

BEFORE THE ENVIRONMENT COURT

Decision No. [2010] NZEnvC 432.

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under section 120 of the Act

BETWEEN UPPER CLUTHA TRACKS TRUST

(ENV-2008-CHC-124)

AND

UPPER CLUTHA ENVIRONMENTAL
SOCIETY INCORPORATED

(ENV-2008-CHC-113)

AND

D THORN

(ENV-2008-CHC-117)

Appellants

AND

QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

Court: Environment Judge J R Jackson
Environment Commissioner C E Manning
Environment Commissioner D H Menzies

Venue: Wanaka

Hearing: 22-26 February and 1-3 March 2010
Site visit 26 February 2010

Appearances: T Borick for Upper Clutha Environmental Society Incorporated
R H Ibbotson for D Thorn
H Tait for Upper Clutha Tracks Trust
G M Todd, M A Ray and M Barnett for Queenstown Lakes District
Council



M R G Christensen and A C Ritchie for Parkins Bay Preserve
Limited
M J Bayliss in person
B Scott for Wanaka Golf Club Incorporated

Date of Decision: 21 December 2010

Date of Issue: 22 December 2010

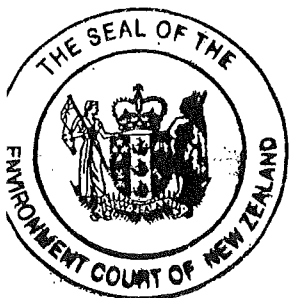
INTERIM DECISION

A: Subject to Orders B and C below:

- (1) the applicant, Parkins Bay Preserve Limited, is directed to lodge with the Registrar and serve on the other parties by 24 February 2011 a memorandum advising what (if any) further mitigation and/or environmental compensation it wishes to put forward in respect of the court's provisional findings in the Reasons below; and
- (2) leave is reserved for any other party to lodge a memorandum in response.

B: Leave is reserved for the applicant, Parkins Bay Preserve Limited, and the Queenstown Lakes District Council to call further evidence on the following matters:

- the supplementary evidence of Mr R F W Kruger [Environment Court document 34A];
- the court's provisional findings in respect of the "off-site" areas on Glendhu Station and on Lake Wanaka and possible conditions/covenants in respect of them;
- possible changes to planting plans around the proposed 42 houses because of the questionable viability of keeping the grassland patches open (and possible fire hazards);



- and in particular whether there should be express conditions requiring on-going removal of sweet-briar and/or lupins from the site, and pest control and requiring
- removal of conifers from between the site and the Fern Burn;
- protection of on-lake and on-site (lake-edge) habitat for (Southern) Crested Grebe;
- environmental compensation generally; and
- on any other matter in the Reasons on which leave is reserved or on which the court's decision is not final;

– and they are directed to advise the Registrar and other parties by 14 February 2011 whether either party wishes to exercise such leave.

C: Leave is reserved for any other party to apply to make submissions and/or call evidence on:

- (1) the attachments to Mr Christensen's extra documents lodged towards the end of the hearing [Environment Court document 1.1 or 39.1]; and
- (2) the proposed mitigation and/or environmental compensation proposed in Mr Christensen's final submissions [Environment Court document 39] and/or discussed in the Reasons below;

– by 28 February 2011.

D: The proceedings are adjourned:

- (1) for issue of a final decision in due course; or
- (2) if leave is exercised under orders B and/or C;

– for a judicial conference in Queenstown or Wanaka.

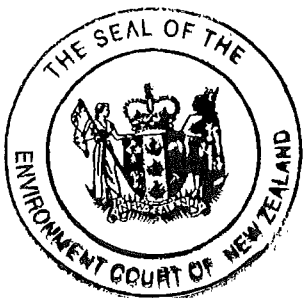


REASONS

<i>Table of Contents</i>	Para
1. Introduction	[1]
1.1 The issue	[1]
1.2 The proposal for a golf course and residential buildings	[2]
1.3 The parties and their witnesses	[9]
1.4 Status of the activities and the matters to be considered	[18]
2. The existing environment	[25]
2.1 The site, its setting and the factual issues	[25]
The principal factual issue : is the site part of an outstanding natural landscape?	[38]
2.2 The legal issue : what is an outstanding natural landscape?	[44]
2.2.1 What is a 'landscape'?	[44]
2.2.2 What is 'natural'?	[54]
2.2.3 What is 'outstanding'?	[63]
2.3 Classifying the Southern Wanaka landscape	[66]
2.3.1 The issues between the parties	[66]
2.3.2 The Commissioners' decisions	[71]
2.3.3 The evidence on landscape	[72]
2.3.4 Our conclusions on the landscape	[79]
3. The provisions of the relevant statutory documents	[82]
3.1 The operative district plan	[82]
Chapter 4 of the district plan	[82]
Chapter 5 of the district plan	[95]
3.2 Plan Change 30	[97]
3.3 The Regional Policy Statement	[100]
4. Predicting the likely effects of the golf resort (including 42 houses)	[101]
4.1 Introduction	[101]
4.2 Alleged adverse effects	[105]
Public access to and use of the foreshore	[105]
Water quality	[108]
4.3 Effects on landscape : what is its potential to absorb development?	[110]
(a) Potential of the landscape to absorb development	[111]
Views from the lake	[114]
Views from roads	[116]



	Views from tracks	[121]
(b)	Effects on openness of landscape	[139]
(c)	Cumulative effects on landscape values	[147]
	Other assessment criteria in respect of landscape	[153]
4.4	Positive effects	[155]
5.	Other relevant matters (section 104(1)(c) of the Act)	[167]
5.1	Environmental compensation	[167]
5.2	Walking and cycling tracks	[168]
	Parkins Bay shoreline track	[172]
	Fern Burn	[175]
	“Glendhu Hill” – Highpoint 782 track	[177]
	Rocky Mountain to Matukituki River Track	[181]
	Mountain bike access along the Motatapu River	[183]
5.3	Other mitigation and compensation	[186]
	Area A (“The Bull Paddock”)	[187]
	Area B (“The development area”)	[188]
	Area C1	[191]
	Area C2 (Glendhu Station – lakeside terrace)	[193]
	Area D (“The lodge area”)	[196]
	Area E (“The new home”)	[197]
	Area F (Fern Burn and land to the east of Motatapu Road)	[200]
	Area G	[206]
5.4	Will granting consent create a poor planning precedent?	[210]
6.	Consideration	[216]
6.1	Weighing all relevant factors	[216]
6.2	Section 6 of the RMA	[220]
	• Section 6(a)	[225]
	• Section 6(b)	[226]
	• Alternative sites	[228]
6.3	Section 7 of the RMA	[231]
	• Section 7 generally	[231]
	• Section 7(b) – efficient use of natural and physical resources	[233]
6.4	Possible conditions to avoid, remedy or mitigate adverse effects	[245]
	Rural objectives and policies	[248]
	Urban growth (under the operative district plan)	[249]
	Open Space and Recreation	[251]



Landscape and Visual Amenity	[253]
The golf course	[261]
The natural environment	[263]
6.5 Achieving the objectives and policies of PC30	[268]
7. Outcome	[276]

1. Introduction

1.1 The issue

[1] The issue in these proceedings is whether resource consent should be granted to build and operate a golfing resort, including a golf course, golf clubhouse and related buildings and 42 residential units on land at Parkins Bay, adjacent to Glendhu Bay and about 15 kilometres west of Wanaka along the Wanaka Mount Aspiring Road (“the Mt Aspiring Road”). Because the land is in the Rural General Zone, resource consent under the Resource Management Act 1991 (“the RMA” or “the Act”) is required under the district plan of the Queenstown Lakes District Council

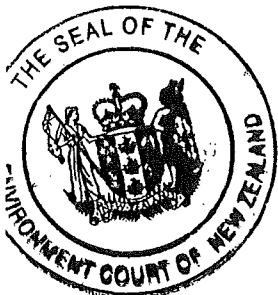
1.2 The proposal for a golf course and residential buildings

[2] The proposed golfing resort would cover an area of 180 hectares (“the site”¹) within Glendhu Station² immediately south of the marginal strip of Lake Wanaka around Parkins Bay. The site stretches west from Fern Burn around Parkins Bay to where the Mt Aspiring Road passes through the Glendhu Bluff. Inland from the lakeshore the development spreads south across the road first onto flat improved pasture and then onto a terrace which rises in rolling fashion to the south of that.

[3] The resource consent is sought to build and establish:

- an 18 hole championship golf course located either side of the Mt Aspiring Road. It is intended to connect the two parts of the golf course by two underpasses – for which additional consent would be required. The design for the golf course would incorporate native planting, and be left “a little rough round the edges” to give a local feel. It would involve approximately 53,000 m³ of earthworks with a close balance of cut to fill;
- a series of lakeside buildings, including:
 - (a) a club house with restaurant and café;
 - (b) a jetty to facilitate public access to the building from the water;
 - (c) twelve visitor accommodation units, spread over three buildings;
- 42 residences/visitor accommodation units, to be located on the rolling terrace to the south of the golf course, each set on an area of land between 3,525 m² and 8,719 m²;

¹ For convenience we will continue to call the area of 180 hectares (part of which PBPL proposed in these proceedings should be developed) “the site” but as Mr W D Whitney, a witness for the appellant Mr Thorn, pointed out, the area is not a “site” as defined by the operative district plan. Computer Freehold Register (Certificate of Title) 478353 Otago Land Registry.



- ecological enhancement in accordance with a revegetation strategy which would include planting of approximately 65 hectares of locally appropriate native plants in the golf course and around the proposed houses, and removal of stock from a further approximately 51 hectares to allow natural revegetation to occur unimpeded;
- enhanced public access to the site including provision of formed access from the Mt Aspiring Road to the Parkins Bay foreshore, formed access from Glendhu Bay to Parkins Bay; and
- further public access in the form of a track along the Fern Burn to the existing Motatapu Track, provision for mountain bike access to the Motatapu Track, a track to the high point on Glendhu hill, and a track from Rocky Mountain to the existing Matukituki River track.

Most of those components are shown on the attached Master Plan marked "X".

[4] The lakeside buildings, including the clubhouse, will be constructed in dark-stained weatherboard, with roofs of gabled form in corrugated iron. They have been designed by Mr M J Wyatt, an architect based in Queenstown, to reflect the form of woolsheds found in the area. The visitor accommodation – called "the Shearers' Quarters" – will comprise three blocks of four two-storey units, each unit with its own gabled roof set close to some Lombardy Poplars. Mr Wyatt's evidence described them as a tight little group of buildings, quite small compared to the height and massing of the surrounding trees³. The lakeside buildings will be approached from Mt Aspiring Road by a five metre wide sealed entry road⁴. There will be parking for 228 cars (50 on gravel, 12 in a covered timber lean-to, 16 on block, and 150 informal overflow parks), a timber lean-to for storing golf carts, and a bus parking area/turning bay.

[5] The 42 residences/visitor accommodation units proposed to be located south of the golf course have been designed on what the architect responsible for their design, Mr D Hill, described as "geomorphic principles"⁵. He wrote that there will be a generic house design capable of being placed on each site with only minor modification. The dwellings will be 3.6 metres high and provide 250-300 m² floor space on a single level, plus garaging. They will be partially sunk into the ground, and their roofs will be covered in "local grasses". Walls are to be of natural concrete, and windows are to be deeply recessed to limit glare. Garaging and vehicle access will be kept to the rear of the dwellings to lessen their impact⁶. In general the curtilage area would be between 900 m² and 1,400 m², though on house site 10 it would be 1,942 m².

³ M J Wyatt, evidence-in-chief para 6.2 [Environment Court document 10].

⁴ R B Thomson, evidence-in-chief Appendix A figure 10.

⁵ D Hill, evidence-in-chief para 6.1 [Environment Court document 11].

⁶ D Hill, evidence-in-chief paragraphs 6.1–6.9 [Environment Court document 11].



[6] Parkins Bay Preserve Limited intends to sell these 42 'residences/visitor accommodation units' (which, for brevity, we will call houses), although the final form of tenure has not been determined and there is no application for subdivision before us. The applicant anticipates that a number of owners will wish to let their residence for visitor accommodation from time to time. This option would only be available via an accommodation management company which would rent them out as part of the onsite accommodation facilities⁷.

[7] For the golf course, in addition to the earthworks necessary to create the greens and the bunkers, a maintenance compound will be located immediately north of the Mt Aspiring Road on the eastern boundary of the site close to the Fern Burn. This will include storage for fuel and chemicals, sand and soil, a lean-to for equipment storage and chipseal parking for ten vehicles⁸.

[8] The applicant seeks ten years to give effect to the resource consent as a land use.

1.3 The parties and their witnesses

[9] Parkins Bay Preserve Limited ("PBPL") is the applicant in these proceedings. We were not told of the precise relationship of this company to the owners of Glendhu Holdings Limited. But Mr J L McRae, the manager of the station who gave evidence in the proceedings, described the station as owned by his parents, Mr R and Mrs P McRae and the proposal as planned by his family. We presume the connection between the company behind the proposals and the ownership of the station is sufficient to ensure that implementation of conditions concerning public access to parts of Glendhu Station is able to be secured. PBPL supports the consent granted by the Council, and accepts the conditions imposed.

[10] For PBPL we read evidence⁹ from, and heard limited cross-examination of, Mr J G Darby, a director of the company which is designing the resort. Mr Darby has been master planner and lead designer¹⁰ for several leading South Island golf courses : Millbrook and Clearwater Resorts, Jacks Point and Michael Hill's golf courses. The appendices to his evidence show a superbly designed proposal with considerable and careful input (with one exception) from an impressive array of experts. The evidence of most of PBPL's witnesses¹¹ was entered into the record by consent since no party sought to cross-examine them. The witnesses who were called to the witness-box in addition

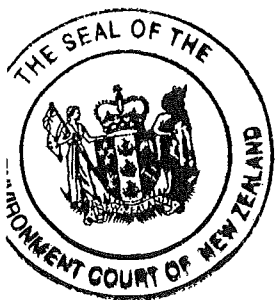
⁷ AEE para 6.3.3.

⁸ R B Thomson, evidence-in-chief Appendix A figure 11.

⁹ Mr Darby adopted evidence that had been prepared by Mr R B Thompson, an employee of his company who left before the hearing; J G Darby, supplementary evidence para 1.5 [Environment Court document 2A].

¹⁰ J G Darby, evidence-in-chief para 2.3 [Environment Court document 2].

¹¹ J S Baker, horticulturalist [Environment Court document 7]; D J Scott, landscape architect [Environment Court document 8]; G D Burns, tourism advisor [Environment Court document 9]; R J Maunder, simulation expert [Environment Court document 10]; D Hill, architect [Environment Court document 11]; M J Wyatt, architect [Environment Court document 12]; and R A Corbett, recreation expert [Environment Court document 13].



to Mr Darby, were Mr J L McRae (farmer and manager of Glendhu Station), Dr J Roper-Lindsay (ecologist); Mr R J Greenaway (recreational consultant); Dr P J McDermott (economist); and Ms N J Rykers (planner).

[11] In addition, after the hearing the Registrar received from Mr Christensen, counsel for PBPL, a memorandum¹² explaining (briefly) its attachments. It stated:

Attached is the following additional information sought by the Court during the Environment Court hearing:

- **Appendix A** – Information from Mr Robert Greenaway regarding the Tracks on Glendhu Station, dated February 2010;
- **Appendix B** – Glendhu Station Public Access and Recreation Trails Plan, dated February 2010;
- **Appendix C** – Parkins Bay Water Courses Plan, dated February 2010;
- **Appendix D** – Existing and Proposed Fence Lines Plan, dated February 2010;
- **Appendix E** – Proposed Clubhouse Plan Figure 10a, dated February 2010;
- **Appendix F** – Survey Office Plan 22993 showing the width of the Marginal Strip;
- **Appendix G** – Treble Cone gondola location plan;
- **Appendix H** – Details of whether [Totara] can [be] grown on the Parkins Bay Site;
- **Appendix I** – Details of the house sites with mitigation mounding;
- **Appendix J** – List of Championship Golf Courses that have legal road through the course;
- **Appendix K** – Map showing the location of a geomorphic designed house in the Queenstown Lake District;
- **Appendix L** – Jacks Point Trail Map for the Courts Site visit.

We receive those documents under section 276(1)(b) as evidence that was called for by the court and record that no party has objected to the court receiving or reading them.

[12] The Queenstown Lakes District Council is the respondent in this case. It was the decision-maker at first instance, and a majority of its appointed Commissioners gave consent to the proposal in slightly reduced form compared with the application. One of its commissioners considered the application for consent should be declined, and wrote a minority decision. The Council appeared in support of the majority decision. Its case was that the proposal promotes a recreational facility of the type envisaged in the rural-general zone; that the land most affected already displays the modified environment of a working sheep station; and that the higher (and less modified ground) off-site is either sufficiently remote or so dominant that the restrained development proposed on site will have negligible effect on it. It called three witnesses; Dr M L Steven¹³, a landscape architect, Mr P K Wilson, a recreation manager, and Mr A P Henderson, a planner.



¹² Entered in the court records as Document 39.1 to go with Mr Christensen's closing submissions [Environment Court document 39.1] although it is also called Document 1.1 in the transcript.

¹³ We were particularly grateful for Dr Steven's presence : he was taken ill before the hearing, his cross-examination was delayed because of that, and he did not appear well even when he did come to court.

[13] The Upper Clutha Environmental Society Incorporated (“UCESI”) is a society with a long history of useful involvement in the preparation of the district plan and in resource consent applications as they affect the broader Wanaka and Hawea areas. It is an appellant¹⁴ in these proceedings and seeks that the majority decision of the Council Commissioners be overturned and that the application be declined in its entirety. Its case was that the positive effects of the proposal in terms of public access, ecological benefits, and the potential contribution of the proposal to the economy of the district have been overstated, and that the landscape, in a location described in the Society’s appeal as ‘iconic’, cannot absorb the proposed development. The Society called evidence from Mr J E Haworth, a member of the Society, and from landscape architect, Ms D J Lucas.

[14] Mr D Thorn is also an appellant¹⁵ in these proceedings. He too considers the proposal will have significant adverse effects on the natural, visual and amenity values of the lake and that the wider outstanding natural landscape is incapable of absorbing what is proposed. Mr Thorn also contends that consent will set an adverse planning precedent in terms of the outstanding natural landscape of the district. He too seeks that the majority decision of the Council’s Commissioners be cancelled, and the application be declined in its entirety. He called evidence from two landscape architects, Mr R F W Kruger and Mr A Cutler¹⁶, an economist Dr T J Hazledine and a planner, Mr W Whitney. He also called two Council officers who had given evidence to the Commissioners to produce their reports – Ms K Neal¹⁷, a landscape architect, and Mr S Fletcher¹⁸, a planner.

[15] The third appellant¹⁹ in these proceedings is the Upper Clutha Tracks Trust²⁰ (“UCT Trust”). The objects of the Trust are to promote, support, fund and advocate for the establishment of tracks in the Upper Clutha area. In its appeal the Trust seeks that resource consent be declined unless non-motorised access that will amount to “meaningful and significant” environmental compensation appropriate to the scale of the proposal is included in the conditions of consent. While that goes beyond the scope of its original submission, in that the UCT Trust is probably limited to seeking conditions of consent relating to tracks, and specifically those referred to as meeting the Trust’s

¹⁴ ENV-2008-CHC-113.

¹⁵ ENV-2008-CHC-117.

¹⁶ The Environment Court discourages more than one expert per party on the same issue, which should be borne in mind in future.

¹⁷ K Neal, Report dated 1 August 2007 [Environment Court document 31].

¹⁸ S Fletcher, Report dated 29 July 2007 [Environment Court document 32].

¹⁹ ENV-2008-CHC-124. We have named the UCT Trust’s appeal first in these proceedings for ease of future reference should this decision ever need to be referred to.

²⁰ We have allowed the UCT Trust to continue under that name but we note the animadversion of another division of the court to references to a (private) trust’s name, rather than the names of the trustees in *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* Decision C113/2009. On the other hand, it does not seem inappropriate here to allow a charitable trust (even if not incorporated) to use its name in proceedings under the RMA.



submission, the question is academic since the other appeals give us the jurisdiction to decline consent if we consider it appropriate, or to impose conditions requiring additional public access. The burden of the Trust's submission to us, in any case, was that there is a very real public benefit in allowing for increased access as part of the development. The Trust called evidence from Ms H M Tait as a trustee, and from Mr C L Morris, a farmer.

[16] Mr M J Bayliss is a section 274 party to these proceedings. Mr Bayliss gave evidence²¹ for himself: he is the holder of a commerce degree, and a retired partner of various chartered accounting firms. He supports the proposal on the basis that it will increase the potential attraction of Wanaka for tourists, provide variety for local golfers, provide high quality visitor accommodation and increase public access to areas around the complex, while using buildings of low environmental impact.

[17] The Wanaka Golf Club has also joined the proceedings as a section 274 party. It too supports the application, and called evidence in favour of the proposal. We note particularly the evidence of Mr J S Roche, a former provincial representative and a professional golfer for 30 years. He told us that the present level of membership of the Wanaka Golf Club often precludes visitors being able to play at a time suitable to them. He considered²² a nearby course would relieve pressure on the existing Wanaka golf course at Golf Road, Wanaka. The useful evidence of Mr G Bunting, the operations manager of the Wanaka Golf Club, will be considered later.

1.4 Status of the activities and the matters to be considered

[18] As we have stated, because the site is in the Rural-General Zone, consent is needed under the (now) operative²³ district plan, and under Plan Change 30 ("PC30") which was notified in August 2009. By virtue of rule 5.3.3.3, the following aspects of the proposal require resource consent as a discretionary activity under different parts of rule 5.3.3.3:

- the construction of any building and any physical activity associated with any building such as roading, landscaping and earthworks²⁴;
- the restaurant bar and golf pro shop in the clubhouse as commercial activities ancillary to and located on the same site as recreational activities²⁵;
- the shearers' quarters, and any of the 42 residences/ visitor accommodation which are let to visitors as visitor accommodation²⁶;

²¹ M J Bayliss, evidence-in-chief [Environment Court document 21].

²² J S Roche, evidence-in-chief paragraphs 4.3 and 4.7 [Environment Court document 20].

²³ The district plan became operative on 23 December 2009.

²⁴ Rule 5.3.3.3(1)(a)(i) and (ii).

²⁵ Rule 5.3.3.3(ii)(a).

²⁶ Rule 5.3.3.3(iii).



- a structure which passes through the surface of any lake – the jetty²⁷.

[19] Further, rule 5.3.3.3(xi) of the district plan provides that any activity which complies with the relevant zone standards but not with the relevant site standards is a discretionary activity with the exercise of the Council's discretion restricted to the matter specified in the standard which are not complied with. Here the proposal does not comply with the following site standards:

- a restriction on the gross floor area on a site to 100 m² for all buildings on a site except for those used for farming, factory farming, forestry and residential activities and visitor activities which require consent as fully discretionary activities (the gross floor area of the clubhouse and maintenance compound exceed this limit²⁸);
- a restriction on earthworks, except for specific activities, to an area of 2,500 m² per site within any consecutive 12 month period, and to a volume of moved earth of 1,000 m³ in any consecutive 12 month period²⁹;
- a restriction on the maximum height of upslope cut or batter on any road or track to a maximum of one metre (the upslope cut on the road giving access to the residences is expected to be about 2.9 metres³⁰).

[20] PC30 does not change the applicable rules but does propose to introduce a new objective and implement new policies in respect of "urban growth".

[21] Overall the proposal is to be evaluated as a discretionary activity under both the operative district plan and under Plan Change 30. Resource consent is required under both versions of the district plan: *O'Connell Construction Limited v Christchurch City Council*³¹.

[22] In assessing the proposal we are, under section 104(1) of the Act, subject to Part 2, to have regard to the following matters: any actual and potential effects on the environment of allowing the activity; the Queenstown Lakes District Plan, the proposed plan constituted by PC30, the Otago Regional Policy Statement; and any other reasonably relevant matter. We are also required under section 290A of the Act to have regard to the decision that is subject to appeal.

[23] We also record that the consent which is the subject of these proceedings appears not to be the limit of PBPL's ambitions for development of visitor accommodation on

²⁷ Rule 5.3.3.3(iv)(a).

²⁸ Site standard 5.3.5.1(iii)(a).

²⁹ Site Standard 5.3.5.1(viii)(1)(a) and (b).

³⁰ Site Standard 5.3.5.1(viii)(2)(a).

³¹ *O'Connell Construction Limited v Christchurch City Council* [2003] NZRMA 216 HC at [79] and [80].



the site. As shown on the Master Plan – Attachment X – an area to the west of the site is marked as a ‘future lodge site’ to be lodged as a separate application. While that application is not before us, and may never be made, we may not be dealing with the final proposal for built development on Glendhu Station. Further, the possibility of the hotel application explains the rather curious shape of the site. Its 180 hectares contain an otherwise redundant appendix (the area on which any future lodge might be located) which is only joined to the main two-thirds of the site by a small strip of land. That appendix is physically separate from and higher than the resort and housing areas.

[24] Finally, we record that the rather unusual nature of the application before us – unusual in that it provides for 42 houses and a clubhouse and accommodation at the edge of Lake Wanaka while not including an application for subdivision – means that the parties have approached issues more narrowly than might have been the case if a subdivision application were involved. In particular, there has been little thought given in anybody’s evidence-in-chief on the issue of the existing and future environmental quality³² of the remainder of Glendhu Station.

2. The existing environment

2.1 The site, its setting and the factual issues

[25] The 180 hectare site is part of Glendhu Station, which in total covers somewhat more than 2,800 hectares. The station’s western boundary is the Motatapu River extending from the point where a legal road running from Glendhu Bay joins the river north to the confluence of that river with the Matukituki. The northern boundary follows the Matukituki River to the neck of Roys Peninsula, where the eastern boundary runs south following the Mt Aspiring Road. Where that road meets the lake the boundary follows the lake shore south and east to a point on Glendhu Bay on the eastern side of the Fern Burn, and indeed east of Fern Burn. It then runs southwest and west to join the Motatapu River.

[26] Historically the station was rather larger than it is now and was held under pastoral lease. As a result of tenure review approximately 293 hectares were returned to full Crown ownership in 2005. Mr J L McRae, the farm manager and son of the “owners”³³ of Glendhu Station, told us the land freeholded by tenure review consisted of 400 hectares of flat paddocks, 600 hectares of rolling hill country, and 1,800 hectares of steep to rolling hill country.

[27] The station is still cut in half by the Mt Aspiring Road between Emerald Bay and the Motatapu River. To the north it comprises a huge *roche moutonnee* with several rounded high points including what is known as Rocky Hill at 775 metres above sea level (“masl”). South of the road the station rises steeply through Glendhu Bluff to a high point at 782 masl, called “Glendhu Hill” or “Te Matuki”.

³² The one exception is the provision for more tracks over other parts of the Station.

³³ We use quotation marks since the certificate of title records the owner as “Glendhu Holdings Limited”.



[28] The site is on the southern slope rising from the small southern arm of Lake Wanaka. The eastern end of the site between the road and the lakeshore is part of the delta³⁴ of the Fern Burn; to the west is successively lake shore beach³⁵, then “moraine and fluvial outwash”³⁶ followed by a small area of alluvial deposits³⁷ immediately before the “isolated mountain”³⁸ of which the Glendhu Bluff is part. All the remaining lower part of the site is part of the subtly complex “moraine field and associated glacial outwash terraces”³⁹ flattened in small areas, by the remnants of beaches from earlier, higher forms of Lake Wanaka. The possible lodge area is on a higher glacially smoothed terrace above Glendhu Bluff. The Mt Aspiring Road runs through the site’s flat land from east to west before turning north through the Glendhu Bluff.

[29] The setting of the site reflects the complex interplay in geological time of glacial and fluvial activity around the Wanaka basin. The northern boundary of the site fronts Parkins Bay, a comparatively small north-facing embayment along the complicated southern shoreline of Lake Wanaka. There is a series of bays making up the four leaf clover of the southern arm of Lake Wanaka. Turning clockwise from the southern end of Roys Peninsula they are Glendhu Bay, Parkins Bay, Emerald Bay and Paddock Bay.

[30] We have described how the south-eastern boundary of the site adjoins the Fern Burn; and a roughly rectangular area of flat land to the east of it is known as the Fern Burn or Glendhu Flats. The crest of the Roys Peak/Mt Alpha ridge is several kilometres to the east of the site and the Harris mountains rise west of the site over 3.5 kilometres away.

[31] We now place the site in the context of how it is usually first perceived. From the town of Wanaka the Mt Aspiring Road leads to three popular destinations west of Wanaka: Glendhu Bay and its campground, the ski field at Treble Cone and, at the end of the road, Mt Aspiring National Park. After leaving the urban edge of Wanaka behind in the vicinity of the Rippon vineyard and Waterfall Creek the road runs northwest along a shallow but handsome valley at the foot of the Roys Peak ridge. Turning around the very steep spur at the northwestern end of Roys Peak, the road turns southwest into Glendhu Bay. Immediately a new vista opens up before the traveller, although the foreground and Lake Wanaka are largely obscured by willows. The horizon is the Harris Mountains from south to north including Treble Cone itself and Black Peak, north again in the distance. There is a view of Mt Aspiring, and north again of the various peaks around the Minarets above the western side of Lake Wanaka. Adding complexity and interest to the view are some lower rugged but rounded large hills in the

³⁴ D J Lucas, evidence-in-chief Attachment 7 : area j(ii) [Environment Court document 29].

³⁵ D J Lucas, evidence-in-chief Attachment 7 : area j(i) [Environment Court document 29].

³⁶ D J Lucas, evidence-in-chief Attachment 7 : area s [Environment Court document 29].

³⁷ D J Lucas, evidence-in-chief Attachment 7 : area i [Environment Court document 29].

³⁸ D J Lucas, evidence-in-chief Attachment 7 : area a [Environment Court document 29].

³⁹ D J Lucas, evidence-in-chief Attachment 7 : area s [Environment Court document 29].



middle-ground. These are the *roches moutonnees*⁴⁰ which surround Parkins Bay (beyond Glendhu Bay, Emerald Bay, and Paddock Bay behind the southern end of Roys Peninsula). Roys Peninsula, whose rounded hills show in almost all views of Lake Wanaka, is an outstanding natural feature and has been the subject of several appeals to the Environment Court relating to proposed houses on the peninsula. The most recent decision is the *Marler* case: *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council*⁴¹.

[32] The vegetation on the site is mostly introduced : exotic grasses⁴² and weeds⁴³, pines, and close to the lake shore willows⁴⁴ and poplars⁴⁵. There are some native plants such as kanuka and matagouri scattered through the moraine on the upper levels of the site. Seasonal differences in the introduced plants cause aesthetic effects which many people enjoy : the tall yellow flames of the poplars in autumn, and the pink sweet-briar roses and the lupin flowers (along the Mt Aspiring Road edge) in late spring.

[33] The flat land either side of the Fern Burn is divided into paddocks planted in exotic grasses. Its more regular pattern of shelterbelts, green paddocks, and buildings give this area a different character from the surrounding mountains and lake. The Fern Burn flats are quite intensively farmed and there are several houses scattered over them. Glendhu Bay itself contains a camping ground – owned by the Council – that accommodates 1,500 or so people over the summer, and at the time of our site visit was occupied by caravans on a seemingly permanent basis. The Fern Burn fan is the site of the new Glendhu Station homestead.

[34] Parkins Bay displays similar characteristics to Glendhu Bay in terms of farming use⁴⁶ and recreational activity although it contains no houses. The Parkins Bay flats are cultivated and close to the shore there are stands of poplar⁴⁷ along with the willow which has spread more naturally.

[35] The waters of all four bays in the southern arm of Lake Wanaka are used for water-skiing, jet skiing and other forms of recreational boating. We note that signs of human activity are spreading along the southern shore of the lake between Glendhu and

⁴⁰ Literally 'rock sheep'.

⁴¹ *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* Decision C113/2009. We are indebted to this full and careful decision for its insights on outstanding natural feature issues under the district plan.

⁴² Brown top (*Agrostis capillaris*) and Fescue (*Festuca rubra*).

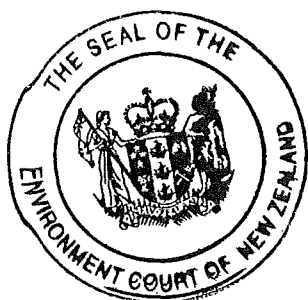
⁴³ Notably sweet-briar (*Rosa rubiginosa*) and lupins (a legume).

⁴⁴ *Salix* sp.

⁴⁵ *Populus nigra*.

⁴⁶ J L Roper-Lindsay, evidence-in-chief para 4.23 [Environment Court document 4].

⁴⁷ Approximately 108 trees according to a report attached to Dr J L Roper-Lindsay's evidence [Environment Court document 4].



Emerald Bays. A carefully designed eight-lot subdivision above Emerald Bay has received resource consent⁴⁸ and some building is taking place.

[36] There are a few native animals in and around the site. Invertebrates, at least two species of lizards, and birds are found on land and “a few”⁴⁹ native fish species in the lake, together with trout and salmon.

[37] A circle centred on the site is extraordinarily complex and diverse in landscape terms. There are sets of contrasts in every direction : the fierce crags of the leading range onto Roys Peak and Mount Alpha contrast with the rounded shapes of the *roches moutonnées* on Glendhu Station to the west; the long golden brown native tussocks on the mountainsides contrast with the vivid green exotic grasses on the Fern Burn flats and Matukituki flats; the open space of Glendhu Bay contrasts with the enclosed Hospital Flat to the west; the dark greens and browns of the native woody vegetation on Glendhu Bluff contrasts with the “brightness falls from the air” effect of the introduced poplars and willows , sweet-briars and lupins . The land contrasts with the lake; and the relatively quiet and gentle-edged southern arm of the lake contrasts with the steep-sided, wild and (often) windy character of the remainder of the lake. The water’s edge and the fields behind between Emerald Bay and Paddock Bay could come straight out of Constable’s England – see his *Water-meadows near Salisbury*⁵⁰ – whereas the Glendhu Bluff is (above the fringe of willows) in the colours of indigenous kanuka and other native species. Whether it is perceived as one landscape or a number of landscapes, what is apparent is the variation in forms and intensity of the colours.

The principal factual issue : is the site part of an outstanding natural landscape?

[38] Because the site is located in the mountain and lake landscape west of Wanaka, the first factual question to be answered in these proceedings is : in what landscape is the proposal set? The district plan regards the answer to that question as important⁵¹ because it determines what the applicable objectives, policies and assessment matters are. Chapter 5 of the district plan identifies three steps⁵² in applying its landscape assessment criteria to any development : first analysis of the site and surrounding area, secondly determination of the appropriate landscape category; and thirdly application of the assessment criteria. We have already briefly described the site and surrounding area, so the remaining aspect is to delimit the landscape in which the site is embedded or nested.

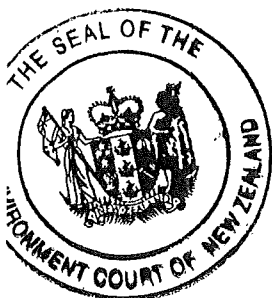
⁴⁸ Environment Court consent order in *Ecosustainability Limited v Queenstown Lakes District Council* : ENV-2006-CHC-410/411 for eight lots.

⁴⁹ J L Roper-Lindsay, evidence-in-chief para 5.5 (especially the bully *Gobiomorphus cotidianus* – para 4.21) [Environment Court document 4].

⁵⁰ J Constable (1829) oil on canvas [Victoria and Albert Museum, London].

⁵¹ Para 5.4.2.1, Chapter 5 (Rural Areas) [District Plan p. 5-23].

⁵² Para 5.4.2.1, Chapter 5 (Rural Areas) [District Plan p. 5-23].



[39] As for the second step, the district plan contains a description of three categories of landscape in the rural general zone as follows⁵³:

(1) **Protection of Outstanding Natural Landscape and Features**

The Outstanding Natural Landscapes are the romantic landscapes – the mountains and the lakes – landscapes to which Section 6 of the Act applies. The key resource management issues within outstanding natural landscapes are their protection from inappropriate subdivision, use and development, particularly where activity may threaten the landscape's openness and naturalness.

(2) **Maintenance and Enhancement of Visual Amenity Landscape**

The visual amenity landscapes are the landscapes to which particular regard is to be had under Section 7 of the Act. They are landscapes which wear a cloak of human activity much more obviously – pastoral (in the poetic and picturesque sense rather than the functional sense) or Arcadian landscapes with more houses and trees, greener (introduced) grasses and tend to be on the District's downlands, flats and terraces.

(3) **Other rural landscapes**

...

[40] In fact the applicant did not call any direct evidence assessing the proposal under the criteria. Its landscape architect, Mr Scott, current president of the New Zealand Institute of Landscape Architects, expressly eschewed that approach. The flavour of his evidence can be ascertained from his written summary of his evidence⁵⁴ as follows:

- a. The South Island high country and the Glendhu Bay/Parkins Bay landscape is a product of both natural and cultural processes. It has evolved through significant natural formative process and human intervention, both spatially and temporally. It is no longer a 'natural' landscape.
- b. There are fundamental socio-economic drivers that are influencing the landscape to further evolve. They include the tenure review process and internal and external (local and international) influences, particularly in relation to agricultural, tourism and recreational activities.
- c. It is against a backdrop of the above – described natural and cultural landscape matters and connected socio-economic components that signify a complex, dynamic and unavoidable changing land-use and consequential landscape direction.

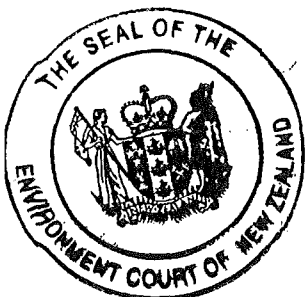
...

We return to 'a' shortly. We question whether Mr Scott is going beyond his expertise in 'b' – which it is too general to be helpful anyway; and 'c' simply does not make sense or have any discernible meaning. In fact, the bulk of Mr Scott's evidence was a vague treatise – largely without supporting detail – about the socio-economic factors affecting high country landscapes. The other parties did not find it relevant (they chose not to cross-examine him) and nor, generally, do we, although we do consider some of his specific statements where they are relevant.

[41] For its part, since the Council's landscape architect at the Commissioners' hearing opposed the development, the Council called Dr M L Steven to give evidence to

⁵³ Para 4.2.4 Chapter 4 [District plan p. 4-9].

⁵⁴ D J Scott, evidence-in-chief para 2.3 [Environment Court document 8].



us. He did assess the proposal under the criteria set out in the district plan, if only in appendices⁵⁵, and we consider that assessment later. The bulk of Dr Steven's evidence was a statement of his concerns about landscape assessment under the RMA. He wrote in his rebuttal evidence⁵⁶:

That there are clearly significant differences of opinion between the landscape experts, and that my evidence has elicited the critical comments it has done from Mr Kruger in particular and Ms Lucas, can be attributed to the significant philosophical, theoretical and methodological differences between landscape experts. The difference apparent in the data interpretation, conclusions and opinions expressed in my own evidence compared with the evidence of the appellants reflects a deep and widening gulf over the professional practice of landscape assessment within members of the NZILA who operate in the area of RMA landscape assessment.

I place myself within a growing group of professional landscape architects who are questioning accepted practice, particularly with regard to fundamental aspects of landscape assessment, such as:

- ... Defining the landscape 'unit of analysis',
- ... The distinction between objective characterisations of landscape and subjective evaluations;
- ... Understandings of naturalness and techniques for its assessment, rating and representation.
- ... The identification of facts that are relevant to the evaluation of landscape significances (or outstandingness), and methods for the assessment of significance including the identification of valid indicators or thresholds.

[42] We have been rather troubled by the evidence of Dr Steven and (to the extent it is relevant) of Mr Scott. They attempt to explain the central concepts in section 6(b): 'landscape', 'natural' and 'outstanding' without full reference to how they are used in the Queenstown Lakes district plan (especially para 5.4.2.1.⁵⁷) or even to the court's previous decisions on them. Enlightened expert evidence⁵⁸ on what Parliament meant when introducing such complex concepts is welcomed by the court, but it would be useful if witnesses placed their discussions and criticisms in the context of what has come before. As one example (we consider others shortly), Dr Steven rejects⁵⁹ a 'land unit' approach because it fails, in his view, "to acknowledge the perceptual nature of landscape". While we agree with him, we point out that the Environment Court had already discussed and rejected equating landscapes with landscape units some years ago: *Wakatipu Environmental Society Incorporated and Stewart v Queenstown Lakes District Council*⁶⁰.

⁵⁵ M L Steven, evidence-in-chief Appendices B and C [Environment Court document 36].

⁵⁶ M L Steven, evidence-in-reply paragraphs 29-30 [Environment Court document 36].

⁵⁷ District plan p. 5-23.

⁵⁸ Strictly interpretation of a statute is a matter of law, but there are exceptions where complex technical terms are concerned.

⁵⁹ M L Steven, evidence-in-chief para 39 [Environment Court document 36].

⁶⁰ *Wakatipu Environmental Society Incorporated and Stewart v Queenstown Lakes District Council* Decision C3/2002 at [28] and [33].



[43] Given the broad questioning of what is meant by 'landscape' and 'natural' in the Council's evidence, we now need to pause in our consideration of the facts, and state our understanding of what the RMA means by those concepts.

2.2 The legal issue : what is an outstanding natural landscape?

2.2.1 What is a 'landscape'?

[44] Section 6 of the RMA requires that outstanding natural landscapes (and features) must be recognised and provided for. The Act is silent on what a 'landscape' is, and the evidence of the landscape architects in these proceedings shows there is some debate in the profession about what a landscape is, at least for the purposes of the RMA. The applicant's landscape architect, Mr Scott, attached two appendices to his evidence⁶¹ which rather discursively approach the definition of 'landscape'. Appendix 4 starts encouragingly with the statement:

The definition of landscape may seem complex, however I consider it relatively straightforward.

Unfortunately, that is then undermined by two pages of qualifications and an ambiguous conclusion that:

The construct of landscape is not inherent in the land ... it is interpreted through human cognisance and perception.

We do not find any of that helpful.

[45] Dr Steven introduced⁶² new terms – 'the project scale' and the 'project level landscape development' both of which he appears to contrast with 'development site' scale⁶³. He describes these as follows⁶⁴:

Project Scale – a project level landscape development occurs at the level at which a project is designed as an integral whole. It is the level at which specific use areas and activities are located and functional relationships established. In the context of the current application this scale is taken to include the immediate landscape environs of the proposal, including that area that can be broadly defined as being within the middle ground of views from the site. The middle ground zone extends some 4-6 km from the site and is the area within which visibility effects will be most apparent.

We do not agree such an approach is useful for several reasons: it introduces extra complexity, it is unnecessary, and it is unhelpfully isolating in that it does not acknowledge that perceptions and findings about a landscape in one case (whether at local authority or Environment Court level) may greatly assist in a later case. Finally,



⁶¹ D J Scott, evidence-in-chief Appendix 4 [Environment Court document 8].

⁶² M L Steven, evidence-in-chief para 42 [Environment Court document 36].

⁶³ M L Steven. Evidence-in-chief para 40 [Environment Court document 36].

⁶⁴ M L Steven, evidence-in-chief para 42.1 [Environment Court document 36].

as we shall see, it appears to be used inconsistently or at least only intermittently by Dr Steven himself.

[46] We do not understand why Dr Steven introduces a project scale landscape when usually the landscape is quite obvious – catchment boundaries normally delimit most boundaries of a landscape as Dr Steven acknowledges⁶⁵. Where problems normally arise is in the lower and flatter parts of a landscape – are they the same landscape or a different one? Nor is the term ‘project landscape’ necessary: section 6(b) of the RMA merely requires recognition of “outstanding natural ...landscapes”.

[47] In 1973 the New Zealand Institute of Landscape Architects included in its purpose a statement that “*the landscape reflects the cumulative effects of physical and cultural processes*”⁶⁶. Since then definitions have been suggested which define landscapes as sets of “*elements, processes and patterns*” see the Eighth Decision in *Robinson et ors v Waitakere City Council*⁶⁷. We have never found them of much use in explaining our decisions because describing a landscape in terms of elements, processes and patterns is not likely to make much immediate sense to reasonable laypersons.

[48] As an example of international practice the European Landscape Convention, created by the Council of Europe in 2000, defines landscape⁶⁸ as:

An area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors.

Dr Steven quoted the definition of English geographer and landscape researcher, Jay Appleton:

Landscape is not synonymous with environment, it is the environment perceived, especially visually perceived.

In *The Language of Landscape* A W Spirn wrote⁶⁹:

Landscape connotes a sense of the purposefully shaped, the sensual and aesthetic, the embeddedness in culture. The language of landscape recovers the dynamic connection between place and those who dwell there.

While those definitions all reflect important aspects of the complex construct known as a ‘landscape’ we respectfully find them too broad to be helpful in many practical contexts.

⁶⁵ M L Steven, evidence-in-chief para 41 [Environment Court document 36].

⁶⁶ NZILA Statement of Philosophy 1973.

⁶⁷ *Robinson et ors v Waitakere District Council* Decision A3/2009 at para [75].

⁶⁸ Council of Europe 2000 quoted in G Fairclough ‘A forward looking convention ...’ *Naturopa* No. 98/2002 at p. 5.

⁶⁹ A W Spirn (1998) *The Language of Landscape* (Yale UP) p. 17.



[49] The Environment Court too has struggled to find a working definition. In *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council*⁷⁰ (“the first *Wakatipu landscape decision*”) the Court wrote:

(74) The dictionaries define a landscape as:

1. natural or imaginary scenery, as seen in a broad view.
2. a picture representing this ...

A portion of land which the eye can comprehend in a single view; a country scene.

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

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

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

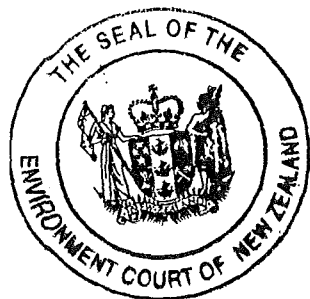
Perhaps because the issues were still new to it, the court did not really attempt to find a working definition in the first *Wakatipu landscape decision*. Instead it referred to an earlier decision of the Environment Court – *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council*⁷¹. There the court had summarised – from earlier cases presided over by Judge Kenderdine – the various aspects of an area which are relevant to assessment of the “significance” of landscape. In our view the court in *Pigeon Bay* was slightly inaccurate in confining the itemised aspects of a landscape to defining its *significance*; in our view they also go to its identification. Further, the values people attribute to the landscape, once it is identified, need consideration of other matters as subsequent cases have pointed out.

[50] The latest response to criticisms that earlier discussions by the court of ‘landscape’ did not include land uses, and that they mixed objective and subjective elements, is in *Maniototo Environmental Society Incorporated and others v Central Otago District Council and Otago Regional Council* (the *Lammermoor* case). There the Environment Court gave its understanding of a ‘landscape’ within the meaning of section 6(b) of the Act⁷². It wrote:

⁷⁰ *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council* [2000] NZRMA 59 at 74.

⁷¹ *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* [1999] NZRMA 209 at (56).

⁷² *Maniototo Environmental Society Incorporated and others v Central Otago District Council and Otago Regional Council* Decision C103/2009 at paragraphs [202] to [204].



... In our view a landscape is four-dimensional in space and time within the given environment – often focussed on a smaller relevant space such as an application site – which is the sum of the following:

- (1) a reasonably comprehensive (but proportionate to the issues) description of the characteristics of the space such as:
 - the geological, topographical, ecological and dynamic components of the wider space (the natural science factors);
 - the number, location, size and quality of buildings and structures;
 - the history of the area;
 - the past, present and likely future (permitted or consented) activities in the relevant parts of the environment; and
- (2) a description of the values of the candidate landscape including:
 - an initial assessment of the naturalness of the space (to the extent this is more than the sum of the elements described under (1) above);
 - its legibility – how obviously the landscape demonstrates the formative processes described under (1);
 - its transient values;
 - people and communities’ shared and recognised values including the memories and associations it raises;
 - its memorability;
 - its values to tangata whenua;
 - any other aesthetic values; and
 - any further values expressed in a relevant plan under the RMA; and
- (3) a reasonably representative selection of perceptions – direct or indirect, remembered or even imagined – of the space, usually the sub-sets of:
 - (a) the more expansive views of the proposed landscape⁷³; and
 - (b) the views, experiences and associations of persons who may be affected by the landscape.

... There is some repetition within the sets. For example the objective characteristics of the landscape go a long way towards determining its naturalness. More widely, the matters in the third set influence the perceptions in the second.

... To describe and delimit a landscape a consent authority needs at least to consider the matters in set (1) and, to the extent necessary and proportionate to the case, those in sets (2) and (3) also ...

We broadly agree with that, although we might be inclined to place “the history of the area” in (2) – the associative or relationship values; and move legibility to (3) as a perceptual value.

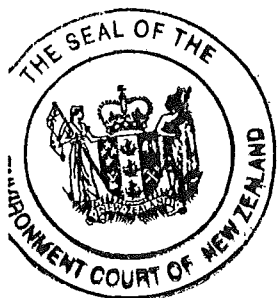
[51] The *Lammermoor* description seems to correspond generally with contemporary landscape practice⁷⁴ in describing a landscape as having three sets of components:

⁷³

Kircher v Marlborough District Council Decision C90/2009 (Judge McElrea) at para [76].

⁷⁴

See the evidence of Mr G C Lister quoted in paragraph [94] of *Unison Networks Limited v Hastings District Council* Decision W11/2009.



- the biogeographical elements, patterns and processes;
- the associative or relationship contributions; and
- the perceptual aspects.

A full description of a landscape in terms of those three sets of components will assist to answer the questions whether it is natural and/or outstanding. We also point out that it is not necessary to use the rather treacherous word 'natural' when initially describing the biogeographical characteristics of the candidate landscapes. It is preferable to use descriptors such as "endemic/native/exotic" or (possibly) "weed"⁷⁵ for vegetation, and "modified" for landforms.

[52] In the context of the RMA landscapes may be perceived at a national, regional or district scale. We talk and write of a "*Waikato landscape*" or a Marlborough Sounds landscape⁷⁶. At a district level smaller landscapes may nest within a larger landscape. But there comes a point where that no longer applies. Care needs to be taken by local authorities not to divide a landscape into its units (which is acceptable in itself – although preferable in the reverse order for analytic purposes) and then to treat units as landscapes.

[53] We recognise that, even (especially) within a district, scale and context are important aspects of most concepts of landscape: *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council*⁷⁷. For example, when considering a townscape and assessing its value, the extent of the area being focussed on, and its surrounding context, may be important issues when deciding the value of the townscape. However, when a local authority comes to consider whether it is dealing with a (natural) landscape, questions of scale and context tend to morph into considerations of boundaries and a sense of place.

2.2.2 What is 'natural'?

[54] Several of the landscape architects applied the (now) conventional approach to what is 'natural' in a landscape. They followed *Harrison v Tasman District Council*⁷⁸ where the Court stated:

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

⁷⁵ Or adventitious.

⁷⁶ Or a 90 Mile Beach or Farewell Spit sandscape.

⁷⁷ *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council* [2003] NZRMA 289 at paragraphs [14] to [17].

⁷⁸ *Harrison v Tasman District Council* Decision W42/1993; [1994] NZRMA 193 at p. 5.



[55] In *Long Bay-Okura Great Park Society Incorporated v North Shore City Council*⁷⁹ the Environment Court referred to surveys which show that the criteria for determining the degree of naturalness include:

- ...
- Relatively unmodified and legible physical landform and relief;
 - The landscape being uncluttered by structure and/or of obvious human presence;
 - The presence of water (lake, river, sea);
 - The presence of vegetation (especially native vegetation) and other ecological patterns.

These are some of the more common perceptual values in set (3) of the Lammermoor list. Further, as the evidence quoted in the previous paragraph⁸⁰ of *Long Bay* makes clear those indicia apply even in the presence of "... exotic vegetation and productive rural uses"⁸¹. Conversely indications against high naturalness or natural character are "... obvious signs of development and buildings in the landscape"⁸².

[56] Dr Steven had a different view. He wrote that⁸³:

Naturalness in the sense used in aesthetic evaluations is a different conceptualisation of naturalness than that used in RMA section 6(a) assessments of natural character and s6(b) assessments of outstanding natural landscapes. In aesthetic evaluations, it is apparent naturalness that is being considered – that which seems natural. Factors being considered include the presence of water, ruggedness and relief, and the relative absence of structures.

Dr Steven's first sentence is confusing. He is wrong if he is setting up a pristine (i.e. "truly natural") versus "apparently natural" dichotomy. As the court has pointed out on numerous occasions⁸⁴, a better reflection of reality (as viewed by humans) is that there is a spectrum of landscapes from pristine through highly natural, along to highly modified but looks natural (corresponding to Dr Steven's "apparently natural") through to urban.

[57] Elsewhere Dr Steven did recognise that there is a continuum from pristine to non-natural. However, he was frustrated by the slipperiness of the slope between natural and non-natural. He suggested⁸⁵ it was useful to have a seven-point scale of naturalness running through six sets from natural to cultural as follows:

⁷⁹ *Long Bay-Okura Great Park Society Incorporated v North Shore City Council* Decision A78/2008 para 135.

⁸⁰ *Long Bay-Okura Great Park Society Incorporated v North Shore City Council* Decision A78/2008 at para [134].

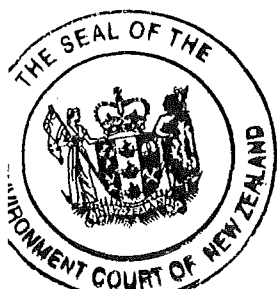
⁸¹ Quoting the evidence of Mr S K Brown in *Long Bay-Okura Great Park Society Incorporated v North Shore City Council* Decision A78/2008 at para [134].

⁸² Quoting the evidence of Mr S K Brown in *Long Bay-Okura Great Park Society Incorporated v North Shore City Council* Decision A78/2008 at para [134].

⁸³ M L Steven, evidence-in-chief para 134 [Environment Court document 36].

⁸⁴ *Long Bay-Okura Great Park Society Incorporated v North Shore City Council* Decision A78/2008 at para [135].

⁸⁵ M L Steven, evidence-in-chief para 17 [Environment Court document 36].



Natural	Near-Natural	Semi-Natural (Inc pastoral agriculture & exotic forests)	Quasi-natural (arable agriculture & intensive cropping)	Near-Cultural	Cultural	
Pristine-Very High	High	Moderate-High	Moderate	Moderate-Low	Low	Very Low -Nil

[58] Questioned by the Court which was interested that rural areas were being described implicitly as non-cultural, he said he was not concerned with the right-hand labels and was readily prepared⁸⁶ to amend those two sets so that his table would read:

Natural	Near-Natural	Semi-Natural (Inc pastoral agriculture & exotic forests)	Quasi-natural (arable agriculture & intensive cropping)	Suburban	Urban	
Pristine-Very High	High	Moderate-High	Moderate	Moderate-Low	Low	Very Low -Nil

[59] Further reflection has led us to see other potential problems with his two scales:

- (1) the principal difficulty is that Dr Steven has not given any reasons for allocating the captions inside the boxes. In particular, why is a landscape with moderate-high to high natural values described as “near-natural”? He is defining away any possibility of that landscape being a natural landscape because it is only a “near-natural” landscape;
- (2) it is not clear what the second (lower) scale assesses. We assume it also refers to naturalness. If that is so the first four labels in the box are unnecessary;
- (3) the word ‘pristine’ has, for no reason that we can see, been located (inconsistently) outside the box, in a schema that otherwise runs in orthodox fashion from ‘very high’ to ‘very low’.

[60] Bearing in mind that section 9(3) of the RMA does not apply normally to conservation land held by the Crown⁸⁷, and that the conservation estate includes land in New Zealand which could be described as pristine or near-pristine, on Dr Steven’s approach there may be no natural land left in New Zealand for section 6(b) to apply to. Almost all land around the globe, parts of New Zealand being rare exceptions, has been modified by humans and is thus “cultural landscape”. We reiterate strongly that it is the extent of human (or cultural) modification – on a continuum – that determines whether a

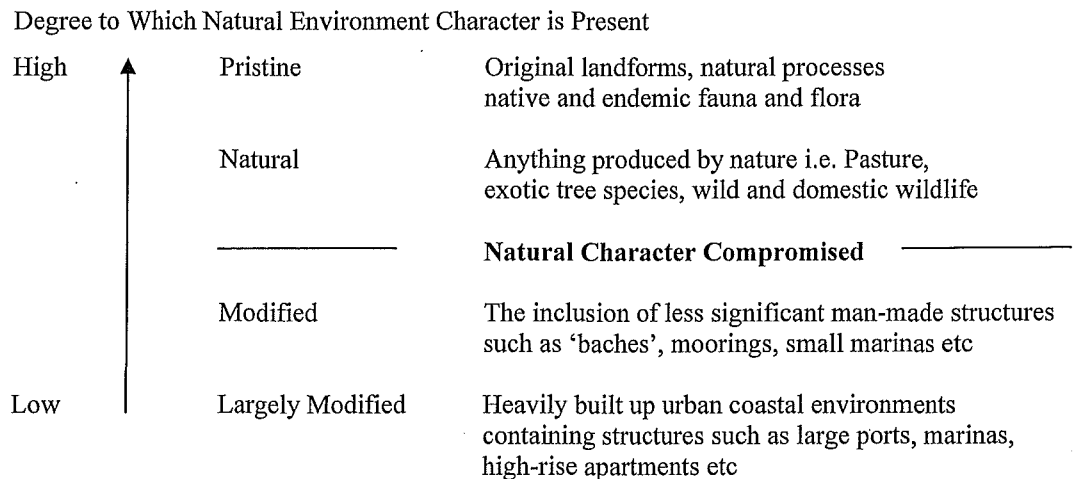
⁸⁶ Transcript p. 598.

⁸⁷ Section 4(3) of the RMA.



landscape is natural or not. A simple natural/cultural dichotomy as applied by Mr Scott and Dr Steven is not useful under the RMA. In fact, for almost all practical purposes it may be preferable to start with the presumption that a pure 'natural landscape' is an oxymoron⁸⁸ under the RMA.

[61] We were reminded by Mr Kruger of one of the starting points for assessing the naturalness of a landscape. He referred⁸⁹ to a paper written by Ms R Maplesden in 1995 in which she presented this description of the continuum:



We think Ms Maplesden's schema is useful even if it does only contain four points. The essential issue is to decide whether a landscape is natural, even if it does (almost inevitably) contain a cultural component. But just because humans have intervened does not make a landscape unnatural. It is the nature of that intervention – and most notably the presence and use of buildings and infrastructure – which tends to make a landscape look unnatural.

[62] But in the end we are wary of scales of 'naturalness' or 'natural character'⁹⁰. At the risk of being unduly repetitive 'natural' is a cultural construct rather than a scientific term. Chinese or Maori communities understand 'nature' and 'natural' in different ways to Europeans. These different cultural concepts are not readily placed on a simple scale.

2.2.3 What is outstanding?

[63] Dr Steven focussed on the naturalness of vegetative cover. He wrote⁹¹:

It is my opinion that ecosystems, and in particular vegetation communities are the most reliable indicator of naturalness in the New Zealand landscape. Natural landforms in New Zealand have

⁸⁸ See G Park *Theatre Country* (2006, VUP) at p. 9.

⁸⁹ R F W Kruger, evidence-in-chief para 62 [Environment Court document 34].

⁹⁰ The term used in section 6(a) RMA.

⁹¹ Dr M L Steven, evidence-in-chief para 19 [Environment Court document 34].



generally endured in a relatively unmodified state, whereas fundamental changes have been wrought on the natural vegetation communities, particularly as a consequence of development for agricultural production.

We accept that there may be cases where vegetative cover is a determining factor: a good example is *Maniototo Environmental Society Incorporated v Central Otago District Council*⁹². However, on this point we respectfully agree with the Environment Court in *Unison Networks Limited v Hastings District Council*⁹³ where it wrote:

We also have some concern about evaluating landscapes using (predominantly) vegetation patterns as the most significant criterion. May there not be instances where the landform itself is so striking, even when clothed only by pasture, that the landscape is outstanding?

[64] We add that an averagely natural landscape may be an outstanding natural landscape simply because its experiential or associative relationship character is so remarkable it lifts the landscape into the category. Indeed *Unison Networks* and its predecessor in respect of a nearly identical site, *The Outstanding Landscape Protection Society Incorporated v Hastings District Council*⁹⁴ are such cases. There the characteristic of the landscape which, as we read the decisions, pushed the natural landscape into the outstanding natural landscape category was the value to the tangata whenua⁹⁵. In other words the section 6(e) RMA values relating to the natural landscape made it outstanding.

[65] In summary we are concerned that Dr Steven is looking for “outstandingly natural landscapes” whereas we hold that the RMA requires recognition of natural landscapes which are outstanding.

2.3 Classifying the Southern Wanaka landscape

2.3.1 The issues between the parties

[66] It is not disputed that the steeper country around the site and the mountains and lake are part of an outstanding natural landscape (“ONL”). The issues between the parties in terms of category of landscape applying to the site appear to be these:

- (1) are the Glendhu/Fern Burn Flats a large enough area to be considered a separate VAL embedded in the wider ONL, as the court provisionally found in 2002?
- (2) if so, do the Parkins Bay flats to the west of the Fern Burn belong with that area as a VAL, or are they part of another landscape, say that of the lake?

⁹² *Maniototo Environmental Society Incorporated v Central Otago District Council* Decision C103/2009.

⁹³ *Unison Networks Limited v Hastings District Council* Decision W11/2009 at [92].

⁹⁴ *The Outstanding Landscape Protection Society Incorporated v Hastings District Council* [2008] NZRMA 8.

⁹⁵ See *The Outstanding Landscape Protection Society Incorporated v Hastings District Council* [2008] NZRMA 8 at para [116].



- (3) if the Parkins Bay Flats are a part of a VAL, does the terrace belong to that landscape, or is it part of the mountainous ONL?

[67] We have already observed that Dr Steven's approach does not attempt to build on previous cases. That is ironic because, as it happens, one of the first cases to consider the scale of a 'landscape' under section 6(b) of the RMA concerned the Fern Burn flats immediately east of the site. In *Wakatipu Environmental Society and Lakes District Rural Landowners Incorporated v Queenstown Lakes District Council*⁹⁶ ("the *Rural Landowners*" case) the court considered the landscape of the Fern Burn area that contains the site, finding that⁹⁷:

All of the expert landscape witnesses (Mr P J Baxter, Ms D J Lucas, Ms E J Kidson) who gave evidence on the Fern Burn agreed that its floor was a VAL. There was no evidence to the contrary and we find accordingly.

No formal orders resulted from the *Rural Landowners* case, and despite the views of the court, the planning maps in the district plan⁹⁸ show a dashed line to the west of the Fern Burn and around the base of Roys Peak. The southern boundary of the visual amenity landscape ("VAL") is not indicated at all nor is the western boundary from not far south of the Mt Aspiring Road to the coast. The legend indicates that boundaries marked with a dashed line are subject to analysis of the specific physical circumstances of each site, and the landscape descriptions of the district plan. The consequence is that we must determine the landscape category of the site and surrounding landscape early in this decision to decide which assessment criteria and policies apply.

[68] The starting point is Appendix 8 to the district plan since that refers to maps (in a separate folder) which contains⁹⁹ "indicative" (but not determinative) maps showing the landscape categorisation of the rural areas of the district. The relevant map shows the site as outstanding natural landscape, but the adjacent land on the Fern Burn Flats as visual amenity landscape.

[69] There was disagreement between the witnesses about the category of landscape in which this site was located. Mr Scott, the landscape architect called by PBPL, did not express an opinion. Dr Steven, whose evidence for the Council was adopted by the applicant, considered that the site was part of a VAL. Ms Lucas, Mr Cutler and Mr Kruger considered the whole Glendhu Bay and Parkins Bay area was an ONL. We also had a report from Boffa Miskell Limited dated 2006 in which Mr A Rackham,

⁹⁶ *Wakatipu Environmental Society and Lakes District Rural Landowners Incorporated v Queenstown Lakes District Council* Decision C73/2002; [2003] NZRMA 289.

⁹⁷ *Wakatipu Environmental Society and Lakes District Rural Landowners Incorporated v Queenstown Lakes District Council* Decision C73/2002; [2003] NZRMA 289 at para [19].

⁹⁸ District plan Appendix 8.

⁹⁹ Appendix 8 Landscape Categories [District Plan p. A8-1] and Appendix 8B : Map 1 (Landscape Categorisation in the Wanaka Basin).



another very experienced landscape architect, described the flats as VAL and the hillsides as ONL.

[70] There is, of course, an element of artificiality in delimiting landscapes. As the court stated in *Wakatipu Environmental Society v Queenstown Lakes District Council*¹⁰⁰:

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

There will be areas of land where a classification into either of two categories of landscape could be justified. Equally there are often areas where a landscape unit is notably different from the surrounding landscape, but the unit itself is too small to be a separate landscape.

2.3.2 The Commissioners’ decisions

[71] The majority of Commissioners, in reaching their decision, adopted a boundary line which separated the flat land on the shore of Parkins Bay either side of the Mt Aspiring Road from the moraine and ice-sculpted landscapes. Commissioner Marquet, one of the majority, cited with approval the evidence to the Commissioners of Mr Rackham¹⁰¹:

In my opinion, the VAL boundary line, so far defined, is reasonable and a logical extension of the boundary would result in a small extension of the VAL northwest into the Fern Burn flats. In my opinion, a boundary line that separates the largely flat and depositional landscapes from the largely moraine and ice sculpted base rock landscapes is a logical outcome.

None of the landscape experts who appeared before us adopted precisely that position, Mr Rackham having retired between the Council hearing and the hearing of the appeals. In any event we note Mr Rackham seems to have proceeded on the assumption – reasonable given Appendix 8 of the District Plan – that the Fern Burn flats are a visual amenity landscape and confined himself to determining the boundary of the visual amenity landscape.

2.3.3 The evidence on landscape

[72] The evidence of PBPL’s landscape architect Mr Scott did not comment on how the landscape should be identified. He seems to assume¹⁰² that the lines drawn in the district plan are correct. Elsewhere in his evidence for PBPL Mr Scott chose a very



¹⁰⁰ *Wakatipu Environmental Society v Queenstown Lakes District Council* Decision C73/2002; [2003] NZRMA 28959 at para [8].

¹⁰¹ Decision of Commissioner N S Marquet, para [54].

¹⁰² D J Scott, evidence-in-chief para 3.19 (last sentence) [Environment Court document 8].

large landscape. He wrote¹⁰³ that “The South Island High Country landscape within which the subject site sits is a product of both nature and culture”. We consider that Mr Scott is confusing a particular landscape with a “landscape type” – see *Maniototo Environmental Society Incorporated v Queenstown Lakes District Council*¹⁰⁴. There is probably a recognisable South Island High Country landscape type – inverted V-shaped ridges covered in tussock grasslands, but within that there are many different landscapes.

[73] Dr Steven’s evidence on this issue was confusing. Having earlier described the site as being within a “project landscape”, being a rough circle with a radius of about 2.5 to 3 kilometres, he concludes that¹⁰⁵:

... parts of the [project scale] landscape can be regarded as ONL, while other parts ... should be regarded as VAL.

In our view the absence of definite (or any) articles before the category of landscape (as defined by the district plan) is telling. Dr Steven seems to be saying that his ‘project scale landscape’ is not actually one landscape but a part of two different landscapes. That simply reinforces our conclusion that his ‘project scale landscape’ is a confusing and unnecessary entity.

[74] Dr Steven was of the view that the whole site was within a visual amenity landscape. That is, whereas Mr Rackham included the terrace on which it is proposed to locate some of the residences/visitor accommodation within the ONL, Dr Steven considered the most notable change in landscape character occurred higher up, around the 460-480 metre contour line where the landform becomes steeper and is characterised by pronounced rock surfaces and outcrops, and where the processes of natural succession are evident in the vegetation¹⁰⁶.

[75] The basis of Ms Lucas’ and Mr Cutler’s assessments appears to be a judgement that the Fern Burn valley floor is not large enough (even with the addition of the Parkins Bay Flats) to be considered a separate landscape. Ms Lucas’ evidence-in-chief was that while the valley floor continues to demonstrate VAL character; the scale of greater Wanaka landscapes is generally very large, with the result that the Glendhu Bay Flats are perceived as a landscape unit rather than a landscape¹⁰⁷.

[76] Mr Kruger was also of the view that the Fern Burn flats are too small to be separately classified as a Visual Amenity Landscape. He conducted an analysis of the

¹⁰³ D J Scott, evidence-in-chief para 3.1 [Environment Court document 8].

¹⁰⁴ *Maniototo Environmental Society Incorporated v Queenstown Lakes District Council* Decision C103/2009 at para [267]: “In our view any landscape type includes a set of landscapes and each of those in turn includes a set of landscape units (and/or features)”.

¹⁰⁵ M L Steven, evidence-in-chief para 70 [Environment Court document 36].

¹⁰⁶ M L Steven, evidence-in-chief para 75.

¹⁰⁷ D J Lucas, evidence-in-chief paragraphs 58-59.



site using the amended *Pigeon Bay* factors which the plan requires to be applied in landscape assessment. Our reading of Mr Kruger's evidence is that his consideration of these factors is applied over a wider area than that argued by the applicant to be a VAL. His conclusion was that the geological significance of the landforms is sufficient justification for classifying the landscape as ONL, that the formative processes which had given birth to the landscape were clearly intelligible and that its aesthetic qualities were high¹⁰⁸.

[77] In terms of the Fern Burn flats Mr Kruger noted that benches formed in this area show that Lake Wanaka had at earlier times been at higher levels. Some 150 hectares of the area provisionally regarded as a Fern Burn flats VAL should therefore be included in the Lake Wanaka ONL, because they demonstrated the formative processes of the lake¹⁰⁹. In the case of the remaining 450 hectares he reasoned by analogy with other landscapes in which an area with a 'cultured' landscape layer had been agreed not to comprise a separate landscape that this area of the Fern Burn flats was too small to be a separate landscape¹¹⁰ and in any case contained two significant braided streams and scattered remnants of indigenous vegetation.

[78] To a considerable degree the difference between the witnesses resulted from the different approach to the concept of naturalness which we have described. Dr Steven attributed little significance to landform in assessing naturalness, since coastal flats might be as much a product of nature as rugged mountain terrain. He considered that the characteristics of vegetative cover, in particular the extent to which it has been modified by farming practices, fire and grazing, provide the most meaningful indications of naturalness within a site and in its surrounding context¹¹¹. Mr Kruger on the other hand considered the fact that a site's landform was unmodified by structures or earthworks highly significant. He said¹¹²:

[m]odification by land management or coverage by exotic plants is minor and does not disqualify a landscape from being natural.

2.3.4 Our conclusions

[79] We agree with the witnesses (Mr Kruger and Ms Lucas) who considered the Fern Burn flats are too small in their context to be a separate landscape. Anywhere on those flats viewers are aware of the ring of mountains around them, especially the Roys Peak-Mt Alpha range and its extension to the south. Compared with the large scale of the mountains around them the flats are so small that we hold that they cannot reasonably be a landscape. Putting it another way : the surrounding mountains and lake have such a strong influence that the flats and rounded hills are all perceived as part of the one landscape.

¹⁰⁸ R F W Kruger, evidence-in-chief para 73.

¹⁰⁹ R F W Kruger, evidence-in-chief para 86.

¹¹⁰ R F W Kruger, evidence-in-chief paragraphs 89-94.

¹¹¹ M L Steven, evidence-in-chief para 74.

¹¹² R F W Kruger, evidence-in-chief para 54.



[80] Further, while the Fern Burn flats have a different character from the surrounding mountains, we find that, despite the utilitarian character of the paddocks, the lack of houses and the proximity of the lake make even the flats an attractive and natural component of the wider landscape.

[81] We prefer the evidence of Mr Kruger, Ms Lucas and Ms Neal and conclude that the site is part of the outstanding natural landscape of western Wanaka. That finding has implications as to which of the objectives and policies in the district plan apply. However, we also find, and this will need to be borne in mind when those objectives and policies are considered, that the ONL around the site is a very complex landscape and that it includes two highly modified areas which are very different from most of the embedding landscape. These areas are the Fern Burn Flats and the Matukituki River delta. These areas, especially the latter, are pastoral in the English sense¹¹³. Due to the proximity of the lake, the surrounding mountains and the absence of many buildings, these areas feel natural.

3. The provisions of the relevant statutory documents

3.1 The operative district plan

Chapter 4 of the district plan

[82] Chapter 4 of the district plan discusses “district wide” issues and sets out objectives and policies for them under these headings (relevant ones emphasised):

- 4.1 **Natural Environment**
- 4.2 **Landscape and Visual Amenity**
- 4.3 Takatua Whenua
- 4.4 **Open Space and Recreation**
- 4.5 Energy
- 4.6 Surface of Lakes and Rivers
- 4.7 ... Waste Management
- 4.8 Natural Hazards
- 4.9 **Urban Growth**

[83] The primary and only relevant¹¹⁴ objective for the **natural environment** - objective 1 – requires¹¹⁵ (relevantly):

¹¹³ As opposed to pastoral in the Australasian sense of a “pastoral run” (often a lease from the Government). The difference tends to be visible in colour and texture – green and soft in the English version of pastoral, and brown and harsher on the Australasian station.

¹¹⁴ Natural Environment objective 2 relates to air quality [Section 4.1.4 QLDC Operative District Plan pp 4-5] and is not relevant to this case.

¹¹⁵ Section 4.1.4 QLDC Operative District Plan pp 4-2 and 4-3.



Objective 1 – Nature Conservation Values

The protection and enhancement of indigenous ecosystem functioning and sufficient viable habitats to maintain the communities and the diversity of indigenous flora and fauna within the District.

Improved opportunity for linkages between the habitat communities.

The preservation of the remaining natural character of the District's lakes, rivers, wetlands and their margins.

The protection of outstanding natural features and natural landscapes.

The management of the land resources of the District in such a way as to maintain and, where possible, enhance the quality and quantity of water in the lakes, rivers and wetlands.

...

[84] The relevant implementing policies¹¹⁶ relating to Objective 1 are to encourage the protection of geological features¹¹⁷ – this applies to the proposed earthworking of the site; to encourage the removal or management of existing vegetation with the potential to spread and naturalise¹¹⁸ – this applies to weeds such as sweet-briar and Douglas-fir; to take opportunities to promote the protection of indigenous ecosystems¹¹⁹ – this is relevant as to environmental compensation for adverse effects of the proposal; to encourage the protection of significant habitats of indigenous fauna¹²⁰; to maintain or enhance the natural character of the beds and margins of lakes, rivers, and wetlands¹²¹; and to encourage and promote the regeneration and reinstatement of indigenous ecosystems on the margins of lakes, rivers and wetlands¹²² – this is relevant to what happens to the streams and lake around the edges of the site; and to encourage the planting of trees¹²³:

[85] In section 4.2 (**Landscape and Visual Amenity**) of the district plan the sole objective rather blandly requires development which avoids, remedies or mitigates adverse effects on landscape and visual amenity values. There is then a string of important implementing policies which we will consider in turn later in this decision.

[86] However, we should mention the Urban Development policy¹²⁴ at this stage because it may be particularly important. It states (relevantly):

¹¹⁶ Section 4.1.4 QLDC Operative District Plan pp 4-3 and 4.4.
¹¹⁷ Policies 4.1.4/1.1 and 4.1.4/1.4 [Operative District Plan p. 4-3].
¹¹⁸ Policy 4.1.4/1.5 [Operative District Plan p. 4-3].
¹¹⁹ Policy 4.1.4/1.7 [Operative District Plan p. 4-3].
¹²⁰ Policy 4.1.4/1.11 [Operative District Plan p. 4-3].
¹²¹ Policy 4.1.4/1.13 [Operative District Plan p. 4-3].
¹²² Policy 4.1.4/1.16 [Operative District Plan p. 4-3].
¹²³ Policy 4.1.4/1.17 [Operative District Plan p. 4-3].
¹²⁴ Policy 4.2.5/6 [QLDC Operative District Plan p. 4-11].



6. Urban Development

- (a) To avoid new urban development in the outstanding natural landscapes of Wakatipu basin.
- (b) To discourage urban subdivision and development in the other outstanding natural landscapes (and features) and in the visual amenity landscapes of the district.
- (c) To avoid remedy and mitigate the adverse effects of urban subdivision and development where it does occur in the other outstanding natural landscapes of the district by:
 - maintaining the open character of those outstanding natural landscapes which are open at the date this plan becomes operative;
 - ensuring that the subdivision and development does not sprawl along roads.

Whereas new urban development is to be avoided in the outstanding natural landscape(s) of the Wakatipu Basin it is merely discouraged in the other outstanding natural landscapes of the district. Thus urban development in an outstanding natural landscape is not necessarily inappropriate, but it is inappropriate in many cases. Where urban development is allowed one would often expect a simultaneous rezoning to a residential zoning (under a plan change perhaps). But again that is not necessary. The operative district plan – we discuss the situation under PC30 shortly – contemplates the unlikely contingency of urban development in an outstanding natural landscape. Of course if that is to occur as a result of a resource consent application the development must also meet the objectives and policies in Chapter 5 (Rural Areas).

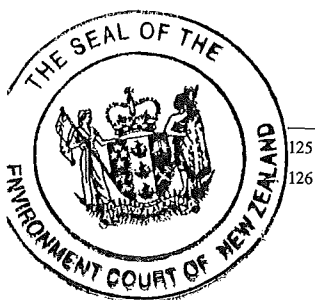
[87] The next relevant district wide issue is section 4.4 (**Open Space and Recreation**). Objective 2 requires that¹²⁵:

Objective 2 – Environmental Effects [of recreational activities]

Recreational activities and facilities undertaken in a way which avoids, remedies or mitigates significant adverse effects on the environment or on the recreation opportunities available within the District.

[88] The policies are¹²⁶:

- 2.1 To avoid, remedy or mitigate the adverse effects of commercial recreational activities on the natural character, peace and tranquillity of the District.
- 2.2 To ensure the scale and location of buildings, noise and lighting associated with recreational activities are consistent with the level of amenity anticipated in the surrounding environment.
- 2.3 To ensure the adverse effects of the development of buildings and other structures, earthworks and plantings in areas of open space or recreation on the District's outstanding natural features and landscapes or significant natural conservation values are avoided, remedied or mitigated.
- 2.4 To avoid, remedy or mitigate any adverse effects commercial recreation may have on the range of recreational activities available in the District and the quality of the experience of people partaking of these opportunities.



¹²⁵ Section 4.4.3 QLDC Operative District Plan p. 4-25.

¹²⁶ Section 4.4.3 QLDC Operative District Plan p. 4-25.

- 2.5 To ensure the development and use of open space and recreational facilities does not detract from a safe and efficient system for the movement of people and goods or the amenity of adjoining roads.
- 2.6 To maintain and enhance open space and recreational areas so as to avoid, remedy or mitigate any adverse effects on the visual amenity of the surrounding environment, including its natural, scenic and heritage values.
- 2.7 To avoid, remedy or mitigate the adverse effects of commercial recreation activities on the District's indigenous vegetation.

There is a discussion in *Just One Life Limited v Queenstown Lakes District Council*¹²⁷ about the use of the phrases "open space" and "open character" in the operative policies of the district plan. The Environment Court held that "open character" is marked by few trees and a lack of houses, whereas "open space" is marked by a lack of buildings only. We consider that is correct in the policies above and as a general proposition, but of course each objective or policy needs to be interpreted in its own specific context.

[89] Objective 3 requires¹²⁸:

Effective use and functioning of open space and recreational areas in meeting the needs of the District's residents and visitors.

[90] The most relevant implementing policy is¹²⁹:

- ...
- 3.3 To encourage and support increased use of private open space and recreational facilities in order to help meet the recreational needs of the District's residents and visitors, subject to meeting policies relating to the environmental effects of recreational activities and facilities.

[91] Objective 4 requires¹³⁰:

a level of public access to and along the District's rivers, lakes and wetlands, adequate to provide for the current and foreseeable recreational and leisure needs of residents and visitors to the District.

[92] The relevant policies are¹³¹:

- ...
- 4.5 To have regard to any adverse effects along the margins of the District's lakes, rivers and wetlands when considering resource consents.

...

 - 4.7 To consider the need for vehicle parking at public access points along esplanade reserves, esplanade strips, marginal strips and access strips when the purpose of those reserves and strips is for public access or recreation and [they] are adjacent to arterial roads.

¹²⁷ *Just One Life Limited v Queenstown Lakes District Council* Decision C163/2001, para 44.
¹²⁸ Section 4.4.3 QLDC Operative District Plan p. 4-26.
¹²⁹ Section 4.4.3 QLDC Operative District Plan p. 4-26.
¹³⁰ Section 4.4.3 QLDC Operative District Plan p. 4-26.
¹³¹ Section 4.4.3 QLDC Operative District Plan pp 4-26 – 4-27.



[93] The final relevant issue in Chapter 4 is 4.9 **Urban Growth**. That term is not defined in the operative district plan (but see our discussion of Plan Change 30 below). Objective 1 seeks growth and development consistent with the maintenance of (in particular) landscape values¹³². The most relevant implementing policy is¹³³:

To ensure new growth occurs in a form which protects the visual amenity, avoids urbanisation of land which is of outstanding landscape quality, ecologically significant, or which does not detract from the values of margins of rivers and lakes.

Obviously there is a drafting error here. We consider this is intended to read as if it were written:

To ensure new growth occurs in a form which:

- protects the visual amenity;
- avoids urbanisation of land which is of outstanding landscape quality [or] ecologically significant; ...
- does not detract from the values of lakes and rivers.

[94] The second objective relates to existing urban areas and so is not relevant. The third objective is to provide for sufficient residential growth to meet the district's needs¹³⁴. The (marginally) relevant policy is¹³⁵:

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.

The fourth objective – on business activity – is irrelevant. Urban Growth objective 5 is to enable visitor accommodation to occur while ensuring adverse effects are avoided, remedied or mitigated¹³⁶. The policies are not particularly relevant. Objective 6 relates to the Frankton Flats and is irrelevant. A new Objective 7 is proposed to be introduced by PC30 which is discussed shortly.

Chapter 5 of the district plan

[95] Objective 1 of chapter 5 (Rural Areas) states¹³⁷:

Objective 1 – Character and Landscape Value

To promote the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.

¹³² Objective (1) in 4.9.3 [District Plan p. 4-52].

¹³³ Policy 4.9.3/1.1 [District Plan p. 4-52].

¹³⁴ Objective 4.9.3/3 [District Plan p. 4-54].

¹³⁵ Policy 4.9.3/3.2 [District Plan p. 4-54].

¹³⁶ Objective 4.9.3/5 [District Plan p. 4-56].

¹³⁷ Section 5.2 QLDC Operative District Plan p. 5-2.



The relevant related policies are¹³⁸:

- 1.1 Consider fully the district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.
- 1.2 Allow for the establishment of a range of activities, which utilise the soil resource of the rural area in a sustainable manner.
- 1.3 Ensure land with potential value for rural productive activities is not compromised by the inappropriate location of other developments and buildings.
- 1.4 Ensure activities not based on the rural resources of the area occur only where the character of the rural area will not be adversely impacted.
- ...
- 1.6 Avoid, remedy or mitigate adverse effects of development on the landscape values of the District.
- 1.7 Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.
- 1.8 Avoid remedy or mitigate the adverse effects of the location of structures and water tanks on skylines, ridges, hills and prominent slopes.
- ...

[96] Rural Areas Objective 3 states¹³⁹:

Objective 3 – Rural Amenity

Avoiding, remedy or mitigating adverse effects of activities on rural amenity.

The relevant related policies are¹⁴⁰ to:

- 3.1 Recognise permitted activities in rural areas may result in effects such as noise, dust and traffic generation, which will be noticeable to residents in the rural areas.
- 3.2 Ensure a wide range of rural land uses and land management practices can be undertaken in the rural areas without increased potential for the loss of rural amenity values.
- 3.3 ... avoid, remedy or mitigate adverse effects of activities located in rural areas.
- ...
- 3.5 Ensure residential dwellings are setback from property boundaries, so as to avoid or mitigate adverse effects of activities on neighbouring properties.
- ...

3.2 Plan Change 30

[97] Plan Change 30 was notified on 19 August 2009. It seeks to manage urban growth in the district. That term is proposed to be defined in the district plan as follows:

URBAN GROWTH Means development of a type, scale or intensity that is not consistent with rural activities or characteristics, and is intended to serve as a focus for residential, commercial, business, industrial or community activities.

¹³⁸ Section 5.2 QLDC Operative District Plan pp 5-2 – 5.3.

¹³⁹ Section 5.2 QLDC Operative District Plan p. 5-4.

¹⁴⁰ Section 5.2 QLDC Operative District Plan pp 5-4 – 5.5.



It will normally have one or more of the following characteristics:

- A density of development > 2.5 dwellings or sections per hectare (sections of less than 4,000 m²)
- Building coverage of the site or lots in excess of 15%
- A concentration of over 10 adjacent dwellings, VA units¹⁴¹, building platforms or sections with common access/servicing arrangements, including reticulated infrastructure
- Generates in excess of 100 vehicle trips per day.

Urban growth includes clusters of built development within a more extensive landscape/open area.

Because PBPL's proposal includes a cluster of built development within a more extensive open area, reinforced by the facts that it includes a concentration of over ten adjacent dwellings or visitor accommodation units with common servicing arrangements, and is likely to generate 862 vehicle trips per day¹⁴², it falls within the definition of "urban growth".

[98] PC30 then proposes to add a new objective 7 and implementing policies to part 4.9.3 of the district plan as follows (relevantly):

Objective 7 Sustainable Management of Development
The scale and distribution of urban growth is effectively managed to ensure a sustainable pattern of development is achieved.

Policies

...

7.1 To establish a settlement hierarchy for the District as follows:

Area Centres

- Queenstown (including Frankton, Kelvin Heights) and
- Wanaka (including Albert Town)

Local Centres

- Arrowtown
- Lake Hayes Estate
- Hawea (including Hawea Flat)
- Luggate
- Makarora
- Glenorchy
- Kingston
- Cardrona
- Arthurs Point

7.2 To achieve 85% of the District[']s urban growth within the defined Area Centres. ...

¹⁴¹ This is surmised to be shorthand for "visitor accommodation units" : W D Whitney, evidence-in-chief para 194 [Environment Court document 38].

¹⁴² W D Whitney, evidence-in-chief para 87 [Environment Court document 38].



- 7.3 To enable the local economic, social and community needs of rural townships and communities to be met in the defined Local Centres.
- 7.4 To use Urban Boundaries to enable sustainable urban development that will meet the identified needs of the community over a twenty year time horizon to occur, and to ensure that a five year land supply is maintained to meet the short term urban growth needs of the community.
- 7.5 To use Urban Boundaries to define the spatial parameters of urban development, and indicate this on the Planning Maps. ...
- 7.6 To implement a sequential approach to land release for urban growth as follows:
 - 7.6.1 Priority will be given to the utilisation of appropriately zoned and consented land within Urban Boundaries.
 - 7.6.2 Where additional land, beyond the available capacity of current zoning and approved consents, is required for urban growth initial consideration will be given to further land release within the defined Urban Boundaries, taking into account the need to prioritise land within Inner Boundaries prior to Outer Boundaries (where they exist).
 - 7.6.3 Only in exceptional circumstances, where there is an identified need for urban growth and there is insufficient capacity available within the Urban Boundary, or the land is unsuitable for the type of development required to meet the identified need, and no suitable opportunities exist within higher order settlements will consideration be given to land release beyond the identified Urban Boundary.
 - 7.6.4 Where land is considered for urban growth outside an identified Urban Boundary priority shall be given to extending settlements with a defined Urban Boundary, subject to an assessment of the potential effects on the natural and physical resources related to the land adjacent to the Urban Boundary and the potential impact on the settlement[']s character and identity.
 - 7.6.5 Only when there is no suitable land within or adjacent to an Urban Boundary can consideration be given to other locations for urban growth.
 - 7.6.6 In considering proposals for urban growth outside Urban Boundaries Council must be satisfied that all reasonable measures have been taken to evaluate and prioritise the use of previously developed land, unless this would conflict with other objectives and policies.
- 7.7 To use effective urban design to achieve successful integration of growth areas and new development with existing settlements and adjacent areas.
- 7.8 To avoid piecemeal development that could compromise the delivery of sustainable future urban areas within defined Urban Boundaries.
- 7.9 To achieve a scale and pattern of urban growth that maintains or enhances the character and amenity of individual settlements and reinforces local identity.
- 7.10 To avoid sporadic and/or ad hoc urban growth in the rural areas of the District.
- 7.11 To take account of the following matters when defining Urban Boundaries ...

[99] Environmental Results Anticipated are proposed¹⁴³ to be added to the existing list. Relevantly these include:

- ...
- xii Successful assimilation of new development with existing settlements and rural areas.
- ...
- xv Sufficient land of a suitable quality in appropriate locations is identified to meet medium-long term development needs of the community for housing, ... development, and for ... leisure and recreation facilities.

¹⁴³ Plan Change 30 : proposed para 4.9.4.



- xvi Improved access to housing, ... health, ... leisure and community facilities, open space, sport and recreation.
- ...
- xix The character of rural areas is not eroded by the cumulative effects of urban growth and development.

Plan Change 30 also provides for a lengthy list of new assessment matters to be included in the district plan. We will consider these later in this decision.

3.3 The Regional Policy Statement

[100] The Otago Regional Policy Statement, which became operative on 1 October 1998, contains an objective¹⁴⁴ which merely repeats section 6(b) of the RMA. It does not help us make our decision.

4. Predicting the likely effects of the golf resort (including 42 houses)

4.1 Introduction

[101] It is very likely there would be a number of positive effects of the proposal. An attempt to quantify them is analysed later. Here we simply describe some of them qualitatively. For a start there will be up to 42 houses on superb north-facing sites with wonderful views over Lake Wanaka to the mountains around the lake, and some views of the lake itself. Secondly there will be a new championship standard golf course in the same setting. This will add a new course in a “world class and distinctive location”¹⁴⁵ according to Mr G D Burns, a tourism sector advisor, called by PBPL. He saw this as a significant step in the district, being the first ‘region’ in New Zealand “... to meet domestic and international visitors’ needs with sufficient international courses to enable variety of play across several adjacent courses, during a week of holiday. That will help Wanaka fill more visitor accommodation with golfers”¹⁴⁶. Apparently golf is the most important participation sport¹⁴⁷ for males between the ages of 25 and 64. Thirdly there will be a small amount of accommodation to go with the clubhouse – the “Shearers’ Quarters”.

[102] Mr J W F Helmore, the general manager of Lake Wanaka Tourism Ltd, wrote¹⁴⁸ that indirect, but significant financial benefits are likely to be realised in the local community.

[103] Quite considerable mitigation is being put forward by the applicant PBPL in the form of planting of native plants, and some control of weeds and pests. We discuss this in more detail in the context of various allegations as to adverse effects.

¹⁴⁴ Objective 5.4.3 of the Regional Policy Statement.

¹⁴⁵ G D Burns, evidence-in-chief para 8.1 [Environment Court document 9].

¹⁴⁶ G D Burns, evidence-in-chief para 7.9 [Environment Court document 9].

¹⁴⁷ R J Greenaway, evidence-in-chief para 5.1(b) [Environment Court document 5]. 20% of New Zealand males and 13% of the total population play golf.

¹⁴⁸ J W F Helmore, evidence-in-chief paragraphs 3.16 and 3.19 [Environment Court document 17].



[104] In what follows, our predictions in 4.2 on access to and use of the foreshore are final, as are our predictions on adverse effects on the landscape in part 4.3 of this decision. For reasons which we hope will become clear our predictions on water quality in 4.2 and on positive effects in 4.4 are provisional.

4.2 Alleged adverse effects

Public access to and use of the foreshore

[105] Some concerns were raised about public access along the lakeshore. Mr Darby wrote about this¹⁴⁹:

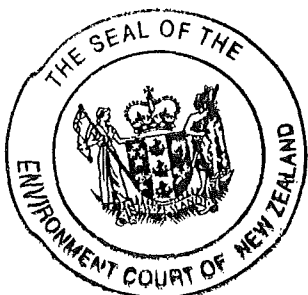
Concern was raised at the Council hearing and in the decision of Commissioner Taylor's about the defacto "privatisation" of the marginal strip and public areas. Public buildings, by their very nature, need a certain degree of exposure in order to attract the public. There is no point trying to hide the building, but celebrate its location and connection to the lake. Our experience of placing golf clubhouses along lake edges (for example both the Clubhouses at Clearwater and Jacks Point) is that they become magnets for human activity and interaction. So much so that we now relegate the pure golf functions to the back of the building, preferring the public realm components such as the restaurant and café, to be located along the lake edge. It also signals that the buildings' function is not just about golf but about providing lakeside amenity be it for people involved in active recreation or passive recreation.

The profitability of such facilities is also dependent upon public patronage, without which, such ventures are simply uneconomic. We have found that if designed correctly these buildings have a very wide public appeal ...

We accept that evidence.

[106] A related issue is whether the proposed buildings close to the lakeshore will have an adverse effect on other users. In relation to commercial recreational activities (which are discretionary), the district plan takes this sufficiently seriously to have separate assessment matters. They are¹⁵⁰ (relevantly):

- ...
- (b) any adverse effects of the proposed activity in terms of:
 - ...
 - (ii) loss of privacy or a sense of remoteness or isolation.
 - ...
- (c) The extent to which any proposed buildings will be compatible with the character of the local environment, including the scale of other buildings in the surrounding area.
- (d) The extent to which the nature and character of the activity would be compatible with the character of the surrounding environment.



¹⁴⁹ J G Darby, evidence-in-chief paragraphs 10.13 and 10.14 [Environment Court document 2].
¹⁵⁰ Rule 5.4.2.3(xv) [District Plan p. 5-35].

In Mr Kruger's opinion¹⁵¹ "The secluded, serene and tranquil effect of the beautiful Parkins Bay crescent will be compromised". We consider there is some exaggeration in Mr Kruger's opinion. Parkins Bay is one of the less remote or isolated bays around Lake Wanaka. It is separated from Glendhu Bay only by the shingle fan of the Fern Burn. Mr R J Greenaway¹⁵² described the recreational uses of Parkins Bay as including a water-skiing slalom course offshore (running northwest/southeast) from the proposed jetty site. Cross-examined, Mr Kruger and Ms Lucas conceded recreational activities take place in Parkins Bay.

[107] Further, given that Parkins Bay, with its fringe of willows and poplars, is one of the more English bays around the lake, we find that the proposed clubhouse and accommodation will not be incompatible with the character of the bay.

Water quality

[108] Concerns were raised by UCESI about water quality as a result of irrigation and/or fertiliser used on the golf course. On this issue the Wanaka Golf Club called Mr Bunting, a course manager with 16 years experience. In a trenchant heading (although one that does look a little self-interested) he wrote: "Golf courses are not an environmental nightmare"¹⁵³. He then gave evidence that around the world the public has become concerned with chemical use and groundwater quality on golf courses. He described how environmental management systems are being developed, and outlined their components¹⁵⁴. In his opinion the Parkins Bay conditions of consent are consistent with best practice¹⁵⁵. He referred to the proposals for:

- monitoring the application rate and amount of fertilisers applied to the green and fairways¹⁵⁶;
- preparation of an integrated pest management plan¹⁵⁷;
- computerised irrigation rates and flows¹⁵⁸;
- maintaining 20 metre buffer strips between the golf course and Lake Wanaka and the golf course and the Fern Burn watercourse;
- monitoring of water quality of Lake Wanaka and the Fern Burn.

[109] We agree that the proposed monitoring would be desirable if consent is to be granted, but consider the condition might need to be improved. At present it is proposed to read¹⁵⁹:

¹⁵¹ R F W Kruger, evidence-in-chief p. 72 [Environment Court document 34].
¹⁵² R J Greenaway, evidence-in-chief paragraphs 6.7 and 9.12 [Environment Court document 6].
¹⁵³ G Bunting, evidence-in-chief para 2 [Environment Court document 15].
¹⁵⁴ G Bunting, evidence-in-chief para 3 [Environment Court document 15].
¹⁵⁵ G Bunting, evidence-in-chief para 4.2 [Environment Court document 15].
¹⁵⁶ N J Rykers, evidence-in-chief Appendix D Condition 46 [Environment Court document 14].
¹⁵⁷ N J Rykers, evidence-in-chief Appendix D Condition 47 [Environment Court document 14].
¹⁵⁸ N J Rykers, evidence-in-chief Appendix D Condition 48 [Environment Court document 14].
¹⁵⁹ N J Rykers, evidence-in-chief Appendix D Condition 50 [Environment Court document 14].



Monitoring of water quality is to be undertaken every six months within Parkins Bay from the date the golf course is commissioned. Details of the sampling methods and monitoring are to be provided to the Council for review prior to the commissioning of the golf course. The details of this monitoring regime including frequency of monitoring, what contaminants will be required to be assessed, and immediate responses required if contamination is found, needs to be established to the satisfaction of Council prior to the commissioning of the golf course.

However, existing sources of water pollution from (principally) cattle faeces and (possibly) topdressing are likely to continue higher in the catchment(s) of which the site is part. We consider the monitoring will be ineffective if it cannot establish the source of any pollutants; so at the least it will need to provide for additional monitoring immediately upstream of the site.

4.3 Effects on landscape : what is the potential of the landscape to absorb development?

[110] The most useful way to assess the likely effects of the proposal in the landscape is to consider how it fares under the assessment matters in Chapter 5 of the district plan. The assessment matters for outstanding natural landscapes (district wide) are stated in section 5.4.2.2 of the district plan¹⁶⁰. We consider them in turn.

(a) Potential of the landscape to absorb development

[111] We must take into account the answer to a number of questions. The first question is:

- (i) *whether, and to what extent, the proposed development is visible from public places?*

There will be many places from which much of the development will be visible¹⁶¹. They can be divided into three sets:

- views from the surface of Lake Wanaka;
- views from Mt Aspiring Road;
- views from walking tracks or reserves in the area.

[112] To understand the effect on views we need to describe first the way in which PBPL proposes to develop the house sites. Mr Darby wrote that¹⁶²:

Each building will eventually be contained in a separate title with approximately 14% to 20% of the area comprised of the curtilage area which will contain the residence, garage, a swimming pool (for selected sites) patio features entrance drive and vehicle manoeuvring area. The design of these components is already in place, with specific plans for each house site. This is to reduce visibility of domestic elements around the units. These areas will be covenanted to ensure that

¹⁶⁰ Section 5.4.2.2 QLDC Operative District Plan p. 5-26 to 5-30.

¹⁶¹ D J Lucas, evidence-in-chief para 117 [Environment Court document 29].

¹⁶² J G Darby, supplementary evidence attachment 'A' para 10.31 [Environment Court document 2A].



the only building alterations permitted are those approved by resource consent. The area will also be covenanted to ensure that planting within this area will be limited to indigenous species.

[113] As for the remainder of each potential house title he explained that¹⁶³:

A covenant will also be offered over the remaining 75% to 86% of each house site lot protecting the areas of open space, preventing the modification of existing and proposed revegetation plantings ensuring that they are maintained in perpetuity.

Dr Steven relied on that revegetation and the “geomorphic” architecture to diminish the visibility of the development¹⁶⁴.

Views from the lake

[114] It is likely that the proposed housing development will be visible from the southern arm of Lake Wanaka. However, from outside Parkins Bay the houses will be over one kilometre away. Further, while Mr Kruger may be correct that some roofs will be visible it must be borne in mind that these will not be conventional roofs but will be flat and covered in vegetation. We also predict that the signs of development (especially the golf clubhouse) and signs of activity will be obvious but discreet when viewed from the lake. In making that prediction we rely in part on Dr Steven’s evidence and in part on the Truescape simulation from photopoint 3¹⁶⁵. We accept that in real life the proposed buildings will be about twice as obvious as they are in the photosimulation. But even so the dark, ‘recessive’ colours of the clubhouse and Shearers’ Quarters and the long, low lines of the buildings – mimicking in much smaller scale the terrace lines above – will not be highly visible, except close to shore.

[115] We also bear in mind the practical consideration that for many days in the year there are unlikely to be any observers from the lake. The surface of the lake will be too cold or windy (and/or dangerous) a place to tempt people out in boats.

Views from roads

[116] As for views from roads, in what follows it is useful to consider the view from Glendhu Bluff as shown in several of the photographs and/or simulations of the witnesses¹⁶⁶.

[117] Mr Kruger considered that the site is¹⁶⁷ “... broadly visible from a number of viewpoints on land ...”. As an example he identified that the following components of the proposal will be seen from “near” Glendhu Bluff¹⁶⁸ at the same time:

¹⁶³ J G Darby, supplementary evidence attachment ‘A’ para 10.32 [Environment Court document 2A].

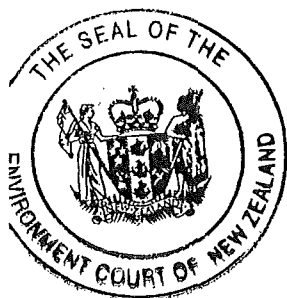
¹⁶⁴ M L Steven, evidence-in-chief Appendix B p. 3 [Environment Court document 36].

¹⁶⁵ R J Maunder, evidence-in-chief photopoint 3 [Environment Court document 10].

¹⁶⁶ R J Maunder, evidence-in-chief attachments photopoint 2 [Environment Court document 10]; D J Lucas, evidence-in-chief attachment 31 [Environment Court document 29]; and M L Steven, evidence-in-chief Figure 11 [Environment Court document 36].

¹⁶⁷ R F W Kruger, evidence-in-chief para 228 [Environment Court document 34].

¹⁶⁸ R F W Kruger, evidence-in-chief para 228 [Environment Court document 34].



- clubhouse, access and carparks
- jetty
- “Shearer’s Quarters”
- Visitors’ accommodation
- at least the roofs of houses 1, 3, 4, 5
- parts of houses 45, 46, 47, 27, 28, 30, 40, 41, 21, 22, 24, 17
- some access roading
- parts of maintenance building
- parts of golf course holes 1, 3, 4, 5, 18, 12 (possibly more)
- driving range
- human activity such as vehicle manoeuvring, parking, golf carts, etc.

He concluded that¹⁶⁹:

Because this is not the only point from where such an experience can be had, in my view, this makes the development as a whole highly to extremely visible.

[118] From the Mt Aspiring Road we consider the housing will be barely visible from the road as one drives west. Even when close to, for example after crossing the Fern Burn Bridge and turning into a short straight through (if the proposal is successful) the golf course, the houses will be difficult to see¹⁷⁰.

[119] While the golf course itself is a development we consider it is as ‘legitimate’¹⁷¹ as other rural activities in this context and given the proposed design which uses poplars, some other exotic species on the lake side of the road and mainly native plant species on the other. The fairways and greens will of course be exotic grasses, but they merely replace cultivated fields containing the same grasses.

[120] There is only one set of views from roads which concerns us: it is the two views from Mt Aspiring Road as a vehicle is returning around Glendhu Bluff, that is travelling towards Wanaka. There are two places to park and look southwest. The first necessitates a short walk from the vehicle, and the second is in a small formed bay above the western end of Parkins Bay¹⁷². From here the occupants of a car would be looking south through east. Several fairways and greens on the golf course are likely to be visible as are people on the course, vehicles and some of the houses. We consider the effects of these views below.



¹⁶⁹ R F W Kruger, evidence-in-chief para 228 [Environment Court document 34].
¹⁷⁰ R J Maunder, Photosimulation 1 [Environment Court document 10].
¹⁷¹ See rural policy 5.2/1.2 [District Plan p. 5-2].
¹⁷² See R J Maunder, photosimulation 2 [Environment Court document 10].

Views from tracks

[121] Mr Kruger seemed to accept¹⁷³ that views from more than 2.5 kilometres distance will not be significantly affected. With one exception (Glendhu Bluff), we find that all views from public tracks and places (for example above Diamond Lake and from the Mt Roy track) are sufficiently far away and above the site that the proposed development would not be likely to be visually prominent.

[122] Since the proposed development would be visible from public places, we next have to consider:

- (ii) *whether the proposed development is likely to be visually prominent to the extent that it dominates or detracts from views otherwise characterised by natural landscapes.*

In Ms Lucas' view the lake shore buildings and jetty would be "... particularly visually prominent and detract [from] and dominate views of and within Parkins Bay"¹⁷⁴. Mr Kruger was clearly of the same opinion. In Mr Kruger's opinion¹⁷⁵ the effects of the proposal on the landscape have been "significantly understated". He wrote that¹⁷⁶ "... human senses detect anomalies easily. Particularly, if the mind of the viewer is "programmed" on a natural experience as it would be in this environment." He was particularly concerned with the effect of the clubhouse and Shearers' Quarters on users (e.g. picnickers) of the Parkins Bay beach¹⁷⁷.

[123] We accept that for people on the beach in the vicinity of the proposed jetty (out from the clubhouse), the buildings will dominate a view of an otherwise natural landscape. However, in the particular circumstances of this case we consider that is a relatively minor factor for two reasons. First, the evidence is that the McRae family erect a marquee close to the jetty-site most summers, so the natural experience is reduced to a considerable extent in the existing environment anyway; and secondly the proposed development should improve the picnicking opportunities along the remainder of the Parkins Bay foreshore compared with the current situation. This is a design factor which PBPL would need to revisit (if we grant consent) when designing lakeside planting.

[124] As for views of the houses and associated signs of domesticity including golfing activities, a subsidiary issue arises which is whether the proposed mounding and screening of houses will work. In a number of cases in the district the Environment Court has expressed doubts about the viability of such schemes. In *Hillend*¹⁷⁸ the

¹⁷³ R F W Kruger, evidence-in-chief para 228 (pp 62 et ff) [Environment Court document 34].

¹⁷⁴ D J Lucas, evidence-in-chief para 118 [Environment Court document 29].

¹⁷⁵ R F W Kruger, evidence-in-chief p. 63 [Environment Court document 34].

¹⁷⁶ R F W Kruger, evidence-in-chief p. 64 [Environment Court document 34].

¹⁷⁷ R F W Kruger, evidence-in-chief p. 64 [Environment Court document 34].

¹⁷⁸ *Hillend UCESI v Queenstown Lakes District Council* Decision W88/2006 (Kenderdine EJ presiding).



Environment Court concluded the presence of screening vegetation cannot necessarily be relied on to make an inappropriate site an appropriate one. The Court wrote¹⁷⁹:

Even if converted to Kanuka forest, the buildings are going to be visible because people will want to keep views outwards over the Wanaka Basin and the buildings and their platforms will domesticate the landscape at a critical juncture. To close off such vistas with future screening we consider is an unreasonable condition to impose in this location.

[125] Similarly in *Infinity Group v Queenstown Lakes District Council*¹⁸⁰, when discussing the place of vegetation as an aid for hiding or screening development, the Court stated¹⁸¹:

... vegetation can hide or at least soften the view of development, but hiding developing, or softening its appearance, does not excuse for providing for development that should not have been provided for in an ONL or a VAL where it would not have potential to absorb change without detracting from landscape and visual values.

Further, we do not have confidence that district plan requirements for retaining vegetation will necessarily be effective in the long term. As well as being vulnerable to fire, disease and natural mortality, the continued life of vegetation may depend on the extent to which it is perceived to obstruct valued views.

[126] In this case the temptation to change the landscaping will not be so great. Desirable views of the lake are not going to be completely obscured: it was Mr Darby's evidence¹⁸² that all of the proposed 42 houses would have views of the lake : "... some wide and broad, some have framed glimpses, and some are only available when standing"¹⁸³. We must bear in mind too that the lake is only a part of the substantial landscape that occupants would have otherwise unimpeded views of. Mr Darby also gave evidence¹⁸⁴ that similar developments such as Millbrook, Clearwater and Jacks Point do not have problems with occupiers reshaping mounding. On that basis we find it unlikely that occupiers would take it into their hands to remove screening, vegetation or mounding provided there are covenants or other legal mechanisms on the titles to the property forbidding such actions.

[127] On whether the proposed development is likely to be visually prominent in this (and other) views Dr Steven wrote¹⁸⁵:

The horizontal and vertical scale of the landscape is such that the proposed development will neither dominate nor detract from views otherwise characterised by natural landscapes. The strongly dominant, vertical elements of the surrounding mountain ranges (e.g., Roys Peak) and

¹⁷⁹ *Hillend UCESI v Queenstown Lakes District Council* Decision W88/2006 at para [228].

¹⁸⁰ *Infinity Group v Queenstown Lakes District Council* Decision C10/2005 (Sheppard E J presiding).

¹⁸¹ *Infinity Group v Queenstown Lakes District Council* Decision C10/2005 at paragraphs 149 and 150 (Sheppard EJ presiding).

¹⁸² J G Darby, supplementary evidence attachment 'A' para 10.26 [Environment Court document 2A].

¹⁸³ J G Darby, supplementary evidence attachment 'A' para 10.28 [Environment Court document 2A].

¹⁸⁴ J G Darby, rebuttal evidence para 2.9 [Environment Court document 2B].

¹⁸⁵ M L Steven, evidence-in-chief Appendix B p. 3 [Environment Court document 36].



the vistas across Lake Wanaka are the dominant visual features of the landscape at whatever scale it is considered, and the characteristics and qualities of mountains and lake will remain unaffected by the proposed development.

Ms Neal was of the opposite view¹⁸⁶, considering that the entire development would dominate and detract from views of the natural landscape. For his part, Mr Kruger considered that the natural character of the landscape is high and that it will be adversely affected. He was critical¹⁸⁷ of Dr Steven's assessment that the proposal will not have any adverse effects "... due to the scale of the natural environment".

[128] From further out in Parkins Bay we consider that Dr Steven's point is correct : the scale of the outstanding natural landscape has the effect that the proposal does not dominate the landscape. On the issue whether the proposed development is likely to be visually prominent we consider Dr Steven's point of view is closer to the likely real outcome, even if it is overstated when he says the landscape(s) will be "unaffected". While we found earlier that the site is part of an outstanding natural landscape, we qualified that by pointing out that the extensive outstanding natural landscape contains a large area of relatively flat topography either side of the Fern Burn that is of significantly different character from the rest of the outstanding natural landscape. Not only is that land flat but its vegetation patterns are more artificial – there are shelter belts of exotic conifers and topdressed paddocks of short green grass. Further, it contains more fence lines and buildings, especially houses. In other words, there is an area on either side of the lower Fern Burn which is too small in the context of the surrounding mountains to be a landscape itself, but which is less natural than the rest of its embedding landscape. Consequently, that is more able to accommodate some houses and other development without that development so changing the character of the area as to dominate views.

[129] Next, as discussed above, the proposed screening relies on both earthworks and planting. That raises two questions which we consider in the assessment sequence. First:

- (iii) *whether any mitigation or earthworks and/or planting associated with the proposed development will detract from existing natural patterns and processes within the site and surrounding landscape or otherwise adversely effect the natural landscape character.*

Mr Darby explained that¹⁸⁸

[These] areas outside the curtilage area, once established, will require minimal maintenance. The maintenance will be managed by a Parkins Bay Residents and Owners Association (or

¹⁸⁶

K Neal, report para 149 [Environment Court document 31].

¹⁸⁷

R F W Kruger, evidence-in-chief p. 64 [Environment Court document 34].

¹⁸⁸

J G Darby, supplementary evidence Attachment 'A' paragraphs 10.33 and 10.34 [Environment Court document 2A].



similar body) who will contract that work out, once the original re-vegetation maintenance contract has terminated.

Similar strict design guidelines and covenants have been put in place at Clearwater Resort and Jacks Point. It has been our experience that people who buy into projects like Clearwater Resort or Jacks Point, adhere to these strict design guidelines or covenants placed upon them. In fact, the covenants are often the reason they bought in the first place.

[130] Dr Steven considered, and we accept, that the proposed mitigation planting is desirable. Of course the success of the proposal would depend on the success of the revegetation and Mr Kruger questioned that¹⁸⁹. However, we accept the evidence of Mr Baker¹⁹⁰ – who has carried out successful revegetation on the other golf courses designed by Mr Darby – that the planting regime proposed is likely to work here too.

[131] As for earthworks, regrettably the issue was not addressed at all by Mr Scott for the applicant or by Dr Steven for the Council. Mr Kruger considered that earthworks of, on his calculation, up to 300,000 m³ over an area of 40 hectares will¹⁹¹ “... seriously and adversely affect [the] natural character of the site and surrounding landscape”. His reason was that the earthworks would introduce inappropriate landform elements. We find it difficult to accept Mr Kruger’s reasoning and conclusion, even though Ms Lucas came to a similar conclusion¹⁹². We accept the evidence of Mr Darby that the proposal is carefully designed to fit in with the topography as far as possible. We have already described how the morainic terrace where most of the houses are to be located is lumpy. Bulldozing the morainic bumps around and creating new mounds to the extent proposed is not likely to change perceptions of this landscape¹⁹³.

[132] The next assessment matter is:

- (iv) *whether, with respect to subdivision, any new boundaries are likely to give rise to planting, fencing or other land use patterns which appear unrelated to the natural line and form of the landscape; wherever possible with allowance for practical considerations, boundaries should reflect underlying natural patterns such as topographical boundaries.*

To ensure that unsightly fencing does not occur it is proposed to prohibit this. Mr Christensen produced a copy of a consent notice¹⁹⁴ for Jacks Point and described its effects as being¹⁹⁵:

¹⁸⁹ R F W Kruger, evidence-in-chief p. 64 [Environment Court document 34].

¹⁹⁰ J S Baker, evidence-in-chief para 16 [Environment Court document 7].

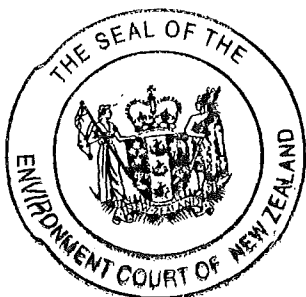
¹⁹¹ R F W Kruger, evidence-in-chief p. 64 [Environment Court document 34].

¹⁹² D J Lucas, evidence-in-chief para 119 [Environment Court document 29].

¹⁹³ This is our assessment under rule 5.4.2.3(xxviii) Earthworks also.
7017246.4.

¹⁹⁴ M Christensen, closing submissions para 2.9 [Environment Court document 39].

¹⁹⁵



The fencing controls at Jacks Point are enforced by way of Consent Notice registered on the certificate of title for each lot which provides that all ‘building and landscaping, including fencing shall be undertaken in accordance with, the “Preserve Guidelines” approved by Council ...[.]’¹⁹⁶.

He continued¹⁹⁷:

At Parkins Bay, it is proposed that a covenant be registered on the certificate of title prohibiting the fencing of the individual house-sites¹⁹⁸, and within the curtilage area of each house-site, no fencing in excess of 0.75m in height is prohibited except as required under the fencing of Swimming Pools Act 1987¹⁹⁹.

[133] In general we accept Dr Steven’s evidence²⁰⁰, the patterns of development will ‘reflect’ underlying landforms “... with the golf course being largely confined to the flats, while the [houses] are confined to the higher terraces”. However, we consider the boundaries between the site and the remainder of the station are slightly problematic. The southern and western boundaries of the site run along contours (which is no bad thing in itself) and across stream catchments. It is the latter point that concerns us. While we can see that the McRae family would wish to retain as much of the station as possible, keeping the head of the catchments in Glendhu Station may cause new land use patterns although we doubt if this is likely to be more than minor in landscape terms. More importantly, retaining stock in the headwaters of the minor streams would possibly continue any adverse ecological effects (we may need to hear evidence about that) and would probably make the water monitoring conditions²⁰¹ otiose. As we observed earlier, if the source of any pollution cannot be identified as between the farm and the golf course it would be difficult to act on improving the catchment.

[134] We were surprised not to receive any evidence from Mr Scott, for PBPL, on this issue since our understanding is that a fundamental tenet of his approach to landscape management in the past has been that landscapes should be managed under “catchment management principles” : see *Lyttle and others v Auckland City Council*²⁰²; *Russell Protection Society Incorporated v The Far North District Council*²⁰³; also *Robinson and others v Waitakere City Council*²⁰⁴.

[135] The next two assessment matters require identification of (respectively):

¹⁹⁶ Consent Notice 7017246.4 condition (a) [Environment Court document 39 Appendix B].

¹⁹⁷ M Christensen, closing submissions para 2.10 [Environment Court document 39].

¹⁹⁸ Condition 62 of the Conditions of Consent [Environment Court document 39.1 Appendix F].

¹⁹⁹ Condition 42(o) [Environment Court document 39.1].

²⁰⁰ M L Steven, evidence-in-chief Appendix B p. 3 [Environment Court document 36].

²⁰¹ QLDC proposed condition 50.

²⁰² *Lyttle and others v Auckland City Council* Decision A143/1998 at foot of p. 9.

²⁰³ *Russell Protection Society Incorporated v The Far North District Council* Decision A125/1998 at para 24.

²⁰⁴ *P and J Robinson and others v Waitakere City Council* Decision A155/2006 and subsequent decisions in the proceedings.



- (v) *whether the site includes any indigenous ecosystems, wildlife habitats, wetlands, significant geological or geomorphologic features or is otherwise an integral part of the same; and*
- (vi) *whether and to what extent the proposed activity will have an adverse effect on any of the ecosystems or features identified in (v).*

It is common ground that the site contains little indigenous vegetation²⁰⁵. We find that the proposal if implemented is likely, with appropriate conditions, to have an overall strongly beneficial effect on indigenous ecosystems on the site.

[136] As for effects on the geomorphologic features, Dr Steven wrote that the development would avoid the landforms of the glacially scoured rocky hills west of the site, and instead would be confined to areas of farmland. In our opinion that rather misses the point which is that the site comprises flats and morainic/fluvial terraces which will be affected. However, we consider that the adverse effects will be relatively small. The 300,000 m³ of earthworks contemplated by Mr Kruger is very small compared with the natural bulldozing by the (long-melted) glaciers.

[137] Dr Steven did not consider the effects of the proposal on the integrity of the wider glacial/riverine landform. In contrast, Mr Kruger considered²⁰⁶ that the earthworks, buildings and roads will compromise the integrity²⁰⁷ of the wider area. Again this raises a question of scale. Given the huge scale of glacial activity in this landscape we consider the integrity of the landforms will not be adversely affected sufficiently to cause concern.

[138] The final assessment matter under this heading is:

- (vii) *whether the proposed activity introduces exotic species with the potential to spread and naturalise.*

It is common ground that it does not²⁰⁸.

(b) Effects on openness of landscape

[139] We must take into account a number of matters relating to effects on the openness of the landscape. The first is (relevantly)²⁰⁹:

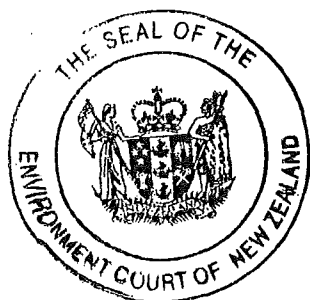
²⁰⁵ J Roper-Lindsay, evidence-in-chief para 4.23 [Environment Court document 4]; R F W Kruger, evidence-in-chief p. 65 [Environment Court document 34].

²⁰⁶ R F W Kruger, evidence-in-chief p. 65 [Environment Court document 34].

²⁰⁷ R F W Kruger, evidence-in-chief p. 65 [Environment Court document 34].

²⁰⁸ R F W Kruger, evidence-in-chief p. 65 [Environment Court document 34].

²⁰⁹ The assessment matter goes on to consider developments in the vicinity of unformed legal roads : there are none relevant to these proceedings.



- (i) *whether and the extent to which the proposed development will be within a broadly visible expanse of open landscape when viewed from any public road or public place ...*

Dr Steven considered²¹⁰ the site is within such an expanse, and in the opinions of Mr Kruger²¹¹ and Ms Neal²¹², the site contains open broadly visible slopes, and flats completely open to the lake. We find that the proposal is within a broadly visible expanse of open landscape.

[140] Next we must assess and then take into account:

- (ii) *whether, and the extent to which, the proposed development is likely to adversely affect open space values with respect to the site and surrounding landscape?*

Dr Steven observed that golf courses are normally regarded as open space²¹³, and as for the residences in the scale of the landscape (by which he meant his 'project scale landscape) their effects will "... be of no consequence"²¹⁴.

[141] At this point we interpolate consideration of another relevant set of assessment criteria. They are for 'residential units' as a discretionary or non-complying activity in the Rural General zone. The matters to be assessed are²¹⁵:

- (a) The extent to which the residential activity maintains and enhances:
- (i) rural character.
 - (ii) landscape values.
 - (iv) visual amenity.
- ...
- (d) The extent to which the location of the residential unit and associated earthworks, access and landscaping, affects the line and form of the landscape with special regard to skylines, ridges, hills and prominent slopes.
- ...
- (e) Whether the bulk, design, external appearance and overall form of the residential unit is appropriate within the rural context.

Mr Kruger considered that none of the specified values will be maintained or enhanced. We find that the rural character will be reduced (slightly). It is difficult to introduce 42 houses and a golf course without affecting that character to some extent. However, we find it likely that PBPL's mitigation measures will reduce the change in rural character to a marked degree. We also predict that the landscapes values of the area will change

²¹⁰ M L Steven, evidence-in-chief Appendix B p. 4 [Environment Court document 36].

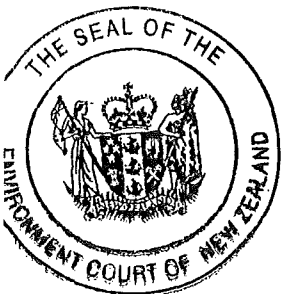
²¹¹ M L Steven, evidence-in-chief Appendix B p. 4 [Environment Court document 36]; R F W Kruger, evidence-in-chief p. 66 [Environment Court document 34].

²¹² K Neal, evidence-in-chief para 126 [Environment Court document 31].

²¹³ M L Steven, evidence-in-chief Appendix B p. 4 [Environment Court document 36].

²¹⁴ M L Steven, evidence-in-chief Appendix B p. 4 [Environment Court document 36].

²¹⁵ Rule 5.4.2.3(xxvii) (Residential Units) [District Plan p. 5-39].



but not adversely. The embedding landscape will not be affected greatly because the site's visual amenity will be changed, but in many ways for the better. There will be a much larger area of native plants on the site, and the number of weeds will be reduced. We consider this further under the heading of environmental compensation below.

[142] As for encroaching on the skyline, we consider any infringement by proposed houses is likely to be minor. Secondly we are not concerned with the visibility of the golf clubhouse from the lake as boats approach it. In the overall scale of the lake this is a miniscule effect, and may not even be adverse.

[143] Mr Kruger was concerned that the overall scale of the proposal is "... completely out of character with the surrounding environment"²¹⁶. We agree that the proposed development would change the site. However, the proposed buildings have been carefully designed to fit into the land so we accept that (in general) in this very large landscape, the proposed houses and their layout will not be inappropriate on the site in terms of these rural assessment matters.

[144] Returning to the assessment criterion concerned with adverse effects on the open space values of the site and its surrounds, we note Mr Kruger's comments²¹⁷:

What is broadly visible open space – from the distance and from close proximity – will be modified by a "thick layer" of human activity and land pattern change. These human elements will be widely perceivable and will give rise to significant adverse effects on open space values on the site and the surrounding landscape.

Again, the Applicant's landscape team makes a statement demonstrating that the sense of scale has been lost in the course of preparing this development:

*"The visual diversity of the rocky moraine and ice sculptured feature is very high and openness of the site will not be compromised by the proposed low rise, small scale built form [of the visitor accommodation residence[s] ..."*²¹⁸

I agree – one "low rise, small scale built form" will not compromise this landscape if sited very carefully – but 42 "low rise, small scale built forms" will!

I also refuse to accept that the "... *Shearer's Quarters are going to be situated in an unobtrusive location away from the lake foreshore ...*"²¹⁹. Standing on the beach, these proposed apartments are neither situated in an unobtrusive location, nor are they any significant distance away from the foreshore.

While we respect Mr Kruger's opinions we consider that he is perhaps overstating the potential adverse effects on open space. We consider the design of the houses and the location on morainic terraces means that they will be unlikely to compromise the overall



²¹⁶ R F W Kruger, evidence-in-chief p. 73 [Environment Court document 34].

²¹⁷ R F W Kruger, evidence-in-chief p. 67 [Environment Court document 34].

²¹⁸ Boffa Miskell Glendhu/Parkins Bay Landscape Assessment p. 41.

²¹⁹ Boffa Miskell Glendhu/Parkins Bay Landscape Assessment p. 41.

outstanding natural landscape in which they are embedded given the very handsome dimensions of that landscape and the extent to which the houses will be concealed.

[145] In the opinion of Ms Neal²²⁰ the effect of the proposal would be to break up the “perceived visual continuity of the overall landscape into smaller units”. We do not accept that: the underlying landscape unit – the lakeside flat and sloping morainic/alluvial “terraces” will remain; only the ground cover will change. But that ground cover is merely changing from rough pasture to a golf course (lower down) and houses with extensive restoration planting (slightly higher). There is a contrast, as Dr Steven pointed out, between the introduced grasses on the site, and the much greater percentage of native grasses on Glendhu Hill above the site. Further, we can see some merit in Dr Steven’s observation that contrast can be, and in this context is, desirable. If we enlarge the scale of the landscape to that which we have decided is appropriate : the outstanding natural landscape approximately defined by the surrounding horizon of mountains as viewed from Glendhu and Parkins Bays, we judge that the effects of the golf course and buildings will have less than a major impact on open space values.

[146] Finally, as the converse to (i) above under this heading, we must examine:

(iii) *whether the proposed development is defined by natural elements such as topography and/or vegetation which may contain any adverse effects associated with the development.*

The landscape witnesses were opposed on this criterion too. Dr Steven relied on the ‘rolling, hummocky terrain’²²¹ to contain the proposed houses and limit visibility. He also referred to the proposed ecological restriction as assisting that. In Mr Kruger’s opinion²²²:

The proposed development as a whole is neither defined by topography nor by vegetation. Some individual locations within the site have such characteristics and adverse effects of a very small-scale development in one of those locations could potentially be contained by topography and/or vegetation. For the development as a whole this is not the case.

Dr Steven again misses the point. This assessment matter does not ask whether mitigation is possible by means of any “*proposed ecological restoration*” – it simply requires the assessment of existing features’ ability to contain adverse effects.

We agree with Mr Kruger’s second point in that Dr Steven is overstating the case here. However, on the issue of visual containment of houses on the site we tend to prefer Dr Steven’s evidence: on that point it is Mr Kruger who is overstating the position. Our site visit confirmed that the upper levels of the site are complex topographically and



²²⁰ K Neal, Report 1 August 2009 para 129 [Environment Court document 31].

²²¹ M L Steven, evidence-in-chief Appendix B p. 4 [Environment Court document 36].

²²² R F W Kruger, evidence-in-chief p. 67 [Environment Court document 34].

there is considerable potential for locating buildings to reduce views of them from the road and the lake.

(c) Cumulative effects on landscape values

[147] In considering whether there are likely to be any adverse cumulative effects as a result of the proposed development, we must take the following matters into account. First is:

- (i) *whether, and to what extent, the proposed development will result in the introduction of elements which are inconsistent with the natural character of the site and surrounding landscape; and*
- (ii) *whether the elements identified in (i) above will further compromise the existing natural character of the landscape either visually or ecologically by exacerbating existing and potential adverse effects.*

Dr Steven assessed²²³ the proposed golf course as not inconsistent with the existing agricultural land use of the Fern Burn flats; as for the proposed 42 houses he acknowledged these would add ‘cultural elements’ to the landscape but that this would be ‘balanced’ by the restoration planting.

[148] In Mr Kruger’s opinion²²⁴:

The total equates to an estimated “domesticating footprint” of 33ha over a total site area of 180ha – or an equivalent of more than 17% of the site.

All these elements – together with the activities generated by them and the movement of people and vehicles – are inconsistent with the embedding landscape. Consequentially, the existing natural character will be compromised significantly.

We consider that Mr Kruger over-estimates the area, if not the intensity, of domestication. His calculation of the domesticated footprint appears to assume that each house site is wholly given over to active use for household activities. On our understanding of Mr Darby’s evidence that is not intended. We have already quoted the latter’s evidence to the effect that over 75% of each house site will be protected as (re)vegetated area of open space. Further, PBPL is entitled to have the application considered in the context of Glendhu Station as a whole. What concerns us about Mr Kruger’s second statement generally is that it fails to recognise that while the site is within an outstanding natural landscape, it is also within a lower and comparatively small part of that landscape with different (and somewhat lesser) qualities of naturalness due mainly to the non-native vegetation (grass, weeds and exotic trees) which denote the site.

²²³

M L Steven, evidence-in-chief Appendix B p. 5 [Environment Court document 36].

²²⁴

R F W Kruger, evidence-in-chief p. 68 [Environment Court document 34].



[149] Mr Kruger continued²²⁵:

The following statement in the Applicant's landscape assessment report creates a high level of anxiety with respect to the approach taken by the Applicant's landscape team:

"The natural character of the Glendhu Bay area has been modified by its pastoral land use and associated buildings. Native vegetation has been removed from much of the surrounding Glendhu Bay area. The proposed development will form part of this modified environment and will have no effect on the natural character of the wider ONL to the south."

With respect – in my opinion, this statement is rather outrageous and unprofessional. Any development of this magnitude, covering an area of around 33ha on a 180ha site within an ONL cannot "*form part of this environment*" and will have significant "effect on the ONL".

Dr Steven significantly downplays. He simply finds that the reduction in naturalness by the modifications is offset by the ecological restoration and also opines that the golf course is consistent with the natural environment because it does not greatly differ from farmland.

He was cross-examined on his allegation of a lack of professionalism in the AEE by Mr Christensen²²⁶ who asked:

Q Do you stand by that word?

A I do, yes I do.

Mr Christensen later relied on Mr Kruger's evidence and that exchange (amongst other examples) as a basis for saying that Mr Kruger's evidence was subjective and should not be relied on. Mr Kruger's language is stronger than is helpful. But we agree that for the AEE to describe the proposed 42 houses, even given the careful siting and design as having no effect, is quite remarkable. Further, as we shall see, Dr Steven takes the same extreme view as the AEE, and as the passage quoted by Mr Kruger shows, he has taken set-offs or environmental compensation into account at a point where it is not contemplated in the assessment criteria. Further, we have commented before that 'objectivity' is a difficult concept in the context of a subject as inherently subjective as landscape. We value the reasons given for, and coherence of landscape, evidence rather more highly than 'apparent' objectivity.

[150] A key question is the next assessment matter:

(iii) *whether existing development and/or land use represents a threshold with respect to the site's ability to absorb further change?*



²²⁵ R F W Kruger, evidence-in-chief p. 68 [Environment Court document 34].
²²⁶ Transcript p. 554 line 10 [2 March 2010 at 4.55 pm].

Dr Steven did not consider this precise matter, but answered more generally about cumulative effects. Mr Kruger's view was that²²⁷:

The very limited [ability] of this site and the embedding landscape to absorb development creates a threshold at quite [a] low level. Each addition of further proposed development breaches this threshold.

We do not agree : based on the visual absorption capacity figures produced by Mr Darby²²⁸, the assessment of "Ability to absorb change" in the Boffa Miskell Study²²⁹ and our assessment of the photographs produced by many of the witnesses, we think that Glendhu Station has not yet reached a threshold for development, although clearly that part of it to the north of Mt Aspiring Road is very close to a threshold given its flatter nature, and visibility from the road and the lake.

[151] Finally:

(iv) where development has occurred or there is potential for development to occur (ie. existing resource consent or zoning), whether further development is likely to lead to further degradation of natural values or inappropriate domestication of the landscape or feature.

Dr Steven had rather a polemical answer to this²³⁰:

The words "whether further development is likely to lead to further degradation of natural values" carries with it the inference that existing agricultural and recreational development has already degraded "natural values" (whatever they are). I do not accept that this is the case.

The ONL landscape itself will not be subject to any domesticating developments or influences, particularly influences that will adversely effect the naturalness of the ONL.

First, the words in brackets and the following sentence are inconsistent: if Dr Steven does not know what the natural values are he cannot know whether or not they have been degraded. Secondly, we find that it is nearly certain that there will be an increase in domesticating elements in the landscape (houses/cars/people), if the proposal proceeds. The questions really are how much and whether it is inappropriate. But to say there will not be any domestication is clearly wrong given that at this point Dr Steven is considering the site and the proposal as being in an outstanding natural landscape.

²²⁷ R F W Kruger, evidence-in-chief p. 68 [Environment Court document 34].

²²⁸ J G Darby, supplementary evidence : Attached evidence of R B Thomson, Appendix B, Attachment 5 Initial Visibility Analysis Plan and Attachment 6 Potential to Absorb Change [Environment Court document 2A].

²²⁹ N L Rykers, evidence-in-chief Appendix B p. 32 [Environment Court document 14].

²³⁰ M L Steven, evidence-in-chief Appendix B p. 6 [Environment Court document 36].



[152] In Mr Kruger's view "... this development has significantly overstepped the mark in respect to creating a threshold". We do not consider that is the case in respect of the golf course. In respect of the 42 houses the proposal comes close to exceeding a threshold, but may not if an appropriate set of conditions and covenants is imposed.

Other assessment criteria in respect of landscape

[153] Other assessment matters actually occur in a different part²³¹ of the district plan. For convenience we deal with them here. Mr Kruger pointed out²³² we need to consider the effect of buildings on skylines, ridges, hills and prominent slopes. In his opinion the proposed houses will be on a prominent slope, and the clubhouse will, when viewed from the lake, break the skyline. None of the other landscape witnesses considered this in their evidence-in-chief.

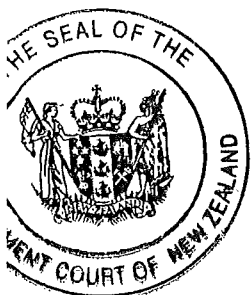
[154] Another criterion²³³ requires assessment of whether the external appearance of buildings is appropriate. There was no criticism by any witness of any of the buildings' appearance except by Mr Kruger who took exception²³⁴ to the "Shearer's Quarters" accommodation block near the clubhouse but further northwest along the shore of Parkins Bay. Mr Kruger's objection was that "the architecture is based on pretending to be of rural or high-country-station type but of course it is not". We agree that the name is rather affected but we find Mr Wyatt's design to be unexceptionable. For a start there is a long and quite honourable tradition of disguising the function of buildings. We think for example of the whitestone banks in Oamaru masquerading as Greek temples; or in Queenstown the boat-shed appearance of Steamers Wharf. Those buildings (also, we think, designed by Mr Wyatt) are generally regarded as successful. In the context of this proposal we are not quite so concerned about "facadism" as the court was in *Scurr v Queenstown Lakes District Court*²³⁵, because the proposed "Shearers' Quarters" are more a false name than a false building. We consider their relatively small scale and lack of a monolithic shape are appropriate in this location regardless of the name.

4.4 Positive effects

[155] The final assessment matter is to take into account any positive effects associated with the proposed development and mitigating matters. Some are specifically listed:

- (i) *whether the proposed activity will protect, maintain or enhance any of the ecosystems or features identified ... above;*
- (ii) *whether the proposed activity provides for the retention and/or re-establishment of native vegetation and their appropriate management;*

²³¹ Part 5.4.2.3 [District Plan p. 5-32].
²³² R F W Kruger, evidence-in-chief para 229 [Environment Court document 34].
²³³ 5.4.2.3(iv)(b) [District Plan p. 5-32].
²³⁴ R F W Kruger, evidence-in-chief para 229 [Environment Court document 34].
²³⁵ *Scurr v Queenstown Lakes District Court* Decision 60/2005 at p. 18.



- (iii) *whether the proposed development provides any opportunity to protect open space from further development which is inconsistent with preserving natural open landscape;*
- (iv) *whether the proposed development provides an opportunity to remedy or mitigate existing and potential ... adverse effects by modifying, including mitigation, or removing existing structures or developments; and/or surrendering any existing resource consents;*
- (v) *the ability to take esplanade reserves to protect ... natural character and nature conservation values ...;*
- (vi) *the use of restrictive covenants, easements, consent notices or other legal instruments otherwise necessary to realise those positive effects referred to in (i)-(v) above and or to ensure that the potential for future effects, particularly cumulative effects, are avoided.*

The applicant proposes an extensive revegetation strategy to be implemented over six years from commencement of work, in three stages²³⁶. Dr Roper-Lindsay identified²³⁷ three main planting areas within the site : the golf course, the area around the houses, and the balance of the site.

[156] As for the golf course, she implied that a stand of Douglas-Firs alongside the road will be cut down as weeds²³⁸ as will, for safety reasons, some old poplars²³⁹ close to the visitors' accommodation by the clubhouse. Most of the other poplars and willows will be retained²⁴⁰. Wetlands and gullies in the golf course will be planted with native vegetation²⁴¹. Elsewhere kanuka will be planted in drier areas²⁴², and "some" native species will be planted in the rough. Kanuka will be planted for multiple purposes²⁴³: most importantly to screen the buildings, to reduce silt movement during construction and assist in stormwater treatment from roads, to provide amenities for residents and other users, to provide diverse habitats and to extend the ecological values of Glendhu Bluff. Importantly, it is proposed that riparian buffer strips at least 20 metres wide along all fairways will be used to protect the lake from nutrient run-off²⁴⁴. Consistent with the hoped-for quality of the golf course all stock will be removed from the course; and there will be intensive weed and pest control²⁴⁵.

[157] Around the houses indigenous shrubland will be planted or allowed to regenerate as shown in the Master Plan²⁴⁶. We have already quoted Mr Darby's evidence as to the

²³⁶ J L Roper-Lindsay, evidence-in-chief para 4.32 *et ff* [Environment Court document 4].

²³⁷ J L Roper-Lindsay, evidence-in-chief para 4.33 [Environment Court document 4].

²³⁸ Transcript p. 64.

²³⁹ J L Roper-Lindsay, evidence-in-chief para 4.35 [Environment Court document 4].

²⁴⁰ J L Roper-Lindsay, evidence-in-chief para 4.35 [Environment Court document 4].

²⁴¹ J L Roper-Lindsay, evidence-in-chief para 4.36 [Environment Court document 4].

²⁴² J L Roper-Lindsay, evidence-in-chief para 4.39 [Environment Court document 4].

²⁴³ J L Roper-Lindsay, evidence-in-chief para 4.41 [Environment Court document 4].

²⁴⁴ J L Roper-Lindsay, evidence-in-chief para 4.37 [Environment Court document 4].

²⁴⁵ J L Roper-Lindsay, evidence-in-chief para 4.40 [Environment Court document 4].

²⁴⁶ J Roper-Lindsay, evidence-in-chief Figure 5 [Environment Court document 4].



treatment of the curtilage areas. Generally we are satisfied with the proposals except for a potential safety issue (fire risk) we raise later. The exception relates to the numerous small areas of “dry grassland/unimproved pasture”²⁴⁷ shown within the housing area. We are not clear as to how these areas are to be managed : the covenant described by Mr Darby²⁴⁸ is intended to “... protect the areas of open space”. In particular we are uncertain as to whether it is proposed to keep weeds such as sweet-briar out of these areas.

[158] As for the balance of the site, approximately 51 hectares, this will be fenced off to regenerate²⁴⁹. There may be some further planting here²⁵⁰. We add here that the 51 hectare balance is the appendix of land above Glendhu Bluff. For present purposes it is irrelevant to the proposal except insofar as it enables PBPL to improve (potentially) water quality and vegetation on the site. Normal farming is assumed to continue on other parts of Glendhu Station in the meantime.

[159] The total planting outside the proposed golf course will cover, at maximum²⁵¹, an area of 65 hectares. At first sight that looks generous. But it only amounts to $(65 \div 42 \Rightarrow) 1.5$ hectares per house which is small mitigation compared with other recent developments in the southwestern corner of Lake Wanaka. Dr Roper-Lindsay attached²⁵² to her evidence a ‘Local Catchment Revegetation Plan’ showing the revegetation on seven other residential developments in the area. We have compiled a table from this as follows:

²⁴⁷ J Roper-Lindsay, evidence-in-chief Figure 5 [Environment Court document 4].
²⁴⁸ J G Darby, supplementary evidence Attachment A para 10.32 [Environment Court document 2A].
²⁴⁹ J L Roper-Lindsay, evidence-in-chief para 4.44 and Appendix A, Figure 5 [Environment Court document 4].
²⁵⁰ J L Roper-Lindsay, evidence-in-chief para 4.44 [Environment Court document 4].
²⁵¹ i.e. including the “dry grassland/unimproved pasture areas” mentioned above (but excluding any further planting that may occur on the balance of the site).
²⁵² J Roper-Lindsay, evidence-in-chief Appendix “B” [Environmental Court document 4].



Table : Revegetation in Southwestern Lake Wanaka

Owner ²⁵³	Resource Consent reference ²⁵⁴	Total area of native planting ²⁵⁵	Number of houses ²⁵⁶	Calculation of houses per hectare of planting (approx)
Ecosustainability Limited	ENV-2006-CHC-410/411	15 ha	8 houses	2 ha per house
Clever Maker Limited	QLDC ref RM081254	10 ha	1 house	10 ha per house
Seven J Trustees Limited	QLDC ref RM081411	20 ha	1 house	20 ha per house
Brewer	QLDC ref RM061148	8 ha	1 house	8 ha per house
Just One Life Limited	Decision C163/2001	80 ha	1 house	80 ha per house
Matukituki Trust	QLDC ref RM080876	10 ha ²⁵⁷	1 house	more than 10 ha per house
Motatapu Station	-	10 ha ²⁵⁸	1 house	more than 10 ha per house
		(Total) 153 ha	(Total) 14 houses	(Average) 11 ha approximately

As shown we have calculated that the average revegetation provided has been about 11 hectares per house. Of course each case has to be considered on its merits, and we must bear in mind that five of those developments were for houses on the outstanding natural feature of Roys Peninsula so greater mitigation and/or environmental compensation was reasonably and relevantly required. Even so the mitigation and/or environmental compensation put forward in this case seems light at 1.5 hectares per house.

[160] As we have described, native fauna on the site is limited – skinks and geckos are present, and bellbirds, fantails and grey warblers use the relatively few trees. The applicant is prepared to have a “no cats” covenant to maximise chances of numbers of these species recovering²⁵⁹.

[161] Dr Roper-Lindsay considered there would be no adverse effects on birds using Parkins Bay or the shoreline from increased activity. She wrote²⁶⁰:

Concerns have been raised in the past about the potential adverse effects of increased activity along the shore on birds using the bay or shore here. Birds commonly found here (e.g. scaup and black swan) are able to move away from the bay to other similar habitats at times when they are threatened. However, it is my understanding that the bay is currently used regularly by boats

²⁵³ J L Roper-Lindsay, evidence-in-chief Key to Appendix B [Environment Court document 4].
²⁵⁴ J L Roper-Lindsay, evidence-in-chief Key to Appendix B [Environment Court document 4].
²⁵⁵ J L Roper-Lindsay, evidence-in-chief Key to Appendix B [Environment Court document 4].
²⁵⁶ Assumed to be one per property, except for Ecosustainability where the consent order shows eight lots. (In fact it may be only six : see Transcript pp 487-488.)
²⁵⁷ “10% of the site area” wrote Dr Roper-Lindsay, and the Environment Court decision C113/2009 at para [1] states the area of the property as being 108 ha.
²⁵⁸ Dr Roper-Lindsay describes 200,000 native plants so we infer at least ten hectares of planting.
²⁵⁹ J L Roper-Lindsay, evidence-in-chief para 4.48 [Environment Court document 4].
²⁶⁰ J L Roper-Lindsay, evidence-in-chief para 5.11 [Environment Court document 4].



so that it is not an undisturbed area at present. This suggests that the species commonly noted there are very tolerant of human activity and have adapted to this environment.

While elsewhere we consider Dr Roper-Lindsay has been thorough and careful, we question whether she is being a little superficial on this issue. For example, she does not appear to have considered whether the proposed jetty and restaurant in Parkins Bay will act as a magnet for more boats and whether this will cross a threshold of tolerance for the fauna.

[162] Further, on our site inspection, unfortunately after she gave evidence, we were agreeably surprised by the number (four pairs) of Southern Crested Grebes²⁶¹ in Parkins and Emeralds Bay. Since we understand this species is not common in New Zealand we consider conditions should, if consent is to be granted, provide for nesting habitat to be provided and protected west of the “Shearers’ Quarters”, and for PBPL to negotiate with the Council for a no power and jet-ski boating area to the northwest of the Shearers’ Quarters²⁶². We would like to hear further evidence on how to protect the on-site (lake edge) and off-site (Parkins Bay) habitat of these birds and whether that should be provided for – especially west of the Shearers’ Quarters.

[163] No further esplanade reserves are needed because they were set aside on tenure review²⁶³.

[164] Public walking tracks are to be provided on and off the site. Since some possibilities were not raised with Mr Greenaway, the recreation expert for PBPL, at the hearing we asked counsel if the witness could provide us with a report on the options. This report, which we will call the “Greenaway Review” was lodged with the court by Mr Christensen, as described earlier, as Appendix A to the document labelled by the court as Document 39.1.

[165] In the Greenaway Review the two on-site tracks proposed are described as²⁶⁴:

- | | | |
|----|------------------------------|---|
| 6. | Residential access circuit | Part of development proposal only. Provides feeder access for future residents to [the next] Track ... With the development in place the access will permit the public to pass through residential area, which will be of interest. Need to manage for safe road connections. |
| 7. | Parkins Bay to Hospital Flat | Very important. Bypasses Glendhu Bluff for walkers and cyclists. Creates off-road access to Diamond Lake and Matukituki River Valley. Extension [of] Wanaka to Glendhu Bay Track. |

²⁶¹ *Podiceps cristatus*.

²⁶² This may require relocation of the existing waterski slalom course and lanes.

²⁶³ M L Steven, evidence-in-chief Appendix B p. 6 [Environment Court document 36].

²⁶⁴ Greenaway Review Tracks 6 and 7 [Appendix A to Environment Court document 39.1].



They are positive effects of the proposal and the costs²⁶⁵ of the latter (\$80,000) are quite substantial.

[166] We also discuss later the proposed legal mechanisms to provide for mitigation and environmental compensation.

5. Other relevant matters (section 104(1)(c) of the Act)

5.1 Environmental compensation

[167] Although it did not concede they would be necessary, the applicant proposed various forms of environmental compensation. Because we consider environmental compensation²⁶⁶ is likely to be necessary to add sufficient weight to the applicants' side of the scales, we discuss the possibilities in turn.

5.2 Walking and cycling tracks

[168] PBPL proposed further walking and cycling tracks over Glendhu Station (in addition to the two over the site) as compensation for any adverse effects of the proposal. That is important because walking is New Zealanders' "most popular form of outdoor physical activity" according to Mr Greenaway²⁶⁷.

[169] Notable existing tracks in the area are: the "Millennium" (lake shore) track from Wanaka township to the eastern end of Glendhu Bay, the Roys Peak, the Diamond Lake Track (on the northern part of Glendhu Station), and the Motatapu Track. The first and last of those either are, or are proposed to be, part of the Te Araroa Track from Cape Reinga to Bluff. While Mr Greenaway²⁶⁸ quoted a book by Neville Peat describing Wanaka as a "walker's Shangri-La"²⁶⁹, he conceded to Ms Tait that there is some lack of options in the "peri-urban setting ... close to Wanaka"²⁷⁰.

[170] To give the context of what PBPL is now offering we should record that a number of new access opportunities were given by the McRae family on tenure review²⁷¹. As we have recorded, the UCT Trust seeks that more or improved access be provided.

²⁶⁵ Greenaway Review Track 7 [Appendix A to Environment Court document 39.1].

²⁶⁶ "We define as 'environmental compensation' any action (works, services or restrictive covenants) to avoid, remedy or mitigate adverse effects of activities on the relevant area, landscape or environment as compensation from the unavoids and unmitigated adverse effects of the activity for which consent is being sought": *J F Investments Limited v Queenstown Lakes District Council* Decision C48/2006 at para [8].

²⁶⁷ R J Greenaway, evidence-in-chief para 5.1(a) [Environment Court document 5]. His Appendix 1 refers to tables 1 and 2 from Sport and Recreation New Zealand's 2007/8 Active New Zealand Survey.

²⁶⁸ R J Greenaway, evidence-in-chief para 5.1(d) [Environment Court document 5].

²⁶⁹ N Peat, The Lake Wanaka Region OUP 2002.

²⁷⁰ Transcript p. 93.

²⁷¹ R J Greenaway, evidence-in-chief para 6.2 [Environment Court document 5].



[171] There was considerable discussion and cross-examination during the hearing as to what might be appropriate. In his closing submissions Mr Christensen, counsel for the applicant, accepted that the evidence suggested the following tracks be reserved as easements for the public:

- (a) Parkins Bay “marginal strip”;
- (b) Fern Burn to the Motatapu Track;
- (c) Glendhu Hill Track;
- (d) Rocky Mountain to Matukituki River Track;
- (e) Mountain-bike access to Motatapu River Strip.

We attach marked “Y” a copy of the track map attached to Mr Christensen’s closing submissions²⁷². We consider each in turn. We are assisted in this by the Greenaway Review²⁷³.

Parkins Bay shoreline track

[172] In the Greenaway Review this is described as “essential”²⁷⁴. Elsewhere it was suggested this track would be in the marginal strip (created in the recent tenure review of Glendhu Station). There are fencelines that make use of the marginal strip slightly difficult at present because they protrude metres into the lake to stop stock getting around the end of the fence. Further, there are sometimes wet areas along the lake shore. Mr Greenaway seemed to accept²⁷⁵ there would be places where it would be preferable for walkers to move onto the site (e.g. on boardwalks around wet areas or to cross a possible bridge over the stream a little east of the proposed clubhouse) and that it would be best to create a footpath that “... goes through the right places and meanders nicely ...”²⁷⁶. If the proposal is to proceed, that seems like a good idea to us, although we consider PBPL should consider whether it wishes to retain the right to close the track for up to (say) 25 days per year (not more than five weekends) for tournaments if it considers that necessary. The public would still be able to use the marginal strip.

[173] Mr Greenaway envisaged this “walking track” be designed to the New Zealand Standard and that it finish at the “logical end point” on Lake Wanaka²⁷⁷. As we understand it that end point is simply where the shingly shoreline reaches Glendhu Bluff. We accept Mr Greenaway’s view²⁷⁸ that continuing the track around the bluff would be very expensive, because it might need to be suspended above the lake. In any view there is an alternative route bypassing Glendhu Bluff and the road. This is the

²⁷² M Christensen, closing submissions Appendix ‘D’, [Environment Court document 39].
²⁷³ R J Greenaway ‘Review and Costing of Parkins Bay and Glendhu Station track development options’ [Appendix A to Environment Court document 39.1].
²⁷⁴ The Greenaway Review : Track 1 [Appendix A to Environment Court document 39.1].
²⁷⁵ Transcript p. 109.
²⁷⁶ Transcript p. 110.
²⁷⁷ Greenaway Review : Track 1 [Appendix A to Environment Court document 39.1].
²⁷⁸ Greenaway Review : Track 2 [Appendix A to Environment Court document 39.1].



Greenaway Review's track 7 which runs away from the lakeshore and through the site²⁷⁹ and which is part of PBPL's proposal.

[174] A consequence of that diversion is that there is no need to end the lakeshore track²⁸⁰ at Glendhu Bluff and so the lakeshore west of the Shearers' Quarters could be left for the native fauna. If we are to grant the resource consent, we would ask that the consent-holder terminate the public track at the jetty below the clubhouse, so that waterbirds are relatively²⁸¹ undisturbed when nesting, loafing or roosting further to the west.

Fern Burn

[175] Ms Tait for the UCT Trust raised the issue of forming a track up the Fern Burn to the start of the Motatapu Track approximately half-way up Motatapu Road. She pointed out that while there is theoretical access up the marginal strip (created in the recent tenure review) of the Fern Burn, the river is crossed by fences in a number of places²⁸². Mr Greenaway had not considered that at the time of the hearing²⁸³. For the UCT Trust Ms Tait said²⁸⁴, in answer to Mr Christensen, that such a track will provide off-road access along this stretch which will enable the Te Araroa Track to be off-road all the way from the Ahuriri Valley via Hawea, Albert Town, Wanaka and Glendhu Bay to Macetown. This track was considered of high importance by the UCT Trust²⁸⁵.

[176] The Greenaway Review states²⁸⁶ that any track on this marginal strip would be "Low value, high cost. Any track is likely to be flooded out in five or ten years. Willows a problem. Track would be in a low area, with no views and parallel to the Motatapu Road ...". We accept that the Fern Burn to Motatapu Track is an unnecessary (and unjustifiable²⁸⁷) expense to PBPL if it has to be rebuilt after every major flood. We consider that mountain bikers could use the Motatapu Road, and that walkers could use the grass berm along the western side of the road. Except for the first four hundred metres of this road as it leaves the Mt Aspiring Road there is usually plenty of room for walkers along the grassed edge. Equally we accept the Greenaway Review that there is little point in forming a track from the Fern Burn bridge to the lake. Anglers may walk down the river bed anyway, and walkers have formed access from both Parkins Bay and Glendhu Bay²⁸⁸ around the delta's marginal strip to the mouth of the stream.

²⁷⁹ Greenaway Review : Track 7 [Appendix A to Environment Court document 39.1].

²⁸⁰ Greenaway Review : Track 1 [Appendix A to Environment Court document 39.1].

²⁸¹ There may be errant golf balls from Mr Todd (Transcript p. 357 line 8) and other golfers.

²⁸² Transcript p. 100.

²⁸³ Transcript p. 100.

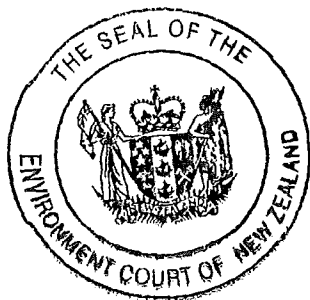
²⁸⁴ Transcript p. 231.

²⁸⁵ Ms Tait confirmed in cross examination that access from the Motatapu Track to connect to Glendhu Bay was a priority, Transcript page 231.

²⁸⁶ The Greenaway Review : Track 3 [Appendix A to Environment Court document 39.1].

²⁸⁷ Greenaway Review : Track 3 [Appendix A to Environment Court document 39.1].

²⁸⁸ Greenaway Review : Track 4 [Appendix A to Environment Court document 39.1].



“Glendhu Hill” – Highpoint 782 track

[177] The first option is Mr Greenaway’s “Track 14” from the Diamond Lake Track carpark but instead of heading north to Diamond Lake (and beyond), walkers would climb south to the crest of Glendhu Hill. The Greenaway Review states²⁸⁹:

Some value, moderate cost. This provides an alternative view of Lake Wanaka to the Diamond Lake Track, Roys Peak and Ironside Trig. Due to the proximity of Diamond Lake, I would be cautious about spending too much on this access.

There is a bluff below the high point with climbing potential and this may be the key attraction. This high point and the nearby peak at 782m offer similar views ... There are some difficult access areas near the summit which could require ladders.

Could be developed as a ‘route’ only with poles and a scramble. ...

If developed as a route only, the cost²⁹⁰ for signs, stiles and poles might be \$8,000.

[178] Two other options close to Glendhu Hill (782 masl) are also considered in the Greenaway Review. First there is the option, raised by the court, of a track up Glendhu Hill from the golf course, or east side. The Greenaway Review states²⁹¹:

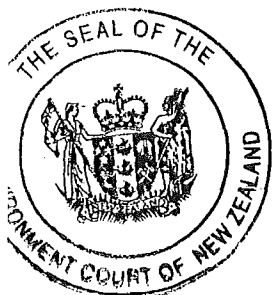
Extension from Track 7, also linking to Track 14. Expensive to form to walking track standard and gradient would probably preclude this standard regardless. Need to consider safety of users and will likely require some structures – rails, ladders, small bridges.

Mr Greenaway estimated the rough costs of construction as \$70,000 and annual maintenance at \$800 pa. He thought this might be of value to new residents of the resort, but was more dubious of its value to the public given the proximity of the Diamond Lake Track.

[179] The other choice passes Glendhu Hill below the crest on the western side, that is the other side of Glendhu Hill from the proposed development. It is to give a right to walkers and bikers to use the existing farm track from Hospital Flat on the Mt Aspiring Road, south to the Motatapu Road at a gate several kilometres south of the site. For the UCT Trust Ms Tait referred to a plan²⁹² produced by Mr McRae showing that on tenure review the Department of Conservation showed the farm track over the western side of Glendhu Hill from Mt Aspiring Road to Motatapu Road as being a priority.

[180] The Greenaway Review states²⁹³:

²⁸⁹ Greenaway Review : Track 14 [Appendix A to Environment Court document 39.1].
²⁹⁰ Greenaway Review : Track 14 [Appendix A to Environment Court document 39.1].
²⁹¹ Greenaway Review : Track 8 [Appendix A to Environment Court document 39.1].
²⁹² J L McRae Exhibit 3.1 [Environment Court document 3].
²⁹³ Greenaway Review : Track 9 [Appendix A to Environment Court document 39.1].



Moderate value, low cost. Does not provide a natural link to other settings and would be a track experience by itself. No formation cost as it follows a formed farm road. Essentially an 'easy tramp'. Challenging mountain biking and not a family cycling experience. Excellent equestrian setting. Gates are a problem: as the track is confined to the farm road due to the steep terrain there are no options to separate stiles from gates and all gates would need to be locked (open or shut). A management plan for a regional park might define a track like this as suitable for events and clubs (such as the Cavalcade) rather than providing for open access. Under a park scenario, likely to be periodically closed for lambing and mustering, and fire risk due to the high likelihood of users 'wandering at will'.

Because the track is already formed, there would be no formation cost, and maintenance would be part of the farm budget. Markers, stiles and signs might cost \$10,000²⁹⁴. On the basis of the Greenaway Review we consider that none of these three tracks are sufficiently important to justify the costs of formation at this stage. However, if there is ever to be any development on the northern lobe of the site (above Glendhu Bluff) then a formed track from the lodge up to the summit may be desirable.

Rocky Mountain to Matukituki River Track

[181] The McRae family is prepared to allow a poled route here but only for four months each year, from January to April. The Council Commissioners considered this track was of significant public value²⁹⁵. Ms Tait confirmed in cross examination that if it was not available to create a track from the QEII area to the Motatapu River, then creating a track through the conservation area [CA4] was an alternative²⁹⁶. Ms Tait considered that this track provides an excellent return loop from the Diamond Lake carpark, either anticlockwise along the Matukituki and Motatapu Rivers, or clockwise along the true right of the Matukituki River and back via the track system as part of the Moonrise Bay subdivision²⁹⁷.

[182] The Greenaway Review²⁹⁸ referred to two options here (tracks 12 and 13) as follows:

(CA1 to CA4 creating Diamond Lake-Matukituki circuit)

Moderate to high value. Diamond Lake is an important walking track with high levels of use. This extension would require additional commitment, but considering that most of the altitude has been gained via the Diamond Lake climb, this addition would not be as limiting as I had first envisioned. There are at least two options for the descent to the Matukituki River. The easiest is via a ridge shown as the west side of the triangle in the map to the right. This would need to be poled with several stiles. The dog-leg option would take walkers immediately under the bluffs in the CA4 conservation area and closer to the regenerating bush, which would add appeal. The latter would most likely require some track formation. The formation of Track 11 would make this option more realistic. Both options would be 'tramping track' standard.



²⁹⁴ Greenaway Review : Track 9 [Appendix A to Environment Court document 39.1].

²⁹⁵ Commissioners decision at page 21, paragraph 87.

²⁹⁶ Transcript page 230 line 45, page 231, line 5.

²⁹⁷ Transcript at pages 230-231.

²⁹⁸ Greenaway Review : Tracks 12 and 13 [Appendix A to Environment Court document 39.1].

(Track 13) This is the western descent from CA4.

Some value, low cost. This descent would provide a loop option if Track 11 was formed. There appear to be many descent options on this west face.

Mountain bike access along the Motatapu River

[183] The applicant has volunteered to amend the easement instruments to allow mountain bike access down to the marginal strip. Ms Tait confirmed in cross examination that the UCT Trust would be delighted with this additional access²⁹⁹. Mr Greenaway recommended³⁰⁰ that the tracks be 'walking track' standard as defined in the New Zealand Standards³⁰¹. That allows for mountain biking use³⁰². The Standards describe these tracks as enabling use by relatively inexperienced visitors ... wanting a low level of risk³⁰³. Various prescriptions as to grade (15° maximum) a width (0.6 to 0.75 metres) and formation are given³⁰⁴, and the Standards also direct that track surfaces shall be well-formed and even, and that wet areas are drained.

[184] In his review Mr Greenaway stated³⁰⁵:

Very high value. Potentially a nationally recognised mountain bike route, especially if linked with a Motatapu/Matukituki River circuit (Track 11). 'Easy tramping track' standard would be ideal. An excellent circuit for the Wanaka to Glendhu Bay Track, adding the option to cycle down the Motatapu Road, along the Motatapu River track to Hospital Flat and to Parkins Bay via Track 7, and back to Wanaka. Would thereby add much value to the Wanaka-Glendhu Bay Track. Easy grade, fantastic setting. Would also provide for extensive angler access.

However, the costs³⁰⁶ of formation of the five kilometre track for full mountain bike access to 'easy tramping standard' would be approximately \$110,000. In contrast if opened to a lesser standard these could be reduced³⁰⁷ to \$15,000 to \$30,000. We consider that it would be appropriate for the easement to be amended and the track formed to the lower standard.

[185] Although Mr Christensen did not refer to it, Mr Greenaway also identified as his Track 11 a "Motatapu/Matukituki River circuit". His review stated³⁰⁸:

299 Transcript at page 229.
 300 R J Greenaway, evidence-in-chief para 7.4.
 301 SNZ NZ Handbook for Tracks and Outdoor Visitor Structures (SNZ HB 8630:2004).
 302 R J Greenaway, evidence-in-chief para 7.4.
 303 SNZ HB 8630:2004 – Standard 2.5.
 304 SNZ HB 8630:2004 – Standard 2.5.
 305 Greenaway Review : Track 10 [Appendix A to Environment Court document 39.1].
 306 Greenaway Review : Track 10 [Appendix A to Environment Court document 39.1].
 307 Greenaway Review : Track 10 [Appendix A to Environment Court document 39.1].
 308 Greenaway Review : Track 11 [Appendix A to Environment Court document 39.1].



Very high value. If linked with Track 10, these two tracks would certainly create a nationally recognised mountain bike track. The grade would generally be easy and the scenery stunning. Would provide extensive angler access. "Easy tramping track" standard preferred, but costly. Would require deviation off the marginal strip to support this option, otherwise confined to walking access on a tramping track (much cheaper option).

5.3 Other mitigation and compensation

[186] Given our concerns about the cumulative effects of PBPL's proposal on its outstanding natural landscape setting we now consider other aspects of mitigation and/or environmental compensation suggested by the parties and their witnesses. We discuss each item in turn. That is rather tedious but as always the devil is in the detail. In what follows it will be convenient to refer to the plan attached as "Z" – the Glendhu Station Covenants Areas Plan³⁰⁹.

Area A ("The Bull Paddock")

[187] A covenant was required by the Council decision and originally proposed by the applicant as follows:

- a. Covenant A – The area marked A 'Bull Paddock' shall be covenanted for a period that commences on the date of the grant of consent until the date that is ten years from the implementation of Stage 3 against further development but not prohibiting subdivision.

That seems appropriate with two provisos, first that any allotment which contains the clubhouse shall be held in perpetuity with the allotment containing the golf course, and secondly that all allotments created from the Bull Paddock shall share one access off Mt Aspiring Road.

Area B ("The development area")

[188] This area is that part of the site which is actually proposed to be developed under the application we are considering³¹⁰. PBPL's proposed covenant is:

- b. Covenant B – The area marked B Development Area shall be covenanted in perpetuity from the date of the grant of consent against further development, but not prohibiting subdivision for and the development of, eight visitor accommodation residential units.

No party or witness objected to this. However, it seems to us that this wording would preclude any future subdivision excising each of the 42 houses and their exclusive occupation areas. If we grant consent this covenant might need to be reworded.

[189] We should add here that we raised several questions about environmental compensation or mitigation at the hearing, including about this area. In particular, through Mr Thorn's counsel, Mr Ibbotson, we asked the landscape architect Mr Kruger

³⁰⁹ This is a copy of the plan attached to Mr Christensen's final submissions [Environment Court document 39] as Appendix E.

³¹⁰ The appendix above Glendhu Bluff is also part of the site. It is shown as area 'D' on plan X attached, and is considered below.



to give his view on several possible aspects of environmental compensation. We would have liked to ask the same questions of Dr Steven, the Council's witness. However, because of his ill-health (as recorded earlier) we did not wish to impose any further, stressful obligations on him.

[190] In the eastern part of Area B there are some pine trees above the Fern Burn. Mr Kruger wrote³¹¹:

4. East of Development Area (Pine Trees)

Question: Would removal of pine trees be desirable?

[Answer]: Yes. Any [removal] of pine trees here and throughout the Fernburn riparian corridor including the eastern moraine slopes will be beneficial. I say this, because it is the ambition of the Applicant company to recreate or re-establish an indigenous landscape throughout the proposed development site. Leaving remnants of Arcadian or cultural landscapes will deter from the overall experience that will dominate in the future – both, along Mt Aspiring Road and Motatapu Road.

We consider there is merit in what Mr Kruger proposes.

Area C1

[191] Rather confusingly there are two areas marked C1 on attachment "Z". We will call the area northwest of Mt Aspiring Road "Emerald C1" and the other area "Glendhu Hill C1". The proposed covenant reads:

- c. Covenant C1 – The area marked C1 Farm Area shall be covenanted, for a period that commences on the date of the grant of consent until the date that is ten years from the implementation of Stage 3, against further development not associated with usual farming activities.

We have concerns about area Emerald C1 because we have only realised relatively late in the writing of this decision that part of area Emerald C1 adjoins Emerald Bay and is separated from the lake only by a 20 metre marginal strip. Bearing in mind that there is an eight-lot residential subdivision³¹² immediately to the northeast of area Emerald C1 and the strictures in the district plan against sprawl, we consider that subdivision and residential development of area Emerald C1 should be precluded in perpetuity. That will ensure that the backdrop to Emerald Bay is preserved forever in anthropocentric terms.

[192] We see no necessity for the proposed covenant in respect of that part of Area C1 which we have called Glendhu Hill C1. We will discuss a possible water quality covenant later.

³¹¹

R F W Kruger, supplementary evidence paragraph 4 [Environment Court document 34A].

³¹²

The Ecosustainability Limited resource consent referred to earlier in this decision.



Area C2 (Glendhu Station – lakeside terrace)

[193] Area C2 also comprises two areas:

- Homestead C2 on the west side of Motatapu Road;
- Glendhu Bay C2 : this is the area behind the motorcamp, and on the southern side of Mt Aspiring Road.

[194] Additional covenants volunteered by PBPL after the hearing included:

- C1. Covenant C2 – The area marked C2 Glendhu Bay Farm Area shall be covenanted, for a period that commences on the date of the grant of consent until the date that is 20 years from the implementation³¹³ of Stage 3, against further development not associated with usual farming activities, but not prohibiting:
- i. Activities for camp ground purposes;
 - ii. subdivision to separate the area marked C2 from the rest of the farm land;
 - iii. A subdivision which will create a separate certificate of title for the area marked “X” within C2; and
 - iv. any boundary adjustment which does not create additional titles.

The explanation given by counsel was that:

Activities for campground purposes have been specifically provided for because the Glendhu Bay campground is nearing full capacity³¹⁴ and may require expansion or relocation in the future. The area C2 has been identified as an area that the campground could potentially be expanded or relocated to and this would also allow for a larger passive recreation area on the lakeshore. ...

[195] The proposed covenant over Area C2 is so limited that it does not assist the applicant.

Area D (“The lodge area”)

[196] The proposed covenant is:

- d. Covenant D – The area marked D Lodge Area shall be covenanted in perpetuity from the date of the grant of consent against further development, but not prohibiting subdivision for and the development of, a lodge and ten visitor accommodation residential units.

Since residential or visitors’ accommodation are easily the most obvious types of development conceivable for this site, we consider the covenant is not particularly useful and do not require it.

³¹³ Notes:

- (1) We have given these additional covenants different identifiers to avoid confusion;
- (2) For the purpose of the Covenant Conditions, Stage 3 is deemed to be “implemented” when a final code of compliance certificate under the Building Act 2004 has issued for the 12 visitor accommodation residences referred to in Condition 5(iii) (Condition 41(a)).

³¹⁴ Referring to the supplementary evidence of J G Darby (evidence of R B Thomson) at para 8.3(c)(ii).



Area E ("The new home")

[197] The area marked E contains the home of Mr John McRae's parents, B and P McRae. PBPL volunteers that this land should be covenanted in perpetuity from the date of the grant of consent against further development, but not prohibiting:

- i. subdivision to separate the area marked E from the rest of the land currently contained in Certificate of Title 478353 and any boundary adjustment which does not create additional titles;
- ii. the construction of a chapel;
- iii. the erection of any temporary buildings such as marquees and other shelters used for the purpose of conducting weddings and reception functions;
- iv. a shed for the purpose of storing farming and landscaping equipment;
- v. alterations to the existing dwelling located on the land, and
- vi. the construction of a residential unit ancillary to the main dwelling;

[198] Mr Kruger wrote about this area on the Fern Burn Delta³¹⁵:

3 Fernburn Delta

Question: Would precluding development here be a gain in landscape terms?

[Answer]: Yes. I am of the opinion that any further development in that area must be avoided. The way the fan area has been developed in recent years created a significant degree of domestication on this rather vulnerable landform close to the lake margin.

In the light of that evidence we are initially reluctant for any new building whether permanent (a chapel and an ancillary dwelling) or temporary (a marquee) to be allowed on this land given its prominence in the landscape. That is particularly so since one of our reasons for potentially allowing the clubhouse to be erected in the bull paddock is because there is often a marquee on that site over the summer months. Replacing that with the golf clubhouse seems meritorious but not if it is likely to export the marquee to another site. That is the epitome of an adverse accumulative effect.

[199] Our initial view is that there should be a condition expressly prohibiting the proposed activities, but we are prepared to hear submissions evidence from PBPL on that issue.

Area F (Fern Burn and land to the east of Motatapu Road)

[200] There are two sub-areas within this Area F to be considered : the Fern Burn, its margins and the containing valley walls which we will call "F1"; and the land east of the Motatapu Road which we will call Area "F2". There is a hill to the west of F1 which we would have thought more sensibly should go with Area G or Glendhu Hill C2 and we will ignore it here.



R F W Kruger, supplementary evidence paragraphs 3 *et ff* [Environment Court document 34A].

[201] Of Area F1, the Fern Burn, Mr Kruger wrote³¹⁶:

Having re-visited the site ... and having considered the pine trees and walkway matters discussed above, I have taken notice of the degraded state of the entire riparian corridor of the Fernburn. Being at the edge of the Glendhu Station area and more or less directly bordering the proposed development area, I am of the opinion, that this part of the landscape offers very good opportunity to rehabilitate and incorporate the land into the wider are[a] of ecological restoration.

...

In light of the fact that the pressure on the farm has [now] been removed [if consent is granted] I believe that destocking this area will provide an immediate benefit to the lower reaches of the Fernburn. Furthermore, the removal of and prevention of reinvasion by all exotic trees and shrubs (including willows, Douglas fir, pine species and sweet briar) will increase ecological values. Passive revegetation of this area should be assisted by the establishment of significant pockets of planted indigenous species as a seed source.

The rehabilitating corridor can be host to the potential walkway link between the Motatapu track and the foreshore.

While we disagree with Mr Kruger about having the walkway in the valley of the Fern Burn for the reasons given by Mr Greenaway, we consider there is, at first sight, considerable merit in his proposal for rehabilitation of the Fern Burn. At least the fencing component of Mr Kruger's proposal is consistent with Mr John McRae's intentions as quoted earlier.

[202] In respect of Area F2 (Glendhu Station Land East of Motatapu Road) Mr Kruger wrote³¹⁷:

Question: Would – from a landscape point of view – further restrictions on future residential development in that area be beneficial (particularly considering a potential precedent effect).

[Answer]: Yes. The residential are[a] has been kept outside the visual catchment from Motatapu Road. I am of the opinion that it is essential to maintain this situation in perpetuity and to prevent any further "spill" of development outside the area as is proposed presently.

This part of the landscape can fulfil better and more important functions discussed in the section on environmental compensation below.

[203] The covenant volunteered by PBPL reads:

³¹⁶ R F W Kruger, supplementary evidence para 9.2.3 [Environment Court document 34A].

³¹⁷ R F W Kruger, supplementary evidence para 6 [Environment Court document 34A].



The area marked F (Fern Burn area) shall be covenanted for a period that commences on the date of the grant of consent until the date that is 35 years from the implementation of Stage 3, against any further development, but not prohibiting:

- i. activities associated with farming activities;
- ii. a subdivision to separate the area marked F from the rest of the farm land and any boundary adjustment which does not create additional titles;
- iii. the relocation, repair and replacement of the existing homestead and ancillary buildings; and
- iv. the construction of two further residential dwellings on the land and any subsequent repairs and alterations to those residential dwellings.

Counsel explained that the 35 year term for this covenant was determined on the basis that 35 years is longer than one generation and is at least three cycles of district plan (assuming a ten year life, although we note new plans are no longer required).

[204] The reference to relocation of the existing homestead³¹⁸ follows on from the candid suggestion about extension of the camping ground into Area C2. Clearly there are plans to extend the camping ground across the road from its present site on Glendhu Bay, and we make no comment about that.

[205] The implication of the proposed covenants for Area F2 is that the McRae family hopes for three sets of buildings to be established where at present there are none. We approve the covenant prohibiting further development for a period of 35 years with the provided exceptions, but the parties must understand that means neither approval nor disapproval of any of the activities in the exceptions.

Area G

[206] This area wraps around the south and west of the site. It is generally higher than the site and appears to go to the crest of Glendhu Hill. PBPL proposes that:

- g. Covenant G – The area marked G shall be covenanted in perpetuity from the date of the grant of consent against any development not associated with farming activities, but permitting any boundary adjustment which does not create additional titles.

...

Mr Christensen explained³¹⁹ that:

The low lying gully immediately behind the development area in Covenant Area “G” was also considered to be an area capable of absorbing further development when assessed from a visibility analysis and landscape character assessment perspective. However, the applicant has volunteered a covenant in perpetuity against any development not associated with farming activities in this area to address the comments made at the hearing regarding precedent and providing a buffer between the development site and the adjacent farm land. In response to

³¹⁸ We understand the homestead is located at a point marked with a cross within Area C2 on our attachment “Z”.

³¹⁹ M R G Christensen, closing submissions 7.11 [Environment Court document 39].



questions from His Honour, the applicant has also volunteered that this low lying gully be planted in a mix of locally sourced native species including Totara.

[207] Mr Kruger wrote:

5. Crest of Ridge and “Reverse Slope”

Question: Would the revegetation (including the use of totara) of these areas be beneficial?

[Answer]: Yes. The rather arbitrary and linear boundaries of the proposed development can be softened and the proposed revegetation on the residential area can be extended in a more naturalistic way. I propose to go a step further and include the Fernburn riparian corridor and the moraine side slopes east and south of the proposed development site.

...

[208] In relation to Area G and on another aspect of environmental compensation Mr Kruger wrote³²⁰:

Removal of Areas from Grazing and Ecological Restoration

Given the fact that the pressure has been removed from farming – by way of the financial returns from the commercial development that has been consented (hypothetically, I may add here) – the retirement of areas from grazing should be considered. Here, the focus should be on the slopes of the isolated mountain area and the moraine areas below – meaning all the ground that forms part of the visual catchment from the Parkins Bay and Glendhu Bay land areas and including the surface of Lake Wanaka in the proximity of the bays [these are areas visible in Truescape Photopoints 01 and 03].

If allowed to restore – both, passively and potentially assisted by some targeted active vegetation establishment – these areas would blend with adjacent conservation land and eventually form a highly natural backdrop in the middle ground within the above viewing catchment. Habitat creation would be significantly improved by creation of larger and more cohesive, undisturbed and re-vegetated areas.

...

All such areas require protection by covenants and need to be maintained at the Applicant’s expense for an agreed period – at least until successfully established.

Appreciating that we have only heard from one witness from one party on this issue we consider this idea may have merit, but will give other parties (especially PBPL) an opportunity to indicate whether it wishes to call evidence on this issue.

[209] We should add that we have a tentative view that Mr Kruger has not gone far enough. His ‘rehabilitation’ area³²¹ does not follow catchment boundaries. We would like to hear from PBPL as to why it should not fence off and retire from (at least) grazing by cattle the entire catchments west of the site to the crest of Glendhu Hill. We

³²⁰ R F W Kruger, supplementary evidence para 9.2.1 [Environment Court document 34A].

³²¹ R F W Kruger, Exhibit 34.5 [Environment Court document 34A].



would not see revegetation as essential because we consider it is likely on the evidence³²² that bracken and then other native plants would quickly revegetate the hillside. We should add that we are unenthusiastic about the proposed cattle corridor through Area 'D' on Attachment Z.

5.4 Will granting consent create a poor planning precedent?

[210] In *Scurr v Queenstown Lakes District Council*³²³ the Court wrote:

As we see the matter, a grant of consent to a discretionary activity can be a precedent in the sense of creating an expectation that a like application will be treated in a like manner. In general this may not be as important as in the case of a non-complying activity, because most District Plans assume that a discretionary activity will be acceptable on a variety of sites within the zone and each must be assessed on a case-by-case basis.

In terms of this particular District Plan, there is even greater reason to consider issues of precedent for discretionary activities. In a section of the classification of activities it is stated that discretionary activities have been awarded such status ... "because in or on outstanding landscapes or features the relevant activities are inappropriate in almost all locations ...", and "... in visual amenity landscapes the relevant activities are inappropriate in many locations ...". Such explanation works against any assumption that this plan envisages discretionary activities will occur on most sites in either type of landscape – an assumption that would leave little room for precedent arguments.

Purporting to rely on that, Mr Whitney concluded that in this case³²⁴ the proposed activity will establish a precedent for establishing a resort in the Rural General Zone, especially for visitor accommodation in substantial two storey buildings and forty two residential units.

[211] We have considered the evidence on whether there are other sites in the Clutha catchment (within the district) which might:

- be alternative sites for a golf course; and/or
- use a consent for the present site as a precedent for building 40 houses.

To be similar such a site would need to have a substantial area of working farmland (covered in introduced grasses and with shelterbelts of introduced trees), contain morainic terraces or other topography in which to conceal the full effect of houses, and be on the opposite side of any road from the dominant visual attractions (lake, mountains).

³²² Transcript p. 651.

³²³ *Scurr v Queenstown Lakes District Council* Decision C60/2005 at paragraphs 43 and 44.

³²⁴ W Whitney, evidence-in-chief para 211 [Environment Court document 38].



[212] Two sites that might be considered as alternatives are at Dublin Bay³²⁵ and at Cattle Flat. Mr Darby considered the first, but found it inferior to the site, and potential for residential development on a limited part of Cattle Flat Station was suggested in the Boffa Miskell Report. However, one only has to look at a map to realise how different those particular outstanding natural landscapes are from the embedding landscape at Parkins Bay to realise that the precedent value of this case is quite low.

[213] This is an important issue. We find that it is likely that granting consent will only establish a limited precedent. That is unless another applicant can find a site where:

- the proposed golf course is in an “English pastoral” area;
- the site is located in a tame corner of Lake Wanaka;
- the proposed housing can be tucked onto a moraine terrace which is on the landward side of any access road (in this case Mt Aspiring Road).

[214] The other way in which granting consent might create a precedent is in respect of applications for a much smaller number of houses – say between 1 and 6 as in the *Sharpridge* case³²⁶ in 2002. That concerned an application for subdivision and residential use of rural land half-way between Wanaka and Parkins Bay. Such an applicant might argue that if 42 houses were allowed in Parkins Bay, why not a mere 1-6 elsewhere in an outstanding natural landscape?

[215] It is trite law that every discretionary activity decision turns on its own facts and predictions. But we consider there are real differences between the facts of *Sharpridge* and this case:

- in this case the site is in a relatively more modified and less important part of the embedding outstanding natural landscape;
- the site is not on the lake side of the road;
- the houses are associated with the proposed golf course;
- the houses will be grass-roofed.

In our view it is difficult to imagine a proposal that cannot be readily and reasonably distinguished from the one before us in multiple respects.



³²⁵ Other(s) may be in the little-known Stevenson Arm, north of Dublin Bay.

³²⁶ *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* Decision C104/2002 and its sequel C47/2004.

6. Consideration

6.1 Weighing all relevant factors

[216] As for our discretion under section 104B of the RMA we have to make an overall judgment to achieve the single purpose of the RMA as set out in section 5 by:

- taking into account all of the relevant matters identified under section 104;
- avoiding consideration of any irrelevant matters such as those identified in section 104(3);
- giving different weight to the matters identified under section 104 depending on the court's opinion as to how they are affected by application of section 5(2)(a), (b) and (c) and sections 6 to 8 of the Act to the particular facts and predictions in the case, and then:
- in the light of the above as stated in *North Shore City Council v Auckland Regional Council*³²⁷: "allow... for comparison of conflicting considerations, and the scale or degree of them, and their relative significance or proportion in the final outcome."

[217] In relation to section 5(2) of the RMA one of the attractive features of PBPL's proposal is that it aspires to contribute to the physical and social wellbeing of the Wanaka community, and visitors by providing a high quality golf course and several walking and cycling tracks, as well as improved access to and along the Fern Burn and the shores of Lake Wanaka. Those aims of course are part of the purpose of the RMA.

[218] At the risk of being perceived as over-cautious we rather belatedly raise the issue of fire risk, specifically in respect to the safety³²⁸ of future residents of the 42 houses. It is PBPL's intention to place the houses carefully within the mounds and valleys of the morainic terrace and then to revegetate the housing area with kanuka³²⁹. Kanuka is an inflammable plant in our experience. Especially since it appears that kanuka is to be planted on the roofs of the houses as well as around their curtilage areas we are concerned that in-house safety and evacuation measures have not been considered. Residents should be enabled to provide reasonably for their own safety.

[219] We do not regard fire risk as a factor going either for or against the proposal since we have neither read nor heard evidence about it. But if the opportunity arises we would like some reassurance on this issue.

6.2 Section 6 of the RMA

[220] There are three matters under section 6 which need to be recognised and provided for. They are (relevantly):

³²⁷ *North Shore City Council v Auckland Regional Council* Decision A86/96 at p. 46; [1997] NZRMA 59.

³²⁸ Section 5(2) of the RMA refers to "... safety of people and communities ...".

³²⁹ J L Roper-Lindsay, evidence-in-chief para 4.41 [Environment Court document 4].



- the preservation of the natural character of Lake Wanaka and the Fern Burn and their margins and their preservation from inappropriate use and development;
- the protection of the outstanding natural landscape in which the site is set from inappropriate use and development (and ultimately subdivision);
- the maintenance and enhancement of public access to and along the Fern Burn and the Motatapu and Matukituki Rivers and the shores of Lake Wanaka.

[221] Whether the proposal does recognise and provide for the first two of the matters was, as we have described, the subject of lengthy evidence from landscape architects. From what we have already written it will be apparent that we do not find much of the evidence of Mr Scott relevant or useful. The general evidence of Dr Steven, while interesting, is, in the end, not useful either. Some of his more specific opinions, while somewhat exaggerated, have been more helpful to us in attempting to weigh relevant landscape considerations.

[222] At first sight the evidence of Mr Kruger is the most accurate and trustworthy. We have already recorded how Mr Christensen, in his closing submissions for PBPL, made a strong attack on Mr Kruger. He submitted that Mr Kruger lost his objectivity by:

- criticising landscape architects for the applicant as unprofessional;
- quoting from other decisions;
- repeating evidence on environmental compensation that he had written for an earlier case.

As to the first of these: we agree it does not assist the court to accuse other experts of being unprofessional especially in the subjective fields of architecture and landscape architecture. On the other hand we can understand Mr Kruger's frustration: there is something rather insouciant in the AEE's (and Dr Steven's) acceptance of 42 or more houses in this landscape.

[223] We do not criticize Mr Kruger's citation of other decisions. It is always proper for a witness to give a brief summary of the law they have been told applies provided they do not lecture the court on points of law. That is particularly true of the law on section 6(b) of the RMA which is both unusually complex and still developing. Indeed, we have criticised other landscape witnesses in these proceedings for not engaging with the Environment Court's attempts to discuss what an outstanding natural landscape is. Further, we are uneasy with any suggestion that the court cannot build on earlier decisions. For example, if another division of the court has found that a particular landscape is an outstanding natural landscape then for ourselves we would regard that as an important factor in our consideration. To that extent we would respectfully qualify



the statement of the court in the *Marler*³³⁰ case that “Except on matters of law, statements made by this Court on other occasions are the view of the members of that Court based on the evidence and submissions heard in that case” by adding the words “... except where findings of fact relate to off-site matters, which a subsequent division of the court considers it should, subject to the principles of fairness, receive and apply under section 276(1)(a) and (2) of the RMA”.

[224] Finally, reference by Mr Kruger to his earlier evidence on environmental compensation was also justified. He had little time – less than 24 hours – to respond to the court, and was simply being honest when acknowledging he had written the passage Mr Christensen complains of for another case.

Section 6(a)

[225] We hold that the clubhouse and the accommodation³³¹ close to the lake edge are appropriate there provided that the proposed vegetation either side of it is planted and maintained. We consider that in many ways the clubhouse will be preferable to the marquee which we heard often sits near the lake edge, especially since the public will have access to the facilities in the clubhouse.

Section 6(b)

[226] As for the protection of the outstanding natural landscape in which the site is set, we consider that, taking into account the careful siting of the houses and the way in which they are designed to become part of the landscape, the revegetation plans, and their morainic setting, the housing component of the proposal will not harm the landscape to any significant extent. As for the golf course, that really only changes the character of this part of the landscape from utilitarian to recreational without making any real change in its fundamental character. We also find that the proposed houses and golf resort will be appropriate in the landscape.

[227] The adverse effects on landscape values which cannot be mitigated so readily are the dynamic and changing effects of the occupants and visitors of 42 houses going about their lives, and of the golfers and watches on the golf course and of their attendants, cars and buggies. We accept Mr Kruger’s evidence, that even with the mitigation proposed in the form of mounding and planting, they will have some adverse effects on the outstanding natural landscape of which the site and Parkins Bay are part. Whether the proposal is acceptable under the objectives and policies will be a matter of the environment compensation off the site (but within Glendhu Station or the margins of adjacent streams or Lake Wanaka).



³³⁰ *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* Decision C113/2009 at [188].

³³¹ The “Shearers’ Quarters”.

Alternative sites

[228] Since matters of national importance are raised the question of whether there are preferable alternative sites is (at least theoretically) raised : *TV3 Network Services Limited v Waikato District Council*³³²; *Meridian Energy Limited v Central Otago District Council*³³³. In *Maniototo Environmental Society Incorporated v Central Otago District Council*³³⁴ the Environment Court wrote that the consideration of alternatives:

... needs to be proportional to the significance and size of the issues to the applicant, the people and communities affected, and to society as a whole.

That aspect of the decision has not, as far as we can see, been overturned on appeal by the High Court in *Meridian Energy Limited v Central Otago District Council*³³⁵.

[229] The only evidence about possible alternative sites for a golf course was brief mention in Mr Thompson's report³³⁶ of potential sites being available at Dublin Bay on the north side of the outlet (to the Clutha River) of Lake Wanaka and another site closer to Wanaka. For the applicant Mr Christensen submitted that the evidence shows that for a championship golf course to be successful "as part of an internationally recognised golf destination cluster" it needs to be located in a "memorable" landscape setting, referring to the unchallenged (on this point) evidence of Mr Darby³³⁷, Mr Roche³³⁸ and Mr Bayliss³³⁹.

[230] We appreciate that in this case the issue is important for the community. Obviously opinions about the proposal are split. We consider that the question of alternatives is not important in this case for two reasons : first any other sufficiently memorable golf course is, as Mr Christensen pointed out, also likely to be in an outstanding natural landscape, so we would be no better off in our consideration. That is the more important point, but we also recognise that if there is a suitable site elsewhere in the Clutha Basin which is not in an outstanding natural landscape then it may well be developed eventually as part of a "golf destination cluster". So the possible alternative is not a true alternative at all.

³³² *TV3 Network Services Limited v Waikato District Council* [1997] NZRMA 539; [1998] 1 NZLR 360 (HC).

³³³ *Meridian Energy Limited v Central Otago District Council* HC, Dunedin, CIV 2009-412-000980, 16 August 2010.

³³⁴ *Maniototo Environmental Society Incorporated v Central Otago District Council* Decision C103/2009.

³³⁵ *Meridian Energy Limited v Central Otago District Council* HC, Dunedin, CIV 2009-412-000980, 16 August 2010.

³³⁶ J G Darby, supplementary evidence para 5.3 [Environment Court document 2A].

³³⁷ J G Darby, evidence-in-chief para 413 [Environment Court document 2] and supplementary evidence (evidence of Mr Thomson) at paragraphs 8.2(b) and 10.6(f) [Environment Court document 2A].

³³⁸ J S Roche, evidence-in-chief para 9.3.1 [Environment Court document 20].

³³⁹ M J Bayliss, evidence-in-chief paragraphs 4.1 and 4.7 [Environment Court document 21].



6.3 Section 7 of the RMA

Section 7 generally

[231] Only subsections 7(aa) – the ethic of stewardship; 7(b) – the efficient use and development of natural and physical resources, 7(c) – the maintenance and enhancement of amenity values and 7(f) – maintenance and enhancement of the quality of the environment – are directly relevant in these proceedings.

[232] Most of those matters to which we are to have particular regard are subsumed in various objectives and policies we discuss shortly. The exceptions are subsection 7(b) which we consider next, and section 7(f) which requires us to have particular regard to the maintenance and enhancement of the quality of the environment. That is particularly important in view of the applicant’s failure to consider whether that part of the environment outside the site but within Glendhu Station should be enhanced.

Section 7(b) – efficient use of natural and physical resources

[233] In *Meridian Energy Limited v Central Otago District Council*³⁴⁰ the High Court held that the Environment Court:

... went too far when it decided that section 7(b) required a comprehensive and explicit cost benefit analysis in [the] case.

We are bound by that decision. Clearly its ramifications need further thought. It seems to us that an important point remains that if a section 7(b) analysis is to be useful – in adding to the judgement required by section 5 – a cost benefit analysis is the best and (relatively) most objective test of which proposed use or development of the resources is more sustainable. If that is not supplied then an applicant loses its benefit, but is not penalised because the consent authority cannot have particular regard to – in the sense of “inquire into” : see *Quarantine Waste (NZ) Limited v Waste Resources Limited*³⁴¹ – evidence which does not exist. If there is no such inquiry into quantified benefits and costs there is a concern that a consent authority’s predictions about not wasting resources will be merely wind as far as the losing party is concerned.

[234] On the question of whether the proposal is an efficient use of the resources PBPL called Dr McDermott. He wrote³⁴²:

If we wish to ... determine whether a particular project represents good use of resources, we can quantify the cost and benefit streams that we identify to calculate the net present value (NPV). For this purpose, costs and benefits are estimated annually using real values (in this case 2009 dollar figures, unadjusted for inflation) over 25 years. Costs and benefits are discounted across these value streams to give greater weight to earlier costs and benefits than later ones. Deducting the sum of discounted costs from the sum of discounted benefits provides an estimate of the project’s NPV at a nominated discount rate.

³⁴⁰ *Meridian Energy Limited v Central Otago District Council* HC, Dunedin, CIV 2009-412-000980, 16 August 2010.

³⁴¹ *Quarantine Waste (NZ) Limited v Waste Resources Limited* [1994] NZRMA 529 at 542 (HC).
³⁴² P J McDermott, evidence-in-chief para 12.5 [Environment Court document 6].



[235] Earlier he had, correctly in our view, observed that a cost-benefit analysis³⁴³:

... adopts a community perspective and not that of the investing entity, with its interest in financial profit and loss ... it does not take account of the funding and structuring of the investment required, nor of transfers that might arise in the course of operations (such as interest and tax payments). It should, however, consider intangibles, however imperfectly.

[236] Dr McDermott then produced his analysis³⁴⁴ in this table:

Table 2 Parkins Bay Golf Course Development Benefits
8% discount rate³⁴⁵ (\$ million)

	Cost	Benefit	Net Benefit
Residences	\$57.0	\$93.2	\$36.2
Accommodation	\$12.7	\$6.4	-\$6.3
Golf Clubhouse	\$15.6	\$16.2	\$0.6
Golf Course	\$12.9	\$9.9	-\$2.9
Recreation	\$1.2	\$4.6	\$3.4
Grounds	\$8.1		-\$8.1
Total	\$107.4	\$130.3	\$22.9
Opportunity Cost	\$0.0	\$0.6	\$0.6
Net Present Value	\$107.4	\$129.8	\$22.4

He also recalculated the Net Present Value (“NPV”) with 6% discount rate because the project “... comprises primarily buildings ... At this rate, the NPV is \$29.2 m”³⁴⁶.

[237] The conclusions drawn by Dr McDermott were³⁴⁷:

³⁴³ P J McDermott, evidence-in-chief para 12.3 [Environment Court document 6].

³⁴⁴ P J McDermott, evidence-in-chief Table 2 in para 12.9 [Environment Court document 6].

³⁴⁵ Dr McDermott wrote about his choice of discount rate (at his para 12.6):

A 10% discount rate has been traditionally used to assess public sector projects. More recently, the view has been advanced that the discount rate should be based on the opportunity cost of capital; i.e. what the capital might attract if invested in the next best alternative. In 2008 Treasury issued an advice which recommends 8% as the default discount rate, 6% for buildings (suggesting a lower rate of return required) and 9.5% for technology (suggesting a higher rate of return). For this statement I have used 8% as the default discount rate.

³⁴⁶ P J McDermott, evidence-in-chief para 12.14 [Environment Court document 6].

³⁴⁷ P J McDermott, evidence-in-chief para 12.15 [Environment Court document 6].



The results of the economic analysis provide reassurance that the project is a sound use of resources as well as an innovative and imaginative addition to Wanaka's tourism infrastructure. The wider implication is that, because the project is justified in economic terms, it can benefit the visitor industry (... increased availability of accommodation), the community (from increased access to an attractive lake-side environment and access to income and employment), and the environment (... removing pastoral farming from the Parkins Bay area, landscaping, and re-vegetation).

In cross-examination by Mr Ibbotson he conceded³⁴⁸ that he had not tried to quantify the costs and benefits of changes to the landscape but pointed out that he had identified that omission in his evidence.

[238] It is correct that when he came to the conclusion just referred to Dr McDermott had given some thought to externalities of the proposal. In his statement of his assumptions³⁴⁹ he wrote that there would be benefits in the form of non-market returns³⁵⁰ from the new walking tracks:

While there will not be a charge for access, people nevertheless receive a benefit from this amenity. In 2007 Pamela Kaval and Richard Yao of Waikato University reviewed 19 studies of non-market valuation of recreation conducted in New Zealand between 1973 and 2002³⁵¹. This provided an opportunity to update my previous estimate of recreational user benefits³⁵² using more-up-to-date and more generalised information than available previously.

Kaval and Yao demonstrated a tendency for higher valuation of South Island compared to North Island recreation assets. The highest values were associated with backpacking and tramping resources (at \$243/day in 2007 dollars) followed by mountain and rock climbing (\$110/day). As there will be no overnight tramping at Parkins Bay and no rock climbing, these figures are useful background information but too high for the present analysis. Instead, I have adopted the value identified with "General Recreation" in the Kaval and Yao study as the best estimate of benefits gained from public access, \$34 per person per day. Some 10,000 people are assumed to take advantage of this opportunity in the first year (less than 30 people per day on average), increasing by 3% per year.

We have quoted that to draw attention to some potentially very useful research.

[239] However, on the subject of potential negative externalities he was not so definite in his evidence-in-chief. He wrote³⁵³:

³⁴⁸ Transcript p. 132.

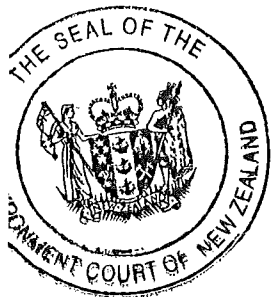
³⁴⁹ P J McDermott, evidence-in-chief Appendix B [Environment Court document 6].

³⁵⁰ P J McDermott, evidence-in-chief Appendix B paragraphs B.14 and B.15 [Environment Court document 6].

³⁵¹ Kaval P and Yao R (2007) "New Zealand Outdoor Recreation Benefits", *Working Paper in Economics 07/14, Department of Economics, University of Waikato*.

³⁵² Walker, D P (1992). "An economic valuation of Bottle Lake Forest: An economic valuation of Bottle Lake Forest: using both the travel cost and contingent valuation methods for analysis", Research project in Advanced Forestry Economics, School of Forestry, University of Canterbury.

³⁵³ P J McDermott, evidence-in-chief Appendix B paras B5 and B6 [Environment Court document 6].



Some submitters to the Council Hearing expressed a preference for the existing farmed landscape rather than the landscape proposed for the Parkins Bay development. An emotional attachment to an existing landscape can be considered with reference to “existence value”. This is a concept used to assess what the community might be willing to pay to maintain a landscape in its natural state. It is reflected, for example, in the willingness of taxpayers to fund national parks and conservation projects which may have no immediate use for nor even be accessed by the majority of them. It implies that people value selected landscapes which they do not use, and that increased access by others or a change in use may devalue them in their eyes.

The Glendhu Station landscape has been modified by farming and so is not in its natural state. It is already committed to an economic use. The issue of landscape effects is therefore more properly dealt with by experts in the context of the visual and biophysical impacts of the proposed land use change. However, allowance has been made in the economic analysis for \$500,000 expenditure on landscaping and \$2,207,000 on revegetation, expenditures that can be considered to enhance site biodiversity.

It is on this last point that he was criticised most fully by Dr Hazledine, the economist called by Mr Thorn. Dr Hazledine claimed³⁵⁴ that Dr McDermott “... made no attempt to quantify the potentially very considerable external effects of permitting development around the shore of Lake Wanaka”. In his reply Dr McDermott referred to the passages quoted above, although he also repeated³⁵⁵ his earlier comment that evaluation of the impact of changes to the landscape be left to the experts.

[240] Dr Hazledine wrote³⁵⁶:

[The] key issue is of course the social value (i.e., the value to New Zealand) of the Parkins Bay-West Wanaka land and landscape in its current, relatively pristine state, as opposed to its social value tranelled by a substantial residential development and golf course. Put it another way; the Court will need to decide (if it treats the proposal on its merit) whether the partial privatization of the view and landscape inherent in the proposal subtracts significantly from the social value of Parkins Bay-West Wanaka as a public good, to be enjoyed or appreciated by all New Zealanders, in actuality or in prospect.

Counsel for the applicant, Mr Christensen, cross-examined Dr Hazledine about his privatisation claim. He answered³⁵⁷ that people in the houses would “... get the lovely views and in that sense it is privatising the view”. Mr Christensen submitted the public has no right to these views at present because the land is owned by the McRae family’s company. That is true but it is not the whole picture. The public cannot access the site of the proposed houses. But in views of the site from the road, looking is free, and a considerable part of the purpose of section 6(b) of the RMA must be to give some protection to the views that passers-by have of outstanding natural landscapes. That recognises the reality that “beautiful scenery” is a major drawcard for visitors especially from overseas³⁵⁸.

³⁵⁴ T J Hazledine, evidence-in-chief para 66 [Environment Court document 22].
³⁵⁵ P J McDermott, rebuttal evidence para 4.9 [Environment Court document 6A].
³⁵⁶ T J Hazledine, evidence-in-chief para 80 [Environment Court document 22].
³⁵⁷ Transcript p. 216 (lines 11-35).
³⁵⁸ R A Corbett evidence-in-chief para 7.8 [Environment Court document 13].



[241] Another useful observation by Dr Hazledine was that³⁵⁹:

It may be that the proposed Parkins Bay development would represent such a new, more valuable use of resources. For sure, as a housing development, if not as a golf course, it would add more private value to the land than the opportunity cost use of continued pastoral farming. That is not in dispute. But what is, of course, in dispute here is whether private or market value should be determinative, in the presence of externalities (notably possible loss of amenity value) which the market fails to take into account.

Subsequently Dr Hazledine questioned³⁶⁰ Mr Darby's claim in respect of the golf course and the 42 houses that '... put simply, one cannot exist without the other'. For a long time we thought Dr Hazledine was simply wrong about that, since we are satisfied on Mr Darby's evidence³⁶¹ (supported to some extent by Dr McDermott) that it is most unlikely that a golf course would be built without the houses. Indeed, as Mr Darby's evidence³⁶² demonstrates, there is a clear trend in New Zealand for new golf courses to have housing associated with them. We have already recorded that Mr Darby himself has been master planner and lead designer³⁶³ for Millbrook Resort (Arrowtown), Clearwater Resort (Christchurch) and Jacks Point (Queenstown) amongst others.

[242] However, Dr Hazledine's obverse may be true : that the 42 houses could exist without the golf course. That is a useful way to think about the proposal : because if an applicant came to the Council with a proposal for one or two houses in an outstanding natural landscape, that would be scrutinised very carefully as the history of appeals to this court by the Wakatipu and Upper Clutha Environment Societies and by Mr Thorn shows. Forty-two houses in an outstanding natural landscape really does raise major concerns as Mr Kruger's, Ms Neal's and Ms Lucas' evidence suggests. We return to this issue later.

[243] Dr McDermott summarised the discussion of negative externalities as follows³⁶⁴:

I have considered Professor Hazledine's comments and remain comfortable with my treatment of externalities on the following grounds:

- a. The balance of substantive landscape and biodiversity impacts is a matter best left to the experts and not easily reduced to a single figure in a cost benefit analysis;
- b. However, a substantial investment in landscape and biodiversity together with the removal of pastoral farming from this land may well offset any negative externalities. Incorporating these costs into my analysis goes some way towards dealing with them. (However, I have not sought to offset this cost by valuing any consequent gains to the environment);

³⁵⁹ T J Hazledine, evidence-in-chief para 89 [Environment Court document 22].

³⁶⁰ T J Hazledine, evidence-in-chief paragraphs 8 to 13 [Environment Court document 22].

³⁶¹ J G Darby, evidence-in-chief para 4.10 [Environment Court document 2].

³⁶² J G Darby, evidence-in-chief para 2.3 [Environment Court document 2].

J G Darby, evidence-in-chief para 2.3 [Environment Court document 2].

P J McDermott, rebuttal evidence para 6.1 [Environment Court document 6A].



- c. Because the landscape is already substantially transformed existence and bequest value are of marginal if any relevance. As it stands, the land use can be further modified, subject to the limits associated with a Visual Amenity landscape, so that the notion of option value as a basis for preservation in its current form also has limited application.
- d. I acknowledge third party costs from loss of exclusiveness, changes in landscape appearance, benefits from a stronger tourism sector, and increased public access to the site for recreational purposes. There is difficulty in quantifying the reduction in utility to existing users that might result with any confidence. As it is, I am comfortable from a reading of Mr Greenaway's evidence that the loss will be one of degree rather than absolute for existing users who will, in any case, be outnumbered by future users. I am of the opinion that the balance between positive and negative impacts on third parties will lie with the former.

[244] In the end neither economist made any attempt to quantify all the negative externalities or the effect on "existence values"³⁶⁵, "option benefits" or "bequest values" so we can take those costs or benefits no further. We cannot have regard to anything not before us. Subject to those (important) omissions we approve the CBA prepared by Dr McDermott and find it to be a careful, relatively conservative analysis. We consider Dr Hazledine's criticisms are overstated, finding him to be rather subjective in his descriptions³⁶⁶ of the issues, off the point where he refers to 'privatising' of the views³⁶⁷, and slightly partial in not even acknowledging the positive externalities in the form of increased walking opportunities, or improved habitat.

6.4 Possible conditions to avoid, remedy or mitigate adverse effects

[245] There is an extensive suite of proposed conditions³⁶⁸. We consider that, if resource consent is to be granted, then those conditions need to be modified a little and further conditions need to be added.

[246] As for additions the court considers there should be extra conditions as to:

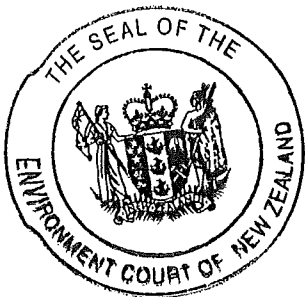
- (1) removal of all introduced conifers from the site and the banks of the Fern Burn;
- (2) no further building on Fern Burn delta;
- (3) amend the tracks so that the public can also use the eastern crossing of road;
- (4) movement of the site boundary to include entire stream catchments above the site.

³⁶⁵ T J Hazledine, evidence-in-chief para 67 et ff [Environment Court document 22] and P J McDermott, rebuttal evidence para 4.9 *et ff* [Environment Court document 6A].

³⁶⁶ In his para [80] Dr Hazledine refers to the current landscape as '... relatively pristine' and to the proposed development as 'trammell[ing]' it [Environment Court document 22].

³⁶⁷ Pointed out by Dr McDermott, rebuttal evidence para 5.1 [Environment Court document 6A].

³⁶⁸ N J Rykers, evidence-in-chief Appendix D [Environment Court document 14].



We also raise the question whether there should be an express condition requiring removal of all sweet-briar and lupins and if so from where. We are ambivalent about the former given how widespread it is on the South Island High Country. Further, there may be a conflict between biodiversity and aesthetic values here. Future residents might wish:

To hear the lark begin his flight,
 And singing startle the dull night,
 ...
 And at [the] window bid good morrow
 Through the sweet-briar or the vine;
 Or the twisted Eglantine³⁶⁹.

If there is one weed that appears to be both in the High Country to stay and attractive it is sweet-briar (Eglantine)³⁷⁰.

[247] We now turn to consider whether the proposal better achieves the objectives and policies of the district plan than refusing consent. We consider the issues in the reverse order to that in Chapter 2 of this decision where we outlined the relevant objectives and policies, that is:

- Rural objectives and policies (Chapter 5 of the operative district plan);
- Urban Growth (section 4.9 of the operative district plan);
- Open Space and Recreation (section 4.4 of the operative district plan);
- Landscape and Visual Amenity (section 4.2 of the operative district plan);
- Natural Environment (section 4.1 of the operative district plan).

Rural objectives and policies

[248] We consider these policies are generally met. The requirement to use soils for productive activities is met by use of the alluvial soils from the golf course. Reverse sensitivity effects are met by not locating houses too close to the boundary of the site. The landscape and amenity policies are effectively subsumed in the district-wide landscape issues and we will discuss them there.

Urban growth (under the operative district plan)

[249] As far as the district-wide landscape policies for future development are concerned we find that this development is located in an area with greater potential to absorb change³⁷¹ without detracting from landscape and visual amenities: the site contains less natural ground cover than the land immediately to the west, it is lower and

³⁶⁹ J Milton *L'Allegro* in *The Poetical Works of John Milton* (OUP 1958) p. 420.

³⁷⁰ We note here one of the few places where this otherwise accurate poet tripped. Sweet-briar is eglantine (*Rosa rubiginosa* is synonymous with *R eglantheria*). He probably meant honeysuckle which is 'woodbine' in Shakespearean English (and does twist).

³⁷¹ Policies 1(a) and (b) of section 4.2 [Operative District Plan p. 4-9].



it contains numerous hummocks and folds which allow houses to have lesser visual impact. Further, we find that the development is likely to harmonise with local topography³⁷² and will very likely improve local ecosystems³⁷³.

[250] In terms of the most relevant objective and related policy in the urban growth section³⁷⁴ of the district plan we find that the form of the proposed new growth will protect visual amenity and will not detract from the value of Lake Wanaka because the site itself is of lower natural quality (although part of an ONL). Thus the element of the policy which requires avoidance of urbanisation of land which is of outstanding landscape value is met.

Open Space and Recreation

[251] The recreational opportunities proposed are encouraged and supported under a district wide policy³⁷⁵ about open space and recreation. The district plan is alert³⁷⁶ to manage potential conflict between recreational activities and the environment and on other recreational opportunities. In particular it requires the consent authority to avoid, remedy or mitigate the adverse effects of commercial recreational activities or facilitate³⁷⁷ "... natural character, peace and tranquility of the [district]" and "... on the range of recreational activities and [on] the quality of the experience of people [involved] ..."³⁷⁸. For the most part the proposal will simply add to the quality of the experiences. For the few people who enjoyed the relative³⁷⁹ quiet of Parkins Bay previously, there are other places to go such as Emerald Bay.

[252] Finally, the objective as to the environmental effects of recreational activities also has implementing policies requiring that any adverse effects in the district's outstanding natural landscapes³⁸⁰ and the visual amenities³⁸¹ provided by the environment be avoided, remedied or mitigated. We examine these policies next as part of our discussion of the policies in part 4.2 (Landscape and Visual Amenity) of the district plan.

Landscape and Visual Amenity

[253] The proposal will not maintain the openness of the outstanding natural landscape setting. However, it will not reduce the openness of the wider landscape at all, and the reductions in openness on the site will be largely due to amenity planting (which is also

³⁷² Policy 1(c) of section 4.2 [Operative District Plan p. 4-9].

³⁷³ Policy 1(c) of section 4.2 [Operative District Plan p. 4-9].

³⁷⁴ Objective 4.9.3 and policy 4.9.3.1 [Operative District Plan p. 4-52].

³⁷⁵ Policy 3.3 in section 4.4.3 [Operative District Plan p. 4-26].

³⁷⁶ Objective 2 in section 4.4.3 [Operative District Plan p. 4-26].

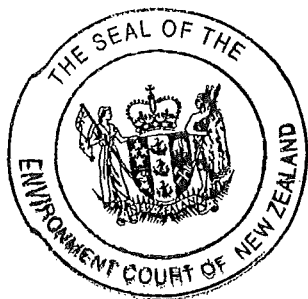
³⁷⁷ Policy 2/2.1 in section 4.4.3 [Operative District Plan p. 4-25].

³⁷⁸ Policy 2/2.4 in section 4.4.3 [Operative District Plan p. 4-25].

³⁷⁹ Relative given the presence a little off-shore of the waterski slalom course, and onshore of a marquee over parts of summer.

³⁸⁰ Policy 2.3 of section 4.4.3 [Operative District Plan p. 4-26].

³⁸¹ Policies 2.2. and 2.6 of section 4.4.3 [Operative District Plan p. 4-26].



encouraged by a policy³⁸² and is part of the first³⁸³ objective in Chapter 4). While we accept that the proposal is for residential development, the diagrams³⁸⁴ produced by Mr Darby show, the moraine area has at least medium and often high visual absorption capacity. That evidence was not disputed by other landscape experts, nor was he cross-examined on it.

[254] One of the fundamental questions for us in deciding whether the proposed development is appropriate is whether the development is sufficiently limited³⁸⁵. At this point we must not downplay the importance of the existing policy³⁸⁶ on urban development in the outstanding natural landscapes of the district. That policy discourages urban development in outstanding natural landscapes such as this one. We consider first that 42 houses spread over about 35 hectares is not urban development in this district although it is approaching it. In the operative district plan these densities are more akin to rural residential densities in Chapter 8.

[255] We accept that there is a possibility that this proposal, with other development in the vicinity, might constitute development that sprawls³⁸⁷ along Mt Aspiring Road and we will consider that when we turn to (ac)cumulative³⁸⁸ effects.

[256] We consider the proposal does recognise and protect³⁸⁹ naturalness of views from roads, and indeed enhances their amenity values. We have described how carefully the proposed 42 houses have been located and designed so as to protect the naturalness of views from Mt Aspiring Road. Given the scale and extent of views from the road we are satisfied that this policy would be unequivocally achieved.

[257] There is a policy³⁹⁰ requiring structures to preserve the coherence of outstanding natural landscapes. We find this policy has been expressly addressed³⁹¹ in that:

- the proposed houses are long and low thus mimicking the line and form³⁹² of the moraine/riverine terraces on which they are proposed;

³⁸² Policy 11 of section 4.2 [Operative District Plan p. 4-12].

³⁸³ Objective 1 (Nature conservation values) [Operative District Plan p. 4-2].

³⁸⁴ J Darby, supplementary evidence Attachment A (Mr Thomson's evidence) Figures 5 and 6 [Environment Court document 2A].

³⁸⁵ Policy 2(c) of section 4.2 [Operative District Plan p. 4-9].

³⁸⁶ Policy 6 of section 4.2 [Operative District Plan p. 4-11].

³⁸⁷ Policy 6(d) of section 4.2 [Operative District Plan p. 4-11].

³⁸⁸ See *Maniototo Environmental Society Incorporated v Central Otago District Council* Decision C103/2009 at para [151].

³⁸⁹ Policy 2(d) of section 4.2 [Operative District Plan p. 4-9].

³⁹⁰ Policy 9 of part 4.2 [Operative District Plan p. 4-11].

³⁹¹ See the evidence of Mr J Darby and the architects, Messrs Wyatt and Hill.

³⁹² Policy 9(a) first and fourth bullets [Operative District Plan p. 4-11].



- the houses are not located³⁹³ on skylines, nor on prominent slopes, but are tucked into the moraine folds;
- the colour of the buildings (local stone for the walls and native plants on the roofs³⁹⁴) will complement³⁹⁵ the existing dominant colours in the landscape.

Finally there are generous setbacks from Mt Aspiring Road which would maintain amenity values³⁹⁶.

[258] The proposed amenity planting has been designed with considerable care by a range of very well qualified experts including Dr J Roper-Lindsay (an ecologist) and Mr J Baker (a nurseryman). We are satisfied that the proposed amenity planting will be consistent³⁹⁷ with the patterns, topography and ecology of the immediate area, and will not obstruct views³⁹⁸ from Mt Aspiring Road to a degree where that is of concern.

[259] Similarly, all the transport infrastructure has been designed to preserve the open nature of the site³⁹⁹. Each of the eight bullet points from this policy has largely been factored into the design.

[260] Finally, the (small amount of) existing indigenous vegetation is being retained⁴⁰⁰, and indeed enhanced by substantial further planting⁴⁰¹.

The golf course

[261] The land use promoted for the flats (which are the more open part of the site) would minimise⁴⁰² adverse effects on the open character of the site. The exotic green grass of fairways and greens will mimic the existing paddocks on the flats on either side of the Fern Burn. Further, we agree with Dr Steven that the green fairways and “greens” will provide an interesting contrast with the native vegetation that will reinforce the variety which we identified earlier as a notable characteristic of this area.

[262] We return to the question of (ac)cumulative effects – policy 8 (Avoiding Cumulative Degradation)⁴⁰³. After considering all the relevant matters we find that the density of development – and in particular the proposed 42 houses – has not reached the point where the benefits of further planting and building will be outweighed by the over-

³⁹³ Policy 9(a) second bullet [Operative District Plan p. 4-11].
³⁹⁴ Policy 9(a) fifth bullet [Operative District Plan p. 4-11].
³⁹⁵ Policy 9(a) third bullet [Operative District Plan p. 4-11].
³⁹⁶ Policy 9(c) [Operative District Plan p. 4-12].
³⁹⁷ Policy 11(a) of section 4.2 [Operative District Plan p. 4-12].
³⁹⁸ Policy 11(b) of section 4.2 [Operative District Plan p. 4-12].
³⁹⁹ Policy 12 of section 4.2 [Operative District Plan p. 4-12].
⁴⁰⁰ Policy 15 of section 4.2 [Operative District Plan p. 4-13].
⁴⁰¹ Policy 14 of section 4.2 [Operative District Plan p. 4-13].
⁴⁰² Policy 17 of section 4.2 [Operative District Plan p. 4-13].
⁴⁰³ Policy 8 of section 4.2 [Operative District Plan p. 4-11].



domestication of the landscape provided that there is mitigation and environmental compensation by, for example, buffering along the eastern edge of the site. We come to that view relying on these factors:

- (1) the design of the proposed houses, especially roofs and curtilage areas;
- (2) location in moraine;
- (3) the development in a modified area;
- (4) the site on the edge of much more modified area;
- (5) the character of the four bays in the southern arm of Lake Wanaka which differs from the other arms of the lake;
- (6) the proposal in its own bay: it is in a separate node from Glendhu Bay or Emerald Bay.

The Natural Environment

[263] Our main concern here is what happens off “site”. We drew attention at the outset to the fact that almost all of the enhancement on Glendhu Station is to be on the 180 hectares of the “site”. Elsewhere on the station it is proposed to be nearly business as normal in terms of the RMA and the district plan. We write ‘nearly’ because we acknowledge that farming practices are unlikely to remain the same as previously: Mr McRae gave evidence⁴⁰⁴ as to how the family has entered the “Biogro” certification process and of his hopes for organic farming of the land. We accept too that Mr John McRae has plans⁴⁰⁵ to increase fencing of both stock country and wetlands, but question whether that should be tied in with completion of last sales of houses on the site to give an incentive for fencing to be completed in the next eight or ten years, because that appears to better ensure that the natural environment policies of the operative district plan are implemented.

[264] We remain concerned that some of the objectives and policies in Part 4.1 of the operative district plan are not being achieved by the proposal. In particular we are concerned about the values of the water ecosystems. We have three areas of concern:

- the Fern Burn and its margins and wetlands;
- the streams above (and then through) the site;
- the waters of Parkins Bay.

[265] As to the first we consider, provisionally, that on the evidence we have, Mr Kruger is correct. At the least it appears that the valley floor of the Fern Burn, as it passes through the Station at least from the Motatapu Road Bridge to the start of the delta, should be fenced off from stock. Preferably exotic weeds including willows should be removed, although that is less important, and may be the responsibility of the Crown as the new owner. It looks to us as if (some of) these steps would achieve the

⁴⁰⁴ J L McRae, evidence-in-chief para 4.10 [Environment Court document 3].

⁴⁰⁵ J L McRae, evidence-in-chief para 6.21 [Environment Court document 3].



important third and fifth objectives of part 4.1.4/1 of the operative district plan and the related policies. We consider that we should give PBPL an opportunity to respond on this issue and to offer modifications to the conditions and/or covenants attaching to the proposal if it considers it is appropriate to do so.

[266] In relation to the streams and headwater seeps on Glendhu Hill above the site and which then flow through it we consider these catchments should at least be fenced off and cattle removed. That should decrease sediment and other pollutants flowing through the site.

[267] As for the lake, there are two issues here. First the objective 4.4.1/1(5) encourages enhancement of the water quality in Lake Wanaka. In passing we note (but put no weight on) the recent NIWA report⁴⁰⁶ as to the degradation of high country lakes:

There is evidence of significant declines in water quality in many lakes that have more native than pastoral or other types of land cover and in many glacial lakes (with some catchment development) since 2005.

We have a generic concern over water quality in the streams. That could ultimately contribute to accumulative degradation of the water in Lake Wanaka. The applicant may call evidence on existing water quality instream and the effect of the proposal on that quality, and n how to enhance that water quality. Secondly we recall our concern over crested grebe habitat and seek further evidence on that issue.

6.5 Achieving the objectives and policies of PC30

[268] Resource consent is also required under a notional plan constituted by plugging PC30 in the operative plan.

[269] We now consider the proposal under the assessment criteria set out in PC30. Those criteria expressly apply to "... proposals for urban growth outside Urban Boundaries". Two guiding principles apply:

- A. Urban growth should only occur outside Urban Boundaries in exceptional circumstances.
- B. Urban growth should contribute to achieving a sustainable pattern of development.

[270] We now have regard to each assessment matter in turn.

- (a) *The extent to which the proposal helps to meet the identified local needs of established settlements/townships.*

In considering whether the potential effects of proposals for urban growth are minor Council should be satisfied that the proposal will:



⁴⁰⁶ NIWA Lake water quality in New Zealand : Status and Trends (NIWA Client Report : HAM 2010-107, 2010 at p. 36). We add that there is nothing in the report so far as we can see which suggests Lake Wanaka is being degraded.

- (i) *enable communities to meet their social, economic, environmental and cultural needs locally*
- (ii) *be proportionate to the needs of the local community, recognising that there is a hierarchy to the delivery of services and facilities*
- (iii) *contribute to achieving an appropriate mix and balance of land uses and activities*

It is not clear to us whether an 'identified local need' is one that is intended to be identified in the plan, but we think not. The evidence in this case is that there is very likely a strong need for a new golf course both for local people (thus contributing to social and cultural welfare) and even more, for overseas visitors (thus contributing to economic wellbeing). Similarly, we are satisfied that the proposal would contribute to a better mix and balance of land uses by adding a new golf course and houses to the existing farming activities.

[271] Next we must consider:

- (b) *The extent to which the proposal reduces energy consumption.*
In considering whether the potential effects of proposals for urban growth are minor Council should be satisfied that the proposal will:
 - (i) *reduce the need to travel by enabling communities to have convenient access to a range of local services and facilities that they require to meet their daily needs*
 - (ii) *improve the ability to undertake multi-purpose trips to destination nodes*
 - (iii) *support a choice of travel modes that prioritises walking, cycling and public transport*
 - (iv) *utilise solar access to buildings*

In relation to energy consumption we are satisfied that the golf course will reduce the need to travel by allowing golfers to access a premium golf course close to Wanaka rather than having to travel to Arrowtown or Queenstown for a championship level course. The houses will also reduce trips for golfers – who could walk down the hill to the first tee – and for skiers, especially on Treble Cone. We are not satisfied that the proposal will improve the ability to undertake multi-purpose trips. However, we consider that the proposal (as amended by the conditions we have suggested) does prioritise walking and cycling. Finally, the proposal does utilise passive solar energy in that the site is north-facing.

[272] Next:

- (c) *Whether opportunities exist to utilise existing urban resources.*
In considering whether the potential effects of proposals for urban growth are minor Council should be satisfied that the proposal will:
 - (i) *promote the efficient use of identified and committed physical resources, particularly zoned and consented land, infrastructure networks and other services within Urban Boundaries*



- (ii) *be necessary to avoid the adverse effects of town cramming*

We had no evidence that there are any existing urban resources that would allow a championship golf course and 42 houses to be built. As for the second matter under this heading, 'cramming' is, we infer, where a town is filled to bursting. This proposal would avoid the adverse effects of that, although there is no evidence that the proposal is necessary for the avoidance of cramming.

[273] Then there is:

- (d) *The extent to which the proposal avoids urban sprawl.*
In considering whether the potential effects of proposals for urban growth are minor Council should be satisfied that the proposal will:
- (i) *achieve a compact urban form*
 - (ii) *contain urban development by concentrating growth on established settlement areas*
 - (iii) *promote accessible communities*
 - (iv) *avoid cumulative effects that result in the urbanisation of rural areas*

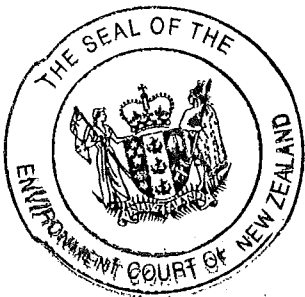
In considering whether the proposal avoids urban sprawl we are not satisfied that the proposal will be relatively compact; it is quite spread out. But despite falling within the definition of 'urban growth', the site is proposed to look rural, so this assessment matter does not really apply.

[274] As for:

- (e) *The extent to which the proposal safeguards sensitive resources.*
In considering whether the potential effects of proposals for urban growth are minor Council should be satisfied that the proposal will:
- (i) *preserve or enhance natural resources (soil, minerals, air and water), landscapes, ecological habitats, heritage and cultural features that are identified for their intrinsic value, and reserves.*

We are satisfied that the proposal scores well on this matter.

- (f) *The extent to which the proposal achieves cohesive urban areas.*
In considering whether the potential effects of proposals for urban growth are minor Council should be satisfied that the proposal will:
- (i) *provide effective urban design that successfully integrates activities*
 - (ii) *co-ordinate the delivery of activities and infrastructure*
 - (iii) *preserve or enhance the character and identity of an adjacent settlement and the surrounding area*
 - (iv) *preserve or enhance the social capital of the local community*
 - (v) *be compatible with the scale of existing urban development*
 - (vi) *safeguard the amenity values of adjacent activities*



We consider the proposal will integrate its various components, and be compatible with adjacent activities and their amenities without adverse effect on the nearest urban settlement (at Wanaka). We consider these criteria are satisfied overall.

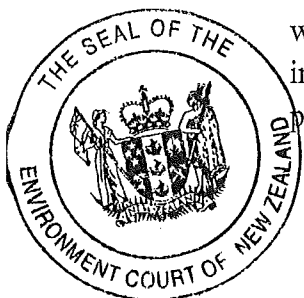
[275] Finally we must consider:

- (g) *The extent to which the proposed site will help to mitigate the effects of urban development.*
In considering whether the potential effects of proposals for urban growth are minor Council should be satisfied that the proposal will:
- (i) *maximise opportunities to re-use previously developed land, other than where this conflicts with other criteria*
 - (ii) *utilise land with the least productive soil classification*
 - (iii) *avoid sensitive landscapes, and can be successfully assimilated into the landscape*
 - (iv) *preserve or enhance ecological habitats, particularly significant indigenous vegetation and fauna*
 - (v) *preserve or enhance heritage and cultural features*
 - (vi) *avoid giving rise to reverse sensitivity issues*
 - (vii) *provide safe vehicular access and avoid a reduction in the level of service of the transportation network*
 - (viii) *contribute to the delivery of an integrated infrastructure network*
 - (ix) *avoid areas of identified natural hazards.*

We are satisfied:

- (i) that it is likely that there is little if any opportunity to re-use previously developed land for this proposal given its most unusual requirements (superior golf course and discreet housing opportunities);
- ...
- (iii) that the proposal avoids a sensitive landscape in that it is already, as we have described, a varied and vivid landscape, and the proposed houses and golf course will only add to that complexity;
- (iv) ecological habitats are very likely to be enhanced;
- (v) there are no heritage and cultural features to be enhanced;
- (vi) there will be no reverse sensitivity issues provided the site boundaries are adjusted to keep all streams flowing through the golf course in one title;
- (vii) that the proposal will provide safe vehicular access;
- (viii) ...
- (ix) that the proposal will avoid natural hazards (subject to a potential fire hazard raised earlier).

In relation to (iii) the sandy loams are not highly productive soils; and as for point (viii) we have no evidence on whether the proposal will contribute to the integrated infrastructure, but given the relative remoteness of the location and the scale of the proposal consider that is unimportant.



7. Outcome

[276] PBPL's proposal is in many ways highly laudable. Because of its careful siting and thoughtful design it achieves many of the objectives of the operative district plan. Further, to the extent it constitutes "urban growth" – which in our view is more theoretical than practical in these proceedings – we judge that it is a proper exception to the need to keep urban development within existing towns and villages within the district, and that it would come close to achieving a sustainable pattern of golf courses in the district. Thus the two principles in PC30 would be achieved.

[277] However, there are three important matters under the RMA, the operative district plan and PC30 which are not (or may not in the second two cases below) being adequately addressed. Those are:

- (1) the landscape impact of the development, given its comparatively large scale (42 houses) for a rural area;
- (2) concerns about accumulative effects of possible further development especially east of the Fern Burn – both on and beyond the boundary of Glendhu Station;
- (3) the lack of attention to the natural environment of Glendhu Station and elsewhere around the site (as opposed to the careful design that has been lavished on the site itself).

As matters stand – that is on the proposal with the conditions and covenants volunteered by PBPL through counsel in his closing submissions – we are not satisfied after weighing all the matters we have considered that the proposal would achieve the purpose of the Act. Some aspects of the possible environmental compensation raised by the court and discussed by Mr Kruger in his supplementary evidence⁴⁰⁷ bring the proposal closer to achieving the purpose of the RMA. But in his reply⁴⁰⁸ Mr Christensen showed that PBPL and the owners of Glendhu Station were not prepared to go much further with mitigation or environmental compensation. That suggests the application should fail under both the operative district plan and PC30.

[278] We are not sure about that outcome for two reasons. First PBPL has only addressed environmental compensation as an afterthought, and should be given a chance to redress that – especially off "site" – after consultation with the McRae family. Second, because our conclusions depend to some extent on Mr Kruger's supplementary evidence⁴⁰⁹ and we are very conscious that fairness requires that PBPL and the Council should be given an opportunity to respond to that. Further, with some amendment of

⁴⁰⁷ Which in many ways is quite helpful for PBPL: [Environment Court document 34A].

⁴⁰⁸ M Christensen, submissions [Environment Court document 39].

⁴⁰⁹ R F W Kruger, supplementary evidence [Environment Court 34A].



the conditions and further covenants supplying further mitigation and/or greater environmental compensation we can see that we might be satisfied that the proposal would be likely to achieve the purpose of the Act. Given that natural justice requires that we should hear PBPL and the Council further, we have tried to alert those (and the other) parties to the matters we consider need attention and which might well push the application from failure to success if it was amended.

[279] We have tried to express our satisfaction with what PBPL has done to mitigate adverse effects on that part of the outstanding natural landscape which is the site. Instead the applicant needs to be conscious in all this that it can do little more to mitigate the visual impact of its development on the landscape. The sheer scale of this proposal effectively negates that. In our view PBPL needs to concentrate on the second and third matters referred to in the previous two paragraphs. A minor exception is that the landscaping plans might be amended:

- to provide more complete screening of houses from views at the formed layby on Glendhu Bluff;
- to meet Mr Kruger's suggestion of a more "natural" planting pattern; and
- to make it clear beyond doubt how sweet-briar and other weeds are to be managed around the houses, and especially in the open spaces.

Further, rather more should be stated in the conditions to guide any management plans more clearly.

[280] In case it assists the applicant we can advise that if we are to grant resource consent as sought then, anticipating that we may be satisfied on other aspects questioned and on the other environmental compensation on the station, we consider the appropriate mitigation and environmental compensation would include creation by easements and formation of the following tracks off-site (using the Greenaway Review numbers):

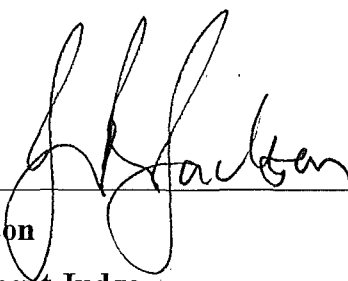
1. Wanaka foreshore – Glendhu Bay to Parkins Bay jetty
10. Motatapu to Mt Aspiring Road
12. CA1 to CA4
13. Western descent from CA4 – preferably over a farm track.

[281] The way forward is for PBPL (and Glendhu Station Limited) and the Council to consider and take advice on our findings, predictions and suggestions and then, through counsel, to advise the Registrar in writing whether they wish to call further evidence on, for example, the farm management and ecological implications of Mr Kruger's supplementary evidence (to the extent we have tentatively relied on it) and/or on our predictions (to the extent we have left them open) and on what other mitigation and/or environmental compensation PBPL considers it can put forward in the light of this (interim) decision.



[282] For the avoidance of doubt we record that nothing in this decision should be read as expressing a view about the resource management merits or lack of them of any potential hotel or other accommodation on – refer to Attachment ‘Z’ – Area D above Glendhu Bluff, or about a camp ground or other development on Area C2.

For the Court:

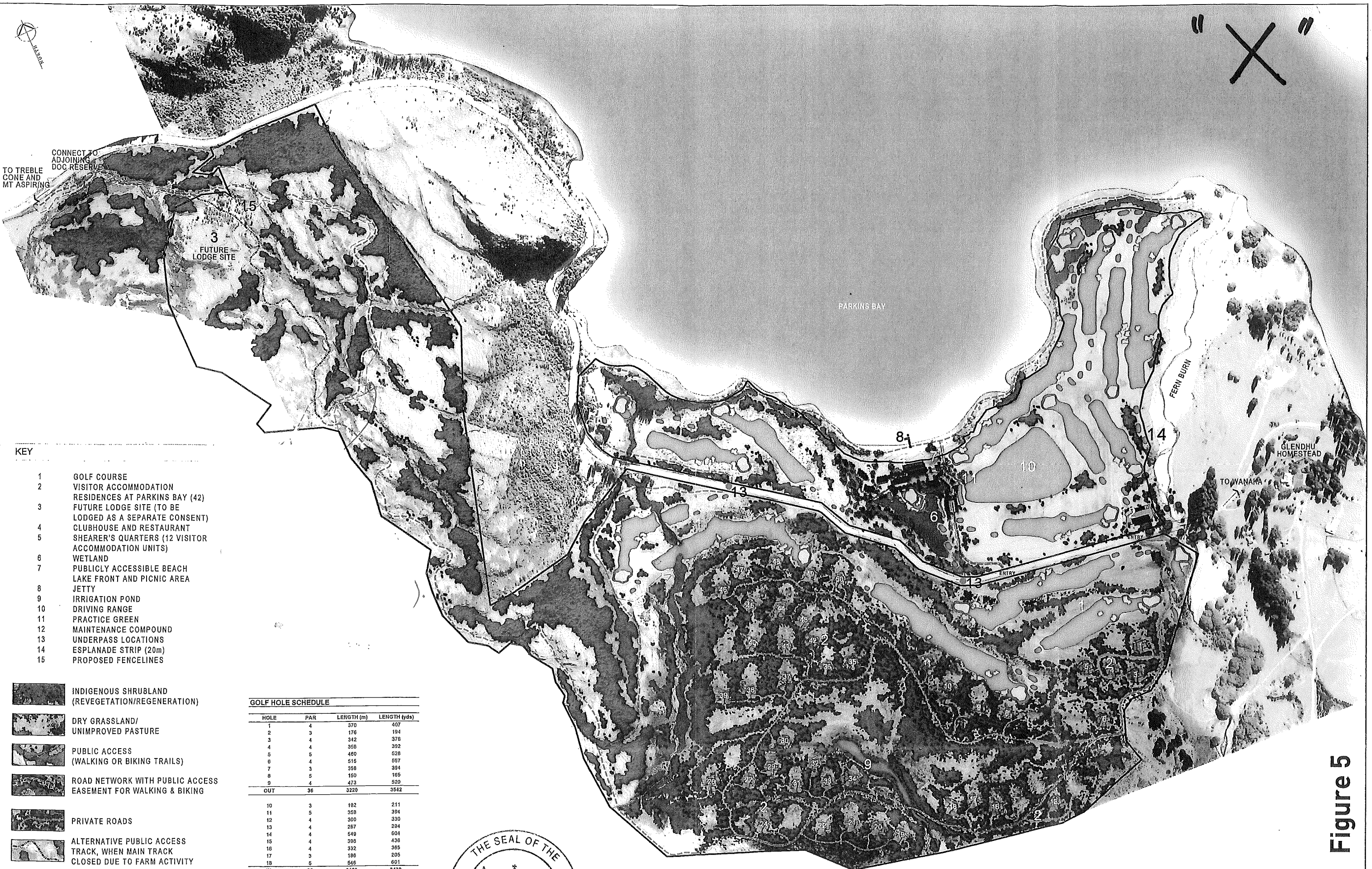


J R Jackson
Environment Judge



Attachments:

- X Site plan [Parkins Bay Golf Course Master Plan : Figure 5 (September 2009) to Environment Court document 2A]
- Y Track map
- Z Covenant Areas plan (Appendix E to Mr Christensen’s closing submissions)



CONNECT TO
ADJOINING
DOC RESERVE
TO TREBLE
CONE AND
MT ASPERING

- KEY**
- 1 GOLF COURSE
 - 2 VISITOR ACCOMMODATION RESIDENCES AT PARKERS BAY (42)
 - 3 FUTURE LODGE SITE (TO BE LODGED AS A SEPARATE CONSENT)
 - 4 CLUBHOUSE AND RESTAURANT
 - 5 SHEARER'S QUARTERS (12 VISITOR ACCOMMODATION UNITS)
 - 6 WETLAND
 - 7 PUBLICLY ACCESSIBLE BEACH LAKE FRONT AND PICNIC AREA
 - 8 JETTY
 - 9 IRRIGATION POND
 - 10 DRIVING RANGE
 - 11 PRACTICE GREEN
 - 12 MAINTENANCE COMPOUND
 - 13 UNDERPASS LOCATIONS
 - 14 ESPLANADE STRIP (20m)
 - 15 PROPOSED FENCELINES

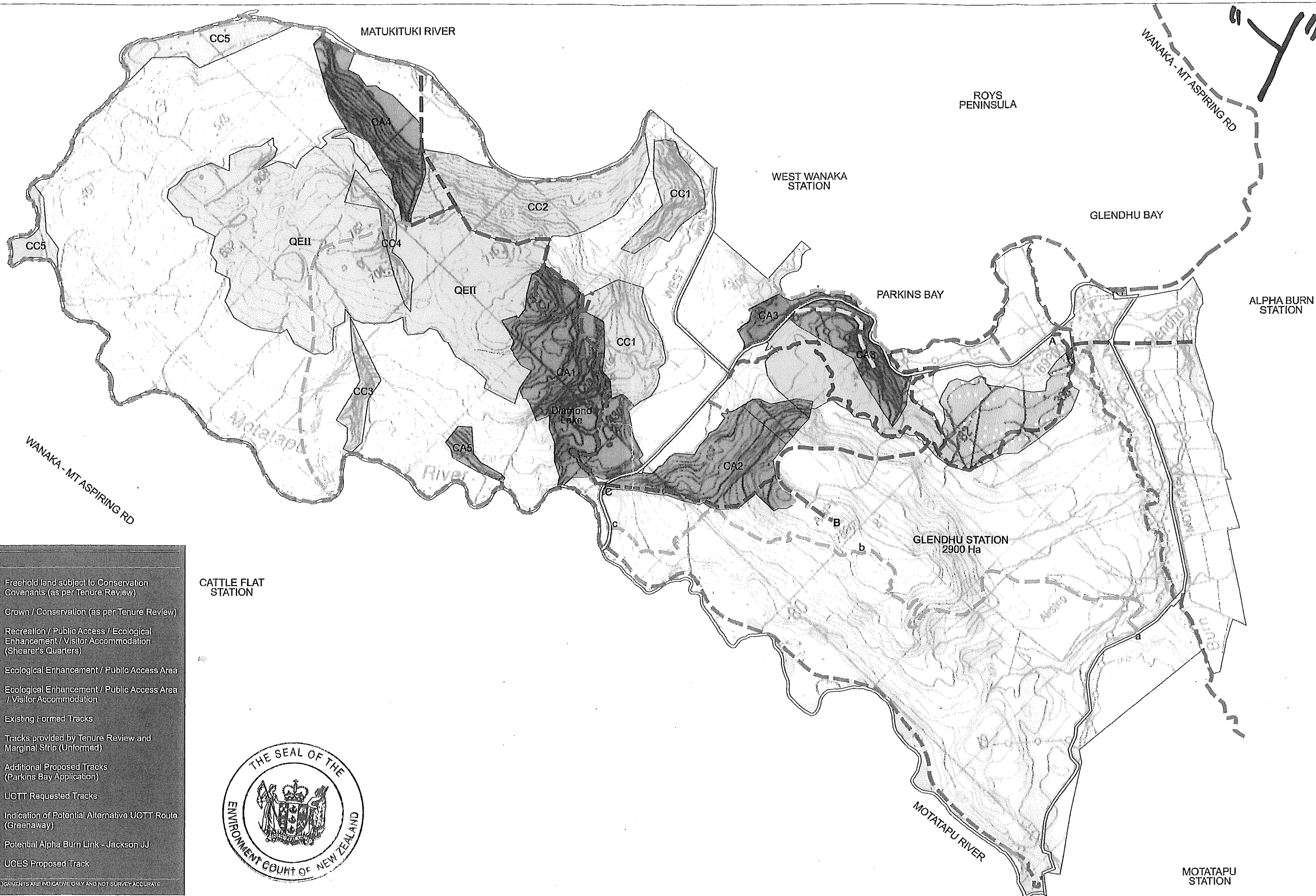
- INDIGENOUS SHRUBLAND (REVEGETATION/REGENERATION)
- DRY GRASSLAND/ UNIMPROVED PASTURE
- PUBLIC ACCESS (WALKING OR BIKING TRAILS)
- ROAD NETWORK WITH PUBLIC ACCESS EASEMENT FOR WALKING & BIKING
- PRIVATE ROADS
- ALTERNATIVE PUBLIC ACCESS TRACK, WHEN MAIN TRACK CLOSED DUE TO FARM ACTIVITY

GOLF HOLE SCHEDULE

HOLE	PAR	LENGTH (m)	LENGTH (yds)
1	4	370	407
2	3	176	194
3	4	342	376
4	4	358	392
5	5	480	528
6	4	516	557
7	3	358	394
8	5	450	495
9	4	473	520
OUT	36	3220	3542
10	3	192	211
11	5	358	394
12	4	300	330
13	4	267	294
14	4	549	604
15	4	398	438
16	4	332	365
17	3	188	209
18	5	546	601
IN	36	3126	3439
OUT	36	3220	3542
TOTAL	72	6346	6981



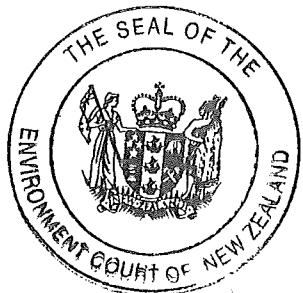
Figure 5



KEY

- Freehold land subject to Conservation Covenants (as per Tenure Review)
- Crown / Conservation (as per Tenure Review)
- Recreation / Public Access / Ecological Enhancement / Visitor Accommodation (Shearer's Quarters)
- Ecological Enhancement / Public Access Area
- Ecological Enhancement / Public Access Area / Visitor Accommodation
- Existing Formed Tracks
- Tracks provided by Tenure Review and Marginal Strip (Unformed)
- Additional Proposed Tracks (Parkins Bay Application)
- UCTT Requested Tracks
- Indication of Potential Alternative UCTT Route (Greenaway)
- Potential Alpha Burn Link - Jackson JJ
- UCES Proposed Track

NOTE: ALL TRACK ALIGNMENTS ARE INDICATIVE ONLY AND NOT SURVEY ACCURATE



JARVIS PARTNERS LIMITED
 Level 1, 100-102, The Arcade, 100-102, The Arcade, Wellington, New Zealand
 Telephone: +64 (0)4 499 9999

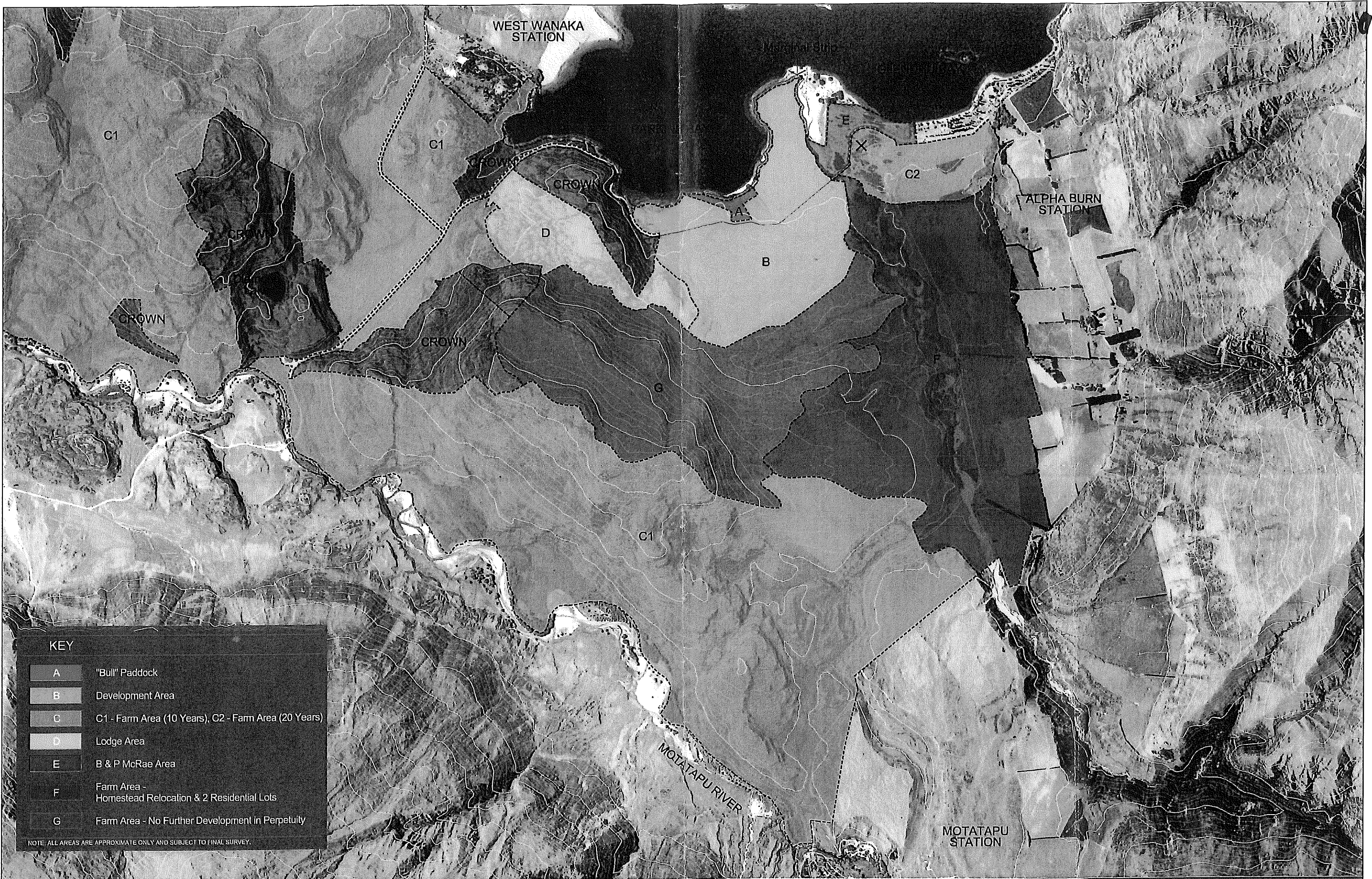
Scale 1:15,000 (A1) 1:30,000 (A3)

NOTE: Potential Tracks marked A-B-C, is an alternative alignment to UCTT requested track a-b-c. All areas and potential track alignments shown are indicative only, and are subject to final survey.

PARKINS BAY
GLENDHU STATION
POTENTIAL PUBLIC ACCESS & RECREATIONAL TRAILS

Scale: 1:30,000 (A3) EC: public access & trails FEB 2010

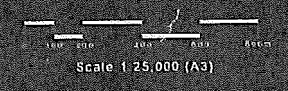
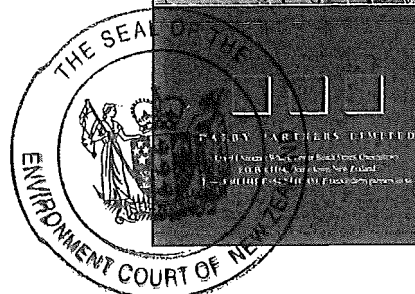
Z'



KEY

A	"Bull" Paddock
B	Development Area
C	C1 - Farm Area (10 Years), C2 - Farm Area (20 Years)
D	Lodge Area
E	B & P McRae Area
F	Farm Area - Homestead Relocation & 2 Residential Lots
G	Farm Area - No Further Development in Perpetuity

NOTE ALL AREAS ARE APPROXIMATE ONLY AND SUBJECT TO FINAL SURVEY.



NOTE: All areas shown are indicative only, and are subject to final survey.

PARKINS BAY
 DETAIL B
 PROPOSED COVENANT AREAS
 Scale: 1:25,000 (A3)

EC

EC_Pr covenants-option 2 March 2010 REVISION