BEFORE THE ENVIRONMENT COURT

Decision No. [2015] NZEnvC139

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal pursuant to Clause 14 of the First Schedule of the Act
BETWEEN	APPEALING WANAKA INCORPORATED (ENV-2014-CHC-46) Appellant
AND	QUEENSTOWN LAKES DISTRICT COUNCIL Respondent
AND	NORTHLAKE INVESTMENTS LIMITED Applicant

Court:	Environment Judge J R Jackson Environment Commissioner J R Mills Environment Commissioner A C E Leijnen
Hearing:	In Wanaka on 2, 3, 4 and 5 March 2015 Site inspection 30 April 2015 (Final submissions received 4 May 2015)
Appearances:	Mr P Page and Ms J Caunter for Appealing Wanaka Incorporated Ms J Macdonald for Queenstown Lakes District Council Mr W Goldsmith and Ms M Baker-Galloway for Northlake Investments Limited
Date of Decision:	21 August 2015
Date of Issue:	21 August 2015

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

INTERIM DECISION

A: Under clause 15 of the First Schedule to the Resource Management Act 1991, the Environment Court:

(1) subject to (2) and Orders [B] and [C] approves Plan Change 45; and

(2) directs the Queenstown Lakes District Council to amend the "Amended Structure Plan" which is part of PC45 as indicated in the attached 'Reasons' unless any party indicates by 30 September 2015 that they wish to call evidence on the issue;

B: We reserve leave for:

(1) Appealing Wanaka Incorporated:

(a) to advise the court and other parties whether it wishes to continue with any of its *ultra vires* allegations (other than those about Chapter 4.9 of the Queenstown Lakes District Plan which have been adjudicated on); and

(b) if so, to lodge a memorandum of counsel setting the issue(s) and arguments out in detail;

— by 4 September 2015;

(2) the other parties to respond by 18 September 2015; and

(3) any reply from Appealing Wanaka Incorporated to be lodged and served by 2 October 2015.

C: We direct that the parties confer on:

(1) our powers to amend PC45 (see the last paragraph of the Reasons); and

(2) on the matters of detail raised in part 10 of the Reasons attached; and

— in the absence of agreement lodge affidavits (if necessary) and submissions on the issues under the following timetable:

- 30 September — submissions by Northlake
- 14 October — submissions by Queenstown Lakes District Council
- 21 October — submissions by Appealing Wanaka Incorporated

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

- 4 November — replies by Queenstown Lakes District Council and Northlake Investments Incorporated

D: Leave is reserved for any party to apply for further or other directions in case we have overlooked any matter or if they have major difficulties with the timetables.

E: Costs are reserved.

Table of Contents Para

REASONS

1. Introduction

1.1 Plan Change 45

[1] The issue in this proceeding is whether or not to confirm Plan Change 45 ("PC45") to the Queenstown Lakes District Plan. That is a private plan change which proposes the residential development of a large area between the town of Wanaka and the Clutha River. The land in question is approximately 219.26 hectares ("the site") and is held in four separate ownerships as shown on the ownership plan annexed to this decision as "A".

[2] The question for us to decide is whether to confirm PC45 and rezone the site for both residential development and protection of special areas of landscape and ecological value or to cancel the decision of the Council. The principal difficulty in this case is that the objectives and policies about residential development in the district plan of the Queenstown Lakes District Council are so many, various and complex that the witnesses for the parties have not been able to agree which are the most relevant and/or whether they head in the same general directions. Those problems are compounded by the fact that all people concerned with resource management are still working through the

ramifications of the Supreme Court's decision in *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*[1] *("EDS v NZ King Salmon").*

1.2 The history of Plan Change 45, the appeal and the parties

[3] A request to amend the Queenstown Lakes District Plan ("the QLDP") under clause 21 of the First Schedule to the Resource Management Act 1991 ("the RMA" or "the Act") was made by a Ms Lucy Meehan in July 2013. That request was accepted[2] and then notified by the Queenstown Lakes District Council on 1 August 2013. A summary of the decisions requested in submissions was publicly notified on 25 September 2013 and the period for further submissions closed on 9 October 2013.

[4] 124 primary submissions were lodged on PC45. The plan change went to a hearing by Council-appointed Commissioners Messrs D Whitney and L Cocks. They released their report and recommendations on 17 June 2014. After the Council accepted those recommendations — to approve PC45 as amended by the Commissioners — a notice of appeal by an unincorporated body of submitters was lodged with the Registrar of the Environment Court on 5 September 2014.

[5] Both the original requestor and the appellants have been succeeded by others. First, the original applicant, Ms Meehan, has been succeeded by Northlake Investments Limited ("Northlake"), a company in which she retains an interest. Second, on 24 February 2015 the court issued a (further) procedural decision[3] confirming that Appealing Wanaka Incorporated ("AWI") is the successor appellant to one of the earlier groups of submitters.

[6] PC45 is opposed by AWI on a number of grounds. First it says that the existing supply of land zoned for residential purposes in Wanaka is more than sufficient to meet the community's needs[4]; second it says that the lack of an identified urban growth boundary means that the court only has part of the picture[5]; third the plan change is premature because an upcoming review of the district plan will determine the

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1 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38; [2014] 1 NZLR 593; [2014] NZRMA 195; (2014) 17 ELRNZ 442.
2 Under clause 25(2)(b) of Schedule 1 to the RMA.
3 *Appealing Wanaka and Others v Queenstown Lakes District Council* [2015] NZEnvC 23.
4 Submissions by the appellant dated 24 April 2015 para 17.3.
5 Submissions by the appellant dated 24 April 2015 para 17.4.

appropriate solution for urban growth; fourth PC45 does not achieve the objectives and policies of the operative district plan, nor is it the better option under section 32 RMA. Some *vires* issues are also raised. AWI only called two — albeit very experienced — witnesses: an urban designer Mr I C Munro and the planner Mr D F Serjeant. Mr Munro had previously prepared for the Council an urban design report[6] on PC45 which was presented at the Commissioners' Hearing. He was later engaged to support AWI in this proceeding, where he maintains the advice he gave in his earlier report to the Council.

[7] The Council played no active part at the hearing — it called no witnesses — but supports the plan change. However, an independent planner Ms V S Jones, who had been contracted by the Council to report on the plan change, was called by AWI under a witness summons. Ms Jones produced her section 42A report and some supporting documents to the Court. She also took the trouble — for which the court is grateful — to read the evidence lodged with the Registrar and then to lodge and serve a brief statement of evidence updating her expert opinions.

[8] It is common ground that the version of the RMA that must be applied is that in force between 1 October 2011 and 3 December 2013, that is before the Resource Management Amendment Act 2013 came into force[7].

1.3 The environment

The existing rural area

[9] The site is to the north and east of the residential areas of Wanaka town. Aubrey Road runs along the southern boundary of the site, and Peak View Road runs to its western boundary (but terminates short of the high point). Beyond that terminus a pine plantation known as "Sticky Forest" — a popular mountain bike recreational area[8] — covers the hill separating the site from Lake Wanaka. Outlet Road, the road to where the Clutha River begins, runs through the site. Adjacent to the site's eastern boundary is the Hikuwai Conservation Area, a kanuka shrubland managed by the Department of Conservation. This area contains a significant representative[9] sample of the Upper

6 I C Munro evidence-in-chief Appendix 2: 2013 Report [Environment Court document 17].

7 This is because the closing date for submissions was (as recorded above) 9 October 2013, and therefore, under clause 2 of Schedule 12 to the RMA the form of section 32 in existence between 1 October 2011 and 3 December 2013 applies.

8 J B Edmonds evidence-in-chief para 3.2.4 [Environment Court document 14].

9 J B Edmonds evidence-in-chief para 3.14 [Environment Court document 14].

Clutha kanuka shrubland and cushionfield: a modified but apparently relatively uncommon vegetation type.

[10] To the southwest a residential area known as the Kirimoko Block borders the site. It contains a plantation of conifers and a (largely undeveloped) low density residential zoning. Immediately north of the Kirimoko Block a Council water reservoir[10] is situated. A right of way provides vehicle access to the reservoir across part of the site connecting to Peak View Road (currently a private access road).

[11] The topography of the site is quite complex in that it is a mix of old moraine hummocks and riverine terraces incised by smaller (and formed later) water courses. The high point in the northwest is 410 metres above sea level ("masl") and the lowest point, 330 masl, is at the south-eastern end adjoining Aubrey Road. The vegetation of the site is largely introduced pasture, but there are areas of kanuka and smaller ones of matagouri and native tussocks. There are shelterbelts of mature pines, and some plantations of conifers as well as some wildings.

[12] The site borders an outstanding natural landscape which includes Lake Wanaka, although the lake cannot be seen from the site because its high point is at its western end. The site is immediately to the south of the Clutha River (itself an outstanding natural feature) which commences about one kilometre to the northwest where the water flows out of Lake Wanaka. Part of that landscape is the Council-owned Clutha River Reserve[11] to the north of the site. The reserve extends from Beacon Point/Outlet Road to Albert Town and contains a walking and cycling trail along the river edge.

The adjacent urban environment

[13] There is an enclave of "Rural-residential" land between part of the site and Aubrey Road as a result of an earlier subdivision by one of the site's landowners. That area is interesting because it reveals what Northlake claims is a likely outcome for the site if PC45 does not proceed. Across Aubrey Road, to the south of the site, is more

10 Located on Lot 13 DP 300734 and listed in the District Plan as Designation 314 Local Purpose (Water Reservoir).

11 Listed in the District Plan as Designation 116, 'Clutha Outlet Recreation Reserve'.

partly developed Rural Residential zoned land that extends up the lower slopes of Mount Iron, an Outstanding Natural Feature.

[14] In 2013 there were 6,471 people normally resident in Wanaka (that is 23% of the District's population). The housing statistics[12] are:

- there were 2,781 occupied dwellings and 1,752 unoccupied dwellings — total 4,533 dwellings (about 40% of houses are likely to be second or holiday homes)[13];
- the average household size was 2.4 persons, and 20% of Wanaka's households were single person households;
- in the year to December 2013 the Council issued 159 building consents for residential dwellings.

[15] The Council's 2013 estimates[14] were that zoned capacity for 5,686 dwellings exist in Wanaka and that the number of houses likely to be built in the next 20 years (from 2013) is 2,300. The evidence in respect of the site is that if PC45 proceeds then it is likely[15] that up to 600 of the houses at Northlake will be used for holiday homes, with the remainder (a little less than 900 at maximum build out) being lived in permanently.

[16] The median house price[16] in the Queenstown-Lakes district at January 2014 was $532,500; and the median income in January 2015 was about $74,970. Wanaka is affluent by New Zealand standards with slightly higher incomes than the New Zealand average[17]. Even so, the median multiple of income to house price as at that date was 7.10.

[17] There is one other aspect of the land market (for sections of residential zoned land) in the Wanaka basin which we should record. It is dominated by one family. The

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12 Statistics New Zealand quoted in the evidence of I C Munro evidence-in-chief para 5.13 [Environment Court document 17].
13 J A Long evidence-in-chief para 2.3 [Environment Court document 12].
14 Evidence of I C Munro para 5.15 [Environment Court document 17].
15 J A Long evidence-in-chief para 2.3 [Environment Court document 12].
16 Source: www.interest.co.nz/property/house-price-income-multiples (Accessed 12/13/15 1350).
17 J A Long evidence-in-chief para 2.7 [Environment Court document 12].

attached map[18] marked "B" shows some interests of the Dippie family — being Messrs A and E Dippie and various companies[19] apparently owned or controlled by them and their families — in Wanaka. Counsel for AWI tried to undermine this point by identifying other land — at Lake Hawea — which was zoned for residential development. That point failed when it emerged[20] a day or so later that Dippie family interests own much of that land also. Having recorded that situation we must also say that we received insufficient evidence to rely on[21] of any manipulation of the quality, timing or pricing of sections placed on the market by the interests of the Dippie family. We simply note at this point that the potential for monopolistic behaviour exists.

The value of the site as rural land

[18] After the hearing the Court asked for and received evidence of the value of the entire (original) 245 hectares covered by PC45 in its original version. In his affidavit for Northlake, dated 10 April 2015, Mr S G N Rutland of Auckland, Registered Valuer, deposed that the estimated gross market value of the use *Option 1 (Rural General Option Value)* for the land, assuming (counterfactually) that the land is undeveloped farm land in the Rural General Zone in the vicinity of Wanaka and is not currently subject to a plan change to rezone, is $30,000 per hectare (excluding GST)[22].

1.4 The purpose and detail of PC45

[19] The site is proposed to be managed under a new "Section 12.X" of the district plan as the "Northlake Zone". The new zone includes objectives, policies and a Structure Plan intended to guide future development under a staging process, with each stage guided by an "Outline Development Plan" and associated rules. Each Outline Development Plan will require details such as the indicative subdivision design, roading pattern, location of pedestrian and cycling connections, and location of "open space"[23] and recreational amenity spaces.

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18 Ex 14.1.

19 These were identified by Mr Edmonds as Orchard Road Holdings Limited, Willowridge Developments Limited and Beech Cottage Trustees Limited — transcript p 95.

20 Transcript p 96.

21 Quite apart from any natural justice issues: none of these landowners were parties or witnesses.

22 S G N Rutland affidavit dated 10 April 2015 para 9 [Environment Court document 34].

23 This has its own meaning and own chapter (20) in the QLDP.

[20] Rather confusingly, PC45 states its own purpose[24], even though there is no requirement for that under the RMA[25]. This is stated to be:

> ... to provide for a predominantly residential mixed use neighbourhood. The area will offer a range of housing choices and lot sizes ranging from predominantly low to medium density sections, with larger residential sections on the southern and northern edges. The zone enables development of the land resource in a manner that reflects the zone's landscape and amenity values.

It also contains express objectives which are[26] to provide a residential development with "a range of medium to low density and larger lots"[27] in close proximity to the wider Wanaka amenities; to attain best practice in urban design[28] and to achieve "high quality residential environments", which are well-connected[29] internally and to infrastructure networks outside the zone; to develop "tak[ing] into account"[30] the landscape, visual amenity, and conservation values of the zone; and to establish[31] areas for passive and active recreation.

[21] There are to be internal roads connecting to Aubrey Road, Outlet Road and Peak View Road. While Peak View Road was apparently always intended as an important walking and cycling route, the adjacent landowner Allenby Farms Limited (here represented by Northlake) has acquired an additional strip of land adjoining that access strip, so that the access strip available for future access use is now a minimum 20m wide along its full length, and wider in places. That width is adequate to accommodate vehicular access and would improve connectivity between PC45 and Wanaka generally[32]. All other infrastructure can connect to existing infrastructure[33], with upgrades to be provided at Northlake's expense where required.

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24 Para 12.X Northlake Special Zone [PC45 p 12X-1].
25 See section 75 for the compulsory and optional contents of a district plan.
26 Proposed Objectives (12.X.2) 1 to 6 [PC45 p 12.X-1 to -4].
27 Proposed Objective (12.X.2) 1 [PC45 p 12.X-1].
28 Proposed Objective (12.X.2) 2 [PC45 p 12.X-2].
29 Proposed Objectives (12.X.2) 3 and 6 [PC45 pp 12.X-3 and 12.X-4].
30 Proposed Objective (12.X.2) 4 [PC45 p 12.X-3].
31 Proposed Objective (12.X.2) 5 [PC45 p 12.X-3 and 12.X-4].
32 A A Metherell rebuttal evidence para 1.11 [Environment Court document 10].
33 J McCartney evidence-in-chief paras 10 and 11 [Environment Court document 13].

[22] Although the Northlake land is currently held in separate holdings by different owners, PC45 attempts to provide for integrated management of the whole site and adjacent land. It attempts this at three levels. First, it proposes a Structure Plan for the site (a copy dated 1 May 2015 is attached as "C"[34]). Second, it divides the Northlake land into different Activity Areas (each called an "AA" as shown on the Structure Plan), each with different management aims and methods. Third, it proposes a detailed level of design for all development in respect of small areas as they are developed: Outline Development Plans would address detailed design.

[23] The Activity Areas are[35]:

- Activity Area A, which contains the currently zoned Rural Residential part of the site. This part of the site[36] has a current "live" subdivision consent[37] for 64 lots, each over 4000m^2 in size and houses are currently being built on it.

- Activity Areas B1 to B5 which provide for housing of a similar nature to existing Wanaka with low density residential areas containing an average of 10 dwellings per hectare (average lot size of 700-800m^2).

- Activity Area D1, which enables more compact low density residential activities that would comprise around 15 dwellings per ha, or an average lot size of 450-500m^2. The planner for Northlake and "architect" of PC45, Mr J B Edmonds, wrote[38]:

> ... small houses, possibly including some attached housing (townhouses or terrace houses), and possibly two storey construction, would be expected to achieve this type of density. Private amenity may be lower than in the other activity area; however, this is compensated for by other benefits associated with the close proximity to community parks and facilities. Certain non-residential activities

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34 It should be noted that we have drawn a short orange line on this plan which is explained in Part 10 of this decision.

35 J B Edmonds evidence-in-chief para 2.3.1 [Environment Court document 14].

36 Lot 69 DP 371470.

37 Queenstown Lakes District Council reference RM051067.

38 J B Edmonds evidence-in-chief para 2.3.1 (3rd bullet) [Environment Court document 14].

(such as small scale retail) are enabled within this activity area, subject to compatibility with residential amenities.

- Activity Areas C1 to C5 which would enable larger residential lots that would result in around 4.5 dwellings per ha, with an average lot size of 1,500m^2. There are "Building Restriction Areas" within Activity Areas C1, C2 and C3 to reflect the higher landscape qualities of prominent hilltops, ridges and gullies in these parts of the site. Northlake proposes through rules relating to development (Activity status and linked development standards) to conserve the regenerating clusters of kanuka[39] and matagouri.

- Activity Area E is the land protected from development either because it abuts the Clutha River outstanding natural feature or because it encompasses areas of high natural value and/or is visually sensitive — for example the high points on the land, or land adjacent to Sticky Forest. This land is to be retained in a pastoral state.

[24] Other features of the proposed PC45 zone put forward by Northlake are that 20 sections are to be offered in the first development phase, at a cost of no more than $160,000 each, to the Queenstown Community Trust as "affordable housing". The applicant also proposes to provide a community indoor swimming pool, gymnasium, children's play area and tennis court, recreational areas, and pedestrian and cycleway trails. However, there does not appear to be any obligation that these are actually developed, even though space is provided for them. Rather there is a trigger point — a certain number of lots have to be sold before the owners feel obliged to supply these facilities.

1.5 The likely effects of PC45

[25] Many of the positive effects of PC45 have been identified in the description of PC45 above. We will discuss them in more detail later in respect of the objectives and policies of the QLDP about providing for the needs of the Wanaka community, but essentially there was very little challenge to the positive benefits asserted by Northlake.

39 P de Lange *A Revision of the New Zealand Kunzea* Phytokeys 40:1-185 (25 August 2014): At least some of the kanuka in the Wanaka area may be a separate species.

Effects on the supply of zoned land and/or sections

[26] Mr Munro, the urban designer for AWI, gave evidence of the effects of PC45. In his opinion PC45 would increase the zoned supply of land — using sections (allotments) as units — by 28% to (5,686 + 1,600 =) 7,286 sections. The Council's current (2013) predictions are that there may be a 20 year demand for 2,302 households in Wanaka. According to Mr Munro PC45 would result in a "surplus" zoned capacity of (7,286 – 2,302 =) 4,984 households over a relatively long 20 year planning period. In cross-examination Mr Munro said there were five times more sections than Wanaka would need in the near future, and development under PC45 would increase that to six times.

[27] Mr Munro was of the opinion[40] that such an "oversupply" of sections might cause wastelands in approved subdivisions both in Northlake and elsewhere in Wanaka: "... substantial gaps [between houses], sporadic stop start developments ..."[41] and "... an overall failure to establish anywhere ... a coherent sense of community or character as the district plan invariably describes as desirable in its residential zones"[42]. He also considered that would lead to sprawl[43].

Effects on other residents of Wanaka

[28] Mr Serjeant was more concerned with the amenity effects for neighbours of the site and remoter residents of Wanaka. He wrote[44]:

> For persons living on the current urban edge there is an expectation that the Northlake land would remain rural for at least the next 10-15 years. This expectation is supported by the District Plan policies that envisage a compact town and the avoidance of sprawl, and the recognition of ample infill and greenfields capacity closer to town. While specific views are not necessarily protected, I consider that the premature loss of the overall rural ambience is an adverse effect on these people.
>
> Urban amenity is provided as much by journeys through an urban area as by where we live. This is particularly the case in Wanaka which is placed within a much wider outstanding landscape. The town is developing a network of walking and cycling trails with on and off-road sections,

40 Transcript p 168.
41 Transcript p 168 lines 5-6.
42 Transcript p 168 lines 23-24.
43 Transcript p 168 line 28.
44 D F Serjeant evidence-in-chief para 51 [Environment Court document 18].

> complementing the private vehicle journey option. In my view, irrespective of the travel mode chosen, a higher quality journey is provided through a well-developed urban fabric than through a discontinuous series of suburban and rural neighbourhoods.

The first paragraph raises the probability of the direct effects on the amenities of near neighbours of the site on the south side of Aubrey Road. We consider that there are some real (if relatively minor) concerns which could be mitigated by some re-design of the Activity Areas. We consider the second paragraph is being precious: any such effects will be very minor, fleeting, and their number will dwindle over time.

Monetary costs

[29] A class of adverse effects of PC45 identified by Mr Serjeant were not physical effects on people or the environment, but extra costs[45] imposed on other people. We will consider these in our section 32 evaluation.

Effects of the "commercial area"

[30] If the sections on the site sell and are built on, then Mr J A Long, the retail consultant called for Northlake, considered that any of a café/restaurant, a convenience store, takeaway food outlets and a hairdresser/beautician might establish in Activity Area D[46]. Almost all residences would be within 900 metres[47] of any such retail outlets, making them within walking distance for most residents.

[31] Rentals[48] for the shops would be low, and so returns would be challenging for the developer or landlord. In Mr Long's opinion the businesses could be successful at a small scale (and we discuss the urban design consequences later)[49]. We accept Mr Long's evidence that any retail at Northlake will have "... no discernible impact on Albert Town or Three Parks"[50].

[32] Mr Serjeant alleged[51] there would be adverse effects in relation to:

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45 D F Serjeant evidence-in-chief paras 35-36 [Environment Court document 18].
46 J A Long evidence-in-chief para 2.10 [Environment Court document 12].
47 J A Long evidence-in-chief para 2.13 [Environment Court document 12].
48 J A Long evidence-in-chief para 2.19 [Environment Court document 12].
49 J A Long evidence-in-chief para 2.20 [Environment Court document 12].
50 J A Long evidence-in-chief para 9.7 [Environment Court document 12].
51 D F Serjeant evidence-in-chief para 41 [Environment Court document 18].

> … the overall convenience of access to the wide range of goods and services provided in existing centres and potentially in the proposed Northlake centre. This effect is not about trade competition, but the achievement and maintenance of the highest level of urban amenity that can derive from these centres.

[33] Later he added that[52]:

> Although the effect may not be significant, it has a high probability and it undermines the policy framework, which has an aspirational approach of creating positive effects, as opposed to the bottom-line assessment of avoiding adverse effects that Mr Long has undertaken.

We find that evidence rather disingenuous. If, as he appears to be suggesting, Mr Serjeant wishes to protect the shops in both Wanaka's "main street" near the waterfront of Lake Wanaka and in the proposed Northlake centre, he is clearly attempting to stop any trade competition from operators on the Northlake land. We would need considerably more evidence of adverse effects — as against the beneficial effects of (trade) competition[53] — before we could put something solid into the scales against PC45. In any event the adverse effects do not meet the threshold which takes them out of the trade competition category (as we discuss in Part 2).

2. Plan change considerations after *EDS v NZ King Salmon*

2.1 Identifying the matters to be considered

[34] The RMA provides a number of matters which a territorial authority must consider. The principal matters to be considered when preparing a plan or plan change are set out in sections 74 and 75 of the RMA. These state (relevantly):

> **74 Matters to be considered by territorial authority**
>
> (1) A territorial authority must prepare and change its district plan in accordance with—
>
> (a) its functions under section 31; and
>
> (b) the provisions of Part 2; and
>
> (c) a direction given under section 25A(2); and
>
> (d) its obligation (if any) to prepare an evaluation report in accordance with section 32; and
>
> (e) its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and

52 D F Serjeant evidence-in-chief para 48 [Environment Court document 18].

53 To the extent we might be allowed to consider these: see section 104(3)(a) RMA.

(f) any regulations.

(2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to—

(a) any—

(i) proposed regional policy statement; or

(ii) proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and

(b) any—

(i) management plans and strategies prepared under other Acts; and

(ii) *[Repealed]*

(iia) relevant entry on the New Zealand Heritage List/Rārangi Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014; and

(iii) regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing),—

to the extent that their content has a bearing on resource management issues of the district; and

(c) the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

(2A) A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.

(3) In preparing or changing any district plan, a territorial authority must not have regard to trade competition or the effects of trade competition.

75 Contents of district plans

(1) A district plan must state—

(a) the objectives for the district; and

(b) the policies to implement the objectives; and

(c) the rules (if any) to implement the policies.

(2) A district plan may state—

(a) the significant resource management issues for the district; and

(b) the methods, other than rules, for implementing the policies for the district; and

(c) the principal reasons for adopting the policies and methods; and

...

(3) A district plan must give effect to—

(a) any national policy statement; and

(b) any New Zealand coastal policy statement; and

(c) any regional policy statement.

(4) A district plan must not be inconsistent with—

(a) a water conservation order; or

(b) a regional plan for any matter specified in section 30(1).

(5) ...

[35] Apart from their formal requirements[54] as to what a district plan must (and may) contain, those sections impose three sets of positive substantive obligations on a territorial authority when preparing or changing a plan. These are first to ensure the district plan or change accords with the authority's functions under section 31, including management of the effects of development, use and protection of natural and physical resources in an integrated way; second to give the proper consideration[55] to Part 2 of the RMA and the list of statutory documents in section 74 and section 75; and third to evaluate the proposed plan or change under section 32 of the RMA.

[36] On an appeal to this court we must also have regard to the local authority's decision[56].

[37] Of course where the subject of consideration is a plan change rather than a proposed new plan, that list of considerations also needs to consider the provisions of the plan being changed, that is the operative district plan. In fact, assessing how a plan change fits into an operative district plan may not be straight forward. Broadly, plan changes fall on a line between two extremes. At one end a plan change may be totally subservient to the objectives, policies and even rules of the operative district plan it proposes to amend, in which case the question of whether the plan change integrates the management of adverse effects is unlikely to arise. At the other end, rather than to fit within the district plan (other than in the necessary geographical sense that it must be within the district's boundaries) a plan change may be designed to be added to the operative plan. In the latter case, the first set of considerations under section 74(1)(a) RMA — integrated management — may be very important, as may Part 2 and the

54 Section 75(1) and (2) RMA.

55 This ranges from "according" with Part 2, through "giving effect to" or making provisions "not inconsistent with", to "having (particular) regard to".

56 Section 290A RMA.

statutory documents. It is therefore important to work out at the start where and how the plan change is proposed to fit into the operative district plan.

[38] Further complications arise where, as here, a proposed plan change contains its own objectives (including its "purpose"). At first sight section 74 and section 32 require each new objective to be tested against the principles of the Act but not against the other objectives and policies of the operative district plan. However, at least in cases where a plan change is designed to fit within an operative district plan, we consider the proper approach is to view the plan change (proposed purpose, subordinate objectives and all) as a policy change to implement the higher order objectives and policies in the operative district plan. A rezoning of land is a policy issue in the sense that, if confirmed by this court, the Council will be adopting "a course of action" designed to implement higher level objectives and policies: *Auckland Regional Council v North Shore City Council*[57].

[39] Before we turn to the positive obligations we should also refer to the one set of negative obligations — not to have regard to "trade competition or the effects of trade competition" — since the effects of PC45 on potential trade competitors was raised by the evidence. That provision is in section 74(3) and is oddly comprehensive. The mischief at which subsection (3) is directed would appear to be "the effects of trade competition on the profits of trade competitors, their lessors and (possibly) creditors". Instead subsection (3) appears to state that territorial authorities must not have regard even to the beneficial effects of trade competition, for example lower prices for consumers. Despite that the Supreme Court has confirmed that consequential economic and social effects are not the effects of trade competition — *Westfield (NZ) Ltd v North Shore City Council*[58]. We find this whole area of the law about the RMA very confusing: perhaps there is a distinction between the effects of competition (good) and those of trade competition (bad)?

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57 *Auckland Regional Council v North Shore City Council* [1995] 3 NZLR 18 (CA) at 23; [1995] NZRMA 424 at 430; (1995) 1B ELRNZ 426 at 433.

58 *Westfield (NZ) Ltd v North Shore City Council* [2005] NZSC 17; [2005] 2NZLR 597 [2005] NZRMA 337 (SC) at [119] and [120]. The phrase "... and the effects of trade competition" was not in section 74(3) when *Westfield (NZ) Ltd v North Shore City Council* was decided, but we doubt if that would make any difference to the Supreme Court's approach.

2.2 According with the council's functions

[40] The first set of positive obligations — and counsel for AWI reminded us that this is the purpose[59] of a plan (or plan change) — is to ensure that the district plan or change accords with the council's functions under section 31. That is usually a relatively simple factual matter: if the plan proposes to manage the effects of the use, development or subdivision (or protection) of the land, then it accords with the council's functions. Any complications normally arise in respect of the council's first and most general function in section 31. That is:

> (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:

The notion of integrated management is very complex when faced with all the uncertainties of the future.

[41] In this case AWI argues that PC45 does not achieve integrated management of the effects of the development and use of the land and resources of the Wanaka area at all. Rather, it contends, the plan change is "entirely inward focused in terms of its design and analysis"[60]. This is of course a matter of fact, prediction, opinion, and degree on the evidence and will be considered in due course.

2.3 Implementing Part 2 and the list of statutory documents

[42] The second set of obligations in (and the major parts of) sections 74 and 75 appears to direct that, even on a minor plan change, the territorial authority has the onerous and wide-ranging task of traversing all the higher order objectives and policies in the hierarchy of superior documents that sits above the district plan, including the principles in Part 2 of the Act. That is the way sections 74 and 75 have been applied in a string of cases deriving from *Eldamos Investments Ltd v Gisborne District Council*[61],

59 Section 72 RMA.
60 Submissions of counsel for AWI dated 24 April 2015 at para 10.
61 *Eldamos Investments Ltd v Gisborne District Council* W 047/2005.

and more comprehensively since *Long Bay-Great Park Society Incorporated v North Shore City Council*[62].

[43] The recent decision of the Supreme Court in *EDS v NZ King Salmon*[63] sets out an amended — and simpler — approach to assessing plan changes under the second set of obligations in sections 74 and 75. The principle in *EDS v NZ King Salmon* is that if higher order documents in the statutory hierarchy existed when the plan was prepared then each of those statutory documents is particularised in the lower document. It appears that there is, in effect, a rebuttable presumption that each higher document has been given effect to or had regard to (or whatever the relevant requirement is). Thus there is no necessity to refer back to any higher document when determining a plan change provided that the plan is sufficiently certain, and neither incomplete nor invalid. This seems to have been accepted by the High Court in a recent decision — *Thumb Point Station Ltd v Auckland City Council*[64]. There Andrews J very succinctly put the approach as being that:

> In most cases, the Environment Court is entitled to rely on a settled plan as giving effect to the purposes and principles of the Act. There is an exception, however, where there is a deficiency in the plan[65]. In that event, the Environment Court must have regard to the purposes and principles of the Act and may only give effect to the plan to the degree that it is consistent with the Act.

We respectfully agree provided that the reference to giving effect to the "purposes and principles" [66] of the Act includes giving effect to the higher order statutory instruments, and indeed to the consideration of the other statutory documents referred to in sections 74 and 75 of the RMA.

[44] The reference to any "deficiency" in *Thumb Point* was a summary of *EDS v NZ King Salmon*. The latter case was concerned with the relationship between a plan change and a higher order statutory instrument that post-dated and therefore was not given

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62 *Long Bay-Great Park Society Incorporated v North Shore City Council* A 078/08 at [34].

63 *EDS v NZ King Salmon* (supra footnote 1) (SC).

64 *Thumb Point Station Ltd v Auckland City Council* [2015] NZHC 1035 (HC) at [31].

65 Citing *Eldamos Investments Ltd v Gisborne District Council,* W047/2005;*Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd,* above footnote 1.

66 Strictly, there is only one purpose (not more as Andrews J's plural "purposes" might suggest): section 5 RMA.

effect to in the operative district plan. The national policy statement in question was the New Zealand Coastal Policy Statement 2010 ("the NZCPS"). Arnold J stated[67]:

> ... the NZCPS gives substance to pt 2's provisions in relation to the coastal environment. In principle, by giving effect to the NZCPS, a regional council is necessarily acting "in accordance with" pt 2 and there is no need to refer back to the part when determining a plan change. There are several caveats to this, however, which we will mention shortly. ...

[45] The "caveats" were identified in a later passage where Arnold J stated[68]:

> ... it is difficult to see that resort to pt 2 is either necessary or helpful in order to interpret the policies, or the NZCPS more generally, absent any allegation of invalidity, incomplete coverage or uncertainty of meaning. The notion that decision-makers are entitled to decline to implement aspects of the NZCPS if they consider that appropriate in the circumstances does not fit readily into the hierarchical scheme of the RMA.

The Supreme Court makes it clear that, absent invalidity, incomplete coverage or uncertainty of meaning in the intervening statutory documents, there is usually no need to look at Part 2 of the RMA, at least on a plan change.

[46] Mr Goldsmith submitted for Northlake that "[a] district plan is not as pure an expression of the purpose of the Act for the district as the NZCPS is for the coastal marine area ... And a plan change is not strictly bound to 'give effect to' wider relevant plan provisions, compared to the strong directions in say the NZCPS". We hold that misses an important aspect of *EDS v NZ King Salmon*. That is, whatever the obligation in section 74 or section 75 is in respect of the relevant existing statutory document, that obligation has been given effect[69] or had regard[70] to, or been kept consistent with as the case may be, in the operative district plan (absent uncertainty of meaning, incompleteness or invalidity) if it has been carried out by or "particularised" in an objective or policy. It would be illogical if a higher order instrument which had to be given effect to does not need to be looked at (e.g. the NZCPS as in *EDS v NZ King Salmon*) but a lower order document which only needed to be had regard to in the

67 *EDS v NZ King Salmon* (supra footnote 1) (SC) at [85].
68 *EDS v NZ King Salmon* (supra footnote 1) (SC) at [90].
69 Section 75(3) RMA.
70 Much of section 74(2) and (2A).

preparation of the district plan must still be looked at (absent a deficiency in the plan). For example, a strategy prepared under the LGA 2002 might have been had regard to[71] and then particularised in a district plan in a very directive policy. That could then have a nearly determinative effect on the outcome of an application for a resource consent or plan change. Indeed that is, if we understand counsels' arguments correctly, part of the submissions for AWI.

[47] We conclude that, since *EDS v NZ King Salmon,* the method of applying the list of documents referred to in sections 75 and 76 of the RMA is this: first, if there are **1, 2, 3 ... n** documents in the hierarchy of statutory documents[72] — with **1** being Part 2 of the RMA and **n** being the operative district plan which is proposed to be changed — then the effect of *EDS v NZ King Salmon* is that the only principles, objectives and policies which normally (subject to the second and third points) have to be considered on a plan change are the relevant higher order objectives and policies in document **n**[73] (in this case the QLDP itself). Second, only if there is some uncertainty, incompleteness or illegality in the objectives and policies of the applicable document does the next higher relevant document[74] have to be considered (and so on up the chain if necessary). Third, if, since a district plan became operative, a new statutory document in any of the lists identified in section 74(2) and (2A) and section 75(3) and (4) has come into force, that must also be considered under the applicable test[75]. While the simplicity of that process may sometimes be more theoretical than real, since in practice plans may be uncertain, incomplete or even partly invalid, it is easier than the exhaustive and repetitive process followed before the Supreme Court decided *EDS v NZ King Salmon.*

Are there any later statutory documents to be considered in this proceeding?

[48] In this case two documents were suggested as being documents of the classes identified in section 74 (2)(b) RMA:

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71 Under section 74 (2)(b)(i).

72 Including National policy statements, operative and proposed regional policy statements and plans, and any direction from the Ministry for the Environment (under section 25A(2)): section 74(1) and (2) and 75(3) RMA.

73 Or, if there are none, those in document **n-1** (usually a regional plan or regional policy statement).

74 Or, where relevant, a section 74(2)(b) document. While strictly such documents are not part of the hierarchy, they still need to be had regard to; similarly an iwi document identified in section 74(2A) RMA has to be taken into account.

75 'Given effect to', 'not inconsistent with', 'had regard to' etc.

- the Queenstown Lakes District Growth Management Strategy dated April 2007 ("the GMS")[76]; and
- the Wanaka Structure Plan 2007 ("the WSP") — a strategy prepared under the LGA 2002.

As Mr Goldsmith pointed out to us, the GMS expressly records[77] that it is "... an expression of the legislative intent of the Council and the Council's intention is to translate the actions identified in the strategy into appropriate statutory documents". So it is not[78] a statutory document and we have no further regard to it. Other documents prepared for the Council were also referred to in evidence, but none of these qualifies as a document we must have regard to under the RMA, and in any event they culminate in the WSP.

[49] So the only document we must have regard to under section 74(2) RMA is the WSP. The WSP[79] includes provisional placement of some "urban growth boundaries" and a map of "Zoning Proposed", a copy of which is annexed marked "D". It will be noted that approximately one third of the site is white (to the east of the "Plantation/Sticky Forest") and the remaining two thirds is shaded in blue and white diagonal stripes, denoting a proposed "Urban/Landscape Protection" Zone.

[50] There is a legal issue about the WSP we can deal with briefly here. Counsel for AWI pointed out that the WSP stated (in its final words[80]) "This means the Council will undertake Plan Changes", whereas of course PC45 was requested by Northlake. That is at best a legal quibble and no weight should be given to it. As it happens, the relevant policies[81] in the district plan — introduced by the subsequent PC30 — are simply "To enable the use of Urban Growth Boundaries to establish distinct and defendable urban edges ..." and to "... defin[e] an UGB through a plan change [after taking certain listed

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76 Exhibit 14.3 produced by J B Edmonds.

77 GMS p 2 (Exhibit 14.3).

78 In *Monk v Queenstown Lakes District Council* [2013] NZEnvC 12 at [34] the court accepted the GMS as a statutory document under section 74(2)(b) RMA "... in the absence of argument".

79 The only document produced to us was called "The Wanaka Structure Plan Review" but we were told that the QLDC adopted it in December 2007.

80 Wanaka Structure Plan 2007 p 14.

81 Policy (4.9.3) 7.3 and 7.6 [Queenstown Lakes District Council Plan p 4-57].

matters into account]". The policies do not say that the plan change must be introduced by the Council.

[51] We were advised that an earlier plan change ("PC20") was proposed by the Council to establish an UGB for Wanaka but did not proceed beyond initial consultation, apparently due to budgeting constraints. The WSP was presumably taken into account when PC30 was prepared[82]. However, since the WSP goes into much more detail than PC30 (which prescribes how to locate UGBs in general rather than giving specific directions for any particular location) we will have regard to the WSP's key recommendations in part 7 of this decision.

2.4 Evaluation of a plan change under section 32

[52] The third set of obligations on a territorial authority when preparing a plan (change) is the section 32 evaluation. Section 32(3) of the RMA in its relevant form requires us to examine[83]:

> (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
>
> (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate way for achieving the objectives.
>
> ...

The section 32 assessment for policies and methods, including rules, requires examination of whether policies implement the objectives, and the rules (if any) implement the policies[84]. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives[85] of the district plan (or of the plan change if that introduces any), taking into account[86] (relevantly):

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82 PC30 became operative on 5 June 2012.

83 Section 32(3) (emphasis added), as it was until 2 December 2013. Section 32 as quoted was replaced with a new section by section 70 of the Resource Management Act Amendment Act 2013.

84 Section 75(1)(b) and (c) of the Act (also section 76(1)).

85 Section 32(3)(b) of the Act.

86 Section 32(4) of the RMA.

(a) the benefits and costs of the proposed policies rules or other methods; and

(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods; …

On an appeal[87] about a plan change, the Environment Court has the same duty[88] that the territorial authority has to evaluate the plan change under section 32.

[53] In *EDS v NZ King Salmon*[89] the only statement by the Supreme Court about section 32 of the RMA is rather gnomic. Arnold J simply quoted part of section 32(3) and then turned to the NZCPS (2010) stating[90]:

> Given the central role played by the NZCPS in the statutory framework, and because no party has challenged it, we will proceed on the basis that the NZCPS conforms with the RMA's requirements, and with pt 2 in particular. Consistently with s 32(3), we will treat its objectives as being the most appropriate way to achieve the purpose of the RMA and its policies as the most appropriate way to achieve its objectives.

[54] In this case we are not concerned with the application of a higher order instrument but with testing PC45's lower order objectives and policies for their efficiency and effectiveness at implementing the district-wide objectives and policies of the district plan. Of more assistance on our role under section 32 is the decision of the High Court in *Rational Transport Soc Inc v New Zealand Transport Agency*[91]. The High Court stated[92]:

> Section 32 requires a value judgment as to what on balance, is the most appropriate, when measured against the relevant objectives. "Appropriate" means suitable, and there is no need to place any gloss upon that word by incorporating that it be superior. Further, the Freshwater Plan does not only have stream protection as a sole object; …
>
> As to Mr Bennion's argument that s 32(3)(b) mandated that "each objective" had to be the "most appropriate way" to achieve the Act's purpose; i.e. it was an error to look at the combined

87 Under clause 14 of the First Schedule to the RMA.
88 Section 290(1) RMA.
89 *EDS v NZ King Salmon* (supra footnote 1) (SC).
90 *EDS v NZ King Salmon* (supra footnote 1) (SC) at [33].
91 *Rational Transport Soc Inc v New Zealand Transport Agency* [2012] NZRMA 298.
92 *Rational Transport Soc Inc v New Zealand Transport Agency* [2012] NZRMA 298 (HC) at paras 45 and 46.

> objectives; I do not agree that the Board is to be constrained in that way. It is required to *examine* each, and every, objective in its process of evaluation - that may, depending on the circumstances result in more than one objective having different, and overlapping, ways of achieving sustainable management of natural and physical resources (the purpose of the Act). But objectives cannot be looked at in isolation, because "the extent" of each may depend upon inter relationships …

[55] On that basis the evaluation under section 32(3) and (4) will be of the change as a whole, even if — as PC45 does — the plan change contains its own proposed "purpose" and, especially, objectives. Those must initially be taken as subordinate "policies" unless it is quite clear that either the operative district plan does not contemplate any plan changes and/or the plan change shows that it is designed to add to the operative district plan. The complications just identified in the previous sentence do not arise strongly in these proceedings because, as we shall see, the operative district plan contemplates residential rezonings, and PC45 is designed to fit within the QLDP notwithstanding that it purports to introduce new objectives. We should examine PC45 as if it is a policy change to the operative district plan.

3. What are the relevant objectives and policies to be considered?

3.1 The scheme of the plan

[56] The scheme of the QLDP is complex, especially on the subject of urban growth. Oversimplifying slightly, the plan has two broad tiers of objectives and policies — district-wide, and specific to subjects or areas. Those objectives and their policies and rules are contained in Volume 1A[93]. The 20 Chapters, with those most relevant to this proceeding in bold, are:

1. **Introduction**
2. Information …
3. **Sustainable Management**
4. **District Wide Issues**
5. Rural Areas
6. Queenstown Airport Mixed-Use Zone
7. **Residential Areas**

[93] Volume 1B contains the planning maps.

8. Rural Living Areas
9. Townships
10. Town Centres
11. Business and Industrial Areas
12. **Special Zones**
13. Heritage
14. Transport
15. **Subdivision Development ...**
16. Hazardous Substances
17. Utilities
18. Signs
19. Relocated Buildings ... and Temporary Activities
20. Open Space Zone-Landscape Protection.

We note that the different parts of the plan are called "sections" in the QLDP but to avoid confusion with parts and sections in the RMA we will call them "Chapters".

Sustainable management

[57] Chapter 3 contemplates[94] an enabling approach to development[95] and contains four basic aspirations of which two are anthropocentric and therefore particularly relevant here: enabling people's social, economic and health concerns to be met and allowing individuals and communities to provide for their well being[96].

District wide issues

[58] The principal, but not the only, higher order district-wide objectives and policies in the district plan are in Chapter 4. Chapter 4.2 of the district plan contains district-wide objectives and policies about the landscapes and visual amenities of the district. Objective (4.2.5) 1 seeks that subdivision, use and development in the district is undertaken in a manner which avoids, remedies or mitigates adverse effects on landscape and visual amenity values[97]. These include policies to discourage urban development in the outstanding natural landscapes and visual amenity landscapes of the

94 Chapters 1 and 2 are introductory.
95 Para 3.4 [Queenstown Lakes District Council Plan p 3-2].
96 Para 3.6 [Queenstown Lakes District Council Plan p 3-4].
97 Objective (4.2.5) 1 [Queenstown Lakes District Council Plan p 4-9].

district[98], and to avoid sprawling development and subdivision along roads[99]. There is a related policy[100] which seeks clear identification of extensions to urban areas by "design solutions to avoid sprawling development along the roads of the district". The open space and recreation policies require provision of open space and recreation reserves[101].

[59] The energy efficiency objective[102] in Chapter 4.5 has policies promoting "compact urban forms which reduce the length of and need for vehicle trips"[103] and the "compact location" of community, commercial, service and industrial activities, reduction of "the length of and need for vehicle trips"[104], and encouraging sufficiently large residential sites to enable solar energy to be generated for heating[105]. Other relevant objectives and policies relate to natural hazards[106].

[60] Chapter 4.9 on urban growth was the subject of a good deal of evidence and lengthy submissions so we outline its provisions and the arguments raised, in the next subpart of this decision.

[61] More recently the Council has identified a need for "affordable housing" and introduced a plan change ("PC24") to assist in its provision. The definition of that term is not provided, but from the context it appears to refer to relatively inexpensive housing for "low and moderate income households". Chapter 4.10 of the district plan — Affordable and Community Housing[107] — provides this objective[108]:

> Objective 1 Access to Community Housing or the provision of a range of Residential Activity that contributes to housing affordability in the District.

[62] The implementing policies are[109]:

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98 Policy (4.2.5) 6(a) [Queenstown Lakes District Council Plan p 4-11].
99 Policy (4.2.5) 6(c) [Queenstown Lakes District Council Plan p 4-11].
100 Policy (4.2.5) 7 [Queenstown Lakes District Council Plan p 4-11].
101 Objective (4.4) 1.1 [Queenstown Lakes District Council Plan p 4-24].
102 Objective (4.5.3) 1 [Queenstown Lakes District Council Plan p 4-29].
103 Policy (4.5.3) 1.2 [Queenstown Lakes District Council Plan p 4-29].
104 Policy (4.5.3) 1.3 [Queenstown Lakes District Council Plan p 4-29].
105 Policy (4.5.3) 1.3 [Queenstown Lakes District Council Plan p 4-29].
106 Objective (4.8.3) 1 [Queenstown Lakes District Council Plan p 4-49].
107 Added by Environment Court consent order dated 17 July 2013 in *Infinity Investment GH Ltd v Queenstown Lakes District Council* (ENV-2009-CHC-46).
108 Objective (4.10.1) 1 [Queenstown Lakes District Council Plan p 4-59].
109 Policies (4.10.1) 1.1 to 1.3 [Queenstown Lakes District Council Plan p 4-59].

1.1 To provide opportunities for low and moderate income Households to live in the District in a range of accommodation appropriate for their needs.

1.2 To have regard to the extent to which density, height, or building coverage contributes to Residential Activity affordability.

1.3 To enable the delivery of Community Housing through voluntary Retention Mechanisms.

Residential areas (Chapter 7)

[63] Chapter 7 is concerned with residential and proposed residential areas (not merely zones) and so, if applicable – and AWI belatedly challenged this in its closing submissions – it is relevant. We outline its relevant provisions in part 3.3 below.

Special zones (Chapter 12)

[64] The final particularly relevant chapter is Chapter 12 of the QLDP, since that is the proposed home for the Northlake Zone's provisions. Chapter 12 — Special Zones — is introduced with the statement that[110]: "There are areas within the district, which require Special Zones." Residential zones are expressly included. PC45 is designed to be such a special "residential" zone in Chapter 12. It proposes its own suite of objectives, policies and rules.

[65] PC45 also suggests some consequential changes to rules in Chapters 14 (Transport) and 15 (Subdivision) of the operative district plan.

3.2 Subchapter 4.9: urban growth

[66] Subchapter 4.9 manages urban growth within the district. Of the eight urban growth objectives in Chapter 4.9, five are relevant (another relates to visitor accommodation[111] and the remaining two are site specific[112]). It is useful to see the relevant objectives together. They are:

> Objective 1 - Natural Environment and Landscape Values
>
> Growth and development consistent with the maintenance of the quality of the natural environment and landscape values.

110 Para 12 Introduction [Queenstown Lakes District Council Plan p 12-1].

111 Objective (7.9.3) 5 [Queenstown Lakes District Council Plan p 4-56].

112 Relating to Frankton Flats [Objective (4.9.3) 6] and the Wanaka Airport [Objective (4.9.3) 8] respectively.

Objective 2 - Existing Urban Areas and Communities

Urban growth which has regard for the built character and amenity values of the existing urban areas and enables people and communities to provide for their social, cultural and economic well being.

Objective 3 - Residential Growth

Provision for residential growth sufficient to meet the District's needs.

Objective 4 - Business Activity and Growth

A pattern of land use which promotes a close relationship and good access between living, working and leisure environments.

Objective 7 - Sustainable Management of Development

The scale and distribution of urban development is effectively managed.

[67] Two of the objectives — 3 and 7 — on urban growth in Chapter 4.9.3 are formulaic: they give decision makers directions about which dimensions of growth should be managed but not how. Objective 3 is to provide for "residential growth sufficient to meet the District's needs" and Objective 7 is to manage effectively the "scale and distribution" of that growth. (We agree with Mr Goldsmith and Mr Serjeant[113] that "scale" seems to refer to the volume of growth and "distribution" to its location). The words "sufficient" and "needs" in Objective 3 are not so straightforward.

Objective 3 Residential Growth

[68] There was considerable uncertainty at the hearing and submissions afterwards as to the meaning of "sufficient". Mr Goldsmith submitted for Northlake that it is a minimum. "Sufficient" is defined in The Shorter Oxford English Dictionary[114] as meaning "of a quantity, extent or scope adequate to a certain purpose or object". We consider that when "sufficient" is used without "necessary" — as in "necessary and sufficient" — then it is close to but something less than a maximum. Counsel for AWI submitted that the goal is to accommodate urban growth through "policies of consolidation"[115]. We pause to note that consolidation in the QLDP is directed at the

113 Transcript p 278-279.

114 The Shorter Oxford English Dictionary (Third Edition, 1985 OUP) page 2180.

115 AWI's closing submissions para 64 [Environment Court document 35].

distinction between urban and rural growth, and is rather different from the related concept of compactness (which is also important under the plan especially under the Energy objective discussed above). Counsel continued that "the use of the word sufficient" anticipated control over the scale and timing of urban growth. We accept that loose control is anticipated — but not more than that because of the enabling aspirations in the plan (Chapter 3) and in the implementing policies. So we accept the submission of counsel for AWI that the objective requires provision "for adequate residential growth".

[69] As for the "needs" referred to in Objective (4.9.3) 3, AWI took, with respect, a rather reductive position arguing in effect that the relevant needs are for zoned housing sections. For Northlake, Mr Goldsmith submitted that the needs are identified at length in other district-wide objectives. We consider that neither is fully correct, although Mr Goldsmith is closer: the needs are identified in objectives but also in policies and explanations. We will collate and summarise these later since the question of the community's "needs" arises repeatedly.

Objective 7 Sustainable Management of Development

[70] Objective (4.9.3) 7 and its policies were amended[116] by plan change 30, which became operative on 13 June 2012[117]. Because this objective and its policies were central to the appellant's case, we set them out in full[118]:

> Objective 7 Sustainable Management of Development
>
> The scale and distribution of urban development is effectively managed
>
> Policies:
>
> 7.1 To enable urban development to be maintained in a way and at a rate that meets the identified needs of the community at the same time as maintaining the life supporting capacity of air, water, soil and ecosystems and avoiding, remedying or mitigating any adverse effects on the environment.
>
> 7.2 To provide for the majority of urban development to be concentrated at the two urban centres of Queenstown and Wanaka.

116 Objectives (4.9.3) 5 and 6, respectively relating to Visitor Accommodation and the Frankton Flats (in the Wakatipu Basin), are irrelevant to this proceeding.

117 We note that PC29 supplied further policies to Objective (4.9.3) 7 which became operative on 21 May 2015. However, they are irrelevant because they relate to Arrowtown.

118 Objective (4.9.3) 7 [Queenstown Lakes District Council Plan p 4-57].

7.3 To enable the use of Urban Growth Boundaries to establish distinct and defendable urban edges in order to maintain a long term distinct division between urban and rural areas.

7.4 To include land within an Urban Growth Boundary where appropriate to provide for and contain existing and future urban development, recognising that an Urban Growth Boundary has a different function from a zone boundary.

7.5 To avoid sporadic and/or ad hoc urban development in the rural area generally. To strongly discourage urban extensions in the rural areas beyond the Urban Growth Boundaries.

7.6 To take account of the following matters when defining an Urban Growth Boundary through a plan change:

7.6.1 Part 4 district-wide objectives and policies

7.6.2 The avoidance or mitigation where appropriate of any natural hazard, contaminated land or the disruption of existing infrastructure.

7.6.3 The avoidance of significant adverse effects on the landscape, the lakes and the rivers of the district.

7.6.4 The efficient use of infrastructure, including transport infrastructure, and its capacity to accommodate growth.

7.6.5 Any potential reverse sensitivity issues, particularly those relating to established activities in the rural area.

7.7 To ensure that any rural land within an urban growth boundary is used efficiently and that any interim, partial or piecemeal development of that land does not compromise its eventual integration into that settlement.

7.8 To recognise existing land use patterns, natural features, the landscape and heritage values of the District and the receiving environment to inform the location of Urban Growth Boundaries.

[71] The Implementation Methods are[119]:

Objective 7 and associated policies will be implemented through a number of methods:

i District Plan Methods

Through plan changes that identify Urban Growth Boundaries within which effective urban design is encouraged.

119 Queenstown Lakes District Council Plan p 4-57.

ii Other Methods Outside the District Plan

(a) Confining the provision of new public urban infrastructural services exclusively to urban areas.

(b) Monitoring of land availability, development trends and projecting future growth needs.

(c) The use of Structure Plans to implement or stage development growth areas.

(d) Community Plans to identify local characteristics and aspirations.

(e) Studies and management strategies.

[72] AWI put a great deal of weight on Objective (4.9.3) 7 and its implementing policies. Its case included two legal arguments which we should consider here. The first was a jurisdictional argument that in the absence of an UGB the court could not even consider PC45; the second was an argument that PC30 imposed a gate which proposed PC45 could not pass: unless there is evidence identifying needs for sections or zoned land in Wanaka, PC45 cannot pass "Go". Mr D F Sergeant accepted[120] that was his position when cross-examined by Mr Goldsmith.

[73] There were two main threads to the jurisdictional argument raised by counsel for AWI. First they referred to the direction of Policy (4.9.3) 7.5 which "strongly discourages" urban growth in the absence of or outside an UGB. Counsel for AWI submitted this raised a jurisdictional bar: because there is no UGB for Wanaka PC45 could not succeed. We hold that is incorrect, since it effectively reads the relevant part of Policy 7.5 as "To avoid (or prohibit) urban extension in the rural areas …". A policy 'to strongly discourage' is close to but is not a directory policy as was the 'avoidance' policy in the NZCPS — the subject of the Supreme Court's decision in *EDS v NZ King Salmon*[121]. A discouragement policy — even when a strong one — still permits an applicant to request a plan change. While it is unfortunate that Northlake did not put forward a proposed UGB as part of PC45, the absence of an UGB is not fatal. The district plan expressly recognises that an UGB has "… a different function from a zone boundary"[122].

120 Transcript p 237 line 14.

121 *EDS v NZ King Salmon* (supra footnote 1) (SC).

122 Policy (4.9.3) 7.4 [Queenstown Lakes District Council Plan p 4-57].

[74] Second, counsel submitted that "absent … an [UGB], … provision for new urban zoned land within Wanaka does not find support in Part 4.9 of the Plan"[123]. They asked "how the court could know which policies apply until it knows where the UGB is"? Counsel compared this case with *Monk v Queenstown Lakes District Council Ltd*[124] ("*Monk*") where the court would not resolve a rezoning until it established where the UGB should be for Arrowtown. We find that there are quite large differences between this case and the Arrowtown situation before the court in *Monk*. Here PC45 is designed to fit within the district plan as part of Chapter 12. In the Arrowtown situation there were two plan changes before the court:

- PC29 which (rather confusingly) was a Council change adding some further (Arrowtown specific) policies to Objective (4.9.3) 7 as already amended by PC30; and
- PC39 which was a private plan change in respect of rural land immediately south of Arrowtown.

[75] In the Arrowtown situation the court decided that PC29 should be resolved first and did so — see *Monk v Queenstown Lakes District Council*[125] — and only then resolved the appeals on PC39 in *Cook Adams Trustees Ltd v Queenstown Lakes District Council*[126]. Among other important distinguishing factors between the Arrowtown and Northlake situations, is that PC30 sought to introduce both specific "district-wide" policies to implement Objective (4.9.3) 7 in relation to Arrowtown and an UGB for Arrowtown. Clearly, the wording of the policies had to be resolved and the UGB established before any rezoning under the later PC39 could be decided upon.

[76] If the Council had notified its PC20 (proposing an UGB for Wanaka) then the situation might have been different. However it did not. Nor is it correct that we cannot know what policies apply to PC45: very few substantive policies in the district plan (none in Chapter 7 and few in Chapter 4) contain references to urban growth boundaries, so there is a plethora of guidance in the District Plan. Further, as we shall see, there is

123 AWI's submissions dated 24 April 2015 para 6 [Environment Court document 35].
124 *Monk v Queenstown Lakes District Council Ltd* [2013] NZEnvC 12.
125 *Monk v Queenstown Lakes District Council* [2013] NZRMA 12.
126 *Cook Adams Trustees Ltd v Queenstown Lakes District Council* [2014] NZRMA 117.

some guidance about a proposed UGB in the vicinity of the site in the Wanaka Structure Plan.

[77] Turning to the application of Objective (4.9.3) 7, it is, as we have already observed, substantively empty. It is a formula requiring "effective" management of the scale and location of urban development, but what is to be achieved by that is left open by the objective itself. We hold that this objective is mechanistic — it is aimed at managing the scale and location of development so as to achieve the other district-wide objectives for urban growth in Chapter 4.9. Its implementing policies should be read in that light. Policy (4.9.3) 7.1 largely repeats earlier objectives[127]. Policies (4.9.3) 7.3[128] and 7.4 together with 7.6 and 7.8 provide a mini-scheme for the identification of Urban Growth Boundaries (now a defined term in the QLDP). Lastly, Policy (4.9.3) 7.7 is a transitional provision which we will refer to later when assessing the risks of the options open to us.

What housing related needs are identified in Chapter 4?

[78] The three relevant substantive objectives in Chapter 4.9 identify some of the needs to be satisfied:

(1) the first need identified in Chapter 4.9 of the district plan is to enable people and communities to provide for their social, cultural and economic wellbeing (Objective (4.9.3) 2). That is obviously a primary set of needs because it reflects section 5(2) of the RMA. We note too that the objective suggests any management of that need is obliged to be relatively light-handed and flexible because the district plan is not "... to provide for people's wellbeing" but to enable people and communities to provide for their own.

(2) the second need is [Objective (4.9.3) 1] to provide for urban growth and development consistent with the quality of the natural environment and landscape values. New Zealand citizens generally, and Queenstown Lakes residents in particular, are fortunate that their basic needs are (with a few

127 Specifically Objective (4.9.3) 3 (residential growth sufficient to meet the District's needs) and Objective (4.2.1) (adverse effects on landscape and visual amenity values).

128 This policy is not easy to understand: it has an enabling aspect (*Monk* [2013] NZEnvC 12 at [90]) and a restrictive component (*Monk* at [26]).

exceptions) well provided for and they have the fortunate need to protect their landscape values.

(3) the third need in Chapter 4.9 is to promote (again a non-prescriptive word) a close relationship and good access between living, working and recreation.

(4) we also note that other needs are set out in the objectives in Chapter 4.1 to 4.8 and 4.10 of the district plan and we summarised those very briefly earlier.

[79] The introduction to the "Issues" for urban growth states that "it is not possible to be precise about the level of growth to be planned for"[129] and then the statements of issues, policies and explanations elaborates on these needs:

- to have "the lifestyle preferences of the District's present and future population"[130] provided for;
- to manage the identity, cohesion and wellbeing of existing communities[131];
- "... enabl[ing] people and communities to provide for their .... wellbeing"[132] including "... commonality of aspirations, outlook, purpose and interests"[133].

Mr Goldsmith cross-examined Mr Sergeant at some length on these and other provisions in the district plan relating to needs, obtaining a concession in respect of each "need" and the provision relating to it that there was "no sense of limitation[134]" in any of them.

[80] We conclude that Chapter 4 and in particular subchapter 4.9 in the district plan are not strongly "interventionist"[135] about urban extensions or, at least, not as strongly as AWI suggests they are. That is because:

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129 4.9.2 Issues [Queenstown Lakes District Council Plan p 4-52].
130 Issue 4.9.2 (b) [Queenstown Lakes District Council Plan p 4-52].
131 Issue 4.9.2 (c) [Queenstown Lakes District Council Plan p 4-52].
132 Objective (4.9.3) 2 [Queenstown Lakes District Council Plan p 4-53].
133 Explanation to Objective (4.9.3) 2 [Queenstown Lakes District Council Plan p 4-54].
134 Specifically at Transcript p 268 lines 25 to 28 but more generally pp 264 to 273.
135 Submissions for AWI dated 24 April 2015 para 56 [Environment Court document 35].

(1) the objectives in Chapter 4 and their implementing policies have consistent themes of enabling opportunities for a complete range of urban and residential needs and aspirations;

(2) the quantity (scale) of urban development to be enabled (not "set") can only be quantified in very loose terms and in areas rather than in notional allotments, at least when considering a plan change;

(3) in essence the point of Policy (4.9.3) 7.1 is to enable urban development by using one of the implementation methods appropriately — either as residential or as special zones — so that landowners and developers are able to subdivide and develop their land at rates and in locations which meet the multifarious needs of the community (while meeting the bottom lines).

[81] We see only a general requirement for a requestor for a plan change to demonstrate that there is a shortfall in the current rate and quantity supplied of these needs precisely because of their broad and varied nature. In any event the question whether Policy (4.9.3) 7.1 is implemented is a matter of facts, predictions and opinion in specific contexts not simply a question of law. So in relation to the second legal argument[136] raised for AWI about Objective (4.9.3) 1, we hold that it is incorrect that the policy imposes with any precision a threshold as to the rate or scale of development which must be passed by a plan change.

3.3 The objectives and policies for residential areas (Chapter 7 of the district plan)

District-wide provisions

[82] Chapter 7 (Residential areas) of the district plan expressly includes further "district-wide" residential objectives and policies[137]. The first three of the four district-wide residential objectives — relating to availability of land, residential form and residential amenity respectively — are relevant. The first (Chapter 7) objective[138] — availability of land — is to provide sufficient i.e. adequate land to provide a diverse range of residential opportunities. It is important to understand what the plan requires a

136 See para [72] above.

137 Heading 7.1.2: District Wide Residential Objectives and Policies [Queenstown Lakes District Council Plan p 7-3].

138 Objective (7.1.2) 1 [Queenstown Lakes District Council Plan p 7 -3].

sufficiency of. In this more detailed objective it is an adequate supply of land to provide for a diverse range of residential opportunities.

[83] The first implementing policy is[139] "to zone sufficient land to satisfy demand for anticipated residential (and visitor) accommodation". The district plan appears to be intending to use the language of economics here. It does not do so very clearly. The only straightforward meaning to be taken from the policy in its context is that the Council seeks to zone sufficient land to satisfy the quantities of different types of sections/houses demanded by the various submarkets in housing. Most sections or houses are not ready substitute goods for others — that is why specific performance is a remedy for breach of contract in relation to land. So to satisfy demand requires identification of the demand relationships (curves) between the quantity demanded and the price per section for the residential allotment market of the District as a whole and for submarkets within and around Wanaka in particular. That would involve consideration of the type, characteristics and quantity of allotments demanded and of the factors that cause shifts in demand (and in supply). To zone an adequate (or sufficient) area of land requires far more than summation of the number of potential allotments.

[84] New residential areas are to be enabled[140] but in areas which "... have primary regard to the protection and enhancement of the landscape amenity"[141] and to assist that, a distinction is to be maintained between urban and rural areas.

[85] Compact growth is to be "promoted"[142], which leads to the second (Chapter 7) district-wide residential objective[143] (residential form). That focuses on compact "residential form" as distinguished from the rural environment. "Compact" here is a relative term: it is used to distinguish the consolidated urban environments from rural areas. Its first two policies are complementary. Policy (7.1.2) 2.1 seeks to limit peripheral, residential expansion[144]. Policy (7.1.2) 2.2 is to limit the spread of rural living and township areas, and to manage that expansion having regard to "the important district-wide objectives" (presumably those in Chapter 4). A further policy requires

139 Policy (7.1.2) 1.1 [Queenstown Lakes District Council Plan p 7-3].
140 Policy (7.1.2) 1.2 [Queenstown Lakes District Council Plan p 7-3].
141 Policy (7.1.2) 1.2 [Queenstown Lakes District Council p 7-3].
142 Policy (7.1.2) 1.3 [Queenstown Lakes District Council Plan p 7-3].
143 Objective (7.1.2) 2 [Queenstown Lakes District Council Plan p 7-4].
144 Policy (7.1.2) 2.1 [Queenstown Lakes District Council Plan p 7-4].

development forms to provide for increased residential density[145], at least in new residential areas, and "careful use of topography"[146]. We consider that the relevant policies for this proceeding are Policies (7.1.2) 2.1 and 2.4 since this proceeding is about the outward spread of existing residential areas, rather than about townships or rural living areas.

[86] The third objective — residential amenity — is to provide "pleasant living environments within which adverse effects are minimised while still providing the opportunity for community needs [to be satisfied]"[147]. Again the implementing policies appear to be relevant, so we will discuss them later.

Residential objectives and policies for Wanaka

[87] Moving down a tier in the internal hierarchy of objectives and policies, Chapter 7.3 of the district plan recognises the town of Wanaka as the second largest residential area in the district[148]. There is one relevant specific objective for Wanaka[149]:

> 1. Residential and visitor accommodation development of a scale, density and character within sub zones that are separately identifiable by such characteristics as location, topology, geology, access, sunlight or views.

In that objective, the phrase "... scale, density and character" is left hanging. In our view it generally refers back to the first three district-wide objectives in Chapter 7 which, it will be recalled, relate to availability of land, residential form and residential amenity respectively.

[88] The most relevant implementing policies are to provide[150] for some peripheral expansion of existing residential areas in Wanaka (and Albert Town), while retaining their consolidated form, and to organise[151] residential development around

145 Policy (7.1.2) 2.4 [Queenstown Lakes District Council Plan p 7-4].
146 Policy (7.1.2) 2.4 [Queenstown Lakes District Council Plan p 7-4].
147 Objective (7.1.2) 3 [Queenstown Lakes District Council Plan p 7-4 and 7-5]. The words in square brackets must be implied.
148 Para 7.3.1 [Queenstown Lakes District Council Plan p 7-13].
149 Objective (7.3.3) 1 - 4 [Queenstown Lakes District Council Plan p 7-13].
150 Policy (7.3.3) 1 [Queenstown Lakes District Council Plan p 7-14].
151 Policy (7.3.3) 4 [Queenstown Lakes District Council Plan p 7-14].

neighbourhoods separate from areas of predominantly visitor accommodation development.

3.4 Summary

What are the most relevant objectives and policies for PC45?

[89] The urban growth objectives of the district plan are, as observed by Mr Serjeant, rather confusingly found in several places within the district plan. We hold that there are three levels of substantive policy about such development. From the general to the specific they are:

1. district-wide objectives and policies in Parts 4.2, 4.4, 4.5 and 4.9 of the district plan;
2. the "district-wide" residential areas objectives and policies in Chapter 7.1;
3. the Wanaka provisions in Part 7.3.

In resolving which are the most relevant policies we must approach the operative district plan as a coherent whole: *J Rattray and Sons Ltd v Christchurch City Council*[152] per Woodhouse J. We must also avoid the trap of "... conclud[ing] too readily that there is a conflict between particular policies and prefer one over another, rather than making a thorough ... attempt to find a way to reconcile them" as Arnold J stated in *EDS v NZ King Salmon*[153]. On the other hand, later more specific objectives and policies should be applied rather than earlier more general ones (that is the "particularisation" approach working within a district plan) if that is what the scheme of the plan suggests.

[90] We hold that the most particular and therefore the most relevant objectives and policies and therefore those under which PC45 must be considered are:

(1) the Wanaka provisions in Chapter 7.3 and (to the extent they are limited or uncertain);
(2) the district wide objectives and policies in Chapter 7.1.

152 *J Rattray and Sons Ltd v Christchurch City Council* (1984) 10 NZTPA 59 (CA) at 61.
153 *EDS v NZ King Salmon* (supra footnote 1) (SC) at [131].

[91] In the situation before us it is arguable that the QLDP does not require us to look at any of the more general district wide objectives and policies in Chapter 4 generally (except where Chapter 7 contains a direction to go to Chapter 4 or is deficient). However, we should recognise that in fact many of the relevant (amended) provisions in Chapter 4.9 came into force over 10 years later than Chapter 7, so there is some uncertainty over whether Chapter 7 truly carries out the intentions of Chapter 4.9. Further, Chapter 4.10 certainly post-dates Chapter 7. We will therefore consider Chapter 4.9 and 4.10 as part of our analysis. In effect that brings in much of the relevant parts of Chapter 4.

[92] We discuss the extent to which PC45 is effective in implementing the objectives and policies of the QLDP from the bottom up i.e. under Chapter 7 first (part 4 of this decision) and then under Chapter 4 QLDP (part 6 of this decision). In between we consider the urban design evidence (in part 5) separately because much of the urban design evidence lacked grounding references to the district plan.

4. How effective is PC45 in implementing Chapter 7 of the QLDP?

4.1 Where should urban development occur at Wanaka (and on the site)?

[93] The most specific relevant provisions in the QLDP are in Chapter 7 and they expressly encourage[154] some peripheral urban growth at Wanaka (town). The district-wide policies in Chapter 7 also look at where urban development should be in two ways, first by considering the potential adverse effects of urban development on landscape and rural values; and second by examining potential adverse effects of sprawl on urban amenities. The first looks out into the superb country sides of the district, the second back into nearby residential development.

[94] As to the first, residential growth is to be enabled in areas which have "primary regard to the protection and enhancement of the landscape amenity"[155] and is to maintain a distinction between urban areas and rural areas to assist protection of the quality of the surrounding environment[156]. There was little suggestion in AWI's

154 Policy (7.3.1) 1 [Queenstown Lakes District Council Plan p 7-14].
155 Policy (7.1.2) 1.4 [Queenstown Lakes District Council Plan p 7-3].
156 Policy (7.1.2) 1.5 [Queenstown Lakes District Council Plan p 7-3].

evidence that these policies would not be implemented, and we are satisfied by Northlake's that they would be.

[95] As to the second — the effect of urban development — there is a range of implementing policies as to where development should occur. They are:

- to promote compact residential development[157];
- to contain the outward spread of residential areas and to limit peripheral expansion[158];
- to provide for increased residential density and "careful use of the topography"[159].

In Mr Edmond's opinion[160], Northlake's zone maintains the compact form of Wanaka. At first sight that is plausible. The outward spread of residential areas is clearly limited by (ultimately) the Clutha River and, to the south of that, the ONL line agreed by the landscape experts. For AWI Mr Munro gave a detailed analysis of why, in his opinion, PC45 does not achieve compact development. We examine that evidence under *Urban design* below because he tends to use "compactness" in a more general way than the district plan often does. We record that otherwise there was little or no specific criticism by the witnesses of Northlake's use of the topography of the site when setting out the Activity Areas.

4.2 How much development (if any) on the Northlake land?

[96] The relevant specific Wanaka objective[161] is poorly worded, and leaves open the "scale" of residential development, so that the district-wide objectives in Chapter 7 need to be referred to. The relevant district-wide objective[162] is to provide "sufficient land … for a diverse range of residential opportunities for the District's present and future urban populations"; and the implementing policy is "to zone sufficient land to satisfy … anticipated residential demand"[163].

157 Policy (7.1.2) 1.3 [Queenstown Lakes District Council Plan p 7-3].
158 Policy (7.1.2) 2.1 [Queenstown Lakes District Council Plan p 7-4].
159 Policy (7.1.2) 2.4 [Queenstown Lakes District Council Plan p 7-4].
160 J B Edmonds evidence-in-chief para 6.8.16 [Environment Court document 14].
161 Objective (7.3.3) 1 [Queenstown Lakes District Council Plan p 7-13].
162 Objective (7.1.2) 1 [Queenstown Lakes District Council Plan p 7-3].
163 Policy (7.1.2) 1.1 [Queenstown Lakes District Council Plan p 7-3].

[97] The direct evidence-in-chief for Northlake on this was very brief and not very helpful. Mr Edmonds wrote[164]:

> I note that both the objective and Policy 2.1 use the term 'sufficient land', which I interpret to mean that the Council should always maintain an over-supply of appropriately zoned land. This objective looks at providing for both current as well as future generations, consistent with Section 5. I do not consider that there is a good resource management reason to limit or stage the supply of residential zoned land in this particular case.

That may be, as we shall see, nearly correct — except we would not use the term "over-supply"[165] — but in view of the Council's section 42A report (produced by Ms Jones) and Mr Munro's 2013 report Mr Edmonds should have expanded on his reasons for this.

[98] Much of AWI's evidence is relevant to the question of whether PC45 implements what we hold to be the applicable policies in Chapter 7.1. First Mr Munro gave evidence that there is already sufficient land zoned residential to satisfy future demand. Second, in his opinion, if more houses are needed, there are better areas around Wanaka to zone for them. On the first point Mr Munro wrote[166]:

> If PC45 proceeded and accommodated 1,520 units ... over the next 20 years this may lead to remaining zoned areas in Wanaka achieving as little as 14% uptake in that period. That is not effective or efficient for those zoned areas, and would not achieve what I could describe as a "compact" outcome for Wanaka. I could not support it in urban design terms.

Identifying the demand for sections (of different types)

[99] One difficulty with Policy (7.1.2) 1.1 is that it tends to suggest that there is a single residential demand for "accommodation". Mr Meehan gave evidence of demand for different housing types in both the Wakatipu Basin and in the Northlake area[167]. In the absence of evidence to the contrary, we accept that evidence. There may very likely be demands for different quantities of apartments, small households, holiday homes, houses for low income households, middle income households, and wealthy households

164 J B Edmonds evidence-in-chief para 6.8.15 [Environment Court document 14].
165 An "over-supply" simply tends to cause prices to drop (causing a movement in the quantity demanded) which most consumers in NZ would think is desirable.
166 I C Munro evidence-in-chief para 2.5 [Environment Court document 17].
167 C S Meehan evidence-in-chief and rebuttal [Environment Court documents 7 and 7A].

etc. Further, each of the markets for those different (and other) types of households may be segmented further depending on the desires of the aspiring owners in relation to location, views, topography and other factors. The list of "needs" we have identified in the QLDP shows that it is alive to these complexities.

[100] Despite the criticism of Mr Meehan's subjectivity we find his evidence, read with that of Northlake's other witnesses, shows that Northlake would supply a range of different section types and houses which are not currently (on the evidence before us) for sale in any quantity at Wanaka. The areas in Meadowstone Drive and West Meadows Drive in the south-west of Wanaka may provide similar sections but we had no evidence as to the specific quantities actually on the market.

[101] In contrast we have doubts about the Council's 2013 model relied on by AWI's witnesses. That starts by purporting to "... identify a 2011-2031 twenty year demand for houses and holiday homes of 2,302"[168]. Then in his 2013 report Mr Munro stated[169]:

> The Council's model identifies that there is current capacity for 5,686 units in the Wanaka CAU, more than sufficient to meet this .... demand.

We note that, unlike the QLDP, the 2013 model is using economic language loosely. It uses "demand" when the context shows it is attempting to predict the quantity of (general, undifferentiated) units demanded.

[102] Mr Munro showed that he was aware of the submarket's identification problem — not treating all allotments (ice creams)[170] as if they are the same (vanilla), when there are in his view at least two different section types (vanilla and chocolate) — when he continued[171]:

> Even if a reduced supply of land for units broadly "comparable" to those proposed in PC45 of 50% total capacity is used (2,843 units), there is still sufficient capacity to fully accommodate predicted growth without the need for any up zoning of the PC45 land at all.

168 I C Munro evidence-in-chief Appendix 2 para 4.30 [Environment Court document 17].
169 I C Munro evidence-in-chief Appendix 2 para 4.31 [Environment Court document 17].
170 The reason for the metaphor will become apparent shortly.
171 I C Munro evidence-in-chief Appendix 2 para 4.31 [Environment Court document 17].

However, no basis was given by Mr Munro for his proposition that 50% of the available zoned "units" are similar to those in PC45. Indeed even within the PC45 site, not all areas are proposed to have the same housing typology — to the contrary, as we described in part 1 of this decision.

[103] Ms Jones referred to the Council's Special Housing Accord (October 2014), which states that[172]:

> In this Accord, the targets are focuses on the Wakatipu Basin, given its strong projected population and employment growth over the life of the Accord, together with the fact that land supply constraints are significantly greater than in the Upper Clutha.

She relied on that as supporting her opinion that there is "no hard evidence presented that … Wanaka is suffering from a constrained residential land supply …"[173]. With respect to Ms Jones, the Council's document does imply that there are land constraints in the Upper Clutha. Its point is only that those constraints are "significantly" lesser around Wanaka than they are in the Wakatipu Basin.

[104] Further, there is an air of unreality about AWI's evidence. Almost[174] all zones which restrict housing cause constraints in the quantity supplied — usually for a good resource management reason. In this district it is to protect outstanding natural landscapes and features and visual amenities. Elsewhere and more controversially they are used as de facto congestion controls since local authorities do not have the powers to impose congestion charges. Planners and urban designers are generally incorrect to suggest there is no evidence of constraints when zoning structures tend automatically to impose constraints on the quantity of houses that can be supplied (and that of course affects prices and hence affordability). However, we put no weight on the matters raised in this paragraph because they were not put to the witnesses.

[105] There is also evidence — discussed shortly — from several witnesses (Mr Edmonds, Mr Meehan and Mr Barratt-Boyes) for Northlake as to the ways in which the

172 http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Strategies-and-Publications/Queenstown-Lakes-District-Housing-Accord.PDF
173 V S Jones statement-of-evidence para 4.20 [Environment Court document 16].
174 We are being cautious: in fact we can think of no exceptions.

site will provide "products" (sections) which are different from elsewhere in Wanaka. That suggests there is further segmentation into submarkets than Mr Munro allowed for. Having asserted the Northlake sections are different, we hold that Northlake did not have to prove more unless AWI produced evidence to the contrary. An assertion of broadly 'comparable' units is insufficient.

The planning horizon

[106] Time (and timing) is an important element in the assessment of the adequacy of the quantity of sections supplied to the market. Mr Serjeant wrote that "the longest time period for which the[e] supply must be adequate is 10 years"[175], referring to the RMA's requirement[176] that district plans are to be reviewed every 10 years. In fact, as we have recorded, Mr Munro considered that there is enough zoned land to supply new household demand for 20 years.

[107] In reply Mr Edmonds considered it was appropriate to plan for a longer period for several reasons of which we consider two are relevant: first, because Wanaka is growing "exceptionally fast"[177] (28.3% between 2001 and 2013), and second, because elsewhere in the district the Council has adopted long planning horizons. Mr Edmonds cited Alpha Ridge at Wanaka, and Kelvin Heights, Jacks Point, Frankton and "areas of 'commonage' land around the edge of Queenstown's CBD"[178]. He did not identify any adverse effects or blight associated with those areas and he was not cross-examined on that.

Differentiating points and submarkets

[108] A further (minor) aspect of Mr Munro's analyses which concerned us was his reference to[179]:

> The general premise that land supply is one factor that influences the cost (distinct from price) of housing, and that to ensure the lowest possible costs it is desirable to have a surplus of developable land available controlled by commercial competitors motivated to release product in

175 D F Serjeant evidence-in-chief para 31 [Environment Court document 18].
176 Section 79 RMA.
177 J B Edmonds rebuttal evidence-in-chief para 4.4(a) [Environment Court document 14A].
178 J B Edmonds rebuttal evidence-in-chief para 4.4(c) [Environment Court document 14A].
179 I C Munro evidence-in-chief p 28 [Environment Court document 17].

> the short term and inclined to lower prices against each other as the primary means of product differentiation.

[109] Our concern was substantiated by the urban designer for Northlake, Mr G N Barratt-Boyes, in his rebuttal evidence when he wrote[180]:

> ... there are a myriad of factors that make any new residential area more desirable than others. Often the proximity to schools, shops, amenity, open space, cultural and civic amenities, community facilities and character of the neighbourhood itself have a direct bearing on this decision. Affordability is also a key driver.

In the last sentence he agrees with Mr Munro, but unlike Mr Munro he has identified some of the other relevant factors that go into buyers' choices. We add that there was an exchange between the court and a second planner called by Northlake, Mr J A Brown, where he confirmed[181] that normal quantity supplied and price relationships apply in the markets for sections. He too quite properly tried to quantify his answer by saying[182] that differences in location and attributes also affect the relationship.

[110] In Mr Barratt-Boyes opinion[183]:

> PC45 provides choice, affordability and diversity as a new neighbourhood within the wider Wanaka area. It also offers a lifestyle choice and point of difference to other potential residential areas, proposed or existing.

We accept that evidence because it addresses the issue of the needs of people and community as identified in the district plan. Our difficulty with Mr Munro's position is again the air of unreality: he seems to have given little thought to the implications of *location, location, location*[184]. Location is a primary differentiator of one section from another.

[111] We also consider Mr Munro is wrong on a matter of terminology: a product differentiator means that there are two non-substitute products and they may have two

180 G N Barratt-Boyes rebuttal evidence para 6.3 [Environment Court document 9A].
181 Transcript p 18 line 4.
182 Transcript p 18 lines 6 and 7.
183 G N Barratt-Boyes rebuttal evidence para 6.4 [Environment Court document 9A].
184 Apparently first used by a Chicago realtor in 1926.

quantity demanded versus price relationships (curves). In contrast a change in price will simply move the quantity of similar sections (products) sold by whoever has sections on the market. Indeed Mr Munro seemed to acknowledge this. In an answer to a question from the court[185] as to whether:

> … at least in the short-term, just supplying more lots so that you're adding to the quantity of lots supplied does, other things being equal (and they may not be), tend to drive the price down doesn't it?

— Mr Munro answered (eventually)[186]:

> What would really make a difference is the nature of the product being offered and so for instance if Northlake lots with their nice north facing slope with water views were compared with Three Parks lots which are a bit more working-class, flatter, more enclosed in, less of that amenity.

Conclusions

[112] We find (without difficulty) that market differentiators for land include — in addition to location — topography, size, views, aspect and vegetation (all complicated by time). Demand and supply relationships (curves) to price are for a notionally identical[187] good (in this case, sections) and simply show the theoretical relationship between the quantity demanded (or supplied and the price). Sections which differ will usually have different demand/supply relationships. For example, markets in top end sections (with outstanding views, lake frontage and sunny locations) will usually have inelastic demand relationships (the quantity demanded is relatively insensitive to price increases), whereas middle and lower income housing sections tend to be more elastic (so a small decrease in price may cause a significant increase in the quantity demanded and vice versa). In the light of those complexities as illustrated in the evidence of Northlake's witnesses, Mr Munro's analysis seems very simplistic. It is easy to envisage that the Three Parks and Orchard Road areas where he considered development is preferable might be supplying completely different products from Northlake. Indeed, that was the evidence for Northlake.

185 Transcript p 176 lines 1-4.
186 Transcript p 176 lines 19-23.
187 Or at least are for readily substitutable goods.

[113] There is also a wider resource management issue here which is that it is important not to confuse zoning with the quantity of sections actually supplied. Land may be zoned residential but that does not mean it is actually assisting to meet the quantity of sections demanded. Only sections for sale can do that. There is no direct relationship between the number of sections theoretically able to be cut out of land zoned residential and the number of sections actually on the market at any one time especially when — as in Wanaka — there are very few landowners with land zoned for residential activities.

[114] The policy about satisfying "residential demand"[188] is relevant and that must be read in the context of the objective it implements. That refers to supply of adequate land to provide for "a diverse range of residential opportunities". As all the witnesses appeared to agree, sections of different qualities are likely to be priced differently, which suggests any assessment of demand has to be assessed continuously. Since the factors that go into assessing quality are multifarious, any evidence of demand should at least assess the quantity demanded at different prices. Thus the objective means that residential demand must be assessed as the sum of the demands for a diverse range of section types. In order to supply the quantity of residential sections demanded at any given price, the quantity of zoned land might have to be very large in proportion to the quantities demanded and in a variety of different locations. We think that is probably what Mr Edmonds meant by an "oversupply". We note that Ms Jones seemed to agree with Mr Edmonds[189].

[115] We find that an excessive quantity of sections or houses is not being supplied to the market. The site, while not necessary to meet strict numerical growth predictions when price and all the other factors are disregarded (which in practice they never are), offers points of difference to other available or potentially available land. We conclude that Mr Munro considerably oversimplified the situation when he wrote[190]:

> I cannot imagine how in light of such a magnitude of supply over demand there is any foreseeable scenario where an "undersupply" of zoned residential land could eventuate in

188 Policy (7.1.2) 1.1 [Queenstown Lakes District Plan p 7-3].
189 V S Jones statement-of-evidence para 4.13 [Environment Court document 16].
190 Evidence of I C Munro para 5.16 and 2.17.

> Wanaka. Without PC45 or any other private plan change request that scenario would require approximately 5,500 households to locate in Wanaka within the next District Plan review period of approximately 10 years (when further land could be released as necessary). This would amount to over four times the growth rate currently predicted and is in my view fanciful.

[116] We prefer the evidence of Northlake's witnesses. We hold that PC45 effectively achieves the relevant objectives and policies of Chapter 7 of the district plan in respect to the provision of sufficient land for a diverse range of residential opportunities.

5. Does PC45 implement the urban design objectives and policies in the district plan?

5.1 Urban design in the district plan

[117] The QLDP contains the following relevant provisions expressly relating to urban design[191]:

(Chapter 4)

- "to identify clearly the edges of … extensions to [existing urban areas] by design solutions …"[192]

- …

  3.2 To encourage new urban development, particularly residential and commercial development, in a form, character and scale which provides for higher density living environments and is imaginative in terms of urban design and provides for an integration of different activities, e.g. residential, schools, shopping[193].

  (and the explanation in the district plan is that a sustainable pattern of urban design ".... achieves cohesive urban areas through urban design that provides for efficient and effective network connectivity and coordination with existing systems …"[194]).

(Chapter 7)

- "to provide for and encourage new and imaginative residential development forms within the major new residential areas"[195].

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191 Several witnesses referred to the QLDC's *Urban Design Strategy* from 2009. However, that is not a document to which we must have regard so we have not considered it.

192 Policy (4.2.5) 7 [Queenstown Lakes District Council Plan p 4-11].

193 Policies (4.9.3) 3.1 to 3.4 [Queenstown Lakes District Council Plan p 4-54].

194 Explanation etc to Objective (4.9.3) 3 [Queenstown Lakes District Council Plan p 4-58].

195 Policy (7.1.2) 3.10 [Queenstown Lakes District Council Plan p 7-5].

- "to require an urban design review to ensure the new developments satisfy the principles of good design"[196].

  (the explanation[197] states:

  > Within the major new areas of residential zoning the Council strongly encourages a more imaginative approach to subdivision and development. The Council believes the quality of the District's residential environments would be significantly enhanced by design solutions that moved away from traditional subdivision solutions. In this respect the Council will be looking to encourage a range of residential densities, variations in roading patterns, imaginative use of reserves, open space and pedestrian and roading linkages, attention to visual outlook and solar aspect, and extensive use of planting).

We note that urban design as contemplated by the QLDP is largely internal to areas being developed. The outward looking factors are confined to design of edges of new urban areas, and to connectivity to and coordination with existing systems. However, for AWI's urban design witness Mr Munro, the subject seems to cover anything in the RMA that pertains to urban environments, and more.

5.2 Mr Munro's principles of urban design

[118] For AWI, Mr Munro referred to the NZ Urban Design Protocol 2005[198] as the basis for his work. He then described[199] how he has developed a standard urban design framework derived from a number of domestic and international authorities recognised as promoting best practice but varied to account for local circumstances. In summary, the key urban design principles relevant to PC45 in his opinion are as follows (we have footnoted what we consider are the principal relevant objectives and policies in the QLDP as we go through the list)[200]:

(a) to minimise resource, energy[201] and "environmental service inputs"[202] needed to enable wellbeing (this includes promoting public health);

(b) to be based on the most compact[203], mixed pattern of uses and networks possible;

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196 Policy (7.1.2) 3.13 [Queenstown Lakes District Council Plan p 7-5].
197 Explanation [Queenstown Lakes District Council Plan p 7-6 and 7-7].
198 A non-statutory document prepared by the Ministry for the Environment.
199 I C Munro evidence-in-chief para 4.1 [Environment Court document 17].
200 I C Munro evidence-in-chief para 4.2 [Environment Court document 17].
201 See Objective (4.5.3) 1 Efficiency [Queenstown Lakes District Plan p 4-29].
202 See Objective (4.9.3) 1 [Queenstown Lakes District Plan p 4-52].
203 See Policies (4.5.3) 1.2 [Queenstown Lakes District Plan p 4-29], Implementation method (4.9.3) 3(i)(a) [Queenstown Lakes District Plan p 4-54] and (Residential district-wide) Objective (7.1.2) 2 [Queenstown Lakes District Plan p 7-4].

(c) to minimise[204] the need for transport (by any mode) between activities;

(d) to maximise accessibility, diversity, and choice[205] for individuals and communities;

(e) to promote resilient, adaptable and long-term outcomes[206];

(f) to enhance local identity and character[207]; and

(g) to configure community investments to maximise "use" returns relative to capital and maintenance costs.

[119] We have several observations about Mr Munro's principles. The first is that they, like many collections of "principles" about urban design, contain pairs of principles that are at least in tension and may be in conflict in particular situations e.g. (b) and (d), (b) and (f), (c) and (g). Second and importantly, most of the principles are already largely contained in the district plan (as our footnotes show) but not under the heading "urban design" — see part 5.1 above. The exception is principle (g), for which we can find no Chapter 4 policy support.

[120] More generally, a difficulty with producing further "urban design" lists is that it is easy to substitute them for the matters with which we must be concerned — the relevant objectives and policies of the QLDP. We think that Mr Munro's list has caused him to skew the emphases in the plan. For example the only reference in his principles to ecosystems and the natural world which defines the edges of, urban places (this is important in the Queenstown Lakes District and in Wanaka in particular) is in the phrase "environmental service inputs". Another example is Mr Munro's "principle" that development "is to be based on the most compact, mixed pattern of uses and networks possible". That is incorrect. Compact growth is certainly promoted[208], but urban development is not based on the most compact pattern possible without regard to other considerations.

[121] Mr Munro's principles either omit or fail to emphasize a number of policies in the QLDP which are clearly relevant. Examples are:

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204 See Policy (4.5.3) 1.1 and 1.2 [Queenstown Lakes District Plan p 4-29].

205 See Objective (4.9.3) 1 [Queenstown Lakes District Plan p 4-53]; and Objective (7.1.2) 1 [Queenstown Lakes District Plan p 7-3].

206 See Policy (4.9.3) 3.2 [Queenstown Lakes District Plan p 4-54].

207 See Objective (7.3.3) 1 [Queenstown Lakes District Plan p 7-13].

208 "Promote compact urban towns" is the wording in Energy Policy (4.5.3) 1.1 [Queenstown Lakes District Plan p 4-29].

- the residential growth policy[209] to provide for lower density residential development in "appropriate areas";
- the policy to promote " a network of compact commercial centres which are easily accessible to, and meet the regular needs of residents of the surrounding residential environments"[210];
- the policy[211] "distinguish[ing] areas with … low density character from … [those] … located close to urban centres or transport routes where high density development should be encouraged"; and
- the subzone policy[212] specifically for Wanaka.

5.3 Urban design considerations for the site of PC45

[122] Returning to the express urban design considerations in the QLDP, the first related to establishing the boundaries of the site. Particularising the district-wide policy requiring identification of the urban edge of (in this case) Wanaka by a design solution[213], the relevant Wanaka objective provides that residential development[214] should be "… of a scale, density and character within [a] subzone … that [is] separately identifiable by such characteristics as location, topology, geology, access, sunlight, or views". The short answer to that complex prescription is that the Northlake site is so identifiable and has been carefully designed with respect to these matters.

[123] As for the (internal) implementing policies, the most specific seeks residential development organised around a separate neighbourhood[215] which is what PC45 proposes. The appellant barely disputed that the topography of the site provides a variety of landform suitable for a range of housing densities; that surrounding landforms afford a considerable degree of shelter from prevailing winds, the site's recreational attributes will be excellent[216], with the adjoining Lake Wanaka and Clutha River recreational corridor, extensive proposed walkway/cycleway linkages, and proposed internal

209 Policy (4.9.3) 3.4 [Queenstown Lakes District Plan p 4-54].
210 Policy (4.9.3) 4.2 [Queenstown Lakes District Plan p 4-55].
211 Policy (7.1.2) 3.14 [Queenstown Lakes District Plan p 7-5].
212 Policy (7.3.3) 1 [Queenstown Lakes District Plan p 7-13].
213 Policy (4.2.5) 7 [Queenstown Lakes District Plan p 4-11].
214 Objective (7.3.3)1 [Queenstown Lakes District Plan p 7-13].
215 Policy (7.3.1) 4 [Queenstown Lakes District Plan p 7-14].
216 C S Meehan evidence-in-chief para 12 [Environment Court document 7].

community facilities. Importantly the site is close to local schools[217], and is well located in relation to future potential public transport services. The Wanaka CBD and proposed Three Parks retail centre are only a little further away — although too far in the opinion of Messrs Munro and Serjeant. In any event the neighbourhood 'corner dairy' type development proposed would minimise travel requirements for day to day retail needs.

[124] Connected and compact development is an urban design imperative to ensure efficient use of infrastructure such as roading and services as well as community facilities such as schools, employment and commercial centres. The subject land is connected to Wanaka CBD by an identified future bus route and according to Mr Munro, is within a walking distance — of 800m at the Peak View Ridge access and of approximately 1600m at the midpoint of the land — to local primary and secondary schools. It would not be necessary for pedestrians or cyclists to cross an arterial road[218].

[125] Mr A A Metherell, a traffic expert called by Northlake, provided the court with analysis[219] of the existing roading network capacity and the integration of the PC45 development with that. The plan change provides for intersection upgrades. Traffic impacts were not challenged on the basis of provision made in the plan change for the necessary improvements.

[126] Servicing for water, sewerage, stormwater etc has been described to us as a cost the developer will bear. Although that was a matter under debate at the Council hearing it was not pursued with any vigour[220] at the hearing before us. Mr J McCartney, an experienced civil engineer called for Northlake, described the potential for the proponents to combine with the Council to provide an additional water supply that would benefit both this development and the wider community of Wanaka, where the current water supply has limitations. We were advised that Northlake could provide its own independent water supply and would not be reliant on any form of community infrastructure upgrade. Wastewater and stormwater drainage are also "enabled by the

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217 G N Barratt-Boyes evidence-in-chief para 5 (p 11) [Environment Court document 9].
218 G N Barratt-Boyes rebuttal evidence para 7.3 [Environment Court document 9A].
219 A A Metherell rebuttal evidence [Environment Court document 10].
220 There was some comment in the evidence-in-chief of several AWI witnesses but their criticisms were abandoned when cross-examined.

plan change"[221]. There was no suggestion that the management of the services could not be undertaken in a sustainable manner. We predict that servicing is not likely to be a significant cost or constraint to the community of Wanaka if this development proceeded.

The shops

[127] In Mr Munro's view a commercial node is "not supportable in urban design terms" if a maximum yield of 705 units over 20 years was imposed (as he suggested). He added[222]:

> Even if 1,600 units were to proceed in the zone and no additional connectivity was required I would still not be comfortable with a commercial node as it would either be inferior in urban design placement terms, or undermine other nodes if placed more desirably.

That overlooks Policy (4.9.3) 4.3 which promotes and seeks to enhance a "network of compact commercial centres … easily accessible to and meet[s] the regular needs of the surrounding residential environment …"[223].

[128] In Mr Long's opinion[224]:

> … a small, accessible on-foot, cluster of shops, pitched at independent retailers with a mix that supports each other, that doesn't compete with the large centres, is very desirable for a small residential community. It will help create a sense of place and be a focus for community identity. It could also help cut down on some trips, but my view is that planned regular/normal shopping trips will occur anyway.
>
> In summary, it will deliver positive outcomes from an urban design perspective, while not competing with the main centres. It will also help economic activity and employment, by creating accessible retail/commercial space for start-up and subsistence retailers and the like.

We prefer that evidence as showing PC45 implements the QLDP.

221 J McCartney evidence-in-chief para 5 [Environment Court document 13].
222 I C Munro evidence-in-chief para 6.15(b) [Environment Court document 17].
223 Policy (4.9.3) 4.2 [Queenstown Lakes District Plan p 4-55].
224 J A Long evidence-in-chief pras 6.10 and 6.11 [Environment Court document 12].

5.4 External urban design issues

[129] Mr Munro considered that, if more urban land was necessary (and he also considered it was not — a crucial point we will return to in part 6 of this decision), then there were other areas on which development would be preferable to the site. He showed these on a plan[225] which was the subject of some discussion by the witnesses and in cross-examination. In his opinion there were at least two, realistically developable, areas which should be preferred to the Northlake site. In preferring those he appeared heavily influenced by the fact that they are closer to the lakefront centre of Wanaka (although further from the Wanaka primary school).

[130] Northlake's urban designer Mr Barratt-Boyes first observed of Mr Munro's alternative areas that[226]:

> All the precincts generally gravitate outwards to the outer urban limit, with the existing town centre approximately in the middle. They all differ in character and offer varying forms of amenity and lifestyle choices.

While critical[227] of the accuracy of Mr Munro's isochrones, he pointed out that in relation to schools they "... place ... PC45 in a positive, unique location, relative to a significant proportion of other Wanaka residential areas to the south and east of the town centre"[228]. More broadly, and we consider with justification, he[229]:

> ... question[ed] the significant weight placed by Mr Munro on the ... walking distance isochrones without reference to other urban design considerations. Walking distance is a relevant factor, but in my opinion it is not the only relevant factor when asserting urban design outcomes.

We accept that evidence because, as we have held, the QLDP makes choice, opportunities and amenities important factors for us to consider.

225 I C Munro evidence-in-chief Figure 7 [Environment Court document 17].
226 N Barratt-Boyes rebuttal evidence-in-chief para 6.2 [Environment Court document 9A].
227 N Barratt-Boyes rebuttal evidence-in-chief para 7.2 [Environment Court document 9A].
228 N Barratt-Boyes rebuttal evidence-in-chief para 7.2 [Environment Court document 9A].
229 N Barratt-Boyes rebuttal evidence-in-chief para 7.4 [Environment Court document 9A].

[131] We referred to Mr Munro's oral evidence that the Northlake proposal PC45 would lead residential development to the edge of the urban boundary, leaving a "hole" in the town form when outlining the effects of PC45 in the first part of this decision. Mr Munro suggested[230] that development of the land in PC45 would lead to the remaining zonings in Wanaka being 85% empty and that would be "sprawl" with pockets of "stop/start" development.

[132] Mr Barratt-Boyes agreed that, from a strategic urban design perspective, sprawl is an important issue[231]:

> Urban sprawl is typically defined as the unplanned, uncontrolled spreading of urban development into areas adjoining the edge of a city or neighbouring regions. In my opinion PC45 is not urban sprawl. For that to be the case it would need to be uncontrolled and unplanned which it is not.
>
> The urban boundaries that limit future growth for Wanaka [indicated in the Wanaka Structure Plan] are clearly defined by geographical constraints e.g. the Cardrona River, Lake Wanaka, the Clutha River and the Crown Range. I believe these are very logical and legible physical boundaries within which Wanaka and its future urban form should sit.

The difference is that Mr Barratt-Boyes is talking about the sort of sprawl — housing randomly spread across the countryside or along rural roads — with which the QLDP is principally concerned (under the important Part 4.2 of the QLDP).

[133] Mr Munro compared PC45 with Jacks Point on the shores of Lake Wakatipu as an example of an undesirable stand-alone development. The short answer is that Jacks Point is provided for in the district plan. In any event, Northlake says PC45 is different. Mr Barratt-Boyes' response was that[232]:

> Jacks Point is divorced from both the Queenstown CBD and from Frankton. It is a standalone 'lifestyle' residential community conceived as a destination, set alongside and around a golf course, and with provision for two commercial villages.

230 Transcript p 168.
231 G N Barratt-Boyes rebuttal evidence para 4.2 [[Environment Court document 9A and 4.3].
232 G N Barratt-Boyes rebuttal evidence paras 5.3 and 5.4 [Environment Court document 9A].

> On the other hand, PC45 is close to schools and open space, connected to walking and cycling trails, and is stitched into its adjacent and neighbouring residential areas. The small local hub … creates a neighbourhood amenity… but not a new urban centre.

We prefer the evidence of Mr Barratt-Boyes and conclude that PC45 is not urban sprawl. Its development would implement the Chapter 7 objectives and policies.

[134] Finally, taking a view of the overall urban design merits of the proposal we note that Mr Munro largely agreed with the merits of PC45 in his 2013 report[233]:

> There is a fair case that the requestor's land will, in part, offer urban zoned land that is at least as meritorious as areas of land that have been zoned already, and in the case of land within a 2km isochrone of the schools, Wanaka centre or Three Parks; or within 400m of Aubrey Road, PC45 could offer superior urban design benefits to some of that zoned land. I support the enablement of land in PC45 that, while not necessary to meet Wanaka's growth needs, is superior to alternatives. This will promote competition in the land market as well as helping best serve the "compact" approach sought in Wanaka. If a competitive product can be released to market and it proves preferred by purchasers, this could lead to an improvement of urban form outcomes for Wanaka.

In fairness we should record that even in 2013 he was concerned about the rate of development. We consider this issue shortly (in 6.3 below).

6. Does PC45 effectively implement Chapter 4 of the QLDP?

6.1 Objectives (4.9.3) 1 and 4

[135] Objective (4.9.3) 1[234] is to have growth and development consistent with the maintenance of the quality of the natural environment and landscape values. This is a core linking objective in the district which relies on those values for much of its commerce and to maintain the qualities which residents come there for. We are satisfied that PC45 avoids[235] urbanisation of the outstanding natural landscape of the Clutha River Valley and protects[236] the visual amenity of the site and surrounding area. Objective (4.9.3) 4 then seeks a "pattern of land use which promotes a close relationship

233 I C Munro evidence-in-chief Appendix 2: Page 20 (2013 Report) [Environment Court document 17].
234 Objective (4.9.3) 1 [Queenstown Lakes District Plan p 4-52].
235 Policy (4.9.3) 1.1 [Queenstown Lakes District Plan p 4-52].
236 One small rearrangement of Activity Area E might be required as we discuss later.

and access between living, working and leisure environments[237]. PC45 is notable for its links between the living and leisure environments because of its proximity to the Clutha River and Sticky Forest and for the provision of walking and cycling tracks.

6.2 Objective (4.9.3): Sustainable management of development

Residential growth sufficient to meet the District's needs

[136] We have described how Objective [4.9.3] 3 is to provide[238] for residential growth "... sufficient to meet the District's needs" and how that needs to be read with Policy (4.9.3) 7.1. That policy, on which AWI's witnesses relied heavily, seeks to implement Objective (4.9.3) 7 (of effectively managing the extent and location of urban development) by "... enabl[ing] urban development to be maintained in a way and at a rate that meets the identified needs of the community ..."[239] (underlining added to demonstrate AWI's emphases). Much of the evidence discussed already in relation to Chapter 7 is relevant here, as is the list of needs identified earlier.

[137] Counsel for AWI submitted[240] that Objective (4.9.3) 7 and its implementing policies "... requires the integration of a range of issues and choices that are not addressed in the evidence". To illustrate the submission they suggested the policies raised the following questions:

(a) What is the identified need (in a residential capacity sense) of the Wanaka community in relation to urban growth?
(b) Where is that need best accommodated to avoid, remedy, or mitigate adverse effects on the environment?
(c) Where is the long term distinct division between rural and urban to be located?
(d) What land within the UGB should be rezoned for residential use now, and what should be preserved for "future urban development"?

Then they submitted that "none of those questions can sensibly be answered before the UGB has been set, and [PC45] is not the vehicle to set it".

237 Objective (4.9.3) 4 [Queenstown Lakes District Council Plan p 4-55].
238 Objective (4.9.3) 3 [Queenstown Lakes District Council Plan p 4-54].
239 Policy (4.9.3) 7.1 [Queenstown Lakes District Council Plan p 4-57].
240 Closing submissions for AWI (para 82) [Environment Court document 35].

[138] We have considered the evidence on these questions generally and in the earlier parts of this decision at length. Our specific consideration is set out below:

- Question (a) is not the correct question to derive from Policy (4.9.3) 7.1, since it both omits any reference of the introductory phrase 'To enable urban development to be maintained' and narrowly circumscribes the "identified needs" of the community in respect of urban development to a small artificial set of "residential capacity". The singular "need" rather than "needs" in counsels' question shows that AWI is being focused far too tightly to cover the extensive list of needs identified in part 3 of this decision. Further, the question put by counsel implicitly suggests tight control of "residential capacity", rather than management, which enables urban development by owners and developers to continue ("be maintained") in an improved (guided by other policies in Chapter 4) way and at a rate that provides the extensive list of opportunities and other needs identified in the QLDP;
- Question (b): for the reasons discussed in part 3 we consider that these policies do not require the local authority to second guess the market. The policies do not require a search for the "best" method of accommodating that "need" (which again should be "needs"). Rather they require an examination first of the enabling exercise under Policies (4.9.3) 7.1 and 7.3 (since an UGB is not being established in PC45) and second, measuring against the degree of achievement of all the other more specific policies in Chapter 4 of the QLDP, few if any of which require any sort of comparison to find the 'best' solution;
- Question (c) is, on the undisputed evidence, quite straight forward to answer. The division between rural and urban areas should probably in the long term be located either on the northern PC45 boundary, being the line drawn by the landscape architects described earlier or inside Activity Area E; and
- A variant of Question (d) — without the reference to an UGB — is considered in some detail below. We have already stated our conclusions on the legal issues raised by the lack of an UGB over the site.

Sustainable management of development

[139] Turning to the evidence on Objective (4.9.3) 7 and its policies, counsel for AWI submitted first that Northlake[241]:

> ... did not call any credible evidence that there is an insufficient supply of land in Wanaka such that the identified needs of the community cannot be met. It did not present any economic analysis of the prices available in Wanaka now at various levels of the property market.

The first sentence shows the deformation of Policy (4.9.3) 7.1 which we identified above. The words of the policy which require urban development (not land) to be maintained in a way and at a rate that meets "the identified needs of the community" — for much more than merely land — have been oversimplified with the effect that complexities of the policy are misrepresented. In fact AWI's question would have been more suitable as a test of whether PC45 achieves Chapter 7's objectives and policies, and we have considered similar issues raised by the evidence there.

[140] While we think counsel for AWI went too far when they described Mr Edmonds' one paragraph[242] about part 4.9 of the QLDP as extraordinary, it certainly was rather brief. Further, they referred[243] to Mr Page's cross-examination of Mr Edmonds[244] about the rate referred to in Policy (4.9.3) 7.1. We find the questions (and therefore the answers) unhelpful because they are predicated on a restricted interpretation of the policy which is, as we have already held, incorrect. Counsel suggested Mr Edmonds' answer to a point about the absence of an UGB was enlightening[245]. What we find enlightening in this otherwise rather unhelpful passage was Mr Edmonds' reference[246] to Mr Meehan's evidence. He described Mr Meehan as having "... identified — and [PC45] provides for — a range of other needs that are not currently being met by the District Plan in Wanaka. In particular areas such as Activity Area D, D1 so I believe that [PC] 45 does meet the identified needs of the community ...". That answer correctly

241 AWI closing submissions para 109(b) [Environment Court document 35].
242 J B Edmonds evidence-in-chief para 6.8.10 [Environment Court document 14].
243 AWI's closing submissions para 84 [Environment Court document 35].
244 Transcript p 107-108.
245 AWI's closing submissions footnote 38 [Environment Court document 35].
246 Transcript p 107 line 25 et ff.

applies Policy (4.9.3) 7.1. Counsel criticised[247] the reliance on Mr Meehan's evidence on the grounds he was not an expert, and had an interest in the outcome of the case. But the important points are that Mr Edmonds, who is an expert, accepted the evidence of Mr Meehan who gave evidence of facts as well as opinions. We give some weight to Mr Edmonds' expert opinion on this issue.

[141] In contrast was Mr Serjeant's evidence for AWI. Mr Serjeant did not strictly consider the policy. Instead he phrased his own question[248] — "Whether Wanaka needs additional land rezoned for residential development at the present time?"He described this as the "real" issue in the case[249]: and his answer was "no" relying on Mr Munro's evidence that Wanaka is likely only to have 2,302 new houses built in the 20 years from 2011 to 2031 and there is zoned provision for five times that many sections. Consequently in his opinion there is no need for any more.

[142] An aspect of Policy (4.9.3) 7.1 ignored by Mr Serjeant in his framing of the question is that it is an "enabling" policy, consistent with the enabling theme of the district plan as a whole. It is to enable urban development to be maintained not "to manage" it. Cross-examined on this Mr Serjeant said[250] " ... because there is no demand [for sections] the plan change should be refused". That is an empty and confusing[251] assertion. One can only make such a statement at a price or in a price range. There would likely be a higher quantity of sections demanded in Wanaka if they were only $50,000 each.

[143] Mr Serjeant was cross-examined extensively[252] by Mr Goldsmith on the application of the Objective (4.9.3) 7 and its policy 7.1. In an exchange between the court and Mr Serjeant he confirmed that[253] he agrees that sections are sold at different prices because they offer different qualities to buyers. Yet there was a revealing passage in cross-examination which shows that he retains a fundamental rationing approach to

247 AWI's closing submissions para 85 [Environment Court document 35].
248 D F Serjeant evidence-in-chief para 14 [Environment Court document 18].
249 D F Serjeant evidence-in-chief para 14 [Environment Court document 18].
250 Transcript pp 237-8.
251 As so often happens when witnesses use this language, it is unclear whether Mr Serjeant is talking about demand or the quantity demanded?
252 Transcript pp 261-267.
253 Transcript pp 231-232.

housing supply in the district. Mr Goldsmith was examining[254] about Objective (4.9.3) 3. After making it clear he was speaking hypothetically the exchange went:

> Q. … If you provide more than is sufficient without creating adverse effects in your view is the objective met?
>
> A. (Mr Sergeant) It's just so hypothetical I can't imagine that. I mean you could put any proposition hypothetical like that and I could potentially agree with it but I don't because it doesn't meet the district needs and one ice cream's enough for a child. There might be two and then three and four and five and they're going to get sick aren't they?

That suggests that Mr Sergeant thinks the plan is ultimately about rationing the supply of zoned land (ice creams) to what it considers is acceptable. There is an uncomfortable paternalism about this. In any event, we hold that rationing is not what the objectives and policies, read as a whole, aim for at all. The issue under the plan is not how many ice creams or sections are good for people but increasing the opportunities by increasing the quantity and range of products supplied and thus potentially reducing the price of some.

[144] Mr Serjeant was also concerned that Northlake and its advisors were "… interpreting the objective so that it's limitless"[255]. We agree there is sometimes a suggestion of that, but at other places Mr Edmonds (and Mr Brown) properly applied the relevant objectives and policies. Further, some of the policies are very open-ended so there is room for considerable disagreement over when an activity might reasonably be said to come within them — especially since the policies pull in different directions. On balance, we prefer the evidence of Mr Edmonds and Mr Brown.

6.3 <u>When should any urban development occur?</u>

[145] Counsel for AWI submitted that PC45 does not implement the direction in Policy (4.9.3) 7.1 that the <u>rate</u> of development is managed. We have already given our reasons for holding that the rate of development is to be enabled not managed but we briefly consider the evidence that the Council should manage staging of development of the site (although it apparently does not want to).

254 Transcript p 266.
255 Transcript p 266 line 28.

[146] Mr Munro put forward an alternative to PC45 which involved a staged release of the land. He considered his "demand" figures under a number of "lenses" e.g.: accessibility (walkable isochrones[256]), "pure land merit", and proportioning development pro-rata yield across Wanaka, and derived his opinion of an acceptable development yield for PC45 land of up to 512 dwellings over the next 20 years. He then considered whether development of the PC45 land was strategically appropriate in the contribution it would make to the objectives for Wanaka as a whole. He again referred us to his earlier report[257] where he came to the opinion that in order for the PC45 development to successfully integrate with Wanaka as part of a coherent and well-planned expansion, it should be contained in terms of yield to 442 dwelling units until at least 2025. In addition, the permitted development should be subject to a location constraint to along the southern edge of the PC45 land running along Aubrey Road and the rear of existing rural residential development fronting that road. He recommended that the highest possible densities be employed, subject to landscape constraints, to consume as little land as possible so as to avoid a large scale and relatively isolated stand alone node that would undermine the vision for Wanaka as a compact, well connected settlement.[258]

[147] In his rebuttal evidence Mr Edmonds described[259] how the rules of PC45 ensure that the initial stages of development "... will be focused within the Activity Area D1". In his opinion other staging requirements would not be necessary. We accept that evidence and consequently we accept Mr Goldsmith's submission that delaying the release of PC45 land would contribute little to sustainable management because:

- much of the land in question has been signalled for development for some time in the WSP (as we shall see in the next part of this decision);
- there is general agreement over the design and components of the development proposed;

256 An isochrone connects the points at which persons leaving for an identified destination would normally take the same time (making certain assumptions) to reach it.

257 I C Munro evidence-in-chief Appendix 2 [Environment Court document 17].

258 I C Munro evidence-in-chief Appendix 2: Paras [5.2-5.5] Page 20 (2013 Report) [Environment Court document 17].

259 J B Edmonds rebuttal evidence paras 13.1 to 13.7 [Environment Court document 14].

- the proposal will not place a strain on existing infrastructure and is in a planned location in terms of connectedness with Wanaka as a whole as it will continue to develop;
- while the release of the site to development over the next year or so may affect the release of other residential land into the market, it is unlikely to provide any undermining of the objectives and policies for Wanaka in the QLDP.

6.4 Compact development

[148] On the compactness or consolidation themes in the QLDP, Mr Serjeant referred to the policy[260] on providing for high density residential development in residential areas and continued[261]:

> Density is a relative term and in the Wanaka context higher densities are really only medium to high density with lot sizes down to 300m^2 per dwelling unit. In paragraphs 6.8.11 and 6.8.12 Mr Edmonds refers to the PC45 response to the affordable housing objective. While I recognise the importance of affordable housing to the district, the provision of up to 250 dwelling units, including affordable housing units, within Activity Area D1 is in direct conflict with Policy 3.2 and 3.3 above which directs the provision of high(er) density housing in appropriate areas and the combination of residential and commercial development so as to achieve the integration of different activities. It is clear to me that the provisions intend higher density development to locate around existing centres. The urban structure of Wanaka is relatively simple (ie not multi-nodal) and the expectation is that density will concentrically reduce rather than have suburban 'islands' of increased density, with consequent demand for competing open space and other community services in those locations.

We have several concerns with that. First, Mr Serjeant places too much weight on Policy (4.9.3) 3.3. As we have said, that is only a formula. He could just as easily (and equally wrongly) have justified PC45 under the following Policy (4.9.3) 3.4 which provides for low density residential development in "appropriate areas" also. In fact Policies (4.9.3) 3.3 and 3.4 require reference to other policies to determine what is appropriate. Cross-examined on that he conceded[262] that policy 3.3 needs to be applied in the light of the district's needs objectives (and of course they seek other targets than simply

260 Policy (4.9.3) 3.3 [Queenstown Lakes District Council Plan p 4-54].
261 D F Serjeant evidence-in-chief para 78 [Environment Court document 18].
262 Transcript p 268 line 7 et ff.

compactness). Second, reading the district plan as a whole, these policies need to be read with the specific Wanaka policy[263] of organising residential development around neighbourhoods. We predict that PC45 is likely to achieve that because it is designed to do so. Third, we have already pointed out that the district plan tends to use 'consolidation' for what Mr Serjeant (and Mr Munro) call compactness.

[149] In fact Mr Serjeant's point would have been better made in respect of the more specific Chapter 7 policy[264] which is "To provide limited opportunity for higher density residential development close to the Wanaka town centre". We have given that careful thought because at first sight PC45's Activity Area D1 goes against this policy. However, this policy needs to be read in the light of both the 'higher density close to transport routes' and to the affordable housing policies and we consider they justify the slightly contentious Activity Area D1 in combination with the Wanaka neighbourhood policy just referred to and other wider integration policies in Chapter 4.9. We find that PC45 will contribute to a relatively compact Wanaka. While it is not as compact as Mr Serjeant, Mr Munro and Ms Jones would like it to be, we hold that their conception is not necessarily what the district plan contemplates as most appropriate.

6.5 Affordable and Community Housing (Chapter 4.10)

[150] An "advice note" says[265] that the objectives and policies[266] of Chapter 4.10 of the district plan — Affordable and Community Housing[267] — are to be applied in the assessment of plan changes. Despite that, it was not well or thoroughly considered by the experts. Mr Edmonds, the planner for Northlake, quoted[268] the notified version of Chapter 4.10 which is not the operative provision. He described[269] how within PC45's Activity Area D1 the density range of up to 15 dwellings per hectare would result in smaller lots which would tend to be more affordable[270]. He also referred[271] to the provision of the 20 expressly "affordable lots" at a maximum price of $160,000. Mr

263 Policy (7.3.3) 4 [Queenstown Lakes District Plan p 7-14].
264 Policy (7.3.3) 3 [Queenstown Lakes District Plan p 7-14].
265 Queenstown Lakes District Plan p 4-59.
266 Quoted above in part 3.1 of this decision.
267 Added by Environment Court consent order dated 17 July 2013 in *Infinity Investment GH Ltd v Queenstown Lakes District Council* (ENV-2009-CHC-46).
268 J B Edmonds evidence-in-chief para 6.8.10 [Environment Court document 14].
269 J B Edmonds evidence-in-chief para 6.8.12 [Environment Court document 14].
270 J B Edmonds evidence-in-chief para 6.8.12 [Environment Court document 14].
271 J B Edmonds evidence-in-chief para 6.8.12 [Environment Court document 14].

Barratt-Boyes only referred to it indirectly when he talked about the types of housing likely to be built under PC45 — stand alone houses with clusters of "zero-lot" or terrace houses. Ms Jones referred to the evidence of Mr Barratt-Boyes and Mr Meehan and concluded that there will not be a "significant" amount of "true medium to high density" housing at Northlake. In our view almost any amount of such housing would be a success given what appears to be the strong desire of purchasers in this district for space around them. That is consistent with Mr Munro's position: he seemed to consider PC45's proposal did not meet his concept of affordable housing but approved this aspect of the plan change anyway. Finally Mr Serjeant, who had obviously relied on Mr Edmond's wrong quotation in preparation of his evidence, deleted his comments on the issue[272].

7. Having regard to the Wanaka Structure Plan

[151] As stated earlier, we must have regard to the WSP. Published in 2007, the WSP's purpose is "... to provide a tool for the Council to manage growth in Wanaka over the next 20 years"[273]. Each of the parties placed considerable weight on (different) aspects of the WSP.

[152] The first 13 recommendations are general. The remaining come under headings as follows[274] (relevantly)[275]:

- *Retaining Wanaka's Landscape Character*
- *Retaining the character of the settlement*
- *Protecting and enhancing entrances to the town*
- *Movement Networks*
- *Providing for High Quality Green (open space) and Blue (urban) Networks*
- *Providing for a vital town centre*
- *Promoting sustainability initiatives*

272 See J B Serjeant evidence-in-chief para 78 [Environment Court document 18].
273 Wanaka Structure Plan 2007 p 1.
274 Wanaka Structure Plan 2007 p 11 et ff.
275 Wanaka Structure Plan 2007. Key Recommendations 57 and 58 on visitor accommodation are omitted.

We will discuss these largely in order, clustering a few related key recommendations where appropriate. We also add some further subheadings (in brackets) within the 'General' recommendations.

General recommendations

[153] The first Key Recommendation ("KR") is not really a recommendation at all, but simply states that the growth figures had been updated to reflect the most recent studies (as at 2007). The growth boundaries in the "Zonings Proposed" Map — annexure "D" — reflect these figures which are, of course, out of date. Further they suffer from the same sort of problems we have identified in the 2013 predictions as to "capacity".

[154] The next KR is that [276]:

> 2. The Structure Plan will not incorporate a detailed 'staging plan', but will consider preferred staging principles when the structure plan is implemented into the District Plan. Initial investigations indicate that urban development is preferred south of the existing golf course (bound by SH84 and Ballantyne Rd), while development in the proposed Urban Landscape Protection Zone north of Aubrey Road is preferred over other land contained in this zone in the structure plan area.

It is not immediately clear what are the "staging principles" referred to in KR 2. The witnesses for AWI assumed they contemplated staging within an area to be rezoned. However, for several reasons we consider that is wrong. First the WSP applies to an area greater than the existing urban area of Wanaka, second, two areas are identified — one south of the golf course and one being part of the site (within the proposed Urban Landscape Protection Zone) — as preferred. We consider the more likely intention of this recommendation is that the staging is as between residential zones (in a general sense) as shown on attachment "D" to this decision. We hold that KR 2 does not promote detailed within-zone staging. The result is that at least part of the site — the area within the Urban Landscape Protection Zone — is favoured for development earlier rather than later.

[155] That is reinforced by KR 11 which states:

[276] Wanaka Structure Plan 2007 p 11.

> 11. The revised Structure Plan identifies a proposed 'Urban/Landscape Protection' area in the north east of the proposed structure plan area. The 2004 Structure Plan identified this area as an open space. This area is considered suitable for development due to its proximity to community and education facilities and to future public transportation linkages. It also reflects the fact that this area is already zoned for rural residential purposes, which is not considered to be an efficient use of the land (and also precludes its use for recreation/open space). The Urban/Landscape Protection area has been shown immediately fronting Aubrey Road, however the exact location of future development should be determined further during the Plan Change process. The outer growth boundary adjacent to the Clutha River has been amended (located further south to the 2004 structure plan) in recognition of the need to protect this land from inappropriate development.

This is a crucial recommendation for the site because the WSP expressly recognises at least a large part of the site is suitable for residential development.

(Open space)[277]

[156] KR 3 deals with open space issues. The WSP leaves the specific area and location of open spaces to be resolved at the plan change and/or resource consent stage. PC45 contains some proposals in respect of these matters, with a particular concentration on connectivity (see KR 14) across different ownerships within the site and across boundaries to existing roads and tracks (for pedestrians and cyclists).

[157] We note that KR 10 adds:

> 10. The Structure Plan identifies 'Plantation Forest' (i.e. "Sticky Forest") as a potential landscape protection area. This highlights the landscape sensitivity of this area as well as its potential to contribute to open space and recreation networks. …

Mr Edmonds pointed out that future trail connections are planned between the site and Sticky Forest[278].

(Neighbourhood centres)

[158] KR 4 also identifies locations for potential "neighbourhood centres" as "commercial/retail" on the map. It adds[279]:

277 We use brackets around subheadings where we supply them: they are not used by the WSP itself.
278 J B Edmonds evidence-in-chief Attachment 3 p 119 [Environment Court document 14].
279 Key Recommendation 4 [Wanaka Structure Plan 2007 p 11].

> 4. An appropriate location for a further neighbourhood centre … in the vicinity of Plantation Road/Aubrey Road will be considered prior to implementing the structure plan into the District Plan.

PC45 proposes a neighbourhood centre on the site to the north of Aubrey Road (a little more than one kilometre from Plantation Road). Given the explanation for the choice of location in the evidence of Mr Long[280], we consider that is appropriate. The evidence of Mr Serjeant and Mr Munro was not convincing on this issue (see Part 1.5). Mr Long gave evidence[281] of what he said was a successful small operation — the Grazë café at "Lake Hayes"[282] — and suggested the same could occur on the site. The success of a shop like this will depend on how well it is set up and marketed. We have already discussed the desirability of a small neighbourhood commercial centre from an urban design perspective, and we consider that PC45's proposal is consistent with this recommendation.

(Growth boundaries)

[159] Growth boundaries in the area are described by KR 5 in this way[283]:

> 5. The land that is located outside the inner (20 year) growth boundary but within the outer growth boundary will be identified as remaining Rural General as it is currently not needed to meet the 20 year growth needs. This aims to clearly signal to the community and landowners that this land is not considered suitable for additional development within the short to medium term future. Future guidance on the appropriate use of this land will be considered at the implementation stage.

[160] In the vicinity of the site, the WSP proposed both an "Inner Growth Boundary" ("pIGB") and an "Outer Growth Boundary" ("pOGB"). The location of both on the site is shown on annexed plan "D". The WSP clearly envisages part of the site — that within the pIGB — being urbanised, but subject to the constraints of the topography in this area as indicated by the WSP's proposed "Urban/Landscape Protection" zoning for the southern two-thirds of the site, as shown on annexure "D". That suggests that PC45 is at least heading in the right direction to achieve the WSP.

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280 J A Long rebuttal evidence para 7.2 [Environment Court document 12A].

281 J A Long evidence-in-chief Exhibit 12.1 [Environment Court document 12].

282 The inverted commas are because the "Lake Hayes Estate" is not at Lake Hayes but south of the State Highway on a terrace above the Kawarau River.

283 Key Recommendation 5 [Wanaka Structure Plan 2007 p 5].

[161] KR 5 is that the land between the pIGB and the pOGB will be identified as remaining Rural General because it was (at 2007)[284] "... currently not needed to meet the 20 year growth needs". Since that recommendation expressly signalled to the land owners that the northern one third of the site was not considered suitable for urban development in the medium term future, it is obviously against development of that part of the site as Mr Edmonds quite properly acknowledged in his evidence-in-chief[285].

[162] Against that we were advised that[286] the landscape experts for Northlake and the Council agreed before the hearing that there is "no landscape logic" to the pOGB as drawn across the site. Further, Mr Goldsmith pointed out that 83% of Northlake's proposed development would occur inside the pIGB. The 250 residential lots outside the pIGB but inside the pOGB represent only one or two years supply of allotments.

[163] No other reason for supporting the pIGB as a limit on development of the site was put forward. We accept that the concept of an outer growth boundary running along the edge of the higher landform points overlooking Lake Wanaka and the Clutha River, and intended to constrain urban growth within a clearly delineated UGB, is valid in an RMA context and achieved the important district-wide policies in part 4.2 of the QLDP. We agree with Mr Goldsmith[287] that: "The detail of this part of the pOGB in the WSP was not properly analysed and is not valid". We also accept that a boundary in the location agreed between Mr Baxter and Dr Read may well be an appropriate UGB. While we have no jurisdiction to incorporate a UGB into the district plan through PC45, we accept that the outer boundary of Activity Area E might be a valid and enforceable boundary. Preferable might be a line on the inside of Activity Area E (or at least E2).

Retaining Wanaka's Landscape Character

[164] The KRs on landscape include[288]:

> 14. A high amenity network of open space and recreation spaces should be provided to ensure that the settlement retains a strong connection to the adjacent landscape.

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284 KR 5 [WSP p 10].
285 J B Edmonds evidence-in-chief Attachment 3 p 117 [Environment Court document 14].
286 W J Goldsmith opening submissions para 15.10 [Environment Court document 4].
287 W J Goldsmith opening submissions para 15.9 [Environment Court document 4].
288 Key Recommendations 14 et ff [Wanaka Structure Plan 2007 p 11-12].

15. Maintain existing view corridors that offer high amenity landscape interpretation opportunities.
16. Limit development in areas identified as having landscape sensitivity and encourage development in the most logical, convenient and less sensitive areas of the town.

[165] KR 16 makes two points[289] — development in areas of landscape sensitivity should be limited, and development should be encouraged in "... the most logical, convenient and less sensitive areas of town". We have already recorded that Mr Munro put forward his own extensive analysis[290] of what in his view were more logical and convenient areas to develop. However, this KR must of course be considered in the context of the others, including those which expressly recognise the site as suitable for development. KR 16 cannot be used to subvert the more specific recommendations.

[166] The ONL boundary has been identified and drawn to exclude the slopes falling to the Clutha River. The Activity Area A and the Building Restriction Areas also limit development to protect other areas of landscape sensitivity.

[167] We find that PC45 achieves these recommendations in (nearly) exemplary fashion.

Retaining the Character of the Settlement

[168] The "character" recommendations are:

18. Provide for street layouts that are legible and interconnected.
19. Ensure that the layout of new development areas responds to the site context, site characteristics, setting, landmarks and views.
20. Ensure that the layout of new development areas creates a strong sense of place that reflects the character of the existing settlement. In particular local streets should reflect a sense of 'informality' with a less regimented arrangement of planting, a lack of kerbing and channelling and casually connecting pedestrian ways where practicable. The use of drainage swales should also be considered where possible. Design covenants could be used in new subdivisions to assist in achieving a specific character.

289 KR 16 [WSP p 11].
290 I C Munro evidence-in-chief 2013 Report [Environment Court document 17].

[169] KR 19 and KR 20 were agreed to be relevant. They relate to internal urban design factors, and on those issues we prefer the evidence of Mr Barratt-Boyes for Northlake (discussed in part 5 of this decision).

(Density of development)

[170] KR 23 is to:

> 23. Ensure that any higher density development is appropriately designed and located to enable for diversity of housing choice while retaining the overall low density character and feel of the settlement.

We consider the Northlake Structure Plan — annexure "C" — shows that will be achieved for the reasons given by Mr Barratt-Boyes in his evidence.

8. Evaluating PC45 under section 32 RMA

8.1 Introduction

[171] We have considered how effectively PC45 implements the relevant objectives and policies of the district plan in parts 4 to 6 of this decision. Because the relevant objectives and policies are, with one exception, not strongly directory and aim to enable a variety of outcomes, we hold that considerations of the efficient use of the land and other resources of the Wanaka area arise. We now examine the (limited) evidence on benefits and costs and the risks of acting or not acting. Those are both factors which help answer the question whether PC45 is more efficient than the status quo and other options put forward in the evidence in achieving the objectives and policies of the district plan.

8.2 The benefits and costs

What costs?

[172] We received little quantified evidence of the benefits and costs of the proposal. In relation to infrastructure, we had the uncontested evidence[291] of Mr J McCartney, a civil engineer for Northlake, that there would be no external costs imposed on the district in respect of any such alleged, but unidentified, costs.

[291] J McCartney evidence-in-chief Attachment 4 [Environment Court document 13].

[173] Mr Serjeant wrote that a result of PC45 being implemented would be that some "... additional costs ... will arise if already serviced land [of other developers] remains undeveloped"[292]. He explained by pointing out[293] that development contributions are usually taken by the Council at the time of issuing the section 224(c) RMA certificate to a subdivider which allows titles for new allotments to issue. That cost[294] is not recouped by the subdivider until the land is sold. Mr Serjeant then said that the risk of delays in offsite developers being repaid "... should not be increased through an oversupply of land created by Council zoning supply"[295]. While we do not accept there is likely to be an "oversupply" that is harmful to the public interest, we do accept that developers' holding costs may increase. It appears to us that these are costs imposed on trade competitors which they must accept (as would Northlake's developers) as a cost of trading and which we should not take into account: section 74(4) RMA. Since we did not hear argument about this we have regard to these costs but regard them as minor for the reasons we now give.

[174] First, any "oversupply" (of goods which do not spoil) from the point of view of developers is an opportunity or benefit for purchasers. As a general rule an increase in supply of sections in a market will lead to a lower price and movement in the quantity demanded, so that a greater quantity of sections is sold. That assumes of course that there are enough sellers in the relevant market to provide a competitive supply curve and we have considerable doubts that is so given the restricted ownership of residentially zoned land in the Upper Clutha Basin. The risks this creates we discuss (briefly) in part 8.3 of this decision. The net effect is that the extra holding costs caused to competitors by developers of the PC45 land are very likely to be outweighed by the benefits to purchasers because they will pay lower prices, as Mr Serjeant agreed[296] in an exchange with the court.

[175] In any event developers can, and routinely do, keep an eye on the market and develop their subdivisions in stages[297]. A result is that they only pay financial contributions for allotments they are seeking a section 224 certificate for. In other words

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292 D F Serjeant evidence-in-chief para 35 [Environment Court document 18].
293 D F Serjeant evidence-in-chief para 36 [Environment Court document 18].
294 Initially a private cost, but ultimately a social cost too.
295 D F Serjeant evidence-in-chief para 36 [Environment Court document 18].
296 Transcript p 231 lines 10 to 32 and p 232 lines 19 to 28.
297 Transcript p 254 line 26 et ff.

any trade competitor of Northlake can manage the costs of its financial contribution to a considerable extent.

[176] Of more relevance as offsite social costs are other potential effects identified by Mr Serjeant. He referred to the potential problems of earlybirds (our word) buying sections in the Three Parks subdivision and then living in an unattractive environment because other people who might have moved there have brought elsewhere, so the Three Parks subdivision languishes. However, he accepted[298] in cross-examination that it would only apply to people in a relatively small area (one stage of a subdivision). While we accept that there is a cost — and we accept Ms Jones' evidence[299] of the benefits of a 'built-out' neighbourhood — we consider that is a minor and temporary cost.

[177] Secondly he referred to delays in introducing public transport to Wanaka as a result of relatively more far-flung PC45 development. But he accepted[300] that this is a complex exercise in which PC45 has countervailing advantages in proximity to schools[301].

The net social benefit

[178] Ultimately of course it is desirable to know the net social benefit of any new proposal such as PC45 and compare it with the net social benefit of the status quo (or any other realistic potential use of the resources put forward in the evidence). The proposal with the greater[302] net social benefit is the most efficient use of the resources.

[179] The best way of quantifying and comparing the social benefit of different options for the management of a resource is to compare the relative net benefits of each, calculated in dollars per unit of resource per year if that is possible. Often it is not. In particular the quantification becomes difficult when:

298 Transcript p 257 lines 16 and 17.
299 V S Jones statement para 4.18 [Environment Court document 16].
300 Transcript p 261 lines 1 to 7.
301 Transcript p 260 lines 25 to 29.
302 Or "greatest" benefit if there are more than two choices before the local authority.

(a) there are large uncosted externalities (e.g. pollution, traffic congestion[303] or effects on significant ecosystems[304], outstanding natural landscapes or amenity values); and

(b) there are competing uses of land in one of which (residential use) much of the value may not be easily monetarised in cash flow terms (obviously it is much easier to capitalise as a purchase price).

Perhaps for one of those reasons we were not given any evidence going towards a cost benefit analysis. However, we asked for and were given valuations by a registered valuer called by Northlake.

[180] Land values provide good empirical evidence of the highest and best use as assessed by markets, provided of course there are only minor uncosted and relevant externalities to take into account. In situations involving land resources where lifestyle considerations mean that non-monetary benefits contribute greatly to the value of the land, valuations may be a good proxy because they more accurately reflect the "highest and best use" of the land in the eyes of consumers.

[181] Comparing the predicted approximate value of the land for three types of use shows:

Option 1 — (Rural General Option Value) $30,000 per hectare[305].

Option 2 — Rural Residential Option Value
Valued on the basis the land has been subdivided to a rural residential density as in Activity Area A, namely lot sizes of minimum 4,000^{m2} ready to sell: the gross market value is $530,000 (excluding GST)[306] per hectare.

303 Loosening urban boundaries (in areas much larger than Wanaka) while not dealing with the costs of traffic congestion may be futile.
304 For example, under section 7(c) RMA.
305 See para [12] S G N Rutland affidavit dated 10 April 2015 [Environment Court document 34].
306 S G N Rutland affidavit dated 10 April 2015 para 13 [Environment Court document 34].

Option 3 — PC45 Option Value

Valued on the basis that the land has been subdivided in accordance with PC45; the estimated gross market value is $1,220,000 (excluding GST)[307] per hectare.

[182] Options 2 and 3 are predictions rather than opinions about the current state of affairs, but the evidence was asked for and given as an approximation so that the court could identify the relative value of the Northlake land for the three possible uses discussed. On that basis AWI did not seek to challenge it (although it was given the opportunity to do so). What the valuation evidence reveals is that the market values of residential land at Wanaka are over 40 times Rural General land values. Even allowing for a large margin of error, and for the complete lack of quantification of all costs (the development costs and financial contributions are likely to be formidable for option 3), that is an extraordinary difference and suggests that PC45 is the most efficient outcome. That is consistent with the evidence of Ms Jones who considered efficiency issues briefly. She described the Rural Residential zoning (which includes the site) that surrounds urban Wanaka as "inherently inefficient"[308] and piecemeal subdivision of that land as inefficient also[309].

[183] We conclude that rezoning the site as a type of residential zone is more likely than not to give considerably more benefits to society than retaining it as Rural General and more net benefit than rezoning it for rural-residential uses because it is difficult to conceive of the costs of the remote and apparently minor adverse effects identified by AWI as outweighing even the net benefits of the PC45 development compared with those other options. This conclusion is speculative so we will give it little weight in our overall evaluation, but it is worth recording because the net benefits and costs appear to be on the PC45 side of the ledger.

307 S G N Rutland affidavit dated 10 April 2015 para 15 [Environment Court document 34].
308 V S Jones statement of evidence para 3.1(d) [Environment Court document 16].
309 V S Jones statement of evidence para 3.1(e) [Environment Court document 16].

8.3 The risk of acting or not acting

[184] Another matter we must take into account is the risk of approving[310] PC45 or of refusing it ("not acting").

[185] We identified above three options that were put forward for the site. We discuss the risks of options 1 and 3 below, together with variants on option 2. In the wording of section 32(4), options 1 and 3 are:

> *Option 1: the risk of not acting (i.e. refusing PC45 so that the site remains Rural General).*
>
> *Option 2A: low density residential as recommended by Mr Munro.*
>
> *Option 3: the risk of acting (i.e. approving PC45).*

We have called the middle option 2A because it is different from option 2 assessed by the valuer[311]. It is assessed because it was Mr Munro's preferred option if the site is not to remain Rural General.

Option 1 — Retention of Rural General zoning and rejection of PC45

[186] Rejection of PC45, as recommended by Mr Serjeant, obviously means the zoning of the majority of the PC45 land would remain Rural General. The obvious risk is that part or all of the site would be subject to an application for a discretionary subdivision at some time in the near future. Indeed that has occurred already in this area — Activity Area A[312] adjacent to Aubrey Road has already been subdivided in that way with, in our view, inferior results in terms of the objectives and policies of the QLDP. An application for resource consent to develop a significant part of the site in that way was withdrawn at the Council's request in favour of a holistic approach by way of PC45, which addresses all the land.

310 "Acting" in terms of section 32(A) RMA.
311 That is the presiding Judge's fault: he worded the question to counsel incorrectly.
312 No longer part of the site.

[187] Mr Meehan, on behalf of himself and Allenby Farms Limited, stated that, if PC45 is cancelled and the existing Rural General zone is retained, the community can expect the landowners to pursue other development options. Those would probably involve either discretionary subdivision and land use application or a plan change seeking some form of low density "rural living"[313] development. These would forgo most of the corresponding PC45 benefits and efficiencies in achieving the objectives and policies of the QLDP. That potential outcome must be carefully considered.

[188] Mr Brown expanded on this in his evidence called in rebuttal. He wrote[314]:

> ... [of] the risk that land is suitable for residential growth could be fragmented prior to the opportunity for a comprehensive, integrated planning outcome. The more that land is fragmented the more difficult it is to develop comprehensively and efficiently, and this is a significant risk.

He preferred a comprehensive approach now to "any sort of holding pattern"[315]. That is reinforced by the evidence[316] of Mr Barratt-Boyes that another considerable advantage of PC45 is that it is very likely to avoid the risk of sporadic subdivision of the site which may not give effect to the desirable urban design goals.

[189] Mr Serjeant refused to answer questions about those issues because he regarded discretionary development as speculative. Given the extensive history of precisely such development to the south of the site that seemed slightly evasive. We accept that it would be difficult for the Council to resist ad hoc development enabled by way of discretionary activity resource consent under the Rural General Zones provisions.

[190] Finally we consider the risks of refusing PC45 on the supply of sections to the housing market(s) in the Upper Clutha. This is where the restricted ownership of residentially zoned land becomes relevant. We say immediately that we accept the submission of counsel for AWI that there is insufficient evidence of collusion to find that the housing market(s) is (are) suffering from deliberate monopolistic behaviour. However, that was not why the evidence of Mr Meehan and others covered the restricted

313 See Chapter 8 of the Queenstown Lakes District Council Plan.
314 J A Brown rebuttal evidence para 4.9 [Environment Court document 6].
315 J A Brown rebuttal evidence para 4.9 [Environment Court document 6].
316 G N Barratt-Boyes evidence-in-chief 9 [Environment Court document 9A].

ownership of land in the area. As counsel for Northlake submitted, that ownership creates a risk of suppressing the quantity of sections supplied and we should take that into account. This is a factor that favours PC45.

Option 2A — The low density residential outcome (recommended by Mr Munro)

[191] A second possible outcome appears a standard, suburban, low density residential zoning for an area inside the WSP pIGB. That would develop part of the site for about 700 houses (instead of about 1,500 houses). It would, in Mr Goldsmith's words, give "a much more limited range of residential product" and there would not be any community facilities, nor neighbourhood retail provision nor any affordable houses. The sections that would result would provide a desirable place to live for a reduced number of people (those who can afford property at the higher end of the already expensive Wanaka price range).

[192] A further creative slant on a similar theme was a staged approach suggested by Ms Jones whereby a larger lot (low density) subdivision would be undertaken and then at a point in the future these lots would be able to be further developed on an infill basis[317]. Mr Goldsmith examined the practicality of this suggestion with Ms Jones[318]. We are satisfied that this approach would not lead to best planning practice as integrated planning of such features as access, services and dwellings would not be optimised and could lead to unnecessary cost. In our experience large lot lifestyle or small-holding subdivision and subsequent re-subdivision rarely results in good urban form. We regard Ms Jones' idea as an off-the-cuff response in cross examination, which on reflection has few merits. Her other option in her statement of evidence — some development now in exchange for deferred zoning of the remainder — has more merit but is still likely to be less efficient than PC45.

Option 3 — the risks of approving PC45

[193] Counsel for AWI submitted[319] that there were four risks of approving PC45. None of them are risks in the proper sense of being the product of a probability of an

317 Transcript p 133 [4/3/15 1211].
318 Transcript p 136 [4/315 1211].
319 AWI's closing submissions para 128 [Environment Court document 35].

adverse effect and the cost of its consequences. However, in deference to counsel we will consider them briefly:

- If "sufficient" means any amount more than is necessary, then the more land developed the better. All land (not just the PC45 land) within the Wanaka Structure Plan 2007 UGB could therefore be developed without control.

This is a non-sequitur and we consider it no further. We have discussed the application of "sufficient" in its context earlier.

[194] Next:

- The UGB process to be determined by the district plan review is undermined because part of it will have been set absent of any comparative analysis of absorbing the "identified need" for urban growth elsewhere. This is not what integrated management means.

We have already observed that the UGB process is not compulsory, nor is development in the absence of an UGB prohibited. We consider integrated management in part 9.

[195] Next counsel submitted:

- The "staging plan" referred to in the [WSP] and inferred from Part 4.9 of the Plan will have already been set. For the next twenty years, Northlake will be "the stage". Again, this outcome would be absent of any comparative analysis of achieving the goal of compact urban form.

We have held this is a mistaken understanding of the WSP and what it means by "staging". We consider lack of compact form next.

[196] Finally:

- The Rural Residential Zone on Aubrey Rd will have no continuing function or integrity against a goal of "compact urban form". The effect of up-zoning the Rural Residential zone has not been considered. The UGB, the PC45 site and the Aubrey Rd Rural Residential zone all have to be managed in an integrated way. That has not been attempted, or even considered, by the Requestor.

The main policies[320] on this issue "promote" compactness. We have already found that PC45 is likely to do this to a satisfactory extent.

[197] Turning to risks properly so-called: the risks of approving PC45 are on-site and off-site. The on-site risks are relatively minor and would be largely borne by the developers and/or subsequent purchasers of lots, for example, there is a possibility that insufficient houses will be built to trigger construction of the communal facilities (swimming pool etc). There is also a risk that shops in the neighbourhood centre in Activity Area D will not be able to trade successfully. However, as Mr Barratt-Boyes observed that is largely a risk for the developer or at least the owner of the building as to the level at which they pitch rents. We have accepted Mr Long's unchallenged evidence[321] that a small commercial node will not affect other existing (or possible future) retail centres in Wanaka.

[198] Off-site there is a probability that subdivisions in the Three Parks area may be slower to sell (if they are even put on the market). The "tumbleweed" scenario identified in *Westfield Ltd v Upper Hutt City Council*[322] may be literal in the case of some of this land. However, we consider the social costs of slower sales would be relatively low, especially if the landowners at the time lower their prices as a response to new market conditions (a shift in supply) and/or an increase in the number of sections on the market (a supply movement). That would enable the Three Parks area to become an area for aspirational owners — people who wish to work in the area but cannot otherwise afford to live there.

[199] And of course PC45 is likely to reduce the risk of anti-consumer behaviour from current owners of undeveloped but zoned residential land by introducing more competition into the section/housing market(s) in Wanaka.

320 Policies (4.5.3) 1.1 and 1.2 [Queenstown Lakes District Council Plan p 4-29].
321 J A Long evidence-in-chief parts 7 and 8 [Environment Court document 12].
322 *Westfield Ltd v Upper Hutt City Council* W44/2001.

9. Assessing the most appropriate objectives and policies

9.1 The matters to be weighed and the Council's decision

[200] The final part of our decision on a plan change is to weigh up the four[323] relevant sets of considerations:

(1) whether the plan change is more effective than the status quo in achieving the relevant objectives and policies in the operative district plan and in other — usually higher, but here a lower (the WSP) — later statutory instruments not directly particularised in the district plan;

(2) the section 32 evaluation of the plan change against the relevant alternatives;

(3) whether the plan change accords with the local authority's functions, particularly — in the case of a territorial authority — managing the integrated effects of the use, development and protection of land and the other resources of the district; and

(4) having regard to the decision of the Council.

[201] As to (4), we respectfully agree with the outcome of the Commissioners' Hearing and most of the reasons they gave, and give the decision considerable weight. We consider the Council decision no further, but summarise our consideration of the first three matters in the following paragraphs after dealing with one other legal argument raised for AWI.

[202] Counsel for AWI submitted that no consideration had been given to alternative (off-site) areas for the residential development proposed by PC45 for the site. The Supreme Court decision in *EDS v NZ King Salmon* [324] establishes that there is no obligation to look at alternative sites. That is "... permissible, but not mandatory"[325]. In this case there are no matters of national importance (under section 7 RMA) raised to make that desirable; nor is there any proposal in PC45 which involves exclusive use of a

323 The three sets of territorial authority's obligations identified in para [41] above plus our obligation under section 290A RMA.

324 *EDS v NZ King Salmon* (supra footnote 1) (SC).

325 *EDS v NZ King Salmon* (supra footnote 1) (SC) at [166].

public resource to make consideration of alternatives "unavoidable"[326]. Further, "Of the six areas identified by Mr Munro (additional to Northlake), four are essentially undevelopable; which leaves only the Orchard Road block and Three Parks"[327]. We have found those are not likely to supply (many) comparable sections. Even Mr Munro conceded in his 2013 Report that PC45 was likely to provide superior allotments, so in our discretion we consider it is not necessary to look at alternative sites for urban development.

9.2 Does PC45 effectively implement the QLDP?

[203] Evaluated in terms of its effectiveness in achieving the relevant objectives and policies of the district plan, in parts 4 to 6 of this decision we predicted that PC45 is likely to[328]:

(1) encourage new urban development[329] which is imaginative in terms of urban design (the affordable housing outlined by Mr Meehan) and which integrates different activities:
   — the network of roads and tracks linking residences and providing for recreational biking and walking;
   — the small commercial centre[330]; and
   — the nearby schools.

(2) assist (potentially) in the definition[331] of an UGB on the site;

(3) provide sufficient land for 1,500 (approximately) residential units and a diverse range of residential opportunities[332];

(4) enable new residential accommodation[333] on the site including a number of residential allotments at the more affordable[334] end of the price range (in Activity Area D1) for middle or lower income households ;

(5) observe the constraints[335] imposed by the natural and physical environment;

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326 *EDS v NZ King Salmon* (supra footnote 1)(SC) at [168] and [170]-[173].
327 J D Edmonds rebuttal evidence para 12.11 [Environment Court document 14A].
328 This list generally follows the sequential order of objectives and policies in the district plan.
329 Policy (4.9.3) 3.2 [Queenstown Lakes District Council Plan p 4-54].
330 Policy (4.9.3) 4.2 [Queenstown Lakes District Council Plan p 4-55].
331 Policy (4.9.3) 7 [Queenstown Lakes District Council Plan p 4-57].
332 Objective (7.1.2) 1 [Queenstown Lakes District Council Plan p 7-3].
333 Policy (7.1.2) 1.2 and 1.4 [Queenstown Lakes District Council Plan p 7-3].
334 Policy (4.10.1) 1.1 [Queenstown Lakes District Council Plan p 4-59].
335 Policy (7.1.2) 1.1 [Queenstown Lakes District Council Plan p 7-3].

(6) maintain a distinction between urban and rural areas[336] through the use of Activity Areas, conservation and design controls in the proposed rules;

(7) contain the outward spread[337] of Wanaka by detaining development areas which do not spread along, but away from, Aubrey Road, by restricting access arrangements;

(8) provide for development which carefully uses the topography[338] as shown on the attached "Structure Plan" marked "C";

(9) create a sense of neighbourhood[339] community and wellbeing by providing for centrally placed community facilities[340] (a neighbourhood centre and a swimming pool);

(10) by developing adjacent to Aubrey Road to provide for peripheral expansion[341] of Wanaka; and

[204] In addition PC45 generally carries out the Key Recommendations of the WSP.

[205] Against these positive aspects, Mr Munro summarised his principal concerns with PC45[342]:

> I disagree that sustainable management will be promoted by providing residential land in Wanaka when there is already a surplus, and where the new zoned land is inferior in urban design terms than existing zoned land. This is likely to lead to more dispersal, lower take up rates of existing zoned areas, less connected neighbourhoods, and overall a watering down of the "compactness" consistently seen by the community as essential to Wanaka's character and wider sense of identity. This amounts to urban design inefficiencies and ineffectiveness in terms of the operative zones and the overall outcome for Wanaka that PC45 would enable.

We have found that Mr Munro is likely to be incorrect in his conclusions that there is a surplus of residential land in Wanaka and is wrong that the site is inferior in urban design terms as contemplated by the QLDP.

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336 Policy (7.1.2) 1.5 [Queenstown Lakes District Council Plan p 7-3].
337 Policy (4.9.3) 3.2 [Queenstown Lakes District Council Plan p 4-54].
338 Policy (4.9.3) 4.2 [Queenstown Lakes District Council Plan p 4-55].
339 Policy (7.3.3) 2 [Queenstown Lakes District Council Plan p 7-14].
340 Policy (7.1.2) 3.1 [Queenstown Lakes District Council Plan p 7-5].
341 Policy (7.3.3) 1 [Queenstown Lakes District Council Plan p 7-14].
342 I C Munro evidence-in-chief para 31 [Environment Court document 17].

[206] As for the assertion that the community sees compactness as essential, we consider that the correct position is that the QLDP perceives consolidation/compactness as important and not spreading into the landscapes of the District as very important. PC45 implements both sets of policies especially the latter. We find that the main defects of PC45 from an effectiveness perspective are that it enables extensions of urban Wanaka which are not as compact/consolidated as might be achieved, and second that it is development outside an UGB which is to be "strongly discourage[d]".

[207] Giving due weight to those negatives, we conclude that overall PC45 is, in all the circumstances outlined, more appropriate than the status quo or the options put forward by Mr Munro and Ms Jones.

9.3 Section 32 evaluation: efficiency

[208] The sketch of benefits and costs suggests that the net social benefit of PC45 is more likely than not to be positive compared with the status quo or Mr Munro's staging. Similarly, the risk analysis favours PC45 over the alternatives. Having regard to efficiency of PC45 in achieving the relevant objectives and policies of the district plan, we consider PC45 is the most appropriate way of achieving those objectives.

9.4 Integrated management of the effects of use, development and protection

[209] We have considered the integrated management of the scale of effects of PC45 carefully. We appreciate that the addition of (potentially) 1,600 housing units increases the housing stock by approximately 35% (say, one-third). Counsel for AWI suggest that PC45 would introduce "a level of development never previously seen in Wanaka"[343]. That is not correct: it introduces the potential for such development under a carefully planned template — the Northlake site will only be developed as and when the developers consider all the relevant factors that suggest (to them) another stage should proceed. Counsel for the appellant submitted in closing[344] that "It is not the role of the District Council, or this Court, to pick winners in the market or to tackle growth capacity in the district". Counsel for Northlake agree but then submit that the appellant's approach "... being one of complete Council control over release of land through a ... staging process, could not result in any outcome other than the Council ... picking

343 AWI closing submissions para [101] [Environment Court document 35].
344 AWI closing submissions para 15(b) [Environment Court document 35].

winners through the District Plan". We agree with that submission and consider that AWI misconceives the QLDP: the district plan does not deliberately pick winners — it enables, encourages, and in certain cases strongly discourages, certain behaviour but that is as powerful as its intervention in the market place for land goes (recognising that rezonings may well amount to picking winners indirectly).

[210] We accept that it is theoretically open for the positive relevant considerations to be outweighed by other factors such as the policy discouraging urban extensions in the rural areas beyond urban growth boundaries, considerations of compactness and, overarching, by the exercise of the function to integrate the effects of use and development of land. For example, counsel for AWI submitted that PC45 would pre-empt both the plan review and the setting of an UGB, relying on the evidence of Mr Munro. Mr Goldsmith's reply[345] was that only the Council knows the reasons the Council put PC20 (which proposed an UGB for Wanaka) on hold, and the implications and consequences of the Council putting PC20 on hold (such as the potentiality or likelihood of an intiative such as PC45). The Council processed the Three Parks PC16[346] and the North Three Parks PC4[347] without a UGB in place; the Council must know whether or not, and if so when, it intends notifying a Wanaka-wide UGB; and further the Council must have its own view of whether or not the approval of PC45 would undermine the District Plan review in general or any proposed Wanaka-wide UGB in particular. Further, the Council accepted the Commissioners' PC45 recommendation and supports the PC45 decision in these proceedings, despite the District Plan review supposedly being notified later this year. We accept that is a fair statement of the position. In the circumstances we do not accept that the review is being subverted.

[211] The evidence of Mr Munro and Ms Jones seems influenced by their opinions about the past development of Wanaka. Ms Jones wrote with commendable directness[348]:

345 W Goldsmith submissions for Northlake in reply para 4.3 [Environment Court document 38].
346 Notified April 2009, made operative January 2011.
347 Notified March 2012, made operative July 2013.
348 V S Jones statement of evidence para 4.3 [Environment Court document 16].

> I agree with Mr Munro that the development of the northern peninsula is unfortunate and has resulted in areas of new development that are dependent on the private vehicle travel in the same way that Northlake will be at least for the next 20 years, if it is approved. In this respect, I think the phrase 'two wrongs don't make a right' is apt. I also agree that the historic Rural Residential areas that surround the Wanaka town are not desirable and, in a perfect world, would be intensified over time[349].

That sums up many of their concerns. However while those concerns may be justified by (some) urban design principles, they are not justified by reference to the operative district plan. Recurring themes in the district plan are enjoyment and maintenance of amenities and the landscape, enabling people to provide for their needs and lifestyle preferences. We doubt that many of the people who live on the Peninsula west and southwest of the site consider that their neighbourhood(s) are "unfortunate".

[212] We hold that it is fundamentally incorrect to see PC45 as a second wrong which compounds alleged earlier errors by the Council.

[213] While we appreciate that PC45 will make Wanaka less compact than AWI's witnesses and Ms Jones would like, we consider it does have some energy-saving advantages (in addition to the costs of extra travel to the lakefront or to a supermarket) in its proximity to Wanaka's schools and to recreational facilities. It also contains a proposal for small-scale shops to create its own neighbourhood. We consider that the argument PC45 will not manage the adverse effects of development in an integrated way is significantly overstated. Much will depend on the internal staging adopted by the developers and indeed on market conditions at the time of sale. Even if those go badly we consider the effects will be relatively temporary. In the longer term Wanaka will fill out to within a respectful distance of its natural topographical boundary (the Clutha River), in a completely appropriate and well integrated way. We conclude that the integrated management of effects favours PC45 over the options.

349 Section 42A report, Section 6.

10. Result

10.1 Conclusions

[214] Weighing all the matters outlined above, we conclude that PC45 is (provided some minor changes are made as raised in the next section) the most appropriate method of achieving the relevant objectives and policies of the district plan and that it will achieve integrated management of the resources of Wanaka. We are encouraged in these conclusions by the Hearing Commissioners' decision which was to the same effect. We will make (conditional) orders confirming that judgment.

10.2 Amendments to plans

[215] Since the following matters were not put to the parties or their relevant witnesses, they are provisional. Any party may apply to call evidence in respect of any of them.

[216] There is a low ridge in the centre of the site at the eastern end of (we think) the Allenby Farms Ltd property. There are patches of kanuka and native shrubs (and exotic weeds) on both the sunny northern side of this ridge and, more densely, on the southern side. While the flat ridge top is suitable for residential development, the kanuka and native shrubs should be protected. Any roading should go to the south of them. The Structure Plan will need to be re-drawn to show another tree protection area and relocation of the (notional) road.

[217] In the Stokes/Gilbertson block, at the eastern end of the site, two changes seem to be desirable to protect amenities:

(a) the whole of the gully should be a building restriction area (there is an anomalous residential C4 area at the northern end at present which should be cut off at the orange line drawn by us on plan "C");

(b) the land to the east of the gully in B5 should have minimum zoning size lots of 4,000m^2 (being a minimum Rural Residential scale) to protect the visual amenities of the elevated houses to the south of Aubrey Road.

[218] Third, there should be a walking track from the north-western high point on the site which overlooks the public reserve and camping area at the start of the Clutha River and down the ridge parallel to the Clutha River, to connect the two walking/cycling links shown on the Structure Plan. Because of potential erosion problems this may not be suitable for mountain bikes.

10.3 The objectives, policies and rules of PC45

The objectives and policies

[219] We hold that the rather anodyne objectives and policies of PC45 appropriately implement the particular objectives and policies of Chapter 7, and the more general policies in Chapter 4 of the district plan.

The rules

[220] In *Suburban Estates Ltd v Christchurch City Council*[350], a case about a new district plan for Christchurch City, the Environment Court wrote:

> [40] We conclude that when considering methods of implementation (including rules) the purpose of the Act as defined in section 5 is not the starting point at all; it is the finishing point, to be considered in the overall exercise of the territorial authority's judgement under Part II of the Act[351]. We hold that the overarching purpose of the Act — that is sustainable management, and the elements of Part II — are largely presumed to be met by, and subsumed in, the objectives, policies and methods contained in the revised methods of the City Plan. If that is not the case then there is an element of re-inventing the wheel if all the matters to be considered (to use a neutral term) under sections 5 to 8 of the Act have to be separately applied to the zoning.

With the exception of the first sentence, which is more applicable to a new (proposed) plan than a plan change, that passage largely fits with *EDS v NZ King Salmon.* Thus the objectives and policies to be implemented are primarily those in PC45 itself, now that we have confirmed those. Only where they are incomplete or uncertain do we need to refer to Chapters 7 or 4 of the district plan. Subject to some minor points raised below,

350 *Canterbury Regional Council (Suburban Estates Ltd) v Christchurch City Council* C 217/2001 at p 23.

351 As required by section 74(1) RMA.).

we consider the proposed rules effectively and efficiently implement the policies in PC45.

[221] In relation to the proposed rules in PC45 we note that when making a rule the territorial authority must also have regard to the actual or potential effect of activities on the environment[352]. In addition, there are several other considerations about rules (which have the force of regulations[353]) in section 76 of the RMA. Of these one is potentially relevant. Section 76(4B) states that there must be no blanket rules about felling of trees[354] in any urban environment[355]. Do the areas and rules for tree protection comply with section 76 (4B) RMA? We require an agreed position and/or submissions on this issue.

[222] We also have questions about the practicalities of other rules which should be considered to ensure the objectives and policies of the Plan and Plan Change are appropriately implemented:

(a) it appears there is an arrangement in the activity list where buildings are disjointed from the activities which might occupy them. This means that some categories of buildings appear permitted or controlled activities but the actual *residential* activity which will occupy them requires restricted discretionary consent. Thus the criteria which would be invoked to assess a residential activity will not necessarily be applied at development of the building stage. This could for instance allow remnant stands of native planting to be removed as only the Tree Protection Area and Area E are protected. This outcome might not implement Objectives 4 and Policy 4.2 of PC45;

(b) the requirement for no more than one residential unit on a site seems to be counterproductive in terms of efficient site planning, where contiguous areas of open space and shared features could be employed to achieve a

352 Section 76(3) RMA.

353 Section 76(2) RMA.

354 Section 76(4A) RMA as added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

355 Section 76(4B) RMA — this rule was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

better urban design solution (consistent with PC45 Objective 2 and Policy 2.4);

(c) the rule permitting an underground structure to be excluded from maximum building coverage may reduce planting opportunity and perhaps these structures should be considered in a different way?

(d) there does not seem to be a rule addressing the external edge of the zone to the east where planting could assist the definition of this urban edge to be consistent with the Objectives and Policies introduced to the Plan through PC30. We note rules for planted edges facing Aubrey Road and Outlet Road might provide a model for addressing this issue;

(e) Activity Area E1 and Activity Area E4 seem to require the maintenance of a *pastoral state*. This directive will not protect trees or encourage additional enhancement planting. We request this wording be adjusted to address this concern which we consider does not accord with the Objectives of the Plan Change (e.g. PC45 Objective 4 and Policy 4.2, Objective 2 and Policy 2.1);

(f) is Activity C appropriately nominated given its natural attributes including proximity and buffer role to the ONL and the predominance of existing vegetation? We suggest this area should be nominated as a further Activity Area E (say E3). This would accord with Objective 4 and Policy 4.2 of the Plan Change.

10.4 Interim Decision

[223] Our decision will be interim for four reasons:

(1) the Amended Structure Plan will need to be redrawn;

(2) the objectives, policies and rules may need to be amended in respect of the matters raised in part 10.3;

(3) we are unsure of our powers to make the changes suggested in (1) and (2) — under the First Schedule or under section 293 RMA? — and will seek submissions on that; and

(4) we are unclear whether AWI wished to pursue its 'vires' arguments and in respect of what, so we will reserve leave for it to lodge more detailed

submissions on those (other than on Objective (4.9.3) 7 which we have resolved).

For the court:

J R Jackson
Environment Judge

Attachments

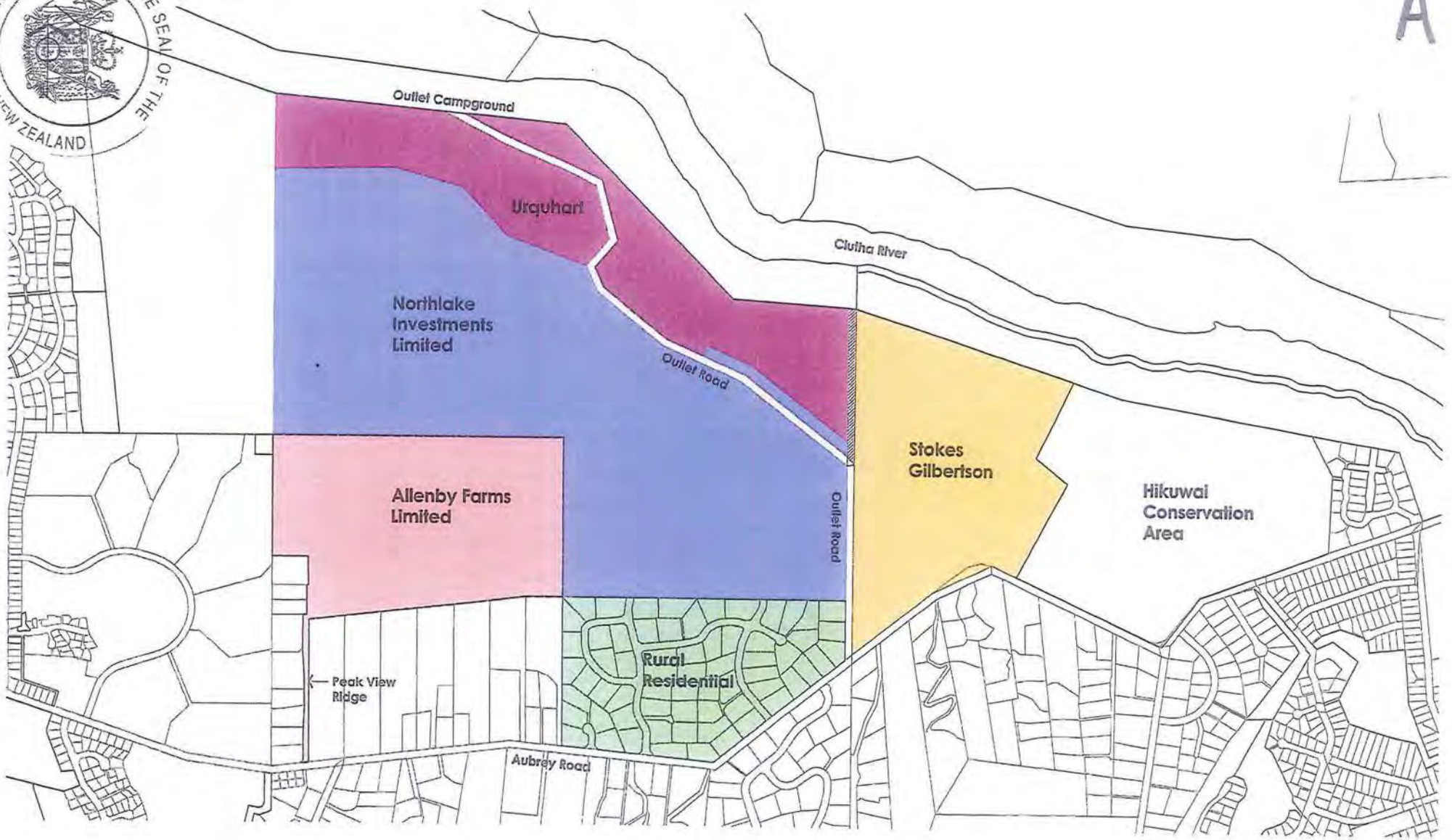
A: Ownership and site plan (Attachment "D" in Mr Goldsmith's opening bundle).

B: Map of Dippie Family interests (Ex 14.1).

C: Northlake's Amended Structure Plan dated 1 May 2015.

D: "Zoning Proposed" map from the Wanaka Structure Plan 2007.

A



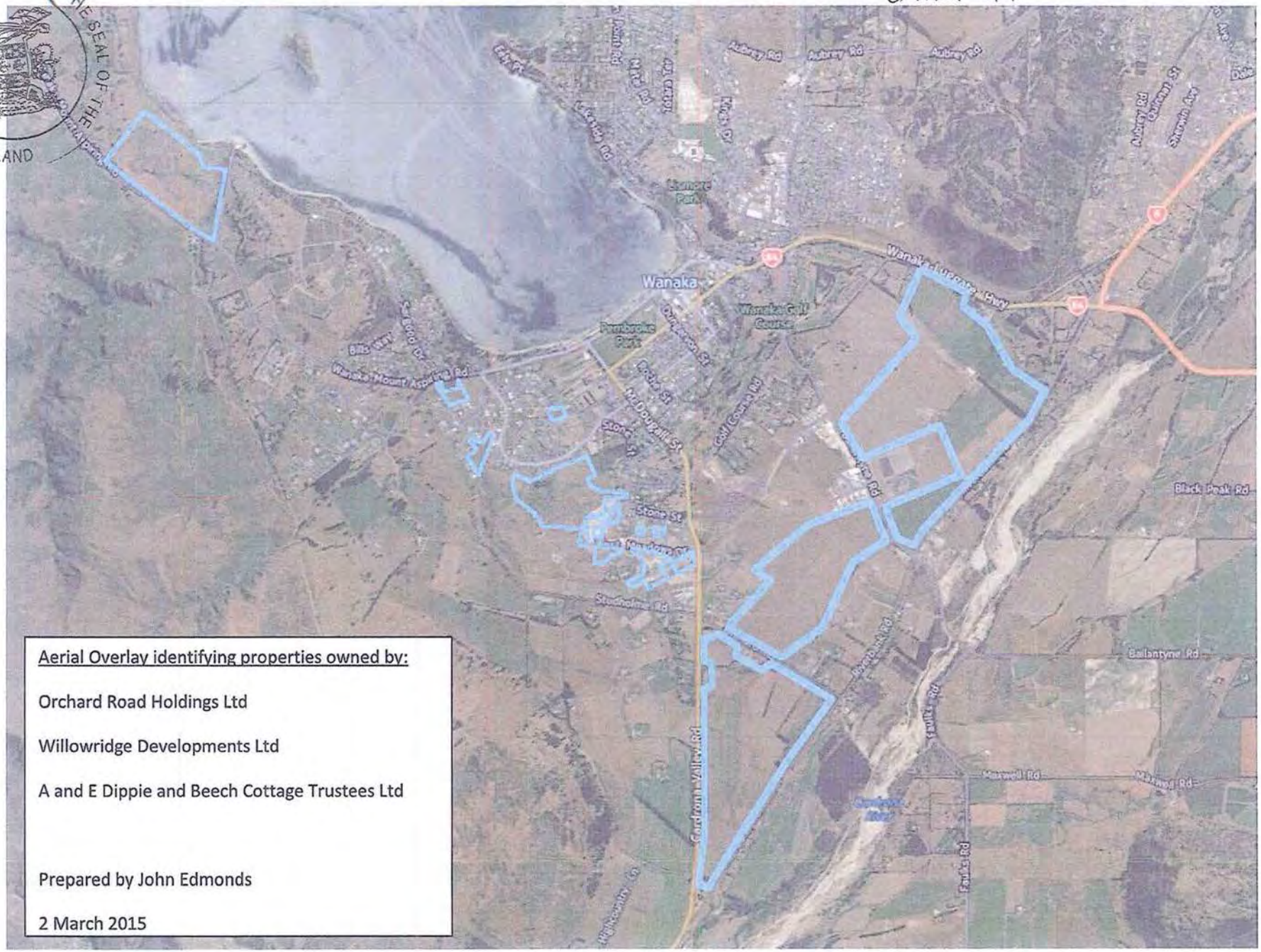
NORTHLAKE WANAKA - LAND OWNERSHIP PLAN (Note: Some coloured land is outside the PC45 Zone)

REFERENCE 1949-SK32 SCALE = 1:5000 AT A3 20 Feb 2015

baxter design group

Exhibit 14.1

B



Aerial Overlay identifying properties owned by:

Orchard Road Holdings Ltd

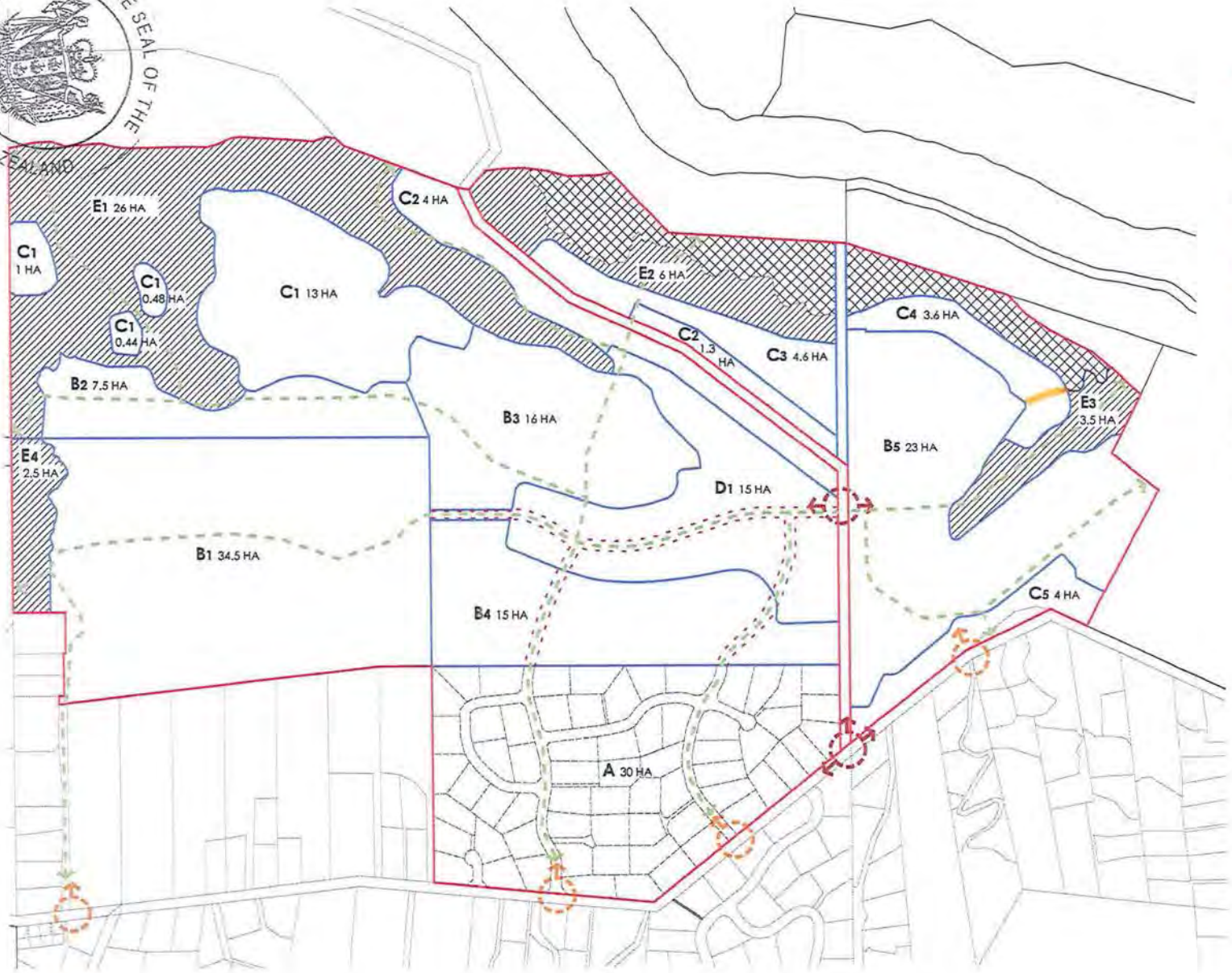
Willowridge Developments Ltd

A and E Dippie and Beech Cottage Trustees Ltd

Prepared by John Edmonds

2 March 2015

C



KEY

- Zone Area = 219.26ha (excludes legal roads)
- A - E Activity Areas
- Activity Area boundary
- Required walkway / cycle links
- Primary entries
- Secondary entries (indicative)
- Building Restriction Area
- Tree Protection Area and Building Restriction Area
- Required road links

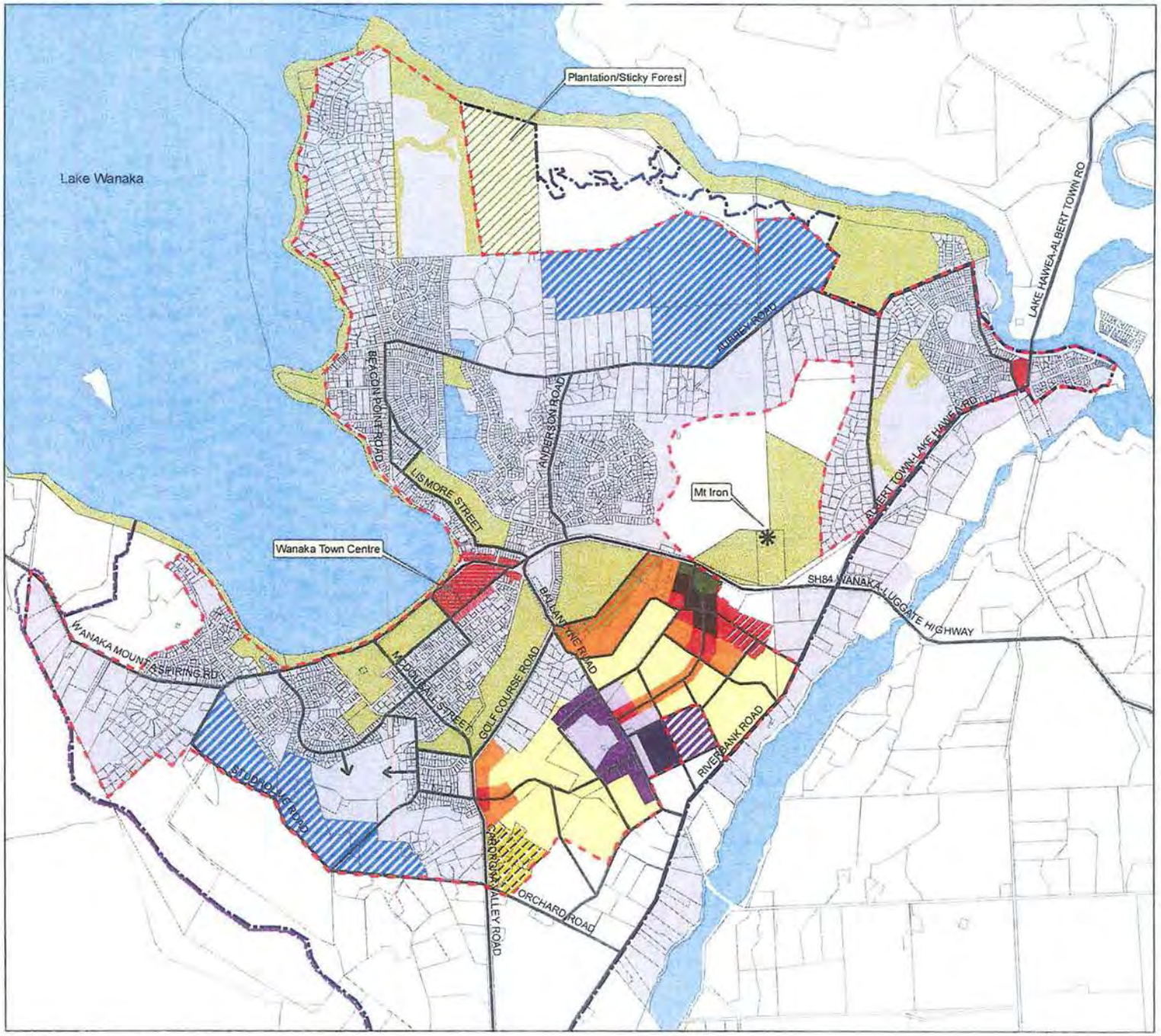
+ NORTHLAKE STRUCTURE PLAN
REFERENCE: 1949-SK58 Scale = 1:8000 @A3 - 01 May 2015

baxter design group

D

Zoning Proposed

- Structure Plan Inner Growth Boundary
- Structure Plan Outer Growth Boundary
- Outstanding Natural Landscape (ONL) Line
- ONL Line Not Confirmed
- Road Network (Indicative)
- Retail Core
- New Open Spaces/Reserves
- Wanaka Town Centre
- Education
- Area Subject to Further Study
- Visitor Accommodation Overlay
- Urban/Landscape Protection
- Existing Open Spaces/Reserves/Golf Club
- Deferred Mixed Business/Office/Technology
- Deferred Future Commercial/Retail
- Commercial/Retail
- Mixed Business
- Existing Business/Industrial
- Industrial Yard based
- Medium/High Density Residential
- Low Density Residential
- Landscape Protection Area
- Mixed Use Zone
- Existing Zoned/Developed Areas
- Water



Indicative zone boundaries only, subject to review at implementation stage

DOUBLE SIDED

Decision No. C 217/2001

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of references pursuant to Clause 14 of the First Schedule of the Act

BETWEEN

SUBURBAN ESTATES LTD and MUIR PARK CORPORATE LTD
RMA: 499/99

ESTATE G D GREENWOOD
RMA: 502/99

P G AND V J BURTON
RMA: 514/99

KENNEDY'S BUSH DEVELOPMENT LTD
RMA: 515/99

I T FORRESTER
RMA: 516/99

A F SCOTT ESTATE
RMA: 517/99

R and H FARRELLY
RMA: 521/99

J JONES, O HOLLEY, W HOLLEY, R FARRELLY and H FARRELLY
RMA: 522/99

B, C AND S STOREY et ors
(formerly P G BURTON)
RMA: 523/99

J P THACKER
RMA: 526/99

C C KISSLING
RMA: 530/99

J E WILSON
RMA: 552/99

CANTERBURY REGIONAL COUNCIL
RMA: 557D, G, K/99

CRACROFT RESIDENTS ASSOCIATION INCORPORATED
RMA: 564/99

J P SHEARMAN
RMA: 566/99

R G AND A B DEAKER ET AL
RMA: 584/99

M D AND C A SCOTT
RMA: 588/99

MAURICE R CARTER LTD
RMA: 602/99

APPLE FIELDS LTD
RMA: 613/99, 616/99, 617/99

STONEHAVEN DEVELOPMENTS LTD (formerly NZ MEAT NOMINEES LTD)
RMA: 472/00

H R ARMSTRONG
RMA: 473/00

AGEDI INVESTMENTS LTD
RMA: 474/00

Referrers

AND

IN THE MATTER of appeals under section 120 of the Act

BETWEEN **CANTERBURY REGIONAL COUNCIL**

RMA: 129/00

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

APPLE FIELDS LTD

RMA: 131/00

Appellants

AND **CHRISTCHURCH CITY COUNCIL**

Respondent

AND **ENTERPRISE HOMES LTD**

Applicant

BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson

Environment Commissioner F Easdale

Environment Commissioner R Grigg

Hearing at **Christchurch** on 6, 7, 8 November, 11, 12 December 2000; and 5, 6, 7, 8, 9, 12, 13, 14, 15 March; 10, 11, 12, 23, 26, 27, 30 April; 1, 2, 3, 14, 15, 16, 28, 29 May, and 11 June 2001

(Final submissions received 23 October 2001)

Appearances

Mr J Fogarty QC, Mr J G Hardie and Mr A Prebble for the Christchurch City Council (respondent) in all proceedings

Reference – RMA 557/99

Ms M Perpick for Canterbury Regional Council

Mr A Hearn QC for the following section 271A parties, J Law, P G and S A Moore, G A and J Y McVicar, Christ's College, National Investment Trust, L R and C D Trott, and the referrers listed below for 'Other References'

Ms C Robinson for M D and C A Scott as section 271A parties (RMA 557/99 and 613/99); and for A E and B E George, J E Burrows and L L Green as section 271A parties (RMA 129/00 and 131/00)

Ms A Dewar for Enterprise Homes Ltd under section 271A

Mr A F J Gallen for the Minister for the Environment under section 274

Ms J M Appleyard for PPCS Ltd as section 271A party in RMA 557/99

[All counsel below for other referrers also appear for the same parties in RMA 557/99 as section 271A parties].

Other References

Mr A Hearn QC for:

- Suburban Estates Ltd and Muir Park Corporate Ltd (RMA 499/99);
- Burton (RMA 514/99);
- Kennedy's Bush (RMA 515/99);
- I T Forrester (RMA 516/99);
- A F Scott Estate (RMA 517/99);
- R and H Farrelly (RMA 521/99);
- J Jones (RMA 522/99);
- B C and S Storey (RMA 523/99);
- J P Thacker (RMA 529/99);
- Van Asch Hoon Hay Trust (RMA 546/99);
- R G and A B Deaker et al (RMA 584/99);
- Maurice R Carter Ltd (RMA 602/99)
- Apple Fields Ltd (RMA 612/99; 613/99; 616/99; 617/99).

Ms M Perpick for C C Kissling (RMA 530/99) and Cracroft Residents Association Inc (RMA 564/99) as referrers and for the Canterbury Regional Council as a section 271A party to all of the above references.

Ms J Borthwick for Transit NZ Ltd as section 274 party

(Section 120 appeals)

Ms M Perpick for Canterbury Regional Council as appellant in RMA 129/00

Mr A Hearn QC for the appellant in RMA 131/00

Ms A Dewar for Enterprise Homes Ltd (applicant) in RMA 129/00 and 131/00

Ms C Robinson for George, Burrows and Green under section 274

INTERIM DECISION

Table of Contents

Chapter 1 *Background*

[1] This decision is about the form of growth of Christchurch City. The proposed plan of the Christchurch City Council ("the CCC") under the Resource Management Act 1991 ("the RMA" or "the Act") contained a number of objectives, policies and maps as to the extent of urban growth around the periphery of Christchurch City. Many parties made submissions on the proposed plan as notified on 24 June 1995 ("the notified plan"). After the CCC heard those submissions and notified its revised proposed plan on 8 May 1999 ("the revised plan") about two hundred submitters

referred parts of the revised plan to the Environment Court. A large set of references related to the general topic of urban growth in the City.

[2] Subsequently agreement was reached between all referrers, interested persons and the CCC as to how to resolve the differences between them in respect of the general objectives and policies of the revised plan relating to urban growth. An order of the Court[1] was made by consent on 18 August 2000 resulting in an amended version of the revised plan which we will call "the City Plan"[2]. The remaining urban growth issues almost exclusively relate to zone boundaries as shown on the planning maps in the City Plan. This is because the principal method of implementing the City Plan's objectives and policies is zoning. This is described as[3]:

> *"the identification of a pattern of land uses (through zoning) supporting a strategy of urban consolidation and a compact urban form for the City ... ".*

This method is set out fully in the chapter[4] on Urban Growth, under the objective on urban consolidation, with the additional words[5]:

> *i.e. preventing the indiscriminate outward spread of urban development into the surrounding rural area and providing opportunities for medium to high density development in identified urban areas, namely the central city, the inner and central living environments and around selected suburban focal points".*

And under the objective on business activity and urban growth with the words[6]:

> *i.e. creating a distribution of general areas of activity (e.g. living, business, open space) enabling convenient access between these areas, minimising trip distances and reliance on use of the motor car".*

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1 Decision C139/00 as amended by corrigendum dated 22 August 2000.

2 However many references in this decision will be to the revised plan since that has been published as a whole, whereas the City Plan (as defined) has not.

3 City Plan, Part 6 Volume 2 [p.6/5].

4 City Plan, Chapter 6 Volume 2 [pp.6/5].

5 City Plan, p.6/5.

6 City Plan, Volume 2 [p.6/5].

[3] In its decisions on the notified plan, resulting in the revised plan, the CCC rezoned or confirmed about 1,723 hectares of rural land to or as "Living" (i.e. residential) zonings. Various references were lodged with this Court concerning that decision and other decisions refusing to zone land into various Living or Special Rural zones allowing closer subdivision. For convenience the references can be divided up as relating to nine geographical areas within the city:

(1) Halswell (at the south of the City);
(2) Masham/Yaldhurst (to the southwest of the City centre);
(3) Land close to the Christchurch International Airport;
(4) Port Hills;
(5) Land adjacent to the proposed southern arterial;
(6) Belfast;
(7) Styx;
(8) Brooklands;
(9) Burwood.

[4] Groups (3), (4) and (5) have not yet been heard. Group (3) has been separated because it relates to land which is (arguably) within the 50 dBA Ldn noise contour of the Christchurch International Airport. All the land in Group 3 is the subject of a variation[7] to the City Plan which is now the subject of other references to the Court. Group (5) – relating to land adjacent to the proposed southern arterial – also raises specified issues which will be considered separately.

[5] As for the land in Group (4) – the Port Hills – that raises other and distinct landscape issues which need to be resolved at a subsequent hearing. All parties agreed the issues were discrete and could be considered separately with one important exception – that the general evidence of the Canterbury Regional Council ("the CRC") in these hearings should be carried over and be considered by the Court when hearing the Port Hills references. However some of the parties to the Port Hills cases chose not to appear (on grounds of expense in many cases) on the CRC's general case.

[7] Variation No. 52.

[6] As for the remaining groups these were heard together if the land subject to individual references was also the subject of the global reference (RMA 557/99) by the CRC concerning many aspects of the City Plan and a number of specific zonings in particular. The relevant parts of RMA 557/99 for consideration in these hearings are Parts D, G and K:

D: Peripheral Urban Development – Rezoning

G: Rural 2A Zoning – Halswell/Wigram Areas

K: Urban Zoning – Worsleys Spur, Westmorland and Cashmere Valley.

[7] The general case for the CRC is that the contested zonings will (singly or, worse, together) cause the following adverse effects to increase:

- vehicle trips (distances);
- vehicle emissions to air;
- dependence on motor vehicles as sole means of transport; and
- areas of versatile soils irreversibly lost

and a decrease in the ability to promote wellbeing, cycling and public transport. The CRC also alleges that the contested zonings would not achieve the objectives and policies of the City Plan, and would be inconsistent with the CRC's regional policy statement. Finally, the CRC argues that the contested zonings are not sustainable management of the City's natural and physical resources.

[8] Five other cases were heard at the same time as the references about rezoning rural land to living zones. Three were about rezoning rural land as special Rural 2A and 3A zones for rural residential use – RMA 557/99 by the CRC and RMA 616/99 and 617/99 by Apple Fields Ltd. Two proceedings (RMA 129/00 and RMA 131/00) were section 120 appeals against the grant of resource consent by the CCC to Enterprise Homes Ltd for subdivision consent and land use consents relating to land at Yaldhurst.

[9] Two references:

- RMA 613/99 by Apple Fields Ltd;
- RMA 566/99 by Mr Shearman;

were withdrawn during the hearings.

[10] Two other cases were resolved by agreement during the hearing:

- RMA 557D/99 by the Canterbury Regional Council relating to Harbour Road at Brooklands/Lower Styx; and
- RMA 558/99 by the J W Barker Estate in the same area.

[11] After a series of pre-hearing conferences involving all the parties to all the urban growth references (other than those affected by the International Airport) the Court directed that the proceedings should be heard in the groups identified above. Further, at the request of the CRC the Court directed that the order of hearing would be that there should be a hearing of the general evidence for the CRC, the CCC and those other parties ("the opposing parties") that wished to give it, and then the site specific cases for each of the parties in a set order.

[12] There never was any precise agreement over the areas involved in these cases. Mr S R Harris, an economist for the CRC stated that the CRC was disputing:

(a) 300 hectares of land zoned living by the CCC (and contending it should be rezoned rural); and

(b) 560 hectares of land zoned rural by the CCC but which other referrers ("the opposing parties") claimed should be zoned living or in a special "rural" zone with 2 hectare minimum subdivision lot sizes.

In the site-specific references actually heard in these hearings the areas involved were as follows:

TABLE 1.1

Group	Appellant	Owner	RMA No	Ha (approx)	Locality	Zoning sought
1	CRC	Sundry	557/99	103	Halswell	Rural 2A to Rural 2
1	CRC	Muir Park Corporate	449/99 393/96	12	Halswell	Rural 2A to Living 1A
6	AFL	AFL subsidiaries	616/99 617/99	93	Belfast	Rural 3A
2	CRC	Enterprise Homes	557D/99 129/00 131/00	28.4	Masham/ Yaldhurst	Living 1 To Rural
2	CRC	PPCS	557/99	15.3	Masham	Living 1A (deferred) to Rural
2	CRC	AFL, Burrows et ors	557/99	67	Yaldhurst	Living 1A (deferred) To Rural
7	CRC	Simpson Ilam P. Carter Etc	557D/99	12.3	Styx Mill	Living 1A (deferred) To Rural
7	Burton	Storey	523/99 et al	100	Styx Mill	Living 1A (deferred) to Rural
8	M Carter Ltd		602/99	9	Stewarts Gully	Rural to LRD
9	CRC	Trott, Law & Moore	557D/99	49	Burwood	Living B (R-R) to Rural

It should be noted however (because the table adds to about 500 hectares, not 860):

(a) that none of the Port Hills land is included in that total since we have yet to hear specific evidence on those references; and

(b) there are other areas – mainly around Marshlands Road, where the CCC has zoned land as rural and referrers have sought living zonings which are not opposed by the CRC. Those references are not part of these proceedings.

[13] These urban growth cases were claimed by Mr Fogarty, of counsel for the City, to be important. Perhaps that is so: even on a crude economic measure of the difference in value of the 860 hectares of land subject to all the urban growth references (excluding those in the airport area) with a rural zoning and with a living zoning is[8] 860 x $140,000

[8] Using a conservative difference of $140,000 per hectare based on Mr P J Cook's evidence in chief paragraph 79.

= $120.4 million. This does not take into account the other environmental costs we were asked to consider.

Chapter 2 The scheme of the City Plan

[14] The revised plan is in four volumes containing first, a statement of the resource management issues; secondly, a statement of the objectives and policies for the City and of the methods to achieve them; thirdly, a larger volume of rules; and finally, a volume of maps. These cases are largely concerned with which land zonings (an important method) achieve the objectives and policies of the City Plan. In deciding that we have to approach the City Plan as a "living and coherent whole": ***J Rattray and Sons Ltd v Christchurch City Council***[9]. We outline, in this Chapter, the structure and the relevant parts of the City Plan.

[15] A reader of the revised plan might hope that section 11 of the revised plan (on "Living") would inform them as to when land should be used for living purposes. In fact the objectives and policies for that chapter are really concerned with what should be achieved after the land is zoned for living. To ascertain whether land should be zoned living, one has to look at many other parts of the City Plan.

[16] The objectives, policies and methods of the City Plan are set out in the 15 sections of Volume 2. The particular sections of the City Plan on which the cases focused are emphasised in the following list of sections (although we have read and considered all of them):

1 Planning a Sustainable Christchurch
2 Natural Environment
3 Energy
4 City Identity
5 Tangata Whenua
6 Urban Growth
7 Transport
8 Utilities
9 Community Facilities and Identity
10 Subdivision and Development

[10] NZTPA 59.

11 Living

12 Business

13 Rural

14 Recreation and Open Space

15 Methods of Implementation

We will consider each of the emphasised sections in due course although not in the same order because a good deal of this case turns on Part 6 of the revised plan which deals with "urban growth".

[17] Section 2 of the City Plan is concerned with Christchurch's natural environment. The plans[10] of the City's natural environment and soils shows that Christchurch's urban area is surrounded by:

(1) the coastline of the Pacific Ocean on the east;
(2) rural land including the rural (flood) plains of the Waimakariri River to the north;
(3) Christchurch International Airport to the northwest;
(4) the Port Hills (identified as outstanding natural landscapes and features) to the south; and
(5) the Canterbury Plains versatile soils to the southwest.

While the plans show rural land within the City boundaries we agree with at least two of the witnesses[11] for some of the landowners, that[12] those legal or zone boundaries will not provide the ultimate limits to urban growth of the City. It is more likely that in the middle term (beyond the life of the City Plan) it will be the physical constraints of (1) – (4) above which stop most outward urban growth of the city as a physical entity or resource.

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10 City plan Volume 2 between pages 2/1 and 2/3, and 2/4 and 2/6 respectively [there is no numbered pages 2/2 and 2/5].

11 Mr K P McCracken and Mr J D Lunday (the latter called specifically in relation to the Masham/Yaldhurst rezonings considered later).

12 K P McCracken, evidence-in-chief, para 42(vii) and Appendix 1.

[18] While the City Plan is primarily concerned with its statutory life of 10 plus years[13] we consider that the definition of sustainable management[14] requires us to consider the reasonably foreseeable needs of future generations of City-dwellers. In practical terms, that means that while we have to give proper weight to policies such as that stressing consolidation (which we discuss later) it is worth bearing in mind that there are some likely physical limits (except to the southwest) to the growth of Christchurch within the next few generations. As to the meaning of "future generations" Mr Gallen for the Minister for the Environment ("MFE") cross-examined a number of witnesses on what they understood by the term. The average was about two generations. We consider that is a minimum to consider and also that the term is more flexible (upwards) than that depending on the nature both of the resource being considered and the threat to it.

[19] Section 2 of the City Plan contains three objectives which are relevant to these cases: to maintain and enhance the characteristics of land and soils so as to best enable them to support life and provide for community needs[15]; to maintain and enhance the quality and availability of water resources and waterways and their margins[16]; and to improve air quality[17].

[20] Issues as to water quality can only be usefully considered in the context of specific requested rezonings. However, the other two objectives – relating to land and soils, and air quality respectively - were the subject of extensive general evidence and will be discussed in Chapters 6 (Soils) and 7 (Transport) of this decision.

[21] As far as the City's physical identity is concerned[18] section 4 of the City Plan recognises that the City is approximately circular and centred on the central business area. Around that area is an inner urban area which is to be the focus for "the larger scale and widest range of housing forms"[19]. Outside that ring are the suburban centres and areas. There are two basic policies for the latter[20]:

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13 Section 79(2) RMA.
14 Section 5(2)(a) RMA.
15 Objective 2.1 [City Plan Volume 2 p.2/3].
16 Objective 2.2 [City Plan Volume 2 p.2/8].
17 Objective 2.3 [City Plan Volume 2 p.2/13].
[Vol 2 p.4/3].
19 City Plan [Vol 2 p.4/4].
20 Policies 4.1 43 and 4.1.4 [Vol 2 p.4/4].

- the maintenance of suburban areas for low scale, low density housing; and
- to maintain and enhance suburban centres and other community focal points with a large scale and high density of development.

[22] Some of the existing "district centres" and "community focal points" are shown on the plan of City Form[21] in Section 4. It appears that the list is not exclusive because the reasons for the policies as to suburban areas and centres include a statement[22]:

> *Finally, within larger areas of peripheral growth, there is the opportunity to enable concentrations of medium density housing as community focal points, and around expansive publicly owned spaces. Such development does not affect any "existing character" and provides greater variety and housing choice in establishing the identity of new suburban nodes.*

[23] We note that the idea that the plan contemplates other community focal points is reinforced by the description and purpose of the Living 3 (Medium Density) zone which states that[23]:

> *A third component of the Living 3 Zone is planned provision for a proportion of medium density housing within large greenfield housing developments such as North Halswell and Styx Mill at Belfast (in conjunction with a village centre and lake). This provides an opportunity for more varied housing types to satisfy a wider range of needs than traditional suburban housing.*
> [our emphasis].

The purpose of the zone contemplates that there may be other large greenfield housing developments since North Halswell and Styx are only mentioned as examples.

[24] Other aspects of the City identity will be discussed where appropriate in relation to site specific rezoning issues.

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22 "City Form" [by implication it is Vol.2 p.4/2 since it is between p.4/1 and 4/3].
23 Explanation and reasons to policies 4.1.3 and 4.1.4 [City Plan, Vol 2 p.4/5].
Living zones para 1.7 [City Plan, Volume 3, p.2/9].

Chapter 3 Requirements of the RMA for the City Plan

The requirements for zoning land

[25] The requirements of the RMA for the contents of a district plan were summarised in general (if slightly incomplete) terms by the Environment Court in ***Wakatipu Environmental Society Inc v Queenstown Lakes District Council*** as[24]:

> *A district plan must provide[25] for the management of the use, development and protection of land and associated natural and physical resources. It must identify and then state[26] (inter alia) the significant[27] resource management issues, objectives, policies and proposed implementation methods for the district. In providing for those matters the territorial authority (and on any reference[28] the Environment Court) shall[29]: see* ***Nugent Consultants Ltd v Auckland City Council***[30] *... prepare its district plan in accordance with:*
>
> - *its functions under section 31,*
> - *the provisions of Part II,*
> - *section 32,*
> - *any regulations*
>
> *and must have regard to[31] various statutory instruments.*

[26] The Court in ***Wilkinson v Hurunui District Council***[32] then focused on references about rezoning of land and continued[33]:

> *While those passages serve to remind us of the matters we have to take into account and have regard to, neither is completely useful as a test for ascertaining whether land should be classified in a particular zone or other category contained in a proposed plan. The ruling of lines on a map is usually seen as a policy (****Auckland Regional Council v North Shore City***[34] *or general method (****Application by North Shore City***[35]*) rather than a rule. A rule must apply to a defined area of a district, and the definition is usually but not necessarily*

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24 [2000] NZRMA 59 at paragraphs [13] and [14].
25 Section 75(1) and Part II of the Second Schedule to the RMA.
26 Section 75(1)(a)-(d).
27 Section 75(1).
28 Under clause 14 of the First Schedule to the RMA.
29 Section 74(1): [1996] NZRMA 481.
30 [1996] NZRMA 481.
31 Section 74(2).
32 Decision C50/00.
33 Decision C50/00 at para [14].
34 [1995] NZRMA 424 at 430 (CA).
35 [1995] NZRMA 74 (Planning Tribunal).

> *achieved by zoning. Consequently the framework of issues stated in* ***Nugent***[36] *(and in* ***Wakatipu Environmental Society Inc***[37]*) needs to be amended slightly when the question is where a zoning or other line should be drawn:* ***North Shore City Council v Auckland Regional Council***[38]*. In addition to the requirements of sections 74 and 75 summarized above the other key issue in considering whether land should be included in a zone is whether the zoning achieves the objectives, or implements the policies of the proposed plan*[39].

[27] We agree with and apply that passage. However to the discussion in the ***Wilkinson*** case we should add the need to ensure that any rezonings sought by the references are not inconsistent[40] with any policy statement or water conservation orders. In this case the CRC's regional policy statement[41] ("the RPS") is the only relevant such statutory instrument.

Do objectives and policies drive methods of implementation?

[28] There was general agreement amongst counsel that the objectives and policies of a plan under the Act generally drive methods of implementation including any rules. This is because the methods are generally[42]:

> *... to implement the policies ...;*
>
> - and rules are[43]:
>
> *... [to] achiev[e] ... the objectives and policies of the plan ...*

To have the methods driving the policies would be for the 'tail to wag the dog' as a witness observed in ***Shaw and Others v Selwyn District Council***[44] of a submission and reference that sought various rule changes and zonings unjustified by any objectives and policies in a transitional district plan. The submissions and references of the two appellants[45] also sought:

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36 [1996] NZRMA 481.
37 [2000] NZRMA 43.
38 [1997] NZRMA 59 at 70.
39 Section 75(1)(d) of the Act.
40 Section 75(2).
41 Operative on 26 June 1998.
42 Section 75(1)(d).
43 Section 76(1)(b).
44 Decision C183/00.
45 Quoted conveniently in [2001] NZRMA 399 at para's [27] and [28].

Any necessary amendments to objectives and policies

and

Such other consequential and incidental amendments, deletions, or additions to the ... objectives and policies ... as may be necessary or expedient to give effect to the purpose and intent of the decisions sought [as to rules] ... .

[29] The position has now, in our view, been obscured by a High Court decision ***Shaw v Selwyn District Council***[46] on appeal from the Environment Court. Chisholm J. stated that, even though[47]:

> *... neither the submissions or references attempted to ... formulate specific objectives and policies ... .*
>
> *In my opinion the "workable" approach ... required the Environment Court to take into account the* ***whole*** *relief package detailed in each submission when considering whether the relief sought had been reasonable and fairly raised in the submissions. Given the nature of the proposed rules I cannot conceive that anyone could have been under any illusion that the submissions were seeking not only a reduction in lot size (and associated relaxation in relation to dwellings) but also any necessary modification to the objectives and policies. In other words, I do not think that anyone could justifiably complain that they would have lodged a submission if they had been aware that the referrers were seeking amendments to the objectives and policies. They were on notice that such amendments were contemplated.* [our underlining]

That decision is subject to further appeal to the Court of Appeal. Even though some counsel for referrers in the proceedings were involved in ***Shaw***, none sought to apply the High Court decision here. The difficulty appears to be that the question of what is a 'necessary' modification is begged. With respect to the High Court, one cannot tell what objectives and policies might need to be changed. It could be all the objectives and policies in the plan for all the reader of a submission can tell. The suggested process appears to work from the bottom (i.e. the suggested rules).

[46] [2001] NZRMA 399.
[47] [2001] NZRMA 399 at para's [29] and [31].

[30] Further, given the highly directive objectives and policies already in the transitional district plan in ***Shaw's*** case, it is difficult for us to see how Chisholm J.'s decision is consistent with the Court of Appeal's decision in ***Auckland Regional Council v North Shore City Council***[48]. There, Sir Robin Cooke, giving the decision of the Court stated:

> *It is obvious that in ordinary present day speech a policy may be either flexible or inflexible, either broad or narrow. Honesty is said to be the best policy. Most people would prefer to take some discretion in implementing it, but if applied remorselessly it would not cease to be a policy. Counsel for the defendants are on unsound ground in suggesting that, in everyday New Zealand speech or in parliamentary drafting or in etymology, policy cannot include something highly specific. We can find nothing in the Resource Management Act adequate to remove the challenged provisions from the permissible scope of "policies". In our opinion they all fall within that term.*

[31] We prefer, and respectfully follow, the approach of another High Court Judge in ***Beach Road Preservation Society Inc v Whangarei District Council***[49]. While we have some difficulty with aspects of that decision as identified in ***Brownlee v Christchurch City Council***[50] we respectfully agree with the important statement that the RMA[51]:

> *... works from the most general to the most particular and each document along the way is required to reflect those above it in the hierarchy. It is a top-down approach.*

What is the purpose of the Act in the context of the City Plan?

[32] An important issue in this case is the extent to which the Court needs to consider separately the matters identified in sections 74 and 75 of the RMA as well as the

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48 [1995] NZRMA 424 at 430 (per Sir Robin Cooke).
49 [2001] NZRMA 176.
50 Decision C102/2001.
51 [2001] NZRMA 176 at para [39].

objectives and policies in the revised plan. This issue arises because, while it is certain that the territorial authority needs to consider the purpose of the Act[52], it also appears that a territorial authority (and on appeal this Court) when considering the zoning of land in a framework where not only the objectives and policies but also some of the methods of implementation (including rules) have already been set, needs to place a good deal of weight on the framework and contents of the plan. Putting the issue as a question: does a territorial authority have to determine what the purpose of the Act is from the first principles in Part II of the Act or can it look at the (legal) objectives and policies of the (proposed) City Plan which are beyond challenge?

[33] In ***Nugent Consultants Ltd v Auckland City Council***[53] the Planning Tribunal[54] had to decide a reference about a rule in the proposed district plan for Auckland City. The Court did not in fact start with section 74 of the Act but stated:

> *What is expected of district rules can be gathered from five provisions of the Resource Management Act.* ***The starting point is the statutory purpose of sustainable management*** *of natural and physical resources, and the explanation in s 5(2) of the term ""sustainable management - ...*
> [our emphasis].

After identifying the other four provisions[55] it continued in a passage which has often been quoted[56] by concluding[57]:

> *In summary, a rule in a proposed district plan has to be necessary in achieving the purpose of the Act, being the sustainable management of natural and physical resources (as those terms are defined); it has to assist the territorial authority to carry out its function of control of actual or potential effects of the use, development or protection of land in order to achieve the purpose of the Act; it has*

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52 As defined in section 5 RMA.
53 [1996] NZRMA 481.
54 Now the Environment Court.
55 Sections 31, 72, 76 and 32 RMA.
56 See the cases quoted earlier in this chapter.
57 [1996] NZRMA 481 at 484.

to be the most appropriate means of exercising that function; and it has to have a purpose of achieving the objectives and policies of the plan.

[34] It was rather surprising then when Mr Fogarty QC, in his closing general submissions for the CCC, submitted:

> *... respectfully ... that the legal method used ... in* ***Nugent*** *and in* ***Hibbit***[58] *is wrong, though not wholly wrong. In each case the Court agrees that a rule must have the purpose of achieving the objectives and policies of the plan. See* ***Nugent*** *page 484, second paragraph. See* ***Hibbit*** *pages 6 and 7. Nowhere in either decision does the Court contemplate that a rule may have the purpose of achieving the objectives and policies of a plan but that those objectives and policies are inconsistent with s 5. ...*
>
> *However, both decisions, unnecessarily in our submission, begin by justifying a rule as being necessary to achieve the purpose of the Act[,] [w]hereas the scheme and arrangement of the Act is that rules are justified under s 76 by achieving the objectives and policies of the plan. There is no provision in the Act which justifies rules as being necessary to achieve the purpose of the Act. As we have explained the Act proceeds upon the premise that objectives and policies of the district plan will be achieving the purpose of the Act, and accordingly under the scheme of the legislation, the immediate focus and justification for rules are the objectives and policies of the plan.*
>
> *With respect to the Court in* ***Nugent*** *and* ***Hibbit*** *they have not followed the injunction of Sir Ivor Richardson which is to follow the scheme and organisation of the Act, one of the twin pillars of statutory construction. The statute itself narrows the focus when dealing with rules to implementing the objectives and policies of the district plan.*

[58] [1996] NZRMA 529.

[35] Mr Fogarty's submissions were directed primarily against the argument put by Mr Hearn QC for the opposing landowners to the effect that[59]:

> *The purpose of the Act is superior to everything including the Regional Policy Statement ...*

Mr Hearn made a similar argument in submissions in some of the area-specific hearings.

[36] We hold that Mr Fogarty is correct, and that "the purpose of the Act" when considering whether or not to adopt a rule or other method is to be found in objectives and policies. There are four sets of reasons for that conclusion. First, the text and purpose of methods and rules are closely intertwined and make it clear that:

- methods are to "implement"[60] policies; and
- if the method is a rule, then its purpose is to "carry out"[61] the functions of the territorial authority and "achieve"[62] the objectives and policies in its plan.

[37] Secondly, the context of the phrase "the purpose of this Act" when a territorial authority is deciding, under section 32, whether or not to adopt a method (including a rule) in its plan suggests that the phrase means "the purpose of this Act as ascertainable from and set out in the objectives and policies of the relevant plan". When the RMA wants to make a process subject to the purpose of the Act in a general sense it states "Subject to Part II ..." as in section 104(1) when listing the matters which a consent authority is to consider when deciding a resource consent application.

[38] Thirdly, as Mr Fogarty submitted, the scheme of the Act supports his conclusion. Rules and methods are contained in district (or regional) plans, and are thus part of two hierarchies under the RMA – the external hierarchy of instruments identified by the Court of Appeal in ***CRC v Banks Peninsula District Council***[63] and the internal structure of a plan as set out by section 75 of the RMA.

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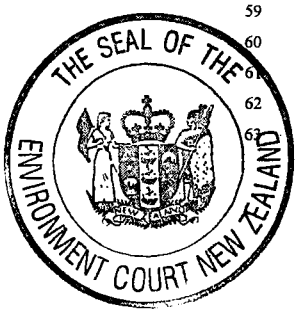
59 Notes of evidence, p.161: in a question to Mr L R McCallum.
60 Section 75(1)(d) RMA.
61 Section 76(1)(a) RMA.
62 Section 76(1)(b).
63 [1995] NZRMA 452 at 456.



[39] Fourthly, always having to have regard to the general purpose of the Act (e.g. when considering whether a district rule should impose a sideyard requirement of 2.5 metres or 3 metres) would make the RMA even more difficult than it already is to work with; it would become impossible. There is also the difficulty, as Mr Fogarty submitted, that all objectives, policies and even rules themselves would be qualified by the words:

subject to achieving the purpose of the Act

which, at worst, makes them completely ineffective as rules (with the connotations of certainty in that concept). At best, it marginalises the settled objectives and policies that the methods are meant to implement.

[40] We conclude that when considering methods of implementation (including rules) the purpose of the Act as defined in section 5 is not the starting point at all; it is the finishing point, to be considered in the overall exercise of the territorial authority's judgment under Part II of the Act[64]. We hold that the overarching purpose of the Act - that is sustainable management, and the elements of Part II - are largely presumed to be met by, and subsumed in, the objectives, policies and methods contained in the revised methods of the City Plan. If that is not the case then there is an element of re-inventing the wheel if all the matters to be considered (to use a neutral term) under sections 5 to 8 of the Act have to be separately applied to the zoning.

Relevant considerations under section 74

[41] The matters to be considered in these references are therefore:

(1) the functions of the CCC under section 31 of the Act, especially

(1) As required by section 74(1).
(2) The purpose of the Act always has a role to play of course in the interpretation of both the Act itself, and instruments under it – ***Brownlee v Christchurch City Council*** Decision C102/2001.

achieving integrated management of the effects of the use, development, protection and controlling subdivision of land;

(2) any transport strategy [section 17 of the Land Transport Act 1998];

(3) the relevant objectives, policies of the City Plan;

(4) the reasons for and against, and the costs and benefits of the proposed zonings (and alternatives) under section 32 of the Act;

(5) any possible inconsistency with the regional policy statement;

(6) the purpose of the Act as revealed in the objectives, policies and other provisions of the City Plan.

[42] As for the functions of the CCC: integrated management of the effects of land use and controlling subdivision is, in our view, adequately (and best) considered in the context of the settled objectives, policies and methods of the City Plan. As for the identification of the relevant effects we heard detailed evidence on the effects caused by further rezoning of rural land within Christchurch City as living in respect of:

- versatile soils;
- transport use;
- energy use;
- air pollution;
- population density;
- rural character and landscape.

[43] Since each of those sets of effects is managed in detail by the revised plan we will largely leave discussion of them to when we consider the relevant sections of the City Plan – with one exception.

[44] The first exception is to recognise that one of the most important issues in these references about rezoning is to recognise the potential **cumulative** effects[65] of:

- rezoning any or all the land; and
- (later) rezoning more land on the Port Hills for living purposes; and

[65] See the wide, inclusive definition of "effects" in section 3 RMA.

- rezoning rural land in the Christchurch International Airport's noise shadow for living purposes.

One advantage of the general cases presented by the parties is that they gave us a good opportunity to consider the issue of cumulative effects, and we bear that issue in mind in all that follows.

No presumption or onus

[45] Finally we agree partially with the decisions of the Planning Tribunal[66] and, later, the Environment Court[67] which state that the approach when considering competing provisions suggested for a plan is correctly stated in Dr K A Palmer's Local Government Law in New Zealand[68]:

> *As a matter of principle an appeal to the Planning Tribunal is a true hearing de novo, with a complete rehearing of all evidence afresh ... Accordingly, in appeals relating to content of a regional or district plan ... no onus rests on the appellant to prove that the decision of the body at first instance is incorrect. The appeal is more in the nature of an inquiry into the merits, in accordance with the statutory objectives and existing provisions of policy statements and planning. There is no presumption that the council decision is correct.*

However the next sentence in Dr Palmer's book has also been included with the same apparent approval. It states:

> *Where an appeal relates to a rule, which brings into question a policy statement or other plan provision, there is no presumption that the related policy, plan, or rule is necessarily appropriate or correct.*

With respect we do not agree with that proposition, at least in respect of "related" policies. They are, for the reasons we have just discussed, a given: they are the policies

Leith v Auckland City Council [1996] NZRMA 400.
Royal Forest and Bird Protection Society Inc v Northland Regional Council 4 ELRNZ 200.
p.646 [2nd edition, 1993].

which the contentious rule is intended to implement or achieve. We do not see how a rule can bring a policy into question.

Chapter 4 Urban Growth: the objectives and policies

Introduction

[46] The overall urban growth objective[69] in section 6 of the City Plan is nearly vacuous – it seeks urban development patterns that promote sustainable resource management. The explanation for the objective is slightly more useful in that it contemplates[70] *"intervention in urban land use patterns"*. We note at this point that the intervention is in "patterns" not "supply". The significance of this wording will, we hope, be revealed later. The explanation gives two reasons for that intervention:

- *... that "appropriate" urban forms exist to help secure desired outcomes or manage effects[;* and]
- *[t]he converse ... that if left unimpeded resulting patterns are likely to produce adverse environmental effects.*

[47] There are three further, subordinate, objectives in section 6 which contain more information. In summary, they are: first to accommodate urban growth with a primary emphasis on consolidation; secondly, to promote and reinforce proximity and accessibility between living and business areas; and thirdly to provide for peripheral urban development which:

(a) is on a scale and of a character consistent with the (first) consolidation objective;

(b) avoids, remedies or mitigates adverse effects on natural resources; and

[69] Section 6 [City Plan Vol. 2 p.6/3].
[70] Section 6 [City Plan Vol. 2 p.6/3].

(c) makes efficient use of infrastructure.

[48] We have struggled to understand the relationship between the three objectives on urban growth in section 6 of the City Plan. We consider that the third objective[71] is a subordinate to the first and second. The third objective (6.3) is still very important because it links the urban growth section of the City Plan with almost all the other sections of the revised plan.

[49] When considering whether to rezone rural land as part of a living zone, the key objectives are the urban growth objectives.[72] We consider the text of each objective in turn.

The consolidation objective

[50] The consolidation objective is:

6.1 To accommodate urban growth, with a primary emphasis on consolidation.

While the primary emphasis on consolidation suggests that anything else is subordinate, that there is another such option (for example, peripheral expansion) is implicit in the objective.

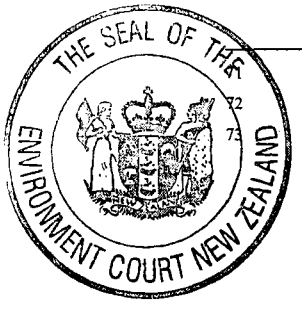
"Accommodate" is defined in the dictionary[73] as, when used transitively:

1. *To ascribe fittingly (a thing to a person); to adjust (one thing or person to another) .... ;*

2. *To adjust, reconcile (things or persons); to bring to agreement ...*

3. *To fit (a thing for use); to repair; to facilitate ... ;*

4. *To fit or furnish a person with; to oblige; especially with lodgings ...*



72 Objective 6.3 [City Plan, Vol 2 p.6/8].
73 City Plan, p.6/3 as amended by Corrigendum to decision C139/2000.
The Shorter Oxford English Dictionary [Third Edition, 1973] p.12.

And intransitively:

1. *... to adapt oneself to ...; to show the correspondence of one thing with another; to make consistent ...;*

2. *... to come to terms ...*

While there is no suggestion in the City Plan that the CCC is in fact going to provide or directly plan the building of houses, some of the transitive senses of "accommodate" are suggested in the way the objective uses the word.

[51] We conclude that (on the text alone at this stage of interpretation) to "accommodate" as used in the objective means:

- *To direct/control indirectly/enable urban growth designed or adjusted to fit (the primary emphasis on consolidation).*

The choice between "direct" "control indirectly" and "enable" is because the text of the objective does not help decide which of these is intended. Other guides to interpretation are needed.

[52] *"Consolidation"* as used in Objective 6.1 is not defined in the City Plan. To *"consolidate"* is defined in the Concise Oxford Dictionary[74] as meaning:

1. *... make or become strong or solid*

2. *... reinforce or strengthen (one's position, power etc)*

3. *... combine ... into one whole.*

Those senses are part of the meaning of the noun *"consolidation"* as used in objectives 6.1 and 6.3.

[74] 8th Ed, [OUP, Oxford1990].

[53] Turning to the context of the objective: other, more precise, meanings are suggested by the reasons[75] for the objective. Those reasons[76] implicitly qualify what is meant by *"consolidation"* so that it includes:

- minimising adverse effects on water quality and versatile soils through selective restraint on peripheral development;
- shortening private car trips by locating housing close to employment, schools and business areas;
- ensuring that safe and convenient pedestrian and cycling links are provided in new neighbourhoods;
- increasing population densities to support public transport;
- emphasis on a compact pattern of development;
- possible extension of the city/urban boundaries;

and should be contrasted with

- an isolated and dispersed pattern of urban growth.

[54] It is therefore important to recognise that the contextual meaning of "consolidation" in the revised plan includes some concepts – peripheral development, extension of urban boundaries – which would not be included if only the dictionary definitions were relied on.

[55] Each of the objectives has a set of related policies. The relevant policy in regard to the urban consolidation objective relates to population densities is the first. It is[77]:

[75] Revised plan p.6/3.
[76] As required by section 75(1)(e) of the RMA.
[77] Policy 6.1.1 [Revised plan, Vol 2, p.6/4].

To provide for a gradual increase in overall population density within the[78] *urban area through:*

(a) Providing for higher densities near the central city and suburban focal points; and

(b) Enabling new peripheral development where it is consistent with a consolidated urban form; and

(c) Promoting opportunities for higher building densities in larger areas of peripheral urban housing growth.

The other policy relates to redevelopment and infill and is of little or no relevance in these proceedings.

[56] The policy is to achieve a gradual increase in population density by providing for higher building densities near the central city, suburban focal points and in larger areas of peripheral urban housing growth. Indeed in the third of those categories higher building densities are positively encouraged by the use of the words *"promoting opportunities"*. The policy also makes it clear that new peripheral development must be consistent with a consolidated urban form. We take that to mean any new development must substantially meet most if not all of the criteria implied by the inclusive definition of *"consolidation"* already referred to[79]. Finally we note that the policy is to *"enable"*[80] new peripheral development, not to "direct" or "control" it. This is of crucial importance because there is not a suggestion of any city-wide directed rationing in this policy, it is to be left to landowners to calculate the demand for housing; the CCC's functions are (it is implied) to act as a referee by ensuring growth is consistent with a consolidated urban form and to promote higher densities in larger areas of peripheral growth. It can presumably achieve the latter by blowing the whistle on the

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78 Readers of the City Plan should note that the July 2001 reprint refers to "existing urban area" here (as did the revised plan). That is incorrect: the word "existing" was deleted by consent order in C139/2000 and corrigendum C141/2000.

79 Paragraph [53] above.

80 Policy 6.1.1(b).

former. That is, for example, by not allowing a rezoning unless it includes higher density areas.

Business activity and urban growth

[57] The second objective connects urban growth with business activity. It is to establish[81]:

> *Patterns of land use that promote and reinforce a close proximity and good accessibility between living, business and other employment areas.*

[58] The policies establish three general methods as to how that is to be achieved:

(1) by promoting[82] the central city as the principal focus – consistent with the objectives and policies in Chapter 4 of the revised plan on "City Identity"[83];

(2) by the encouragement[84] of compact suburban centres[85];

(3) by promoting industrial activities within the existing urban area.

Peripheral development

[59] The third and final urban growth objective relates to and provides for[86]:

> *Peripheral urban development of a scale and character consistent with a primary emphasis on urban consolidation; which avoids, remedies or mitigates adverse impacts on water, versatile soils, significant amenity values and other natural resources; and which makes efficient use of physical infrastructure.*

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81 City Plan p.6/5.
82 Policy 6.2.1 [City Plan, p.6/6].
83 [City Plan p.4/3].
84 Policy 6.2.2 [City Plan p.6/6].
85 See policy 12.4.1 Distribution (or suburban centres) [City Plan p.12/20].
86 Objective 6.3 [City Plan Vol 2 p.6/8].

There are no less than 18 policies relating to this objective.

[60] There are 6 policies[87] particularly relevant to the issue of urban growth:

> *Policy: Urban boundary*
> *6.3.1 To ensure peripheral urban growth does not occur in a form detached from current urban boundaries, or which promotes a dispersed and uncoordinated pattern of development.*
>
> *Policy: Infrastructure costs*
> *6.3.2 To encourage growth in areas (and in a manner), that ensures that any adverse effects on the roading network can be avoided or mitigated, and the costs of providing public infrastructure are minimised; and that costs attributable to particular developments are met by the developer.*
>
> *Policy: Community facilities*
> *6.3.3 To encourage growth in areas where facilities already exist and have the potential to accommodate additional demand.*
>
> *Policy: Versatile soils*
> *6.3.4 When considering the sustainability of urban expansion into rural areas, it shall be assessed in accordance with Policy 2.1.1.*
>
> ...
>
> *Policy: Urban extensions*
> *6.3.9 To promote a range of incremental extensions to the urban area distributed over a number of peripheral locations, rather than a major extension in any one area.*
>
> *Policy: Boundaries of urban extensions*
> *6.3.10 To prefer peripheral development which is contained, at least in part, by a well defined barrier to further outward extension for urban development.*

The context and scheme of the City Plan

[61] The objectives and policies of section 6 of the City Plan need to be understood in the context of both section 6 as a whole and of the revised plan as a whole. Therefore in attempting to ascertain the meaning of the objectives and policies of section 6 of the revised plan we should also refer to:

[87] From policies 6.3.1 to 6.3.18 [City Plan Vol 2 pp.6/8 to 6/12].

- The explanation and reasons given for the objectives and policies;
- The proposed methods of implementation stated in the revised plan;
- The description of environmental results anticipated.

In fact, the explanation and reasons were relied on by some of the parties quite heavily.

[62] An interpretation advanced by both the CRC and by some of the CCC's witnesses, was that the objectives in section 6 of the plan were to be achieved, and could only be achieved, if the rezoning of rural land as living zones was rationed. This argument ("the rationing approach") can rely neither on any objective or policy in itself, as we have seen, nor on any method of implementation as we shall see. Instead, counsel and the relevant planning/resource management witnesses (Mr L McCallum for the CRC, Messrs R Nixon and I Thomson for the CCC) relied on various explanations and/or reasons for policies as imparting the rationing approach.

[63] The first section of the revised plan that gives any encouragement to a rationing approach is that part of the explanation and reasons for policy 6.1.1 which states that[88]:

> *Any additional release of land for peripheral urban development will be assessed against the objective of urban consolidation and the objective and policies relating to peripheral urban growth. The total amount of this new urban land should be such that the average household density in the urban area will gradually rise over time to help facilitate transport energy savings, and reinforce the advantages derived from the primary emphasis on urban consolidation.*

The references to a 'release' of rural land and the 'total amount' of new urban land suggest (if not strongly) that a rationing approach might be implied by the reasons given in the **City Plan**.

[88] City Plan, Vol 2 p.6/4.

[64] The only other support for a rationing approach to the supply of land is contained in the reasons for Objective 6.3. These state that[89]:

> *An overriding matter remains the objective of urban consolidation, and the maintenance of a compact urban form.* ***Accordingly, notwithstanding other factors, the rate at which land is released for peripheral urban growth is subject to achieving a gradual increase in population density within the urban area, and not at a rate exceeding the rate at which vacant land is taken up for urban purposes.*** *The objective and policies intervene in the land market to an extent that effects on natural and physical resources are anticipated and managed, rather than merely reacted to after the consequences of urban growth have already become apparent.* [Our emphasis].

We have no difficulty with applying the first and third sentences of that statement. However there are two problems with ascertaining the meaning of the middle (emphasised) sentence:

(1) it refers to the "release" of land for peripheral urban developments; and

(2) then states that the land should not be released at a rate which exceeds the rate at which land is taken up.

There is a third element – increasing population density – which should be achievable by other methods, and is justified by other policies.

[65] As to (1): we are concerned that the method does not reflect the enabling policy, but is carried over as a method of implementing a more prescriptive or controlling policy. As to (2): our concern is that the method creates a meaningless test because it is self-referential or circular. That is because the speed with which land is taken up by purchase is inversely related to its price; the price of a piece of land varies directly with the quantity of land supplied (i.e. on the market); and the quantity of land supplied is of course the item the method contemplates controlling.

[89] City Plan p.6/8.

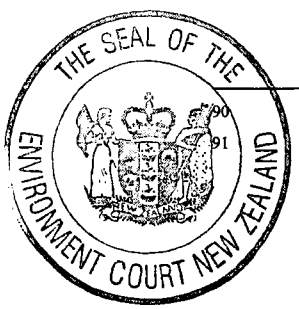
[66] Turning to objective 6.2, none of the policies flowing from that objective addresses how the plan links business and living activities. More assistance is given by the reasons for the objective. These state[90]:

> *The way in which social, business and cultural activities are distributed within Christchurch has a major influence on travel demand and energy consumption. While it is unrealistic to expect all people to use facilities or obtain employment nearest to their homes, particularly in a flexible labour market, there are good reasons why the opportunities should at least be made available. These include:*
>
> - *enabling people with limited private transport to have convenient access to shops and other facilities;*
> - *enabling people to have a choice as to whether they use a car, walk or cycle, or use public transport; and*
> - *enabling those who do rely on car travel, to be able to reduce trip lengths to access services, recreation and employment.*

The reasons are significant because they inform the policies relating to Objective 6.3 – as they should because it should not be overlooked that both Objectives 6.1 and 6.2 guide the third objective and its policies.

[67] Another part of the context for the consolidation objective and policies is the methods of implementation. These are so important we should state them in full. As stated in the City Plan they are[91]:

> ***District Plan***
>
> - *The identification of a pattern of land uses (through zoning) supporting a strategy of urban consolidation and a compact urban form for the City, i.e. preventing the indiscriminate outward spread of urban development into the surrounding rural area and providing opportunities for medium to high density development in identified urban areas, namely the central city, the*



[90] City Plan p.6/5.
[91] Revised plan p.6/5.

inner and central living environments and around selected suburban focal points.

- *Living Zone rules relating to, for example, residential site density, open space and building height.*
- *City rules for Subdivision, e.g. for allotment sizes and dimensions.*
- *The identification and promotion of new development opportunities during the plan period through plan changes, including where appropriate those initiated other than by the Council.*

Other methods

- *Provision of works and services, e.g. development of public open space, water supply, drainage and district roading programmes, and environmental enhancement of older areas of the City.*
- *Production, implementation and review of Neighbourhood Improvement Plans and Local Area Traffic Management Schemes.*
- *Promoting and facilitating redevelopment of land, e.g. through comprehensive development plans.*
- *Liaison with communities within the city to identify community character and amenity values.*
- *Managing the sequence and timing of public infrastructure through the Capital Works Programme.*

[68] To those a decision[92] on a reference added a further method of implementation within the **City Plan** which now states:

- *The investigation, including public consultation, into increasing the density of urban development in and around the community focal points (as defined in Vol 2, p4/2) in accordance with Objective 6.1 and Policy 6.1.1.*

The CRC relied on this – in Mr McCallum's evidence and Ms Perpick's submissions - as a reason for upholding the CRC reference. They asked us to refuse the rezonings to allow further investigations to be carried out. The opposing landowners saw this as

[92] Decision C139/2000.

delaying tactics. However there is a little more to the CRC position than that: there may be situations where there is no alternative to obtaining more information. However we consider there is no such global case applicable to all the relevant areas of land, and that the application of this method is better considered on a locality basis.

[69] The methods of implementation for the 'peripheral growth' objective and policies are[93]:

District Plan

- *The identification of specialised low density and/or peripheral Living 1 Zones to accommodate anticipated urban growth of the City, and associated zone rules, e.g. minimum net site areas, special setbacks and performance standards.*
- *City rules for Heritage and Amenities, e.g. for protected trees.*
- *City rules for Subdivision, e.g. for allotment sizes and dimensions, for provision of services (water, waste disposal) and for esplanade reserves and strips.*
- *General city rules for building adjacent to waterways and filling and excavation of land.*
- *Development plans controlling the staging and layout of development within some areas identified for new urban growth.*
- *The identification and promotion of new development opportunities during the plan period through plan changes, including where appropriate those initiated other than by the Council.*

Other methods

- *Provision of works and services, e.g. works relating to water supply, drainage and the roading programme.*
- *Negotiation with landowners of appropriate long term use or protection of any balance of peripheral land not used for urban purposes.*

[93] City Plan p.6/16.

[70] When the methods of implementation for the urban growth objectives (and policies) are read with the City Identity policies for "Suburban areas and centres"[94] and especially the final part of the "explanation and reasons"[95] for that policy we hold that the correct interpretation of section 6 of the revised plan is that it contemplates two kinds of carefully assessed (i.e. not indiscriminate) forms of peripheral urban growth:

(1) larger scale subdivision and development providing opportunities for medium to high density development[96];
(2) low density Living 1 zones[97];

and that these are to be enabled while controlled indirectly to ensure that densities increase and a compact[98] city form is contained.

It also provides for:

(3) the investigation into increasing the density around existing community focal points.

In our view the CRC case emphasized the policy added by its reference, that is further investigations, too much, and did not give sufficient significance to the fact there are two types of peripheral growth identified above. The zoning method for the fundamental consolidation objective implicitly recognises that there may be "outward spread" of urban development. It must simply not be "indiscriminate"[99] spread. We infer that the methods support the concept that each piece of rural land should be looked at on its merits and in the light of the other objectives and policies of the revised plan. A corollary is that there is no rationing of the rate or scale of conversion for peripheral growth in category (1) in the previous paragraph.

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94 Policy 4.1.3 [Revised plan p.4/4].
95 City Plan p.4/5 – quoted earlier in this decision.
96 Methods of implementation to Objective 6.1.
97 Implementation methods for Objective 6.3 [Revised plan p.6/16].
98 "Compact" being a relative term, since Christchurch City is a notably uncompact city on an international comparison.
99 Implementation methods for Objective 6.1 [City Plan p.6/5].

The wider context and scheme of the revised plan

[71] Another aspect of the context and scheme of section 6 of the **City Plan** is to consider the monitoring[100] provisions in the plan. The requirements[101] of the City Plan to monitor "the retention of a compact urban form for the City"[102] are stated[103] as a list of "possible indicators"[104] including:

(a) Change in population density by area unit.

[72] The wording is significant: the indicators are merely "possible". Nor are they tests in respect of one indicator which must be met. Rather, in coming to any decisions about whether the objectives and policies in respect of urban growth are being achieved, the Council (and now this Court) will have regard to various indicators to see whether the statistics show that the trends are in the right direction. Further, the monitoring provisions do not suggest that those indicators are the only ones – others might be possible, or indeed preferable.

[73] Further the ambiguities in the proposed monitoring techniques need to be recognised, which confirms further in our view that they are "possible indicators" not benchmarks or tests. For example, in relation to "change in population density":

- What is the starting date? (Date of notification of notified plan? Or of the revised plan? Or Other?)
- What was the population as at that date?
- What is a "head" of population? (a permanent inhabitant of Christchurch? A landowner?)

Or in relation to the population density "by unit area" is the unit area:

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100 Under section 75(1)(i) RMA.
101 Introduction: General monitoring statement [City Plan, Vol 2, p.3].
102 6.1 Environmental results anticipated [City Plan Vol 2 p.6/5].
103 City Plan Vol 2 p.6/17.
104 City Plan Vol 2 p.6/17.

- The total area of the City?
- The urban land in the City?
- The land zoned "Living" in the City?
- The land zoned "Living" and subdivided?
- The land zoned "Living", subdivided and built on?

Finally, are the areas of Living zonings to be assessed as in 1995, 1999 or when the City Plan comes into force? We do not see any answers to any of those questions in the City Plan. We assume the opaqueness was deliberate in order that any reliable, consistent statistics could be used as indicators.

[74] Widening our contextual/schematic search for meaning to include the rules in the Living zones we observe that rationing of land supply will not achieve an increase in density by itself anyway. The City Plan appears to contemplate that most peripheral development will be in the Living 1 zone which has a minimum (!) but not a maximum lot size – making it difficult to achieve increasing densities in our view. On the other hand the indirect controls we have referred to (when considering specific rezonings) can go some way towards increasing density within the City (as may the Living 3 and 4 zonings by having smaller minimum lot sizes).

History of section 6: Urban Growth

[75] If the history of the plan is examined – and we consider that to be a particularly apposite approach given that the proposed plan was publicly notified: ***Brownlee v Christchurch City Council***[105] - then that history shows that objectives and policies relating to urban growth have changed significantly.

[76] There have been three versions of Objective 6.1:

[105] Decision C102/2001 at paragraphs [25] and [30].

Plan	Objective 6.1
Notified (1995)	To accommodate urban growth through consolidation of the existing urban area.
Revised (1998)	To accommodate urban growth, including by peripheral expansion, with a primary emphasise [sic] on consolidation.
City [Corrigendum to C139/2001]	To accommodation urban growth with a primary emphasis on consolidation.

[77] In our view the notified plan's objective was most restrictive in that all urban growth was to be accommodated through consolidation. It appears that the consent order represents a compromise in an attempt by the CRC to move the objective back towards the notified plan. However, in our view there is not a large difference between the objectives of the revised plan and the consent order (the City Plan). The latter implies what the former made explicit. If the primary emphasis is on consolidation, then at least some lesser consideration must be given to other ways of accommodating urban growth (for example by peripheral expansion).

[78] A similar pattern in policy 6.1.1 is revealed in the more rigid 1995 plan, wider 1999 revised plan, and a move towards the 1995 plan in the consent order:

Plan	Policy: Population densities 6.1.1
Notified (1995)	To achieve a gradual increase in overall population density within the existing urban area through: (a) higher building densities near the central city and suburban focal points; and (b) by managing the rate at which land is zoned at the edge of the urban area for urban purposes.
Revised (1999)	To encourage a gradual increase in overall population density within the existing urban area through: (a) higher building densities near the central city and suburban focal points; and (b) by promoting opportunities for higher building densities in larger areas of peripheral urban housing growth. [our underlining].

City Plan [Decision C139/2000]	To provide for a gradual increase in overall population density within the urban area through (a) Providing for higher densities near the central city and suburban focal points; and (b) Enabling new peripheral development where it is consistent with a consolidated urban form; and (c) Promoting opportunities for higher building densities in larger areas of peripheral urban housing growth.

[79] The two crucial points about the changes in policy 6.1.1 are:

(1) the notified plan managed the rate at which land is zoned for urban purposes whereas the revised plan does not, and neither does the consent order;

(2) the consent order expressly enables and promotes peripheral development.

Those two points are very important in this case because in our view, on the issue of urban growth, the CRC and the CCC have both misinterpreted section 6 of the City Plan.

[80] The notified plan included in policy 6.1.1 the following:

...

(b) by managing the rate at which land is zoned at the edge of the urban area for urban purposes.

The explanation and reasons stated:

The rate of release of land for peripheral growth is a key component of consolidation, because if the rate of land release is such that it exceeds the rate at which land is "consumed" for "greenfields" development, urban consolidation and the efficient use of existing infrastructure and energy associated with transport will be compromised.

Policy 6.1.1(b) and the above paragraph from the explanation have both been deleted from the City Plan. There is a substituted paragraph (b) as quoted above.

[81] The only planning witness to have properly registered this change and its importance is Mr K P McCracken[106] who was called by Mr Hearn QC. Cross-examination on this point (which is an issue of law anyway) did not shake him[107].

[82] It would in our view make a mockery of the changes in the City Plan if what has expressly been deleted were written back by implication. Yet, in our view, that is what the CRC and, to a lesser extent, CCC are seeking to do. We do not think we are being inconsistent in our approach to Objective 6.1 and policy 6.1.1. Both have had deletions, but the objective 6.3 expressly refers to the peripheral expansion now deleted from Objective 6.1, whereas there is now no policy endorsing the rationing approach. In other words, Part 6 of the City Plan allows for the regulation of land use but not supply as the overall objective suggests.

[83] It is easy to see how the CRC misinterpretation has occurred. It is because the "explanation and reasons" for various objectives and policies including policy 6.1.1, have not been completely amended since the (1995) notified plan. Thus while all quantification and/or management of the rate of zoning land disappeared in the revised plan and was not reinstated in the consent order, the statement of reasons for the relevant policy has not been fully changed.

[84] The picture is further confused by the fact that the explanation and reasons for objective 6.3 (peripheral urban growth)[108] also contain a reference back to the primary urban growth objective and policies which is redolent of policy 6.1.1 in the (1995) notified plan but makes no sense in the revised plan. It is the statement[109]:

> *Accordingly notwithstanding other factors, the rate at which land is released for peripheral urban growth is subject to achieving a gradual increase in population*

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106 K P McCracken evidence in chief paragraphs 84 and 86.
107 Notes of evidence pp 267-272.
108 Vol 2 City Plan p.6/8.
109 Vol 2 Revised plan p.6/8.

density within the urban area, and not at a rate exceeding the rate at which vacant land is taken up for urban purposes.

We hold that that "reason":

(1) is not, as a matter of interpretation, a reason for or explanation of anything – it was a reference back to policy 6.1.1(b) of the 1995 notified plan but that has now gone;
(2) is not an objective or policy itself;
(3) cannot be given the force or effect of an objective or policy;
(4) is meaningless for the reasons discussed earlier.[110]

[85] It is very significant that, for the CRC, Ms Perpick relied on precisely those reasons for Objective 6.3 and policy 6.1.1 in support of the rationing approach. She submitted[111]:

It has been suggested that this "formula" for determining the rate at which land on the periphery should be converted from rural to urban uses is somewhat circular. I submit that it is not; it merely directs resource managers to determine how much demand there is likely to be, during the planning period, for new housing on the periphery of the city, and then to rezone no more than that amount. The reasons for this direction are set out in the objective itself: such restraint is necessary in order to achieve consolidation of urban form and to avoid, remedy or mitigate adverse impacts on water, versatile soils, significant amenity values, and other natural resources, and to make efficient use of physical infrastructure.

The evidence of Mr Barber was that allowing the disputed zoning would not achieve the required increase in population density of the urban area, and no other witness has offered contrary evidence. According to objectives 6.1 and 6.3, and Policy 6.1.1, (and supported by the explanation and reasons for those provisions), peripheral zoning does have to be justified on a quantified analysis,

Para 65 above.
M Perpick: General submissions paras 4.8 and 4.9.

because consolidation, as that term is used in the Plan, will not be achieved if more than a certain amount of peripheral zoning is allowed.

[86] We agree that objective 6.3 provides for restraints on possible rezonings of rural land for living purposes, and when we consider the specific areas of land we will consider those restraints. However, Ms Perpick's argument that we should determine the quantity demanded and rezone no more than that amount does not follow from any objective or policy in the **City Plan**, and cannot be written back in from the "reasons and explanation" for the reasons we have discussed. Thus Mr Barber's evidence on that issue is irrelevant, and it does not matter that it was not controverted.

Summary

[87] In the war of amendments to the notified and revised plans all parties are claiming victory for their interpretation. We find that it is not the case that all amendments favour one side or the other. Generally however, we consider the movements in wording towards the position espoused by the CRC are significantly outweighed by the movements towards the position maintained by the opposing parties (with the CCC somewhere in the middle but closer to the CRC on the rationing approach). Putting it another way, while the revised plan represented a major freeing up of the objectives and policies on urban growth in the notified plan, that revisionary liberation was only restricted in a small way in the City Plan.

[88] We hold that the correct interpretation of Part 6 of the City Plan is:

(1) there is no rationing approach;
(2) peripheral development is to be assessed:
  (a) so that it implements Objectives 6.1 and 6.2 and their policies; and
  (b) according to the policies which follow objective 6.3.

[89] Our findings that the City Plan neither adopts a rationing approach nor strict (measured) limits on density does not mean that the population density objective [6.1] and related policies can or should be ignored. To the contrary: the scheme of Part 6 of the City Plan makes it clear they are of great importance. We hold that the correct way

to apply them is on a location by location basis, having particular regard to the area sought to be rezoned and its physical context.

Chapter 5 Urban growth: the evidence

Introduction

[90] There is general agreement amongst the witnesses that the population of Christchurch City is growing, but not necessarily over the rate of growth or how smooth the rate is. We also note that there is no policy in the City Plan providing a ceiling to the City's population.

[91] It may help to understand this decision to know that three broad concepts or models of urban growth were used by the witnesses: contained, consolidated and dispersed. Figure 5.1 on the next page is a copy of a diagram produced[112] by Mr R C Nixon, a planning witness for the CCC, showing the differences between those three models of urban growth. While helpful the diagram has to be used with some care. First, as Mr Nixon conceded in cross-examination, the consolidated model should also have arrows pointing inwards to show that the City Plan contemplates some increase in the population density of the Inner City. Secondly, as we have just discussed, new living areas on the periphery of the City are not allowed randomly, but only if they meet the criteria in the various urban growth policies. Thirdly, there may be a difference between the models and the objectives and policies of the City Plan.

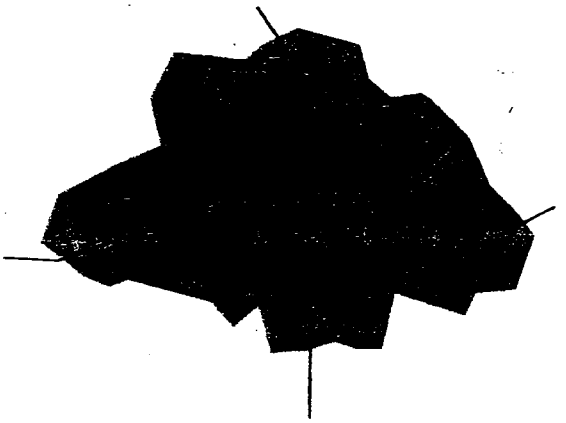
[92] There were seven classes of general evidence on urban growth in the framework of those models:

(1) population projections;
(2) scenarios for the future growth of the City and (sometimes) the surrounding district (i.e. how the population will be distributed through the region at least between the Rakaia and Hurunui Rivers);
(3) the size of the "land bank" of vacant sections zoned living in Christchurch;
(4) the effects on land prices of increasing the area of land zoned living;
(5) economic evidence on (1) – (4);

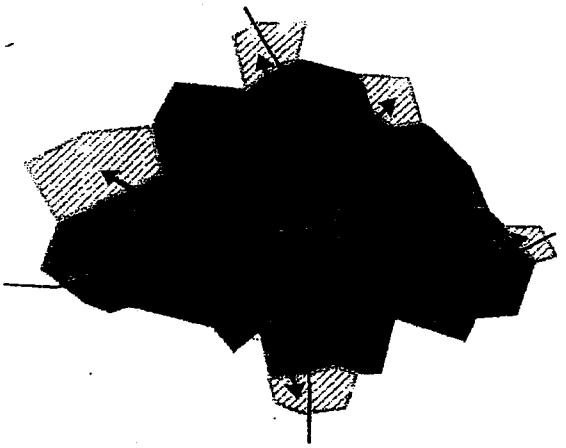
[112] R C Nixon evidence in chief Appendix 4.

Figure 5.1

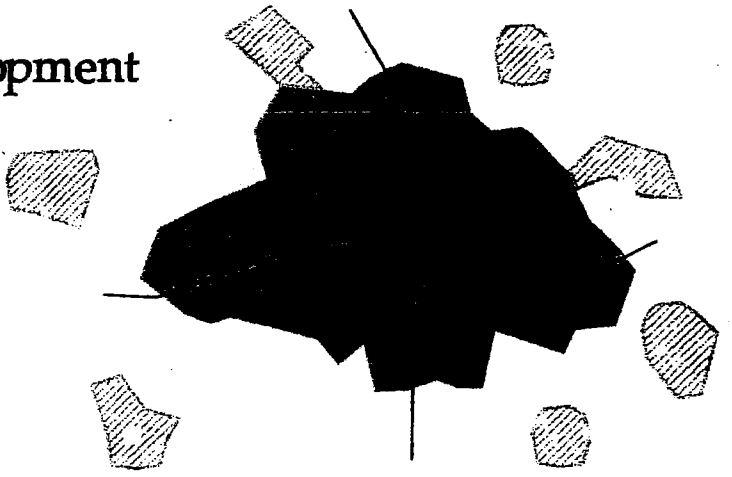
Containment



Consolidation



Dispersed Development



Christchurch City Council
Geodata Services

Map: ug000609.dgn
5 February 2001

(6) general planning or resource management evidence

(7) academic overviews of the issues raised in (1) – (6).

Evidence of consequential effects of population growth on transport, air pollution and other matters is discussed later in this decision.

[93] All the classes above and the issues arising out of them were first identified by the CRC witnesses – necessarily, because the CRC agreed to, and did, supply all its evidence in chief to the other parties well in advance of receiving theirs. So it is convenient when discussing several of the classes of evidence to group them under the name of the relevant CRC witness and to discuss the evidence of their critics at the same time. Thus the classes are set out as follows:

- Classes (1) to (3) in the evidence of Mr M G Barber;
- Class (4) in the evidence of Mr G R Sellars;
- Class (5) in Chapter 11[113] below;
- Class (6) in Chapter 4 above and elsewhere;
- Class (7) in this chapter.

Environmental results anticipated

[94] Before we turn to discuss the evidence, there is one preliminary issue. During the hearing we were puzzled as to the relevance of some of the evidence, notably that of Dr M A Bachels, because it did not obviously relate to the amended objectives and policies of the City Plan. The CRC's counsel, Ms Perpick, advised us that the evidence was put in to show that the environmental results anticipated by the City Plan, as required by section 75(1)(g) of the Act, would not be met.

[95] Further light was cast by the evidence of Mr L R McCallum, an experienced planner for the CRC who gave an overview of the CRC case as it was conceived. Mr McCallum's evidence explained why much of the CRC evidence concentrated on

[113] On section 32 of the RMA.

showing why (in the witness' opinion) the "Environmental results anticipated" as identified in the revised plan would not be met. Mr McCallum's evidence quoted all the objectives and policies in the City Plan that he considered would be relevant to the living rezoning proceedings, and the relevant environmental results anticipated too.

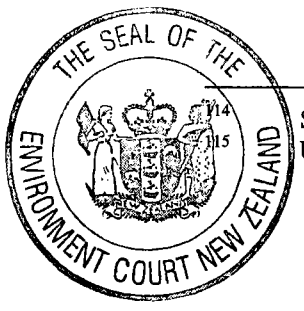
[96] We have no difficulty with referring to a statement on environmental results anticipated because they are required by the RMA to be identified in a plan[114]. The purpose of stating them is, in our view, to enable monitoring and review of the plan[115]. The results are not objectives or policies because they are not stated to be "intended", simply anticipated. It would be permissible to look at the "environmental results anticipated" in order to shed some light on the meaning of another provision of a plan (e.g. an objective, policy or rule). However any person reading the City Plan should not put too much emphasis on the statement of "environmental results anticipated" because to do so would be in effect to rewrite the objectives and policies (at least) of the plan. The plan needs to be read as a coherent whole and without over-emphasising a small part of it. There may, after all, be a considerable disjunction in reality between the **actual** results of certain objectives and policies and the projected environmental results. That is one of the reasons a section 32 analysis is so important: to ensure that the chances of achieving the projected results are sufficiently high to justify the cost imposed by the method chosen.

[97] The same over-emphasis on those anticipated results is manifested in the evidence of Mr Barber and even more so in that of Mr M G Smith (a traffic engineer) which was based on Mr Barber's evidence.

The evidence of Mr Barber and critics

[98] The evidence of Mr Barber for the CRC was set out in this way:

(1) He calculated the likely increase in the City's population on various scenarios;



[114] Section 75(1)(g) RMA.
[115] Under section 75(1)(i) RMA.

(2) He calculated the area of land ("the land bank") that the most likely scenarios would require to house the increased population;

(3) He concluded that the Living land as rezoned in the 1999 revised plan, but excluding the rezoned land challenged in these proceedings by the CRC, would more than accommodate the likely increased population;

(4) The conclusion drawn for the CRC is:

(a) that there is no need for any more Living land in the "land bank"; and

(b) that the City's population density will decrease if there is more land zoned "Living" than is needed.

[99] Mr Barber identified[116] five scenarios for assessing the housing requirements of the projected population to 2021. They are:

- Existing trends ("B1");
- Peripheral ("B2");
- Concentrated ("B3");

And two variants of the first (i.e. B1) scenario:

- Zoned and contested ("Z1")
- Not zoned but sought ("A1").

These scenarios are explained below.

[100] Simplifying to the maximum extent possible, the Existing Trends (B1) scenario assumes:

(a) that growth in the surrounding districts outside the City, i.e. Waimakariri District, Selwyn District, and Banks Peninsula District will continue to grow at a faster rate than Christchurch;

(b) that all housing growth which does take place in Christchurch City will be within the areas (total 1,723 ha) identified in the revised plan as "Living" and therefore includes:

- all existing vacant and new zoning "Living" (1,495ha) and
- land zoned as living but subject to reference as to density and timing (228 ha).

[116] M G Barber evidence in chief para 5.3 and Attachment 10.

[101] The Peripheral (B2) scenario assumes:

(a) emphasis on suburban and low density development around Christchurch[117] together "with limited development at higher densities within the existing Christchurch urban area"; and

(b) reallocation[118] of some households from the three districts to Christchurch.

It is unclear whether the B2 and B3 scenario assume the same area of Living land in Christchurch City as the B1 scenario (i.e. 1,723 ha). The Concentrated (B3) scenario concentrates housing development in the central core of Christchurch with limited development in the surrounding district[119].

[102] The other two scenarios are modifications of B1 (Existing Trends). They are:

- Zoned and contested (Z1) - Present zoned area plus land zoned Living but subject to references (ie present zoned + 304 ha);

- Not zoned but sought (A1) - Present zoned area plus zoned and contested, plus land zoned Rural in the Proposed City Plan but where appellants want the land zoned for Living purposes (ie present zoned + 304 ha + 568 ha). This variant includes land on Montgomery Spur (on the Port Hills) but excludes Worsleys Basin (on the edge of Port Hills) and Templeton Hospital.

[103] It is remarkable that none of the scenarios considered was "consolidated" even though that is what the City Plan is trying to achieve. It was and remains unclear to us why we were given scenarios B2 and B3 since they are at best of no relevance. Worse, presenting those scenarios could be seen as an attempt to throw real possibilities in a bad light. For example the **concentrated**[120] scenario envisages that the most likely increases in population (and therefore households) in Christchurch to the year 2021 are absorbed by the Inner City. That would entail[121] that the household density in the

117 M G Barber evidence in chief Attachment 10, p.39.
118 M G Barber evidence in chief para 5.3.6.
119 M G Barber evidence in chief Attachment 10 p.39.
120 Corresponding to Mr Nixon's containment model.
121 P J Roberts evidence in chief para 5.4.

"core" of Christchurch would have to be 57% higher than in 1996. It would also give a level of traffic congestion in the core[122] that would be highly likely to be unacceptable without what he described as "a significant mode shift"[123], that is a major shift to public transport.

[104] Mr Barber's failure to provide us with a scenario for a "consolidated" model leads to a hole in the middle of the CRC case: it opposes the zoned but contested scenario by comparing them with the concentrated scenario – but the latter is not sought by the City Plan. The objectives and policies try to achieve a 'consolidated' model but we do not know what that is in Mr Barber's eyes. All he can state[124] is that the population density (by which he means[125] "population or number of households per hectare for a defined area")[126]:

> *... would be lower in 2011 than in 1999 with the addition of land not zoned Living and subject to references (i.e. +568 ha). In all instances, household density would still increase because of the reduction in the number of persons per household.*

[105] There is another aspect of Mr Barber's scenarios which concerned us; that scenarios B2 and B3 assume[127] that growth in the surrounding districts would be reduced (which flies in the face of the fact of the Existing Trends) whereas Z1 and B1 do not. If the comparisons were to start to be useful then uniform starting assumptions (other than the variables being tested for) would have been a more scientific approach. Further, if more land around the periphery of the City was to be zoned living (as the other referrers seek) and prices drop as a consequence then it is possible that some households which would otherwise leave the City would instead locate within Christchurch City (and there may be relocations too), so why not run the Z1 and B1 scenarios with those assumptions too.

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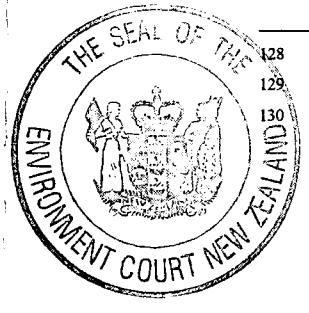
122 M G Smith evidence in chief para 5.10 and Figure 7.
123 In an answer to a question from the Court : notes of evidence p.62.
124 M G Barber, evidence-in-chief, para 4.7.2.
125 M G Barber, evidence in chief, para 4.7.1.
126 (And we note the ambiguities inherent in the alternative, and the lack of definition of the defined area).
127 M G Barber, evidence in chief, para 5.3.6.

[106] There are other problems with Mr Barber's analysis identified by Mr Donnelly in his evidence and not adequately answered by Mr Barber in his rebuttal evidence. Mr Donnelly noted that Mr Barber's forecasts (and those of the CCC) were based on Statistic New Zealand's populations forecasts. Mr Donnelly wrote[128]:

> *Mr Barber's scenarios essentially adjust and/or allocate the official projections to areas smaller than those used by the department based on various assumptions. Because of this, his analysis incorporates the deficiencies inherent in demographic based projections. The fundamental problem with the department's demographic based projections is that they give limited consideration to important economic factors that play a significant part in population change over time. The factors include Gross Domestic Product (GDP), capital formation and macro economic policies. The department takes account of known major developments in sub-national projections but does not undertake any economic modelling work to facilitate its projections. Economic factors such as change to GDP or economic policies are incorporated into demographic projections through influencing population trends. However, significant economic changes (eg significant GDP growth) can make demographic based projections moribund, more or less overnight.*
>
> *This problem was highlighted with the 1991 projections (released 1993) for Canterbury when the region experienced rapid economic growth during the period 1993 to 1995. The 1996 census counts exceeded predictions for the year 2016. This is shown by Table 1, which compares the 1991 base medium forecasts with the 1996 population counts.*

[107] Mr Barber stated[129] that the effects of the rapid growth of Christchurch during 1993-1995 were taken into account in some Statistics NZ updates. But that misses Mr Donnelly's point which is that the rapid growth was not forecast, and that other economic factors came into play. He gave two examples of this. First[130]:



128 P T Donnelly, evidence in chief, paragraphs 5.29 and 5.30.
129 M G Barber, rebuttal evidence para 3.1.
130 P T Donnelly, evidence in chief, para 5.33.

Past growth rates, however, have been heavily influenced by the transitional district plan, which was formulated under the direction and control policies of the Town and Country Planning Act. Resource consent, submitter driven development should result in substantial changes to past trends. This has already occurred in the case of greater Rolleston for example. Statistics New Zealand estimates greater Rolleston's population has increased from its 1996 census count of 1461 to an estimated 2600 people at 30 September 1999.

Mr Barber recognises this in a footnote (fn 11) to his Appendix 10 but does not make any allowances for possible changes resulting from no longer "pursuing a policy of urban containment [in Christchurch] and encouraging urban development at locations beyond Christchurch, especially Rangiora and Kaiapoi" (which has apparently been the CRC policy in the past).

[108] Secondly, in respect to predictions of new jobs and the split between full-time and part-time work Mr Donnelly stated (and he was referring to the evidence of Mr M G Smith, who gave evidence for both the CRC and the CCC but whose traffic model relied on input from Mr Barber)[131]:

Grant Smith does not state the method by which employment growth was estimated. Presumably job numbers were derived from the official population projections rather than by economic forecasting. Labour force requirements will be largely determined by the region's capital formation and GDP growth, interest and exchange rates, technological developments, government policies, rates, prevailing investor confidence and so forth. Deriving job growth from demographic projections that do not have explicit regard to these factors is problematic.

[109] We acknowledge that Mr Barber did recognise some of the dangers of forecasting[132]:

131 P T Donnelly, evidence in chief, para 5.34.
132 M G Barber, evidence in chief, para 3.1.1.

Projecting the past into the future to determine future urban growth requirements assumes that people will live as they did in the 70's and 80's. This is an unrealistic assumption. Over the past 10 – 15 years, there have been significant changes in the structure of the population, household formation patterns, and social and economic conditions. There have also been changes in the perceptions of "house" and "home". These have major implications for future housing needs and demands. The main features of these changes and some of the emerging trends are outlined below.

Later his written evidence contains sections[133] on "Employment" and "Social and economic conditions". These are very brief and concentrate on social conditions. Apart from changes in shop trading hours and employment laws, he does not discuss other microeconomic drivers and none of the macro-economic factors identified by Mr Donnelly.

[110] Concerns about the scenarios are significant because they were relied on in two ways in this case: first by Mr Barber to show that over the proposed life of the City Plan (10 years from when it comes into force whenever that may be)[134] the amount of Living land as zoned in the revised plan was "adequate" to supply all needs in the City; and secondly by Mr Smith when modelling the consequences of the scenarios for traffic and transport in the City.

The evidence of Mr G R Sellars and critics

[111] Mr G R Sellars, a qualified and experienced Registered Valuer, gave evidence for the CRC. After explaining some of his methodology, he estimated that the maximum number of new sections needed in Christchurch over the next 10 years, assuming historic demand remains in a straight line, is 650 lots per year.

133 Sections 3.5 and 3.6.

134 2002 or 2003 or perhaps later if unresolved submissions (e.g. on financial contributions) by the Council and yet to be decided lead to references to this Court.

[112] Then Mr Sellars classified submarkets around Christchurch and gave some figures for each one. We will not refer to all of them, but only to some of the relevant (i.e. those on which we have heard evidence from other parties) submarkets.

[113] We start with what he described as "Hornby"[135]. He states[136]:

> *6.5.2 The only land in Hornby with potential for residential subdivision is in Gilberthorpes Road. Re-zoning of this land has been opposed by CRC. The land is located on the western side of Gilberthorpes Road mostly to the rear of a strip of existing housing. A significant proportion of the housing located in close proximity to the Gilberthorpes Road site comprises 1950's group housing and some ex-State rental housing.*

We will call the land he identifies in Gilberthorpes Road and subject to a reference by the CRC as "the PPCS land" (after its owner). He then describes some details relating to that land in a table[137]:

Subdivision	Zoning	Area Ha	Developed Sections	Committed Sections	Undeveloped Potential Sections	Total Sections	Average Value $
Gilberthorpes Rd	L1	16.0380	-	-	152	152	60.000

Table 10

[114] The figure for the number of potential sections comes by assuming that on the flat (i.e. as opposed to development on the Port Hills), one hectare will produce 9.5 sections[138].

[115] It is unclear where Mr Sellars' "average value" comes from. It appears it is Mr Sellars own valuation based on his own expertise. His next few paragraphs give the basis for this when he states[139]:

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135 But later, in the evidence of other witnesses it was called "Yaldhurst/Masham".
136 G R Sellars evidence in chief para 6.5.2.
137 G R Sellars evidence in chief para 6.5.3.
138 Each less than 1,000 m^2 with the balance area being used for roads, reserves etc).
139 G R Sellars evidence in chief paras 6.5.4 – 6.5.8.

6.5.4 The residential section market in Hornby has had a low level of activity for a number of years due to the absence of available land for subdivision. The Christchurch City Council Vacant Land Register records there were 36 vacant sections in the entire Hornby suburb as at June 1999.

6.5.5 Since January 1998 there have been seven section sales in Hornby, all of which relate to in-fill subdivisions, generally comprising small sections less than 550 square metres.

6.5.6 Sales evidence clearly indicates that the absence of a new residential sections supply in Hornby has not created a premium. Section prices for small, generally rear in-fill sections indicate a price range of between $35,000 and $55,000.

6.5.7 The closest alternatives to Hornby are at Wigram Village where sections are selling for $75,000 and at Rolleston where sections are selling for $55,000. This segment of the market has not been catered for previously on this side of the city.

6.5.8 The only location within Christchurch City where section prices are below $60,000 is Bexley which is one of the eastern suburbs.

[116] Mr Sellars then comes to the conclusion that if the PPCS land is "released" for residential subdivision[140]:

... I do not believe existing land values in the area will be affected. If CRC's opposition to rezoning is successful and the land is withdrawn from the market, I do not believe this will have any effect on existing land values.

[117] But we cannot see any evidence for his conclusion. The figure of $60,000 which he suggests as the average value is his valuation, not a sale price (the land has not been subdivided let alone sold yet). So if he is relying on his own valuation to establish that

140 G R Sellars evidence in chief para 6.5.9.

land values in the area will or will not be affected by subdivision, that is meaningless, especially since critical elements in the assessment would be 'before' and 'after' prices in relation to release of new sections. Mr Sellars gives us no evidence of dates.

[118] The same pattern is repeated throughout this section of Mr Sellars' evidence. In each case he identifies the submarket and then tabulates the proposed rezonings and any other recent subdivisions including those for which living zonings were approved with the release of the 1999 revised plan. Then he gives his "average value" for the lots in each subdivision (in some cases based on actual sales of which he had knowledge). And he usually concludes with a similar statement to that quoted above with respect to the PPCS land at Hornby i.e. that he does not believe that rezoning the land (or not) will have any affect on land values in the area.

[119] There is one notable exception to his pattern of analysis. His table of the section potential in Harewood/Bishopdale shows[141]:

Subdivision	Zoning	Area Ha	Developed Sections	Committed Sections	Undeveloped Potential Sections	Total Sections	Average Value $
Skydale on the Park	L1A	-	31	49		80	145.000
Nunweek Park	L1A	-	16	56		72	128.000
Tullet Park	L1A	-	25	-	-	25	131.000
Crofton Rd	L1A	9.1401	-	-	87	87	120.000
Claridges Road etc	L1A	107.3454	-	-	1020	1020	120.000
Total			72	105	1107	1284	

He continues[142]:

> *The Claridges Road block[143] has been opposed by CRC and if successful, this [opposition] will severely reduce the number of potential sections available in the Harewood and Bishopdale location. The nearby Styx suburb is in close proximity and provides a wide range of alternatives at similar or slightly cheaper price levels.*

141 G R Sellars evidence in chief para 6.8.4 (Table 13).
142 G R Sellars evidence in chief para 6.8.5.
143 Called "Ilam Park" in much of the evidence.

[120] It is conspicuous that Mr Sellars does not conclude that land values in the area will not be affected by rezoning. Perhaps the reason for that can be deduced from his last sentence referring to the nearby Styx suburb where there are two interesting subdivisions. The first, Regent Park, contains 62 developed sections (to which he gives an average value of $123,000). The second is to the north of the Styx River along Main Road North. It is the 98 hectare Northwood subdivision (potentially 897 sections) which followed speedily after a rezoning to Living 1 in the 1999 revised plan (with average section values attributed at $100,000).

[121] We later heard evidence from Mr P J Cook[144] about the sale of sections at Regent Park. Mr Cook is a licensed Real Estate Agent and a Registered Valuer with many years experience. His company is responsible for marketing and sales of several large subdivisions around Christchurch. He wrote[145]:

> *... Illustrating how section sales are sensitive to price levels I refer to the Regents Park subdivision at Styx, marketed by our Company. We have been marketing this subdivision for a number of years. Section prices were reduced about 20% or $15,000 - $20,000 per site in October last year [2000].*
>
> *... The rate of section sales before and after this price adjustment was as follows:*

Jan 2000	0 sales
Feb 2000	1 sale
March 2000	5 sales
April 2000	0 sales
May 2000	0 sales
June 2000	4 sales
July 2000	4 sales
Aug 2000	1 sale (conditional)
Sept 2000	0 sales

144 Called for the section 271A parties.
145 P J Cook evidence in chief paras 29 and 30.

Oct 2000	10 sales (after price adjustment)
Nov 2000	8 sales
Dec 2000	7 sales

Mr Cook attributed the lower price to the fact that the nearby Northwood subdivision was becoming available.

[122] Cross-examination of Mr Sellars by Mr Hearn showed that he was aware of the reduction in sale prices at Regents Park. So we have the position where based on no visible statistics except his own valuations and without any dates, Mr Sellars regularly concludes that in each submarket the contested rezoning would make no difference to land prices, except in the one case where there is real evidence (not referred to by him) that rezoning a larger area (more than 100 hectares) may have an effect on prices.

[123] As against that we have the evidence of Mr Cook – not damaged in any way that we can see in cross-examination by Ms Perpick or Mr Fogarty – that[146]:

> *Existing section prices have factored in an historical land supply shortage. Mr Sellars on page 12 paragraph 6.4.4 comments that sales do not suggest a premium is being paid in a location (Templeton) where there is an absence of land available for subdivision. He refers to sales between $82,000 and $89,500. I suggest a premium for subdivision has already been built into the price level, and that if land capable of subdivision were available prices could be closer to Rolleston levels, currently about $50,000 per section, or at the Wigram level, about $70,000-$80,000 per site. Similar comment applies to ... the locations Hornby, Russley, Broomfield, and Avonhead.*

[124] Mr Cook referred[147] to other areas within the city where section prices have actually decreased. Some of those reductions were clearly due to other factors because they occurred before the release of the revised plan. He also demonstrated[148] that much of the increase ($58,736) in the average sale price of a house built in the 1990's (from

146 P J Cook evidence in chief para 44.
147 P J Cook evidence in chief paras 31 and 32.
148 P J Cook evidence in chief paras 60 to 65.

$163,767 in 1993 to $222,503 in 2000) is due to increased land prices ($38,036 or 64%) rather than building costs (but he made no allowance for inflation).

[125] Apart from the lack of empirical evidence from Mr Sellars, whose evidence is almost empty of meaningful figures on the key issue just discussed, we have some concerns about the conceptual framework he uses. Mr Donnelly writes that it ignores economic principles. In addition to Mr Donnelly's points, there is another. Mr Sellars refers, uncritically, to the market being "well-supplied"; Mr Cook thinks it is "undersupplied". Those concepts do not mean much in absolute terms – there can usually[149] only be a shortfall or surplus at a price. For example, there might be an "oversupply" of new imported Japanese cars in the car sales yards at present. If the price on every car fell to $500, it is unlikely there would be a surplus for long.

Evidence on resource management theory

[126] We heard brief evidence from two Australian academic planners by videolink. Professor P Newman gave evidence for the CRC, and Professor P N Troy for the section 271A parties. Both of them had some knowledge of Christchurch but very little of the revised plan. Their evidence in each case consisted of a curriculum vitae, a short introduction and a copy of one of their recent books annexed as an exhibit. The title of Professor Newman's co-authored book is Sustainability and Cities[150]. Professor Troy's book is The Perils of Urban Consolidation[151].

[127] The subtitle of Professor Newman's book is "overcoming automobile dependence", and we note that several of the policies in the City Plan are based on the same theme. We are obliged to apply those policies in considering whether or not to

149 The economic concept (and jargon) of elasticity of supply comes into play here.
150 Island Press, 1999.
151 The Federation Press 1996.

rezone the land in issue in these cases. To that extent Professor Newman's evidence, while very interesting, is not particularly useful since it is the objectives and policies which must guide us. Further, in determining the weight to be given to those policies and assessing the overall cumulative effects of rezonings and/or the effects of rezoning the specific areas we need to look at not only the purposes for the rezoning(s) but also the benefits and costs.

[128] On the economic aspects Professor Troy's text is too broad to be useful. The same can be said of its target which, while named 'consolidation', appears to be what the witnesses in this case have identified as the 'containment' model – as Professor Troy conceded in cross-examination by Mr Fogarty[152].

Conclusions

[129] For the CRC, Ms Perpick submitted Mr Barber's evidence showed that the disputed zonings would not achieve the required increase in population density, and that no other witness offered contrary evidence. She also submitted that peripheral zoning has to be justified on a quantified basis. We disagree with the latter for the reasons stated in Chapter 4.

[130] As for population densities, while we agree that no other witness offered alternative evidence to Mr Barber, they were not required to on our interpretation of the City Plan. The CRC case puts more weight on the assessment methods than they were designed to bear.

[131] If a single, definitive method of defining changes in residential density was in the plan, then it would be a simple matter to define (at least for some definitions e.g. houses per hectare of living zoned land) density limits to ensure that densities in the city increased over time. That could be achieved by a rule in the living zone rules. There is no such rule. Surprisingly, there is no maximum lot size for the living 1 zone, and when we suggested that at least for the land in question there should be, none of the parties – not even the CRC – responded positively. In those circumstances we consider it would

[152] Notes of evidence p. 179.

probably not be useful to suggest any application under section 293(2) of the Act to amend the plan upon notice (although we reserve the position for specific areas of land sought to be rezoned).

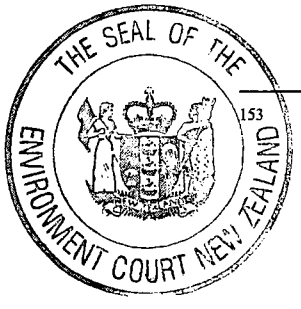
[132] We agree with the closing submissions for the CCC[153] that:

> *There is no objective nor any intention in the 6.1 or in the 6.3 series [of policies] that there be a precise release of land for a peripheral development judged against quantified understanding of market demand. Rather, the plan is looking for a more general judgment so that over time the outcomes will be peripheral urban development which achieves objective 6.3 set out above.*
>
> *Accordingly, it was not necessary for the Council, nor is necessary for the Environment Court, to quantify present or future urban demand in order to judge in a precise way as to how much peripheral development should be allowed now, as the CRC case invites the Court to do.*

[133] It is unnecessary for us to consider the evidence on urban growth given for the CCC or section 271A parties in any more detail then we already have.

[134] We hold that the correct approach to Part 6 of the City Plan is to consider each piece of land for which a rezoning to "Living" is proposed in the light of the many policies in section 6 (together with any other relevant considerations under section 74 of the Act) and to take account of the primary objective of consolidation as discussed earlier. In particular:

(1) When considering whether the primary objective of consolidation is being achieved the CCC (or on appeal the Environment Court) must consider whether a simple Living 1 (or 2) zoning will achieve the desired gradual increase in density or whether the land should be rezoned as Living 3 or 4 with their provision for denser living.



[153] Mr Fogarty QC and Mr Prebble dated 23/4/01.

(2) A proposal for rezoning will usually need a rather more sophisticated approach than simply seeking a rezoning to satisfy (sufficiently) the specific policies and the general objective;

(3) As a minimum a rezoning proposal will need to contain a binding development plan indicating provisions for (inter alia):

(a) the staging of development;

(b) medium or even high density development areas;

(c) possibly, maximum lot sizes

as well as the provisions for walkways, cycleways and reserves required by the City Plan.

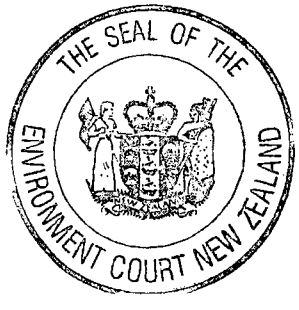
(4) As far as monitoring is concerned we consider that a simple measure of residents per hectare of zoned living land is inadequate. Perhaps the most useful indicators are residents per hectare and buildings per hectare of built-on living land.

[135] There is one final matter we should mention because it links the issue of urban growth with other relevant issues, as well as the section 32 analysis. It was an important part of the CRC's case that we should consider the cumulative effects of the proposal. However one possibility is that the cumulative effects of not allowing the rezonings sought by referrers or already allowed by the CCC might lead to a worsening of some of the effects the CRC is concerned about. We accept the evidence of Mr A T Penny, witness for some of the referrers when he states[154]:

If the location and scale of peripheral residential development provided by the Proposed Plan within Christchurch City is limited in the way which Mr Bachels and Mr Smith suggests, then potential residents unable to establish in such areas may (and current patterns suggest they already have), choose to live in rural residential areas beyond Christchurch. Both Waimakariri and Selwyn Districts have experienced significant growth in rural residential subdivisions beyond the established rural towns and settlements within these Districts. Lifestyle residential activity of this type is likely to generate significantly greater levels of individual travel demand.

[154] A T Penny evidence in chief para 12.

Further Mr Penny's opinions were confirmed independently by Mr P T Donnelly who gave an economic reason why Mr Penny is correct.



Chapter 6 Soils

Section 5(2)(b) of the RMA

[136] Soils are an important "natural and physical resource"[155] to be sustainably managed. A component of the definition of "sustainable management" is the need to[156]:

> *Safeguard ... the life-supporting capacity of air, water,* ***soil****, and ecosystems; ...* [Our emphasis].

[137] For the CRC, Ms Perpick referred to many cases where the importance of protecting soils under section 5(2)(b) of the Act is emphasised. Most of them were in the Waikato region:

> ***Pickmere v Franklin District Council[157]; Peters v Franklin District Council[158]; Houchen v Waikato District Council[159]; Lovegrove v Waikato District Council[160]; Wightman v Waipa District Council[161]; Croudis Family Trust v Franklin District Council[162]; Baker v Franklin District Council[163]; Gentry v Waikato District Council[164].***

In our view none of those cases needs to be considered in any detail for three reasons. First, they all depend on their own facts and policies. Secondly, one aspect of those policies is that protection of the soils of the Waikato, away from the city of Hamilton, is a very important matter to the Waikato District Council. Its district plan states[165]:

> *The proposed district plan sets out a strategy for soil resources. Council aims to ensure the sustainability of the soil resources of the Waikato District as these are*

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155 As that phrase is defined in section 2 RMA.
156 Section 5(2)(b) RMA.
157 A46/93.
158 (1993) 2 NZRMA 421.
159 [1995] NZRMA 26.
160 A17/97.
161 A62/97.
162 A113/97.
163 A70/98.
164 A118/99.
165 Quoted from both *Lovegrove* (p1) and *Gentry* (p2) cited above.

the most significant [emphasis added] *natural resources for maintaining the current social and economic basis of the district ...".*

Thirdly there are two decisions of different divisions of the Environment Court which explain section 5(2)(b) of the Act in relation to the safeguarding of soils in the Canterbury region.

[138] In ***Becmead Investments Limited v Christchurch City Council*** the Court stated[166]:

We have indicated that s 5(2)(b) is couched in a general way. It falls to be applied so that its broad requirement is met. Obviously, it is not to be taken as meaning that land containing soil of good quality, whatever its location, size and other features, is effectively proscribed from use in any circumstances for residential development and activity.

In ***Canterbury Regional Council v Selwyn District Council and Tucker***[167] the Court stated:

In the present case we agree with Mr Milligan that the RMA does not place soil in a situation of primacy, any more than s 5(2)(b) could be construed as placing an absolute prohibition upon the use of air or water.

We respectfully agree with those two statements.

[139] While there is little doubt that protection of large, discrete areas of high quality soils is important, under section 5(2)(b) of the Act, in Christchurch City, the policies appear to recognise competing values, although the position is by no means clear as we shall see shortly.

166 [1997] NZRMA 1 at 23.
167 [1997] NZRMA 25 at 37.

Versatile soils

[140] Part 2 of the City Plan dealing with the natural environment, contains an objective of the City Plan which is[168]:

> *To maintain and enhance those physical, chemical and biological characteristics of land and soils, and the ecosystems they contain, in a way that best enables them to support life and provide for community needs.*

The reasons for this objective include a statement that[169]:

> *... the key issue is to manage the use and protection of all land in a way that maximises the benefits for current and future generations and the environment as a whole.*
>
> *A significant area of conflict arises when rural land is proposed for urban development. Soils utilised for urban development are to a large extent irreversibly committed to that use. This results in a significant overall reduction in the capacity of soils to support life, whether that be primary production for the community or for other life forms. However, in the case of Christchurch, some reduction in that capacity to support life is warranted to provide for urban growth and other community needs (refer in particular to Policy 2.1.1).*

[141] There are two related policies – one dealing with the degradation and rehabilitation of soils generally[170] and the other with what are described as "versatile soils". These are defined as including class 1 and 2 soils under the well-known Land Use Capability ("LUC") Classification system[171] but with recent amendments[172] by staff at Landcare Research Incorporated to exclude soils with significant drainage impediments.

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168 Part 2, Objective 2.1 [City Plan, Vol.2 p.2/3].

169 Reasons for Objective 2 [City Plan, pp2/3 to 2/4].

170 Part 2 Policy 2.1.2 [City Plan Vol 2, p.2/6].

171 Most conveniently described in a 1971 publication by the now defunct Soil Conservation and Rivers Control Council – a copy is annexed to the evidence of Mr T H Webb from the CRC.

172 Milne JDG, Clayden B, Singleton PL, Wilson AD Soil Description Handbook [Manaaki Whenua 1995, Lincoln].

[142] Policy 2.1.1 on versatile soil is one of the most obscure and badly-written policies in the entire City Plan. It states[173]:

> *(a) Where consideration is being given to the use, development or protection of land comprising versatile soils, in circumstances where such use development or protection is necessary to achieve the purpose of the RM Act, particular regard shall be had, in the circumstances of the case, to any need to protect such land from irreversible effects that may foreclose some future land use options that benefit from being located on such land.*
>
> *(b) Provided that where a proposed activity will irreversibly affect land comprising versatile soils and there is a choice in the locality between such activity occurring on that land or on less versatile land, the preference shall be to protect versatile land from such activity, unless the proposed activity would better achieve the purpose of the RM Act.*

[143] The wording of the policy cannot be blamed entirely on the CCC because its wording is identical (for all practical purposes) with a policy in the Canterbury Regional Policy Statement[174]. The relevance of the policy to urban growth is that within Chapter 6 (Urban Growth) versatile soils are addressed in Policy 6.3.4. Following the resolution of the CRC's reference on this policy[175], Policy 6.3.4 directs the reader to Policy 2.1.1, and states:[176]

> *When considering the sustainability of urban expansion into rural areas, it shall be assessed in accordance with Policy 2.1.1.*

[144] The Environment Court commented in ***Shaw and Others v Selwyn District Council***[177] about how confusing it found Policy 2.1.1 (in its higher form in the CRPS). We do not find it any easier now. In these proceedings we have spent many hours trying to make sense of this policy. We asked for further submissions from counsel –

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173 Policy 2.1.2 [City Plan, Vol 2, p.2/6].
174 Chapter 7 Policy 6 [The RPS (26 June 1998) p.87].
175 C139/2000.
176 Policy 6.3.4 [City Plan, Vol 2, p.6/9].
177 Decision C183/00.

and the last submissions received related to this issue of versatile soils. We are grateful to counsel for their efforts.

Is policy 2.1.1(a) unlawful?

[145] In the end we have come to the conclusion that one phrase in policy 2.1.1(a) is either void for uncertainty or because it is *ultra vires*. It was tempting to apply the policy as a general vague principle about the (undoubted) importance of versatile soils. But apart from our concern about the lack of judicial principle in such an approach, the policy is not really of that type. Rather it is of the more specific type that approaches the nature of a rule as identified in the decision of the Court of Appeal in ***Auckland Regional Council v North Shore City***[178]***:***

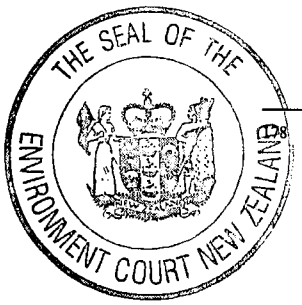
> *... a policy ... may be either flexible or inflexible, either broad or narrow.*

[146] Our reasons for holding that one phrase in the policy is *ultra vires* are as follows. Policy 2.1.1(a) can be interpreted in a variety of ways, since there are at least two fundamental ambiguities quite apart from the generality of the language used. The two ambiguities arise out of:

(1) the clause *"... in circumstances where such use [or] development ... is necessary to achieve the purpose of the R M Act"*, and

(2) the requirement to ascertain whether there is *"... any need"* to protect the versatile soils on the land.

[147] The first problem is that if the use or development of soils is necessary to achieve the purpose of the Act, then one would have thought that was the end of the matter. For the condition to make any sense it needs to be read with the word "otherwise" inserted. The second problem is to establish what the "need" is. The most obvious way then to read policy 2.1.1(a) is that it means:



[178] [1995] NZRMA 424 at 430 (per Sir Robin Cooke as he then was).

If (i) consideration is being given to the use or development of land containing versatile soils; and

(ii) that use or development is **otherwise** necessary to achieve the purpose of the RMA

then particular regard is to be had to some identified need to protect the land from those irreversible effects which foreclose future land use options that benefit from versatile soils.

The policy does not explain what is to happen to land whose proposed use is not (otherwise) necessary to achieve the purpose of the Act.

[148] More fundamentally there is no requirement to establish that any use of land is necessary to achieve the purpose of the RMA before it is allowed. In fact the whole scheme of the RMA suggests the opposite. First the effect of section 9 of the Act is that any activity (or use) is allowed unless a rule in a plan forbids it. Obviously a rule may partially reverse that initial presumption by stating:

No person shall use land in this way unless certain circumstances apply ...

But it is beyond the scope of the Act, in our opinion, for a rule to state:

No person shall use land in this way unless it is necessary for the purpose of the Act ...

And if a rule cannot impose such a standard, then a policy cannot either.

[149] Secondly, the formula "necessary in achieving the purpose of this Act" is to be found in section 32 of the Act. There it is a test to be applied in deciding whether or not an objective, policy or method of implementation should be in a plan or not. It is impermissible to move that test from instruments to the real world. While it is proper to test whether an objective, policy or method is necessary in achieving the purpose of the Act, it is not proper to test whether an activity is necessary in achieving the purpose of the Act. The purpose of objectives and policies is to give guidance as to how the

purpose of the Act can be achieved. It is a dereliction of the section 32 duty to prepare a plan to state that activities are permitted if they achieve the purpose of the Act. That is not "being satisfied" that the rule is necessary: rather it is putting the decision off. It is worse to state they are only allowed if they are necessary to achieve that purpose.

[150] Thirdly, another way of expressing the difficulties is to find that policy 2.1.1(a) is void for uncertainty. There is a self-referential quality to the policy which makes it meaningless. The purpose of the policies in the revised plan, is cumulatively, to achieve the single purpose of the Act. But this policy states, in effect, that: "for the purpose of the Act to be achieved, the purpose of the Act must be achieved". That is absurd.

[151] We have considered whether the appropriate answer to the invalidity of the phrase is to sever it from policy 2.2.1(a) under the principles stated in: ***A R and M C McLeod Holdings Ltd v Countdown Properties Ltd***[179] and ***Fletcher Property Ltd v America's Cup Village Ltd***[180]. Those cases apply the doctrine of severance to rules but we consider it can apply to policies and objectives too. The principle is that a provision can be severed where it does not affect the meaning of the rest of the provision or where severance would not produce a substantially different provision: ***Turner v Allison***[181].

[152] The objective as to versatile soils is relatively clear and can be applied appropriately in each reference, so policy 2.1.1(a) as a whole can be severed from the revised plan without harm. However a smaller severance is less clear. In this case, as in ***Fletcher Property Ltd,*** the difference between the policy with and without the offending phrase is marked – as one would expect of a formula that refers to 'achieving the purpose of the Act'. In a joint memorandum on this issue the three counsel for the CCC submitted[182] that the contentious phrase is unnecessary:

> *If one deletes the clause [2.1.1(a)] that those words appear in and reads paragraph (a) in the context of the statutory obligation to apply section 32 the meaning remains the same.*

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179 (1990) 14 NZTPA 362 (HC).
180 A50/99.
181 [1971] NZLR 833; [1971] 4 NZTPA 104 (CA).
182 Submissions of J G Fogarty QC, J G Hardie and A J Prebble dated 18 October 2001, para 24

We disagree because, with respect, counsel are "comparing apples with oranges". The need for an objective or policy to achieve the purpose of the Act is quite different from asserting that a need for an activity to achieve the purpose of the Act is a valid policy. Further the meaning of the policy is quite different without the phrase – the scope of the inquiry suggested by policy 2.1.1(a) then shrinks greatly. Undoubtedly the policy 2.1.1(a) makes (more) sense without the offending words, but it is not the same sense. In these circumstances we do not consider the phrase can be severed. Instead policy 2.2.1(a) is invalid as a whole.

[153] In those circumstances we do not have to decide whether "any" means "the" in policy 2.1.1(a) although we do not think it does. Our preliminary view is that a need to protect the versatile soils on any site would have to be proved.

[154] The consequences of the invalidity of policy 2.1.1(a) are not too significant because policy 2.1.1(b) is a proviso, or backup, in any case. The alternative scenario – in policy 2.1.1(b) – assumes that a proposed activity will irreversibly affect versatile soils and that there is a choice in the locality as to where to site the activity.

The meaning of policy 2.1.1(b)

[155] The term 'locality' in the policies is explained as having[183]:

> *a different meaning in different circumstances and relative to activities being considered. It is a matter of fact and degree in each case and could range from consideration of the area of the whole city at a district plan change or variation to the immediate locality in the case of small scale proposals.*

[156] After the close of the open hearings we asked for and received written submissions on the meaning of "better achieve the purpose of the Act". That wording comes dangerously close to being unlawful in the same way as policy 2.1.1(a). However, we accept the submissions of counsel for the CCC that:

[183] Explanation and reasons to policy 2.1.1 [City Plan as reprinted Vol 2 p.2/6].

... more than one way may have merit and a choice may have to be made, on a comparative basis.

[157] The objective to be achieved by policy 2.1.1(b) shows no preference for versatile soils, but provides for the maintenance and enhancement in a way that best enables two ends – safeguarding the life-supporting capacity of soils[184] and providing for community and individual needs[185]. We heard evidence from the section 271A parties that even versatile soils are not necessarily ruined by urban subdivision and development. Subdivision gardens may maintain and enhance versatile and other soils in an exemplary way. We accept that houses and driveways may be nearly irreversible and to that extent subdivisions will have a harmful effect, but the remaining part of any allotment cannot be criticised as having the same effect. Of course practically there is another answer. In many subdivisions the soils are removed as part of the development process and relocated for future use.

[158] The explanation and reasons for the policy are also helpful. They include a statement that[186]:

While the policy places a weight consistent with the duty to have particular regard to the protection of land comprising versatile soils, this policy is not intended to be absolute or inflexible and is intended to recognise exceptions where the use of land comprising versatile soils for uses other than production is found to be necessary to achieve the purpose of the RM Act as set out in the policy. Thus there can be counterbalancing considerations of sustainable management which outweigh any inflexible application of the policy, as is set out in the policy itself.

[159] In the light of that guidance we summarise the meaning and purpose of policy 2.1.1(b) as being:

(1) If there is a choice between locating the activity on the proposed site; or

184 Section 5(2)(b).
185 Section 5(2).
186 City Plan Vol.2 p.2/6.

(2) on less versatile soils in the locality (the extent of which is decided on a case by case basis);

(3) then the preference is to place it on less versatile land unless;

(4) there are counterbalancing considerations which indicate that if the development was allowed the purpose of the RMA would be achieved.

The evidence on versatile soils

[160] Mr T H Webb, a Soil Scientist employed by Landcare Research, gave evidence for the CRC. He described the LUC categorisations and stated that in general terms LUC classes 1 and 2 soils provide the greatest correlation with the attributes which identify[187]:

> *... soils with the greatest value to future generations for the sustainable production of food and fibre ...*

Those qualities he identified as:

- high versatility;
- high energy-use efficiency;
- high pollution absorption capacity;
- moderate or better soil resilience.

[161] He described each of these qualities to us. First[188]:

> *Versatile soils possess intrinsically high quality soil physical properties such as high water retention, good soil aeration, friable consistence with good*

187 T H Webb evidence in chief para 5.1.
188 T H Webb evidence in chief para 5.3.

conditions for root growth, and a topsoil structure capable of sustaining cultivation impacts.

Secondly as to energy-use efficiency he wrote[189]:

Agricultural production on versatile soils requires lower levels of inputs (e.g. fossil fuels, fertilisers and irrigation water) per unit of output than soils with lower versatility.

He stated that there was "abundant" overseas evidence for that proposition, and that was not seriously challenged in cross-examination or by other witnesses. Thirdly he stated that versatile soils have a high pollution absorption capacity because that is related to[190] "cation exchange capacity" and organic matter content. That is particularly significant, it appears, for Canterbury because[191]:

Shallow and stony soils, which are the dominant alternative to Class 1 and 2 soils, on the Canterbury Plains, have moderate to very severe risk of leaching losses.

Mr Webb has conducted some modelling (not yet confirmed by measurements) which suggest that shallow soils have up to 10x more nitrate leaching to groundwater than deep soils.

Fourthly, soil resilience[192] is:

... the capacity of a soil to recover from an adverse impact such as cultivation under unfavourable conditions ...

[162] Mr Webb denied that improvements in technology and care ("the green revolution") are improving the efficiency of agriculture in a sustainable way[193]:

189 T H Webb evidence in chief para 5.4.
190 T H Webb evidence in chief para 5.11.
191 T H Webb evidence in chief para 5.13.
192 T H Webb evidence in chief para 5.16.
193 T H Webb evidence in chief para 7.2.

> *... the heavy dependence of modern agriculture on non-renewable fossil fuels, the extensive use of pesticides, and the energy needed for cultivation, harvest, intensive animal production and grain processing, raise serious doubts about the long-term sustainability of modern agriculture. These doubts relate to the health of the land and the wider environmental degradation resulting from intensive use of fertilisers, pesticides, and cultivation practices.*

However Mr Webb conceded in cross-examination by Ms Robinson that much of the evidence of those problems relates to overseas experience and is not necessarily applicable to Canterbury.

[163] Mr Webb then analysed 12 sites subject to references (some of them within the 50dBA noise contour for the airport and therefore not being considered by us in these hearings) and concluded that[194]:

(1) Versatile soils occupy 80% or more of the land area of the 12 sites described;

(2) Extensive areas of soils of lower versatility are available in the Christchurch rural area;

(3) Most contentiously[195]:

The loss of versatile soils under urban areas will ultimately force primary production onto soils of lower quality where primary production has lower energy-use efficiency, and poses greater risks of soil degradation and pollution of water resources.

[164] We do not accept Mr Webb's third conclusion as stating a real problem. At the rate of consumption proposed in these cases, it would take about two thousand years before all Canterbury's versatile soils were occupied by a megapolis. As for his first and second conclusions we consider these are best considered on a locality basis.

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194 T H Webb evidence in chief para 12.2.
195 T H Webb evidence in chief para 12.4.

[165] Mr R A Brooks, a Registered Primary Industrial Consultant with considerable experience, gave evidence for both the CRC and the CCC[196]. He described the existing and potentially significant horticultural uses for versatile soils within Christchurch City. He did not consider the versatile soils within the city were of a sufficient scale to make them of value to agricultural activities such as intensive livestock farming and/or arable cropping.

[166] Mr Brooks then calculated that if all horticulture (9,500 ha) and arable cropping (141,400 ha) currently carried out in Canterbury was on versatile soils then approximately 88% of the total (172,000 ha) versatile soils (excluding those with water drainage limitations) would be used. The relevance of that was in the next passage[197]:

> *I am also aware that there are some propositions that suggest that the area of versatile soils in Canterbury far exceeds the present use for both arable farming and horticultural use. These propositions seem to be based on the following assumptions:*
>
> - *that there will be no limiting factors on the continued use of versatile soils;*
> - *the present and future management will always be sustainable and able to be undertaken without any adverse effects on soil resources or other natural resources.*
>
> *Experience to date shows that this is not the case as there are many examples where the continued use of some soil resources has been compromised due to management activities that have lead to the degradation of the soil resource.*
>
> ...
>
> - *Contamination with DDT residues has excluded large areas of soils for dairying and organic farming production;*

196 R A Brooks evidence in chief para 5.
197 R A Brooks evidence in chief paras 42 and 43.

- *The presence of soil borne pathogens such as onion white rot and potato cyst nematode has restricted production of specific crops.*

- *Environmental factors such as flooding, soil erosion or reduced water resources may all limit the use of soils in any area at any time;*

- *There may be increasing environmental constraints on restrictions to the use of farming inputs such as nitrogenous fertilisers.*

[167] While we have no reason to doubt the specifics of Mr Brooks' evidence on this issue, we are troubled by his inferences. First, his qualification that some of the problems he refers to arise in both versatile and non-versatile soils seems to undermine his point. Secondly, in relation to his last point about increasing environmental constraints; that seems to be a matter very much within the control of Mr Brooks' client, the CRC. In the absence of a very clear policy in the City Plan we would be reluctant to put much weight on this issue unless and until the CRC has tackled the problem (if it exists) of nitrates and other pollutants from agriculture directly.

[168] Mr Brooks also considered the range of potential land use options (mainly horticultural) for various allotment sizes. This was of relevance mainly to the references about the Rural 2A and 3A zones at Halswell and Belfast respectively – where it is suggested that instead of a 4 hectare minimum lot size in the rural zones generally, 2 hectares would be appropriate in those zones.

[169] Mr Brooks' opinion is that as allotment size reduces, so the range of potential land uses falls accordingly. Generally, as lot sizes fall below 20 hectares, the most productive uses are horticultural. He set out[198] a table of recommended minimum allotment sizes for various types of horticulture – produced on the next page as Table 6.1:

198 R A Brooks evidence in chief Table 1.

Table 6.1 Recommended Minimum Allotment Area for Sustainable Production

Land Use	Area in Hectares
Outdoor vegetables	
- Extensive	10.0
- Intensive	4.0
Herbs and intensive specialty vegetables	2.0
*Greenhouse vegetables	0.5 to 1.0
*Greenhouse flowers	0.5 to 1.0
Berryfruit	
- Extensive	10.0
- Intensive	4.0
*Outdoor flowers	1.0 to 2.0
Pipfruit	8.0
Stone fruit	10.0
Nuts	10.0
Specimen trees	4.0
Wine grapes	10.0

[170] The table demonstrates Mr Brooks' point that reduction of lot sizes also reduces options. For example, it can be seen that for a lot size of 4 hectares, 7 activities can be established, but for 2 hectare lots, the number is reduced to 4 categories.

[171] Mr Brooks' opinions were based on several sources. Of these, two contained checkable figures. First, he referred to the New Residents Survey Waimakariri District Council[199].

[199] M Sparrow 1996.

Mr Brooks wrote that this study showed that[200]:

> *[In] the rural residential zones (minimum area ranging from 1.0 to 1.5 ha) only 20% of residents responding to the survey undertook any type of business use on their property (this included farming and all other types of use). The properties in these zones are used primarily for lifestyle or residential purposes.*

[172] The second report related to the Bay of Plenty[201]. The study examined changes following subdivision between 1992 and 1995. The changes were quantified in terms of land use and productivity. Mr Brooks stated that the major relevant conclusions were[202]:

- *The total number of properties engaged in no primary production rose from 2% to 10% following subdivision. This represented a total area increase from 3.4 ha to 29.3 ha.*
- *Properties surveyed ranged in size from 0.2 ha to 19.8 ha. The average size was 4.4 ha.*
- *The estimated value of total production from the area surveyed increased by only 3% following subdivision (note survey margin of error 5%).*
- *While the gross margin for blocks in the 1.0 to 1.99 ha range increased significantly, this was the result of a few producers with very intensive operations (flowers) (note only 2 properties out of 59 properties in this size range produced flowers).*
- *Based on gross margin analysis, 52% of the land involved in the study (1,329 ha.) produced more than or equal to what was produced prior to subdivision.*

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200 R A Brooks evidence in chief para 73.
201 Agricultural Productivity Changes due to Rural Subdivision in the Western Bay of Plenty District (Western Bay of Plenty District Council, Tauranga, February 1996).
202 R A Brooks evidence in chief para 75.

- *In terms of the number of properties involved in some type of primary production before and after subdivision for properties less than 4.0 ha. in size there was an overall decrease in the number involved in primary production. As the lot size diminished a corresponding lower number of properties were engaged in farming activity, for example <0.5 ha. 62% less, 0.5 to 0.99 ha. 20% less, 1.0 to 1.99 ha. 13% less, 2.0 to 3.9 ha. no change.*

- *For the properties above 4.0 ha. in size, all size ranges recorded increases in the number involved in some type of primary production. These ranged from 3% for properties 4.0 to 7.9 ha. to 9% for properties within the 8.0 to 11.9 ha. range.*

- *The overall analysis showed that 12% of the properties produced more following subdivision than the land did prior to subdivision. The smaller the property the more likely that the proportion of gross margin produced on the block will be less than before subdivision. Only on blocks 4 ha. and greater were there properties that produced the same or higher gross margin than the land generated prior to subdivision. The findings of this study demonstrates that the smaller allotment size the more likely productive use will decrease as more emphasis is placed on the residential use of the land.*

[173] For various section 271A parties we read the evidence of Mr A W Smith, a very experienced Horticulturalist. His evidence was rather more anecdotal and general than that of Mr Brooks. An important example of the latter is where, when writing about productivity of small lots, he states[203]:

> *After intensive study of the literature (including a literature review carried out by my office), I have not seen any case where total productivity drops as a result of subdivision and settlement into smaller lots in rural areas. In the early period*

[203] A W Smith evidence in chief para 17.5.

after subdivision, productivity may be low, however it is reasonable to allow a 3-5 year time frame before optimal productivity is achieved.

[174] Now Mr Smith is partly making the point that total productivity does not drop as a result of subdivision – after all, residential use is (economically speaking) very productive but not in monetary terms. However, in relation to horticultural production then Mr Smith should have discussed the studies referred to by Mr Brooks (noting that Mr Smith had Mr Brooks' evidence when he wrote his). In the circumstances we find Mr Brooks' evidence generally more cogent. Nor does the evidence of Mr I D Kippenberger or Mr A J Gallagher affect that finding.

[175] Mr G C Dunham, another experienced agricultural business consultant, gave evidence for Enterprise Homes Ltd. He largely agreed with Mr Brooks' evidence on the relevant issues. However, his evidence came at the problem of versatile soils from a different direction. He starts by accepting the proposition (as do we) of Mr Webb that[204]:

Blocks of land with large areas of versatile soils are of added significance for protection because they allow enterprises, of varying scales, to be sited on land with versatile soils.

He then refers to the evidence of Mr Brooks that[205]:

One of the key aspects of sustainable management is to be able to use adequate crop rotations or to maintain a variety of farming activities. This involves being able to have available a larger area of land than the actual production levels may require at any one time.

We then agree with Mr Dunham's conclusion when he agrees with Mr Brooks and stated that[206]:

204 T H Webb evidence in chief para 11.2.
205 R A Brooks evidence in chief para 44.
206 G C Dunham evidence in chief para 21.

... in my view this reinforces the preference to protect larger blocks of versatile soils compared to smaller blocks of versatile soils.

Mr Dunham then gave us some interesting examples of areas of highly versatile soils in discrete blocks:

(1)	Northwood (Styx Mill)	100 ha;
(2)	Aidanfield 195 ha	195 ha;
(3)	Halswell Domain	68 ha;
(4)	Enterprise (Masham)	27 ha;

Those examples are particularly interesting because numbers (1)-(3) are all larger areas of rezonings that have been agreed to by the CRC. There is something to be said for Mr Dunham's conclusion that[207]:

In my opinion therefore, the [CRC's] different approaches to the above areas, appears to indicate the likelihood of other individual site-oriented considerations having been applied (for example in the case of the Enterprise block at Masham) rather than the application of its interpretation of the RPS soils policy on a 'City-Wide basis' as is now apparently being promoted.

[176] On the evidence we heard Canterbury has approximately 294,000 hectares of versatile soils or 170,000 hectares[208] if soils with significant drainage problems are excluded (and Christchurch City 15,400 hectares approximately, over half of it already zoned for urban purposes). On the face of it there is little need for the CCC to protect all of the City's versatile soils. Thus the rezonings of the sort we are considering on these hearings will fall to be decided under policy 2.1.1(b) which contains large discretions to be decided as a matter of fact and degree in the circumstances of each proposed rezoning having regard to:

207 G C Dunham evidence in chief para 27.
208 Supplementary evidence of Mr R A Brooks paras 18 and 22.

- the size of the proposed rezoning;
- whether there is available an area of less versatile soils in the locality;
- all the other factors identified by other parts of the revised plan.

Chapter 7 Transport

[177] The evidence in these proceedings raised five general transport issues relating to the proposed rezonings:

(1) integration[209] of land use and transport systems within the City;

(2) efficient use of current and proposed infrastructure;

(3) overcrowding (congestion) on the City's roads;

(4) the conservation of fuels;

(5) air pollution effects.

The first three issues are discussed in this chapter. The fourth and fifth are considered in the next two chapters [Chapter 8: Energy and Chapter 9: Air Pollution]. We start by considering the provisions of the revised plan as they relate to transport within Christchurch City.

[178] We do not overlook that section 7 of the plan contains clear objectives[210] as to cycling and walking which need to be implemented. It seems to us however, that it will be fairly obviously on an area-by-area basis as to whether any proposed zone will fit into the proposed integrated cycleway system. Provision for walking friendly neighbourhoods[211] are less secure since it is uncertain whether the CCC has sufficient power to insist on adequate design of subdivisions.

Provisions of the City Plan

[179] The objective of the City Plan is to have a[212] safe, efficient and sustainable transport system. The related policies, grouped under a heading "Minimising adverse

209 Integrated management is one of the CCC's functions under section 31 of the Act.
210 Objectives 7.4 and 7.5 [City Plan p.7/12 and 7/15].
211 Policy 7.5 [City Plan p.7/15].
212 Objective 7.1.

effects," are[213]:

> *1. To remedy, mitigate or avoid the adverse effects of the use of the transport system.*
>
> *2. To promote integration of transport and land use planning.*
>
> *3. To promote integration of the planning, management, and operation of all elements of the transport system.*
>
> *4. To make efficient use of the transport system, particularly its infrastructure.*
>
> *5. To encourage change in the transport system towards sustainability.*

[180] None of the CRC witnesses discussed these objectives and policies directly in any detail. Mr McCallum, its planner, quoted them but did not attempt to state what significance they had for all the rezonings in issue. Instead Mr McCallum relied on the City Plan's description of the environmental results anticipated as being of more use in identifying the targets action. They include (relevantly)[214]:

...

- *A containment or reduction in the number and length of motor vehicle trips.*
- *Greater use of public transport, cycleways and pedestrian routes.*

...

- *Reduced dependency on private car usage.*
- *Increased accessibility for those without cars.*

213 Policies 7.1.1 to 7.1.5 [Revised Plan pp.7/3 and 7/4].
214 City Plan Vol 2 p.7/5.

- *Reduced congestion.*

...

- *A safer, more efficient and sustainable transport system.*

[181] We comment here that it is not at all obvious from the policies as to how the specific environmental results anticipated are to be achieved, or indeed in some cases that the results even follow in any way from the policies without some fairly large assumptions being made (for example, that it is inefficient to use private cars and that it is more efficient to use public transport).

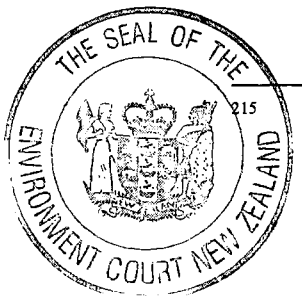
The technical evidence on transport issues

[182] For the CRC Dr M A Bachels gave evidence of research he had carried out comparing the land use and transport characters of New Zealand's three "main cities" (identified as Auckland, Wellington and Christchurch) with 46 other cities overseas. Dr Bachels' findings were that there are strong relationships between some land use and transport variables. From those findings he drew the following "principles"[215]:

- *urban area matters – increasing the size of the urbanised area relates to increases in transport energy use, car travel and transport related effects;*

- *population and job density matter – increasing population and job densities in urban areas relates to reductions in transport effects, or conversely reducing population and job densities relate to increases in transport effects;*

- *urban containment and concentration relates to reductions in environmental effects (air emissions and energy use), improvements in use of alternative transport modes (higher use of public transport, cycling and walking), and reductions in car travel (for both trip length and annual travel).*



[215] Dr M A Bachels evidence para 2.4.

[183] None of the witnesses challenged Dr Bachels' first point – he was not, after all, claiming that increasing the area of Living land caused the increases the effects he refers to. We note however that transport energy use may not be an issue under the RMA, and that some car travel effects are self-imposed, that is they may not be externalities.

[184] Dr Bachels appears to suggest (although he does not actually state this) that his second principle is derived from the fact that there is a strong negative correlation between the amount of travel by car per person (measured as vehicle/kilometres travelled per year per capita) and urban population density. We attach as Figure 7.1 a copy of a figure produced by Dr Bachels[216] which shows that relationship.

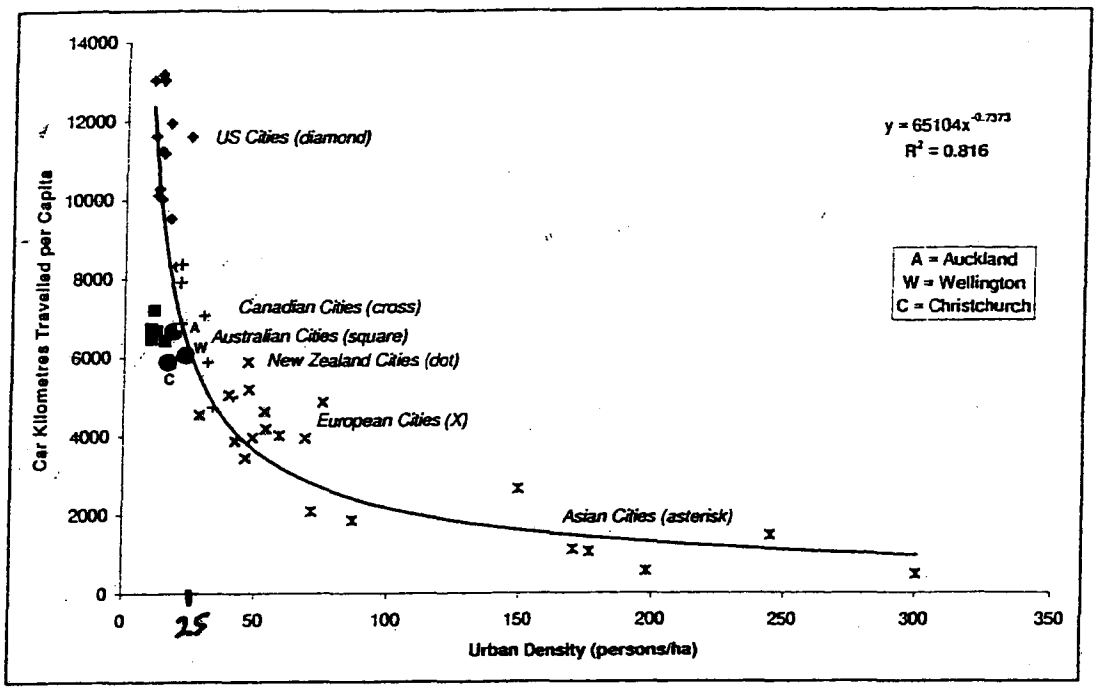


Figure 7.1 Car Kilometres per Capita versus Urban Population Density (1991)

[185] We are troubled as to how Dr Bachels' moves from the facts to his second principle. First, and of minor importance, is the reality check provided by our own knowledge from first hand experience that Asian cities have major problems from congestion and street-specific pollution (amongst other adverse effects from transport).

[216] Dr Bachels' Figure 2.

How many citizens of Christchurch would like the City to have the traffic of Bangkok or Kuala Lumpur or even Singapore? Secondly the evidence of Mr M G Smith, another witness for the CRC, suggested that while "concentration" policies might solve congestion and other transport problems outside the CBD, they would increase those problems within the CBD. Thirdly Mr I D Moncrieff, a witness called for the opposing parties, opined that the circumstances have to be considered in much smaller units (we discuss his evidence shortly). Fourthly Dr Bachels' principle refers to population and job densities, but his evidence only relates to population densities.

[186] Dr Bachels' third principle seems to derive from the positive (but not very strong) correlation between public transport trips and urban population density. Of the New Zealand use of public transport he wrote[217]:

> *... there is a noticeable difference where higher population densities in Wellington correspond to higher public transport use (and lower densities in Christchurch correspond to much lower levels of public transport use).*

However under cross examination[218] by Mr Hearn QC he conceded that the form of Wellington was undoubtedly partially determined by its topography.

[187] A more wide-ranging criticism of Dr Bachels' evidence was made by Mr P T Donnelly. He stated[219]:

> *His evidence presents findings for comparisons between transport and land use of 49 international cities including Auckland, Christchurch and Wellington. He states that data was collected for over 60 indicators for the three New Zealand cities (for 1991 and 1996). This was compared to similar data from 46 other unspecified international cities (for 1991) from the USA, Australia, Canada, Europe and Asia. While it is relevant to the conclusions drawn, it is not possible to determine from his evidence whether some cities are in countries bordering*

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217 Dr M A Bachels evidence in chief para 2.10.
218 Notes of evidence p.7.
219 P T Donnelly evidence in chief paras 5.38 and 5.39.

on third world economic status and/or whether some were previously centrally controlled non-market economies. He does not state the criteria used for the selection of cities. Nor does he list the 60 indicators for which he states data was collected.

He states that the factors affecting transport choices and transport outcomes are complex. His analysis, however, is confined to a small number of 'non-economic' variables, including car vehicle kilometres travelled (total and per capita), urban area (total and persons per hectare which he calls density) and public transport trips per capita. Prices allocate resources in market economies and therefore the lack of analysis or comment on economic factors is surprising. Economic factors play a major part in demand for housing and transport goods and services and explain the volume of use of competing modes (public and private). Factors that explain the demand for housing and transport (including preferred modes) include:

- *Income of consumers and purchasing power;*
- *Comparative capital cost (including taxes and subsidies) of private ownership associated with various forms of transport (ie cost to consumers of items such as cars and motor bikes) in purchasing power parity terms (ie having regard to the number of hours of work required to purchase);*
- *The comparative fixed (eg insurance, registration) and variable cost (inclusive of taxes and subsidies) of various types of transport use in purchasing power parity terms. Variable cost includes all maintenance costs, fuels, tolls, parking etc.*
- *The comparative capital cost of ownership associated with various forms of housing in purchasing power parity terms to users (eg cost of large stand-alone housing of various quality and size) and associated fixed and variable cost of use (eg rent, insurance, rates, land taxes, maintenance);*
- *Price elasticity of demand for housing and transport goods and services.*

We accept that those criticisms are valid, and that the variables and relationships are much more complex than suggested by Dr Bachels (who did not suggest they were simple).

[188] Later in his evidence[220] Dr Bachels introduced a hierarchy of types of urban development ranked for their effectiveness in reducing transport effects. These cause some confusion because as will be seen, they correspond to neither the three models that were generally discussed, nor to the objectives and policies of the City Plan. He wrote (and we add his informative footnotes)[221]:

> *The hierarchy of priority for location of future urban development includes*[222]
>
> 1) ***Urban Containment and Concentration*** *– the first preference for urban containment and concentration is to make most efficient use of the existing urban area and transport infrastructure/network, including enhancements to alternative transport systems (public transport, cycling and walking); there is a higher preference for urban containment and increasing population and job density within city centres and at nodes and along corridors within the existing urbanised are of cities and towns; a second order preference within containment/concentration would be for quality "infill" and redevelopment at other appropriate locations within existing urban areas.*
>
> 2) ***Urban Consolidation – Nodal Development Along Corridors at the Edge of the Urban Area of the City*** *– the second preference for future urban development is based upon new "nodes" of activities of development*

220 Dr M A Bachels evidence in chief Part 3.

221 Dr M A Bachels evidence in chief Para 3.6.

222 Support for the hierarchy of urban development comes from numerous studies in New Zealand as well as overseas including: the Christchurch City Plan Section 32 analysis which showed a preference for urban consolidation rather than fringe expansion of new settlements Environmental Policy and Planning Unit, City Plan Christchurch, Urban Growth, Evaluation of Urban Forms: Principal Alternatives, Report 5a. Christchurch City Council. The results of this research have been summarised in Technical Report No. 5 by the Environmental Policy and Planning Unit (City Plan Christchurch, 1994, Urban Growth, Section 32, Volume 5, Evaluation of Growth Options. Christchurch); the international City data comparisons presented above; Ausroads, 1998, Cities for Tomorrow – Integrating Land Use, Transport and the Environment, Austroads Australia; UK government Policy Planning Guidelines 6 (Town Centres and Retail Development) and 13 (Transport) from 1996 and 1994 respectively.

located on the fringe of the existing urban area of the city[223] *which are along identified current or future public transport corridors (including rail);*[224] *nodal developments would inherently include strong mixes of both residential and commercial activities, with mixed-use zoning principles (which allow for mixed residential and commercial activities in an area or site); these new nodes would be reasonably highly self-sufficient providing a high degree of local shopping and commercial activity; urban design principles which enhance accessibility for public transport, cycling and walking are a key tenet of such nodal development*

3) ***Peripheral Development – Expansion at or Beyond the Edge of the Urban Area*** *– the third preference for urban development is for fringe expansion at the edge of the urban area of cities and towns while maintaining the contiguous nature of the urbanised area (e.g. filling in "wedges" of existing urban areas); generally these developments might be standard suburban detached family housing areas, relatively little mixed use or commercial activity areas, and largely car dependent in transport demand (except in smaller town centres where fringe development could still be reasonably well serviced by public transport, as well as conducive to short car trips, cycling and walking).*

4) ***Nodal Developments Outside the Urban Area*** *– the fourth preference for urban development is new nodal developments areas well outside the existing urban area and not well connected on current or future public transport corridors (including rail); such developments would include a reasonably high degree of self-sufficiency (that is a reasonably high provision of commercial and job activities); these areas would rely upon the major urban areas and towns for most jobs and many general attractions; trip making would be largely car dependent with few alternatives for public transport, cycling or walking.*

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223 Where for towns higher preference is for urban consolidation of the existing town as opposed to new nodal developments outside the town.

224 Public transport corridors would include current and future possibilities for urban passenger rail services (heavy and light rail) as well as current high-frequency urban bus services identified in the CRC's Passenger Transport Plan.

5) ***Rural Subdivisions*** – *the fifth and lowest preference for future urban developments would generally involve low density rural developments located some distance from existing town centres or urban areas (such as lifestyle blocks of single family detached housing); these developments would generally be highly car dependent, relatively unserviceable by public transport and too far from attractions to be viable for cycle and walk trips.*

[189] Dr Bachels' conclusion in respect of the land in issue in these proceedings (including 335 hectares zoned living and contested between the CCC and the CRC) was[225]:

> *I would expect that the addition of "greenfield" land on the edge of Christchurch that accords with the third level in the [hierarchy] – expansion at the edge of the Urban Area – thereby not enhancing either urban containment, concentration, or consolidation, would produce adverse transport and travel effects.*

[190] As Ms Robinson's cross-examination of this witness showed there are some problems with his categorisations. Dr Bachels' first preference is not an issue, because "urban containment and concentration" is not an objective of the City Plan. Secondly the question as to whether the rezonings sought in these proceedings falls into the third category of Dr Bachels' preferences has two problems:

(1) the CCC consolidation objective has elements of all of Dr Bachels' first three categories; and

(2) each rezoning needs to be considered on its own facts and in the light of the relevant policies.

[191] Mr P T Donnelly had some further general criticisms of Dr Bachels' evidence which appears to be cogent. He stated[226]:

225 Dr M A Bachels evidence in chief para 4.7.
226 P T Donnelly, evidence in chief para 5.40.

Dr Bachels observes statistical relationships in the variables he analyses. This is not surprising as the factors chosen for analysis are effectively surrogate economic indicators of living standards ie they are linked or driven by income and the cost of living. When land is scarce and there is considerable demand, people are forced to use it sparingly. Because it is cheaper than low-density options, there will be an overall preference for high-density living. Cities with large populations and low average income are more likely to accommodate a high percentage of people in high-density living. As incomes rise, a greater percentage of the population can afford the cost of lower density, higher quality housing. Similarly, private car ownership should increase as incomes rise. Low-income countries are more likely to have lower car ownership per capita. Budget constraints generally don't permit options with high capital outlay and/or more expensive operating costs. Hence private car transport and the level of housing density should be related to income and the real cost of living. Living and transport options increase with affluence and decrease with poverty.

Factors other than price and income will also influence housing and transport preferences. Regulation (eg relating to cars and to cities), the cost of parking and level of congestion (which significantly alter travel times of alternative modes) will influence transport use.

[192] The more we have reflected upon Dr Bachels' evidence the more we have concerns about it, especially in the light of subsequent evidence. In summary those concerns are:

(1) the generality of his evidence which has insufficient regard to the multifarious factors affecting transport in Christchurch;

(2) that he has applied his own hierarchy of types of urban development that does not correspond to the consolidation model in the City Plan;

(3) that his hierarchy is developed in a set of 5 principles[227] that:

[227] Dr M A Bachels evidence in chief para 3.3.

(a) is different from an earlier set of three principles in the same evidence;

(b) none of the principles necessarily derives from the empirical evidence he cited;

(4) his evidence is directed at the "Environmental Results Anticipated" rather than by considering how to achieve the objectives and policies of the City Plan.

[193] The next evidence on transport for the CRC was from Mr M G Smith, an independent civil engineer with many years experience and appropriate professional certification. He has specialised in transport planning and traffic engineering since 1973. In his evidence he described the strategic analyses he has undertaken to assess the effects of different urban forms. The analyses were carried out using computer modelling of transportation patterns[228] using software called "TRACKS".

[194] There was considerable criticism, both in cross-examination and in the evidence of witnesses called for section 271A parties, of the model used by Mr Smith and particularly of the out-of-date data based on populations in Christchurch in 1991 and earlier, used in the model. However, on the whole Mr Smith weathered those criticisms fairly well, and we had the sense of a reliable objective witness (although perhaps more so in his answers to oral questions whereas his evidence in chief does not seem to have questioned the assumptions of some of the scenarios).

[195] A summary of the criticism of Mr Smith's opinions can be found in Mr Donnelly's evidence (but similar points were made by other traffic witnesses – Mr A T Penny and Mr P J McCombs). He stated[229]:

Grant Smith's estimates of increased fuel use and emissions appear to be based on existing motor car engine technology, fuel consumption, emission levels, road user charging/funding mechanisms and so forth. If this is the case, it ignores the potential for use of real time consumption based charging for roading

228 M G Smith evidence in chief para 1.4.
229 P T Donnelly evidence in chief paras 5.35 to 5.37.

infrastructure (eg electronic charging on major arterials) and the implications of mass-produced cars incorporating fuel cell technology (within ten years according to an announcement by Exxon Mobil Corporation and General Motors Limited). Fuel cell technology is being driven by the pending introduction of more stringent emission standards in the United States of America.

Grant Smith's estimates of the additional costs associated with different patterns of land use (refer paragraph 5.8 of his evidence) are deficient from an economic perspective as they are confined to a narrow range of transport costs (eg travel). In the longer term a policy of concentration and increased density would inflate land values in the Christchurch urban area. This should encourage a greater number of people to reside outside of the district in areas of lower land values such as Kaiapoi and Rolleston and commute to work in Christchurch.

In summary it is reasonable to say that CCC's model looks to the past to make predictions about traffic movements up to the year 2021. Outcomes are based on existing infrastructure and assumed changes to it. The model is dependent on a wide array of assumptions about the future (eg jobs, population growth) which could easily prove to be wrong as their life span in terms of reliability should be short term. These facts undermine assumption (b), namely, 'that regulators can indisputably and accurately predict marginal change in traffic flows and distances generated by different urban forms'. In this regard Grant Smith's evidence highlights an advantage of direct methods of control of fuel use and associated emissions, namely, the lack of need to make uncertain predictions. For example, forecasting is not a prerequisite to increasing fuel taxes and/or vehicle emission testing.

[196] We do not overlook Mr Smith's concern that too much emphasis was placed by opposing witnesses on the benefits of technological change especially to reduce emissions to air. We consider the likely outcome may be in the middle of the positions taken by Mr Smith on one side, and Messrs Penny, Donnelly and McCombs on the other.

[197] Nor does adding extra lanes, new highways or bridges necessarily help – that just induces extra demand. For example the roads may be wider but they tend to be just as

busy on four lanes as they were on two. This problem was confirmed by Mr Smith when under re-examination he mentioned the example of the M25 around London. He said[230]:

> *That is a ring route around London, 30-40 miles, I think, away from the city, which was built in green fields and intended to be a complete relief route round London. When the plan was done for that the government department responsible for transport at that time said they were not allowed to look at land use changes when planning the road. Almost from the day it opened huge land use development - retail in large measure - have sprung up at the major interchanges and the road is now full. So the land use change has defeated the purpose for which the road was built. That ... has been the subject of audit office review in Britain who were less than complimentary about the initial analysis.*

[198] In fact Mr Smith's technical evidence suffers more at the hands of witnesses giving evidence for the CRC or CCC. First Mr Smith relied on Mr Barber's scenarios as to the increasing households generated in different places by different urban forms. Consequently Mr Smith's results suffer from the unrealistic assumptions built into Mr Barber's scenarios. Secondly a witness for the CCC, Mr P J Roberts, who largely agreed with Mr Smith's methodology had some cogent criticisms of Mr Smith's results and their interpretation which we discuss shortly.

[199] All Mr Barber's scenarios assume the same population and household projections for Christchurch City and the surrounding districts up to 2021 at medium levels of growth.[231] Thus the assumption is that in 2021 the figures for Christchurch will be, compared to 1996 census figures:

	1996	2021
Population[232]	316,500	358,500
Households[233]	117,800	146,300

230 Notes of evidence p.64.

231 Using figures supplied by Statistics New Zealand (but with some adjustment by Mr Barber, that no one challenged).

232 M G Barber, evidence in chief, para 4.5.1.

233 M G Barber, evidence in chief, para 4.5.1.

[200] Mr Smith gave us some calculations as to the increased costs of certain scenarios which we will return to. However in order to give us an intuitively comprehensible, but subjective, assessment of the effects of housing development in the City, Mr Smith also referred us to the categorisation by traffic engineers of the volume of traffic on a road relative to capacity, in 6 levels of service. These range from A (completely uncongested) to F (highly congested) and F++ (even worse). In 1996 several roads were in level of service F according to Mr Smith[234] including:

- Riccarton Road
- Papanui Road
- Lincoln Road
- Ferry Road

[201] Based on Mr Barber's scenarios Mr Smith came up with the following scenarios for traffic. In 1996 there were 1.15m trips per day on Christchurch roads. Under the Existing Trends scenario prepared by Mr Barber[235] this would rise to 1.74m trips in 2021 (an increase of 50% in 25 years). Flows across the Waimakariri River are predicted to rise by some 70% to 60,500 vehicles per day. The level of service, if Existing Trends are continued to 2021, would deteriorate significantly. The number of locations with a F++ level of service would increase[236] from 6 (in 1996) to 26 or more in 2021 even with considerable spending ($250 million) on road improvements (e.g. 4 lanes on the roads in the previous paragraph, together with improved intersections, and a new Southern and Northern Arterial highway).

[202] Other effects of the increased road use on Existing Trends would be that fuel use would rise by 54% and CO_2 emissions would increase similarly to 1.05 million tonnes per year.

234 M G Smith evidence in chief para 4.34.
235 Described in Chapter 5 of this decision.
236 M G Smith Figure 6.

[203] Mr Smith's conclusions in respect of Mr Barber's three base scenarios were that[237]:

> *... the existing trend scenario represents the most dispersed growth pattern. As growth is concentrated toward the main urban area, and then to the inner city, overall travel costs decrease, as shown in the table below.*

	$m/year	*Change In Relation to Existing Trends*
Existing Trends	*$2,570.9*	*0*
Peripheral Growth	*$2,533.5*	*(-$37.4m)*
Concentrated	*$2,435.2*	*(-$135.7m)*

Putting it positively, the improvements of the peripheral growth and concentrated scenarios on the existing trends are approximately 1.5% and 5.5% (but we note that 1.5% is within Mr Smith's margin of error and the second percentage is only just outside it).

[204] The concentrated scenario looks impressive in reducing adverse environmental effects until one recalls that it is not an objective under the City Plan. Further it makes a large assumption about where the increased population of Christchurch (by 2021) is going to live. Mr Smith understated the issue:[238]

> *The projected number of households required in the Christchurch City core for the Concentrated Scenario exceeded the capacity in terms of to the quantity of available zoned land and densities to which that land may be developed under the current City Plan. Consequently the capacity of each area unit in the city core was increased by 21% to allow for the additional 14,650 households required over and above the existing capacity of vacant, undisputed land.*

237 M G Smith evidence in chief para 5.8.
238 M G Smith evidence in chief para 4.22.

[205] That is quite significant because in a sense the City Plan is now like an American doughnut – it has a hole in the middle. Cross-examination by Mr Hearn of another witness, Mr Barber, showed that some positive centralising aspects of a consolidation model are not included in the plan. Two types of provisions for increasing residential density in the City were rejected by the CCC when it released the revised plan: first the density provisions for the Living 1 zone were loosened rather than tightened. Secondly, it rejected the CRC's idea of a denser living zone (Living 3) in corridors 200-300 metres wide along the main roads[239]. What remains are the existing Living 3 and 4 zonings and the hope they will become more densely occupied for residential use.

[206] Further, and rather surprisingly, Mr Smith seemed unaware that the "concentrated" scenario was not in the City Plan. When cross-examined about that by Mr Fogarty he said[240]:

> *I don't know. But if so, then the transport consequences for Christchurch will be dire.*

[207] Mr Smith then analysed three further scenarios as variations of the Existing Trends scenario. He started with the assumption that[241]:

> *In all cases, the growth in Waimakariri and Selwyn was held constant, meaning that growth in the City Council area was also constant at 29,157 households.*

[208] Mr Smith's variations on the Existing Trends scenario were described in a different way to those of Mr Barber. To avoid confusion we have amended the descriptions so that two correspond (as far as they can) to Mr Barber's Z1 and A1 scenarios[242]. They are[243]:

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239 Cross-examination of Mr M G Barber by Mr Hearn: notes of evidence p.32.
240 Notes of evidence p.44.
241 M G Smith evidence in chief para 4.27.
242 Described at para 102 above in Chapter 5 of this decision.
243 M G Smith evidence in chief paras 4.28 to 4.30.

- [Mr Smith's first variant] was to assess the effect of growth occurring at the edge of the urban area. In this case the Central core was assumed to grow by about 10% to 60,000 households, with the balance spread to the edge of the City.

- Scenario Z1 [Mr Smith's second variant] included the 320 ha [Mr Barber's 304 ha] that has been zoned by the CCC, but which has been contested [by the CRC].

- Scenario A1 [Mr Smith's third variant] includes all the contested land, including the 320 ha zoned and contested [by the CRC] and 568 ha, not zoned but where Living zoning has been sought [and also contested by the CRC].

[209] Mr Smith's conclusions were:

- In respect of Z1 (zoned but contested)[244]:

  Adding 320 ha predominantly toward Yaldhurst and Templeton has only a small effect on traffic flow. The change in total travel cost is also small, but is a little higher than that for currently zoned land. In terms of the model, the change is insignificant. [Our underlining].

- In respect of A1 (not zoned but sought by other referrers)[245]:

  When 888 additional hectares are made available, there is a discernible change in flow ...

  Total travel cost is some $3m per year more expensive and about half of this comes from increased congestion. There is an additional 309,000 litres of fuel used per year, and an additional 980 tonnes of carbon dioxide produced each year.

244 M G Smith evidence in chief para 6.3.
245 M G Smith evidence in chief paras 6.4 and 6.5.

[210] These figures were relied on heavily by subsequent CRC witnesses notably Mr S R Harris, an economist, and Dr J Salinger.

[211] Mr Smith also gave another variation on Existing Trends (his first variant) which he called "extended edge development". He described it as showing[246]:

> *... what happens if further re-zoning applications were to be pursued in the years ahead.*
>
> *There is a significant change in traffic flow from the Existing Trend Scenarios as shown on Figure 9. Total road user costs increase by $24m per year fuel use by 4.6m litres per year, and carbon dioxide by 10,400 tonnes per year*

[212] The puzzle we are left with at the end of Mr Smith's evidence is why, if carefully designed subdivisions on the periphery of Christchurch are allowed, that will not improve Existing Trends. Further there are other factors not discussed by him in his evidence in chief – reduced land prices, different types of fuel - which might reinforce this by reducing the increase in the number of households in surrounding districts because people can live closer to Christchurch. Conversely if the zonings sought are not allowed then it appears to us (and Mr Penny's and Mr Donnelly's evidence confirmed this) that it might maintain Existing Trends.

[213] The evidence of Mr P J Roberts, a transport planning engineer for the CCC, is important because Mr Smith did not take any issue with it in his rebuttal evidence in which he attempted to answer the criticisms of all the other transport and traffic witnesses. Mr Roberts is another well qualified and experienced civil engineer.

[214] Mr Roberts stated that he was "in broad agreement with the modelling approach adopted by [Mr Smith]". However he considered that the model was not sensitive enough to distinguish between the Z1 and A1 scenarios[247]. Mr Roberts emphasised that his evidence[248]:

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246 M G Smith evidence in chief paras 6.6 and 6.7.
247 P J Roberts evidence in chief para 1.11.
248 P J Roberts evidence in chief para 1.12.

... should not be interpreted as meaning that the transport effects of either the 320ha zoned by the Council but contested by the Regional Council, or the additional 568 ha under dispute, can be ignored. I believe that at a local level there ***could*** *be significant adverse effects (which may or may not be capable of being remedied, mitigated or avoided), but that these are questions that will be most appropriately canvassed when individual areas are dealt with specifically.*

[215] Mr Roberts' conclusion on the (theoretical) concentrated scenario is that[249]:

... the facts provided at this hearing have failed to demonstrate with a sufficient degree of certainty that the degree of transport benefit of a Containment (or "Concentrated") pattern of land-use – or conversely the dis-benefits of an Consolidation (or "Existing Trends") alternative, can be considered significant. Nor indeed whether they can (or cannot) be avoided, remedied or mitigated. In any event, Mr Smith rightly confines himself to the transport implications of these each of these scenarios. The implications of such a concentrated pattern on a wide range of other factors (eg urban amenity) would have to be considered to provide a balanced opinion on the merits or otherwise of one alternative over another.

[216] This witness also had some very interesting comments on the "Edge Development" scenario given by Mr Smith (and that scenario has some importance because it is part of the cumulative effect the CRC is concerned about). Mr Roberts stated[250]:

...that the most congested part of the city (the CBD) would be relatively less congested with such an "Edge Development" hypothesis. More importantly however, it is important to appreciate that some of any additional costs would be incurred by those settling in the additional "edge development". One would presume these homeowners would bear any additional costs as one element in their location decision. The true "additional" cost is, in my opinion, likely to be

249 P J Roberts evidence in chief para 5.21.
250 P J Roberts evidence in chief para 5.24.

somewhat less, being that cost (of congestion) which these relocation decisions impose on others.

There is an important issue here – that not all congestion costs are true externalities – the costs are chosen by the homeowner when they choose to live in the outer living areas.

The general policies

[217] The City Plan provides another policy[251] to develop a long term integrated strategy for transport. In the meantime we consider it is worth trying to work through in a little more detail what the other general policies imply for the ten years (plus) of the life of the City Plan.

[218] In terms of policy 7.1.1, it is common ground that congestion is a potential adverse effect of use of the transport system, and that Christchurch is likely to suffer great increased congestion over the next 20 years. We find that we have insufficient evidence to decide whether the contested zonings will (en masse) add to the probable congestion in a significant way.

[219] Looking at the problem of congestion generally however, it is worth considering what integration[252] of transport and land use planning might entail. Current transport planning seems to be largely reactive; and noticeable that at least in part it aims at pollution rather than congestion. We are under the impression from our (very limited) knowledge of the subject that it is often preferable to control congestion first, because that reduces pollution almost incidentally.

[220] As to the efficient use of infrastructure, it is easy to see that there may be something inefficient with the transport system in and around cities, especially in Christchurch - for example, all the commuter cars with only the driver during morning and evening rush hours.

251 Policy 7.1.6 [Revised plan Vol 2 p.7/4].
252 Policy 7.1.2 [City Plan p.7/4].

[221] The City Plan seems to contemplate public transport as a solution to the problem, although the document itself records the implausibility of that because people like using their cars so much. But that is a technique, or method, yet to be proved as effective, let alone incorporated in the plan.

[222] What the CRC does not like about the proposed zonings en masse, is that they make it more difficult to adopt any fuller public transport system in the future. It seems to us that implicit in that argument is a recognition of the inefficiency of the current transport infrastructure. That is, roads are not being used in an allocatively efficient way: they are not being used for the goods and services that the community of Christchurch values most.

[223] If it makes any sense to speak of a 'market/regulations' spectrum, then at the other end of the spectrum, but equally simplistic, is the straightforward economist's approach. We quote Mr Heyne's formulation to show that there is an alternative method to zoning and rules[253]:

> *It's called pricing. Economists call it congestion pricing. Almost everyone else calls it tolls for driving and doesn't want to hear anything more about it. "I pay for the roads with my [petrol] taxes; I don't want to pay again with a toll." But [petrol] taxes pay the cost of constructing the roads, not the cost of using them. It's the ignored cost of using them that generates the congestion about which everyone complains. We experience traffic congestion because the government, which owns the roads, allows everyone to use them without payment of a fee. If we were all required to pay fees based on the costs our driving imposes on others, we could eliminate congestion.*
>
> *Technology now exists through which motorists can be charged prices finely adjusted to the level of congestion (the external costs). Moreover, it can all be done automatically without anyone having to stop and pay a toll. Bills can be sent at the end of the month. The technology is not used because people are so hostile to the very idea of tolls; they assume they have a right to drive free of*

[253] P.Heyne – The Economic Way of Thinking 9th Ed. (2000) p.336.

charge on the streets for which their taxes paid. They think that a toll would just take money from their pockets, and don't realise that a well-managed system of congestion pricing could create benefits of greater value to them than the costs they would have to pay in the form of tolls. It's another case where the pricing of a scarce good, in this case urban street space, can reduce dead-weight costs and thereby make all parties better off.

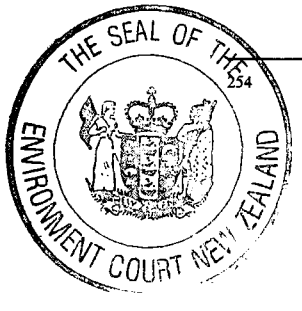
[224] The economist witnesses were referred to this passage by the Court and all agreed with its sentiments. It is of course not contained in any objective or policy in the City Plan. We mention it because a certain sense of hopelessness pervaded the discussion of traffic issues. There may be solutions to traffic problems of congestion and pollution but the City Plan is not near them yet.

[225] We should add that congestion pricing is fraught with difficulties, as is any possible improvement in public transport systems. We are not deciding in favour of one over the other. That is not our point.

[226] The invisible hand of the market only works properly when all resources (in this context 'roads') sell for prices that reflect their value to users. The fundamental problem behind the relationship of land use and transport, is that in this region, and we suspect New Zealand generally, road users are 'over-using' the physical resource constituted by the road – because they can use it for free (nearly). Once a certain number of users travel on the road and traffic slows down then an externality is caused[254]:

Congestion is an external cost of travel that occurs because drivers do not (usually) pay for the time costs their transportation choices impose on others.

[227] Our concern is that allowing the rezonings causes a moral hazard. If the CRC's fears are correct and more zoning of living land 'sucks' people out of the inner city (and that is a big if since (a) there is potential for real inner city pollution to decrease with



[254] J E Moore et al "Market Based Transportation Alternatives for Los Angeles" Planning and Markets Vol 3: [Website http://www-pam.usc.edu/volume3.]

peripheral development, and (b) on another scenario the majority of effects may be benign if people gravitate from outlying districts) that may lead to political or pressure group action for either:

(a) more roads;

(b) an extended public transport system

- depending on the preferences of the proponent.

[228] Public transport systems can be both inefficient and very expensive. But equally more roads are rarely the answer. More roads tend to produce more traffic on them: this is what traffic engineers call "induced demand". Controlling traffic congestion is like trying to control water on a flat surface when the water is being poured in increasing volumes from a number of buckets simultaneously.

[229] Our conclusion is that at the extremes of the spectrum both the more regulatory (as espoused by the CRC) and the more market approaches (of, for example, Mr Donnelly), to road use suggest there comes a point where there should be no more rezonings until either:

(a) everybody pays for the use of the roads; and/or

(b) the CCC establishes much clearer transport planning priorities.

[230] That leads to reconsideration of another matter. It was argued by Mr Smith expressly, and by other witnesses, we think implicitly, that the purpose of the Act is to enable people and communities, so that generally transport design should accommodate what people want for their health and safety – provided the environmental bottom-lines in section 5(2)(a), (b) and (c) are met. However, in our view, and we hope this is not putting it too generally, there may be a case for restraining living zonings which depend on an artificial suppression of costs until that is somehow removed.

[231] The artificial suppression is of course the free use of roads. Users and taxpayers pay indirectly, through taxes, for the construction and maintenance of roads. Arguably,

poorer citizens may pay more than their fair share since they pay for roads to be designed and built for peak-hour traffic when roads tend to be used over-whelmingly by the better off. But what is not being charged for at all at present is the temporary, moving right of "ownership" or "licence" to use the road as a vehicle moves along it. The problem of congestion is a version of the tragedy of the commons – the tragi-comedy of the common highway. Because citizens do not pay for their use of the roads they do not value them sufficiently.

Conclusions from the evidence

[232] Based on the evidence of Mr Roberts, effectively uncontroverted, we find that:

(1) Christchurch City, while historically it has had no significant congestion, has looming problems just around the chronological corner, probably within the planning period of 10 years and certainly by 2021;

(2) The evidence does not establish that rezoning the land in question – the zoned lot challenged (304-320 ha) and the unzoned but sought land (520ha approximately) – will cause the traffic effects alleged by the CRC witnesses, because the modelling is insufficiently accurate to demonstrate that.

[233] In the circumstances we hold that the "area by area" approach recommended by Mr Roberts for the CCC and encouraged by the section 271A parties' witnesses is appropriate. That is consistent with the "balanced" approach which Mr R C Nixon for the CCC promotes.

Chapter 8 Energy

[234] The principal objective as to energy conservation, contained in its own part[255] of the plan, seeks[256]:

> *The efficient use of energy, in both supply and consumption, whilst promoting the development of alternative renewable energy sources.*

We note that the objective carefully refers to 'renewable energy sources' – thus implicitly recognising that there are "non-renewable" energy sources. This is confirmed by the reasons for the objective which states[257]:

> *It is therefore important that we move away from non-renewable energy sources such as fossil fuels and develop alternative sources.*

[235] The related, relevant policies are[258]:

> ...
>
> *To promote energy efficiency through:*
>
> *(a) urban consolidation; and*
>
> *(b) waste minimisation.*
>
> *To encourage energy efficiency in transportation.*

[236] There is also another policy relating specifically to renewable energy sources[259]. It was the CRC case, at least in its evidence in chief and opening submissions, that the rezoning sought by the other parties and opposed by the CRC would result in increased

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255 Volume 2, Part 3.
256 Objective 3.1 [City Plan, Vol.2, p.3/3].
257 Reasons [City Plan Vol. 2, p.3/3].
258 Policies 3.1.3 and 3.1.4.
259 Policy 3.1.2 [City Plan Vol.2, p.3.3].

use of fossil fuels which would not meet those policies – at least as informed by the reasons for Objective 3.1.

[237] Mr Hearn raised a jurisdictional argument about that issue to the effect that conservation of non-renewable (fossil) fuels is outside the ambit of the RMA. It starts with the definition of *"sustainable management"* in section 5(2) of the Act which states that that term means (relevantly):

> *... managing the use ... of natural and physical resources in a way, or at a* ***rate*** *which enables people and communities ... while –*
>
> *(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; ...* [our emphases].

His argument was that *"minerals"* includes the processed hydrocarbons used in cars, buses and trucks and thus the need to sustain the potential of those fossil fuels is expressly excluded by the wording of section 5(2)(a) of the RMA.

[238] Mr Hearn was in a little initial difficulty with that proposition because of the Environment Court's findings in ***Terrace Tower (NZ) Proprietary Ltd v Queenstown Lakes District Council***[260]. In that case the Court considered this very issue. After pointing out that *"minerals"* are expressly defined as being included in the term *"natural and physical resources"* in section 2 of the RMA, the Court continued[261]:

> *[36] The term "mineral" is defined indirectly by adopting*[262] *the definition of that term in the Crown Minerals Act 1991 ("the CMA") which states:*[263]

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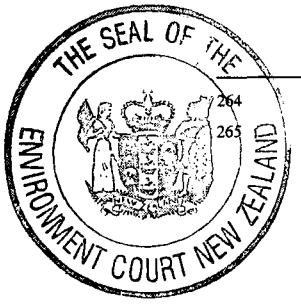
260 [2001] NZRMA 23.
261 [2001] NZRMA 23 at para 36.
262 Section 2(1) of the RMA.
263 Section 2(1) of the Crown Minerals Act 1991.

> *"Mineral" means a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water; and includes all metallic minerals, non-metallic minerals, **fuel minerals**, precious stones, industrial rocks and building stones, and a prescribed substance within the meaning of the Atomic Energy Act 1945: [our emphasis]*

The term "fuel minerals" is also defined[264] *in the CMA as including coal and petroleum, and the latter term is further and more extensively defined as follows:*

> *"Petroleum" means –*
>
> *(a) Any naturally occurring hydrocarbon (other than coal) whether in a gaseous, liquid, or solid state; or*
>
> *(b) Any naturally occurring mixture of hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state; or*
>
> *(c) Any naturally occurring mixture of one or more hydrocarbons (other than coal) whether in a gaseous, liquid, or solid state, and one or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide – and, except in sections 10 and 11, includes any petroleum as so defined which has been mined or otherwise recovered from its natural condition, or which has been so mined or otherwise recovered but which has been returned to a natural reservoir for storage purposes in the same or an adjacent area:*

In our view the important point (for present purposes) is that "petroleum" as defined is a naturally occurring hydrocarbon or mixture of hydrocarbons, whereas petrol, diesel, LPG and other energy sources derived from hydrocarbons are not 'naturally occurring'. Consequently, we hold that the Council had power to control refined petroleum products,[265] *but it must be borne in mind that this determination is without the benefit of argument from counsel since we did not want to delay releasing the decision any further.*



264 Section 2(1) of the Crown Minerals Act 1991.

265 See ***Gebbie v Banks Peninsula District Council*** (1999) 5 ELRNZ 362 at para [15]-[16].

The qualification in the last sentence is important because in these Christchurch references we have heard submissions of counsel.

[239] Mr Hearn QC called evidence from Mr I D Moncrieff, an expert in automotive fuels, combustion, and emissions. Mr Moncrieff's evidence was principally on emissions but he also gave evidence as to the nature of petroleum as a resource. He referred to the definitions of the terms and the discussion in ***Terrace Tower*** and continued[266]:

> *I have been asked to explain how petrol and diesel are produced in the process of refining. This process is essentially one of the separation out of certain components (termed "fractions") by distillation, of the originally occurring hydrocarbons in the crude oil (petroleum). It is my view, therefore, that the products petrol and diesel essentially comprise naturally occurring hydrocarbon material and therefore a mineral excluded from the provisions of the RMA in section 5(2)(a). In some secondary refining processes there is a certain degree of reformation of these hydrocarbons, to optimise the overall fuel properties. However, this primarily concerns changing the distribution of the chemical structures in the hydrocarbon mix, from that present in the base petroleum, rather than the addition of material from non-petroleum (i.e. non-mineral) sources.*

[240] That evidence raises interesting questions as to the extent to which interpretation can be a matter of fact, or at least opinion, on which evidence can be adduced. The general principle in the Environment Court is, so far as we know, that interpretation is solely a matter of law: ***Toy Warehouse Ltd v Hamilton City Council***[267]. However, that was a decision on the Town and Country Planning Act 1977 and is thus not binding on us. In our view, the better principle is that interpretation of the RMA (or of instruments made under it) is usually a question of law, but may be a mixed question of law and fact on which expert evidence may be given. That approach accords with our understanding of modern approaches to statutory interpretation which suggest that while interpretation

266 I D Moncrieff, evidence-in-chief, part 6.
267 (1986) 11 NZTPA 465 (HC - Barker J).

is a matter of law, the meaning of words may be partly a matter of fact and therefore evidence. In any event, we do not have to resolve the issue as to the admissibility of Mr Moncrieff's evidence because no party attacked either the evidence or Mr Hearn's argument directly.

[241] Instead, Mr Stewart-Wallace, counsel for the CRC submitted that whether fossil fuels are minerals or not is open to debate, but in any event fossil fuels are a finite resource within the meaning of section 7(g) of the RMA and therefore:

> *Even if there is no requirement to sustain [fossil fuels] potential to meet the reasonably foreseeable needs of future generations, there is a requirement to have particular regard to their future characteristics.*

Counsel neither quoted authority for that proposition nor tried to reconcile sections 5(2) and 7(g) of the RMA.

[242] In our view, that issue has been resolved by the Environment Court in ***Winter v Taranaki Regional Council***[268]:

> *It is true that the paragraphs in section 7 about efficient use of natural and physical resources and about finite characteristics of natural and physical resources do not themselves contain any expressed exclusion of minerals corresponding with that in section 5(2)(a). However, it has been established that the purpose of the Resource Management Act is to be seen as a single purpose, and we observe that section 7 is introduced by the words "In achieving the purpose of this Act ...". Accordingly, the Courts have taken the provisions of sections 6 to 8 of the Resource Management Act as being subordinate and accessory to the primary or principal purpose of the Act. The purpose of that is to avoid any inconsistency in giving effect to Parliament's purpose for the Act. The result is that the broad provisions of sections 6 to 8 need to be understood as explaining the purpose stated in section 5, and how that purpose is to be achieved, but not conflicting with it.*

[268] (1998) 4 ELRNZ 506 at para's 36-37.

We hold that this is the appropriate method for understanding those important provisions. Accordingly, we hold that paragraphs (b) and (g) of section 7 are to be understood as not extending to require functionaries to have particular regard to the efficient use of minerals, including naturally occurring hydrocarbon gas, or to finite characteristics of them.

We go a step further and hold that we do not have to consider any issue as to the rate of use of petroleum products. That does not mean, of course, that a territorial authority cannot impose zoning restrictions, for other proper resource management reasons (e.g. to reduce pollution) that have the effect of reducing the rate of use of hydrocarbons. However, it does not have the power under the RMA to impose direct controls on petrol, CNG, or diesel in order to reduce the rate of their use.

[243] A potential complication was raised by Mr Nixon in his evidence. He pointed out that "energy" is included in the definition of "natural and physical resources"[269] and thus both sections 5(2)(a) and 7(g) of the RMA apply to energy. We do not consider this poses large problems. The other forms of natural and physical resources can be a source of energy[270] and therefore to the extent that minerals are one such source, the need to sustain the potential of minerally-derived energy is excluded.

[244] We hold that even if the evidence did establish that the rezonings would increase the consumption of fossil fuels (and for the reasons given in the previous Chapter we are doubtful about that) then that is an irrelevant consideration by virtue of the exclusion in section 5(2)(a) of the Act.

269 Section 2 RMA.

270 It's not often we have the opportunity to quote Einstein relevantly: $E = MC^2$ where E=energy, and M=natural resources.

Chapter 9 Air Pollution

[245] The City Plan contains an objective[271] to improve the standards of air quality over the City where they are influenced by the location and nature of land uses. There are two related policies relating respectively to transport emissions[272]:

> *To promote reduced air emissions from transport through a strategy of consolidating the urban form, which also provides for the ability to retain a viable public transport system and promotes lessening dependence on motor vehicle use.*

and to land uses[273]:

> *To ensure that the location of processes causing airborne contaminants is considered when assessing land uses.*

[246] We heard evidence that motor vehicle emissions can have an effect on air quality in three different ways. They are, going from the particular to the general, the road corridor in which the vehicles are travelling (or idling), the ambient air at the City level and in the global atmosphere. For the CRC, we heard largely uncontroverted evidence from two witnesses on these issues. First Ms E V Wilton gave evidence on roadway and local air pollution; then Dr M J Salinger gave evidence as to global effects. It is noteworthy that they were each concerned with different pollutants.

[247] Ms Wilton, a scientist employed by the CRC, gave evidence about the nature of Christchurch's air pollution problems. She stated that[274]:

> *Poor air quality in Christchurch is largely a wintertime phenomenon, with high pollution episodes typically occurring during the months May to August.*

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271 Part 2, Natural Environment: Objective 2.3 [City Plan, Vol 2, p.2/13].
272 Part 2, Natural Environment: Policy 2.3.1 [City Plan, Vol 2, p.2/13].
273 Part 2, Natural Environment: Policy 2.3.2 [City Plan, Vol 2, p.2/13].
274 E V Wilton, Evidence-in-chief, para 3.2.

During these months meteorological conditions are often conducive to high pollution as temperature inversion conditions are frequently coupled with low wind speeds. This restricts the dispersion of contaminants discharged to air and results in high pollutant concentrations.

The main pollutants at a local level and in road corridors are:

- Suspended particles known as PM_{10} (particles in the air less than 10 microns in diameter).
- Carbon monoxide (CO)
- Hazardous air pollutants e.g. polycyclic aromatic hydrocarbons (PAHs) and benzene.

Concentrations of PM_{10} and CO exceed health guidelines by, on average, 30 occasions per year.

[248] As for the sources of air pollution Ms Wilton stated[275]:

The greatest contributor to PM_{10} in Christchurch is solid fuel burning for domestic heating. This source contributes 90% of the PM_{10} concentrations on a high pollution night and is also the major source of PAHs. Motor vehicles contribute over two thirds of the CO emissions and are a major source of benzene emissions.

[249] Focusing then on transport Ms Wilton wrote that[276]:

Increasing vehicle numbers on a road where vehicle numbers are already near to, or exceeding, the road's capacity will increase emissions. This is because the increase in traffic volume will result in congestion causing more emissions per vehicle.

275 E V Wilton: Evidence-in-chief, para 3.4.
276 E V Wilton: Evidence-in-chief, para 4.1.

She stated that a number of roads around Christchurch (Riccarton Road, Papanui Road) suffer from air quality which exceeds the CO guidelines. Further Riccarton Road regularly exceeds the proposed health guideline for quantities of benzene.

[250] Dr M J Salinger, a very experienced scientist working in the areas of greenhouse gas emissions was concerned with different pollutants – carbon dioxide (CO_2) and methane (CH_4). His evidence was usefully summarised in his conclusions[277]:

> *The combustion of fossil fuel, and in particular oil, contributes to the increase of greenhouse gases in the atmosphere. The fossil fuel reserves of coal, oil and natural gases were laid down millions of years ago, therefore their combustion with the release of carbon dioxide to the atmosphere results in a net gain of carbon dioxide, and to a minor extent methane. Petrol and diesel combustion is one of the most intensive forms of release of carbon to the atmosphere. Carbon dioxide is a greenhouse gas in the atmosphere, which has increased since the industrial revolution. Increases in greenhouse gases lead to global warming of the lower atmosphere and climate change. The observed climate record already shows that some climate warming has occurred, and the [International Panel on Climate Change] has concluded that there is a discernible human influence on climate. Further increases in greenhouse gases will lead to more climate warming and sea-level rise in the future. For the reasons stated above I therefore conclude that city development that leads to increased vehicle distances travelled in Christchurch will lead to rises of greenhouse gases in the global atmosphere. This will contribut[e] towards enhancement of the greenhouse effect and global warming, which is both at variance with the objective of reducing emissions of greenhouse gases in the Canterbury regional policy statement ... [and] also contrary to mitigation of climate change under the United Nations Framework Climate Change Convention which New Zealand is a signatory to, and has committed obligations under the Kyoto Protocol of December 1997 [but not yet ratified].*

[277] M J Salinger, Evidence-in-chief, para 8.1.

[251] Dr Salinger was concerned about the extra 710 tonnes per year that Mr Smith's modelling shows would result if 830 hectares of rural land were rezoned for living purposes.

[252] Dr Salinger confirmed in cross-examination by Mr Hearn that New Zealand differs from most of the rest of the world in its "contribution" to greenhouse gas effects. The increase in greenhouse gases, globally and nationally, are as follows:

	CO_2	Methane (CH_4)
Globally	66%	25%
New Zealand	34%	44%

He also confirmed that the main source of methane in New Zealand is "ruminant livestock" i.e. sheep, cows, goats and deer.

[253] Ms Wilton and Dr Salinger are knowledgeable expert witnesses and those parts of their respective evidence which does not rely on the transport modelling was not challenged and therefore we accept it for the purpose of these proceedings. However their evidence needs to be looked at in context. While we acknowledge the pollution problems caused by transport, we need to look very carefully at whether the proposed rezonings will cause air pollution to get worse.

[254] Starting at the road corridor level, it is not clear on the evidence that the rezonings will exacerbate the problems in Riccarton Road and Papanui Road. Mr Smith's modelling suggests:

(a) those roads will get worse anyway as traffic increases (regardless of the possible rezonings in issue here);

(b) a concentrated model of urban growth rather than the currently applicable consolidation model would cause massive air pollution problems of congestion (and therefore likely pollution) in the central city.

By comparison we find that the proposed rezoning effects on road corridors is minor.

[255] As for transport effects at the Christchurch City and global levels, while we agree that the consolidation model would cause less air pollution (over the city as a whole) compared with the concentrated model, the latter is not an option we are being asked to consider. The choices are (at the extremes):

(1) The City without the sought rezonings;

(2) The City with the sought rezonings (i.e. option (1) plus 830 hectares).

However, there are two weaknesses with the argument that option (1) will reduce, for example CO_2 emissions by over 700 tonnes per year. First there is a question over the accuracy of Mr Smith's figures. Secondly, we never received a convincing answer to our question as to why refusing the rezoning sought would not simply push people into the surrounding districts (especially Waimakariri and Selwyn districts) thus increasing the distances travelled and the resulting pollution. Indeed Mr Penny a witness on transport for Mr Hearn's clients stated that would occur. Mr Donnelly, the economist, stated that it was likely.

[256] We find that the witness who gives the most objective over-view of pollution issues in relation to the rezonings sought (and opposed) is Mr I D Moncrieff, a witness called for various referrers by Mr Hearn. Mr Moncrieff is a chartered engineer who has had a 23 year career specialising in the subject of fuels, combustion and emissions. He is responsible for the development of the "Vehicle Fleet Emissions Control Strategy" ("VFECS") – how to control pollution from cars, trucks etc – for the Ministry of Transport.

[257] Mr Moncrieff stated that the air pollution from vehicles[278]:

> *... follows a trend towards general improvement, as to be expected with the continuous influx of modern vehicle technology over time. However, whilst the average vehicle output is currently around 10 g/km under freeflowing traffic*

[278] I D Moncrieff, evidence-in-chief, para 2.3.

conditions, it can increase threefold as the volumes increase towards congestion. Furthermore, the emission rate is much increased again under cold running conditions, in the first 2 or 3 kms after a cold start; this can be a significant proportion of a typical urban vehicle trip.

He continued[279]:

The effective management of vehicle emissions must therefore embrace the design of urban form, travel demand patterns and management of the traffic network, as well as vehicle technology.

The analysis must also consider the emissions contribution from other, non-vehicle sources in the same area, which can be significant in particular local air quality situations. The emission of particulate matter (PM) from domestic fires as the main source of Christchurch's problem is a prime example. This sector is also a major source of CO emissions in the winter months.

Also, a given output of emissions does not necessarily lead to a pollution problem, as defined by the ambient concentrations exceeding the accepted targets. It is only when the emissions loading is greater than the capacity of the surrounding airshed to disperse it that pollution levels rise to levels of concern. These pollution peaks can vary in magnitude with time and location, depending on the localised concentration of the emissions activity, containment of the monitoring site, and meteorological effects on the air movements. The highest peak levels that are directly attributable to vehicle traffic tend to be found within the road corridors, in immediate proximity to the source, that experience high volume and congested traffic flows.

[258] On the subject of greenhouse gas emissions Mr Moncrieff stated[280]:

It has long been established that CO_2 (and other greenhouse gas) reduction policy should be trans-sectoral, as the marginal cost balances can vary greatly

279 I D Moncrieff, evidence-in-chief, paras 2.6 to 2.8.
280 I D Moncrieff, evidence-in-chief, paras 4.2 to 4.3.

amongst the various primary sources, transport and other, and also in the consideration of carbon sinks as might be warranted to offset carbon combustion. For this reason, for the magnitude of change required (several millions of tonnes reduction, per annum) effective overall policy will be determined at the national level, as there can be a number of natural conflicts arising in a particular locality when considering the CO_2 impacts of otherwise beneficial urban development programmes (e.g. attracting new industries).

The exception to this is where there is a natural gain to be had in energy use efficiency from an urban development (the so-called "no regrets" situation), and this is again an instance where, in the transport context, it is important to consider the traffic network interactions and their effects on fuel consumption. There are strong parallels between this and the pollutant emissions relationships (note that CO_2 is not a local air pollutant).

[259] He also disagreed with Mr M G Smith's evidence which was based in part on the assumption that fuel consumption will increase. Mr Moncrieff's answer was[281]:

... it is more likely that average fuel consumption will be less than today, due to government policy aimed at meeting Kyoto Protocal targets for CO_2 reduction. By 2021, the average fleet fuel consumption could be up to 30-50% lower than today's fleet.

A number of references are made to fuel consumption and emission rates, but the factors used in the analysis appear to be at odds with the data developed by the Ministry of Transport's VFECS programme, and CO2 projections. ... The consumption/CO_2 and CO emission factors used for the 2021 scenarios, ... are all much higher than will be the case (e.g. if average CO is 15g/km now, it will likely be around 4-5 g/km by 2021).

This makes [Mr Smith's] *analysis of emissions impacts invalid, and therefore suggests that the conclusion made in item 7.4, "effects are small, but negative..." could be misleading. Could there be a swing to positive resulting*

[281] I D Moncrieff, Evidence-in-chief, paras 5.10-5.12.

from the use of more accurate indices of emissions/fuel efficiency relationships, consistent with the scenario timing?

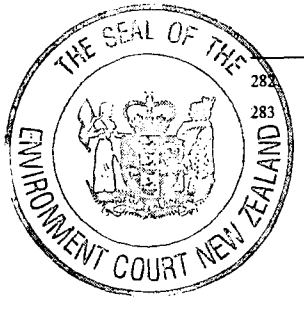
[260] Mr Smith did not seem to engage properly with that criticism in his rebuttal evidence – where he stated that total fuel use would rise. However it is the average figure that was relevant to Mr Moncrieff's evidence especially since the correct answer affected one of Mr Smith's quantitative results. Nor are we particularly assisted by Mr Smith's conclusion in rebuttal[282]:

> *Finally, emission reduction from vehicle technology has no effect on the scenarios. The relative differences between them will remain the same. What is more important, along with technology changes, is that we design our cities in such a way that the need to travel by car is minimised. There is no single measure, but rather a package where all components lead in the same direction.*

[261] Not only does that come perilously close to throwing away the evidence on which other CRC witnesses depend, but Mr Smith's statement overlooks or ignores the problems raised by Mr Moncrieff's difficulties with Mr Bachel's concentrated scenario which suggests broad comparisons between the scenarios may not show the same relative differences.

[262] Mr Moncrieff's summary of what should be done at the local level was[283]:

> *In summary, at the local urban level, the main no-regrets gain to be had in vehicle CO_2 output is through minimising the trend towards increasing congestion, as this will benefit fuel consumption in all local vehicle traffic. As said before, it also has major advantages in reducing pollutant emissions. General experience overseas has shown that measures to reduce vehicle travel by a significant extent can be expensive, and have limited impact due to the problems in encouraging uptake, away from the convenience of the personal motor car. The only exception is where the use of vehicles is controlled by mandate, or relatively significant cost barriers.*



282 M G Smith, Rebuttal evidence, para 4.
283 I D Moncrieff, evidence-in-chief, para 4.8.

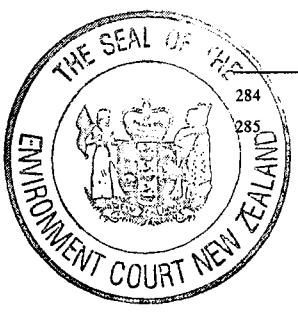
[263] His conclusion was that[284]:

> *... As the actual nature of the prospective developments has not been defined, nor their timing, it is argued that it is premature and judgmental to make this argument, without conducting any analysis.* [our emphasis]

As an example of that he observed of Mr Bachel's evidence that[285]:

> *It ... quite rightly suggests that there is a multitude of factors relating to the actual nature of the urban form and its management that will influence the detail nature of these relationships. This supports the fact that it is premature to deny a potential development until the specific nature of the development can be analysed, within the real urban context existing at the time.*
>
> *Also, the containment of the urban activity may have a contrary effect on the emissions output from traffic. If urban population growth leads to increasing traffic congestion, this will significantly increase per vehicle emission rates within the confined airshed, making it more sensitive to pollution exceedances. Also to be considered is the cold running portion of the trip, with its much elevated emission rates; it may be better for this to occur in less densely active parts of the city surrounds. Again, the purpose of the ECA framework is to quantify actual balances at work, rather than use judgment.*

[264] There are two important points here which we accept. First, is that the prospective development on any rezoned living land needs to be considered because this may affect these issues – we assume he means there may be paths and cycleways within the subdivision that reduce the need for cars: there may be schooling, social and employment opportunities nearby so that in fact extra congestion and pollution is less than anticipated at a general analysis. Secondly, Mr Moncrieff identifies the point that loose congestion (and pollution) is not nearly as bad as dense congestion (and pollution) which might result from tighter urban growth.



284 I D Moncrieff, evidence-in-chief, para 5.4.
285 I D Moncrieff, evidence-in-chief, paras 5.6-5.7.

[265] Our conclusions in relation to air pollution issues are:

(1) the greenhouse warming effect is real, and potentially alarming;

(2) the effects of allowing all the rezoning on greenhouse gas emissions are so small that they cannot be adequately measured;

(3) moving down the scale from globe to city, Christchurch has major air pollution problems but most of these are caused by solid fuel burning;

(4) congestion on Christchurch's roads does add to local air pollution, but how harmful that is depends on where the pollution occurs – in other words it becomes a local transport corridor issue;

(5) the combined effect of all the rezonings (if allowed) is insufficient to be a major problem and it is preferable for the reasons given by Mr Moncrieff to consider each rezoning in its own context.

Chapter 10 Section 32 of the RMA: planning factors

Introduction: the requirements of section 32 in relation to zoning

[266] Section 32 of the RMA required the Council before adopting any policy or method (such as a zoning) to carry out what is conveniently called a section 32 analysis, that is, to consider[286] alternatives and assess the benefits and costs of the method. The specific elements of the analysis are identified by section 32(1) of the Act which states:

> ***32. Duties to consider alternatives, assess benefits and costs, etc.***
>
> *(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)—*

[286] Heading to section 32 RMA.

(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.

[267] It is clear that each and every "objective, policy, rule or other method" proposed in a plan needs to be considered under section 32 before being adopted[287]. Regardless of whether they are policies or rules[288], the zoning lines on planning maps need to be justified under section 32 of the RMA.

[268] On references of provisions in a proposed plan to the Environment Court, the duties under section 32 fall on the Environment Court: ***Countdown Properties (Northlands) Ltd v Dunedin City Council***[289]; ***Kirkland v Dunedin City Council***[290]. As to how the Environment Court should approach its functions under section 32 we partly adopt what the Court stated in ***Terrace Tower (NZ) Pty Ltd v Queenstown Lakes District Council***[291]*:*

The Environment Court has commented on the complexity and peculiarities of section 32 before: ***Marlborough Ridge Ltd v Marlborough District Council***[292]*. It seems to us that, at least in hearings by the Environment Court, the complexities can be simplified in two ways. First, the reference to the provision "being necessary" in s 32(1)(a)(i) is repeated in s 32(1)(c)(i) so that issue can be left to the later statutory step. Secondly, that later step in s.32(1)(c) is in effect, a part of, the overall assessment identified by the Planning Tribunal in* ***Foodstuffs (Otago Southland) Properties Ltd v Dunedin City Council***[293]*.*

That means the remaining provisions of s 32(1) can be reduced to three smaller steps which together make up the s 32 process which the Court has to record in its decision[294]*. Those three steps are:*

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287 Section 32(1) RMA.
288 See Chapter 3 of this decision.
289 [1994] NZRMA 145 (Full Ct).
290 [2001] NZRMA 97 (Full Ct).
291 [2001] NZRMA 23 at paragraphs [48] and [49].
292 [1998] NZRMA 73.
293 [1993] 2 NZRMA 497 at 519.
294 Section 32(4) RMA.

(1) To identify the other means of achieving the purpose of the Act. In a hearing before the Environment Court – which does not have executive functions: ***Waimea Residents Association Inc v Chelsea Investments Ltd***[295] *... - the other means are usually (but not invariably) identified by the parties as being:*

(a) the Council's revised plan;

(b) the referrer's suggestion; or

(c) somewhere between (a) and (b); and (sometimes)

(d) in relation to land uses, the absence of rules; and (rarely)

(e) another reasonable possible solution which is outside (a)-(c) and which requires further notification under section 293 of the Act.

(2) To have regard to the reasons for and against the means identified in section 32(1)(a)-(c).

(3) Carry out an evaluation of:

- *benefit and costs (whether monetary or not).*
- *effectiveness in achieving objectives and policies.*
- *whether the proposed provisions are appropriate to circumstances.*

[269] We have two slight concerns with that interpretation of section 32(1). The first is that it omits to state expressly what we are to do with the analysis, that is, to:

- "have regard to" the matters in paragraph (a);
- "carry out an evaluation" of the matters in (b); and

[295] High Court, Wellington M 616/81, 16 December 1981.

- "be satisfied" as to certain matters in (c).

The requirements of section 32(1)(a) and (b) can be seen as steps on the way to the judgment required by section 32(1)(c). That raises our second mild concern about the ***Terrace Towers*** interpretation which is that it subsumes the section 32(1)(c) satisfaction 'test' in the overall judgment of the territorial authority (or Court). In one sense that occurs anyway, but in the ***Countdown*** decision (quoted earlier) the Full Court of the High Court did perceive them as two different steps[296].

[270] In any event, to enable a Council to satisfy itself as to the matters in section 32(1)(c) of the Act, there are two preliminary evaluations to be made[297]. In the context of rezonings such as we are considering in these proceedings, those evaluations require that we are first to have regard to planning[298] and then to economic considerations[299] if we generally categorise the obligations of section 32(1)(a) and (b) as fitting into those two disciplines respectively. The planning issues in these proceedings are:

(1) the extent to which the rezoning is necessary compared with other means of achieving the purpose of the Act;

(2) the other reasons for and against:

(a) proposed living (or rural) rezonings;

(b) the current (rural) zonings as stated in the City Plan;

The economic consideration is to evaluate the likely benefits and costs of the alternative zonings, including the extent to which the rezoning is likely to be effective and identifying likely implementation and compliance costs. The greatest difficulty with planning analysis is that it makes evaluation of activities which have many effects (positive and negative) almost hopelessly subjective, especially when potential

296 [1994] NZRMA 145 at 179.
297 Section 32(1)(a) and (b).
298 Section 32(1)(a).
299 Section 32(1)(b).

cumulative effects need to be considered. That, as the Court observed in ***Marlborough Ridge Ltd v Marlborough District Council***[300], is where the economic evaluation is potentially so useful (especially if section 6 matters or intrinsic values[301] are not relevant – as here).

[271] The planning and economic considerations in section 32(1)(a) and (b) are largely evaluative. The results are then carried forward. The main exercise of judgment comes at the third stage of the section 32 analysis when the Council or Court has to be satisfied that the rezonings are necessary and appropriate (having regard to relative efficiency and effectiveness).

[272] It is important to recognise when carrying out section 32 obligations that there is not and cannot now be any challenge under that section to the objectives, policies and methods of implementation already contained in the City Plan. They are settled and beyond challenge under section 32 (or generally). We make that point because there were suggestions in the evidence of both the economist (Mr P T Donnelly) called by Mr Hearn and of the resource manager (Mr A J Sheppard) called for the Minister for the Environment that they were challenging the objectives and policies themselves, not merely the reasons for zoning some areas of land as rural rather than residential.

[273] We carry out the analysis required in paragraph (a) – "the planning factors" in the remainder of this chapter and then carry them forward to have regard to them later, when considering section 32(1)(c). The benefit-cost and economic analysis required by paragraph (b) is the subject of the next chapter. Although the RMA does not expressly require us to have regard to the evaluation in (b), we hold it is implicit that we should do so.

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300 [1998] NZRMA 73 at 86-89.

301 Section 7(d): this is one place where the economic thread of the RMA gets entangled. Economics has difficulties with intrinsic values, since in that anthropocentric discipline all costs are costs to someone.

[274] The planning analysis required by section 32(1)(a) is the principal subject of the earlier chapters of this decision. However one matter we should make clear is to confirm[302] that when considering whether the proposed rezonings are necessary to achieve the purpose of the Act under section 32, that purpose is not to be found by looking back at Part II of the Act, but at the settled objectives and policies of the City Plan which, we hold, are deemed to represent sustainable management of the relevant district or region's resources.

[275] We note however that while the "purpose of the Act" is represented (in a rezoning reference or references on rules) by the objectives and policies of a plan when considering section 32(1)(a) that does not entail that Part II of the Act is not relevant. It is relevant because the Act expressly states so[303]. Part II needs to be considered as part of the 'broader and ultimate issue' for the individual references: ***Countdown Properties (Northlands) Ltd v Dunedin City Council***[304] as applied in ***Wakatipu Environmental Society Inc v Queenstown Lakes District Council***[305].

The extent each method is necessary to achieve the purpose of the Act

[276] The planning test – in section 32(1)(a) - is whether the proposed rezoning is necessary compared with other means (in this case the rural zone) to achieve the purpose of the Act. In this context we hold that "necessary" merely means "better". As the Court said when considering a plan change in ***Marlborough Ridge Ltd v Marlborough District Council***[306]:

> *A plan change only needs to be preferable in resource management terms to the existing plan to be "necessary" and most appropriate for the purpose of the Act and thus pass the threshold test.*

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302 See chapter 3 of this decision.
303 Section 66 (for regional councils) and section 74 (for territorial authorities).
304 [1994] NZRMA 145 at 179.
305 [2000] NZRMA 59 at para 54.
306 [1998] NZRMA 73 at 91.

[277] There is an interesting statement by Mr McCallum about this in his general evidence for the CRC. He states[307]:

> *For the purposes of section 32(a)(i) I have taken the method to be assessed as the mix of Living and Rural zoning as sought by the Regional Council within the Plan. I have set out above why the zoning sought by the Regional Council is necessary to avoid particular transport, energy, versatile soil and rural character effects. Without the mix of zoning sought by the Canterbury Regional Council these effects will occur.*

[278] We consider that statement makes an incorrect assumption about what the Act requires. Mr McCallum's reference to the "method" as being necessary to avoid particular effects, as if that is all that is required to achieving the purpose of the RMA, is incorrect. We have already held that:

(1) the purpose of the RMA is as revealed in the settled (and legal) provisions of the relevant plan being considered – here the City Plan; and

(2) the local authority cannot simply bypass the objectives and policies of the City Plan and go to Part II of the Act.

[279] There is some irony in the fact that at this critical point Mr McCallum simply cuts out the City Plan and goes straight to the general purpose of the Act. It was the CRC's position on several opposing witnesses notably Mr Donnelly and Mr Sheppard that they were ignoring the provisions of the City Plan and going to the general purpose of the Act. We agree, but observe that Mr McCallum has done the same. We reduce the weight given to all those witnesses' evidence accordingly, on the basis they have misinterpreted the RMA.

[280] Secondly, Mr McCallum may be wrong in taking the method to be assessed as the distribution and areas ("the mix") of living and rural zoning as sought by the CRC. In our view section 32(1)'s introductory words require that each of the methods in issue

[307] L R McCallum evidence in chief para 8.2.1.

in the proceedings is to be assessed against the objectives and policies of the City Plan. In this case the methods proposed by the parties are:

(1) the status quo in the City Plan ("the CCC position");

(2) the CCC position minus the 300 hectares approximately of land zoned living but contested by the CRC ("the CRC position");

(3) the CCC position plus any 1 or more extra rezonings to accommodate the equivalent number of landowner references; and

(4) the CCC position plus 500 hectares approximately sought by the opposing landowners ("the owners' position").

[281] It appears Mr McCallum considers options (1) and (2), but not – in his general evidence – (3) to (4). We consider his failure to assess the CRC position against the purpose of the RMA as identified by the City Plan has lead him astray, because he identifies the relevant method as being the mix of living and rural zoning as if there was an inter-relationship between those zones. In a district plan there could be a relationship between zones, like linked balloons, so that as one inflated the other deflated. However we see nothing in the City Plan that links areas in that way. So Mr McCallum's evidence does not assist us much, if at all, with respect to section 32(1)(a)(i).

[282] Mr I Thomson, senior planner with the CCC, gave evidence as to the section 32 analysis carried out by the CCC prior to the notified plan in 1995; and about the input into the changes prior to the notification of the revised plan in 1999. Mr Thomson was careful to point out the weaknesses he could see in the CCC's methodology: we were impressed with his objectivity. He stated:[308]

> *Land use policy is a slow acting instrument in a city, like Christchurch, where the rate of growth is small. The Council has difficulty with the strategy being suggested by Dr Bachels in particular. For example the amount of growth needed to create high-density corridors along Christchurch's major routes (refer to Para 3.6 in his evidence) does not exist. By itself, influencing land use will have little*

[308] I Thomson evidence in chief paras 85-87.

impact on total travel compared to other instruments, e.g. better public transport services, disincentives to use cars.

Acknowledging these weaknesses, the City Council has taken a balanced approach to consolidation. While managing transport demand is an important aspect of the Plan, it is not the only consideration. The consolidation model contained in the Plan tries to accommodate a broad spectrum of needs. It did not increase densities across the whole city or along transport corridors and it provided a considerable amount of new peripheral residential zoning.

I think this is where the difference between the Region and the City lies. The evidence presented by Environment Canterbury witnesses, in my opinion, emphasise managing transport demand through manipulating urban form without fully considering other ramifications. Relatively little attention was given to the myriad of other social, economic and environmental qualities that affect people's wellbeing. For example, larger sections may enable better outcomes to be achieved for water quality and waste management.

[283] While we agree with that passage – and will bear it in mind in our section 32(1)(c) judgment – neither that nor the rest of his evidence gives much guidance to the actual section 32 assessment we have to carry out. A great deal of Mr Thomson's evidence was in the form of an appendix[309] showing the section 32 analysis that the CCC had carried out prior to notification of the proposed plan. No person has challenged that analysis, so we did not need to be given it. Nor did the analysis help us much for these reasons: in the arithmetical rankings that Mr Thomson derives for possible urban rezonings around the City, the areas we are considering here all ranked at similar negative numbers. A negative number was attributed to the area if it was assessed as having a negative effect or impeding a resource objective. Based on those numbers it does not look as if any of the land in these references or most of the land rezoned in the notified plan meets any of the objectives at all. However we have to take into account that:

309 I Thomson evidence in chief Appendix A3.

(1) that analysis was prepared for the notified plan and based on different objectives (now replaced);

(2) it was based on a comparison with growth in the central City, i.e. a concentration or containment model, which is not now applicable.

[284] Of more use is Mr Thomson's "sensitivity analysis"[310] ranking the general areas in which there are references to this Court as to relative compliance compared with each other. If we had to make a choice between them, because the objectives only allowed that, then that table would be helpful.

[285] That raises the question of whether it is possible to zone too much land for living purposes. Messrs Nixon and Thomson in their combined statement of rebuttal evidence state[311]:

> *If it can be shown that there are no adverse effects in zoning, a particular piece of land, and the zoning is consistent with the policies and objectives in the plan, then the issue of need may have little significance. But in our experience, this is not likely to be the case on the edge of Christchurch. Urban Christchurch is surrounded by areas that have various resource or servicing constraints. With a few exceptions there are always going to be trade-offs, whether it is versatile soils, landscape values, rural amenity or servicing costs. If it can be shown that the plan already enables the people of Christchurch to have a wide choice of housing at realistic prices over the plan period, with minimum adverse effects then it makes little sense to keep on zoning even more land.*

That is a revealing statement, especially in respect of prices: what are "realistic" prices? It suggests the prices that citizens in Christchurch are used to. But if those citizens were able to obtain cheaper prices, then the community as a whole would be better off because the savings could be used on other things provided that the objectives and policies of the plan were met by the rezonings.

310 I Thomson evidence in chief Appendix 4B.
311 I Thomson & R C Nixon para 4.2.

[286] Further, Messrs Thomson's and Nixon's approach assumed that the City Plan adopts a rationing approach, and, as we have held, it does not.

[287] The planning witness for the opposing parties – Mr K P McCracken, does not discuss section 32 in his general evidence. The section 32 analysis for those parties is contained in the evidence of Mr Donnelly, an economist, and we discuss that in the next chapter.

[288] In summary, while the general evidence of the planning witnesses has helped us obtain a picture of the alternatives and the reasons for and against them (as discussed in earlier chapters of this decision) we find none of it particularly useful on the precise evaluations to be carried out in section 32(1)(a). Consequently we hold that the extent to which each possible rezoning from rural to living better achieves the purpose of the Act as stated in the objectives and policies of the City Plan, can only be assessed on a locality basis once we have considered all the evidence.

Chapter 11 Section 32 of the RMA: economic factors

Economic evaluation

[289] The costs and benefits of the rezonings discussed by the economists were:

(1) The value of the land if zoned for residential uses rather than rural uses;

(2) Traffic costs;

(3) Air emissions costs;

(4) Costs relating to use of finite energy resources;

(5) Infrastructural costs;

(6) Costs relating to use of versatile soils; and

(7) Implementation and compliance costs.

[290] In comparing costs and benefits, the different scenarios considered by Mr S R Harris, the economist called for the CRC, were that:

A All the disputed land has a rural zoning ("the CRC position");

B 300 hectares of the disputed land has a living zoning ("the CCC position");

C All 860 hectares of the disputed land has a living zoning ("the landowners' position").

Mr Harris compared the costs of B and C with A, and produced a table[312] which we think is useful as an over-view. We reproduce in table 11.1 on the next page Mr Harris' table modified so that the comparisons headings now reflect the 3 scenarios considered by Mr Harris. There are, as Mr Harris candidly admitted both in evidence-in-chief and in cross-examination, some difficulties with his assessments. However, we are grateful to him and the CRC for making an attempt to produce a section 32 analysis. It is the first time we have seen a serious systematic attempt to comply with the obligations of section 32(1)(b). We deal with each category in turn.

(1) Residential use values

[291] Mr Harris wrote[313]:

> *The Rural scenario* [i.e. the CRC position] *may theoretically result in loss of some of the hedonic (use) values associated with urban use of these land types. These values are the benefit which those purchasing sections gain from residential use of the site. Any change in use values would be reflected in a change in market structure and higher prices for remaining available urban land. Evidence has been presented by Mr Gary Sellars[314] which analyses different sub markets in the Christchurch urban area. His evidence shows the changes in supply associated with the different scenarios have no effect on the market structure, either in aggregate or when broken down into sub markets, and that section prices will not be affected by the rural scenario.*
>
> *I therefore conclude that no difference in residential use values is expected among the three principal means because alternative land is available in the city area to achieve the required consumer utility.*

312 S R Harris, evidence-in-chief para 4.26 Table 1.
313 S R Harris evidence in chief paras 4.1 (second) to 4.3.
314 And Mr Harris repeats his reliance on Mr Sellars in his rebuttal evidence at para 3.15.

Figure 11.1 Summary costs and benefits of principal means for urban zoning

Item	Sub-item	Rural relative to CCC position		Rural relative to Landowners Position	
		Costs	***Benefits***	***Costs***	***Benefits***
Consumer utility associated with residential use of land		*No difference*		*No difference*	
Traffic costs	Road User Costs Congestion Costs	*No significant difference*			*$1.5m/annum*
	Transport utility benefits measured by willingness to pay	*No significant difference*		*$1.6m/annum*	
Harmful effects of local air emissions			*Lower risk of harm to life supporting capacity*		*Lower risk of harm to life supporting capacity*
Use of finite energy resources			*Option value retained on 70,000 l/annum*		*Option value retained on 300,000 l/annum*
Infrastructure Costs	Local subdivision infrastructure costs	*Approx. neutral*		*Approx. neutral*	
	Housing infrastructure costs outside subdivisions:	*No difference*		*No difference*	
	Traffic infrastructure costs outside subdivisions:	*No difference*		*No difference*	
Versatile soils			*Option value retained on 125 ha*		*Option value retained on 425 ha*
Implementation and Compliance Costs		*No difference*		*No difference*	

Comparing the urban zoning against the rural zoning, if the rural zoning option were chosen the following outcomes are likely [with respect to]:

Loss in Residential Use Values:

[CRC position] Relative to [CCC position]: *No change;*

[CRC position] Relative to [landowner's position]: *No change*

[292] In his rebuttal evidence he stated[315]:

The scenarios used in the CRC analysis assume that the number of sections taken up is not affected by the amount of land zoned for urban uses. This means that regardless of what is zoned urban, the urban utility values will not change as a result of land being used for urban rather than rural purposes —simply because there will be the same number of sections sold. The fact that land is much more valuable for urban than rural uses is therefore irrelevant, because the total urban use will not change. This concept underpins the argument that benefits to landholders and developers are transfer benefits (or costs), because the benefit does not change in aggregate but merely transfers among different parties.

The opposite argument, that zoning more land urban encourages people to move to the outer areas and there is therefore greater section uptake, is directly contrary to the requirement for consolidation in the City Plan and RPS. This scenario is therefore directly contrary to the interests of those who desire more land to be zoned urban.

Because of our earlier concerns[316] with Mr Sellars' evidence, we have consequential concerns about Mr Harris' uncritical acceptance of Mr Sellars' evidence. Further, we

315 S R Harris rebuttal evidence paragraphs 1.4 and 1.5.
316 In Chapter 5 of this decision.

would have felt considerably more secure with his opinions if Mr Harris had made some comments on the assumption in the "CRC analysis". Is it realistic or even plausible? On his evidence we do not know. When he considers the "opposite argument", are there not two possibilities:

(1) that people who are otherwise constrained by land supply restrictions in the transitional and current City Plans to live within the existing urban area will move out to the newly zoned peripheral land; or

(2) that people who had previously lived in surrounding districts, or new residents who might have been forced by price and other factors to live in surrounding districts, would choose to move into the City, albeit in the new peripheral zoned land?

Mr Harris considered the first possibility but not the second. Ms Perpick submitted that there was no evidence at all that the latter was a realistic possibility. We disagree and find that it is a realistic possibility based upon the evidence of Mr Penny, a traffic consultant for some of the landowners, and of Mr Donnelly.

[293] Further, Mr Harris himself confirmed that the second possibility could occur. The Court asked Mr Harris some questions about factors affecting the rate of take up of land zoned living[317]:

Court *Some of them relate to the possibility that the population of Christchurch may increase at a faster rate than in the projections, for example, if there was increased immigration, then there might be a demand for more land without reducing the density of Christchurch might there?.*

A. *Witness (nods yes)*

Court *Or, it might be that if land prices stayed lower, and there is some evidence they have dropped in the last few years, that people who have been part of*

[317] Notes of evidence p.409.

the much higher rate of population growth in Selwyn and Waimakariri might choose to live closer to Christchurch, would you agree with that?.

A. *Yes I do agree that both of those scenarios are possible. I'm unsure about the second one and the degree to which we can consider inter council changes. The first point though, is specifically the one to which I was addressing that concept of dynamic efficiency, because equally it may be that population growth decreases and section uptake is lower than anticipated and this is where I raised the point about your ability to respond to those different situations. If it grows faster than anticipated, we can zone more sections urban, more land urban. We cannot do the reverse.*

[294] Mr Harris seemed to be unable to consider other options which we found of concern: why should we not consider changes of housing patterns between districts if there is a possibility they will occur? Why can't land zonings be reversed from urban to rural? His answers are too obscure to us, as if he had some over-riding instructions about what was possible and what was not. This appears to be confirmed a little later on when the Court was asking for his expert help[318]:

Court *I'm looking at the scenario where it [i.e. rezoning more rural land as urban in the City] might suck people out of surrounding districts back into the city?*

A. *Yes, now that as I recollect was also a scenario we had considered, and I think you will find it in the annex to Grant Smith's evidence, but as I understand the decision that was made, was that we were confined to considering matters under the control of the City Council. You are probably better to ask someone else about that.*

That is not a very helpful answer. And this followed immediately[319]:

Court *But if that scenario occurred, that would affect the last sentence in your paragraph 1.4, would it not?*

318 Notes of evidence p.410.
319 Notes of evidence pp.410-411.

A. *Well not entirely.*

Court *But at least partially?*

A. *Well the transfer would then be between developers say in Waimakariri to developers say in the Christchurch City, it would remain a transfer cost, assuming again constant population trends.*

Court *Even though there might be other benefits of the sort that concern the CRC in reducing pollution emissions by reducing transport demand?*

A. *I think you are better to direct that question to perhaps [Ms Perpick] because I am out of my depth in that context.*

In the end we were left with the impression of a witness who was being careful to protect a position, rather than of an expert trying to give the Court the balanced and objective opinion which it was his duty to provide.

[295] We are disappointed that Mr Harris hid behind his instructions and that he failed to consider other valuation evidence. That is important because we do not accept Mr Sellars' opinion. That is partly because of the doubts we have already raised e.g. that it is controverted by the evidence of Mr Cook that the prices of sections have dropped as a consequence of the uncontested rezonings, and also for a broader reason.

[296] Mr Donnelly, the economist stated that Mr Sellars' opinion *"contradicts the application of conventional microeconomic theory and is irrational"*. Mr Donnelly's analysis is clearly set out[320] in the language of a High School economics text (that we can understand) and we annex it as Appendix "A" to this decision.

[297] In fact Mr Harris criticizes Mr Donnelly's use of microeconomic theory, and the graphs. He states[321]:

320 Paragraphs 8 to 8.14 and Figures 1-3.
321 S R Harris rebuttal evidence para 3.10.

In sections 8.8 to 8.14 Mr Donnelly goes into some detail of micro economic theory to explain why section prices will change under the different scenarios. While I accept that any intervention is distorting in some form, otherwise it would probably not be worth undertaking, the size of the undesirable distortions may range from trivial to significant. Real market behaviour rarely follows the straight line format provided in his accompanying graphs, and in real life these behavioural curves may contain discontinuities and inflexions which make market behaviour far more complex than Mr Donnelly's explanation suggests. In my opinion, the evidence presented to the Court by valuers, as to actual market behaviour, is of more assistance than Mr Donnelly's hypothetical exposition.

That is fair enough. The Court also much prefers empirical evidence to theory (and assumptions) but if we have problems with the valuer (Mr Sellars) relied on by Mr Harris then what weight can we give to the latter's evidence? As we have stated, Mr Harris gave us no help on that – and he did not in his rebuttal evidence refer to the evidence of the other key valuer witness (Mr Cook) at all.

[298] Mr Harris' other argument for dismissing the differences in value between a piece of land if zoned rural and the same land zoned living[322] is to say the difference is merely a transfer benefit or cost (depending on perspective) and not a social cost or benefit. To understand 'transfer benefits' we refer to R A Posner's Economic Analysis of Law[323].

The economist distinguishes between transactions that affect the use of resources, whether or not money changes hands, and purely pecuniary transactions-transfer payments. Housework is an economic activity, even if the house-worker is a spouse who does not receive pecuniary compensation; it involves cost-primarily the opportunity cost of the houseworker's time. Sex is an economic activity too. The search for a sexual partner (as well as the sex act itself) takes time and thus imposes a cost measured by the value of that time in its next-best use. The risk of disease or of unwanted pregnancy is also a cost of sex – a real, though not primarily a pecuniary, cost. In contrast, the transfer by taxation of $1,000 from

322 Mr Cook's evidence suggested the difference could be $140,000 per hectare.
323 Little, Brown & Co, 4th Edition, 1992 at p.7.

me to a poor (or to a rich) person would be costless in itself, regardless of its effects on his and my incentives, the (other) costs of implementing it, or any possible differences in the value of a dollar to us; it would not diminish the stock of resources. It would diminish my purchasing power, but it would increase the recipient's by the same amount. Put differently, it would be a private cost but not a social one. A social cost diminishes the wealth of society; a private cost merely rearranges that wealth.

Competition is a rich source of 'pecuniary' as distinct from 'technological' externalities – that is, of wealth transfers from, as distinct from cost impositions on, unconsenting parties. Suppose A opens a gas station opposite B's gas station and as a result siphons revenues from B. Since B's loss is A's gain, there is no diminution in overall wealth and hence no social cost, even though B is harmed by A's competition and thus incurs a private cost.

The distinction between opportunity costs and transfer payments, or in other words between economic and accounting costs, helps show that cost to an economist is a forward-looking concept.

[299] We have several concerns about Mr Harris' writing off all of the differences in valuation as transfer payments. First, he is not being objective: he is confusing what his client the CRC says ought to be the case with what is the case. In particular his analysis assumes (and he states this twice in his rebuttal evidence and again in cross-examination) that only 570 houses will be needed each year in Christchurch. He could not say how that was going to be achieved or indeed what it means from an economic perspective because "need" is a relative[324] concept (except at subsistence level). Secondly, as we have said, in our view he should have investigated other possibilities – that some people who live in Christchurch might choose to relocate; that the City Plan has no direct way of stopping those; and that other people who could previously only live in the surrounding districts might prefer to live in Christchurch City. Thirdly, we also see some strength in Mr Donnelly's opinion that Mr Harris wrongly excluded the benefits of rezoning the contentious land as living rather than rural.

[324] If prices were reduced to $500 per house, the "need" for houses in, say, Fendalton might be considerably higher.

[300] We should add that when Ms Perpick submitted[325] that:

> *None of the evidence establishes that, in itself, zoning more or less land in Christchurch for residential purposes decreases or increases section prices ...*

- it appears she has misunderstood or overlooked some of the evidence. Mr Cook stated that prices at the Regents Park subdivision in Belfast have reduced by $15,000 to $20,000 per section since the 1999 decision by the CCC releasing the revised plan.

[301] Ms Perpick then continued[326]:

> *And more importantly, none of the evidence establishes that the price of land has caused or even contributed to the trend towards decentralisation (i.e. people living in the districts and commuting to Christchurch).*

That is not correct for these simple reasons:

(1) Her assertion breaches a simple economic rule[327]:

> *Price goes up, quantity demanded goes down, period!*

(2) So if price goes up some potential purchasers look elsewhere i.e. they substitute other land (based on all sorts of other factors of which price is only one).

(3) Mr Donnelly expressed his expert opinion that he would expect restrictions on the amount of residential land in Christchurch to increase prices and thus push potential purchasers elsewhere.

Further we are concerned that Ms Perpick has misunderstood a fundamental economic principle that price is determined by both the supply and the quantity demanded. We

325 Submissions dated 23 April 2001 para 5.4.
326 Submissions dated 23 April 2001 para 5.4.
327 P Heyne The Economic Way of Thinking (9th Ed. 2000) p.26.

have direct evidence of that in the passage from Mr Donnelly which we have annexed as Appendix "A" to this decision. That analysis may be an oversimplification but we do not understand it to be wrong.

(2) Traffic costs

[302] Mr Harris relied on Mr M G Smith's evidence for the calculation of the road user costs of rezoning a further 300 hectares (the CCC position) or 800 hectares (the landowner's position) as living zones. So, to the extent that Mr Smith's evidence on that issue is insecure, so is Mr Harris'. Mr Smith calculated that the difference between rural zoning and living zoning in road user costs is $3m per year – half of which is "congestion costs". Mr Harris stated[328]:

> *We can assume that the increases in road user costs, other than congestion, are offset by increases in consumer utility. These increases in consumer utility will be slightly larger (approx. 5%) than the increase in road user costs because of the effect of excise tax on petrol prices. However the changes in congestion costs, which amount to $1.5 million per annum in the NZBC [not zoned but contested areas sought by the referrers] are costs that are not offset by increases in utility for consumers because they are mainly incurred by individuals other than those who make the decision to travel.* [Our underlining].

The underlined words are contentious.

[303] Mr Donnelly stated[329] of personal travel costs that:

> *... the additional travel time and travel cost generated by congestion is not an adverse effect on the environment, as defined by the RMA, per se as it is more in the nature of a financial or economic effect. The costs are self-inflicted and fall on users of the system (i.e. costs are internalised) but are avoidable (e.g. users could go by train, walk or delay their journey to non-peak travel). Inefficient*

328 S R Harris, evidence in chief para 4.6.
329 P T Donnelly, evidence-in-chief para 5.7 and 5.8.

pricing mechanisms in association with capacity constraints cause the additional travel time and cost.

Congestion may generate the need to expand restricted elements of the transport network and require additional public and/or motorist funding to finance it. The financing issue is also not in itself relevant to the RMA. Depending on circumstance, the expansion of the network to remove the restricted elements may give rise to adverse effects on the environment other than just economic or social. These effects, which are likely to be site specific, are relevant to the RMA.

[304] We find that neither witness is correct although Mr Harris is more so on this point. Some of the money that the living zone residents spend on fuel, tax and on maintenance of their cars is a necessary consequence of a resident's choice of locations to live. Only the excessive costs caused by congestion (resulting from free use of the roads) comprise the social costs identified as externalities as Mr Roberts stated in his evidence. But we are left with no idea of how to quantify them.

(3) Air emission costs

[305] Mr Harris relied on the calculations of Mr Smith that the living zoning sought by the opposing parties would add 980 tonnes of CO_2/p.a. to the atmosphere compared with a rural zoning. There are two problems with that. The first is that Mr Smith's analysis is very problematic – and in fact we have not accepted that it is correct. Secondly, we accept the evidence of Dr K R Lassey that a rural zoning could in fact move more "greenhouse" gases to the atmosphere especially if the land was used for a dairy farm (which is a credible if unlikely possibility). Ms Perpick relied on the fact that any saving in flatulence gases would only occur if cows were not displaced to another location by an urban zoning. It is interesting that she made that point, but that the CRC was not prepared to acknowledge that people who might be disenabled from living on the edge of Christchurch might feel forced to move to other districts. We do not understand why cows will be displaced into outlying districts but people will not be.

(4) Finite energy resources

[306] The short legal answer is that these costs are irrelevant for the reasons stated in Chapter 8 of this decision.

(5) Infrastructure costs

[307] Mr Harris stated that many of these costs (new roading, power lines, telephone cable etc) are paid for by the developer (i.e. internalised). Similarly, their maintenance is paid for by CCC rates and by consumers. Mr Harris considered that the three scenarios were neutral on these issues. There are, in our view, remoter infrastructures – provision of schools, hospitals – which Mr Harris did not take into account. These can however, be taken into account when considering the "compact form" provisions of the revised plan as a planning issue.

(6) Versatile soils

[308] The important point here is that Mr Harris has not quantified these. He has referred to their "option value" without identifying what it is. Further Mr Donnelly observed that there are "option values" associated with housing as well. Mr Donnelly's evidence needs to be discounted also, because it is so often gives the impression that he is attacking all the objectives and policies of the plan even though they are a given. Even with that qualification, as between the evidence of Mr Harris and Mr Donnelly we tend to prefer the specific evidence of the latter – where it exists.

[309] In any event there was a third economist in the case called for the Minister for the Environment ("the MFE"). Mr M R Longley is a qualified economist employed by the MFE, who has practised as such for 14 years. Mr Longley summarised Mr Harris' evidence, we think fairly, as follows:[330]

[330] M B Longley evidence in chief paras 3.4 and 3.5.

Mr Harris concludes that CRC's intervention to establish protection for high quality soils and to reduce the risks from air emissions can be undertaken at no discernible social cost in terms of consumer utility, transport or infrastructure, that this demonstrates optimal allocative efficiency; and that dynamic efficiency will be achieved if this level of resource protection is able to change in the future as the marginal costs and benefits of the use of land change.

This conclusion rests heavily on the supposition that the (unquantified) benefits of the CRC position outweigh the (unquantified) costs of the CCC position. The benefits side of the ledger comprises the option value associated with retaining versatile soils, the option value associated with forgoing the use of finite energy resources, and the reduced risk of harmful air emissions.

[310] As that quotation shows Mr Harris' conclusions rested quite heavily – in his evidence in chief – on the concept of "option value" and Mr Longley discussed that in some detail. Unfortunately in his rebuttal evidence he then stated he was actually writing about "the value of the option". Thus we had a very confusing exchange of opinions by two economists on a subject which Mr Longley described as[331] "the subject of considerable debate amongst economists". In the end it seemed pointless because in his rebuttal evidence Mr Harris conceded that the value of the option is unlikely to be large and therefore[332]:

... I do not consider the Court will make a serious error if it ignores this issue [option pricing].

He then summarised his earlier rebuttal evidence where he had stated his opinion that the Court should[333]:

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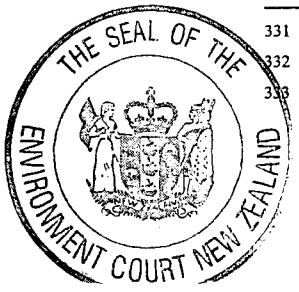
331 Notes of evidence p.340.
332 S R Harris rebuttal evidence p.13.
333 S R Harris rebuttal evidence para 4.9.



- *Focus on the evidence from the valuers, and determine the extent of changes to the market which are likely to occur under the different zoning options. One should consider both the market as a whole, and submarkets with the overall market.*

- *It is found that the different zoning options are likely to lead to significant increases in the market or submarket price of urban or lifestyle land, then these increases are likely to mean* the cost of retaining the option on versatile soils and fossil fuels **exceeds** the value of that option. *Preventing the relevant zoning interventions where significant market distortion occurs is therefore the appropriate course of action.*

- *If it is found that the different zoning options are likely to lead to nil or minor changes, then the* cost of retaining the option on versatile fossil fuels is likely to be **less than** the value of the option. *Allowing the relevant zoning interventions proposed is therefore the appropriate path of action. This is the conclusion supported by evidence from Mr Gary Sellars that the retention of the options does not distort the market, and also by the analysis undertaken by the CRC.*

[311] Mr Harris' final position therefore does not seem too far from Mr Longley's conclusion[334]:

> *The result is that the option values cited by Mr Harris as benefits for the rural zoning preferred by the CRC are not, on economic grounds, sufficient to justify the CRC position.*

[312] The key question here is whether the different zonings are likely to lead to significant rises or falls in the relevant submarkets of residential land. We have already dealt with that issue and found that they would.

[334] Mr M B Longley evidence in chief para 6.4.

(7) Implementation and Compliance costs

[313] There is no difference between the parties about these.

Section 32(1)(c) Judgment

[314] There are two tests as to whether a proposed plan provision is, relatively, the most appropriate means of exercising the function: effectiveness and efficiency. As to efficiency we refer to the discussion of that term in ***Marlborough Ridge Ltd v Marlborough District Council***[335].

[315] On the question of efficiency we prefer the evidence of Mr Donnelly (corroborated to some extent by Mr Longley). However, we emphasise that is a decision based on the narrowest of margins (say 51% to 49%) because in the end we simply do not have enough good evidence as to the benefits and costs of the options. The main substantive factor, in our view, is that on the evidence we are satisfied that a living zone would increase the wealth of society by making land in the City cheaper for people trying to find somewhere to live; conversely a rural zoning of the contested land would be a social cost because the price of urban land would stay high. To refuse all the sought rezonings is more likely than not to be wasteful because the costs to society (likely higher land prices) would be more than the benefits (possible reduced pollution, congestion) to the effect that the landowner's position is the more efficient method of achieving the objectives and policies of the City Plan having regard to the costs of maintaining the land with a rural zoning.

[316] As for effectiveness, our overview is that the City Plan has a consolidation objective which is open to careful, managed urban development at the current margins of the City. Further there is little positive policy direction (as opposed to the negative suggestion argued for by the CRC: no more living zoning) as to how to achieve greater densities in the Inner City. For example, infill is carefully controlled so that the

[335] [1998] NZRMA 73 at 86 et ff; (1998) 3 ELRNZ 483.

"Garden City" values of Christchurch are not lost, and the extensive Living 1 zone contains no maximum lot sizes.

[317] We conclude that there is no general case that rules out any of the proposed living zoning on grounds of cumulative effects. Rather each piece of land needs to be considered on its own facts and in the light of the relevant objectives and policies of the City Plan.

[318] One of the worrying aspects of the CRC case, because it seems to lead to a perverse result, is that a policy of consolidation as the CRC understands it (and for reasons given in Chapter 4 we think that understanding is incorrect) would lead people who might otherwise have lived on the periphery of Christchurch, to move even further afield. We accept Mr Donnelly's evidence that:[336]

> *... in the longer term, a policy of concentration and increased density would inflate land values in the Christchurch urban area. This should encourage a greater number of people to reside outside ... the district in areas of lower land values such as Kaiapoi and Rolleston and commute to Christchurch.*

Mr Penny and Mr Sheppard hold the same opinion.

[319] The CRC's answer to that was curious: first Mr McCallum (the CRC planner) and Ms Perpick, its counsel, argued that the objective of consolidation was set and binding on the CCC (and on this Court) and therefore, if we understood them correctly, the decentralisation effect could be ignored. In our view that is not the kind of evaluation required by section 32(1): rather it is an attempt at using the authority of the objective and policies to impose a possible inefficient and ineffective zoning of land on the public without critical evaluation. Secondly Mr Barber stated in his rebuttal evidence[337]:

> *... I accept that the alternative "reaction" to centralisation pressures could occur. I don't regard this as implying that the concentrated scenario is "wrong", but*

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336 P T Donnelly evidence-in-chief para 5.36.
337 M G Barber rebuttal evidence para 1.12.

rather suggesting that, if necessary, a further concentrated scenario could be prepared which contained elements of peripheral development or decentralisation

...

That answer is unhelpful to us because we need to give an answer now. Mr Barber should not be surprised because the consolidation scenario actually in the City Plan does contain elements of peripheral development.

[320] We hold that:

(1) the economic evidence is such that the cumulative effects in these cases are not sufficient for us to have to weigh the contested rezoning proposals against each other – particularly having regard to the 1723 hectares now rezoned by the CCC in the City Plan;

(2) the planning evidence and the objectives and policies of the City Plan when correctly interpreted do not entail that there is a rationing approach to the supply of land. Therefore when considering[338] other means or "reasons for and against" in relation to each contested rezoning or challenged zoning to living, there is no need to compare each one with the other (unless it is in the same locality);

(3) each zoning opposed, and rezoning sought and opposed by the CRC should be considered in the context of its locality and with regard to the relevant policies in the City Plan;

(4) therefore we can release decisions on each area for which a rezoning is sought and/or challenged by the CRC in a piecemeal way as we have time to decide them; and

(5) a similar approach can be used for the Port Hills references as and when we hear them.

[338] Under section 32(1)(a) of the Act.

[321] However, at this stage, we cannot complete the 'rigorous' test of section 32(1)(c) - ***Countdown Properties (Northlands) Ltd v Dunedin City Council***[339] in respect of each challenged rezoning. That will have to await the consideration of the facts of each case.

339 [1994] NZRMA 145.

Chapter 12 The Regional Policy Statement

Introduction: inconsistency

[322] With a double negative enjoyed by lawyers but no one else, section 75(2) of the RMA requires that a district plan must

> .. ... *not* –
>
> ....
>
> *(c) Be inconsistent with* –
>
> *(i) The regional policy statement ...*

The issue is whether zoning the areas of land subject to these proceedings as living zones is not inconsistent[340] with the Canterbury Regional Policy Statement ("the RPS"). It is common ground that some of the relevant objectives and policies of the RPS have been moved directly – in some cases in almost exactly the same words – to the City Plan. There can be no argument in respect of those: if the methods meet the objectives and policies of the City Plan then they cannot be inconsistent with the RPS. We will leave those matters until we consider specific areas on a case-by-case basis. However the CRC has raised an argument that the proposed rezonings are inconsistent with other provisions of the RPS. Before we turn to that we should consider two arguments advanced by Mr Hearn.

[323] He first submitted that if there is any inconsistency between any of the proposed rezonings and the RPS then another issue arises. His argument runs:

(1) that a district plan is to be prepared[341] "in accordance with its functions under section 31, the provisions of Part II, its duty under section 32, and any regulations"; and

340 As required by section 75(2)(c)(i) of the Act.
341 Under the guiding section for preparation of plans – section 74(1).

(2) a district plan must be not inconsistent[342] with the regional policy statement;

(3) the phrase "in accordance with" is more precise and stronger than "not inconsistent with"; and therefore

(4) if there is any conflict then the provisions of a district plan which is supported by being in accordance with Part II prevail over the obligation not to be inconsistent with.

[324] We respectfully disagree with Mr Hearn. We consider section 75(2) implies a threshold over which any proposed provision must pass. However the step is a low one – it does not require "consistency with", but uses the double negative "not inconsistent with", which is lower than consistency. In logical terms the law of the excluded middle does not apply. Rather there is a spectrum from 'identity' to 'opposite' with:

(1) both 'consistent' and "not inconsistent" coming between;

(2) those terms placed some distance apart from each other; and

(3) with "not inconsistent" being closer to "opposite".

For example, to introduce some colour to the bleached world of logic: in the spectrum between violet and yellow, blue is "consistent" with violet, and green is "not inconsistent" with violet, even though green is closer to yellow on the spectrum.

[325] Secondly, Mr Hearn argued that the obligation for a district plan to be "not inconsistent" with a higher document in the hierarchy only applies to an operative document not to a proposed plan. He pointed out that section 2 of the Act defines a "district plan" as an "operative plan approved by a territorial authority under the First Schedule ..." Logically that is impeccable: a proposed plan is not a "district plan" and therefore section 75(2) of the RMA does not apply.

[342] Section 75(2).

[326] However, we do not think that argument is very helpful on a reference. We are concerned with the projected (operative) district plan, so there would be no point in us approving objectives policies or methods that were clearly inconsistent with the RPS. If there is inconsistency, it should be determined sooner rather than later (if the issue has been raised, as it has by the CRC in these proceedings).

Provisions of the RPS

[327] Chapter 12 of the RPS contains an objective to[343]:

> *Enable urban development and the physical expansion of settlements and the use and provision of network utilities to occur while avoiding, remedying or mitigating adverse effects on the environment, including in particular effects on:*
>
> ...
>
> *(c) air quality*
>
> ...
>
> *(k) energy use*

For the reasons discussed in the previous chapters, even if we were to rezone all the land disapproved of by the CRC as living, that would not necessarily be inconsistent with this objective. This is an issue that would need to be considered on a case-by-case basis.

[328] The related policy is[344]:

> *Promote settlement and transport patterns and built environments that will:*
>
> *(a) Result in increasingly effective and efficient use of resources, particularly energy.*

343 Objective 1 [RPS pp.187-188].
344 RPS p.189.

(b) Reduce the rate of use of non-renewable energy sources.

(c) Minimise the adverse effects of emissions into the atmosphere resulting from the use of motor vehicles and building heating.

(d) Incorporate energy efficient approaches to building orientation, form and design.

We have doubts about the lawfulness of this policy as it relates to energy sources which are derived from minerals. In respect of other aspects of the policy, the proposed rezonings cannot be said to be inconsistent with them. This is confirmed by the explanation to Policy 1 which highlights the link between increased transport demand and adverse effects on air quality. The explanation goes on to state:

> *Policy 1 in most cases will be met by the consolidation of urban areas. However, this policy does not preclude extension of urban areas, but means that land use planning and resource management should seek to encourage the consolidation and infill of urban areas, to the extent that is practical, whilst providing adequate land for the accommodation of anticipated development, and choice.*[345]

The proposed rezonings are generally consistent with that explanation.

[329] Our concerns about the lawfulness of some policies are heightened in respect of Chapter 14 Objective 1 and related Policy 1 which addresses the issue of the Canterbury region's dependence on non-sustainable energy sources, including fossil fuels.

Objective 1

Reduce Canterbury's dependence on non-sustainable energy sources.

[345] RPS p.189.

Policy 1

Promote the use of energy from renewable sources consistent with sustainable management of natural and physical resources, including the promotion of the substitution of fossil fuels with renewable sources.[346]

The rezonings are not consistent with this objective and policy, but we are not concerned about that for the reasons given in Chapter 8.

[330] Chapter 12, Objective 2 and Policy 3 encourage land use patterns that will make efficient use of transport infrastructure (being a physical resource)[347].

Objective 2

Achieve patterns of urban development and settlement that do not adversely affect the efficient operation, use and development of:

(a) Roading infrastructure

(b) Christchurch International Airport

...

(f) Telecommunication facilities

...

(h) Rail network

(i) Other network utilities[348]

346 RPS p.222.
347 RPS p.192.
348 RPS p.192.

The first paragraph of the explanation to Policy 3 specifically recognises the link between the pattern of urban development and settlement and the demand for transport. It states[349]:

> *The pattern of urban development and settlement in the region has a strong influence on the demand for transport and consequently on the use of energy and emissions to the atmosphere. Patterns of development which minimise transport and dependence on personal transport for both work and other trips, are likely to encourage or enable more efficient use of transport facilities. Limiting the extent of urban areas and encouraging self-containment, are likely to minimise transport use and result in more efficient use of the regional transport network.*

These issues suggest a case-by-case approach having regard to roads in the locality is necessary for each area sought to be rezoned before inconsistency with the RPS can be determined.

[331] Chapter 13 on air quality contains an objective[350]:

> *Objective 1*
>
> *Maintain or improve ambient air quality so that it is not a danger to people's health and safety, and reduce the nuisance effects of low ambient air quality.*

The related policy is:

> ...
>
> *Policy 2*
>
> *Promote measures that reduce emissions from the use of carbon based fuels*[351].

349 RPS p.192.
350 Ch.13, Objective 1, [RPS p.208].
351 RPS p.209.

There is another objective to[352]:

> *(a) Reduce emissions of greenhouse gases.*
>
> *(b) Reduce emissions of stratospheric ozone depleting substances*

and related policy 9 to[353]:

> *Promote measures to reduce emissions, or mitigate the effects of carbon dioxide from the use of carbon based fuels.*
>
> ...
>
> *(b) Reduce emissions of stratospheric ozone depleting substances*[354].

The evidence suggests that these policies will not be jeopardised.

[332] Chapter 15 Objective 2's Policy 2 seeks to promote the use of modes of transport with low adverse effects on the environment to assist in providing for the transport needs of the community in a sustainable way by avoiding adverse effects on the environment[355]:

> *Promote the use of transport modes which have low adverse environmental effects.*

We rely on the evidence of Mr Roberts which suggests that these issues can only be resolved on a site-by-site basis for these rezonings.

[333] Chapter 15, Objective 2's Policy 3, seeks that the safe, efficient and cost effective use of transport is achieved, and the demand for transport is reduced, by promoting changes in movement patterns, travel habits and the location of activities[356]:

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352 Ch.13, Objective 3 [RPS p.213].
353 RPS p.215.
354 RPS p.213.
355 RPS p.234.
356 RPS p.235.

Promote changes in movement patterns, travel habits and the location of activities, which achieve a safe, efficient and cost-effective use of the transport infrastructure and reduce the demand for transport.

The explanation to Policy 3 discusses transport demand in some detail. It specifically identifies, but not exclusively, four means by which transport demand may be reduced:

... ..

The demand for transport may be reduced by a wide range of means including:

(1) controlling the use, development and protection of land, such as the containment of urban areas

(2) encouraging increased use of more energy efficient transport modes

(3) increasing public awareness on environmental issues and transport options

(4) promoting or facilitating increased substitution by telecommunications, for example, "telecommuting".[357]

We doubt if any use of the roads within the region can be efficient while road users do not pay for the congestion they cause. However there is nothing in the proposed rezonings inconsistent with these policies.

[334] We conclude that the contested rezonings are not generically inconsistent with the RPS.

[357] RPS p.235 and 236.

Chapter 13 General Conclusions and Outcome

The general planning evidence

[335] While the City Plan is generally coherent, it is not totally consistent. Our finding is not a criticism, simply a recognition of the complexity of the issues the CCC is trying to resolve and of the compromises in objectives and policies introduced by consent order C139/00 (and its corrections in C141/00). Several of the complexities and resulting inconsistencies and/or problems are spotlit by the evidence in these proceedings. In particular there are:

(1) the illegal policies as to:

(a) versatile soils [Policy 2.1.1(a)]; and

(b) (possibly) the use of fossil fuels (although it may be the environmental result rather than a policy which is illegal);

(2) the hints, but no actual policy, suggesting a rationing approach to the supply of living zoned land;

(3) the policies seeking to maintain the (low density) Garden City image of Christchurch (by avoiding inappropriate infill) which do not sit easily with the policies as to increasing residential density (although we accept that the CCC is attempting to have both virtues: the Living 1 and 2 zones are for the Garden City characteristics; and the Living 3 and 4 zones for increasing densification);

(4) the contortions of the policy (2.1.1 (b)) seeking to protect versatile soils.

[336] Our determinations as to the correct way to interpret the objectives and policies of the City Plan helps us to decide to what extent we can rely on the planning witnesses in their overall assessments of the rezonings. We find that Mr McCracken, the planning

witness for the opposing parties, is accurate on the whole, in his understanding of the correct interpretation of the City Plan. In particular he appears to appreciate that:

(1) there is no rationing approach to the supply of land for living purposes (in Part 6 of the City Plan);

(2) while objective 6.1 (consolidation) is the most important objective with respect to urban growth, objective 6.2 plays an important part too; and the latter reinforces the need for a case by case approach to rezoning;

(3) the versatile soils policy (Policy 2.1.1) is a balancing test to be decided on the facts of the area under consideration;

(4) there is no requirement in the objectives and polices to conserve fossil fuels or if they purport to require that, then any such policy is illegal.

We note however that Mr McCracken does not really come to grips with the cumulative effects issues in any of the ways they are raised.

[337] By contrast we find that Mr McCallum for the CRC proceeds on a different assumption in respect of the interpretation of each of the relevant (sets of) objectives and policies. For example:

(1) When Mr McCallum tests the necessity for limiting the zoning of living land as argued for by the CRC, he states[358]:

> *There is sufficient land for living activities for the 10 year period of the plan before a review must be commenced.*

(2) He does not discuss the important objective 6.2 at all;

(3) He relies on evidence about versatile soils which we have found is over-stated in its concern for Christchurch: the City Plan does not require such careful protection of the versatile soils on a City-wide basis. The relevant objective and policy 2.1.1(b) require an assessment in the context of the locality;

[358] L R McCallum evidence in chief para 8.2.2(a).

(4) He relies on the 'need' to conserve fossil fuels as a part of the justification for opposing the challenged zonings.

[338] On the other hand there is one important aspect of sustainable management which Mr McCallum articulates more fully than the other planning witnesses, and that is the need for the CCC on any rezonings (and now this Court) to consider the cumulative effects of any rezonings. We trust we have given proper consideration to those concerns – much of this decision has been directed at ascertaining whether the cumulative adverse effects on the environment will be as stated by the other CRC witnesses. In the event we have either found that they will not, or that we do not know enough to be satisfied on balance that they will occur.

[339] The third planner to give general evidence was Mr R C Nixon for the CCC. Mr Nixon has been the principal planning officer involved with the drafting of the City Plan since it was a proposed plan. His evidence clearly explained the philosophy of the City Plan as he understands it and for the most part we accept that he has a profound knowledge of the issues and what the objectives and policies intend to do about them. We accept his evidence on those issues. However in order to resolve disputes over the controversial objectives and policies (with respect to urban growth and versatile soils in particular), compromise wordings were agreed to which are, as we have shown, unsatisfactory and inconsistent and – worse - justified by "reasons" inherited from earlier quite different objectives and policies. Even Mr Nixon has been slightly foxed by that as is shown by his apparent adoption of the rationing approach when he states[359]:

> *... excessive provision for peripheral development could result in an overall lowering of urban densities, which is contrary to the outcomes sought by the proposed plan (refer Policy 6.1.1 explanation and reasons).*

Only if we substitute "inappropriate" for "excessive" can we agree with that proposition.

[359] R C Nixon evidence in chief para 93.

[340] The other aspect of Mr Nixon's evidence that concerns us slightly is his omission to consider the cumulative effects that concerned the CRC. Despite the fact that Mr Nixon had all the CRC evidence before he exchanged his, he makes no reference to it. He simply states:

> *The issues are confined to whether or not particular rezonings are consistent with these agreed objectives and policies and an appropriate selection, given the need to be selective.*

We find the last phrase in that sentence puzzling (*"... given the need to be selective"*) because Mr Nixon is rather silent on what determines the need to be selective.

[341] What it comes down to, and we are not being critical here for a reason that will become apparent shortly, is that despite the useful background knowledge given to us by Mr Nixon, in the end his general evidence does not greatly assist us in making our decisions as to the correct approach to be taken to the cumulative effects of references seeking rezonings to living. While his answer might be that his evidence should be read with that of the other general planning witness Mr I Thomson, who dealt with the CCC's section 32 analysis (see Chapter 10) that too did not assist us greatly on the issues we have to decide. Both the CCC planning experts rely on the City Plan containing a rationing approach to the supply of land zoned "Living" which we have held is not a correct interpretation of the City Plan.

[342] We are uncomfortably aware that the above is carping about what is, on the whole, perceptive and balanced planning evidence by Mr Nixon. It particularly reassured us to know that Mr Nixon was aware of the fact that many of the congestion and other problems caused by dispersed developments arise because the costs are not being paid by those who cause them. He stated[360]:

> *The 'solution' often advanced to address this problem is that such costs be 'internalised' – usually by suggested economic instruments such as fuel taxes, emission controls, and congestion pricing. The difficulty is that such*

[360] R C Nixon evidence in chief para 81.

mechanisms must be all of the following – workable, technologically practicable, intra vires, legally certain, fair and above all, be 'here' and 'now'. Those involving 'taxes' must also have a political mandate quite separately from a Council's resource management functions.

Integrated management

[343] Approaching the City Plan as a generally coherent whole and with the function of integrated management in mind, we find that in relation to urban growth:

(1) the objective giving primary emphasis to consolidation runs through a number of sections of the City Plan;

(2) the relationships between land use and transport are important; and

(3) there are other sections of the City Plan which may have a significant role in deciding individual references.

(We also note that while nowhere recorded in the City Plan, the malign influences that result from free use of the City's streets and roads are growing into spectres that will cause greater problems in future).

[344] Two other sections of the City Plan that will have a particular part to play in individual references are those relating to Utilities[361] and Financial Contributions. With the objective[362] of co-ordinating provision of utilities with development, the City Plan contains a policy[363]:

To ensure that possible areas for new development:

(a) are readily able to be serviced; and/or

361 Volume 2, Section 8.
362 Objective 8.1 [City Plan Volume 2, p 8/5].
363 Policy 8.1.1.

(b) are located in identified areas where the Council will meet the costs of major works (to be recovered from developers as development proceeds); and/or

(c) are located in other areas, provided the full costs of upgrading reticulation systems attributable to that development are paid for by the developer, and that an efficient pattern of development is promoted.

[345] It is easy enough to apply that utilities policy to individual references. In relation to financial contributions, the issue is more obscure. The intentions are straightforward since the policies as to financial contributions are[364]:

Policies: Financial contributions

To ensure that subdividers and/or developers meet the costs of any required provision of services within subdivision or as a result of land use development.

To require that subdividers and/or developers meet the costs of any upgrading of services (including headworks) which are attributable to the impacts of the subdivision, and/or land use development, including where applicable:

- *roading and access;*
- *water supply;*
- *sanitary sewage disposal;*
- *stormwater disposal;*
- *trade waste disposal;*

[364] Policies 10.4.25 to 27 [Chapter 10, Vol 2, p 10/15].

- *provision of land for open space and/or recreation; and*

provision for esplanade reserves and/or esplanade strips.

That any contributions be in accordance with formulae, amounts or methods specified in the Statement of Rules.

[346] We need to take into account that in fact the CCC's decisions on submissions to Policy 10.4.27 are deferred. That is important because, in effect, it entails that financial contributions can only be taken under the relatively inflexible reserve fund contribution provisions of the now formerly repealed (but revived) provisions of the Local Government Act 1974.

[347] In any event, both the utilities and financial contributions policies are eminently suitable for resolution on an area-by-area basis for rezoning. In some district plans those matters might be left until the application for subdivision consent but we do not think that is the position here.

[348] Returning to the most general issue, after all the objectives, policies and other provisions of the City Plan in relation to urban growth are considered, we conclude that all except two provide for a balanced approach on a locality basis. The two exceptions are:

(1) the consolidation objective [6.1] and related policies;

(2) the transport objective [7.1] and related policies.

[349] Both of those objectives and their related policies (especially the policies) require an overview to be taken with the implication that there may be a limit to peripheral development because:

(1) it becomes dominant over consolidated development within a 'compact' City; and/or

(2) it adversely affects traffic congestion and transport planning.

The difficulty is always to ascertain at what point serious adverse effects may arise. There are two approaches to this issue – the legal or planning concept of 'planning precedent' and the economic/planning concept of cumulative effects.

Planning Precedents

[350] As we have stated, one of the difficulties of applying a balancing approach is that it makes the consideration of cumulative effects very difficult. In the broadest terms that problem is why the concepts of 'integrity of the plan' and 'planning precedent' arose. In these proceedings Ms Perpick submitted[365] that the rezonings are not contained by any well-defined boundary to further expansion, and thus would set a precedent for private plan applications.

[351] The Court of Appeal has recently discussed the concept of precedents under the RMA in ***Dye v Auckland Regional Council***[366] where it stated:

> - *The granting of a resource consent has no precedent effect in the strict sense. It is obviously necessary to have consistency in the application of legal principles, because all resource consent applications must be decided in accordance with a correct understanding of those principles. But a consent authority is not formally bound by a previous decision of the same or another authority. Indeed in factual terms no two applications are ever likely to be the same: albeit one may be similar to another. The most that can be said is that the granting of one consent may well have an influence on how another application should be dealt with. The extent of that will obviously depend on the similarities.*

[352] We take it from Tipping J's wording that the Court of Appeal accepts that there is a looser sense of 'precedent' as a guide to substantive fairness – what we might call a "planning precedent" as opposed to a legal precedent. The concept of a planning precedent is useful because it reminds an adjudicating local authority to treat similar cases in similar fashion and not to make spurious distinctions (e.g. between calla lillies and garlic on subdivision applications). So we continue to take the concept of a

365 Ms M Perpick submissions dated 23 April 2001.
366 [2001] NZRMA 513 at para [32].

planning precedent seriously as in ***Pigeon Bay Aquaculture Ltd v Canterbury Regional Council***[367].

[353] It is difficult to state definitively that any rezonings would, on a City-wide basis, set a precedent. Since each area we are considering is in a different part of the City and subject to policies that may have different application in each area we do not think there is any planning precedent in a general way. Whether there is for any of the areas we are considering is a matter we will consider at the appropriate time.

Cumulative effects reconsidered

[354] We consider that potentially the most powerful tool in a territorial authority's box in respect of cumulative effects is the benefit-cost component of a section 32 analysis. That is one of the few quantitative measures demanded by the Act. Thus if a territorial authority (or any other party) can show that an objective policy or method has positive social benefits in monetary terms (always recognising that in some situations[368] the RMA puts a 'premium' on non-monetary benefits and/or costs) then it would be very hard to find that the provision is inefficient.

[355] In this case the CRC made a significant, although hardly full, attempt to provide such an analysis. In the end it failed to persuade us that the possible rezonings (approximately 830 hectares of rural land to living zones) would be inefficient. That finding should not be read as a suggestion that we have imposed a burden of proof on the CRC (here or elsewhere). As stated we have approached the proceedings on the basis there is no such burden on any party. Ms Perpick submitted that:

> *It is significant that no other party to the general hearing has attempted to put forward an alternative view of what the environmental effects of the disputed zoning will be; the general evidence for the other parties simply seeks to attack the CRC's evidence about what the effects of the zoning will be ...*

367 [1999] NZRMA 209 at para's 49 to 53.
368 Section 6 and section 7(d) of the RMA amongst others.

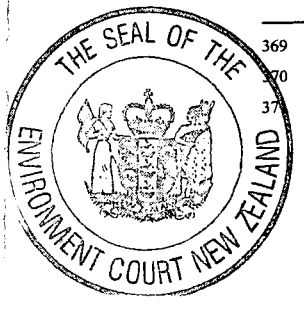
[356] She is correct to this extent, that while the opposing parties discredited the CRC's section 32 analysis to the point where we consider it is more likely to be wrong than right, they have not given us a sufficient benefit-cost analysis themselves to demonstrate that living zonings for all the contested land is likely (on a City wide basis) to be effective in achieving the purpose of the Act. At the most we have been persuaded by the economic and supporting evidence of the opposing parties that it would be efficient to consider each of the proposed rezonings on their own merits in the light of the relevant objectives and policies of the City Plan and the other matters to be considered under section 74 of the Act.

[357] In the end, none of the evidence about cumulative effects is strong enough to satisfy us that it is either effective or efficient to refuse all the sought and challenged zonings completely as a package. Nor should the moral hazard created by rezoning land as "Living" (with the extra attraction to purchasers created by free use of roads to access these peripheral subdivisions) be given more than minimal weight, especially since we heard neither evidence nor submissions on the issue. Each area the subject of one or more references should therefore be decided on its own and in the context of its own locality.

Part II of the Act

[358] As for our duty to apply[369] Part II of the Act, we consider that too will be complied with if we apply the relevant objectives and policies of the City Plan to the relevant pieces of land in the context of their respective localities. The obligation[370] to:

> *(a)* *Sustain ... the potential of natural and physical resources ...; and*
>
> *(b)* *Safeguard ... the life-supporting capacity of air, water, soil and ecosystems; and*
>
> *(c)* *Avoid ..., remedy ..., or mitigate ... any adverse effects* [especially cumulative[371] effects] *of activities on the environment ...*



369 Section 75(1) RMA.
370 Section 5(2) RMA.
371 Section 3 RMA definition of "effect".

have been met by our consideration of the general section 32 analysis in both its economic and planning dimensions.

[359] Another aspect of Part II, as Mr Nixon, the planning witness for the CCC observed, is that the very definition[372] of sustainable management refers to managing the use and development of resources "at a rate" which enables people and communities to provide for their welfare. It is clear that the RMA contains ample power for a territorial authority to regulate the rate at which natural and physical resources (other than minerals) are used. It can do this in a number of ways, including by rationing supply of the resource or judging each case on its merits in the context of the relevant locality. We have held that the City Plan adopts the latter approach.

[360] With that qualification we adopt the evidence of Mr Nixon that Part II of the Act[373]:

> *identifies matters the Council is required to give effect to or take account of, in managing natural and physical resources, including those affected by potential urban growth. A consequence of identifying these resources is that a pattern of constraints emerges, which influences the extent and direction of peripheral urban growth around the City (and of infill for that matter). This in turn forms the basis of selective regulatory intervention, as signaled through the policies in the proposed plan ...*

For the purposes of this overview, the important point is really the implied obverse of that – that in considering the objectives and policies of the City Plan there is nothing else in Part II that we need to consider.

[361] That is not the end of the matter because we now have to consider the specific areas on a case by case basis.

372 Section 5(2) RMA.
373 R C Nixon evidence in chief para 51.

Outcome

[362] Having discussed the general cases presented by the parties, we now need to consider each reference in its context and issue a decision on each reference on its facts. We are not yet ready to do that.

[363] However we consider it to be worthwhile issuing an interim decision for three reasons:

(1) there are parties to these proceedings – some of the Port Hills referrers in Group 4 of these references, who did not appear at the general hearings, and yet for whom findings on the general evidence may be important. We need to state our conclusions so that they can be carried forward and taken into account in due course;

(2) we have decided several questions of law, and those decisions should be issued to the parties as soon as possible so that appeals to the High Court (if any) can be decided expeditiously;

(3) it was part of the CRC case, in the evidence if not in the submissions, that all the zonings challenged by the CRC, that is

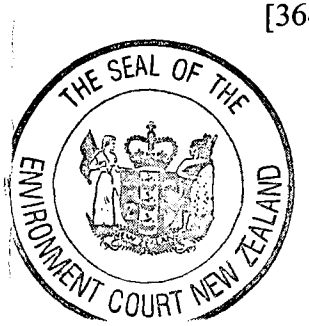
(a) 300 hectares (approximately) of living land – zoned but contested; and

(b) 560 hectares (approximately) of rural land not zoned but sought for "Living";

- should be converted to, or remain in, a rural zone because the cumulative effects were too large, and we can at least make a final determination on that issue.

[364] In accordance with:

- the purpose of the Act in itself; and



- the purpose as revealed by the objectives, policies and other provisions of the City Plan read as a whole;

- the functions of the CCC to achieve integrated management of the effects of the use, development and protection of land;

- section 32 of the Act;

- the Regional Policy Statement; and

- Part II of the Act

- we hold that the CRC's general case cannot succeed to the extent that we cannot find that all the opposing parties references should fail on an overall basis. Bringing together the threads of this decision we hold that:

  - (1) rezonings of rural land – in the absence of special circumstances, for example the presence of the airport noise footprint, or location on the Port Hills should be considered on a site-by-site basis; and

  (2) that in such circumstances the potential cumulative adverse effects may be adequately dealt with by the subdivision design.

[365] Too much should not be read into that judgment: it is still possible for all the other references to fail and for the zoned and contested living zoning to revert to a rural zoning when we consider each contested area on its merits and in its contexts in accordance with the matters listed in section 74 of the Act.

[366] Looking at the zonings sought as a whole in the light of the general consolidation objective we agree with Ms Robinson's submission that it is not:

> *... prescriptive as to how consolidation is to be achieved and leaves it open for argument that proximity to services, roading, facilities, public transport routes*

and the design of a development can all be shown to meet the objective and policy.

There is a clue in that sentence as to the difficulties we do face when we turn to consider specific rezonings – it is the reference to the "design of a development". That is relevant for two reasons:

(a) the Living zone subdivision rules are weak in respect of design controls even though the implementation methods are proposed to include[374]: *comprehensive planning of large areas of new subdivision.*

(b) the district plan has no specific policy as to financial contributions.

[367] In the absence of any maximum lot size for the Living zone it is important for the Council to have the ability to be able to decline a subdivision plan and concept if it does not make a genuine and adequate effort to meet the policies as to design and (generally) density. Since the provisions of the City Plan appear inadequate with respect to that – and we heard evidence about how both the 'Northwood' subdivision at Styx Mill and 'Aidanfield' close to Halswell were not being subdivided quite as the CCC hoped – then perhaps all rezonings should be declined automatically on that basis? Since that appears too drastic – it is unfair to the landowners, and not very beneficial for potential homebuyers - there may be other solutions.

[368] One possibility is that if we find that any of the contested rezonings are appropriate then we may consider an application under section 293 of the Act to make subdivision on that rezoned land a limited discretionary activity with the Council's discretion limited to (for example):

- density of subdivision
- design
- layout
- implementation of the Part 6 policies.

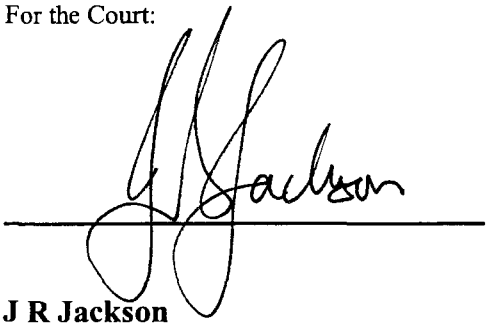
[369] Decisions on the individual references and appeals are further reserved.

[374] Chapter 10 (Vol 2 p 10/9).

[370] Costs are reserved.

DATED at CHRISTCHURCH this 6th day of **December** 2001.

For the Court:



J R Jackson

Environment Judge

Issued: -7 DEC 2001

Residential use values of disputed land

8.8 While acknowledging some theoretical loss of benefits to potential purchasers of the subject land should it be zoned rural,[22] Mr Harris expects no difference in residential use values among the three options he describes (ie rural scenario, zoned and contested, not zoned but contested). This is because "alternative land is available in the city area to achieve the required consumer utility."[23]

8.9 This conclusion appears to be derived from Mr Sellars' evidence. This witness claims there will be no change in the price of the remaining available urban land either in aggregate or broken down into sub-markets. Mr Harris concludes that because there will be no impact on price this implies purchasers are indifferent to location. I reject Mr Harris's conclusion for two reasons. First, I do not accept Mr Sellars' opinion that a rural zoning of the subject land will have no effect on price. His opinion contradicts the application of conventional microeconomic theory and is irrational.

8.10 Each potential developer of residential land will have his/her own supply curve. The industry supply curve is derived by aggregation of the number of lots each developer will supply at different prices (eg the industry supply at $65,000 is 25 if developer A is prepared to offer 10 sections and B 15 lots). The industry supply curve will be upward sloping indicating that higher prices are required to offer ever-increasing areas of land. There are several reasons for this including variation in the opportunity cost of development in various city locations. These facts are visually presented in Fig 1. The curve shows the supply curves of developers A (ss^a), B (ss^b) and the industry (ss). Given the method by which an industry supply curve is constructed and the fact that it is upward sloping, the economic implications of adding more developers to the industry is obvious. If developer C now enters the market and he/she is prepared to offer five sections at a price of $65,000 each, it will have the effect of moving the industry supply curve to the

22 Refer paragraph 4.1.
23 Refer paragraph 4.2.

right as is shown by supply curve ss^1 in Fig 2. Instead of 25 sections being offered at a price of $65,000 each, the number of lots will increase to 30. The introduction of further developers with lots for sale will compound this rightward movement. Conversely, reducing the number of 'potential' developers with lots for sale will move the curve back to the left.

8.11 Adding or subtracting new developers with additional supply of lots does not in itself affect lot prices as this is determined by the interaction of both buyers and sellers. Price is determined by the intersection of the supply and demand curves.

8.12 The industry demand curve is established by aggregation of individual demand curves. The demand curve will be downward sloping indicating that more sections will be demanded as price falls due to more individuals bidding for sections and/or more sections being demanded per individual. This is shown by the demand curve dd in Fig 3. I have included ss and ss^1 from Fig 2.

8.13 The price implications of adding more individual developers to the market is immediately apparent from Fig 3. Prior to the entry of developer C the market was in equilibrium at point E. Developers C's entry upsets the equilibrium as it increases the supply of sections at a price of $65,000 from 25 to 30. To clear 30 sections the price would have to fall to $50,000 as is shown by Fig 3. This is not an equilibrium point as it is below the price developers are willing to supply (ie it is not a point of intersection of the two curves) and as a consequence market forces would generate a move back to a price of $58,000 (ie E_1 the new equilibrium).

8.14 While my figures are hypothetical they clearly highlight the fact that Mr Sellars' views on price conflict with the outcome expected from the application of conventional economic theory. There is no reason why fundamental supply and demand theory will not apply to the zoning of the contested land.

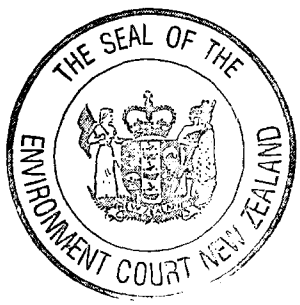


Fig 1: Supply curves of developers and industry

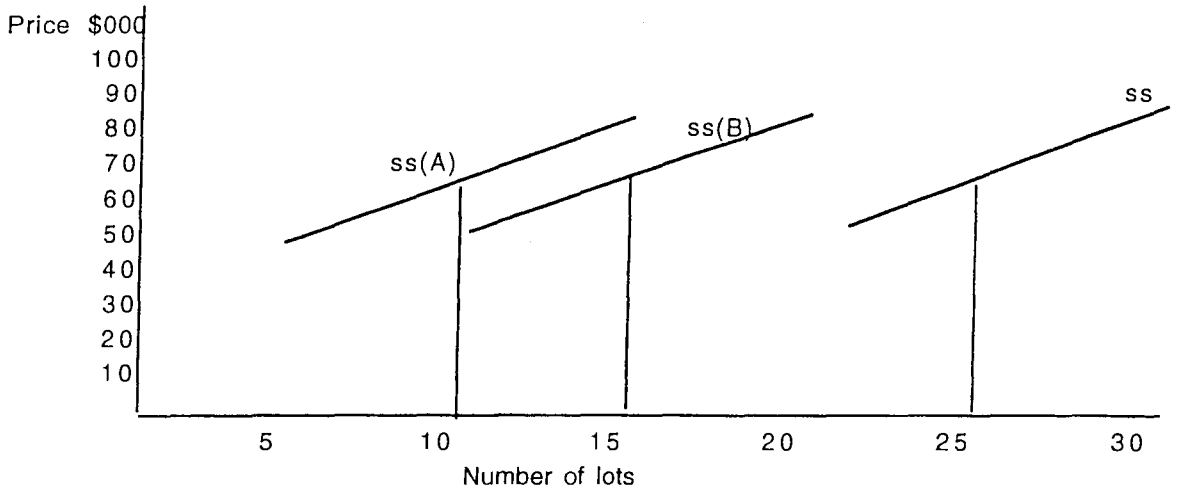


Fig 2: Supply curves of developers and industry with new entrant

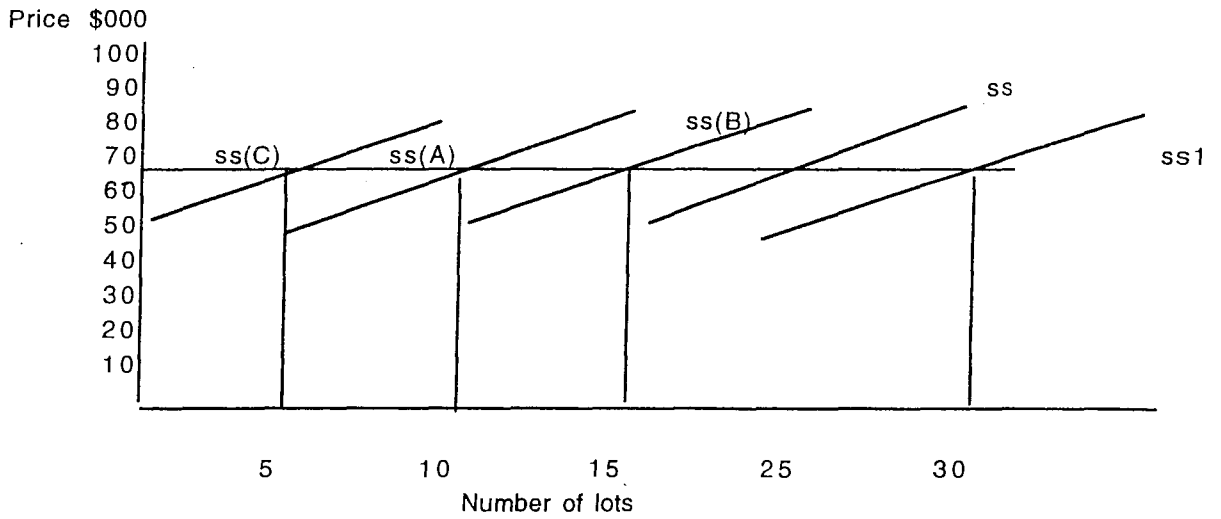


Fig 3: Price implications of increased supply