TAB 20

Wakatipu Environmental Society Incorporated and ors v Queenstown-Lakes District Council

Environment Court Christchurch C 180/99
19 October 1999
Environment Judge Jackson, Environment Commissioners Grigg and Tasker

References — Management of landscapes in district plan — Natural character — Assessment of significance of a landscape — Use of "outstanding" — Benefit/cost analysis — Effects of subdivision — Resource Management Act 1991, ss 2, 5, 6, 7, 8, 11, 31, 32, 74, 75, 79, 199, 271A, 274, 292, 293, First Schedule, cl 14, Second Schedule, cl 2

The Wakatipu Environmental Society ("WESI") lodged references focused on the landscapes of the Queenstown-Lakes District and how they were to be suitably managed pursuant to the proposed district plan. In Part 4 of the notified plan, the methods of implementation 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", and included consequential rules. Following decisions on submissions, the revised plan dropped all reference to the Areas of Landscape Importance, and they were not shown on the revised planning maps either. WESI therefore sought as part of its reference the reinstatement of those parts of the proposed district plan.

It was common ground between the parties that there were outstanding natural features and landscapes within the district, and that all landscapes of the district were important. The difficulties were that, first, most of the parties did not attempt to inform the Court precisely where the outstanding natural features and landscapes end and the important landscapes began; and secondly, that there were development pressures in the district which could have major adverse effects on the landscapes within the district.

After the close of WESI's case it was clear that the Areas of Landscape Importance were not identical with areas that qualified as nationally important under s 6(b) of the RMA; that certain areas which were nationally important were excluded, and areas that were not so important were included; and that the methodology was flawed in that there were areas included in the Areas of Landscape Importance which

should not have been. The Court then received an application from most of the other parties to strike out that part of WESI's reference that sought reintroduction of the Areas of Landscape Importance. That application was declined on the grounds that the questions to be resolved were substantially of fact and degree, and because whilst the Areas of Landscape Importance method might be flawed it was at least an attempt to protect areas of national importance under s 6 of the RMA.

The Court determined to approach the issues:

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

If WESI was satisfied as to the adequacy of steps (1) and (2) (and the Court indicated that it would have to make an election later), a considered view on (3) and how that policies and rules on Areas of Landscape Importance could be improved so that they would work practicably would never have to be given.

Held (interim decision):

(1) There are three substantive stages in deciding the contents of a district plan:

(a) identification of the facts, the significant issues for the district arising out of those facts and then sequentially, the other contents of the district plan;
(b) the s 32 analysis of the proposed objectives, policies and rules generated by (a); and
(c) the broader and ultimate issue as to whether on balance, the Council is satisfied that implementing the proposals would more fully serve the statutory purpose than would cancelling them (*Countdown Properties (Northlands) Ltd v Dunedin City Council*).

(2) The Queenstown-Lakes district is renowned for the quality of its scenery, on which a huge part of its economy depends, and the Council should have identified as part of stage (i) of preparing its plan the outstanding natural landscapes and any other landscapes to which particular regard should be had. It needed to identify the landscapes that qualify under s 6(b) and/or ss 7(c) and 7(f) so that it could identify the issues relating to the management of effects on landscapes (amongst other values).

(3) Sections 6(a) and 6(b) do not entail that the natural character of lakes and rivers are to be preserved or protected at all costs (*Trio Holdings Ltd v Marlborough District Council and New Zealand Rail Ltd v Marlborough District Council*). It is only "inappropriate subdivision, use

and development" from which they are to be protected. Whilst only s 6(b) refers to "landscape", s 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.

(4) The most important aspects of the definitions of "environment" and "amenity values" in the context of the case were their comprehensiveness and their cross-referencing quality. It was useful to consider "landscape" as a large subset of the environment. Landscape involves both natural and physical resources themselves and also various factors relating to the viewer and their perception of the resources. These aspects seemed to fit within "amenity values" and into the category of "social and cultural conditions which affect the matters in paras (a) to (c) or which are affected by those matters".

(5) Landscape is also a link between individual (natural and physical) resources and the environment as a whole. That link is in two ways. First, in that it considers a group of natural and physical resources together as a "landscape" rather than in any ecologically significant way; and secondly, in that it emphasises that our attitudes to those resources are affected by social, economic, aesthetic and cultural conditions.

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

(7) Consequently, there was no reason to change the criteria stated in *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* for assessing the significance of a landscape in any major way. The corrected list of criteria 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 year;
(e) whether the values are shared and recognised;
(f) its value to tangata whenua;
(g) its historical associations.

(8) That list is not regarded as frozen, and may be improved with further use and understanding.

(9) The use of the word "outstanding" in s 6(b) depends on what authority is considering it. Thus if s 6(b) is being considered by a regional council then that authority has to consider s 6(b) on a regional basis. Similarly a district council must consider what is outstanding within its district because the sum of the district's landscapes are the only immediate

comparison that the territorial authority has. A district may have no outstanding natural landscapes or features.

(10) It is wrong to equate "natural" with "endemic" (*Harrison v Tasman District Council*). The criteria of naturalness under the RMA include:

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

(11) 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.

(12) While s 6(b) only protects outstanding natural landscapes that does not mean that lesser landscapes should not be considered and in some cases maintained. All landscapes need to be considered under ss 5(2) and 7(b), (c), (d), (f) and (g). Whether any resulting objectives, policies and methods pass a s 32 assessment is another issue.

(13) A tripartite distinction could be made in the landscapes of the district: outstanding natural landscapes and features; visual amenity landscapes, to which particular regard was to be had under s 7; and landscapes in respect of which there was no significant resource management issue. The outstanding natural landscapes of the district were Romantic landscapes — the mountains and lakes. Each landscape in the second category wore a cloak of human activity much more obviously — they were pastoral or Arcadian landscapes with more houses and trees, greener (introduced) grasses and tended to be on the district's downlands, flats and terraces. The extra quality they possessed that brought them into the second category was their prominence because they were:

(a) adjacent to outstanding natural features or landscapes; or
(b) on ridges or hills; or
(c) adjacent to important scenic roads; or
(d) a combination of the above.

(14) Mt Aspiring National Park is an outstanding natural landscape. Lake Wakatipu, all its islands, and the surrounding mountains are an outstanding natural landscape. 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). Various (listed) aspects of the Wakatipu basin are an outstanding natural landscape.

(15) The scale of the Wakatipu Basin was important. People in the basin are never more than 2-3 kilometres from an outstanding natural feature or landscape. Consequently, it is generally inappropriate to allow any development for residential, industrial or commercial activities on the outstanding natural landscape or features. For those reasons, the basin needed to be treated as a special case and as a coherent whole.

(16) The fundamental point in considering the siting of utilities in outstanding natural landscapes is that it should not be as of right. A policy stating that utilities should be sited away from skylines etc "where practicable" leaves it open to utility operators 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.

(17) The purpose of the Act is to promote sustainable management of resources not the environment. The role of councils under the RMA in relation to social, economic and cultural activities is essentially a passive one. It is to enable people and communities to provide for their wellbeing, not to direct how that is to be achieved.

(18) The absence of any rigorous benefit/cost analysis of policies was acceptable because such analyses are only required to be "appropriate to the circumstances". In these proceedings where there were issues of national importance the need for analysis was greatly reduced. That was especially so since the revised plan expressly recognised the importance of the district's landscapes to its economy. In the circumstances of the district, with landscape being such an important issue, there was no need to consider a monetary evaluation of the landscapes and the Court could rely on the non-monetary evaluations given by expert witnesses.

(19) As to s 32(1)(c):

(a) there was no need for the district plan to state policies for all the landscapes of the district;
(b) the corollary to (a) was that some landscapes (as landscapes) could be cared for by their owners, especially having regard to the presumption in s 9 (*Marlborough Ridge Ltd v Marlborough District Council*);
(c) only outstanding natural landscapes and visual amenity landscapes required some kind of policies and methods of implementation in respect of, and on, landscape grounds alone.

Observations:

(1) Visions are not valid parts of district plans (*St Columba's Environmental House Group v Hawkes Bay Regional Council*).

(2) The RMA 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 of indigenous bush, grasses or wetlands, especially if predator controls are introduced.

(3) A landscape may be magnificent without being outstanding (*Munro v Waitaki District Council*). New Zealand is full of beautiful or picturesque landscapes that are not necessarily outstanding natural landscapes.

(4) It is often preferable that a policy should refer to effects of activities rather than seek to control activities themselves. However, 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 complicate causation unnecessarily.

(5) Subdivision can have an effect on the environment, as a matter of mixed fact, degree and law (*Yates v Selwyn District Council*). Subdivisions draw lines across the landscape, which lines tend to be marked by fences or trees or other changes in vegetation patterns. All those demarcations have effects on the visual quality of the landscape and thus need to be taken into account.

(6) Having density limits for subdivisions can send the wrong signals. That 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, private property rights can largely protect the character of significant landscapes, eg, by not subdividing, or by imposing restrictive covenants in respect of landscaping, or against further subdivision. Covenants can simply internalise "nimby" reactions at the time of subdivision. In such cases there may be no need for policies or rules specifying how to manage land on landscape grounds.

Cases referred to in judgment:

Baker Boys Ltd v Christchurch City Council [1998] NZRMA 433

Browning v Marlborough District Council (Environment Court, W 20/97, 10 March 1997)

Countdown Properties (Northlands) Ltd v Dunedin City Council [1994] NZRMA 145

Crichton v Queenstown-Lakes District Council (Environment Court, W 12/99, 5 March 1999)

Design 4 Ltd v Queenstown-Lakes District Council (1992) 2 NZRMA 161

Di Andre Estates Ltd v Rodney District Council (Environment Court, W 187/96, 24 December 1996)

Haddon v Auckland City Council [1994] NZRMA 49

Harrison v Tasman District Council [1994] NZRMA 193

Inquiry into the Water Conservation Order for the Kawarau River (Environment Court, C 33/96, 13 June 1996)

Kaikaiawaro Fishing Co Ltd v Marlborough District Council (1999) 5 ELRNZ 417

Kaitiaki Tarawera Inc. v Rotorua District Council (Environment Court, A 7/98, 22 January 1998)

Marlborough Ridge Ltd v Marlborough District Council [1998] NZRMA 73

Munro v Waitaki District Council (Environment Court, C 98/97, 25 September 1997)

New Zealand Rail Ltd v Marlborough District Council [1994] NZRMA 70

New Zealand Marine Hatcheries (Marlborough) Ltd v Marlborough District Council (Environment Court, W 129/97, 18 December 1997)

Nugent Consultants Ltd v Auckland City Council [1996] NZRMA 481

NZ Rail Ltd v Marlborough District Council (1993) 2 NZRMA 449

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

Re an Inquiry into the draft National Water Conservation (Buller River)

Order (Planning Tribunal, C 32/96, 31 May 1996)
Re Draft Water Conservation (Mohaka River) Order (Environment Court, W 20/92, 8 April 1992)
St Columba's Environmental House Group v Hawkes Bay Regional Council [1994] NZRMA 560
Trio Holdings Ltd v Marlborough District Council [1997] NZRMA 97
Upper Clutha Environment Society Inc v Queenstown-Lakes District Council (Environment Court, C 12/98, 26 February 1998)
Winter and Clark v Taranaki Regional Council (1998) 4 ELRNZ 506
Yates v Selwyn District Council (Environment Court, C 44/99, 31 March 1999)

Resource Management Act 1991
In the matter of references under cl 14 of the First Schedule to the Act.

Mr B Lawrence for the Wakatipu Environmental Society Incorporated
Mr J Hayworth for the Upper Clutha Environment Society Incorporated
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
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 various s 271A and s 274 parties
Mr J K Guthrie, Mr J W 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 Incorporated
Mr M M Hasselman on behalf of the Community Association, Glenorchy
Mr A More for Terrace Towers Proprietary Ltd
Mr J Reid for Gibbston Valley Estate Ltd

JUDGE J R JACKSON.

Interim Decision

Index

Editorial Note: The appendices have not been reproduced in this part. Please refer to the unreported judgment if necessary.

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 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

1. *The Search from Arawata Bill* Denis Glover, Selected Peoms, Penguin, 1981).

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 s 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 Ltd (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.

(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 been only 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.

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) Tangata Whenua
(4) Open Space and Recreation

2. Under s 274 RMA.
3. Under s 271A RMA.
4. Under s 274 RMA.
5. They are listed under "Appearances" at the start of this decision.
6. Under s 73(3) a district plan may be prepared in territorial sections.

(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 ss 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 s 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 s (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 references in relation to s (3) of Part 4, and only limited references in relation to ss (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 s 6?

7. Para 4.1.2, p 4/1.
8. See Chapter 5 of this decision: The Natural Environment of the District.

(b) Whether there are other issues under s 5(2) of the RMA and/or other paras of s 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 s 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 eg making 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 s 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

9. RMA 1194/98.
10. Notified Plan, R 15.2.3.4, p 15/12.

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 s 6 of the Act. Subsequently the other parties (including the Council) argued that we would be able to achieve the necessary protection under s 6 of the Act – especially for "outstanding 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 s 6(b) or areas of amenity or other environmental values under s 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 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 eg 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 s 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 s 5 sense) is especially important given the stated intention of the Council to cope with residential growth by rural residential developments.

(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

11. Section 3.6 [revised plan, p 3/3]. 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.

12. (Environment Court, A 7/98, 22 January 1998).

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 district's 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 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

13. Ten years: s 79(2) RMA.

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 s 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:

> 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.

(26) 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 s 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 kms 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

14. QLD proposed district plan, Hearings Panel Decision, Issue 51 – Landscape and Visual Amenity, pp 26-27 (abridged).

15. Rackham, A *A Current Practice: Comparative Case Studies, Paper to the NZLIA* Conference, March 1999, p 17).

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 kms 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 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

16. See *Crichton v Queenstown-Lakes District Council* (Environment Court, W 12/99, 5 March 1999, p 12).

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 Southwestern 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 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 s 271A parties and the s 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

17. *Upper Clutha Environment Society Inc v Queenstown-Lakes District Council* (Environment Court, C 12/98, 26 February 1998).

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 ss (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 s 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 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 s 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 s 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

18. See Chapters 9-12 below.
19. See para 10 above.

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 s 6(b) landscapes. For example, the Council's landscape consultant Mr Rough admitted in his summary:

> 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 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).

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

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 s 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 not provide for the appropriate protection of s 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 ALIs. 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] the management of the use, development and protection of land and associated natural and

21. Section 75(1) and Part II of the Second Schedule to the RMA.

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 s 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]

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

(3) The "broader and ultimate issue"[33] "on balance, we are satisfied that implementing the proposal[s] would more fully serve the statutory purpose than would cancelling [them]

22. Section 75(1)(a) – (d).
23. Section 75(1).
24. Under cl 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).
29. Section 32(1).
30. Section 75(1)(a) and s 74.
31. Section 75.
32. *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.

. . .": *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 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 s 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 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 substages 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

34. [1994] NZRMA 145 at 179.
35. Stage 1 in the preceding paragraph.
36. Section 75(1).
37. Section 74(1).
38. Section 6.
39. Section 6.

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 s 6(b) and/or s 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.

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 s 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 1.18 and 1.19.[45] We agree that policies which emphasise the link are appropriate but again do not insert them until we have heard further argument on our jurisdiction to

40. Clause 2(c) of Part II, Second Schedule to the RMA.
41. Part 4.1 [Revised plan, pp 4/1–4/5).
42. RMA Nos: 1225/98; 1398/98; 1395/98; 1753/98.
43. Para 4.1.4 [revised plan, p 4/2].
44. Section 6(d).
45. To the revised plan on p 4/3.

do so, or until we receive an application under s 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:

> (i) The provision of rules to control the clearance or felling of identified hedgerows
>
> . . .
>
> (ii) In relation to geological and geomorphological features of scientific importance:
>
> to control, by way of resource consents, activities which involve earthworms, 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 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
>
> (i) To minimise the adverse effect of wilding trees on the landscape by:
>
> • supporting and encouraging coordinated action to control existing wilding trees and prevent further spread.[49]
>
> (ii) The limitation of the spread of weeds, such as wilding trees.[50]

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

> 1.17 To encourage the retention and planting of trees, and their

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

appropriate maintenance.[51]

(65) It seems to us this would be an appropriate place to exercise our powers under s 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.

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 s 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, landforms, 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

51. Part 4.1.4 Policy 1.17 [Revised plan 4/3].
52. Part 4.1.4 Objective 1 (Revised plan, p 4/2].
53. Part 4.1.4 Implementation method (i) [Revised plan, p 4/3].
54. To be added after policy 2.1 [revised plan 4/4].
55. Second Schedule: Part II para 2(c).

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 recognise that they may contain all three qualities[56] simultaneously.

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

> (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 s 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 s 6(b) refers to "landscape"; s 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
>
> . . .
>
> (f) Maintenance and enhancement of the quality of the environment:
>
> (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?

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.

58. [1997] NZRMA 97, 116.

59. [1994] NZRMA 70, 85.

60. Section 7.

(3) Are the s 6(b) landscapes:
  (a) any landscape; or
  (b) any outstanding landscape; or
  (c) any outstanding natural landscape?
(4) Is a s 6(b) landscape assessed on a district, regional or national basis?
(5) If the correct interpretation of s 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 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 ss 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:

61. See question (3) above.
62. For example under s 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 v Marlborough District Council* [1997] NZRMA 97; *Browning v Marlborough District Council* (Environment Court, W 20/97, 10 March 1997); *NZ Marine Hatcheries (Marlborough) Ltd v Marlborough District Council* (Environment Court, W 129/97, 18 December 1997); *Kaikaiawaro Fishing Co Ltd v Marlborough District Council* (1999) 5 ELRNZ 417.
64. *Browning v Marlborough District Council* (Environment Court, W 20/97, 10 March 1997).

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

> [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 s 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]:

65. Section 7(c).
66. Section 6(e) and this relationship is also relevant under s 7(h) and s 8 of the Act.
67. Section 7(e).
68. *The Concise Oxford Dictionary*, Eighth edition (1990).
69. University English Dictionary cited by Mr Goldsmith.
70. *Landscape and Memory* Schama S, (Fontana 1996).
71. Second Schedule quoted in para 68 above.
72. [1994] NZRMA 70, 86 (HC).

> 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.

(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]

(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 emphasises 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 s 7 should also be taken into account under s 6. That is to adopt an over-schematic approach to ss 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

73. In s 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": s 2 RMA.
76. Para (d) of the definition of "environment": s 2 RMA.

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 s 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 s 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".

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

77. See definition in s 2 RMA.
78. [1994] 2 NZRMA 49.

(3) In s 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 to a number of inquiries the Court has held into various Draft National Water Conservation Orders. These inquiries related to s 199(l) 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 s 6(b) depends on what authority is considering it. Thus, if s 6(b) is being considered by a regional council then that authority has to consider s 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

79. *Concise Oxford Dictionary* (1990), p 485.
80. (Environment Court, C 98/97, 25 September 1997).
81. (Environment Court, C 32/96, 31 May 1996).
82. *Re Draft Water Conservation (Mohaka River) Order* (Environment Court, W 20/92, 8 April 1992).
83. (Environment Court, C 33/96, 13 June 1996).

comparison that the territorial authority has. In the end of course, this is an ill-defined 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 s 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 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 manmade structures, roads, machinery.

We respectfully agree with that passage.

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

84. *Concise Oxford Dictionary* (1990), p 906.
85. Para 4.1.3(i) [revised plan, pp 4/1]
86. [1994] NZRMA 193 at 197.

- 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.

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 s 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 ss 5(2) and 7(b), (c), (d), (f) and (g). Whether any resulting objectives, policies and methods pass the refining fires of s 32 is another issue.

(91) An important point in respect of s 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, glardia etc). Logically there is a limit: the law of diminishing returns where too much subdivision leads to overdomestication of the landscape.

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 s 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.

87. See *Di Andre Estates Ltd v Rodney District Council* (Environment Court, W 36/97, 14 April 1997).

(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 s 7. The third category is all other landscapes. Of course such landscapes may 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 (s 6 and s 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 s 7 as visual amenity landscapes.

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

88. Using "pastoral" in the poetic and picturesque senses rather than in the functional ("pastoral lease") sense.
89. Under s 7 RMA.
90. Under s 6 RMA.

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:

> 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 s 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

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

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.

(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.

(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.

93. Section 6(b).
94. [1999] NZRMA 209 at 231-232; discussed in Chapter 6 above.

(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 s 7, these areas are not zones;

(2) that just because, findings are made about the national importance or s 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 Wakatiptu;

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

(4) The Kawarau River east of the Kawarau Bridge;

(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;

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

(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 (557 m);
- 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 it 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 recognised values: As we have repeatedly said, all parties recognised 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 landscapes);
- across the Shotover River immediately west of Queenstown Hill homestead;

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.

- 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;
- north to Point 558 m and then north east through Trig J (596 m) 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);
- 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 400 m contour on Map F41;
- northwest to the 400 m 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 400 m contour;
- south along the 400 m 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

97. Map F4 1.

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 (506 m) 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 (particularly 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 s 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 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

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

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 400 m 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-Routebum 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 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

100. Section 75(1)(a).
101. Revised plan, p 4/7.

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

(iii) Degradation of special landscape features

(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 para 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) eg 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 s 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 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.

Chapter 9: Objectives and Policies of the Plan (Landscapes)

(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

102. Section 85(3) RMA.
103. Section 31(a).

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 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.

104. [1993] 2 NZRMA 449 at 460.
105. (Environment Court, Decision C 44/99, 31 March 1999) at p 21.

(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 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 s 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]

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

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

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 crossexamination by Mr Todd, read:

> 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:
>
> (i) encouraging structures which are in harmony with the line and form of the landscape.
>
> (ii) avoiding, remedying or mitigating the adverse effects of structures on the skyline, ridges and prominent slopes and hilltops.
>
> (iii) encouraging the colour of buildings and structures to complement the dominant colours in the landscape.
>
> (iv) encouraging placement of structures in locations where they are in harmony with landscape.
>
> (v) promoting the use of local, natural materials in construction.
>
> (vi) providing for a minimum lot size for subdivision.
>
> (vii) 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 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 (eg 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] 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

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

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:

> 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

111. eg removing inappropriate houses in the adjacent outstanding natural landscape or elsewhere in the visual amenity landscapes.
112. [1998] NZRMA 73.

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:

(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 chnage.

(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.

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 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]

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 s 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 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:

115. Section 6(b).
116. Section 7.
117. RMA1043/98.
118. RMA 1194/98.
119. Paragraph 4.2.5 Objective and Policies [Revised plan, p 4/7].
120. RMA 1028/98.

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.

(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 s 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 s 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 s 4.9.

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

> **(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 should be open or not. Of course in relation to s 6(b) landscapes which are outstanding simply because they are

121. Revised plan, pp 4/39 – 4/43.
122. Paragraph 4.2.4. Issues (Revised Plan, p 4/7).

open, there is little difficulty in establishing need for protection. Similarly s 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".

(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 50 m buffer strips (appropriately planted and landscaped) between any subdivision with lot sizes of less than 4 ha 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;

123. To extend the metaphor in *Crichton v Queenstown Lakes District Council* (Environment Court, W 12/99, 5 March 1999) where the term was used of the chattels or fixtures (eg clotheslines/trampolines) that accumulate around dwellinghouses.
124. See policy 4.1.4 Policy 1.17 [revised plan, p 4/3].
125. See our discussion of "Forestry" in Chapter 11 below.

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

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

(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:

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;

126. Nimby = not in my backyard.
127. Part 7.10 [notified plan, p 7/69].

- 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 s 4.9[128] which is headed "Urban Growth". The place where the urban growth issue meets from both directions (ie 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

128. Revised plan, p 4/39.

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 s 7 of the Act. The Council obviously considers there are separate issues of 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;
- 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 s 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

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

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. **Structures**

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.

(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 400 sq m, then even a long thin section, say a 40 m x 100 m, must obviously necessarily entail a building on a platform within 100 m of a road.

(168) Nor do we think it is necessary 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:

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

- 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 s 293 of the Act.

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 s 32, and, when considering resource consents, s 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.

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

(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:[131A]

- 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 s 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 . . .

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 delete the introductory words and the first bullet point and substitute:

10. **Utilities**

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.

131A. Policy 4.2.5 [revised plan 4/8].

[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:[131B]

> **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.
>
> **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. **Forestry and Amenity Planting**
> 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

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

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 s 4.9 on "social and economic wellbeing"[132] In the statement of "resources and

132. See para 9 of this decision.

activities" at the beginning of its proposed s 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 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 s 4.9 especially since, as we shall see, these proposals on wellbeing fail to pass the s 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 s 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 hydroelectricity 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:

(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;

133. Section 5 RMA.
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 s 5(2)(a) of the RMA.

(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.

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 s 32(1)(a) earlier in our discussion of the need for the various policies. We add that we

137. Section 7(b) RMA.
138. *Baker Boys Ltd v Christchurch City Council* [1998] NZRMA 433 at para 57.

agree with Mr Goldsmith's submission that s 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 s 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 s 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 are 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.

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, p 4/5].
142. See s 2 RMA: definition of "benefits and costs".

(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 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 s 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 s 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 s 32. As we explained in earlier chapters of this decision WESI sought to add:

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

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

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

WESI did not attempt to justify its changes under s 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

143. Research Papers in Environmental and Spatial Analyses No. 43 (Department of Geography, London School of Economics) Cheshire, P and Sheppard, S (1997).
144. [1998] NZRMA 73 at 90.

proposals stated earlier in this decision. Accordingly, we make the following orders:

(1) Under s 292(1) of the Act:

(a) we delete para 4.1.2 of the revised plan and substitute a new para 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 s 293(1) and cl 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 ss 292 and/or 293 of the Act in respect of any matters on which leave has been expressly reserved (including the matters in paras 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 s 7 landscapes.