of further buildings". Relevant controlled activities include farm dwellings and accessory buildings; single household units "located on a site suitable only for rural-residential purposes"; and "minor household units of a maximum gross floor area of $65m^2$."

The assessment criteria for controlled activities, retain the emphasis contained in the transitional plan, namely, that:

"No building or structure should visually intrude on any significant ridgeline or skyline or significant landscape."

"The scale and form of buildings or structures including colour and materials should be such that they complement the open, non-urban and "remote" character of the area."

And, that:

"No building or structure should detract from any view or vista of natural features obtained from any public road or other public place, including the sea."

With regard to that last criterion, we note that the same wording is used in the case of discretionary activities, except that "Pakiri Beach" is specifically referred to, but whether the difference (which was not drawn to our attention) is due to a drafting oversight or a deliberate omission, we are unable to determine.

Also, under the heading of "*Subdivision Standards*" there is provision for rural-residential sites as a limited discretionary activity

"… where subdivision results in the removal and protection from farming or forestry activity, areas containing significant stands of native bush or other significant natural features …"

We shall comment later on the conditions volunteered by the applicant to be attached to any consent, but we note here, that the proposed building bulk and density controls, together with the proposed covenants, would result in a much more restricted development than the existing approved subdivision plan permits. This point was also emphasised by the applicants.

[10] Also relevant is the following passage in the Environment Court's decision when it was discussing s105(2A) and the gateways:

Having so decided in favour of the appellant in respect of the first limb of the threshold tests there is no need for us to consider the second limb. However, in case we are wrong in our determination and in deference to the counsel's detailed submissions, we turn to the second limb. We have set out in some detail the provisions of the transitional plan and Change 55. It will be apparent that the provisions of both plans in respect of buildings are much the same. The permitted and controlled activity provisions, particularly of the Mangawhai/Pakiri Special Character Activity Area, provide that the potential establishment of buildings on the land is subject to a controlled activity status and thus to a series of criteria. Because of the existing consents, the Council could not resist an increase in the number of buildings presently on the site, including buildings on the seaward face of the plateau.

The objectives and policies of the proposed plan, and more so those of Change 55, are designed to protect the landscape and natural features of this special character area. This is in keeping with general objective 4.2(a) on page 17 to which we have already referred. This objective also refers to *"enhance where possible"* the landscape and natural features. Unfortunately, the objectives, policies and rules of

> the special character area with which we are concerned do not implement or encourage that objective. We find, and indeed there was no argument to the contrary, that the special character of this area must be preserved. A careful analysis of the present rules and, in particular, rules which allow an increase in the number of buildings on pastoral units and a rule which allows property to be fragmented merely because it contains haphazard pockets of native vegetation, indicates that this is how that is being achieved. Clearly, the protection from inappropriate subdivision and development is of some considerable importance in the context of Change 55, and in that regard we consider a subdivision which will enhance this nature feature should be encouraged. We find that it is not contrary to the objectives and policies of either plan in the sense of being opposed to them. (original emphasis)

[11] Objective 4.2 of Change 55, referred to by the Environment Court, is in the following terms:

> To protect from inappropriate or insensitive building and development and enhance where possible landscape and natural features of regional and local significance.

[12] Nor do we overlook Policy 1.1.1 of the New Zealand Coastal Policy Statement which speaks of "taking into account the potential effects of subdivision … on the values" of the coastal environment. That must be read with the earlier reference to "avoiding sprawling or sporadic subdivision" and the later reference in Policy 3.1.2 to giving the relevant values "appropriate protection". The reference in Policy 3.2.1 to the need for Policy Statements and plans to define what forms of subdivision would be appropriate and where they may be located, does not imply that suitably designed developments which are located elsewhere are incapable of being appropriate as to design or location.

[13] The Regional Policy Statement also refers to the need to make appropriate provision for the avoidance remediation (sic) or mitigation of adverse effects on the environment. This is coupled with a further reference to protection of specified values from "inappropriate" subdivision.

Question 1 – objectives and policies of plan

[14] It is clear from its decision that the Environment Court gave close and careful attention to the relevant objectives and policies of Change 55. The Court's ultimate finding was that Arrigato's proposal was not contrary to those objectives and policies. In coming to that conclusion the Court also appropriately bore in mind s6(a) of the Act which requires all persons exercising functions and powers under the Act to recognise and provide for specified matters of national importance which include the preservation of the natural character of the coastal environment and its protection from inappropriate subdivision, use and development. The use of the word "inappropriate" involves a value judgment which in the present context was for the Environment Court to make. It also means that subdivisions in such areas are not altogether prohibited.

[15] The Judge held that the Environment Court's conclusion that Arrigato's proposal was not contrary to the relevant objectives and policies of the plan was a conclusion which was not open to it as a matter of law. The question for us is whether Chambers J was himself correct in law in coming to that conclusion. The general tenor of His Honour's judgment gives the appearance of a de novo assessment of Arrigato's proposal against the objectives and policies, and indeed generally, rather than a consideration of whether the Environment Court's conclusion was one which was open to it in law. The Judge's conclusion that the Environment Court must have misunderstood the relevant documents was reached by inference not construction.

[16] As in the case of *Dye v Auckland Regional Council and Rodney District Council*, CA86/01, in which judgment is being delivered contemporaneously, the Judge appears to have worked backwards. He did not identify any particular objective or policy which the Environment Court had misinterpreted or misunderstood. Rather he concluded that because the proposal, as he assessed it, was inconsistent with the objectives and policies the Court must have misunderstood or misinterpreted them. But, as in *Dye*, it is equally, if not more likely that the difference between the Court and the Judge related to whether the proposal was, in

substance, contrary to the objectives and policies. In that case it was not for the Judge to take a different view on an appeal limited to questions of law.

[17] We are also of the view that the Judge may not have fully factored into his thinking the point that Arrigato's application was for consent to a non-complying activity. Such an activity is, by reason of its nature, unlikely to find direct support from any specific provision of the plan. The Act provides for a spectrum of activities ranging from the prohibited to the permitted. In between are non-complying, discretionary and controlled activities. There is a clear conceptual difference between a prohibited activity and a non-complying one. Consent may be granted for the latter but not for the former. A non-complying activity is defined as an activity which is provided for in the plan as a non-complying activity or one which contravenes a rule in the plan. In both respects a resource consent is required and may be granted only if the application satisfies the gateway criteria in s105(2A), the more general criteria in s104 and is otherwise one which the consent authority considers should be allowed.

[18] The issue in this case was not whether the plan supported the activity but rather, given that it did not, whether it was nevertheless appropriate to allow it. Indeed gateway (b) in s105(2A) recognises that a non-complying activity will not be permitted by the plan, yet it may be granted provided it will not be contrary to the objectives and policies of the plan.

[19] In his discussion at para 31 of the significance of the extensive planting of native trees on the land, Chambers J said that the Environment Court's view that such an "enhancement" of the land "justified" the subdivision revealed a misunderstanding of the statutory documents and in particular Change 55. The difficulty with this observation is that it is not correct to regard the Environment Court as having said that the enhancement justified the subdivision. The so-called enhancement was not the only factor the Environment Court took into account in coming to its overall assessment. It may possibly have been the fulcrum point but it cannot be said that the proposal was approved simply because of the tree planting dimension.

[20] The Judge continued:

> But further, there is no suggestion in the policies, methods of implementation, and reasons which follow objective 4.2 that the planting of trees in itself is seen as a method of implementing the objective. Nowhere in objective 4.2 and its related material is there any suggestion that 'enhancement' should be permitted to justify a subdivision which clearly is contrary to specific objectives for the Pakiri area.

These remarks support the view the Judge was looking for something in the planning documents which justified or supported the non-complying activity, of which the planting of native trees was simply a part, albeit a significant part.

[21] We return to the ultimate issue which is whether the objectives and policies, fairly construed, were such that the Environment Court was entitled to say that Arrigato's proposal was not contrary to them. If the Environment Court was so entitled, the Judge was himself in error to hold that the Court must have misinterpreted or misunderstood them. Mr Brabant submitted by reference to various aspects of the legislation and the plan that the view taken by the Environment Court was legally open to it. Mr Cowper argued to the contrary. We have fully considered counsel's submissions and, in view of the nature of the issue, do not consider it necessary to traverse them in detail.

[22] The logical starting point is objective 4.2 of Change 55. This objective, albeit at a fairly high level of generality, clearly recognises that "appropriate [and] sensitive building and development" are within the contemplation of the objectives and policies of Change 55. This is the logical corollary of the policy being to protect this "special character area" from "inappropriate or insensitive building and development". In that part of Change 55 which deals with "specific issues" within the special character area, reference is made to the fact that the introduction of further dwellings and infrastructure "has the potential" to alter the character of the area. This suggests that the introduction of further dwellings and infrastructure will not inevitably have that effect. No absolute prohibition on any further development is foreshadowed. Later in the same part of Change 55 there is reference to a "relative lack" of urban type structures and activities in the area, and it is then said:

> The introduction of further living opportunities and other non-rural production-based activities has the potential to detrimentally affect the high natural environmental values and the landscape quality of the area.

Again the reference to potential for detrimental consequences implies that such consequences will not always result from the provision of further living opportunities. The general objective of Change 55 in its reference to retention of the features mentioned does not necessarily envisage a complete embargo on developments of the type in question, nor does the corresponding specific objective. It was not contended that any policy specified in Change 55 was relevant to the present issue.

[23] It can therefore be said in summary that although there is a clear emphasis in the objectives on protecting and retaining Pakiri's specified qualities, they do not suggest a total embargo on further development. Indeed in the helpful summary of the ARC's written submissions the point is put this way:

> a consistent thread runs through [the] documents. Pakiri beach and its surrounds form a special environment and one where subdivision is acceptable only in very limited circumstances.

It cannot be said that the particular areas designated for possible future development represent a total embargo on development outside them, albeit for such a development the circumstances in which it would be appropriate may be even more limited.

[24] Clearly any further development must not be contrary to the objectives and policies. But if a development can be designed and implemented so as to be consistent with them it cannot be said to be contrary to them. Whether a particular proposal is consistent with or contrary to the objectives and policies; in other words, whether it comes within the very limited circumstances contemplated as acceptable, is a matter of assessment on a case by case basis. That assessment is the province of the Environment Court. The High Court cannot substitute its own assessment. In this case the Environment Court was satisfied that when all the particular features of Arrigato's proposal were taken into account it was consistent with the relevant objectives and policies. We consider that the Court was entitled to construe them in

that way and, on the basis of such consistency, the Court was entitled to conclude that Arrigato's proposal was not contrary to the objectives and policies of Change 55. It follows that Chambers J was in error when he held that in coming to its conclusion the Environment Court must have misunderstood "the statutory documents". The first question must therefore be answered to that effect.

Question 2

[25] This question derives from the fact that in 1995 the RDC granted Arrigato a non-notified controlled activity consent for a subdivision into 9 lots of its existing 7 titles. In addition, before the present case was heard by the Environment Court, a controlled activity consent had been granted for residential dwellings and an accessory building on the seaward subdivided lots. Arrigato wished to have these as yet unimplemented consents taken into account in the assessment of what adverse effects there might be on the environment of its 14 lot subdivision proposal. It was common ground among counsel that if the work contemplated by the consents had been done and the buildings completed, such work and buildings would have become part of the existing environment.

[26] The question at issue concerns the correct approach for consent authorities to take while a resource consent remains unimplemented. The Environment Court took into account the effect on the environment that would result from implementing the resource consents already granted. The High Court considered that to do so was wrong and a consent authority should ignore the effects of any authorised but as yet unimplemented resource consents. There are two possible ways of looking at the issue. The first is to ask what effects qualify as adverse and the second is to inquire what comprises the relevant environment. Adverse effects already inherent in an unimplemented resource consent can be argued to be irrelevant because they are effects which the holder of the consent already has a right to impose on the environment. On the approach which inquires what comprises the environment, Arrigato's proposition is that the environment is already in substance subject to any adverse effects inherent in the granting of a resource consent. In practical terms it is unlikely to matter which of these approaches are taken. They are both apt to lead to the same conclusion. If the view taken by Chambers J is correct, adverse effects

inherent in an already existing but as yet unimplemented resource consent must be ignored when the instant resource consent application is being considered. The focus of the present appeal is whether that conclusion is correct.

[27] In *Bayley v Manukau City Council* (supra) this Court considered a closely related issue from the point of view of notification under s94(2) of the Act. What the Court then held was found to apply equally to the substantive issues arising under ss104 and 105 – see *Smith Chilcott Ltd v Martinez and Auckland City Council* (supra). In *Bayley* at 576 the Court said:

> The appropriate comparison of the activity for which the consent is sought is what either is being lawfully done on the land or could be done there as of right.

[28] A little later at 577, the Court approved what had been said by Salmon J in *Aley v North Shore City Council* [1998] NZRMA 361, 377 but with an extension requiring the relevant environmental comparison to be against the environment:

> as it exists or as it would exist if the land were used in a manner permitted as of right by the plan.

[29] Thus the permitted baseline in terms of *Bayley*, as supplemented by *Smith Chilcott Ltd*, is the existing environment overlaid with such relevant activity (not being a fanciful activity) as is permitted by the plan. Thus, if the activity permitted by the plan will create some adverse effect on the environment, that adverse effect does not count in the s104 and 105 assessments. It is part of the permitted baseline in the sense that it is deemed to be already affecting the environment or, if you like, it is not a relevant adverse effect. The consequence is that only other or further adverse effects emanating from the proposal under consideration are brought to account.

[30] Mr Brabant argued that existing but unimplemented resource consents should also be regarded as falling within the concept of the permitted baseline. His argument was based on two propositions. The first was that a resource consent represents a right to use land according to its tenor and is therefore covered by the words "as of right" used in *Bayley*. Mr Brabant's second proposition was that in any

event a resource consent should, as a matter of logic and justice, be treated in the same way for present purposes as a permitted use under a plan.

[31] The first point can be dealt with quite quickly. The expression "as of right" used in *Bayley* was used at page 576 on its own and at page 577 as part of the phrase "permitted as of right by the plan". This led Mr Brabant to suggest that in its more general statement at 576 the Court was deliberately signalling a general and wider test than the more particular reference at 577 which was focused on the limited circumstances being addressed by Salmon J in *Aley*. No such distinction should be drawn between the two references. The expression "as of right" used on its own at 576 was used in the sense of a person being able to do something without permission. That is apparent from the following sentence: "The starting point is that business activities are permitted" – meaning permitted by the plan: see the definition of a permitted activity in s2 of the Act:

> **Permitted activity** means an activity that is allowed by a plan without a resource consent if it complies in all respects with any conditions (including any conditions in relation to any matter described in section 108 or section 220) specified in the plan:

[32] The addition on p577 of the words "permitted … by the plan" simply underlined what was inherent in the expression "as of right" itself. To do something pursuant to a resource consent is not to do it as of right. It is to do it pursuant to the authority of the resource consent. This distinction between what you can do in terms of a plan and what you can do in terms of a resource consent is inherent in s9(1) of the Act upon which Mr Brabant himself relied. It provides:

> **9 Restrictions on use of land**
>
> (1) No person may use any land in a manner that contravenes a rule in a district plan or proposed district plan unless the activity is—
>
> (a) Expressly allowed by a resource consent granted by the territorial authority responsible for the plan; or
>
> (b) ...

[33] People may do something as of right if it does not contravene a rule in a plan and they may also do something pursuant to a resource consent; in which case they

are doing it in terms of the permission thereby granted and without which their activity would not be lawful. We are therefore unable to accept Mr Brabant's submission that activities contemplated by unimplemented resource consents form part of the *Bayley* permitted baseline by dint of the decision in *Bayley* itself.

[34] There remains, however, the second issue, whether *Bayley* should be extended so as to include unimplemented resource consent activities within the permitted baseline. Mr Brabant argued that following the granting of a resource consent, the holder has an equal right to do what is allowed as would have been the case had the plan allowed it. That is so but, as Mr Burns and Mr Loutit submitted, there is a material difference between what is allowed under a plan and what is allowed under a resource consent. The plan represents a consensus, usually after very extensive community and regional involvement, as to what activities should be permitted as of right in the particular location. There is therefore good reason for concluding, as was done in *Bayley*, that any such permitted activities should be treated as part of the fabric of the particular environment.

[35] Resource consents are capable of being granted on a non-notified as well as a notified basis. Furthermore, they relate to activities of differing kinds. There may be circumstances when it would be appropriate to regard the activity involved in an unimplemented resource consent as being part of the permitted baseline, but equally there may be circumstances in which it would not be appropriate to do so. For example implementation of an earlier resource consent may on the one hand be an inevitable or necessary precursor of the activity envisaged by the new proposal. On the other hand the unimplemented consent may be inconsistent with the new proposal and thus be superseded by it. We do not think it would be in accordance with the policy and purposes of the Act for this topic to be the subject of a prescriptive rule one way or the other. Flexibility should be preserved so as to allow the consent authority to exercise its judgment as to what bearing the unimplemented resource consent should have on the question of the effects of the instant proposal on the environment.

[36] We do not accept Mr Brabant's submission that this approach is inconsistent with ss9 and 11 of the Act. As Mr Cowper pointed out, s9(1) does not purport to

equate a resource consent with a permitted activity. The Act contemplates the relevant environment being addressed in a realistic and factually based way. It would be artificial to require the effects of unimplemented resource consents either to be ignored altogether, or always to be a component of the existing environment. Sections 9 and 11 are in any case directed to significantly different concepts. Their presence in the Act, albeit in Part II, does not have the suggested constraining effect on determining the relevant environment for the purposes of ss94, 104 and 105.

[37] We have given careful attention to the submissions made in respect of what was described as "environmental creep". This expression describes a process whereby having achieved a resource consent for a particular building or activity, a person may seek consent for something more and try to use their existing consent, as yet unimplemented, as the base from which the effects of the additional proposal are to be assessed. In physical terms consent might be obtained for a 10 storey building and then before any work is done an application made for 2 extra floors. On the basis posited by Arrigato effects would be limited on the second application to the extra 2 floors, rather than to the whole building comprising 12 floors. Mr Burns and Mr Loutit expressed concern about the position consent authorities would be in if the 10 floor structure had become part of the permitted baseline. Mr Brabant argued that if such tactics became prevalent, consent authorities could amend their plans or reject the second application as going too far.

[38] Reflecting on the competing contentions in this area has reinforced us in the view that there should be no rigid rule of law either way. That conclusion should relieve consent authorities of the anxieties expressed by counsel while also allowing applicants for consent to seek a factually realistic appraisal. What is permitted as of right by a plan is deemed to be part of the relevant environment. But, beyond that, assessments of the relevant environment and relevant effects are essentially factual matters not to be overlaid by refinements or rules of law. It follows therefore that Chambers J was wrong in law in his approach to this question. The Environment Court did not err in taking into account Arrigato's existing resource consent. The Court was entitled to do so and no criticism was or indeed could be raised as a matter of law about the way this aspect was taken into account by the Court. Although our

conclusions do not go as far as Mr Brabant suggested, Arrigato has established enough to obtain an affirmative answer to question 2.

Conclusion/formal orders

[39] For the reasons given the appeal is allowed. The two questions set out in para [4] are both answered yes. The orders made by the High Court are set aside. In their place we make an order dismissing the appeal to the High Court. The decision of the Environment Court is thereby restored. Arrigato is entitled to costs in this Court in the sum of $5000 plus disbursements including the reasonable travel and accommodation expenses of both counsel to be fixed if necessary by the Registrar. Those costs and disbursements are to be paid as to two-thirds by ARC and one-third by RDC. This apportionment reflects the fact that RDC appeared to oppose the appeal only in relation to question 2. Costs in the High Court are to be fixed, if necessary, in that Court in the light of this decision.

Solicitors
Harkness & Peterson, Wellington, for Appellants
Bell Gully, Auckland, for First Respondent
Simpson Grierson, Auckland, for Second Respondent
Dail Jones & Russell Lawn, Kumeu, for Third Respondent

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by **ONE BLACK MERINO LIMITED** to construct and operate a gondola transport system to provide access between Cardrona Valley Road and the Waiorau Snow Farm Ski Area Subzone, including associating car-parking, earthworks and landscaping.

Council File: RM070610

DECISION OF A QUEENSTOWN-LAKES DISTRICT COUNCIL HEARINGS PANEL COMPRISING JANE TAYLOR AND CHRISTINE KELLY, INDEPENDENT HEARINGS COMMISSIONERS APPOINTED PURSUANT TO SECTION 34A OF THE RESOURCE MANAGEMENT ACT 1991

Site and Environment

1. One Black Merino Limited ("the Applicant") has sought resource consent for the construction and operation of a gondola transport system to provide access between the main arterial route of Cardrona Valley Road and the Waiorau Ski Sub-zone, which presently contains the Snow Farm, Snow Park and Southern Hemisphere Proving Ground. The property is located predominantly in the Rural General Zone, with approximately 500 hectares of the site comprising the Waiorau Ski Sub-zone. The existing mountain access road runs through the site.

2. The application site comprises one title, Lot 2 DP 341711 and Section 2-4, 6-9 Survey Office Plan 24173 and Part Section 10 Survey Office Plan 24173 (CT 171612) and is 2,698 hectares in size.

3. The application describes the site as follows:

> *"The subject site runs from Cardrona Valley Road over the peak of the Pisa Range. It includes river flats, pastoral hillsides and rocky mountain outcrops. The site contains elements that reflect the historic uses of the area. Rural activity has resulted in a predominance of pasture and exotic planting on the site while the modified river flats and the altered, channelised river reflect the historic mining use of the area. The upper ranges of the site contain more recently developed economic and recreational alpine*

activities that are continuing to expand as tourism replaces pastoral activities as the base economic activity in the district."

4. The surrounding area is described at paragraph 2.2 of the application, summarised as follows:

> *"The area is a well-defined valley following the Cardrona River that forms the main arterial route of the Cardrona Valley Road and Cardrona River from Wanaka to Queenstown. The area is classified as an Outstanding Natural Landscape (District wide). The valley north of Cardrona is open, providing wide views up the valley with the valley south of Cardrona, towards Queenstown, becoming narrower as the observer enters the more remote and natural part of the valley. Vegetation in the southern portion is less diverse with tussock grasses being the predominant cover, whereas north of Cardrona, the predominant vegetation is pasture grasses with many more trees present, primarily exotic willow and pine."*

5. The majority of the site is used for pastoral farming activity and is grazed throughout the year as climatic conditions allow. The vegetation comprises a more or less continuous cover of introduced grasses at low levels, with native tussocks becoming more dominant as altitude increases. Consent has been granted to earthworks for the removal of gravel from a 25 hectare area of the river flat located on the site to improve this area for pastoral farming. We will return to this consent (RM 050942) later in our decision.

6. The Waiorau Ski Field Sub-zone is currently occupied by the following facilities:

- Snow Farm cross-country skiing area and high altitude training facilities with 150 car parks.
- Snow Park International Terrain Park with one fixed grip quad chairlift and offices, café, first aid and rental facilities with 600 car parks.
- Four accommodation units, with 20 more planned to be established, together with 44 bunk beds.
- Bar and restaurant.

- Proving ground activities comprising several testing tracks, workshop buildings and handling flats.

- Summer mountain bike operations.

7. Other areas of the site (external to the Ski Field sub-zone) contain the monster truck activity with administration buildings. A variety of rally and truck tracks associated with this and other tourist activities have been constructed on the Cardrona River Flats.

8. Paying customers, employees and service vehicles currently access the Ski Field sub-zone via a gravel access road that adjoins the Cardrona Valley Road immediately adjacent to the confluence of the Cardrona River and Tuohy's Gully. The mountain road is a double carriageway unsealed road of 13.5km with an average gradient of 1:13 (although many parts are much steeper) and contains ten hairpin corners.

9. We understand that the Snow Park and Snow Farm activities currently attract an average of 420 visitors per day during operation of the ski facilities, increasing to an average of 2,500 visitors per day during special events such as the Burton Open Snowboarding Event held in August. The site has also attracted a high number of visitors for the filming of movies and commercials. The Applicant expects such activities to continue on the site in the future. In total, it is estimated that the Ski Field sub-zone currently attracts total visitor numbers in excess of 48,000 per annum.[1]

Proposal

10. The application states that the primary objective of the gondola is to offer better, safer, cleaner sustainable access for the public to the existing and future recreational facilities in the Ski Sub-zone. The proposal contains only those facilities necessary for the operation of the gondola, station buildings and appropriate car-parking at the base of the gondola, which have been designed primarily for the safety and convenience of passengers and to ensure the efficient

[1] This figure relates to the Snow Farm and Snow Park only and does not include other visitors to the Ski Area Sub-zone.

operation of the system. There is no other development associated with the proposal.

11. The gondola development, as originally proposed, consists of the following elements:

- A base building in the area known as Rabbit Flat, located just out of the Cardrona township towards Wanaka. The base building is 6.5m high and contains areas essential for customers utilising the gondola. This includes ticket booths, a waiting area and toilet facilities.

- A top station building for the unloading of guests and the storage of gondola carriages when not in use. The building also includes a waiting area, public storage lockers and ablution facilities.

- Permanent car-parking area for 500 cars, located behind an existing raised berm that will be extended and enhanced to screen the proposal.

- Overflow parking area for 300 cars, to be finished in reinforced grass so that this area will appear similar to the surrounding pasture area.

- A passenger drop-off and pick-up loop adjacent to the base building with a separate bus parking area.

- Access from Cardrona Valley Road. A previously consented access to the south will be amalgamated with the new access to prevent a visual and operational proliferation of accessways in the area.

- Landscaping of the carpark and surrounding area in trees in a pattern that replicates the existing surrounding vegetation.

- The gondola cable system, which is 3,880m in length and rises 965m in elevation. The system consists of 18 towers, ranging in height from 4.05m (tower one) to 20.18m (tower eight). The average height of the towers is 12.48m.

- The gondola line will carry up to 50 carriages at one time, each accommodating up to eight people. The carriages will move at 6m per second, resulting in a total trip time of 12 minutes 8 seconds from the base station to the top.

12. The gondola base station and top station buildings were designed by Sarah Scott Architects to blend with the natural surroundings. Each station was designed recognising the constraints of landscape amenity values, building function and protection from the weather. External materials proposed for the base station buildings include stacked schist walls, glass walls, corrugated Colorsteel coloured "Grey Friars", timber accents and steel work coloured "Ironsand". External materials for the top station building include glass viewing walls (some bronze tinted), transparent polycarbonate glazing, hardwood posts and timber weatherboards, stonework and timber accents. Both buildings will utilise aluminium joinery and expose steelwork coloured "Satin Black" and Colorsteel roofing coloured "Ironsand". The prefabricated steelwork ball wheel housing at the top and base stations will be coloured "Ironsand". The gondola cars and towers are also proposed to be coloured "Ironsand".

13. Approximately 70,000 cubic metres of earthworks are required to form a screening bund adjacent to Cardrona Valley Road, car-parking areas, to locate the base and top buildings, gondola towers and for access tracks to the gondola towers.

14. A full description of the proposal is set out in the application, which is extremely comprehensive, and in the written brief of evidence of Mr Espie at section 4.

Submissions

15. Public notification of the application drew 114 submissions: 109 submissions in support of the application; 3 submissions in opposition; and 2 neutral submissions.

Late submissions

16. Of the 114 submissions received, three submissions were received after the closing date, all in support of the application. The Applicant advised at the hearing

that there was no objection to acceptance of the late submissions by the Commission.

17. Pursuant to s.37 of the Act, the Commission considered it appropriate to waive the requirement for the three late submitters to make a submission within the statutory time period in accordance with the considerations set out in s.37(4). The Commission was satisfied that there was no prejudice suffered by the Applicant as a result of the late submissions.

Summary of issues raised by submitters

18. The Upper Clutha Environmental Society Incorporated's ("UCESI") submission in opposition is essentially concerned with the adverse landscape effects which UCESI considers cannot be avoided, remedied or mitigated by the proposal. UCESI made the following points:

- The application does not demonstrate the gondola as necessary in safety and convenience terms, nor necessary for the continued operation and expansion of commercial businesses in the Waiorau Ski Sub-zone.

- The development will be visible from important public places; visual and amenity effects will be significantly adverse.

- The site is part of a nationally significant landscape, which the proposal does not protect.

- The proposal will result in cumulative effects that will exceed the threshold that can be absorbed by the surrounding Outstanding Natural Landscape ("ONL").

- Positive economic effects are dubious and may not eventuate. Alternative methods (for example, road fencing) are not fully explored.

- The proposal will set a precedent for large scale commercial development in ONLs.

- Energy savings associated with the gondola will be minimal at best.

- Building design controls are supported, but these will not meaningfully mitigate adverse effects.

- The proposal is contrary to the objectives and policies of the District Plan and conflicts with the character of the Rural General Zone.

- The application does not maintain or enhance the quality of the environment, nor amenity values. The gondola is not an efficient use and development of natural and physical resources.

19. The New Zealand Historic Places Trust ("NZHPT") filed a submission in opposition to the application, citing the less than adequate addressing of the development's real and/or potential impacts on historic and cultural heritage as the principal reason. The NZHPT commented that the assessment of environmental effects provided by the application was inadequate in this regard and listed a number of specific concerns. However, at the hearing a letter from NZHPT dated 5 October 2007 was tabled expressing NZHPT's revised view that, based on the report obtained by the Applicant titled "*Archaeological Assessment of the Waiorau Snow Farm Gondola Proposal (October 2007)*" by Chris Jacomb and Richard Walter of Heritage Associates, there will be no impact on archaeological sites or values. The letter noted that the above report had been reviewed by Dr Mathew Schmidt, Regional Archaeologist, Otago/Southland, NZHPT, who believed it to be well researched and surveyed. However, the NZHPT submitted that the following recommendations should be included as appropriate conditions of consent:

    - Care must be taken in the construction of any roads or access tracks to avoid damaging the 1930s gold workings identified on Fig. 1 (page 4 of the report); and

    - If any archaeological or historical features are discovered during the course of the construction of the proposed gondola system, an archaeologist must be contacted immediately for advice.

The Applicant advised at the hearing that these proposed conditions of consent were acceptable.

20. The Upper Clutha Tracks Trust neither supported nor opposed the application, but sought conditions and amendments relating to public access. In particular, the Trust outlined the potential for creating new tracks, particularly a track from the top station to Tuohy's Saddle that, in its view, would comprise beneficial environmental compensation. The Trust also requested a reverse sensitivity condition to prevent the Applicant from opposing any walking tracks that may utilise the Cardrona River marginal strip. At the hearing, the Applicant offered to construct the walking track along the Cardrona River (in conjunction with the Department of Conservation as necessary in relation to the marginal strip); accordingly, this concern has been fully alleviated. In addition, the Applicant has volunteered pedestrian access from the top station to Tuohy's Saddle on the proviso that the Applicant retains full control over the access to, use and management of this track on reasonable terms.

21. The proposal was also opposed by M and K Curtis of 2256 Cardrona Valley Road, Cardrona, who consider the proposal will introduce visual pollution of an ONL, in particular, the towers and their access tracks. They consider that the existing road serves the required purpose.

22. The submissions of the 109 submitters in support of the application are summarised as follows:

- Reduced dust and pollution from the use of the road.
- The gondola will provide an alternate means of transport, which will reduce the likelihood of serious road accidents on the current mountain access road.
- The enhancement of recreation opportunities (such as mountain biking, the extension of the ski areas, tramping).
- Positive impacts on tourism and enhancement of the Cardrona Valley as a year-round destination.

- Economic benefits associated with growth in visitor numbers to the region.

- Improvement for ambulance access.

- Alignment of the standard of access to the ski fields located in the northern hemisphere. The proposal will meet the expectations of international visitors, who are not used to gravel ski field roads.

- Increase in employment opportunities in the Cardrona Valley.

23. Of the above, safety concerns relating to the use of the access road during winter months, the associated dust pollution and the desire to improve the ski field access to an international standard were the main focus of supporting submissions.

24. No consultation was undertaken by the Applicant or written approvals provided that require consideration by the Commission.

The Hearing

25. A hearing to consider the application was convened on 9 and 10 October 2007.

Site Visits

26. Immediately prior to the hearing, the Commissioners undertook a visit to the site and the surrounding area. A further site visit was taken approximately three weeks following the hearing to clarify several of the issues raised at the hearing, and to examine the location of the tracks offered by the Applicant.

Appearances at the Hearing

27. The Applicant was represented at the hearing by Mr Michael Garbett and Ms Annabel Ritchie of Anderson Lloyd, who called evidence from the following persons:

- Mr John Lee, the Managing Director of the Applicant;

- Mr Sam Lee, the General Manager for Snow Park New Zealand Limited and Operations Manager for the Applicant;

- Ms Eliska Lewis on behalf of Sarah Scott Architects Limited, a registered architect and member of the architectural team that designed the proposed base and top station buildings and car-parking facilities;

- Mr Gert van Maren, a shareholder of Data Interface Technologies Limited, which develops computer software and provides information technology services including the three-dimensional special modelling software called K2Vi (Key to Virtual Insight);

- Mr Don McKenzie, a chartered professional engineer, currently employed as a traffic engineer by Traffic Design Group;

- Mr Jeff Bryant, an engineering geologist and principal of Geo Consulting Limited;

- Mr Colin Boswell, an expert witness on ecology issues. Mr Boswell holds post-graduate degrees in ecology and a PHD in soil and agronomy;

- Mr Chris Jacomb, an archaeologist and co-director of Southern Pacific Archaeological Research, a research group based in the Anthropology Department of the University of Otago. Mr Jacomb is also a principal of Heritage Associates, a commercial consulting group based in Dunedin;

- Ms Daniela Edwards, an environmental science consultant with qualifications in environmental science and engineering;

- Mr Ben Espie, a landscape architect and principal of Vivian & Espie Limited, a specialist resource management and landscape planning consultancy based in Queenstown; and

- Ms Nicola Sedgley, a director of MPC Planning Limited and Orion Development Consultants, a qualified planner and member of the New Zealand Planning Institute.

28. The following submitters attended the hearing and spoke to their written submissions:

- Mr Julian Haworth, representing UCESI;
- Mr Tim Scurr;
- Mr S Williams, representing Lake Wanaka Cycling Incorporated;
- Ms Hil Stapper;
- Mr John Wellington, representing the Upper Clutha Tracks Trust; and
- Mr Ross Hawkins, on behalf of Mount Cardrona Station.

29. The Commission acknowledges the valuable assistance provided by the above submitters who expressed their views in a considered and helpful manner.

Section 42A reports

30. Prior to the hearing, the Commission had the benefit of comprehensive s.42A reports provided by the Council's regulatory agents, Lakes Environmental Limited; prepared by Mr Christian Martin (Planner), Mr Antony Rewcastle (Landscape Architect) and Mr Mark Townsley (Engineer). Mr Martin, Mr Rewcastle and Mr Townsley attended the hearing and provided further comment following the presentation of evidence and submissions prior to Mr Garbett's exercise of his right of reply.

31. In his planner's report, Mr Martin recommended that the application be refused pursuant to s.104 of the Resource Management Act 1991 ("the Act") for the following reasons:

(i) The proposal will result in significant adverse effects in terms of landscape character;

(ii) On balance, the proposal is inconsistent with the objectives and policies of the District Plan when taken in their entirety, primarily due to the primacy of the protection of ONLs; and

(iii) The proposal does not promote the purpose of the Act.

32. However, in his report Mr Martin noted that his assessment was finely balanced, and was influenced by the uncertainty surrounding the extent of positive and cultural effects promoted by the application resulting from the lack of relevant expert opinion.

Modifications to the Application presented at the hearing

33. At the hearing, the Applicant proposed the following modifications to the application as a result of the Lakes Environmental reports and recommendations, together with submissions received:

(i) The hours of operation were originally proposed as 6:00 am to 3:00 am, seven days a week, with the ability to operate until 4:00 am on 15 days per year. This has been modified to the following:

- 7 days per week, 6:00 am to 11:00 pm.

- Extended hours from 11:00 pm to 4:00 am on 25 days of the year to allow for special events.

The Applicant submitted that the late operating hours are necessary to enable those accessing the mountain to return to the base station following special events (such as the Burton Open) and filming, which occurs at night. The reduced hours will provide for the reasonable needs of people wishing to access the ski zone facilities (such as being able to return to accommodation after dinner in Cardrona or for people to enjoy dinner in the Snow Park restaurant and then return to their car via the gondola) and will ensure there is no risk of the movement of carriages creating an adverse effect on the night-time environment after 11:00pm.

(ii) The Applicant proposes to modify the planting plan to incorporate the recommendations of Council's landscape architect, Mr Rewcastle. This will involve adding more indigenous species, such as native beech and *Kowhai*; replacement of willows shown on the plan with upright poplars (*Populus nigra italica*); replacement of evergreen trees on the lower terrace area (near the car park) with native beech, and the addition of a new clump of beech/native shrubs to the east of car-parking terrace 4. The area to the east of the new mounding and the watercourse that leads into the wetland area (outside the planted areas) is to be grazed.

(iii) A further 130 car parks located in the permanent car parking area are to be finished in reinforced grass to reduce their visibility from the Cardrona Valley Road.

34. The Upper Clutha Tracks Trust, together with a number of other submitters, raised the potential for creating walking tracks through the site. The Applicant has accepted that this proposal creates an opportunity to enhance public access and is an appropriate form of mitigation for this activity. As a result, the Applicant proposes to form a public walking track from the current Snow Farm access road, preferably along the marginal strip beside the river to the gondola base building. As the Applicant is aware that there has been a significant amount of work done by various groups on the preferred nature and location of walkways in the Cardrona area, a condition of consent was suggested that requires a plan showing the walkway and detail of its formation to be designed in consultation with the Upper Clutha Tracks Trust and the Department of Conservation and submitted to Council for approval prior to construction. If agreement cannot be reached with the Department of Conservation, the walkway shall be created over the Applicant's land and reserved by way of an easement in gross.

35. The Applicant has also volunteered to make access to Tuohy's Gully available to the public who use the gondola and ski field area activities. As part of the 8km walking track is leased to another high country farmer, the Applicant is unable to volunteer unrestricted public access, but is prepared to allow the public to utilise the track as its guests while the facilities are open.

The Applicants Case

36. In his opening address, Mr Garbett submitted that the purpose of the gondola is to provide improved access for staff and customers to the facilities located in the Waiorau Ski Area Sub-zone. Further, the gondola will provide a unique point of difference in the market and an opportunity for the Applicant to improve and build on existing facilities for winter sports. As a result, the gondola will assist the Snow Farm and Snow Park to remain viable in the long term and allow owners and staff to provide for their social, economic and cultural well-being. Any spin-offs for local and district business growth that occurs will in turn provide for the economic well-being of the wider community.

37. Mr Garbett submitted that in particular, the gondola will provide:

- Safer access - particularly during winter months when the existing access road is subject to a range of surface conditions including dust, mud, ice and snow.

- Easier access – less risk of delays due to road climatic conditions including snow and ice, which delay staff and customers arriving at the Snow Farm and Snow Park.

- Avoidance of wear and tear on vehicles travelling on gravel for the 27km return trip to the summit. The gondola will also enable staff to use this facility and avoid lengthy bus rides to the facilities.

- Quality of access – a gondola will provide quality access similar to that experienced by overseas customers in Europe/USA/Canada. The Applicant maintains that many overseas customers are intimidated by travelling on New Zealand's ski field roads.

- Transporting of accident victims – the gondola will enable a stretcher and attendants to travel by gondola to the base station without the delay of waiting for an ambulance to reach the facilities. The gondola will also allow patients to be moved with a minimum of vibration to the base station to meet the ambulance. As a result, ambulances will no longer need to drive up and down the Snow Farm Road to collect patients.

38. The expert evidence provided by the Applicant is summarised in the discussion of each of the relevant environmental effects beginning at paragraph 65.

Post-hearing Events

39. During hearing, the Commission commented on several occasions that the Applicant had failed to provide expert evidence in relation to the positive economic effects claimed to be associated with the proposal, notwithstanding that these positive effects were heavily relied on by the Applicant by way of environmental compensation.

40. Subsequent to the hearing, the Commissioners thoroughly considered the material and evidence presented by the Applicant. On 22 January 2008, the Commission issued a memorandum to the parties, which is **attached** as Appendix "A" to this decision ("the Memorandum").

41. The Memorandum identified that the crux of this decision lies in the extent to which the landscape effects of the proposal may be successfully avoided, mitigated or remedied and, correspondingly, whether the positive effects resulting directly from the proposal are sufficient to outweigh any adverse landscape effects that are unable to be totally remedied or mitigated. In addition, whether the proposal promotes sustainable management under s.5 of the Act is of central importance.

42. The Memorandum essentially summarises the central issues and competing considerations material to the application, concluding that without expert evidence in relation to the economic benefits (to which the Commission was at that time unable to ascribe any significant weight), the application was "very finely balanced". Exercising our discretion under the Act, we granted the Applicant the opportunity to provide substantiating economic evidence, acknowledging that if the Applicant chose not to do so, a decision would be made on the basis of the evidence adduced.

43. On 26 February 2008, the Applicant tabled economic evidence prepared by Mr Michael Copeland, a consulting economist based in Wellington and Managing

Director of Brown, Copeland & Co. Limited. For procedural reasons, the evidence was circulated to all submitters, who were given 10 working days to file any submissions in response to the evidence. The Commission was advised on 18 March 2008 that no comments had been received from submitters by Lakes Environmental. Being satisfied that all relevant evidence had been provided, we closed the hearing shortly following that date, and retired to consider our decision.

44. We are aware that there has been substantial media interest in the outcome of this application. Of particular concern, there has been considerable, and at times unhelpful, media comment on the alleged "delays" associated with the delivery of this decision. For the record, we note that had the Applicant provided economic evidence at the hearing, any delay, whether perceived or actual, would have been largely avoided.

45. We also record that had the Applicant chosen not to eventually provide economic evidence, the application would have been declined in its entirety by this Commission for the reasons expressed in the Memorandum, and which will become clear from the following discussion.

District Plan Provisions

46. The site is zoned predominantly Rural General under the Partially Operative District Plan ("the District Plan"), with the top station and part of the gondola located in the Ski Area Sub-zone.

47. Under Part 5.3.1.1, the purpose of the Rural General Zone is stated as follows:

> The purpose of the Rural General Zone is to manage activities so they can be carried out in a way that:
>
> - protects and enhances nature conservation and landscape values;
> - sustains the life-supporting capacity of the soil and vegetation;
> - maintains acceptable living and working conditions and amenity for residents of and visitors to the zone; and
> - ensures a wide range of outdoor recreational opportunities remain viable within the zone.

> The zone is characterised by farming activities and a diversification to activities such as horticulture and viticulture. The zone includes the majority of rural lands including alpine areas and national parks.

48. The key objectives and policies of the Rural General Zone seek 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.

- Retain the life-supporting capacity of soils and/or vegetation in the rural area so that they are safeguarded to meet the reasonable foreseeable needs of future generations.

- Avoid, remedy or mitigate adverse effects of activities on rural amenity.

49. The purpose of the Ski Area Sub-zone is to:

> "… enable the continued development of ski field activities within the identified boundaries, where the effects of those activities are anticipated to be cumulatively minor."

50. The specific objectives and policies that are relevant to the Ski Area Sub-Zone are found in Part 5.2 of the District Plan:

> **Objective 6: Ski Area Sub-Zone:**
>
> *To encourage the future growth, development and consolidation of existing Ski Areas, in a manner which mitigates adverse effects on the environment.*
>
> **Policies:**
>
> 6.1 To identify specialist sub-zoning for Ski Area activities.
> 6.2 To anticipate growth, development and consolidation of ski fields within Ski Area Sub-Zones.

51. Resource consent for this proposal is required for the following reasons:

- A **controlled activity** consent pursuant to Rule 5.3.3.2(i)(c) for the construction of a new building associated with ski area activities within a Ski Area Sub-zone. Control is restricted to:

(i) Location, external appearance and size;

(ii) Associated earthworks, access and landscaping; and

(iii) Provision of water supply, sewerage treatment and disposal electivity and communication services (where necessary).

- A **controlled activity** consent pursuant to Rule 5.3.3.2(iii)(c) for commercial recreation activities.

- A **discretionary activity** pursuant to Rule 5.3.3.3(i)(a) for the construction of a building not contained within an approved building platform.

- A **discretionary activity** pursuant to Rule 5.3.3.3(ii) for commercial activities ancillary to and located on the same site as recreational activities.

- A **discretionary activity pursuant** to Rule 5.3.3.3(ix) for ski area activities not located within a Ski Area Sub-zone.

- A **restricted discretionary activity** pursuant to Rule 5.3.3.3 as the activity breaches Site Standard 5.3.5.1 (iii)(a) that restricts the maximum gross floor area of all buildings on the site which may be used for activities other than farming, factory farming, forestry and residential activities, activities ancillary to ski area activities within Ski Area Sub-zones, and visitor accommodation, to 100m².

- A **restricted discretionary activity** pursuant to Rule 5.3.3.3 as the activity breaches Site Standards 5.3.5.1(vii)(1)(a), (1)(b) and (2)(c) as they relate to the area and volume of earthworks and the depth of fill.

- A **restricted discretionary activity** pursuant to Rule 5.3.3.3 as the activity breaches Site Standard 5.3.5.1(ix) for commercial recreation activities involving more than five people per group.

- A **restricted discretionary activity** pursuant to Rule 5.3.3.3 as the activity breaches Site Standard 5.3.5.1(x) for the removal of more than 0.5

hectares of indigenous vegetation. Council's discretion is restricted to effects on nature conservation, landscape and visual amenity values and the natural character of the rural environment.

- A **restricted discretionary activity** pursuant to Rule 5.3.3.3 as the activity breaches Site Standard 5.3.5.1(xii) for the clearance of indigenous vegetation on land with an altitude higher than 1070m above sea level. Council's discretion is restricted to effects on nature conservation values, the natural character of the rural environment and landscape and visual amenity values.

- A **discretionary activity** consent pursuant to Rule 14.2.2.3(i) for car-parking for non-identified activities.

52. In the application, Ms Sedgley concluded that the proposal requires consideration overall as a **discretionary activity**, noting that buildings within the Ski Sub-zone are, however, controlled activities. We concur with this analysis, which was endorsed by Mr Martin in his report.

53. It is worth noting that the District Plan has a strong emphasis on protecting landscapes, noting that the world-renowned landscapes of the district are what makes the district attractive to both residents and visitors. At Part 4.2.1, the District Plan states:

> "The district relies, in large parts for its social and economic well-being, on the quality of the landscape image and environment and has included provisions in the District Plan to avoid development which would detract from the general landscape image and values. The district is a series of landscapes distinctive in their formation. Buildings, tree planting and roading can all change the character of an area and provide for social, recreational and economic activity."

54. The relevant objectives and policies of the District Plan in relation to this application are discussed in detail at paragraph 178.

Statutory Assessment Framework

55. As previously discussed, the proposal requires consent as a **discretionary activity**. The Consent Authority is required to have regard to s.104 and s.104B of the Act when considering a discretionary application for resource consent. The assessment under s.104 is subject to Part 2 of the Act, which includes s.5 (Purpose and Principles), s.6 (Matters of National Importance), s.7 (Other Matters) and s.8 (Treaty of Waitangi).

56. Subject to Part 2 of the Act, s 104(1) sets out the matters to be considered by the Consent Authority when considering a resource consent application. Considerations of relevance to this application are:

> *(a) Any actual and potential effects on the environment of allowing the activity; and*
>
> *(b) Any relevant provisions of -*
>
> *(i) a national policy statement;*
> *(ii) a New Zealand coastal policy statement;*
> *(iii) a regional policy statement or proposed regional policy statement;*
> *(iv) a plan or proposed plan; and*
>
> *(c) Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

Section 104B provides that:

> *After considering an application for a resource consent for a discretionary or non-complying activity, a Consent Authority:*
>
> *(a) May grant or refuse the application; and*
>
> *(b) If it grants the application, may impose conditions under section 108.*

The purpose of the Act is to promote the sustainable management of natural and physical resources. The definition of sustainable management is:

> *Managing the use, development and protection of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety while:*

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil and eco systems; and

(c) Avoiding, remedying or mitigating any adverse effect of activities on the environment.

Section 6 of the Act requires that the consent authority shall recognise and provide for matters, including the following, as matters of national importance:

(b) The protection of outstanding natural landscapes from inappropriate subdivision, use and development.

Particular regard must also be had to section 7 of the Act – Other Matters as follows:

In achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –

(b) The efficient use and development of natural and physical resources;

…

(c) The maintenance and enhancement of amenity values;

…

(f) Maintenance and enhancement of the quality of the environment;

...

(i) The effects of climate change.

Section 108 empowers the Council to impose conditions on a resource consent.

Assessment of Effects on the Environment

<u>The Receiving Environment</u>

57. The subject site is zoned Rural General with the upper reaches within the Waiorau Ski Area Sub-zone. We concur with Mr Garbett's submission that as all structures in the Rural General Zone require discretionary resource consent, the permitted baseline is of limited relevance in this particular application.

58. However, the wider receiving environment is a legitimate consideration. This encompasses what already exists and what is enabled by consent in the area surrounding the subject site.

59. Mr Martin has noted that the following facilities are legally established on the subject site within the Waiorau Ski Area Sub-zone:

- Snow Farm cross-country skiing area, high altitude training facility, café, car parks and associated buildings.

- Snow Park International Terrain Park and associated buildings, café, bar/restaurant, chairlift, visitor accommodation and car parks.

- Southern Hemisphere Proving Ground facilities including testing track and associated buildings.

60. In addition, various buildings associated with the rally track activity are located on the flats adjacent to the Cardrona River. The majority of the property remains pastoral in appearance other than the ski field access road, which is a 13km two-way gravel road from the Cardrona Valley to the top of the Pisa Range.

61. There are a number of yet unimplemented resource consents that are of particular relevance to this application:

(a) RM 050942, which grants approval for 317,500m³ of earthworks for the extraction of 200 to 300m² of gravel per year, together with the clearance of indigenous vegetation in the vicinity of the base facilities. The Applicant has volunteered to surrender this consent should this application be granted;

(b) RM 061036 - approval for the construction of an 8 km effluent disposal area, the construction of three associated buildings and the upgrade of an accessway. This consented area is located just south of the proposed gondola car-parking area and runs up to and along Cardrona Valley Road for approximately 450m;

(c) RM 041173, which grants consent to establish, operate and maintain a new activity base building, including commercial activity, and to construct a new machinery workshop building. This activity is located at the current "monster truck" operation;

(d) RM 030379, which grants consent for the erection of a helicopter hanger; and

(e) RM 000579, which approves the commercial operation of a rally adventure activity.

62. Ms Sedgley has noted that in addition to the existing development in the area, the Mt Cardrona Station area to the west of the application site is zoned Rural Visitor Zone, which enables and anticipates a high level of development. In particular, two resource consents have been approved (RM 070276 and RM 070277) for the construction of 472 residential units, 325 hotel rooms and 47 visitor accommodation units, together with associated earthworks. Mt Cardrona Station has filed a submission in support of the proposal.

63. We also note that the proposed base station is in reasonably close proximity to the Cardrona township, which is increasingly, with recent development, taking on the character of an alpine ski village. The proposed developments on Mt Cardrona Station, which is approximately 1km from the subject site, will further add to the developing "alpine village" character of the township. We concur with Ms Sedgley's submission that the site of the proposed gondola (in particular the base station and associated car-parking) is not a pristine rural environment or typical of an area of ONL. Rather, the area is currently utilised by both the community and visitors to the district by providing for their recreation and entertainment, future housing development and infrastructure services.

64. We note that the base building and car park are located on land that would otherwise be completely earth-worked as part of RM 050942. Importantly, the Applicant has volunteered to relinquish this consent should resource consent for this application be granted.

Section 104(1)(a) – Actual and Potential Effects on the Environment

65. A number of actual and potential effects on the environment were identified in the application and the planner's report. In general, there is a high degree of consensus amongst the experts in relation to the expected actual and potential effects on the environment as a result of the proposed activity, the most important being the impact on landscape and visual amenity values.

66. As was noted in our earlier Memorandum, it is apparent that the crux of this decision lies in the extent to which the landscape effects of the proposal may be successfully avoided, mitigated or remedied and, correspondingly, whether the positive effects resulting directly from the proposal are sufficient to outweigh any landscape effects that are unable to be fully remedied or mitigated.[2]

67. Accordingly, we propose to structure our assessment as follows:

- Discussion of the actual and potential effects on the environment (excluding landscape and visibility effects).
- Discussion of effects on landscape values.
- Positive effects.

68. Consideration of the objectives and policies of the District Plan, and Part 2 matters will follow.

Assessment of Actual and Potential Effects (excluding landscape and visibility effects)

(a) Earthworks

[2] In addition, whether the proposal promotes sustainable management under Part 2 of the Act is of central importance.

69. Mr Martin notes that approximately 70,000m³ of earthworks are required to form the proposed screening bund adjacent to Cardrona Valley Road, car-parking areas, to locate the base and top buildings and the gondola towers, and to form access tracks to gondola towers. He notes that, in general, the earthworks required for the top and base buildings will be obscured once construction is complete and will not result in adverse visual effects.

70. It became apparent at the hearing that the most significant earthworks are those associated with the screening bund and the car-parking areas. Mr Martin observed that the landform resulting from the bund will not appear natural; however, screening provided by the bund and proposed landscaping will significantly reduce the visibility of the car park. We note that the overflow car-parking area is to be finished in reinforced grass, which will enable a higher degree of integration into the surrounding landscape than a sealed surface.

71. At the hearing, the Applicant volunteered to reduce the size of the permanent car-parking by 130 parks and to finish this section of the car park, which is in the most visible location (when travelling towards Cardrona from Wanaka), in reinforced grass to reduce visibility. We are satisfied that this proposed modification will reduce the environmental impact and visibility of the car park to a level that is less than minor. A condition of consent has been included to give effect to this modification. In addition, the amendments to the landscaping plan suggested by Mr Rewcastle will further assist to reduce the visibility of the car park and more appropriately integrate it into the surrounding pastoral landscape.

72. We are satisfied that management of the development of the car-parking area in a staged manner is appropriate. The conditions of consent will provide for monitoring of car-parking spaces and development of the overflow areas should demand increase to this level.

73. We note that should existing resource consent RM 050942, which allows for 317,500m³ of earthworks and the extraction of 2,000 to 3,000m² of gravel per year over a 25 year period be given effect to, the appearance of this site would be substantially altered. The surrendering of this consent will, in our view and the view of Mr Rewcastle, have an extremely positive environmental effect.

(b) Ecology

74. Mr Boswell gave extensive evidence on the ecological effects of the proposed gondola development. He concluded as follows:

> *"The vegetation at Waiorau Station is highly modified, and provided the construction techniques are environmentally sensitive and the replanting of vegetation is not delayed, the construction of the gondola is likely to have only a very limited effect on indigenous vegetation on the mountainside."*

75. Mr Boswell noted, as did Mr Howarth, that the most obvious need for sensitivity is in access of machinery to tower sites and, in this regard, a condition requiring towers 14 and 15 to be installed by helicopter has been imposed. The Lakes Environmental experts are satisfied that providing installation is conducted in a sensitive manner, the ecological effects of the proposal will not be significantly adverse. In this respect, conditions have been included to ensure that all temporary access tracks are removed and re-grassed in accordance with the application.

76. There was considerable discussion in relation to the proposed landscaping at the base station and car-parking areas. Mr Espie, on behalf of the Applicant, acknowledged Mr Rewcastle's suggestions, which have been incorporated into a revised landscaping plan to ensure that the effects on fauna and flora are mitigated to the maximum possible extent. We are satisfied that the revised proposal will enhance the rural character of the area and natural features, thereby reducing the perceived domestication that Mr Rewcastle considers was exhibited by the original application.

(c) Openness and character of the landscape

77. Ms Sedgley submitted that the immediate area of the application site has been previously modified and has lost a degree of naturalness. These human-induced changes include the Cardrona Valley Road, ski field roads, pastoral use of hillside slopes, historical mining activities, rural dwellings and unimplemented resource consents that allow 472 houses plus hotel complexes in the vicinity, together with consents for earthworks and the installation of effluent disposal fields in a 33-hectare area in close proximity to the gondola base station.

78. Notwithstanding this analysis, we concur with Mr Martin that the overall character of the Cardrona Valley is predominantly natural as reflected in its ONL classification. The capacity of development to be absorbed within the landscape is highly dependent on its location and the nature and scale of the activity. Mr Martin notes that the gondola line is advantageously located in the same area of disturbance as the current access road. However, he concludes (based on the recommendations of both Lakes Environmental and Mr Espie) that the proposal, when viewed in its entirety, exceeds the ability of the landscape to absorb it.

79. We agree with Ms Sedgley that the potential visual effects of the gondola transport system have been minimised by the carefully considered design, colour and positioning of all built elements. We accept Ms Lewis' evidence that the designs for the bottom and top stations have resulted in proposed structures that blend in with the environment to the fullest extent possible while adequately serving the function that they were designed for – to provide adequate shelter and to facilitate the efficient operation of the gondola transport service. We concur with Mr Martin and Mr Rewcastle that the buildings are subtle in design and appropriate for their intended use, and that the design will ensure that the buildings integrate well with the surrounding environment.

80. Ms Sedgley acknowledges that the gondola line will be visible from a relatively wide area and will appear as an interruption to the openness of the landscape. We concur with Mr Espie that such "interruptions" will not enclose or block the openness of the landscape and that the degree of openness that the landscape currently displays will remain largely unchanged.

81. Importantly, the gondola transport system is located in what is well known to be an alpine recreation area. We concur with Ms Sedgley and Mr Espie that while the gondola will be visible from the road, it is an "expected phenomenon" associated with alpine recreation and, accordingly, is unlikely to be perceived as out of character with the area by passing motorists and visitors. The visual impact of the gondola is, in this sense, no different from that of the current access road, which creates a visual scar on the landscape but is also an expected element in that it is necessary to provide access to the ski field area. In this respect, we note that the access road generates a number of additional adverse effects; in particular,

significant amounts of dust, which are both visually unpleasant and a pollutant of the immediate environs.

82. In his report, Mr Martin queried the necessity of the proposed operating hours (between 6:00am and 3:00am) in the original application, which he considered would detract from the character and amenity of the surrounds. In response, the Applicant has reduced the proposed hours to between 6:00am and 11:00pm, with extended hours only as required (up to a maximum of 25 days). We are satisfied that this modification strikes an appropriate balance between the needs of the gondola operation and the impact on the character of the surrounding area.

(d) Infrastructure

83. Mr Martin notes that the proposal requires limited servicing. The Lakes Environmental engineer has not raised any concerns with regard to infrastructure that cannot be appropriately addressed by conditions of consent. At the hearing, evidence was provided from Connor Consulting Limited, Electrical Engineers, that the electrical infrastructure at the existing Snow Farm and Snow Park has sufficient capacity to provide the required power for the proposed gondola. Accordingly, we have concluded that the proposal will not generate any adverse effects on the environment in relation to infrastructure that are more than minor.

(e) Traffic generation and vehicle movements

84. Mr McKenzie gave evidence in relation to the implications of travel to and from the proposed gondola on the surrounding transport network, comparing this to the current situation that utilises the existing unsealed ski field access roads. He also assessed the transport effects of the proposed gondola on the surrounding road network, including the existing access road to the Waiorau Ski Sub-zone and the measures that have been incorporated into the gondola proposal. He concluded that, in his professional opinion, the proposed gondola transport system will fit easily and effectively into the surrounding transport environment such that the effects of this proposal will be less than minor. Mr McKenzie also considers that there will be some positive road safety effects arising from removal of casual and unfamiliar road users from the current unsealed, steep ski area access road.

85. As Ms Sedgley has noted, there is a high level of agreement between Council's traffic expert and Mr McKenzie. Traffic generation is estimated to be 1500 two-way vehicle movements per day with a peak hour two-way volume of 500 vehicle movements. The Traffic Design Group report concludes as follows:

- Access arrangements are appropriate and will not adversely affect the safe and efficient functioning of the Cardrona Valley Road.

- The gondola may increase traffic volumes over time; however, this is difficult to quantify. Any increases are expected to remain within the capacity of the Cardrona Valley Road.

- The anticipated reduction in cars travelling up and down the ski access road will reduce the possibility of accidents, therefore increasing safety.

- The proposed car-parking area will be easy to use, functional and is an appropriate size for the expected number of cars. The overflow area will cater to times of peak demand such as special events.

86. GHD, on behalf of Council, has recommended a specific intersection upgrade and internal access road standards together with the provision of a road safety audit to be imposed as conditions of consent. We concur with these recommendations and appropriate conditions have been included to address the issues raised. In summary, we are satisfied that the traffic generation and vehicle movements associated with this proposal will be less than minor.

(f) Natural hazards

87. Mr Jeff Bryant, an engineering geologist, gave extensive evidence in relation to his geotechnical assessment of the tower and terminal station positions. He also evaluated the environmental impacts relating to the construction and long-term effects of the gondola operation.

88. Mr Bryant concluded that there are no hazards of significant consequence that relatively simple engineering solutions cannot be found for. Some minor up or down slope changes in tower position are proposed to facilitate construction. He

commented that the proposed alignment is the preferred option after an earlier alignment (Line B) was rejected due to geotechnical difficulties. For the most part, the alignment traverses a very old landslide with minor distances crossing alluvial terraces and in situ bedrock. Accordingly, he concludes that any environmental impacts are likely to be minor and be limited to the short-term construction period.

89. Similarly, Lakes Environmental's engineer does not raise any significant natural hazard concerns that cannot be addressed by appropriately worded conditions of consent. We are satisfied that any actual or potential effects associated with natural hazards will, accordingly, be less than minor.

(g) Cultural and historical effects

90. Mr Chris Jacomb presented evidence in relation to his archaeological assessment of the proposed gondola site. The purpose of his assessment was to assess the areas where construction activities might impact on archaeological or historical features.

91. Mr Jacomb presented a comprehensive account of the historical background to the Cardrona Valley, which was likely to have been visited by Maori during the late 13th to 14th Centuries and to have remained important within Maori communication and trade networks from that time. With the influx of Europeans in the late 1850s, initially for pastoral farming but later for gold mining, both pastoralism and gold-mining have left their mark on the landscape in the form of archaeological sites.

92. Mr Jacomb concluded that there are no direct effects of the proposal on archaeological sites. There are, however, some potential indirect effects, namely visual effects on the archaeological landscape of the gondola passing close to the sluice face and the 1930s gold workings. However, he considers these to be minor in the context of this part of the Cardrona Valley which has already undergone significant modification through dredging, road construction and other activities.

93. Mr Jacomb recommended that it is not necessary for the Applicant to apply for an archaeological authority under the Historic Places Act, provided that:

- Care be taken in the construction of any roads or access tracks to avoid damaging the 1930s gold workings identified in his report; and

- If any archaeological or historical features are discovered during the course of the construction of the proposed gondola system, an archaeologist is contacted immediately for advice.

94. Accordingly, we are satisfied that with the inclusion of these conditions, the effects on the cultural and historical aspects of the site are less than minor. As previously discussed, this position is supported by the NZHPT.

(h) Cumulative effects

95. In his report, Mr Martin concluded that the proposed gondola development will exacerbate overall cumulative effects in this location. He considered that the area immediately surrounding the base building has reached a threshold, and concludes that significantly adverse cumulative effects in terms of landscape character will result. The proposal, in his view, will effectively enlarge the size of the commercial node of activity that has incrementally evolved in the area – such activity is not contemplated or encouraged within rural zones. These concerns were shared by Mr Howarth, who considers the application does not fully assess the effects of clutter and sprawl associated with the proposed development.

96. Mr Espie concluded that existing development and existing zoning in the area has already changed the naturalness of the environment. Future development therefore has the potential to combine with existing development to result in cumulative degradation. However, we agree with Mr Espie that the gondola itself will be a "quite different" element in the general landscape. It is not, in our opinion, a domestic element which will combine cumulatively with other effects; rather, it will represent an entirely new element in the landscape, one that is expected in an area that exhibits the character of an alpine recreation village. The gondola is essentially a means of conveyance, with more in common with a road or other access way than buildings associated with human occupation. Although plainly access ways can and do contribute to cumulative development, in our view the unique nature and function of the gondola *in this particular location* isolates its

effects from other forms of development. Accordingly, we do not consider that the gondola will exacerbate the current level of domestication of this area.

97. We further agree with Ms Sedgley that the visible connection that the gondola will create between the Ski Field Sub-zone and the Cardrona Valley Road is not necessarily an adverse one, and as such will not contribute to cumulative effects of development in this area.

98. We note that no other development is planned as part of this proposal. Had there been any ancillary development proposed in this application, such as residential dwellings or visitor accommodation (whether required to justify the financial cost of the gondola or not), we would have considered the threshold at this location to have been exceeded.

(i) Amenity

99. The Act defines "amenity" as the qualities and characteristics that people perceive to exist in an environment that contributes to their enjoyment of its pleasantness and recreational attributes. Ms Sedgley submitted that people's perception of amenity is influenced by the existing activities in the area and future changes expected in the area. She notes that the main aspects of amenity in the vicinity of the site are landscape, clean air and alpine recreation.

100. The present policy documents for the Cardrona area encourage the consolidation of activities in the Ski Zones, with emphasis on management of the growth of the two Rural Visitor Zones in Cardrona. We concur with Ms Sedgley's view that the gondola is consistent with people's expectations for future growth, and will promote consolidation of the Ski Zone activities. Due to the sensitive design of the gondola, including the base and top stations, we accept that the proposal will create a less than minor effect on the amenity of the area as it currently exists.

(j) Summary of actual and potential effects on the environment (excluding landscape effects)

101. From the analysis above, we are satisfied that the actual and potential effects on the environment of the effects identified above will, with appropriate conditions of consent, be remedied or mitigated to an extent that they are less than minor.

Landscape Assessment

(a) Landscape Classification

102. Environment Court decisions C147/2003 (*Robertson v QLDC*) and C60/2005 (*Scurr v QLDC*) acknowledge that the landscape of the Cardrona Valley is an Outstanding Natural Landscape ("ONL") – Districtwide. Both Mr Rewcastle and Mr Espie agree that this is the relevant landscape classification for the proposed site.

103. The objectives and policies regarding ONL (Districtwide – Greater Wakatipu) are outlined as follows[3]:

(a) To maintain the openness of those outstanding natural landscapes and features which have an open character at present;

(b) To avoid subdivision and development in those parts of the outstanding natural landscape with little or no capacity to absorb change;

(c) To allow limited subdivision and development in those areas with higher potential to absorb change; and

(d) To recognise and provide for the importance of protecting the naturalness and enhancing amenity values of views from public places and public roads.

104. Mr Espie describes the landscape context in considerable detail at paragraph 2 of his evidence:

> *"To an observer travelling up the Cardrona Valley from the north, the aesthetic pattern on the floor of the valley is similar to that of the*

[3] District Plan Part 4.2.5(2)

farming landscape of the Wanaka/Upper Clutha basin floor, although it also features the obvious willow-lined water course of the Clutha River. The mountain slopes that enclose this valley floor on either side contain views from the floor. A traveller on the Cardrona Valley Road is never more than 600m from the foot of steep, glacially-sculptured mountain slopes. These slopes are very open, allowing natural topography to dominate their appearance.

To the south of Cardrona township, the floor of the valley disappears. An observer in this (higher) part of the Cardrona Valley landscape feels they are in a more remote and more natural part of the valley. This experience continues until the Crown Terrace.

Within the Cardrona Valley there is visible evidence of historic large-scale sluicing of the sandstone-rich gravels, as well as areas of colonial tree planting.

In more recent decades, tourism has been the main driver of the local economy in the valley. Cardrona ski area, Waiorau Snow Farm and the Snow Park are internationally-renowned facilities. Most travellers on the Cardrona Valley Road are aware of these facilities; they form part of the perceived character of the valley.

There are two areas of Rural Visitor Zone in the vicinity of Cardrona township. The remainder of the Cardrona Valley is zoned Rural General Zone."

(b) Visibility of development

105. Visibility analysis was enabled using a combination of modelling by K2Vi Data Interface Technologies Limited and ground assessment on and surrounding the site. Although we recognise the limitations of visual modelling technology, this has proved extremely helpful in assisting the Commission to interpret the visibility aspects of this proposal.

106. Mr Espie has submitted that the proposed top station building is not visible from the Cardrona Valley Road. However, the proposed base building will be visible from a stretch of Cardrona Valley Road that totals 550m in length. In these views the building will be visually softened to a degree by the proposed bunding, tree planting and landscaping.

107. Mr Espie notes that the gondola towers (and the cars travelling between them) are in a line of sight from a broader visual catchment, particularly the towers on the central and upper parts of the mountain slope. There is a potential line of sight to

at least part of the gondola operation from an approximately 9.5km stretch of Cardrona Valley Road, although some of these potential views are over long distances.

108. Mr Espie concludes that none of the proposed changes to the landscape will be visible from Little Criffel walking route or Tuohy's Gully Road, which is a public walking track. However, there will be visibility from parts of the Cardrona River and its margins, although this will be significantly less than visibility from Cardrona Valley Road due to topography. Mr Espie also acknowledges there will be some visibility from unformed paper roads adjacent to a boundary creek and the Cardrona ski area access road; however, in general these paper roads follow locally low topography and are, hence, visually contained.

109. In general, Mr Rewcastle agrees with Mr Espie's analysis. He comments that although the gondola in its entirety will not be visible from many of the positions discussed above (as individual components of the application will be screened), an awareness of the presence of the proposed development (in its entirety) will be maintained from most positions within the visual catchment of the Cardrona Valley. Mr Rewcastle considers the proposed base station building is relatively subtle in design and appropriate for its intended use.

110. As previously discussed, Mr Rewcastle has suggested some changes to the proposed landscaping plan for the base station and car-parking area which have been adopted by the Applicant and will be reflected in the conditions of consent. In particular, lighting resulting from night-time operation of the gondola, which Mr Rewcastle noted has the potential to create further adverse visual effects, will be minimised. No lighting will be permitted in or on the gondola cars or towers.

111. Importantly, Mr Rewcastle considers that the subject property has diverged from traditional farming activities to focus on tourism and ski field operations. The proposed gondola will, in his opinion, visually link the semi-rural tourism operations on the valley floor with the alpine ski field operations at the Waiorau Snow Farm Ski Area Sub-zone. He notes that some visual link currently exists between the node of activities on the valley floor and those within the Ski Area Sub-zone: these include signage, entrance features and the access roads associated with both the Cardrona Ski Field and the Snow Farm/Snow Park. In Mr Rewcastle's view, the

proposed gondola will have the effect of contributing to and strengthening the rural/alpine "theme park" character, exaggerating the shift away from traditional farming operations.

112. Although Mr Rewcastle does not express any opinion on the nature of this direction, we accept that it is an inevitable consequence of the location of two Ski Area Sub-zones in this area, together with existing and future consented development. In our view, the priority is to manage future development in such a manner that the predominant features of the ONL are preserved to the greatest possible extent to ensure that the unique alpine village character of Cardrona is maintained and enhanced. In this respect it is anticipated that, in time, some of the existing activities, which are plainly inconsistent with this alpine tourism theme (such as the monster trucks operation), will eventually be replaced by activities which support the Ski Zone and which further enhance this area as an alpine village.

113. Mr Rewcastle also submitted that the proposed gondola provides increased opportunity for users to interact with this ONL and the environment. In particular, the gondola ride from the top station to the base station will enable passengers to enjoy and appreciate the surrounding environment. At the hearing, the Applicant volunteered to place signage in the gondola cars describing the environment and vegetation, which will enhance the experience of viewers and contribute to an understanding of the wider landscape.

(c) Assessment of landscape effects

114. Part 5.4.2.2(2) of the District Plan lists the assessment matters with regard to ONLs (Districtwide) under the following headings:

(a) Potential of the landscape to absorb development;
(b) Effects on openness of landscape;
(c) Cumulative effects on landscape values; and
(d) Positive effects.

115. We consider each of these in turn as follows.

- *Potential of the landscape to absorb development*

116. Mr Espie stated at paragraph 6.3 of his evidence that he considers the landscape will not absorb the proposed development in a visual sense. Although the base building will be absorbed to a moderate degree and the visibility of the gondola itself will be mitigated in some ways, it will remain prominent to a specific visual catchment that includes approximately 3km of the Cardrona Valley Road. The base building will be "experienced" in a location that is characterised by farmed flats and riparian willows, recognising that there is a degree of human modification that distinguishes this area from the dramatic, natural mountain slopes to the east.

117. Mr Espie has noted, however, that most observers in the Cardrona Valley landscape are aware of the recreational use of the valley and the ski area operations that exist at the top of both of its sides, which form part of the perceived character of the valley. In particular, prominent signage exists for the ski areas and the existing roads to them are plainly visible. Mr Espie observed that this knowledge will mitigate the impact of the gondola on the perception of the valley's landscape quality to a degree.

118. We accept Mr Espie's proposition in this regard. While it is plain from Mr Espie and Mr Rewcastle's evidence that the gondola will remain prominent to a specific visual catchment in the Cardrona Valley, this is an area that is characterised by a developing alpine village at its base and two major southern hemisphere ski fields of international importance located on the tops of the adjacent mountain slopes. Visitors to the area are already aware of a connection to the ski field zones by the current access roads which create a very visible scar on the landscape.

119. Although it is not possible to fully mitigate the visual impact of the gondola, we accept Mr Espie's argument that the existing use of the natural resources of the area, together with existing signage and access roads, do assist to mitigate the impact that the gondola will have on the perception of the valley's landscape quality.

120. Mr Haworth drew our attention to the substantial visual and amenity effects of the proposed gondola development. We concur with his submission that the gondola will be visible from a number of important public places including the Cardrona Valley Road, the Waiorau Ski Area Sub-zone ski field access road, the marginal

strip of the Cardrona River and from a number of public unformed legal roads. This has not been disputed by either of the landscape architects. On the contrary, it was generally agreed that the gondola will have a substantial impact on visibility that cannot be fully avoided, remedied or mitigated.

121. We also accept that the Cardrona Valley has a high degree of naturalness in its current state, particularly when viewing the sides of the valley. However, we disagree that consent to this proposed development will necessarily weaken future protection of the natural character of the landscapes adjacent to the Cardrona Valley Road and the landscapes of the Cardrona Valley in general. In this respect, the proposed development has been kept at an absolute minimum and comprises the gondola structure, top and base buildings and associated car parks (part of which will be retained in a natural state until and unless required for future expansion). Due to its unique function; that is, to provide access to the Waiorau Ski Field Sub-zone, the gondola will not, in our opinion, set a precedent for general development in this area. Rather, it is a means of conveyance that is strongly associated with access to the ski field, an activity that has been accepted and incorporated into the District Plan.

122. Notwithstanding the above discussion, we accept the expert opinion that the landscape does not have the ability to fully absorb the adverse effects associated with the proposed structure. Accordingly, the application falls to be assessed on whether the positive effects associated with the development outweigh the adverse landscape and amenity effects that are generated by this proposal.

- *Effects on openness of landscape*

123. It is plain from the evidence of both landscape experts that the slopes that will contain the proposed gondola currently exhibit a high degree of openness. We accept that due to the somewhat insubstantial nature of the gondola structures (in relation to the wide expanse of landscape), they will not significantly block views of the open landscape; that is, while the gondola towers and the transient gondola cars will be visible to observers, they do not, in themselves, take up much space and will not screen visual access to the open slopes in a way that a large building or solid structure would. Mr Rewcastle's analogy of a spider web that touches the surface at various points is apposite.

124. In terms of openness, Mr Espie considers that most of the gondola towers and the transient gondola cars will be seen in the context of a broadly visible expanse of open landscape. Accordingly, he concludes the degree of openness that the landscape currently displays will remain largely unchanged. Similarly, Mr Rewcastle notes that the topography offers some containment, particularly within the river escarpments of the valley floor and within the upper section of the proposed cableway. However, he considers the lower section of the proposed cableway involves ascending spurs and ridges and that, in this regard, the gondola structure may dominate the natural land form through this section and as a consequence may adversely affect open space values.

125. In summary, it is our view that the visible elements of the proposal will be viewed as an interruption to existing openness or an inconsistency with existing openness, rather than creating a reduction in the degree of openness or a screening of openness. The current degree of openness will, accordingly, largely be retained, albeit that this may be less so in the lower section of the cableway.

- *Cumulative effects on landscape values*

126. Mr Rewcastle considers that the series of towers and cableway is not consistent with the natural character of the landscape and that the proposed car park and vehicles using the park have the potential to detract from the natural and pastoral character of the site. However, he also acknowledges that the existing ski field access roads (on either side of the valley) result in adverse landscape effects which detract from the natural character of the landscape. These effects include scarring of the landscape and the glare and dust caused by vehicles using the road. Accordingly, in his opinion, a reduction in road usage as a result of the proposed gondola is likely to reduce existing adverse effects associated with glare and dust from vehicles using the road.

127. Mr Espie notes that existing development in the vicinity of the subject site takes the form of dwellings, roads, commercial farm buildings and so on. The gondola proposal will not continue or expand this type of development, although it will be an obviously unnatural element. In his opinion, the gondola will create an entirely new element in the landscape and its effects on the appreciation of landscape will stem from its own qualities rather than from any combination with existing

elements in the landscape. For this reason, he considers that its effects will not be cumulative effects; rather, they will be individual effects.

128. In her evidence, Ms Sedgley supported Mr Espie's conclusions, adding that as the gondola is a necessary element for alpine recreation that is known to and is already visually apparent in the general location, the possibility of an observer experiencing a negative response to the gondola structures will be reduced. We consider there is merit in this argument. The Cardrona Village and surrounding environs is, following the development of both the Cardrona and Snow Farm ski fields, a location that is plainly associated with winter sports. Its use for summer sports and sight-seeing is increasing. It is expected that further development planned for this area will strengthen this association. In this regard, the submissions of the local residents and businesses in support of the proposed gondola, which in their view forms an integral part of this overall transition, are an important factor in our consideration.

129. We concur with Mr Espie's view that the proposed gondola development is quite different to the existing development in the vicinity of the subject site and that it will not continue or expand this type of development. Although it will be an obviously unnatural element in the landscape, it will not add to the cumulative effects of development in this area, many of which have only recently obtained resource consent. We also concur with Mr Espie's view that the gondola is not a "domestic" element in the landscape; rather, it is a specific form of infrastructure required for access and, in this sense, does not have a domestic character. Signage and other forms of identification will be strictly controlled as outlined in the application and it is intended that the proposed gondola will blend with the natural environment to the greatest degree possible. All domesticating type effects (such as those associated with curtilage for example) will be minimised.

130. Finally, we accept Mr Espie's submission that the Ski Field Sub-zones provide for intense development associated with ski and associated activities. Consolidating these activities within the district's few Ski Area Sub-zones will assist to bring about a positive landscape goal. We concur with his assessment that the proposed gondola will assist in the achievement of this goal and, in particular, will facilitate the better utilisation of the Ski Area Sub-zone by allowing expansion of

the ski field activities without the constraints imposed by access and parking issues.

131. We concur with Mr Espie's comment that the continual addition of dwellings, buildings or roads in this area will breach the vicinity's ability to absorb change at some time in the future. However, we in part accept his submission that the vicinity is not currently at a threshold point beyond which any change to the landscape is automatically unacceptable. Notwithstanding this, we are of the view that once the gondola structures and associated car-parking are established, any further development in this area has the potential to exacerbate cumulative effects in this particular vicinity.

132. Mr Espie has observed, importantly, that the gondola alignment is in relatively close proximity with (and at several points, crosses) the configuration of the road. The visual effects of the gondola are therefore confined to the same general corridor that accommodates the existing access road; they are not seen in a pristine area of mountainside. In other words, the visual effects on the landscape are confined to an area which is already modified by human disturbance.

133. We note also that the proposed development will potentially remedy a number of existing adverse landscape effects in relation to the subject property. The proposal will remove and re-grass a number of existing vehicle access tracks. Further, the consent order of the Environment Court in relation to the monster trucks operation will remedy some of the existing adverse effects in this vicinity: conditions of this consent require that restorative earthworks and re-grassing are implemented, tree planting carried out to screen buildings, the prohibition of outdoor signage and the removal of the collection of monster trucks visible from Cardrona Valley Road. We concur with Mr Espie that in a small (but relevant) way, this consent reduces the degree of accumulation of adverse effects in the existing environment.

134. We note that as a result of Mr Rewcastle's suggestions, the proposed planting has been amended to include additional areas of native beech/shrub community planting and the addition of kowhai trees to the riparian strips in order to bolster the bulk of native riparian areas. This enhancement of native planting will provide additional habitat and food for indigenous animal species, as well as increasing the

native biodiversity on the subject property and within the landscape. The proposed native planting has been designed to generally follow areas of lower topography, ephemeral water courses and hydrological patterns. Mr Espie notes that the area of proposed native riparian planting totals approximately 6,800m³ in area.

135. It should be noted also that existing resource consent RM 050942, which permits gravel screening and extensive visual disturbance over a long period, will be surrendered if the current proposal is consented. Although we understand that if this consent was to proceed the landscape must be returned to its natural state, we concur with Mr Espie that, in practice, this is rarely achievable. While the consent is operational, there will be significant adverse visual effects associated with the very long-term operation (25 years). Accordingly, we accept the Applicant's submission that the surrendering of this consent has valid weight as a form of environmental compensation.

136. In conclusion, we find that there are a number of substantial points of agreement between Mr Rewcastle and Mr Espie in relation to landscape matters. The Applicant has addressed the valid concerns raised by Mr Rewcastle in relation to the proposed landscaping of the base station area and the access tracks. Both experts agree, importantly, that the line of the gondola is located in the part of the mountain slope that already accommodates the visual alignment of the access road, not in a pristine area of the surrounding ONL.

137. Both landscape experts agree that the location and design of the gondola, which includes the top and base stations, colours and associated landscaping, have been designed and located as sensitively as possible to minimise adverse visual and landscape effects to the maximum extent. However, the proposed gondola will bring about change that will not be visually absorbed by the landscape. In this sense, the gondola will, to some extent, undermine the natural character of the ONL in which the development is located (albeit that this is in an existing corridor of visual disturbance). The associated adverse environmental effects on the landscape are unable to be totally mitigated due to the nature of the proposed structure. It is therefore necessary to consider whether the positive effects resulting directly from the proposal are sufficient to outweigh any landscape effects

that are unable to be fully remedied or mitigated and whether, overall, the proposal meets the definition of sustainable management in Part 2 of the Act.

Positive effects

138. We note that the subject property has diverged from traditional rural use in that a rural/alpine "theme park" character has developed (per Mr Rewcastle's evidence). The associated activities have been considered appropriate in recent resource consent decisions and, together with the gondola proposal, will continue the development of this theme. Mr Rewcastle also notes that the subject property contains the potential to enhance the ONL character with the use of indigenous planting, and that the proposed gondola provides an opportunity for visitors to interact with this unique environment. We concur with both of these sentiments and are satisfied that the Applicant has designed the proposal with the appropriate degree of sensitivity required for this location.

(a) Effects on People and Communities

139. We note that the District Plan does not contain any assessment criteria relating to the positive effects of activities on the social, cultural and economic well-being of people and communities. However, s.104(1)(a) of the Act requires all effects on the environment to be considered, whether positive or negative. The definition of "environment" in the Act is:

> "(a) Eco-systems and their constituent parts **including people and communities**; and
>
> (b) All natural and physical resources; and
>
> (c) Amenity values; and
>
> (d) The social, economic, aesthetic and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters …"

140. Accordingly, we concur with Ms Sedge's submission that the social and economic effects on people and communities are relevant matters to assess in this application. Ms Sedgley has summarised the positive effects arising from the proposal as follows:

- Encouraging the safe and efficient future use of the Waiorau ski area.

- Providing safer and more convenient access to the summer and winter recreational area of the Waiorau Ski Sub-zone.

- Providing for the future growth of recreational activities within an appropriately zoned area.

- Enabling future competitiveness of the alpine activities and therefore the growth of tourism, the base industry of the local and wider district economy.

- Assisting the sustainability of the Cardrona community by providing increased opportunity for related businesses to establish in the area and providing opportunities for local family members to return to and work in Cardrona.

- By enabling the capacity of this Ski Sub-zone and current mountain activities to be achieved through the provision of a transport system that has less environmental effects than would occur if the same number of people travelled via the current road. In particular, this includes:

  – vehicle emissions including C02;
  – dust levels resulting from road use;
  – visual effects resulting from frequent mountain road upgrading;
  – visual effects from vehicles travelling up and down the existing road (glare, noise, activity); and
  – safety risks on the mountain road.

- Ensuring the environmental effects of mountain activity infrastructure are consolidated into existing areas. Ms Sedgley submitted that this consolidation may have subsequent environmental benefits of enabling improved sewerage systems, water use and energy use in the current Sub-zones.

- Reduced transport times for injured persons to be transported from the mountain to healthcare facilities. The journey will be more comfortable with less risk of the occurrence of further pain or injury.

(b) Sustainability of Rural Communities

141. Mr Copeland submitted, and we accept, that the reference in the Act to "people and communities" highlights that in assessing the impacts of a proposal, the impacts on the community (not just the Applicant or particular individuals or organisations) must be taken into account. In the case of the proposed gondola, he considers it appropriate to adopt a District viewpoint in assessing the proposal's impact on the community's economic well-being, which comprises the relevant economic impacts on all businesses, organisations and residents in Wanaka and the wider Queenstown-Lakes district.

142. We accept Ms Sedgley's submission that an increasingly large number of people in the Queenstown district rely on the tourism industry for their social and economic well-being. The success and availability of the Ski Sub-zones is a key contributor to the number of tourists in the region, particularly during the winter season. It is also apparent that the summer use of these sub-zones for activities such as mountain biking is becoming increasingly popular, as has been the trend in Europe and North America.

143. Ms Sedgley acknowledges that the gondola alone will not provide for sustainability of the rural community; however, the opportunities for growth that it will potentially facilitate may have consequent downstream effects for the District.

144. We accept the submission that other New Zealand ski fields with easier road access or international alpine destinations with gondola access and/or on-snow accommodation may become preferable destinations in the future, particularly as road users become less and less familiar with the standard of roads that lead to the Ski Sub-zone.

(c) Consolidation of ski activities and zone capacity

145. Provision for future growth of ski activity development within areas zoned for these activities is a priority identified by the District Plan. There are a number of Ski Area Sub-zones in the district, two of which are accessed from Cardrona Valley Road (Cardrona Ski Field and Waiorau Ski Zone). All of these sub-zones have capacity for further development and expansion of recreational facilities, which the District Plan strongly indicates should occur within the existing sub-zones.

146. The gondola will provide access to a Ski Area Sub-zone of 500 hectares in size, of which currently only 120 hectares is utilised. Accordingly, Ms Sedgley submits that the gondola will facilitate the consolidation of activities and allow the environmental effects of mountain infrastructure to be localised into this node of existing modification. The Applicant's evidence is that without the gondola, only limited expansion and utilisation of the remainder of the Ski Field Zone is possible due to the limitations of the current access road and car-parking. Although we are not in a position to assess the merits of this statement, we accept that the proposed gondola will facilitate further expansion and use of the sub-zone in the future.

147. We also accept that improved infrastructure and facilities in the Ski Sub-zones is necessary to ensure that New Zealand continues to meet the changing expectations of international alpine visitors, recognising that investment in improved infrastructure is only possible where sufficient visitor numbers occur to make this possible. In this respect, we were not provided with any evidence in relation to the economic viability of the gondola, as this is not a requirement under the Act. However, we note Mr Haworth's submission that at the current levels of patronage, a gondola is, in his view, unlikely to be financially viable. It follows that the gondola development may not proceed until such time as the expansion of the Ski Sub-zone is planned and facilitated, followed by a corresponding increase in visitor numbers. In this respect, the gondola application is, as Mr Haworth points out, potentially "putting the cart before the horse"; however, in a practical sense, we accept the Applicant's argument that approval for the gondola transport system is necessary before any serious planning for expansion can confidently proceed. Whether or not the gondola is ultimately established is entirely at the discretion of the Applicant; however, this decision will in our opinion almost certainly be grounded in a positive projected financial outcome.

148. A condition of consent has been imposed that will require the removal of the gondola structure in the event that it is not utilised for commercial operations for a period of not less than 12 months. This condition will, in our view, protect the landscape from the prospect of a "white elephant" should the gondola not prove to be financially viable in the longer term and hence no longer deliver the positive benefits that comprise the environmental compensation.

(d) Efficient use of Ski Zone resources

149. We concur with Ms Sedgley's submission that efficient long-term use of the Ski Zone resources requires transportation facilities to match the terrain capacity. The gondola will improve the quality of access to this resource. We accept that the gondola will provide the following advantages:

- Transport more people in a given time period;
- Safer transport, generating less vehicle emissions and dust;
- Reduced visual effects associated with the constant road upgrading required during the snow season; and
- Improve the attractiveness of the ski area to both local and international visitors.

(e) Economic and flow-on community benefits

150. Mr Copeland has submitted comprehensive written evidence in relation to the economic impacts of the gondola for access to and from the Waiorau Ski Area Sub-zone. He states in his introduction that the gondola will provide faster, safer and more comfortable and convenient access to skiers in winter, as compared to the current mountain road access. In addition, the gondola will be an additional attraction for visitors to Wanaka during summer months and will potentially enable sustainable development of the remaining Ski Area. Mr Copeland notes that the current facilities at the Snow Park, Snow Farm and Southern Hemisphere Proving Ground have capacity for up to 3,000 people per day (during the winter season); however, any future growth will be restricted by car-parking constraints. Currently,

on peak days during the winter season a maximum of 2,500 people can be accommodated at the Snow Park: on such days car-parking spills out of the car park, lining the road up to the ski field. Accordingly, Mr Copeland concludes that unless a solution is found to car-parking constraints, growth in annual skier days at the ski field can only be accommodated by increasing skier numbers on non-peak or shoulder season days, which are constrained by the non-availability of suitable snow and the preferences of skiers as to when they visit ski fields.

151. Mr Copeland notes the annual skier numbers at the Snow Farm and Snow Park peaked at 48,000 in 2007. Because of the car-parking constraints, the Applicant expects only small increases above this figure will be possible in future without the gondola.

152. Mr Copeland has assessed the impacts of the proposal in terms of economic efficiency (and community economic well-being) by comparing two scenarios – what is likely to occur "with" the proposal, as against what is likely to occur "without" the proposal. Hence, the economic efficiency and economic well-being implications of the gondola project have been considered relative to the implications of the ski field continuing to operate with road access only. Mr Copeland notes that the investment in the proposed gondola is to be part of an integrated package of investment projects to enhance the access to and the range of facilities and attractions within the Waiorau Ski Area Sub-zone. The gondola will help facilitate additional ski field activities and accommodation within the Ski Field Policy Zone, which will assist to underpin the financial viability of the gondola investment. Because the additional attractions and accommodation do not yet have resource consent, Mr Copeland's analysis focuses principally upon the additional economic benefits resulting from the gondola project only in terms of its impact in relation to the existing attractions within the Ski Area. To the extent that the gondola contributes to the development of additional facilities and accommodation, the quantified economic benefits are understated.

153. Mr Copeland notes that as with "economic well-being", economic efficiency impacts must be considered from the viewpoint of the community at large and not just from the perspective of the Applicant. In having regard to the efficient use of resources, it is necessary to adopt a district or region-wide perspective.

154. We summarise Mr Copeland's findings as follows:

- *Construction impacts*

(i) Gondola Investment

Mr Copeland considers that the aggregate direct construction impacts during the initial construction phase will be the creation of 13 jobs for nine months, wage and salary payments of $937,500.00, and the purchase of other goods and services from within the local economy of $4.2 million. In addition to this direct employment, income and other expenditure impacts of the gondola's construction on the local economy, additional employment, income and expenditure impacts will arise in the district as a result of:

- The demand for additional inputs by suppliers of goods and services to the gondola project from within the district; and

- The demand for goods and services by employees of the project and those engaged in supplying goods and services to the project.

(ii) Other potential investment

Mr Copeland details evidence of the Applicant's investment programme, which will enable expansion into more traditional ski resort facilities. In particular, the proposed Roaring Meg Resort has potential for the installation within the Ski Area Sub-zone of five chairlifts, with three of these being high speed; three magic carpets and one learner's platter. This will provide an estimated total uphill capacity of well over 12,000 skiers per hour. Overall, the gondola is intended to facilitate significant additional investment in additional ski field facilities and accommodation, estimated to cost in excess of $100 million. This investment expenditure is planned to be spread out over a period of approximately 10 years and will help to underpin the financial viability of the investment in the gondola project (Mr Haworth's valid concerns).

- *Operational impacts*

Mr Copeland estimates that there will be ongoing operational economical impacts of 108 additional jobs, $1.8 million additional income and $4.8 million additional expenditure. This is based on the gondola enabling annual skier days to increase from 48,000 to 70,000. However, with the planned additional investment in ski field facilities and accommodation, the Applicant believes skier days could increase to up to 300,000 per annum with consequent greater employment, income and expenditure impacts. In addition, there will be ongoing operational economic impacts to the extent that the gondola attracts an additional number of visitors to Wanaka.

Mr Copeland concludes that additional economic benefits will be generated to the extent that the gondola, by attracting additional visitors to Wanaka and the Queenstown-Lakes District, will help to underpin and broaden Wanaka and the district's economic base and create efficiency gains from economies of scale for the public and private sector providers of goods and services.

In addition, Mr Copeland considers there will be economic efficiency benefits relating to savings in snow-clearing and road maintenance costs; savings in vehicle operating costs; savings in travel time costs; increased comfort and convenience for users of the gondola; and net benefits for additional winter and summer visitors to the ski field. Such economic impacts are consistent with "community economic well-being" and "the efficient use of resources".

155. We accept the evidence and conclusions provided by Mr Copeland which, in our view, enables us to place considerable weight on the economic benefits of the gondola to both users of the ski field and the local and district communities. It is beyond doubt that the snow sports industry in this district is a demonstrably important source of visitors to this area in relatively large numbers. The Ski Field Sub-zones provide for recreational activities for a wide number of participants and it is apparent that more diverse activities are now being facilitated during the summer months. Accordingly, the benefit of the Ski Area Sub-zones to the local and district economy is proven and substantial. We are satisfied that the gondola, if constructed, will facilitate the expansion of activities in the Waiorau Ski Field Sub-zone that may otherwise be restricted due to the limitations associated with the access road and, in particular, car-parking in the zone.

156. We note Ms Sedgley's submission that the main reason for the gondola is to offer better, safer and cleaner access to the existing Snow Farm and Snow Park facilities for current and future visitors.

157. We further accept that the continued attractiveness of the Ski Zone activities is important to the future economy of the local area and wider district. Ms Sedgley referred us to the New Zealand Tourism Research Institute study on "*The economic significance of the Southern Lakes Ski Areas – 2005 Winter Season*", which highlights the importance of the ski areas for the winter tourism market within the Southern Lakes. The following findings are relevant to this proposal:

- 80% of respondents regard snow sports as a major factor in the decision to visit Queenstown and Wanaka over the winter season.

- Tourism activity is replacing pastoral activities as the base-driving factor of the economy.

- The average daily spend for overseas visitors is $47.26 on the mountain and $149.65 off the mountain (an approximate ratio of 1:3).

158. This analysis demonstrates the positive economic flow-on effect of the snow industry, where money spent in the townships provides income and employment within the area. Continued increases in tourist numbers as a result of the further proposed activities to be facilitated by the gondola will assist to underpin future economic prospects for the local area and the wider district. We also accept that based on international trends (and to a certain extent, emerging local trends), it is highly likely that the establishment of the gondola transport system to the mountain will more rapidly encourage the growth of summer alpine activities such as tramping, mountain biking and sight-seeing.

(f) Recreation benefits

159. As has been previously mentioned, the gondola will provide enhanced recreation opportunities. In particular, the gondola will provide improved opportunities for mountain bikers, paragliders and trampers to access the alpine area in the summer months without the need for often repetitive daily vehicle movements.

This view was supported by the submission of the Wanaka Cycling Club, which drew our attention to similar developments in Ski Field Zones in both Europe and North America.

(g) Reducing the use of private vehicles and emissions

160. The Applicant submits that the gondola will plainly reduce the need for visitors to use the ski access road. Although there is an easement to the Snow Farm which provides for public access (at a charge to be agreed with the Department of Conservation), all future visitors to the Snow Park will be required to use the gondola as there is no public easement to this facility.

161. Evidence in relation to the environmental effects of the gondola, in particular the effects on pollution and $C0_2$ reduction, were provided by Ms Daniela Edwards. Ms Edwards estimates that based on a reasonable set of assumptions, the total estimated $C0_2$ produced during the 2008 year by vehicle transport to the Snow Park will be 137.5 tonnes. In comparison, it is estimated that the gondola will produce 48.9 tonnes of $C0_2$ in 2008. The difference of 88 tonnes per annum is, in our view, significant, particularly if future growth is considered. We accept that the $C0_2$ emissions associated with the gondola will be significantly less than those associated with the continuation of vehicles as the main mode of transport to the Waiorau ski area. We concur with Ms Edwards' submission that the gondola is *"an innovative approach to reducing $C0_2$ emissions and will contribute to New Zealand's climate change solutions"*.

162. We further accept Ms Edwards' evidence, which was supported by a number of submissions by both local residents and businesses in the district, that the gondola will produce less dust than the current mode of transport, which comprises vehicles travelling on gravel road. It is well-known that gravel roads can produce unacceptable levels of dust, particularly as visitors to the resort increase. We accept that dust reduces the visual amenity of the area quite substantially at peak times (as was evidenced by the photographs provided by Mt Cardrona Station at the hearing) and that the reduction in dust associated with road use will assist to offset any potential adverse effects of the gondola on the landscape and visual amenity of the Cardrona Valley.

163. We note Mr Haworth's submission that the gondola may attract an increased number of visitors to the Cardrona Valley, many of these driving considerable distances, in order to access the activities at the Ski Field Zone. This will potentially, in his view, result in considerable additional energy usage and CO_2 emissions. Whilst we accept that there is validity in these statements, these sentiments apply equally to other forms of recreational activity that may or are likely to be developed at this and other Ski Field Zones. It is, in our view, incumbent on the Applicant, in conjunction with transport operators, to provide public transport services to the base station from both Queenstown and Wanaka in order to assist to reduce overall $C0_2$ emissions as a result of increased visitor numbers. While the wider issue of the extent to which tourism (which is encouraged by specific policies in the District Plan) impacts on the sustainability of the district in terms of climate change initiatives is outside the scope of this decision, we anticipate that rising petrol prices, together with other government and local body policies that will ultimately ensure that alternative means of pooled transport are actively encouraged, will further contribute to the proposal's positive effect on climate change as compared to the status quo.

(h) Safety and convenience

164. We accept the evidence of Ms Sedgley that many visitors to the Ski Field Sub-zones have difficulty driving on the access roads; in particular, the wide range of unusual driving conditions that may be presented ranging from dry roads, to greasy muddy surfaces, to snow and ice. A study carried out by Otago University, referenced by Ms Sedgley in her evidence, states that:

> *"… 54.5% of (winter) tourists have problems with slippery/loose/bumpy gravelled roads either in general or on ski field access roads. Notably, some tourists stated they felt a lack of safety barrier on ski field access roads and mountain roads was dangerous and some had problems fitting snow chains."*

165. It is beyond doubt that the gondola transport system is intended to provide a safe and more convenient access method to the ski area, which we accept will increase the attractiveness of the area to visitors. This view is reflected in the 41% of submissions that cited the danger of the current access road as a reason for their support of the proposal. Both Mr John Lee and Mr Sam Lee described various issues that have been experienced by the Applicant in relation to the safety of the

road. While we agree with Mr Haworth that this particular access road is probably one of the better in the region in terms of width and steepness, it nonetheless does pose a safety risk to inexperienced drivers. In this respect, we note that the Snow Park, in particular, is frequented by a large number of younger patrons who may not possess the winter driving skills of more mature drivers.

166. We concur with Mr Haworth's views that the safety of the road could potentially be improved by the installation of fencing, better grading and safety barriers. However, we consider that virtually all of these alternative methods could have a potential adverse effect on visual amenity that would require appropriate assessment.

167. We note, also, the submission of the Applicant that the gondola will provide improved access for victims of accidents, who may be transported from the ski zone to the base station more easily, safely and in more comfort. This will also save time and costs associated with lengthy ambulance rides to and from the ski field.

(i) Other positive benefits

168. We have already commented in this decision on a number of other positive benefits that will result from this proposal which include:

- The provision of new walking tracks along the Cardrona River and from the top station to Tuohy's Gully.

- The surrendering of resource consent RM 050942 for earth-working of a 25-hectare of property, which will remove the threat of 25 years of land disturbance on the river flat.

- The enhancement of the appreciation of the ONL by visitors to the area resulting from the opportunity to travel in the gondola, the signage to be placed in the gondola cars describing the environment, together with signage in relation to native species to be placed in the vicinity of the top station loop track.

(j) Conclusion on Positive Effects

169. As has been discussed, there are a significant number of positive effects generated by the proposal. The positive effects that have been supported by expert evidence include:

- Improved access to the Ski Field Sub-zone;
- Potential for the expansion and consolidation of activities in the Ski Field Zone;
- The potential expansion of recreational benefits and opportunities, including summer mountain biking;
- The reduced usage of private vehicles and the resulting decrease in pollution and $C0_2$ emissions;
- Substantial improvements in safety and convenience;
- Significant potential for ecological enhancements (noting the area of proposed native riparian planting totals approximately 6,800m² in area);
- Promotion of the appreciation of the outstanding natural landscape.
- Reduction of pollution in the form of dust;
- Positive economic effects created by the construction and operation of the gondola; and
- The increased sustainability of the Cardrona township in the longer term.

170. In addition, the Applicant has volunteered the following measures:

- Removal and re-grassing of a number of existing vehicle access tracks;
- Surrendering of resource consent RM 050942 in relation to earthworks and gravel extraction over a 25-year period;

- Commitment to the existing programme for removal and control of exotic weed species on the balance land;

- Two new public walkways to be developed on the Applicant's land, together with a loop track to be established in the vicinity of the top station.

Balancing of Effects

171. On balance, we find that the considerable positive benefits generated by this proposal, in particular the substantial economic effects described above, provide sufficient environmental compensation to outweigh the adverse landscape and visual effects associated with the gondola, particularly given the location of the gondola in a current area of disturbance and its association with activities that are expected in this location.

172. The concept of environmental compensation has been discussed in several Environment Court cases – *Remarkables Park Limited v QLDC* (C161/2003); *J F Investments Limited v QLDC* (C132/2004); the *Hillend* case (W088/2006) and *White v Waitaki District Council* (C066/2006).

173. In *Remarkables Park* the Environment Court first addressed the question of environmental compensation. The Court stated at paragraph [34]:

> *"Indeed, one of the useful tests for sustainability under the RMA, applying the appropriate standards in the hierarchy of s.5(2)(a) to (c) and ss.6 to 8, is whether development and use would lead to a net conservation benefit."*

The term "environmental compensation" is not a term used in the Act but was defined by the Environment Court in *J F Investments Limited v Queenstown Lakes District Council* (C28/2006) as:

> *Any action (work, services or restrictive covenants) to avoid, remedy or mitigate adverse effects of activities on the relevant area, landscape or environment as compensation for the unavoidable and unmitigated adverse effects of the activity for which consent is being sought.*

In our opinion, a principled approach is required to evaluate environmental compensation and to determine whether it will lead to a net conservation benefit sufficient to offset development effects on the natural landscape and visual amenities, and to promote the sustainable management of the natural and physical resources of this area of ONL. Based on our analysis of existing case law, the following criteria are useful for the purpose of evaluating the compensation offered (which we understand were developed for the *Hillend* case – *Upper Clutha Environmental Society Inc. v Queenstown Lakes District Council* (WA 88/2006)):

(a) Whether there is a link between the environment effects of the proposed development and the conservation gain from it;

(b) Whether the area of impact from the proposed development compares with the area of environmental compensation; and

(c) Whether the benefits from the proposed development enhance the existing environment.

174. In our view, the Applicant's voluntary offer of environmental benefits in this case meets all of these criteria.

175. We re-iterate the view expressed in the Memorandum that the economic justification for the gondola is paramount in our analysis of the environmental compensation inherent in this application. Without evidence of the economic benefits to members of the public and the wider community, there is nothing to distinguish this application from one submitted for, say, largely private use. For example, if the application was intended to benefit only a limited subset of private users, such as the vehicle testing operations, it is potentially unlikely that the positive economic effects would, in our view, outweigh the adverse landscape effects associated with a gondola on this site (acknowledging that these cannot be avoided, remedied or mitigated any further). It is the potential of the gondola to provide enhanced recreational access to the ski field subzone to a wide variety and number of public users (both domestic and international) in an economically efficient way, and the associated flow-on economic effects to the wider local and regional community, that is the key positive compensatory effect.

176. However, we note that environmental compensation is only relevant to the exercise of our discretion under s.104 and s.104B. The adverse effects of the activity on the landscape do not cease to be more than minor simply because they may be "offset" by the positive effects associated with the development.

177. Finally, it is appropriate to comment on the submissions of UCESI in this respect. We consider the emphasis placed by the Society on protection of the ONL in this location to be well grounded in the objectives and policies of the District Plan. In general, we agree with many of the submissions made by Mr Howarth in this respect. However, we differ in relation to the extent to which the gondola may be considered to be appropriate development in this particular area, given the degree of modification that already exists, the emerging character of Cardrona as an alpine village and the expectation that ski field activities will be grown and consolidated in the existing Ski Area Sub-zones. While we agree with Mr Howarth that the collective weight attributable to many of the positive effects may, without the benefit of economic evidence, be insufficient to outweigh the adverse landscape effects due to the emphasis placed on these in the District Plan, we are satisfied that overall the proposal, as modified by the conditions, will result in the sustainable management of this resource for the reasons we have expressed.

Section 104(1)(b) - Objectives and Policies of the District Plan

178. Under s.104(1)(b), the Commission must have regard to the objectives and policies of the District Plan when assessing applications for discretionary activities. Once assessed, the final determination of the application is made pursuant to Part 2 of the Act: whether the proposal achieves the sustainable management of natural and physical resources.

179. Ms Sedgley submitted, and we accept, that in assessing whether a proposal is contrary to the objectives and policies of a Plan, guidance is given by the *Monowai Properties v Rodney District Council* (A215/03) case, which established that for a proposal to be contrary to the objectives and policies of a plan it must be opposed or repugnant to them rather than simply not finding support for them.

180. Both Ms Sedgley and Mr Martin have thoroughly assessed the proposal against the key objectives and policies of the District Plan. Ms Sedgley concludes that the proposal is inconsistent with some of the objectives and policies that relate to avoiding buildings and structures on ridgelines or in landscapes that are classified as ONL and which have a low ability to absorb change. However, she considers the proposal is not prima facie contrary to all of the policies that relate to maintaining such landscapes, as many of these require the avoiding, remedying and mitigating of effects and maintaining the openness of the landscape. The proposal, in her view, maintains the openness of the landscape and does not affect the pristine remote landscape of the wider district. Ms Sedgley concludes that the proposal cannot be considered to be contrary or repugnant to the collective body of objectives and policies of the District Plan, notwithstanding their inherent focus on landscape values.

181. Mr Martin's analysis finds that the proposal is not consistent with the objectives and policies relating to landscape, visual effects and rural character. However, he concludes the proposal is generally consistent with the objectives and policies relating to nature conservation values, efficient use of energy, efficient use of recreation resources, natural hazards, earthworks, transportation and the Ski Sub-zone.

182. The District Plan discusses outstanding natural landscapes and features as follows:

> "(2) **Protection of Outstanding Natural Landscapes and Features**
>
> The Outstanding Natural Landscapes are the romantic landscapes – the mountains and the lakes – landscapes to which s.6 of the Act applies. The key resource management issues within Outstanding Natural Landscapes are their protection from **inappropriate** subdivision, **use and development**, particularly where the activity may threaten the landscape's openness and naturalness." [My emphasis]

The issue for the Commission is, therefore, whether the proposed gondola is an *appropriate* use and development of the outstanding natural landscape in this particular location.

183. Both Mr Martin and Ms Sedgley (in the application) quoted at some length the relevant provisions of the District Plan. We do not propose to unduly lengthen this decision by repeating all of them here. In summary:

- The objectives and policies seek to avoid, remedy or mitigate the adverse effects of development and subdivision on those areas of the district where the landscape or visual amenity values are vulnerable to degradation (see Policy 4.2.5.1(a)).

- The District Plan seeks to maintain the existing openness of ONLs (Policy 4.2.5.2(a)).

- The District Plan recognises that the landscape provides a backdrop to development while at the same time it provides an economic base for activity (Part 4.2.4(1)).

- The District Plan provides for limited subdivision and development even within an ONL in those areas with higher potential to absorb change (Policy 4.2.5.2).

- The landscape theme of the districtwide landscape objectives and policies is taken up in the Rural General Zone when considering subdivision and development (Policy 5.2.1.1). These policies also seek to protect rural character and amenity and avoid the productivity of rural land being compromised (Policies 5.2.1.2, 5.2.1.3 and 5.2.1.4).

184. Mr Martin has concluded the proposal is inconsistent with the objectives and policies that generally concern landscape, visual effects and rural character. In his view, the gondola proposal is of a nature and scale that is unable to be successfully absorbed into the ONL of the Cardrona Valley. He also considers that the gondola will exacerbate a character not anticipated or encouraged in rural areas due to its prominent visual effects. Mr Martin notes, however, that the location of the proposal "is largely the most appropriate".

185. In his concluding remarks at the hearing, Mr Martin stated that although there will be adverse landscape effects, these effects have been reduced by the additional

changes to the application offered by the Applicant immediately prior to and during the hearing. He concluded that what is required is a balancing of positive and adverse effects and that notwithstanding the lack of expert evidence on the economic effects (at the hearing), he was comfortable that the positives provided outweighed the negative landscape effects. Accordingly, he advised that he had changed his recommendation and was now of the opinion that it is appropriate for the Commission to grant consent.

186. Importantly, Ms Sedgley submitted that the proposal's inconsistency with the objectives and policies that generally concern landscape, visual effects and rural character relate to the "human perceived" effects of structures within the landscape, not to effects on the sustainability of natural or physical resources. She referred us to the decision in *NZ Rail Limited v Marlborough District Council* where Judge Skelton stated:

> *"The preservation of natural character is subordinate to the primary purpose of the promotion of sustainable management. It is not an end or an objective on its own but is accessory to the principal purpose."*

Landscape policies and objectives

187. Ms Sedgley, in her evidence, stated that while the proposal is inconsistent with several of the specific landscape policies and objectives, it finds favour with many of the others and is not contrary or repugnant to the objectives of the District Plan overall. She bases her conclusion on Mr Espie's evidence in relation to landscape effects. Mr Espie has concluded that:

- The proposal will be seen as an "interruption" to the current openness of the landscape and although inconsistent with it, will not block or enclose its openness. The degree of openness that the landscape currently displays will remain unchanged.

- The proposal will be an entirely new element in the landscape and will not combine with other existing elements to create cumulative effects that are more than minor.

- The proposal will bring about change that will not be visually absorbed by the landscape in total; however, the base building will be absorbed to a moderate degree and will only be visible from a 550m stretch of the Cardrona Valley Road.

- Only parts of the gondola system will be visible from most viewing places, which will reduce the effect for the observer. The effects of viewing the gondola will be reduced by observers' expectations of the Cardrona experience, i.e. that of an alpine village.

- The gondola is located in area of existing visual disturbance, not in pristine ONL.

188. We are persuaded by Ms Sedgley's argument in this regard. While it is plain that the proposal does not find support for several of the specific landscape policies and objectives in the District Plan, it is not, in our view, entirely opposed or repugnant to them. In particular, while the gondola will be a visible structure in the landscape, the openness and naturalness of the ONL will, to a large degree, be maintained. Further, as the gondola is designed to provide access to and from the Waiorau Ski Sub-zone, we do not find the development to be inappropriate in this location.

189. As Ms Sedgley has pointed out, the existing Ski Zones within the region require suitable access to achieve their purpose of providing for recreation in consolidated areas in order to avoid similar effects elsewhere. We agree that this proposal will encourage consolidation and growth within an existing Ski Area Sub-zone through the provision of safer and more convenient access.

190. In summary, we conclude that while the proposal does not find support in all of the relevant objectives and policies of the Plan due to the adverse landscape effects, it is not opposed or repugnant to them as a whole. As a large number of the District Plan objectives relate to maintaining the landscape, this is in large part a finely balanced assessment. However, it is plain that the objectives and policies do not exclude appropriate development from all areas of ONL: limited development is

permitted in those areas with a higher potential to absorb change.[4] We concur with Ms Sedgley that the proposal is located in an area with a greater ability to absorb change due to the degree of modification that has already occurred in the area, noting that the gondola line passes through an existing corridor of visual disturbance.

191. Further, it is plain that this proposal actively supports other objectives and policies of the District Plan; in particular, those to relating to open space and recreation and the effective use and functioning of open space and recreational areas in meeting the needs of the district's residents and visitors.

192. The proposal will also support objectives and policies relating to the Ski Area Sub-zone and the efficient use of transport. Objective 6 – Ski Area Sub-Zone, is recorded as follows:

> "To encourage the future growth, development and consolidation of existing ski areas, in a manner which mitigates adverse effects on the environment.
>
> Policies:
>
> 6.1 To identify specialist sub-zoning for ski area activities.
>
> 6.2 To anticipate growth, development and consolidation of ski fields within Ski Area Sub-zones."

193. The gondola will encourage future growth within the Waiorau Ski Area Sub-zone by providing unique, safe and efficient access between the ski area and the Cardrona Valley Road. Future growth and consolidation within the existing Ski Sub-zone is also encouraged by the proposal. We concur with Ms Sedgley that these policies are important in terms of the sustainable management of Ski Area resources for future generations.

194. Overall, we conclude that while the proposal does not support the landscape polices and objectives of the District Plan, it is not opposed or repugnant to the objectives and policies of the plan overall. However, as previously noted, this is a finely balanced assessment due to the considerable proportion of the District Plan objectives and policies which relate to the maintenance and protection of the landscape.

[4] Objective 2(c).

Other Matters

Precedent Effect

195. In *Russell v Dunedin City Council* (C92/2003), a precedent effect was defined as being a decision that will have the effect of:

(i) Undermining the objectives, policies and rules of a District Plan; and

(ii) Making consistent administration of the District Plan difficult.

196. We concur with Mr Martin's assessment that the proposed gondola is a very specific development that is unlikely to be replicated on its facts and which, in any event, will require a site-specific assessment in each case. Accordingly, it is, in our view, highly unlikely that this decision will result in a precedent effect. This conclusion is supported by the detailed balancing of the adverse effects on landscape and the positive environmental compensation considerations, which are very specific to this particular application.

Part 2

197. Part 2 of the Act is concerned with the use, development and protection of natural and physical resources which are to be managed in a way, or at a rate which enables people and communities to provide for their social, economic and cultural well-being, and for their health and safety while:

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil and eco-systems;

(c) Avoiding, remedying or mitigating any adverse effects of activities on the environment.

198. The proposal contains many initiatives that will undoubtedly assist the community to provide for their social, economic and cultural well-being. We accept that the social and economic well-being of the Cardrona community, and indeed the wider district, are appropriate considerations under the enabling aspects of s.5(2).

199. In our opinion, this is one of those rare cases that primarily falls to be determined under s.5 of the Act, largely because of the impact and focus of the assessment matters, objectives and policies of the District Plan which are highly landscape oriented. The "enabling" part of s.5(2), which is essentially concerned with economics, is as important in any analysis as the "while" in s.5(2)(a), (b) and (c) (see above) which focus primarily on protection of the environment. We are satisfied that the enabling aspects of this proposal, which have been fully discussed under positive effects, are sufficiently meaningful to compensate for the adverse impact of the gondola development on landscape values and amenity.

200. This conclusion is further supported by our analysis of the objectives and policies of the District Plan: while the proposed development is inconsistent with several of the landscape objectives and policies, it does, on the whole, support the policies relating to energy efficiency, transport, recreation resources, ski area sub-zones, natural hazards and earthworks.

201. In our view, the gondola will sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations while safeguarding the life-supporting capacity of air, water, soil and eco-systems. Although the proposal is unable to fully mitigate the adverse effect of the development on the landscape, we consider that the positive benefits offered by way of environmental compensation outweigh the adverse effects in this particular case. As a result, we are satisfied that the net conservation benefit is such that the development represents sustainable management in terms of s 5(2).

202. Our discussion of environmental effects was largely concerned with the protection of natural landscapes, which we are required to provide for under s.6(b). As has previously been stated, we consider that this particular development is not

inappropriate in this location and for this purpose. Accordingly, on balance, taking into account the environmental compensation that forms part of this application, we consider the proposal is not contrary to the spirit and intent of s.6(b) when considered in the overall context of sustainable management.

203. In summary, we consider that, on balance, the compensation offered by way of positive benefits, in particular the economic benefits to the local and district communities, outweighs the adverse effects posed by the visual and landscape effects of the gondola. In terms of s.6, we find that the net conservation gain reduces the effects on the ONL to an acceptable level. In this respect, the inclusion of a condition requiring the removal of the gondola and re-instatement of the environment should it cease to be utilised for commercial operations affords some level of protection to the landscape in the longer term. Notwithstanding this, we are of the opinion that our decision to grant consent is a finely balanced one and has only been achieved through our ability to give suitable weight to the positive benefits, in particular the economic benefits, offered by the application.

Conclusion

204. For the reasons outlined above, we consider the gondola to be a potentially important factor in the long-term viability and expansion of the limited resource of the Waiorau Ski Sub-zone, which is one of the few alpine areas available to be developed sustainably for recreational activities. Through appropriate development facilitated by the gondola, which will provide safer, more convenient access to the Ski Area Sub-zone, business and economic opportunities will be provided that will in turn support the communities of the area and district. We are satisfied that the net conservation gains offered by this application are sufficient to outweigh the adverse effects of the gondola on landscape and amenity. As such, in our opinion the gondola promotes the sustainable management of natural and physical resources of this area for future generations.

205. Accordingly, we exercise our discretion in terms of s.104 and s.104B to **grant consent** to this application, subject to the conditions imposed in accordance with s.108 below.

Jane Taylor and **Christine Kelly**
Hearings Commissioners

Date: 15 May 2008

RM070610 One Black Merino Limited
Conditions of Consent

General Conditions

1. That the development be carried out in accordance with the plans **(stamped as approved)** and the application as submitted, with the exception of the amendments required by the following conditions of consent. The approved plans as drawn by Sarah Scott Architects dated 19 April 2007 (except where indicated otherwise) are as follows:

   (a) Location Plan
   (b) Aerial Photo Plan
   (c) Cover Page/Drawing Schedule
   (d) Base Site Plan/Landscape Plan (dated 28 September 2007)
   (e) Base Station Site Sections
   (f) Base Station Elevations
   (g) Base Station Floor Plan
   (h) Top Site Plan/Landscape Plan
   (i) Top Station Floor Plan
   (j) Top Station Elevations
   (k) Preliminary Layout (drawn by Traffic Design Group, dated 28 March 2007)

2. That unless it is otherwise specified in the conditions of this consent, compliance with any monitoring requirement imposed by this consent shall be at the consent holder's own expense.

3. The consent holder shall pay to the Council an initial fee of $240 for the costs associated with the monitoring of this resource consent in accordance with Section 35 of the Act.

4. The consent shall not lapse until ten years after the date of commencement of this consent.

Engineering

5. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.

6. The owner of the land being developed shall provide a letter to the Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under sections 1.4 & 1.5 of NZS4404:2004 "Land Development and Subdivision Engineering", in relation to this development.

7. Prior to the commencement of any works on the land being developed the consent holder shall provide to the Queenstown Lakes District Council for review, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition (5), to detail the following engineering works required:

   a) The provision of access to and from Cardrona Valley Road in compliance with standards set out in Austroads Part 5 – Intersections at Grade and Austroads Rural Road Design. The final design of the intersection is to be approved by Council.

   b) The provision of access to the base station car park from the intersection with Cardrona Valley Road in accordance with NZS4404:2004 with QLDC's amendments and modifications and Austroads Rural Road Design. The width of the carriageway shall be 7m in accordance with recommendations made in the GHD report, dated 11/09/2007.

   c) The provision of access to the Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme. The Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme and the gondola shall share access to Cardrona Valley Road. Access to the Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme shall branch off the gondola access way once the shared access way has dropped to the terrace below the level of Cardrona Valley Road.

   d) The provision of all parking and manoeuvring areas to Council's standards, except where specified otherwise by condition 26.

   e) The provision of a road safety audit in accordance with the Land Transport New Zealand Policy and Procedures for both detailed design and pre opening stages for the intersection and access road.

   f) The provision of alterations to any existing water courses in association with the report prepared by Geoconsulting Ltd, dated 31/01/2007 and any relevant ORC consents.

   g) Relevant ORC consents for the disturbance of natural water courses associated with the tower bases.

   h) The provision of a stormwater disposal system that is to provide stormwater disposal from all impervious areas associated with the Base and Top Stations. The proposed stormwater system shall be designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 and subject to the review of Council prior to implementation.

   i) The provision of an effluent disposal system for the Base Station designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004in terms of AS/NZS 1547:2000 that will provide disposal of effluent to the Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme.

      Alternatively, should the Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme not be operational prior to the opening of the gondola, the provisions of an effluent disposal system to the Base Station designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004in terms of AS/NZS 1547:2000 that will provide sufficient treatment / renovation to effluent from on-site disposal, prior to discharge to land. To maintain high effluent quality such a system would require the following:

- Specific design by a suitably qualified professional engineer.
- Regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of the system to undertake this maintenance.
- Intermittent effluent quality checks to ensure compliance with the system designer's specification.
- Disposal areas shall be located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore.
- Provision to divert the system into the Mount Cardrona Station Wastewater Treatment and Sewerage Disposal Scheme at the time it becomes operational.

The design shall take into consideration the potential for freezing of components within the system.

j) The provision of an effluent disposal system for the Top Station designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004in terms of AS/NZS 1547:2000 that will provide disposal of effluent to the Snow Park Treatment Facility.

Alternatively, should the Snow Park Treatment Facility not be operational prior to the opening of the gondola, the provisions of an effluent disposal system to the Top Station designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004in terms of AS/NZS 1547:2000 that will provide sufficient treatment / renovation to effluent from on-site disposal, prior to discharge to land. To maintain high effluent quality such a system would require the following:

- Specific design by a suitably qualified professional engineer taking into consideration recommendations made in the report prepared by Geoconsulting Ltd, dated 31/01/2007. In general, imported gravels shall be used to form the soakage field to accommodate for the existing poor draining soils.
- Regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of the system to undertake this maintenance.
- Intermittent effluent quality checks to ensure compliance with the system designer's specification.
- Disposal areas shall be located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore.
- Provision to divert the system into the Snow Park Treatment Facility at the time it becomes operational.
- The design shall take into consideration the potential for freezing of components within the system.

k) The provision of a water supply to the Base Station in terms of Council's standards. The building shall be supplied with a minimum of 6400 litres per

day of potable water that complies with the requirements of the Drinking Water Standard for New Zealand 2005.

l) The provision of a water supply to the Top Station in terms of Council's standards. The building shall be supplied with a minimum of 4800 litres per day of potable water that complies with the requirements of the Drinking Water Standard for New Zealand 2005.

m) The provision of fire hydrants with adequate pressure and flow to service the development with a Class W4 fire risk in accordance with the NZ Fire Service Code of Practice for Firefighting Water Supplies 2003. Any lesser risk must be approved in writing by Fire Service NZ, Dunedin Office.

n) The drinking water supply is to be monitored in compliance with the Drinking Water Standards for New Zealand 2005 for the presence of E.coli, by the consent holder, and the results forwarded to the Queenstown Lakes District Council. The Ministry of Health shall approve the laboratory carrying out the analysis. Should the water not meet the requirements of the Standard then the consent holder shall be responsible for the provision of water treatment to ensure that the Drinking Water Standards for New Zealand 2005 are met or exceeded.

8. Prior to the occupation of the buildings, the consent holder shall complete the following:

a) The submission of 'as-built' plans in accordance with Council's 'as-built' standards, and information required to detail all engineering works completed in relation to or in association with this development.

b) The completion of all works detailed in condition (7) above.

c) The consent holder shall obtain any necessary consents from the Otago Regional Council for the water bore and effluent disposal. A copy of this consent shall be forwarded to Council.

d) The consent holder shall provide a suitable and usable power supply and telecommunications connection to the development. These connections shall be underground from any existing reticulation and in accordance with any requirements/standards of Aurora Energy/Delta and Telecom.

9. Prior to commencing works on site, the consent holder shall submit a traffic management plan to Council for approval. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor (certification gained by attending the STMS course and getting registration). All contractors obligated to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan.

10. Prior to commencing any work on the site the consent holder shall install a vehicle crossing, which all construction traffic shall use to enter and exit the site. The minimum standard for this crossing shall be a minimum compacted depth of 150mm AP40 metal. This crossing shall be upgraded in accordance with Council's standards, at the time the base building is constructed on the site.

11. Prior to commencing works, the consent holder shall submit to Council for review and approval a site management plan for the works.

12. The consent holder shall install measures to control and or mitigate any dust, silt run-off and sedimentation that may occur in accordance with the approved site

management plan. These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project.

13. The consent holder shall undertake the excavation, temporary works, retaining walls and batter slopes in accordance with the report prepared by Geoconsulting Ltd, dated 31/01/2007.

14. The consent holder shall provide Council with the name of a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 who is to supervise the excavation procedure. This engineer shall continually assess the condition of the excavation and implement any design changes / additions if and when necessary.

15. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at their expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.

16. Prior to construction of any buildings on the site a Chartered Engineer experienced in soils investigations shall provide certification, in accordance with NZS 4431 for all areas of fill within the site on which buildings are to be founded.

17. Within four weeks of completing the earthworks the consent holder shall submit to Council as built plan of the fill. This plan shall be in terms of New Zealand Map grid and shall show the contours indicating the depth of fill. Any fill that has not been certified by a suitably qualified and experienced engineer in accordance with NZS 4431 shall be recorded on the as built plan as “uncertified fill”.

18. At the completion of the earthworks all earth-worked areas shall be top-soiled and grassed or otherwise permanently stabilised within 4 weeks and in association with recommendations set out in the Ecological Report prepared by Colin Boswell dated May 2007.

19. No earthworks, temporary or permanent, are to breach the boundaries of the site.

20. Upon completion of the earthworks, the consent holder shall complete the following:

    a) The completion of all works detailed in condition 7 above.

    b) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

    c) An engineer’s design certificate/producer statement shall be submitted with regards to any permanent retaining walls on site (if any).

21. A lighting plan shall be submitted to the Council for approval. The lighting plan shall provide sufficient lighting to enable vehicle and pedestrian traffic to manoeuvre safely throughout the car park and base building but shall be low level in keeping with the rural surroundings.

22. No lighting shall be permitted at any time in or on the gondola cars or towers.

23. The consent holder shall surrender resource consent RM050942 Little Bo Peep Limited as volunteered as part of the proposal.

24. Towers 14 and 15 shall be constructed with the use of helicopters rather than requiring the formation of tracks to the tower sites.

25. All tracks formed to facilitate construction of the towers shall be removed and re-grassed within one year of the towers being constructed. Other existing tracks shall be removed and re-grassed in accordance with the application.

Parking

26. The consent holder shall re-submit a parking plan to Council for approval. The parking plan shall accord with the amended parking plan tabled at the hearing and shall indicate:

    (a) 348 parks in the Main Parking Area constructed to Council's standards;

    (b) 130 parks in the north-east of the Main Parking Area constructed in reinforced grass; and

    (c) 287 parks in the Overflow Parking Area constructed in reinforced grass.

27. The consent holder shall obtain Council's approval prior to upgrading any parks required to be constructed in reinforced grass as referenced in condition 26. The consent holder shall provide a report prepared by a suitably qualified and experienced traffic engineer indicating that additional parking is required.

28. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review condition 26, relating to the parking plan, for any of the following purposes:

    (a) To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.

    (b) To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.

    (c) To avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

Archaeological

29. The consent holder shall take due care in the construction of any roads or access tracks to avoid damaging the 1930s gold workings identified on Figure 1 of the Archaeological Assessment of the Waiorau Snow Farm Gondola Proposal Report prepared by Chris Jacomb and Richard Walter and submitted as part of the application.

30. If any archaeological or historical features are discovered during the course of the construction of the proposed gondola system, an archaeologist must be contacted immediately for advice.

Ecological

31. The consent holder shall submit sufficient details and/or plans to Council for approval of the following works to be implemented, as volunteered at the hearing:

    (a) The formation of a walking track from the base building to the existing Snow Farm access road, including the approval of the landowner upon whose land the track is located. The walking track is to be sited after consultation with the Upper Clutha Tracks Trust and the Department of Conservation.

    (b) The consent holder shall provide a plan detailing the 1000 metre (approximately) loop track beginning and ending at the top building to Council for approval. At least five interpretive boards prepared by suitably qualified and experienced persons detailing ecologically significant or interesting information shall be installed.

    (c) The consent holder shall formalise weed and pest management practices currently undertaken, in accordance with the documents provided with the application.

    (d) The consent holder shall install interpretation boards prepared by suitably qualified and experienced persons providing vegetation and historic heritage information in the gondola carriages. The content of the interpretative boards shall be forwarded to Council for approval prior to installation.

    (e) The consent holder shall mark a route between the top building and the Tuohy's Gully track and shall make available public pedestrian access along this route during the gondola's hours of operation. The route shall not be considered a public place in terms of the RMA for the purpose of future resource consent applications.

32. The consent holder shall provide Council with a copy of the approval from the Department of Conservation for any works over Cardrona River marginal strip.

33. Hours of operation shall be between 6am to 11pm only, year round.

34. Notwithstanding condition 33, the consent holder may operate between 6am to 4am on 25 days per year. The consent holder must notify the Council of those occasions operations will extend after 11pm at least seven days in advance, and keep a record of the times operation continues after 11pm.

Landscaping

35. The approved landscaping plan shall be implemented within the first planting season following the construction of the base facilities, and shall thereafter be maintained and irrigated in accordance with that plan. If any plant or tree should die or become diseased it shall be replaced.

36. The consent holder shall remove any rubbish and undertake a general 'tidy-up' of the area surrounding the base building within the subject site prior to implementation of the landscaping plan.

Cessation of Operations

37. Should the gondola be abandoned or cease commercial operations for a period of greater than 12 months all infrastructure associated with the gondola shall be disassembled and removed from the site. The site shall be re-contoured and vegetation rehabilitated to appear consistent with its surrounds. The works required by this condition shall be completed within six months of the gondola being abandoned or ceasing operations for a period of greater than 12 months.

Review

38. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:

    (a) To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.

    (b) To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.

    (c) To avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

Notes

(i) No signage has been proposed as part of this proposal. Should a sign be required in the future, a sign permit from Queenstown Lakes District Council should be obtained PRIOR to erection.

(ii) Development contributions will be required as part of this resource consent. A 'Development Contribution Notice', detailing how contributions were calculated, will be forwarded under separate cover.

(iii) The Council may elect to exercise its functions and duties through the employment of independent consultants.

APPENDIX A – Commissioner's Memorandum (24 January 2008)

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by **ONE BLACK MERINO LIMITED** to construct and operate a gondola transport system to provide access between Cardrona Valley Road and the Waiorau Snowfarm Ski Area Subzone, including associating car parking, earthworks and landscaping.

Council File: RM 070610

MEMORANDUM TO THE PARTIES

206. We were appointed under section 34A of the Resource Management Act 1991 ("the Act") to hear and determine this application.

207. The hearing was held on 9 and 10 October 2007. During the course of the hearing, we indicated that we proposed to undertake a further site visit to inspect the location of two walking tracks volunteered by the Applicant at the hearing, together with the area identified in Mr Sam Lee's evidence as suitable for an expansion of the existing ski field activities.

208. Since the adjournment of the hearing and our further site visit to the proposed development site, we have had the opportunity to thoroughly consider the material and evidence presented by the Applicant.

209. It is apparent that the crux of this decision lies in the extent to which the landscape effects of the proposal may be successfully avoided, mitigated or remedied and correspondingly whether the positive effects resulting directly from the proposal are sufficient to outweigh any landscape effects that are unable to be totally remedied or mitigated. In addition, whether the proposal promotes sustainable management under s.5 of the Act is of central importance.

210. In his s.42A report prior to the hearing, the Lakes Environmental planner, Mr Martin, concluded that the proposal will result in adverse landscape effects that will undermine the natural character of the outstanding natural landscape in which the development is located. He based this conclusion on the Applicant's own landscape assessment (prepared by Vivian & Espie), together with the assessment prepared by Lakes Environmental's landscape architect, Mr Rewcastle. Due to the unique characteristics and nature of the proposed gondola, Mr Martin was of the view that the associated negative effects on the landscape are unable to be totally mitigated.

211. Mr Martin further noted that the proposal results in positive effects, such as improved traffic safety and access to the ski area subzone, economic benefits both during construction and operation that will potentially enhance the sustainability of Cardrona as a township, and the potential enhancement of ecological values. He noted that while he was satisfied that positive benefits may stem from the proposed development, he was restricted in his ability to confidently measure the extent of such benefits as there were no expert reports provided with the application.

212. At the hearing, we were provided with expert evidence in relation to positive effects associated with traffic safety and improvements; the enhancement of ecological values as a result of measures volunteered by the Applicant; environmental effects associated with pollution in the form of dust and CO2 reduction; and the promotion of the objectives and policies of the District Plan, including provisions which aim to mitigate the effects of ski area growth through providing for and encouraging consolidation of existing ski areas.

213. It is useful at this stage to briefly summarise the essential issues in relation to the landscape effects and the counterbalancing positive effects of the proposal.

Assessment of Landscape Effects

(i) The potential of the landscape to absorb development

214. Mr Espie, the Applicant's landscape expert, stated at paragraph 6.3 of his evidence that he considers the landscape will not absorb the proposed

development in a visual sense. Although the base building will be absorbed to a moderate degree and the visibility of the gondola itself will be mitigated in some ways, it will remain prominent to a specific visual catchment that includes approximately 3km of the Cardrona Valley Road. The base building will be "experienced" in a location that is characterised by farmed flats and riparian willows, recognising that there is a degree of human modification that distinguishes this area from the dramatic, natural mountain slopes to the east.

215. Mr Espie notes, however, that most observers in the Cardrona Valley landscape are aware of the recreational use of the valley and the ski area operations that exist at the top of both of its sides, which form part of the perceived character of the valley. He noted that prominent signage exists for the ski areas and that the existing roads to them are plainly visible. He further observed that this knowledge will mitigate the impact of the gondola on the perception of the valley's landscape quality to a degree. We accept Mr Espie's proposition in this regard.

216. At paragraph 8.5, Mr Espie notes that the visual effects from the gondola are confined to the same general corridor that accommodates the existing access road. They are not seen in a pristine area of mountainside. The visual effects on the landscape from the gondola are therefore confined to an area which is already modified by some human disturbance. Again, we accept that this is the case, and that this assists this particular landscape to absorb the proposed development. A gondola in this location will not have the same impact as a gondola on similar terrain not already modified by a visually apparent access road.

(ii) Effects on openness of landscape

217. In terms of openness, Mr Espie believes that most of the gondola towers and the transient gondola cars will be seen in the context of a broadly visible expanse of open landscape. Accordingly, he concludes the degree of openness that the landscape currently displays will remain largely unchanged. Although the gondola will be plainly visible at distances of up to 3 km, we concur with this conclusion in the broad sense.

(iii) Cumulative effects on landscape values

218. Mr Espie notes that existing development in the vicinity of the subject site takes the form of dwellings, roads, commercial farm buildings and so on. The gondola proposal will not continue or expand this type of development, although it will be an obviously unnatural element. In his opinion, the gondola will create an entirely new element in the landscape and its effects on the appreciation of landscape will stem from its own qualities rather than from any combination with existing elements in the landscape. For this reason, he considers that its effects will not be cumulative effects; rather, they will be *individual* effects.

219. In her evidence, Ms Sedgley supported Mr Espie's conclusions, adding that as the gondola is a necessary element for alpine recreation that is known to and is already visually apparent in the general location; this will reduce the possibility of an observer experiencing a negative response to the gondola structures. We consider there is merit in this argument. The Cardrona village and surrounding environs is, following the development of both the Cardona and Snow Farm ski fields, a location that is plainly associated with winter sports. It is expected that further development planned for this area will strengthen this association. In this regard, the submissions of the local residents and businesses in support of the proposed gondola as forming an integral part of this overall transition are an important factor in our consideration.

Lakes Environmental Evidence

220. There was a considerable degree of consensus on landscape effects between Mr Espie and the Lakes Environmental Landscape expert, Mr Rewcastle. Mr Rewcastle acknowledged that the main effect of the proposal is the visual impact of the proposed gondola on landscape values. He agreed with Mr Espie that this effect is more than minor. Although the Applicant has put together a proposal which mitigates the impact of the gondola on the landscape to the greatest degree practicable, it has not been possible to avoid, remedy or mitigate all of the negative visual effects.

221. Mr Rewcastle similarly was of the opinion that the overall decision reduces to a balancing of the positive effects offered by the proposal against the negative effects associated with landscape values.

222. At the conclusion of the Applicant's case and after hearing from submitters both in support and opposed to the application, Mr Martin advised that although it was acknowledged that there will be adverse landscape effects, these have, in his opinion, been reduced since the application was lodged by measures proposed at the hearing. Having heard the evidence in relation to the positive effects of the proposal, noting the omission of any economic evidence together with additional positive benefits offered by the Applicant at the hearing (including access tracks), Mr Martin advised that he was comfortable that the positive measures provided outweighed the negative measures associated with the landscape. Accordingly, he recommended to the Commission that consent be granted, subject to appropriate conditions.

Assessment of Positive Effects

223. Mr Espie, Ms Sedgley, Mr Rewcastle and Mr Martin have all commented to some degree on the positive effects generated by the proposal. As previously mentioned, expert evidence has been provided to support and substantiate many of the positive effects expected to be accrued, which has allowed the Commission to place appropriate weight on these anticipated outcomes as appropriate.

224. We summarise the positive effects of the proposal briefly as follows:

(a) Positive effects supported by expert evidence:

- Potential for the consolidation of activities in the ski field zone.
- The potential expansion of recreational benefits and opportunities, including summer mountain biking.
- Reducing use of private vehicles and CO2 omissions.
- Safety and convenience.
- Significant potential for ecological enhancements.
- Reduction of pollution in the form of dust.

(b) Positive measures volunteered by the Applicant:

- Removal and re-grassing of a number of existing vehicle access tracks.
- Surrendering of resource consent RM050942 that provides for gravel screening (this consent provides for extensive visual disturbance on the Cardrona Valley floor over a long period).
- Proposed native planting, noting that the area of proposed native riparian planting totals approximately 6,800m² in area.
- The removal and control of exotic weed species.
- The two public walkways offered to be developed on the Applicant's land.
- A covenant on the upper terrace, which is to be retained in pastoral form.

(c) Positive effects not supported by expert evidence:

- Economic effects during the construction and operation of the gondola due to the creation of employment and related activities.
- An evaluation of the net economic impacts of the proposed development on users of the ski field and the wider community.
- The level of economic efficiency brought about by the utilisation of identified resources.
- Efficient use of ski zone resources, including the economic benefits associated with consolidation of ski activities and zone capacity.

225. Ms Sedgley commented, at paragraph 36 of her evidence, that:

> *"We know that there will be positive economic effects during the construction and operation of the gondola due to the creation of employment and the sustained growth and visitors to the area. We do not know the extent of the economic benefit, but a qualified economist will not be able to tell us this with certainty either. This is because economic quantification would be based only on assumptions on growth that the Applicant would provide."*

226. Both Mr John Lee and Mr Sam Lee gave some details as to the potential growth of the ski field that would be facilitated by the development of the gondola. Mr Sam Lee stated, at paragraph 9 of his submission, that:

> *"The current ski area policy zone extends far to the south and to excellent terrain for beginner and intermediate facilities, into terrain where we know we can install three chairlifts which will allow us to cater to 200,000 additional skiers and snowboarders per season. While this growth won't be instant, we do foresee a rapid growth for this business like the one seen for Snowpark NZ."*

227. Notwithstanding Ms Sedgley's comments on the potential value of expert economic evidence, we remain concerned that this is a vital omission in the Applicant's case. Whilst we accept that logically there will be positive economic benefits arising from the proposed gondola development, both in the short and longer term, we are unable to assign any significant weight to the anticipated positive effects (as subjectively described by many of the Applicant's experts and submitters) due to the absence of any supporting expert evidence. For example,

Ms Sedgley commented that the gondola will be an important factor in determining the long-term viability and expansion of the limited resource of the Waiorau Ski Subzone, which is one of the few alpine areas available to be developed for recreational activities. Similarly, Mr Sam Lee discussed the potential for development of a further downhill ski field, which we accept (following our site visit) is feasible from a practical point of view (ignoring potential financial hurdles). However, we were not presented with any evidence of the economic benefits which might arise to either ski field users or the wider community as a result of such developments. Consequently we have no objective sense of the longer-term economic impacts of further ski field and associated development that may be facilitated by the gondola on the sustainable management of the physical and natural resources of this area. It is our preliminary view that the benefits to ski field users and the community (both presently and as a result of further possible development) are potentially significant, and may add considerable weight to the proposal, particularly in terms of a Part 2 analysis. The potential availability of the subzone resources to a wider number and range of users at a similar cost, in conjunction with the other positive benefits that would be delivered by the gondola, is considered to be a potentially compelling argument if sustainable.

228. Put simply, without evidence of the economic benefits to members of the public and the wider community, there is presently nothing to distinguish this application from one submitted for, say, largely private use. For example, if the application was intended to benefit only a limited subset of private users, such as the vehicle testing operations, it is potentially unlikely that the positive effects would, in our view, outweigh the adverse landscape effects associated with a gondola on this site (acknowledging that these cannot be avoided, remedied or mitigated any further). It is the potential of the gondola to provide recreational access to the ski field subzone to a wide variety and number of public users (both domestic and international) in an economically efficient way, and the associated flow-on economic effects to the wider local and regional community, that is the key positive effect in mitigation. In our view, there is insufficient evidence of this critical positive effect to give it any more than nominal weight in our analysis.

229. In contrast to Ms Sedgley's views as expressed earlier, we do not consider that economic benefits need to be quantifiable (in the sense that she is referring) to be given weight by the Commission. We are fully aware that economic forecasts are often based on assumptions and that it is often impossible to accurately quantify the economic benefits of a proposal or the benefits to the greater community. However, it remains that in evaluating a proposal where economic benefits are an important factor, both in terms of direct positive benefits and in supporting a s. 5 analysis, expert evidence will assist a Commission to objectively identify benefits and to assign these appropriate weight in the overall analysis. Accordingly, there should ideally be some independent, objectively derived economic foundation to support the economic claims made by the Applicant, based on the most reliable information and forecasts available. Further, we consider that the economic benefits associated with the construction and operation of the gondola are reasonably quantifiable. Similar evidence was provided at the Treble Cone gondola project hearing, RM 060587.

Current Position of the Commission

230. We have come to the conclusion that as we are unable to ascribe any significant weight to the potential positive economic effects of the proposal, the application remains very finely balanced. However, if expert evidence was provided to substantiate the Applicant's assertions in relation to the positive economic effects associated with the potential growth of the ski field for users, the construction and operational costs of gondola, the sustainability of the local and wider community as a result of the forecast continued increase in local and international visitors to the ski field facilitated by the gondola and the corresponding economic and flow-on community benefits, we anticipate that we would be comfortable to grant consent to this development.

231. Accordingly, we wish to give the Applicant the opportunity to provide such economic evidence if it chooses to do so.

232. We note that the hearing stands adjourned. The Applicant is entitled to a decision on the case as it stands and that can be given if requested. The purpose of this memorandum is to summarise the main issues as we have distilled them from the evidence and to provide the Applicant with the opportunity to submit further

information to address our concern in relation to the weight that we are able to assign to the positive economic aspects of the proposal. However, we reiterate that the proposal as it currently stands is very finely balanced and a decision by the Applicant not to provide any further economic evidence does not necessarily mean that consent will be refused. Rather, the provision of expert evidence that supports the assertions made by Ms Sedgley, Mr J Lee and Mr S Lee in relation to economic benefits will, in our view, make the difference between a reasonably persuasive case and a very finely balanced one.

233. In terms of process, we envisage that if the Applicant wishes to submit further information, this should be done through Lakes Environmental which will make it available to submitters for their written comment within 10 working days. Lakes Environmental experts may also wish to provide us with assessments of any further information. Comments from submitters and assessments from Lakes Environmental would be made available to the Applicant for a reply. We stress that we do not envisage a need to reconvene the hearing but would consider a request for that from any party.

234. It would be helpful if the Applicant would advise us, through Lakes Environmental, whether further information is going to be submitted and the anticipated timeframe for that, or whether a decision is required on the case as it stands. If the latter course is elected, we expect that the decision will be issued within 15 working days from the date of such advice.

Jane Taylor and **Christine Kelly**
Hearings Commissioners

Dated 24 January 2008

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by **ONE BLACK MERINO LIMITED** to construct and operate a gondola transport system to provide access between Cardrona Valley Road and the Waiorau Snow Farm Ski Area Subzone, including associating car-parking, earthworks and landscaping.

Council File: RM 070610

ADDENDUM TO DECISION
Dated 16 May 2008

1. Unfortunately, as a result of the considerable time pressures the Commission faced in finalising the decision to grant consent to this application, an important discussion relating to the meaning and content of "environmental compensation" in terms of the Resource Management Act 1991 ("the Act") was omitted from the final draft released on 14 May 2008.

2. While this technical point is not in any way material to the overall decision to grant consent, we consider it necessary to explain our approach more fully to avoid any confusion.

3. The approach of the Commission to the analysis required, set out at paragraph 66, was to first determine the extent to which the landscape effects of the proposal may be avoided, remedied or mitigated. At paragraph 137 we concluded that, having regard to the expert evidence, the gondola will bring about change that will not be visually absorbed by the environment. The associated adverse environmental effects on the outstanding natural landscape are, as a result, unable to be remedied or mitigated.

4. We then considered whether the positive effects of the proposal are sufficient, on balance, to "outweigh" the adverse landscape effects, and, overall, whether the proposal comprises sustainable management in terms of Part 2 of the Act.

5. Consideration of "positive effects" is specifically mandated under the assessment criteria relating to outstanding natural landscapes, set out in part 5.4.2.2(2) of the District Plan. As noted at paragraph 139, section 104(1)(a) of the Act requires all effects on the environment to be considered, whether positive or negative. Accordingly, the positive social and economic effects generated by an application are a relevant consideration in the assessment of a discretionary activity.

6. In our discussion of positive effects, beginning at paragraph 139, we set out all of the relevant matters relating to this application to which we were able to ascribe weight. At paragraph 171, we discussed the "balancing" of the positive effects generated by the proposal against the adverse landscape and visual effects that are unable to be fully remedied or mitigated. We concluded that the positive effects were sufficient to outweigh the adverse landscape effects, and that accordingly it was appropriate to grant consent.

7. During the discussion of balancing of effects, and indeed, the remainder of the decision, we used the term "environmental compensation" as a synonym for the contribution made by all of the positive effects in the balancing exercise. However, we acknowledge that not all of the positive effects may necessarily comprise environmental compensation in the sense that concept has been developed by the fledgling case law in New Zealand. Accordingly, we consider it necessary to clarify our approach for the avoidance of any confusion.

8. It is generally accepted that environmental compensation is recognised as a means to address negative environmental impacts in the wider context of the sustainable management debate.[1] The term "environmental compensation" has been defined as: "*The provision of positive environmental measures to off-set, balance or otherwise atone for the adverse environmental impacts of some action, particularly development projects*".[2] However, it is not entirely clear if the term "positive environmental measures" is intended to comprise all positive measures, including social and economic gains. For example, the Environment Court has used the term to draw a distinction between financial contributions imposed by section 108 and other positive effects, which were described as environmental compensation.[3]

[1] See paragraphs 172 and 173 of the decision.
[2] Memon and Skelton, "*The Practice of Environmental Compensation under the Resource Management Act 1991: A Comparison with International Experience*", RMLA website.
[3] Remarkables Park Limited v QLDC (C161/2003).

9. Having reviewed very limited the case law in this area, the term "environmental compensation" generally appears to refer to positive effects associated with environmental outcomes such as measures offered for the protection of areas with high ecological values, the avoidance of other adverse environmental effects (such as dust and pollution) and potentially the protection of alternative land with high conservation values (*J F Investments*). Accordingly, while positive social and economic effects remain critically important in the balancing exercise, on one school of thought these effects may not be considered, on a purely technical analysis, a form of "environmental compensation". However, by the inclusion of "people and communities" as a constituent part of "eco-systems" under the definition of "environment" in section 2 of the Act, it is equally arguable that in the New Zealand context, environmental compensation does include positive effects on people and communities, which in this case includes the safety, convenience and economic effects generated by the proposal.

10. We have adopted the latter approach for the purposes of this decision. Accordingly, while on a strict academic interpretation, positive effects that generate environmental gains connected to the land (which include the reduction in dust and pollution, the tracks, ecological protection and surrendering of resource consent RM 050942) should perhaps be separated from social and economic effects in our discussion, for efficiency and clarity we have included *all* positive effects connected with the environment (as defined in the Act) in the term "environmental compensation".

11. While we acknowledge that this is an evolving area of law in which the principles are not entirely clear, it is to a large degree a matter of semantics: notwithstanding the approach adopted, it is plain that all positive effects that are not a direct form of mitigation (whether included in the term "environmental compensation" or not) are required to be balanced against the adverse environmental effects of a proposal when reaching a decision.

12. The same approach has been applied to the related term "net conservation gain" in our decision.

13. As this is an evolving area of law, and one that is central to this decision, we consider it important to clarify our approach for the avoidance of confusion. We re-iterate that this technical debate does not in any way affect our decision to grant

consent to this application. However the term “environmental compensation” is ultimately defined by the Courts, it is plain that all positive effects are required to taken into account in reaching a considered decision.

Jane Taylor
16 May 2008

QUEENSTOWN LAKES DISTRICT COUNCIL

DECISION ON AN APPLICATION FOR RESOURCE CONSENT

APPLICANT:	**SNOWLINE HOLDINGS LIMITED**
APPLICATION REFERENCE:	**RM 060587**
LOCATION:	**MOTATAPU VALLEY**
SITE DESCRIPTION:	**RUN 812, SECTION 3 BLOCK VI, MOTATAPU SURVEY DISTRICT, SECTION 1 SURVEY OFFICE PLAN 23260 AND PART SECTION 1-2 SURVEY OFFICE PLAN 22995, CONTAINED IN CERTIFICATE OF TITLE OT10C/688 AND PART RUN 333A, AND PART RUN 334B CONTAINED IN CERTIFICATE OF OT8C/243**
PROPOSAL:	**CONSTRUCT AND OPERATE A GONDOLA FROM A BASE STATION ON THE MOTATAPU VALLEY FLOOR UP TO THE TREBLE CONE SKI FIELD**
ZONING:	**PART RURAL GENERAL AND PART SKI AREA SUBZONE**
STATUS OF PROPOSAL:	**DISCRETIONARY ACTIVITY**
DATES OF HEARING:	**27TH – 30TH NOVEMBER 2006 AND 22ND OCTOBER 2008**
HEARINGS PANEL:	**DAVID W COLLINS, GILLIAN MACLEOD**
DECISION:	**CONSENT IS GRANTED, WITH CONDITIONS**

Under the Resource Management Act 1991

IN THE MATTER OF an application by Snowline Holdings Limited to the Queenstown Lakes District Council for consent to establish a gondola and other facilities serving the Treble Cone Ski Field.

Council File: RM 060587

DECISION OF A QUEENSTOWN LAKES DISTRICT COUNCIL HEARINGS PANEL COMPRISED OF DAVID W COLLINS AND GILLIAN MACLEOD, HEARINGS COMMISSIONERS APPOINTED PURSUANT TO SECTION 34A OF THE ACT

Background

1. This application seeks land use consent for the construction and operation of a gondola transport system between the Motatapu Valley and the Treble Cone ski area. The proposal was originally publicly notified on the 3rd August 2006 and attracted 938 submissions (881 in support and 57 in opposition). Full details of the proposal were provided. In essence the development would involve a base station with a cluster of seven buildings providing ski rental facilities, retail activities, a café, toilets, the gondola waiting and loading area, and storage space for gondola cabins. Carparking for 1,550 vehicles was proposed.

2. The application set out two alternative locations for the base station complex: Option 1 on the east side of the Wanaka-Mt Aspiring Road, and Option 2 on the west side of the Wanaka-Mt Aspiring Road. These options were put forward on the basis that consent was sought to allow the applicant company to build either, but it was acknowledged that consent could be granted for one or the other, or both, but only one would be built.

3. The gondola cableway would rise 945 metres over a total length of about 3.5 kilometres (for base station Option 1 on the far side of the Wanaka-Mt Aspiring Road) and would be of either Doppelmayr or POMA design. The Doppelmayr system would be supported by 18 towers between 5 and 24 metres in height with a single lattice tower 40 metres high and would carry up to 2,000 people per hour. The POMA design would require 28 towers of between 8 metres and 25 metres in height, with a lattice tower 34 metres in height, and would carry 1,800 passengers per hour. Both systems would use 8 person cabins and the trip up the mountain would take about 10 minutes.

4. A hearing was held on the 27th – 30th November 2006 and was adjourned at the request of the applicant company's counsel to allow for further information to be provided.

5. Following the hearing we made a further site visit and issued a Memorandum to the Parties on the 14th December 2006. In that Memorandum we indicated that we had come to the conclusion that the full development sought (either Option 1 or Option 2) would not meet the purpose of the Act:

> *"We consider that the adverse impact on the landscape (part of an Outstanding Natural Landscape under the District Plan) of a development involving a cluster of large buildings in addition to the gondola itself would outweigh the benefits of the proposal. If the applicant company is committed to the whole development that could be indicated now and we will provide a full decision setting out our reasons for coming to that conclusion.*
>
> *While there can be no doubt that the effect on the landscape is a major consideration (in our assessment the most significant consideration) we accept that there are other relevant factors to be balanced against the inevitable adverse landscape impact. Briefly we acknowledge that a gondola would enable people (section 5 of the Act) to access the skifield and the wider alpine area more conveniently and safely. We accept that although it is impossible to quantify this benefit to gondola users or to calculate the benefits to the greater community, these benefits would be considerable.*
>
> *This conclusion has led us to consider whether there could be a development that would provide most of the benefits of the proposal put forward without such an adverse effect on the landscape."*

6. The Memorandum then went on to discuss the possibility of relocating the base station so as to be further away from the public viewpoint of the road and nearer to the existing "disturbance corridor" created by the conspicuous skifield access road, and the possibility of substantially reducing the visual impact of the base station by reducing it to just those facilities that have to be located at the base of the mountain. The Memorandum also discussed the possibility of reducing the area of formed carparking, while expressing the view that the area of grassed "overflow" parking was of much less visual impact.

7. We were pleased that the applicant company did not respond to our Memorandum by simply asking for a decision refusing consent that could be taken to appeal, but by initiating further detailed investigations into the viability of our suggestions. A substantially revised proposal was submitted in August this year and submitters on the original application were invited to comment on it. Although for the record we will list appearances at the first hearing, this decision will focus on the application as it now stands. We are in no doubt that the revised application is within the scope of the application originally notified because the development is reduced in scale (specifically the base station) and the relocation of the base station and first part of the gondola alignment do not introduce any significant new adverse effects.

Original Hearing 27-30 November 2006

8. Prior to the original hearing reports provided by the Council's then regulatory agent, CivicCorp Limited, were circulated to the parties. These were prepared by Mr Stewart Fletcher – Principal: Resource Consents (Wanaka), Mr Antony Rewcastle – landscape architect, Ms Alice Hill – engineer, and Ms Linda Ferrier – Principal: Environmental Health. These reports were supplemented by reports by Dr Colin Boswell – ecologist, Mr Phil Osborne – economist, and Mr David Gamble – traffic engineer.

9. The applicant company was represented at the first hearing by Mr Warwick Goldsmith who presented a detailed explanation of the proposal and addressed various legal issues, before leading evidence from Mr John Darby – director of the applicant company with particular experience in ski area development, Dr Michael Copeland – economist, Mr Graeme Lester – civil engineer, Mr Royden Thomson – geologist (read by Mr Goldsmith), Mr Richard Hanson – director of the applicant company and project manager, Mr Allen Ingles – civil engineer, Mr Willem Groenen – president of Lake Wanaka Cycling Inc., Mr Allan Rackham – landscape architect, Ms Nicola Rykers – planner and Mr Mike Bayliss and Mr Don Spary – skiers who support the application.

10. Submitters who spoke at the initial hearing were: Mr Richard Hutchison, Mr John Pawson – chairman of the Upper Clutha Tracks Trust, Ms Tina Haslett, Mr John Hare, Mr Julian Haworth – president of the Upper Clutha Environmental Society and Ms Di Lucas – landscape architect, appearing for the Upper Clutha Environmental Society. A statement from submitter Ms Bridget Mackay was also tabled. Mr. Quentin Smith, planner, appeared for the Wanaka paraglider pilots group.

11. Reporting officers Mr Fletcher, Mr Rewcastle and Ms Hill attended the initial hearing and provided further advice following the presentation of the evidence and prior to Mr Goldsmith exercising his right of reply.

Reconvened Hearing, 22nd October 2008

12. The invitation for submitters to comment on the revised proposal attracted 14 further submissions: two in opposition, ten in support and two raising issues but not expressing support or opposition. Three of the submitters in support were from people who were not original submitters so technically they cannot be accepted as parties now.

13. For the reconvened hearing we had the benefit of pre-circulated reports provided by the council's new regulatory agent, Lakes Environmental Limited, prepared by Mr Christian Martin – Planning Team Leader (Wanaka), Ms Kerry Price – engineer, and Mr Antony Rewcastle – landscape architect. Mr Martin and Ms Price attended the hearing and Dr Marian Read – Principal: Landscape Architecture, attended on behalf of Mr Rewcastle who was overseas.

14. The applicant company was represented by Mr Mark Christensen who presented legal submissions before leading evidence from Mr Richard Hanson – project manager and director of Snowline Holdings Limited and Treble Cone Investments Limited, and Ms Yvonne Pfluger – landscape architect.

15. Submitters Ms Tina Haslett and Mr Julian Haworth (President of the Upper Clutha Environmental Society Inc) attended the hearing and discussed their remaining concerns. Some of the main points they made will be discussed below.

The Amended Proposal

16. As noted at the beginning of this decision, the application has now been substantially modified. Ms Haslett and Mr Haworth both commented that the proposal is better than the original proposal and Mr Rewcastle's landscape report expressed the view that "*....the amended application has been more sensitively designed and positioned...*". The most significant alterations are as follows:

Base Station Building

The base station buildings complex is now to be located against the base of the mountain about 320 metres from the Wanaka-Mr Aspiring Road. With the deletion of the café, shop, and ski hire facilities the complex has been reduced from seven buildings to four buildings, grouped in a tight cluster. The total building footprint has been reduced 2,173m^2 to 853m^2 and the maximum building height has been reduced from 10.43 metres to 6.375 metres. The apparent height of the buildings would be

further reduced by the proposed excavation of the buildings into the toe of the slope. The revised proposal does however require a mid-station at the point where the cableway changes direction and heads up the mountain along the alignment originally proposed. This additional building would be quite substantial - 39.5 metres by 8.4 metres and 6.5 metres in height - but like the base station buildings it would be finished in recessive colours.

Access and Parking

It is now proposed to provide access to the car park at the base station from the existing skifield access road, rather than from another access point to the Wanaka-Mt Aspiring Road. The number of sealed car parks has been increased from 50 to 81, but more significantly the 1,500 space gravel car park originally proposed has been replaced by a 480 space grassed area.

Landscaping

A completely different landscape proposal has been put forward, reflecting the reduced scale of the base station and parking and their location against the base of the mountain. Informal shaped planting at the south end of the car park is proposed with native shrubs and trees occurring naturally in the locality, and more formal lines of red beech nearer the buildings. Some of the planting would be on bunds which will provide immediate screening, and Ms Pfluger's landscape evidence for the applicant was that:

> *"At maturity red beech will grow to a height of 10-12 metres and will, in combination with the bund, fully screen both the car park and base buildings...when viewed from viewpoints to the south-west along Wanaka-Mt Aspiring Road."*

Status of the Application

17. All relevant provisions of the Partially Operative District Plan are operative. Consent is required under quite a number of rules. While the structures within the Ski Area Sub Zone have the status of controlled activities, all buildings within the Rural General Zone are discretionary activities – in both cases subject to meeting standards such as the height limit. The earthworks require consent as a restricted discretionary activity because they exceed various standards.

18. The original proposal required consent as a non-complying activity under several rules: the height of the base station buildings, the setback from road boundaries and signage. These aspects have been deleted in the revised proposal but there remains

a question of whether the height of the support pylons requires consent as a non-complying activity.

19. The base station buildings for the original proposal exceeded the 8 metre height limit, leading to non-complying status for the application as a whole, although part of the reason for the request for an adjournment was to allow the applicant to consider whether those buildings could be re-designed to comply. The revised proposal under consideration now has buildings that easily comply with the 8 metre height limit. Mr Martin's planning report however raises the question of whether the pylons supporting (or forming part of) the gondola system are "buildings" under the District Plan and are therefore non-complying.

20. This is quite significant because if they are buildings and the application as a whole has to be assessed as a non-complying activity, we have jurisdiction to grant consent only if the proposal overall can meet one of the "threshold tests" in section 104D of the Act. Those tests are whether the adverse effects on the environment will be minor, or whether the proposal will be contrary to the objectives and policies of the District Plan.

21. As discussed below, we consider the inevitable adverse effects on the landscape of the gondola and base buildings would be more than minor, and bearing in mind that for the purposes of this "threshold test" positive effects cannot be taken into account, we believe the application fails that test.

22. Whether the proposal also fails the alternative test is more complicated. If we had come to the view that the proposal could meet the test we could effectively avoid the issue of status by considering the application as a non-complying activity. As Mr Martin's report notes, the District Plan contains objectives and policies relating to transportation, economics and the use of existing skifields as well as the more familiar objectives and policies relating to landscape. We accept that the proposed development would promote those objectives and policies. The Queenstown Lakes District Plan has such a strong emphasis in the objectives and policies on the protection of landscape however that we are not at all sure that taking an overall view the direct conflicts with the landscape objectives and policies can be sufficiently countered by support for some other objectives and policies for us to come to the view that overall the proposal is not contrary to the objectives and policies.

23. We have therefore had to consider the question of status carefully because if the application was non-complying and cannot pass either of the "threshold tests" we

would have no jurisdiction to consider it further. We have had the benefit of a legal opinion dated 1st October 2008 from the Council's lawyers, MacTodd, for Mr Martin and counsel for the applicant, Mr Christensen, provided detailed submissions on the point at the hearing.

24. The District Plan includes the following definition:

"Building: shall have the same meaning as in the Building Act 1991....."

25. The Building Act 1991 has been replaced by the Building Act 2004 but there is no dispute that the definition in the Plan remains unchanged. Section 3 of the Building Act 1991 defines a "building" as excluding:

"(c) Cablecars, cableways, ski tows, and other similar stand-alone machinery systems, whether or not incorporated within any other structure; or..."

26. The MacTodd opinion misquoted this definition by omitting a comma after *"ski tows"* so assumed that for the pylons to be excluded as buildings they would have to be either *"cablecars"* or *"cableways"*. Mr Christensen's submission was that the support towers could be included under any one of the exclusions: *"cablecars"* or *"cableways" or "similar stand-alone machinery systems"*. None of these terms is defined in the District Plan or the Building Act 1991, however *"cablecar"* is defined in the Building Act 2004. We accept that this definition can be used as a guide. It begins:

"Cablecar:

(a) Means a vehicle: ...."

The MacTodd opinion, rightly in our view, interprets that as meaning that *"cablecars"* should be interpreted as including just the gondola cabins and not the supporting structures. Mr Christensen pointed out that later in the definition of *"cablecar"* it is clarified that parts *"... attached to or servicing a building"* are included, but that does not seem to be relevant to the pylons as they are remote from buildings.

27. We do however believe that what is proposed fits within the common understanding of a *"cableway"* so is not a *"building"* for the purposes of the District Plan. The MacTodd opinion gives three dictionary definitions of *"cableway"*. The Collins dictionary (always the most authoritative) defines " *cableway" as:*

"A system for moving people or bulk materials in which suspended cars, buckets, etc run on cables that extend between terminal towers."

The Oxford dictionary similarly refers to *"a transportation system"* (emphasis added), while the American Webster dictionary defines *"cableway"* as:

"A suspended cable used as a track along which carriers can be pulled."

28. The MacTodd opinion acknowledges that these definitions mostly focus on the *"complete package"*, but then suggests that a conservative approach should be taken because:

> *"It seems inconceivable that a 40 metre tower in a sensitive landscape would escape scrutiny when a much small (*sic.*) and less prominent "building" would not."*

29. As pointed out by Mr Christensen, that is not actually correct because the proposed gondola system (including pylons) probably falls to be considered as a *"ski activity"* located outside a Ski Area Sub Zone under Rule 5.3.3.3 (ix) - a discretionary activity. We are not entirely sure of that because this system is proposed to be used outside the ski season, but that was the approach taken by another Council Hearing Panel in the case of the recently consented gondola to serve the Snow Farm skifield above the Cardrona Valley (One Black Merino Limited, consent RM 070610 dated 15th May 2008). Unless there is some reason to believe that Hearing Panel misunderstood something, we consider we should follow that interpretation in the interests of consistency.

30. Mr Christensen also submitted that the gondola pylons could come within the definition of *"other similar stand-alone machinery systems"*. Again, the word *"systems"* is important as it suggests we should not separate components of what is clearly a system. After careful consideration of the alternative possible interpretations, we have come to the view that the support pylons can and should be regarded as part of a cableway or other similar stand-alone machinery system (or both) and is therefore not a building in terms of the District Plan and therefore not subject to the 8 metre height limit.

31. As a discretionary activity we have to consider the application under sections 104 and 104B of the Act. Section 104 directs us to have regard to the effects on the environment and relevant objectives and policies in the Partially Operative District Plan. Consideration is *"subject to"* the purpose and principles of the Act set out in Part II (sections 5 – 8) of the Act. Relevant Part II matters in this case are:

- the sustainable management of resources purpose of the Act set out in section 5,
- section 6(b) *"the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development"*, (one of the declared *"matters of national importance"*),
- section 7(b) *"the efficient use and development of natural and physical resources"*, and
- section 7(c) *"the maintenance and enhancement of amenity values"*.

Precedent

32. Before discussing these matters we should mention the matter of precedent. A number of submissions on the original application, and Ms Haslett in her presentation for the reconvened hearing, expressed concern that what is considered to be a major intrusion into an acknowledged outstanding natural landscape would set a precedent for other developments.

33. We accept that this is an important consideration. While there is no strict doctrine of precedent under the Resource Management Act system, the Courts have made it clear that consistency in decision-making is important: applicants should be able to expect "*equivalent treatment*". For this reason we have had regard to the Council decision in One Black Merino Limited (consent RM 070610), noting some similarities and some differences in the proposals.

34. Ms Haslett's particular concern was that consent in the present case could be seen as a precedent within the area that has particular significance as the gateway to Mt Aspiring National Park. The simple answer to that is that there is no other skifield, existing or proposed, in this area. It is extremely unlikely that something as intrusive as a gondola would have any chance of obtaining consent without the positive benefits associated with a skifield.

35. We do not see approval in this case as establishing any kind of precedent for buildings, because the proposed buildings have been pared down to just those essential for a gondola operation. The original proposal did include buildings for activities we did not consider had this clear linkage and we had a concern that they could provide a basis for an expanding commercial centre around the base station. To that extent we accept that there would have been a precedent issue.

Positive Effects

36. The purpose of the Act set out in section 5 of the Act is "*the sustainable management of natural and physical resources*". Section 5(2) states:

> "*In this Act, sustainable management means managing the use, development, and protection of natural and physical resources, in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while* – (meeting three stated provisos)."

The original application and the many submissions in support emphasised the social, economic and safety benefits that would flow from the proposed gondola development.

37. The evidence was that development of the Treble Cone Ski Field is constrained by the capacity and difficult nature of the access road and by the space available at the skifield for parking. The gondola would address both of these constraints. There are significant areas within the Treble Cone lease area that could be developed for skiing with further lifts and other facilities, allowing the skifield to cater for double the present peak capacity. The gondola would also facilitate opening of this high altitude area all year round, with activities outside the ski season including walking, mountain biking and simply enjoying the alpine experience and extensive views.

38. It is difficult to quantify the social and economic benefits of this expansion of skiing and other activities. The application included an economic assessment and a peer review of this was provided as part of the reports collated by CivicCorp. Although there is always scope to debate the assumptions and conclusions reached in this sort of economic evaluation because it must be somewhat speculative, (and some submitters in opposition did question it), we are satisfied that this major project would facilitate much greater use of the Treble Cone alpine area with very significant social and economic benefits.

39. The case for the applicant company also emphasised the safety benefits of replacing a tortuous road access with a gondola. The access road would remain, but the application is put on the basis that it would no longer be open to the general public. There have been fatalities and numerous accidents on the access road over the years, but it appears that the nature of the road is such that most people take care. Some submitters in opposition questioned the safety argument at the initial hearing, but it is clear to us that the new mode of access could only improve safety. The only question is the magnitude of that benefit.

40. In the course of the initial part of the hearing the applicant's counsel, Mr Goldsmith, emphasised the benefit of the lower standard of access road that would be possible once it was only required for emergencies and some types of servicing such as the transport of materials too big for the gondola cabins. This was of some interest to us because the access road creates an unfortunately obvious man-made scar across the side of the mountain. Over the years the access road has been improved from a functional perspective by widening, but the consequence has been increased height of the uphill batters, which are generally too steep to sustain vegetation and are therefore visually obvious from the valley floor, and large volumes of cleared material spilled over the downslope edges of the road. There was some discussion at the initial hearing about the prospects of a different management and maintenance regime that could lessen these effects as the road was allowed to narrow through natural slipping,

and the possibility of active re-vegetation in appropriate, mainly downhill, areas. The adjournment Mr Goldsmith sought at the end of that initial part of the hearing was partly to allow time for the applicant's advisors to consider this matter further.

41. We were disappointed at the re-convened hearing that Mr Christensen indicated that the applicant wished to withdraw the offer of narrowing the access road. We gather that since then there has been some discussion between the applicant's advisors and the Lakes Environmental officers resulting in the agreed condition about the access road attached to this consent (condition 29). We would be very surprised if the Department of Conservation require that the road is maintained to the present width, bearing in mind the cost and the environmental effect of this, so we feel able to treat reduction in the scale of the access road as a very likely positive environmental effect of this application. We appreciate that the access road will remain very visible, but if the practice of tipping spoil over the downside edge of the road is stopped, there is a good prospect of some natural re-vegetation with the effect of gradually making the road alignment less obvious.

Engineering Issues

42. Before discussing the central issue in this case, the effects on the outstanding natural landscape, we should record that we have considered the evidence and reports about engineering issues which also raise questions about potential adverse effects. We are satisfied that these engineering issues, particularly the matter of protecting the base station facilities from slips and/or flooding raised by the Otago Regional Council, will be properly addressed and the attached conditions are designed to ensure this.

Effects on the Landscape

43. As is normally the case with applications in the Rural General Zone of the Queenstown Lakes District effects on landscape have been the central issue in this case. The Queenstown Lakes District Plan has a strong emphasis on protecting the world renowned landscapes of the District, which are arguably the District's most significant resources and certainly provide the foundation for the District's tourism industry and attraction as a place to live.

44. The Motatapu Valley and the enclosing mountains and hills are part of a recognised Outstanding Natural Landscape, as that term is used in the Partially Operative District Plan. The proposed gondola and associated base station and car park would, in our opinion, introduce a major and long term man-made intrusion into this landscape so regardless of the benefits of the proposal, the landscape impact must be mitigated as

far as practicable. Section 5 of the Act – the stated purpose of the Act – specifically requires:

"avoiding, remedying, or mitigating any adverse activities on the environment."

45. The adverse effects on the landscape could be avoided by declining consent, but we are satisfied that they could also be sufficiently mitigated, and as discussed above the existing adverse effect of the access road could be somewhat remedied.

46. As stated in our Memorandum, we did not consider the landscape effects of the original proposal would have been adequately mitigated, because of both the scale of the base facilities and because of their location. Both of these aspects have now been modified significantly. We are now satisfied that the range of facilities and associated buildings, and the scale of parking areas (particularly the artificially surfaced parking areas that would be obvious all year round), have been reduced to the minimum reasonably necessary.

47. It is unfortunate that the base station could not be moved north to the general location we suggested in our Memorandum. At the re-convened hearing Mr Haworth, speaking on behalf of the Upper Clutha Environmental Society, indicated that the Society would have been happy with something *"entirely consistent with the Memorandum"* and urged us to insist on that location for the base station with corresponding realignment of the gondola more directly over the access road.

48. The applicant's case was that there are two major difficulties with this: firstly, there are engineering difficulties in relation to the stability of parts of that route for support pylons and secondly, the landowner will not make land further north available for a base station. Engineering difficulties might be resolved at a cost, but we accept Mr Christensen's submission that if the land for the base station is simply not available that is the end of the matter. Such a site becomes simply a hypothetical possibility and should not detract from the applicant's best endeavours to minimise adverse landscape effects within the constraints of the range of actual base station siting possibilities.

49. There is a consensus between the landscape architects that the access road creates what the applicant's landscape architect at the initial hearing, Mr Rackham, referred to as a *"disturbance corridor"*, and that the adverse effect of the pylons, cables and moving gondola cars is considerably less within this existing corridor than it would be if the same facilities were placed on a similar mountain side elsewhere. Apart from a suggestion at the re-convened meeting that the concrete bases supporting the pylons

should be painted the same colour as the pylons, (now a condition), there do not appear to be any other ways of further mitigating the inevitable adverse effect of these elements.

50. As Mr Haworth pointed out, the amended site for the base station does lead to an additional length of cableway running along the toe of the mountain side which will be visible from the Wanaka-Mt Aspiring Road. In spite of that, we consider the now proposed site for the base station is preferable to the original Option 2 site which did not require this additional cableway leg but because of its location next to the road would have been much more visible.

51. We have carefully considered the landscape assessments of the proposed buildings in this location provided by Ms Pfluger and Mr Rewcastle, walked all over the base station site and the length of the additional cableway leg, and considered the height poles erected from various view points along the Wanaka-Mt Aspiring Road. We accept that the much revised proposal mitigates the adverse effects on the landscape of the base station and car park as much as is practically possible. It can also be noted that the base station and additional leg of the cableway are within the area already modified by the access road, existing entrance to the skifield and existing lower car park.

Relevant Objectives and Policies

52. We have considered the detailed assessments of relevant objectives and policies provided by the applicant and in Mr Fletcher's report, and although these led us to reject the original proposal we are now satisfied that, on balance, and despite continuing conflict with important landscape objectives and policies, the purpose of the Act would best be met by granting consent, subject to some quite stringent conditions set out below.

DECISION

For the reasons set out above, consent is hereby granted pursuant to sections 104 and 104B of the Act to Snowline Holdings Limited to establish and operate a gondola serving the Treble Cone skifield area in accordance with the revised proposal submitted on the 21st August 2008 subject to the following conditions.

David W Collins
Gillian MacLeod
Hearings Commissioners
4th December 2008

RM060587 – Snowline Holdings Limited

Conditions of Consent

General Conditions

1. That the development be carried out in accordance with the plans **(stamped as approved)** and the revised application as submitted, with the exception of the amendments required by the following conditions of consent. The approved plans are as follows:

   a. Darby Partners, Location Plan;
   b. Darby Partners, Alignment Plan;
   c. Darby Partners, Alignment Plan – Lower Section;
   d. Darby Partners, Landscape Plan;
   e. Koia Architects, Ticket Building Design.
   f. Dopplemayr, Gondola Station Designs;
   g. Darby Partners, Building Set out;
   h. Darby Partners, Lighting Plan.

2. That unless it is otherwise specified in the conditions of this consent, compliance with any monitoring requirement imposed by this consent shall be at the consent holder's own expense.

3. The consent holder shall pay to the Council an initial fee of $240 for the costs associated with the monitoring of this resource consent in accordance with Section 35 of the Act.

4. The consent shall not lapse until ten years after the date of commencement of this consent.

Engineering

5. All engineering works shall be carried out in accordance with the Queenstown Lakes District Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.

6. The owner of the land being developed shall provide a letter to the Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under Sections 1.4 & 1.5 of NZS4404:2004 "Land Development and Subdivision Engineering", in relation to this development.

7. Prior to the commencement of any works on the land being developed the consent holder shall provide to the Queenstown Lakes District Council for review and approval, copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition (5), to detail the following engineering works required:

   a) The provision of all parking, access and manoeuvring areas for the base station complex to Council's standards, except where specified otherwise by Condition 3(b).

   b) A detailed parking plan shall be submitted to Council for approval prior to works commencing on-site. The plan shall be in accordance with the amended application submitted, should clearly show the parking stall layout and include provision for

disabled parking as well as coach and taxi drop-off and parking areas and any necessary loading zones for service vehicles. The parking plan shall indicate:

i) 480 parks in the Main Parking Area constructed in gravel and reinforced grass; and

ii) 81 sealed parks in the northern area of the Main Parking Area constructed to Council's standards.

c) Copies of all necessary ORC consents for effluent disposal, bore construction, water supply, stormwater discharge (from buildings, access and parking area), defence against water structures and any works within a waterway as proposed for flood mitigation measures shall be forwarded to Council.

d) The provision of a stormwater disposal system, in accordance with Council's standards, that is to provide stormwater disposal from all impervious areas associated with the Base, Mid and Top Stations. The proposed stormwater system shall be designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 and subject to the review of Council prior to implementation.

e) The provision of a stormwater disposal system, in accordance with Council's standards, that is to provide stormwater disposal from the access and sealed parking areas (with grassed parks designed so as to avoid ponding). The proposed stormwater system shall be designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 and subject to the review of Council prior to implementation. The disposal system design shall incorporate a hydrocarbon and grit interceptor to ensure these contaminants are not discharged to land or any water courses.

f) The provision of an effluent disposal system for the Base Station designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004, in terms of AS/NZS 1547:2000, that will provide sufficient treatment/renovation to effluent from on-site disposal, prior to discharge to land. To maintain high effluent quality such a system would require the following:

- Specific design by a suitably qualified professional engineer.
- Regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of the system to undertake this maintenance.
- Intermittent effluent quality checks to ensure compliance with the system designer's specification.
- Disposal areas shall be located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore.
- The design shall take into consideration the potential for freezing of components within the system.

g) The provision of a potable water supply to the Base Station in terms of Council's standards that complies with the requirements of the Drinking Water Standard for New Zealand 2005. A suitably qualified engineer shall provide an assessment of the water supply demand for the base station complex, in terms of Council's standards, and confirm that the necessary abstraction rates can be achieved from the bore water supply to meet the expected water supply demand. The bore water supply shall be pump tested and the results submitted to Council along with the water supply assessment. In the event that the proposed bore water supply cannot meet the estimated water demand for the base station complex, then an additional potable water supply shall be secured. Details of any additional water supply must be submitted to Council for review and approval. Sufficient potable water storage shall be provided for within suitably sized tanks, to meet the estimated peak demand, in

accordance with Council's standards. Potable water storage shall be in addition to any fire fighting water storage requirements.

h) The drinking water supply is to be monitored in compliance with the Drinking Water Standards for New Zealand 2005, by the consent holder, and the results forwarded to the Queenstown Lakes District Council. The Ministry of Health shall approve the laboratory carrying out the analysis. Should the water not meet the requirements of the Standard then the consent holder shall be responsible for the provision of water treatment to ensure that the Drinking Water Standards for New Zealand 2005 are met or exceeded.

i) Fire fighting water storage is to be provided for the Top and Bottom Stations in accordance with the requirements of NZ Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 and the New Zealand Fire Service. The water storage volume and fire safety system design must be approved in writing by the NZ Fire Service, Dunedin Office.

j) A suitably qualified and experienced engineer shall monitor and confirm groundwater levels prior to any earthworks commencing on-site. In the event that these groundwater investigations indicate that the proposed earthworks may intercept the groundwater table, then all works shall cease until any necessary ORC consents have been obtained.

k) A quantitative hydrological and geomorphological analysis shall be completed for Catchment A, with a quantitative assessment of debris, flood and alluvial fan hazard derived from this catchment.

l) Details of the proposed bunding and/or other mitigation, including flow and depth calculations that have been used to dictate bund height/design. The designs for proposed mitigation measures for the original section of the gondola alignment shall be in accordance with the recommendations of the URS Report, dated 31 March 2006 and the Royden Thomson Report, dated February 2006, submitted with the original consent application. The designs for proposed mitigation measures for the revised section of the gondola alignment shall be in accordance with the recommendations of the URS Report, dated 7 July 2008 and the Royden Thomson Report, dated 15 July 2008 submitted with the Additional Information Application. These mitigation designs should consider the possibility of increased sediment supplies in the upper catchments of the alluvial fans that could result in significant proportions of sediment being supplied to the lower fan areas in the form of debris flow. The designs details shall be peer reviewed by a suitable qualified engineer to ensure the proposed mitigation provides an appropriate level of protection and meets the minimum requirements of Council's development standard, NZS4404:2004 and adopted amendments to that standard, and any Building Code requirements. Mitigation measures shall provide protection for up to a 1 in 10 year ARI event for the car park area and a 1 in 100 year event for the Base Station buildings and meet the Council's development standard, NZS4404:2004 and adopted amendments to that standard.

m) Details of the final locations of the gondola towers, base buildings and associated floor levels confirmed by a suitably qualified engineer, following a robust quantitative hazard assessment. A suitably qualified geological expert shall be engaged during the site selection process to ensure each tower location has been optimally selected. The final design of the tower foundations shall consider the risks associated with future fault ruptures in Central Otago and the Alpine Fault, as per the recommendations of Royden Thompson, with deference given to those towers founded on the valley floor.

n) An assessment of the integrity and detail of the design of all existing localised stream bunding and any other existing mitigation measures to be used in protecting the

gondola development from natural hazards by a suitably qualified and experienced engineer. In the event that these existing mitigation measures are found to provide inadequate or unreliable protection to the gondola development, then a suitably qualified and experienced engineer shall submit to the Council new designs for the necessary mitigation works prior to any works commencing on-site.

o) An ongoing and robust monitoring and maintenance regime for the proposed mitigation measures must be submitted to Council for review and approval. This monitoring and maintenance regime shall then be implemented to ensure that the level of protection provided by the recommended mitigation measures does not reduce over time as a result of flooding, avulsion, debris flow, stream aggradation, channel erosion or generation of new channels. Active stream channels should be constrained in existing positions and flowpaths in the area must be monitored to ensure that channels do not migrate over time as a result of accumulated sediments and gravels to positions that may endanger the protective bunding, pylons and base buildings.

p) Warning systems and evacuation strategies shall be prepared for the gondola facilities. A plan shall be prepared for the evacuation of the gondola in the event of its failure or for emergencies as a result of extreme events such as storms or earthquakes. This plan shall be developed in consultation with the Police and other emergency services.

8. Prior to the occupation of the buildings, the consent holder shall complete the following:

a) The submission of 'as-built' plans in accordance with Council's 'as-built' standards, and information required to detail all engineering works completed in relation to or in association with this development.

b) The completion of all works detailed in Condition (7) above.

c) The consent holder shall provide a suitable and usable power supply and telecommunications connection to the development. These connections shall be underground from any existing reticulation and in accordance with any requirements/standards of Aurora Energy/Delta and Telecom.

9. Prior to commencing works on site, the consent holder shall submit a Traffic Management Plan to Council for approval. This Traffic Management Plan shall ensure that during the construction period there is ongoing access for ski field users and access to neighbouring properties and shall ensure minimum disruption to traffic along Wanaka-Mt Aspiring Road. The Traffic Management Plan shall be prepared by a Site Traffic Management Supervisor (certification gained by attending the STMS course and getting registration). All contractors obligated to implement temporary traffic management plans shall employ a qualified STMS on site. The STMS shall implement the Traffic Management Plan.

10. Prior to commencing works, the consent holder shall submit to Council for review and approval a site management plan for the works.

11. The consent holder shall install measures to control and or mitigate any dust, silt run-off and sedimentation that may occur according to the proposed site management plan submitted under Condition (10). These measures shall be implemented prior to the commencement of any earthworks on site and shall remain in place for the duration of the project. In addition to those identified in the site management plan submitted under Condition (10), site management measures required to be implemented ***PRIOR to any earthworks on site*** are:

Earthworks Staging Plan

- The consent holder shall submit a staging plan for the earthworks which specifies the maximum area of earthworks exposed at any one time. The maximum area of earthworks to be exposed at any one time will depend on the available earthworks mitigation measures and the consent holder's ability to provide sufficient mitigation for the exposed areas. Each stage of earthworks shall be reinstated, revegetated and/or otherwise permanently stabilised prior to exposing subsequent areas.

- Earthworks and construction works shall be completed in a progressive manner, where practically possible, to minimise adverse earthworks effects. Each tower area shall be reinstated and revegetated, or otherwise permanently stabilised, at the completion of each tower's construction to minimise exposed areas of earth.

Dust Control

- Sprinklers and/or water carts shall be utilized on all materials to prevent dust nuisance in the instance of ANY conditions whereby dust may be generated.

Stormwater Silt and Sediment Control

- Silt traps (in the form of fabric filter dams or straw bales) shall be in place prior to the commencement of works on site to trap stormwater sediments before stormwater is funnelled into any watercourses.

- Site drainage paths shall be constructed and utilized to keep any silt laden materials on site and to direct the flows to the silt traps.

- Silt traps shall be replaced or maintained as necessary to assure that they are effective in their purpose.
- The principle contractor shall take proactive measures in stopping all sediment laden stormwater from entering any watercourses. The principle contractor shall recognize that this may be above and beyond conditions delineated in this consent.

Roading Maintenance

- The consent holder shall ensure tyres remain free of mud and debris by utilising wheel washing equipment, constructing a gravel hardstand area of sufficient depth, or other similar measures.

Traffic Management

- Suitable site warning signage shall be in place on the road in both directions from the site entrance.

- Safety 'dayglo' vests or similar shall be worn by any staff working on the road.

- Safe sight distances and passing provisions shall be maintained.

The measures delineated in this consent are minimum required measures only. The principle contractor shall take proactive measures in all aspects of the site's management to assure that virtually no effects are realized with respect to effects on the environment, local communities, or traffic. **The principal contractor shall recognise that this may be above and beyond conditions delineated in this consent.**

12. The nature and extent of earthworks associated with the gondola development shall be submitted to Council for review and approval prior to any works commencing on-site, including depth of cut and fill and the proposed finished shape of the land. Any temporary or permanent retaining walls and batter slopes shall be designed by a suitably qualified and experienced engineer and shall be submitted to Council for approval prior to installation.

13. The earthworks shall be undertaken in a timely manner. Any excavation shall not remain open long enough to enable any instability (caused by over exposure to the elements) to occur.

14. The consent holder shall provide Council with the name of a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 who is to supervise the excavation and construction procedure. This engineer shall continually assess the condition of the excavations and implement any design changes / additions if and when necessary.

15. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at their expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.

16. Prior to construction of any buildings on the site a Chartered Engineer experienced in soils investigations shall provide certification, in accordance with NZS 4431 for all areas of fill within the site on which buildings are to be founded (if any).

17. Within four weeks of completing the earthworks the consent holder shall submit to Council an as built plan of the fill. This plan shall be in terms of New Zealand Map grid and shall show the contours indicating the depth of fill. Any fill that has not been certified by a suitably qualified and experienced engineer in accordance with NZS 4431 shall be recorded on the as built plan as "uncertified fill".

18. At the completion of each stage of earthworks, the earth-worked areas shall be top-soiled and grassed or otherwise permanently stabilised in a progressive manner, as soon as practicable. All earthworked areas must be reinstated within a maximum 12 weeks from completion of all earthworks.

19. No earthworks, temporary or permanent, are to breach the boundaries of the site.

20. Upon completion of the earthworks, the consent holder shall complete the following:

    a) The consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

    b) An engineer's design certificate/producer statement shall be submitted with regards to any permanent retaining walls on site (if any).

Lighting

21. No lighting shall be permitted at any time in or on the gondola cars or towers. (emergency lighting is permitted)

Parking.

22. The consent holder shall obtain Council's approval prior to upgrading any parks required to be constructed in reinforced grass as referenced in condition 7(b). The

consent holder shall provide a report prepared by a suitably qualified and experienced traffic engineer indicating that additional parking is required.

Ecological

23. The mechanical clearing process for the construction of the towers shall be restricted to the immediate vicinity of the towers and where applicable access to the towers.

24. Indigenous plants are stockpiled and replanted or replaced following the construction of the pylons in accordance with the application and in accordance with the Department of Conservation best practice guidelines.

25. Access tracks formed to facilitate construction of the towers shall be removed and revegetated in accordance with the application. Tracks shall not be visible from the Wanaka-Mt Aspiring Road five years after construction commences and shall be retained in that condition thereafter. The nature and scale of any further work necessary to satisfy this condition shall be determined by the Council in conjunction with the consent holder.

26. The consent holder shall formalise weed management practices in accordance with the application.

Landscaping

27. The approved landscaping plan shall be implemented within the first planting season following the construction of the base facilities, and shall thereafter be maintained and irrigated in accordance with that plan. If any plant or tree should die or become diseased it shall be replaced.

28. The main exterior colours for buildings 1, 2 and 4 shall be selected from Grey Friars, Ironsand and Karaka only. Detailing, not including roofs, may include Permanent Green or Mist Green. Alternative detailing colours may be submitted to Council for approval prior to construction.

29. The existing access road to the Treble Cone base facilities shall be maintained only to the standard necessary to allow passage by maintenance and emergency vehicles, except where superseded by a standard required by the Department of Conservation. In the course of any maintenance to the road, the consent holder shall ensure that no gravel gets tipped over the down mountain side of the road, so as to encourage natural revegetation.

30. Where concrete tower footings protrude 0.5 metres or more above ground level they shall be coloured the same colour as the tower they support.

Constructions and Operation

31. The gondola will be built and operated according to the provisions of the Approved Code of Practice for Passenger Ropeways in New Zealand.

Review

32. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of his resource consent for any of the following purposes:

a. To deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage.

b. To deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered.

c. To avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.

Advice Notes

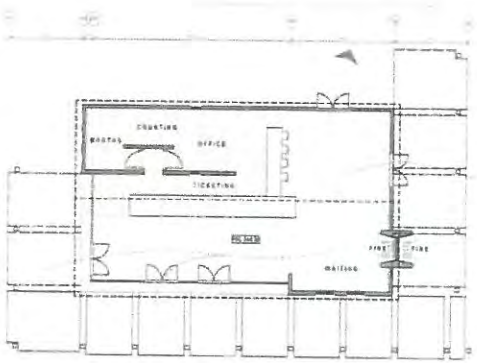
i. Development contributions will be required as part of this resource consent. A Development Contribution Notice', detailing how contributions were calculated, will be forwarded under separate cover.

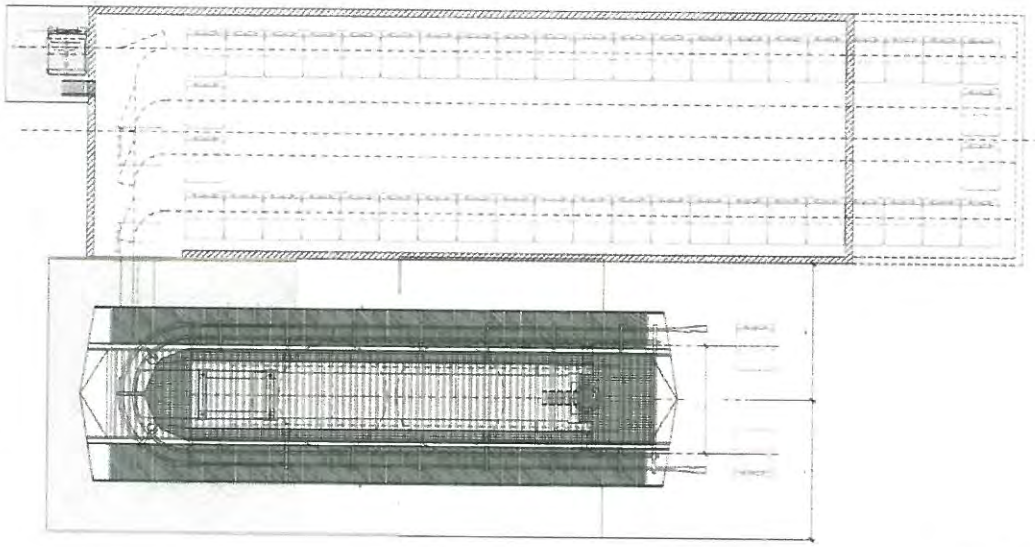
ii. The Council may elect to exercise its functions and duties through the employment of independent consultants.

HARRIS MOUNTAINS
TREBLE CONE SKI AREA
GONDOLA ALIGNMENT
LOCATION OF BASE STATION
QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLANS RM060587
Date
Initials
Treble Cone Gondola
LOCATION PLAN
darby partners limited
darby partners limited
darby partners limited
darby partners limited

Treble Cone Gondola
GONDOLA ALIGNMENT
TREBLE CONE SKI AREA BASE BUILDINGS
PROPOSED BASE STATION
WANAKA - MT ASPIRING ROAD
T20
T19
T18
T17
T16
T15
T14
T13
T12
T11
T10
T9
T8
T7
T6
T5
T4
T3
T2
T1
MEB 2
MEB 1
TOWER HEIGHT
TOWER HEIGHT
1 4.05m
2 18.10m
3 14.12m
4 9.05m
5 9.05m
6 9.05m
7 12.08m
8 9.05m
9 10.05m
10 21.14m
11 22.22m
12 14.12m
13 17.13m
14 21.13m
15 9.05m
16 20.18m
17 19.05m
18 16.18m
19 17.12m
20 14.12m

Treble Cone Gondola
Gondola Base Buildings Detail
1
2
3
4
1A
1B
2A
2B
2C
2D
3A
3B
4A
4B
4C
345.00





KOIA ARCHITECTS

TREBLE CONE
PROJECT ADDRESS

CLIENT NAME

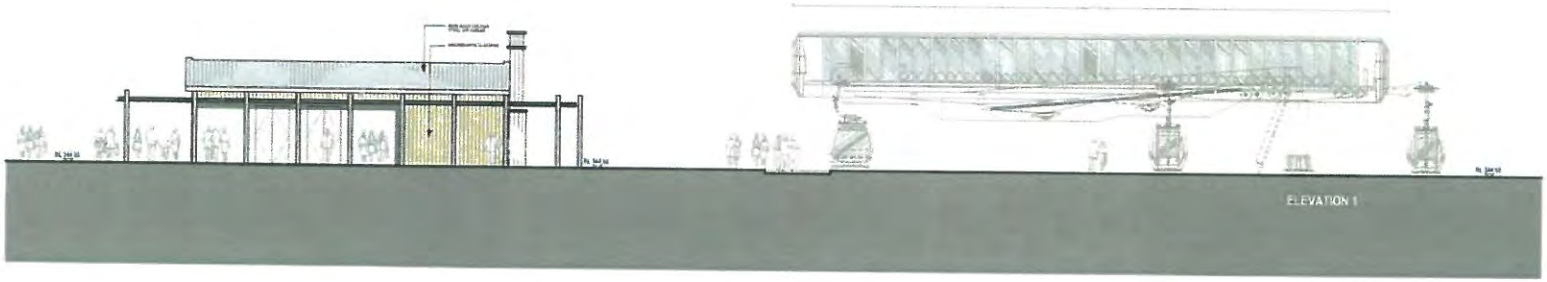
SURVEYOR DETAIL

ENGINEER DETAIL

OTHER DETAIL

PROP SITE LANDSCAPING

A1-03 A



KOIA ARCHITECTS

TREBLE CONE

PROJECT ADDRESS

CLIENT NAME

SURVEYOR DETAIL

ENGINEER DETAIL

OTHER DETAIL

PROPOSED ELEVATION

A2.04 A

Treble Cone Gondola
BASE STATION ACCESS ROAD AND CARPARK
Carpark
Base Station Detail Plan
Base Buildings
Gondola Alignment
Mid Station Plan
Wanaka - Mt Aspiring Road
T1
T2
T3
T4
T5
T6
T7
T8
T9
T10
RM/DP
17.10.08
darby partners limited
darby partners limited
darby partners limited
darby partners limited

KEY
DOWNLIGHTS UNDER BUILDING EAVES
LOW BOLLARD LIGHTS
1 OPERATION/STORAGE AND TOILETS
2 CABIN STORAGE AND MAINTENANCE
3 GONDOLA STATION
4 TICKETS AND CUSTOMER SERVICE
QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLANS: RM020287
4.12.02
Date
Initials
CARPARK
CARPARK
330
335
Treble Cone Gondola
Base Station and Carpark Lighting Plan
17.10.02
RM/JP

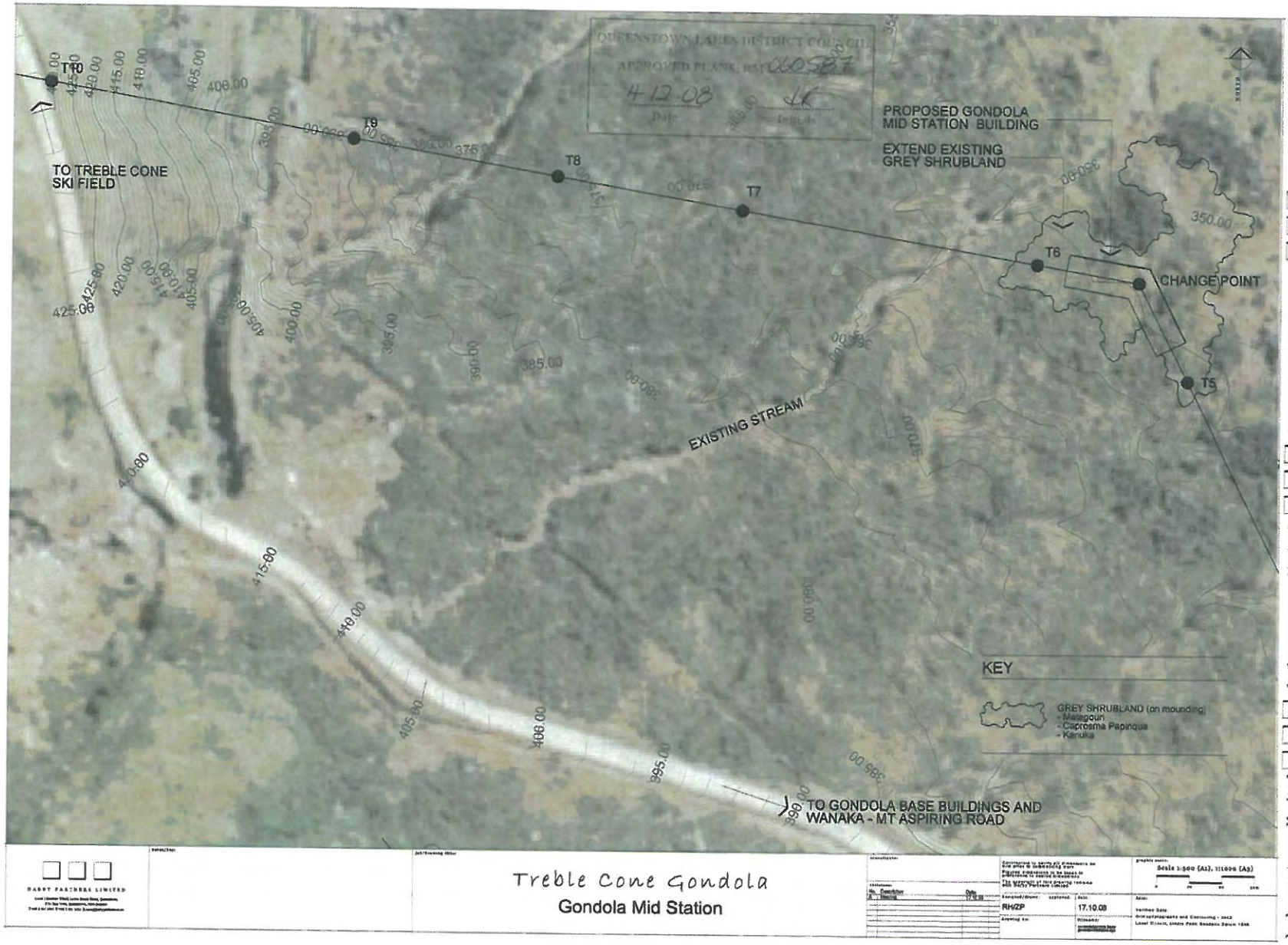
The reduction of alpine access road operational width, will not occur. The proposed rehabilitation works associated with this scenario will not occur.

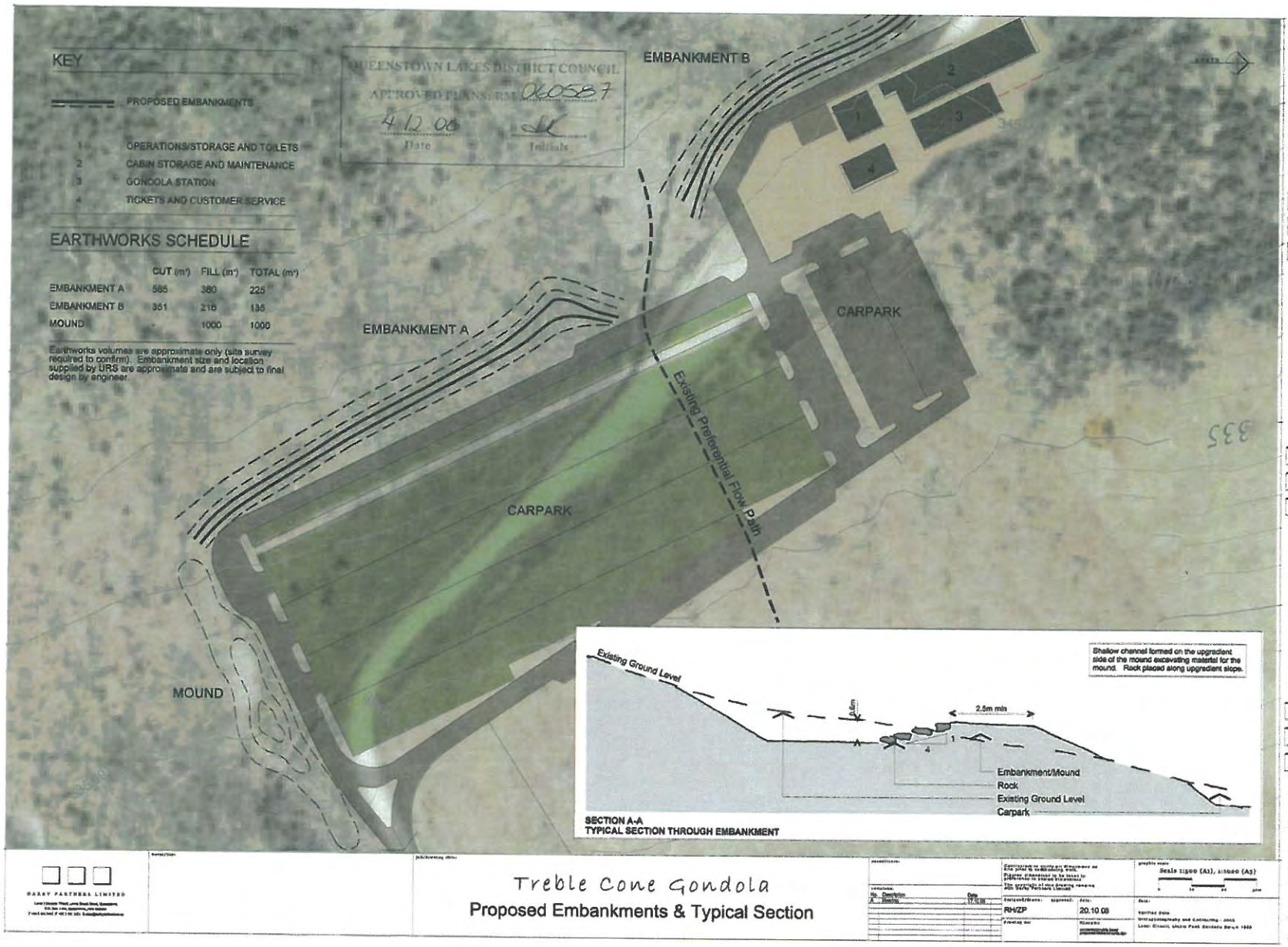
Treble Cone Gondola

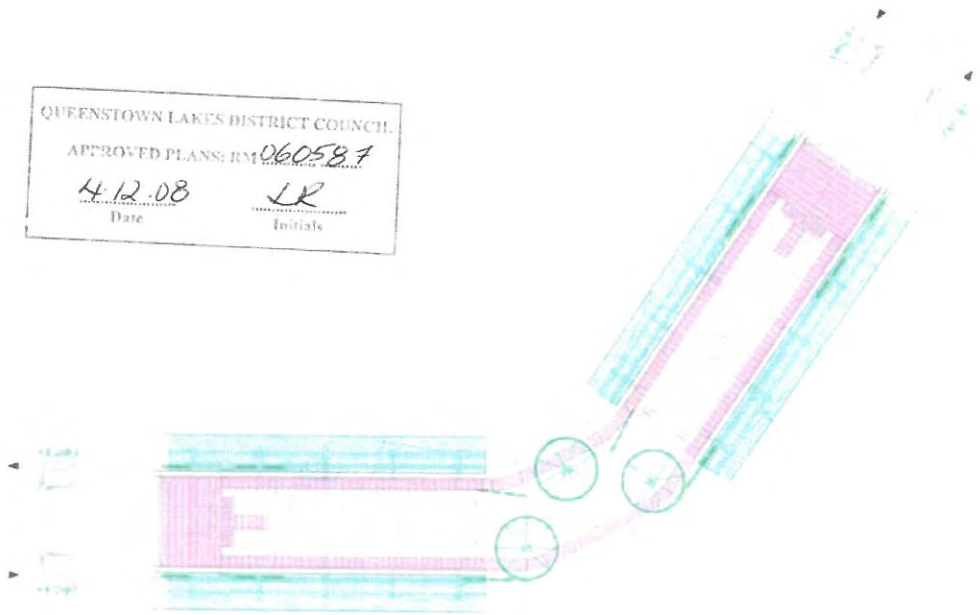
Base Station Access Road and Carpark Detail

RH/ZP 18.10.08

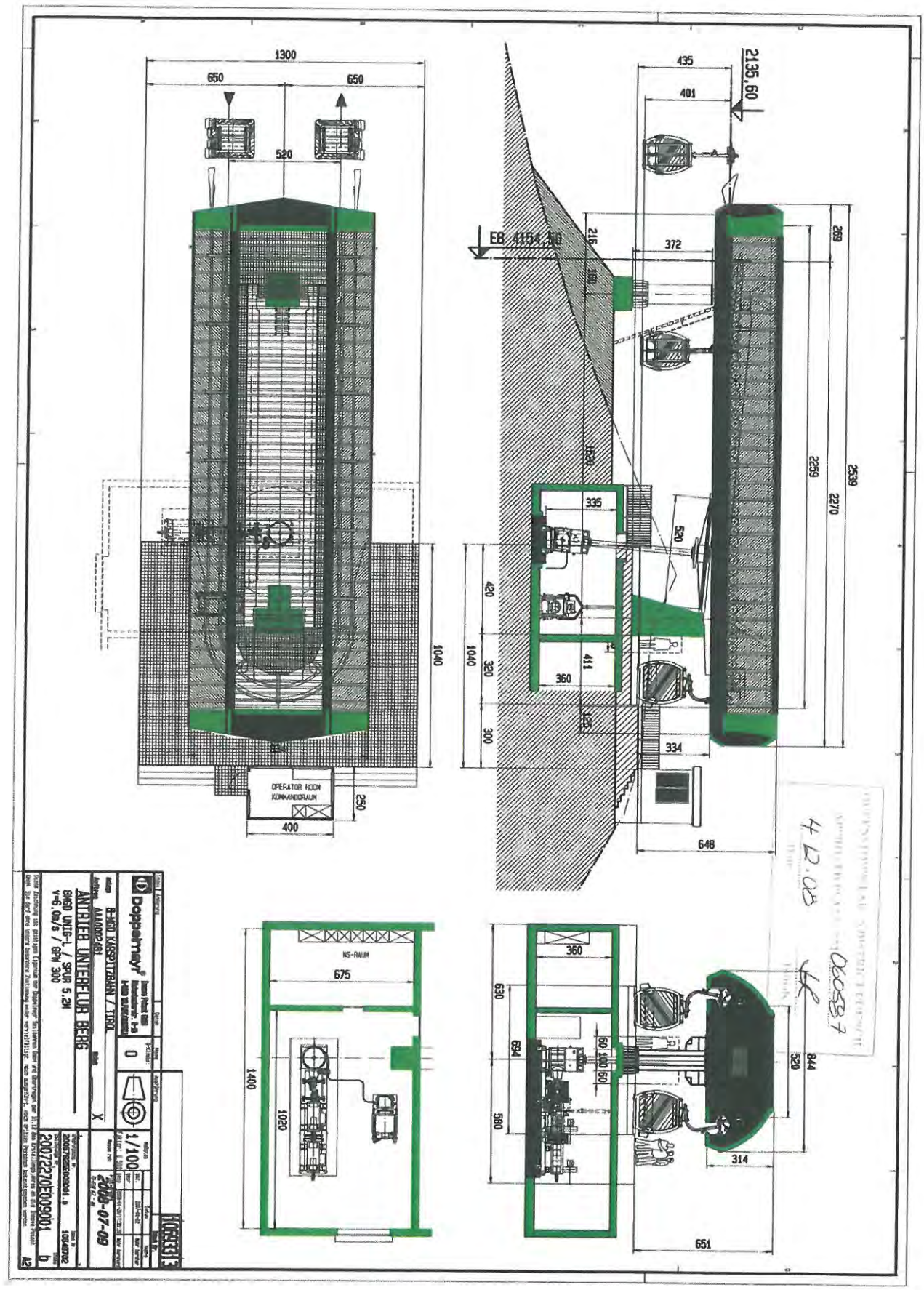
darby partners limited darby partners limited darby partners limited darby partners limited







QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLANS: RM 060587
4.12.08 Date
LR Initials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630
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844
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Doppelmayr
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1/100
B-HEG KRANKENHAUS / LINZ
ANTRIEB UNTERFLUR BERG
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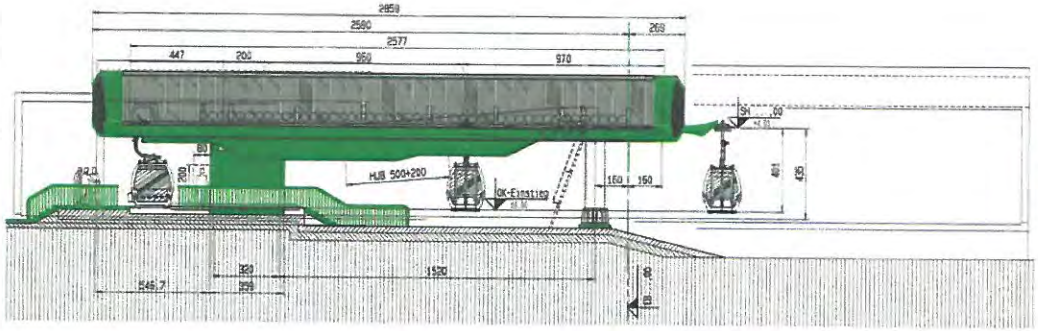

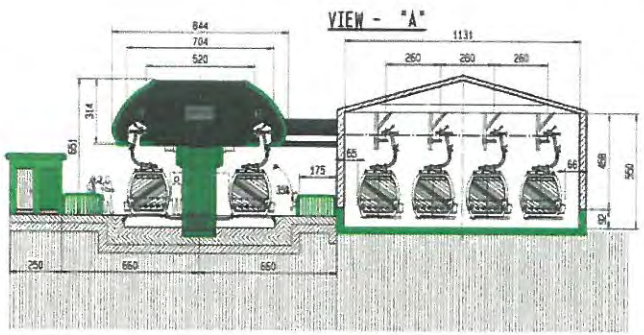

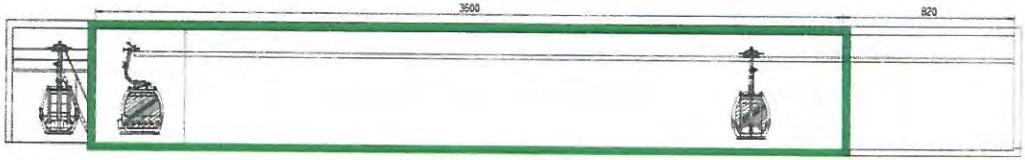

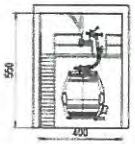

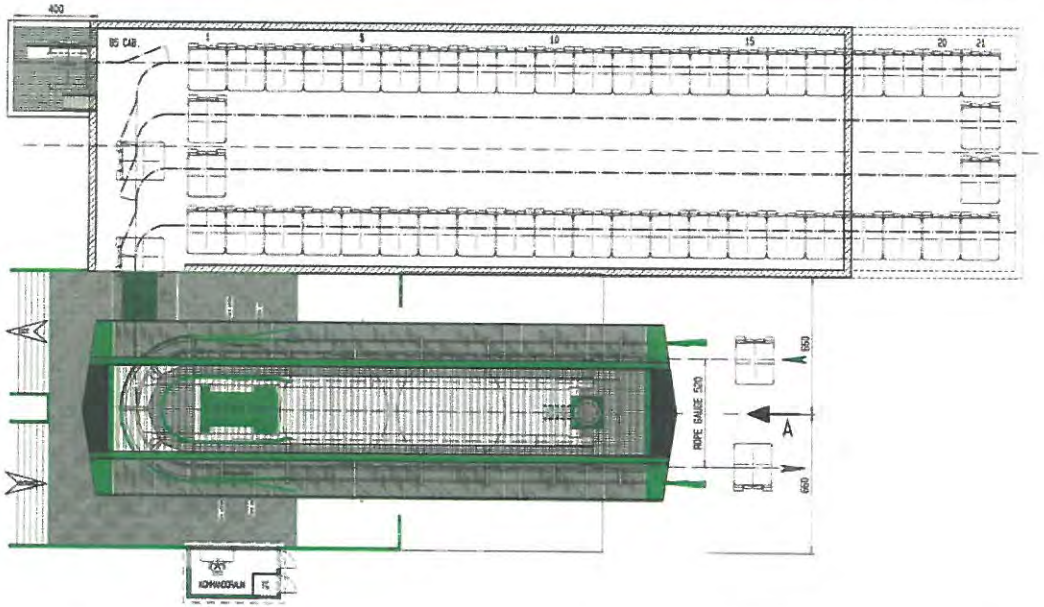

QUEENSTOWN LAKES DISTRICT COUNCIL
APPROVED PLANS RM 060587
4.12.08
Date
JK
Initials

ACHTUNG
VORABPLAN
DETAILPLANUNG
NUR MIT RÜCKSPRACHE

WARNING :
PRELIMINARY PLAN ONLY
NOT TO BE USED FOR
DETAIL PLANNING !

Doppelmayr		0	1/100
Anlage: B-MGD TC GONDOLA / NEW ZEALAND			Kg
Auftrag: MAAQ000252	Index:	X	2008-06-17

BOTTOM DRIVE TENSION
B-MGD UNIG-XL v=6.0m/s
GAUGE 5.2m / BM.85.2m

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A1