Summary

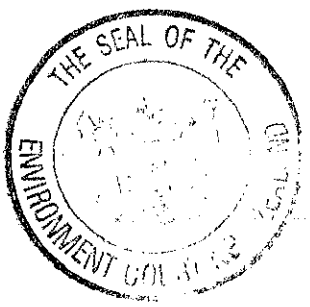
[400] In respect to the evidence available to the Court on landscape matters, we accept the evidence of Mr Boffa, that from a purely physical and visual point of view, the TPD effects on the landscape environment are of a minor nature. Having said that we understand, as does Mr Titchener, that this is only a part of the story. As a Court we have some understanding of the way the Maori people regard the maintenance of the pristine nature of their environment, which carries with it a continuity of the spiritual and cultural association they have always had with their land. We reiterate our disappointment at not being given the opportunity to have a more in-depth account of the tangata whenua's feelings regarding what they see as the desecration of their traditional lands by the TPD structures.

Balancing conflicting interests under the RMA

[401] We have found that the TPD makes a significant contribution to the hydro electric production of New Zealand. Its infrastructure, with its "sunk-costs" and existing capacity to produce 360MW– not to mention the re-use of the water down the Waikato River – reflects its contribution to the New Zealand economy. More importantly, any constraining by way of further releases of water down the streams and rivers affected by the diversions, will result in loss of hydro generation with significant economic implications as earlier discussed in this decision.

[402] Clearly, it is in the national interests for the TPD structure to be as fully utilised as possible. The water and the waterways, utilised by the TPD, can in an average year and in the absence of providing any flows for environmental reasons, produce 1,801 GWh/yr of electricity[382]. The potential generation has been reduced as a result of environmental constraints to a potential annual generation of 1,437 GWh/yr. In reality, the actual average annual generation for the period 1989 to 2003 was only 1,246 GWh/yr – the difference being that not all available water can be diverted all the time.[383]

[382] Bowler, EiC, paragraph 4.9.
[383] Bowler, EiC, paragraph 4.10.



[403] The current situation (prior to these new resource consents becoming operative) has resulted in the spillage of water for environmental reasons such that approximately only 82% of the potential generation is able to be achieved[384]. We are thus conscious of the effect of further eroding the available water that can be used.

[404] That the current situation provides for the release of water for environmental reasons, reflects the need to balance the national interest demands against the necessity of sustaining the environment. We also note that the environmental constraints to date have not been primarily imposed to mitigate Maori concerns. As we have said, the minimum flow regime is primarily to mitigate the effects of the diversion of the waters on such matters as: the natural character of the rivers and streams; the physical and biological environment; and the protection of indigenous habitat such as native and trout fisheries and of the blue duck.

[405] We have also found that to grant consent, as sought, would have a significant effect on Maori. To the Maori people, their tūpuna awa have been and continue to be taonga of central, material and spiritual significance. The importance of the river's place has been central to their cultural identity, as demonstrated by the years' of protest and litigation which has, according to both the Waitangi Tribunal and Mr Taiaroa, continued almost unabated for over a century.[385]

[406] We are mindful of our responsibilities to consider as directed, the provisions of sections 5, 6(e), 7(a) and 8 of the Act. In ***TV 3 Network Services v Waikato District Council***[386] the High Court had this to say of those sections:

> The importance of these sections [ss.5, 6(e), 7(a) and 8] should not be underestimated or read down. For, they contain the spirit of the new legislation.

[407] More recently, when delivering the judgment of the Privy Council in ***McGuire v Hastings District Council***[387] Lord Cooke of Thorndon made reference to the single broad purpose of the Act; then emphasised, that in achieving that purpose, the authorities concerned (which includes the Court) are bound by certain requirements, including requirements, of particular sensitivity to Maori issues. He said:

---

[384] Copeland, EiC, paragraph 5.3
[385] Whanganui River Report, Executive Summary, XVIII; Taiaroa, EiC, paragraphs 8-12.
[386] [1998] 1 NZLR 360.
[387] [2002] 2 NZLR 577.

> Section 5(1) of the RMA declares that the purpose of the Act is to promote the sustainable management of natural and physical resources. But this does not mean that the Act is concerned only with economic considerations. Far from that, it contains many provisions about the protection of the environment, social and cultural well-being, heritage sites, and similar matters. The Act has a single broad purpose. Nonetheless, in achieving it, all the authorities concerned are bound by certain requirements and these include particular sensitivity to Maori issues. By section 6, in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for various matters of national importance, including "(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu (sacred places) and other taonga (treasures)". By section 7, particular regard is to be had to a list of environmental factors, beginning with "(a) Kaitiakitanga [a defined term which may be summarised as guardianship of resources by the Maori people of the area]". By section 8, the principles of the Treaty of Waitangi are to be taken into account. These are strong directions to be borne in mind at every stage of the planning process. The Treaty of Waitangi guaranteed Maori the full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties which they desired to retain. While as already mentioned, this cannot exclude compulsory acquisition (with proper compensation) for necessary public purposes, it and the other statutory provisions quoted do mean that special regard to Maori interests and values is required in such policy decisions as determining the routes of roads. Thus, for instance, the Lordships think that if an alternative route not significantly affecting Maori land which the owners desire to retain were reasonably acceptable, even if not ideal, it would accord with the spirit of the legislation to prefer that route. So, too, if there were no pressing need for a new route to link with the motorway because other access was reasonably available.[388]

[408] We are mindful that the provisions relating to Maori issues must be balanced with the other provisions of Part II, to give effect to the single broad purpose of the Act. They are not to be raised to the status where they are tantamount to the exercise of an exclusionary veto – that would be impermissible.[389]

[409] We are equally as mindful of the weighty consideration we must give to matters and considerations of national benefit as demonstrated in the High Court judgment in ***New Zealand Rail***. The High Court said:

> ...questions of national importance, national value and benefit, and the national needs, must all play their part in the overall consideration and decision.[390]

---

[388] *McGuire v Hastings District Council* (2002) 2 NZLR 577, paragraph 21.

[389] See *TV3 Network Services; Minhinnick v Watercare Services Limited* (3 September 1997) HC Auckland, HC 86/97.

[390] *NZ Rail Ltd v Marlborough District Council,* [1994] NZRMA 70 HC at 86; see also *Elderslie Park v Timaru District Council* [1995] NZRMA, 433; *Transit New Zealand v Auckland Regional Council* (A100/2000); *Holdings v Marlborough District Council*

[410] Central to our determination is that the RMA has a single purpose. Consistent with that, sections 6 to 8 are subordinate and accessory to the primary and principal purpose of the Act.

[411] Having referred to the Part II matters that reflect matters of Maori sensitivity it is not necessary for us to dwell on each subsection. This was not done by Mr Ferguson on behalf of the Maori appellants. No particular emphasis was given to any subsection and, indeed, there was no dispute by counsel as to their applicability – as with the other Part II matters – and the relationship between section 5 and sections 6, 7 and 8.

[412] Part II provisions containing requirements of particular sensitivity to Maori issues, are accessory to and inform the single purpose of the Act as set out in section 5 – in particular the imperative to manage physical resources in a way or rate, which enables "...people and the communities to provide for their...cultural well-being". While all cultures have to be considered, in appropriate cases we are bound, in achieving the broad purpose of the Act, by those requirements to have particular sensitivity to Maori issues.

[413] Section 6(e) of the Act is particularly relevant in this case, because of the evidence we heard – much of it uncontested – of the cultural and traditional relationship of the Maori appellants with their ancestral waters. Section 7(a) is also relevant because of the evidence we heard – again uncontested – of the Maori appellants kaitiaki responsibility to protect the spiritually significant dimensions of their awa.

[414] Section 8 is also relevant. No guidelines are given in the Act as to the manner in which we apply the Treaty principles – which are of course obligations on the Treaty partners[391]. Nor are there any guidelines in the Act as to what constitutes the principles of the Treaty.

[415] In ***Carter Holt Harvey Limited v Te Runanga O Tu Wharetoa Ki Kawerau,***[392] the High Court adopted the list of Treaty principles set out in "Laws of New Zealand – Treaty of Waitangi"[393] extracted from decisions of the Waitangi Tribunal. Seven principles are paraphrased. In "Maori Custom and Values in New Zealand Law"[394] nine principles are listed. The lists are by no means definitive lists. The principles have, and will be, enunciated on a case by case basis by the Courts and the Waitangi Tribunal.

---

[391] See *Sea-Tow Limited v Auckland Regional Council* [1994] NZRMA 204.
[392] Unreported, HC Rotorua, Keith J, 12 December 2002, at paragraph 27.
[393] Paragraph 12.
[394] New Zealand Law Commission Study Paper No. 9 (2001), pages 79-82.

[416] Of particular relevance to this case are; the principles of partnership, active protection, recognition of rangitiratanga and mutual benefit. The principle of partnership requires that the Crown and Maori act towards each other reasonably and in good faith[395]. The principle of active protection obliges the Crown to positively protect Maori Treaty interests[396]. Recognition of rangitiratanga recognises the right of Maori to exercise self-management or kaitiaki over their ancestral lands and waters. The underlying premise of the principle of mutual benefit is that Treaty partners can expect to benefit by the arrangement entered into. The Waitangi Tribunal has said of this principle:

> ...it was envisaged from the outset that the resources of the sea would be shared... [This principle] recognises that benefits should accrue to both Maori and non-Maori as the new economy develops but this should not occur at the expense of unreasonable restraints on Maori access to their sea fisheries.[397]

[417] Having identified the above principles, the next question is – how do we apply those principles in our decision on an application for resource consents by Genesis. Genesis is listed as a State Owned Enterprise under Schedule 1 of the State Owned Enterprise Act 1986. It is not the Crown and accordingly is not a Treaty partner. Nor is the Council.

[418] The imperative contained in section 8 does not invest consent authorities, or this Court, with authority to decide whether there has been a breach of a Treaty principle by a Treaty partner[398]. Rather we see the imperative as requiring us to "take into account" the Treaty principles with all other matters and effect a balance. We are required to assess the facts as they relate to Maori issues in the light of the Treaty principles, as ascertained by the Superior Courts and the Waitangi Tribunal.

[419] Section 8 of the Act is to be read with the more specific imperatives contained in sections 6(e) and 7(a). Those provisions should not, in our view, be read with a limiting pedantry. Nor should they be bogged down in legal niceties, as for example – the precise meaning and manner of application of the Treaty principle. The imperatives ensure recognition of, but not exclusive recognition of, Maori cultural issues in the resource management process.

---

[395] Waitangi Tribunal Muriwhenua Fishing Report – Wai 22.
[396] Waitangi Tribunal – Findings and Recommendations of the Waitangi Tribunal on an application by Aila Taylor for and on behalf of Te Atiawa Tribe in relation to fishing grounds in the Waitara District – Wai
[397] Waitangi Tribunal Report – Ngai Tahu Sea Fisheries Report 1992, page 273.
[398] See *Banks v Waikato Regional Council*, A031/95, at page 13.

[420] We are also aware that Treaty obligations are not absolute and unqualified[399]. But require such action as is reasonable in the circumstances. As we have said the Maori issues under Part II need to be balanced and weighed with other Part II matters – in this case section 7(b) is particularly relevant and the many benefits that the TPD creates in the national interest.

[421] Taking into account the relevant matters in Part II, and balancing the effects on Maori against the many benefits of the TPD, [the single purpose of the Act], we are of the view that in order for there to be sustainable management some accommodation needs to be made by way of mitigation, to address the effects on Maori. The question is – how should Maori be accommodated?

[422] The Maori appellants claim their grievances can be accommodated by:

(i) The release of more water down the waterways; and/or
(ii) A reduced term of consent.

Genesis claimed that any Maori grievances can be met by:

(i) Consent conditions to address tangata whenua concerns and protect their interests.

We now discuss each in turn.

Release of more water

[423] The Maori appellants, in their notices of appeal, requested the return of full flows. Many of their witnesses did likewise. However, being pragmatic their case was not put in that way. In his closing submissions, Mr Ferguson said:

> While it is accepted that the original mauri of these waters cannot be reinstated without a full restoration of the former natural flows, as Mr Mikaere acknowledged in answer to a question to Commissioner Prime, where there was no water there is no mauri. Accordingly, at the very least the Whanganui iwi and Ngati Rangi seek to reconnect wherever possible the headwaters of their tupuna awa.
>
> In relation to the western diversion, Whanganui iwi and Ngati Rangi consider that such minimum flows could be imposed without unreasonably impacting upon the "sustainability" of the TPD. In relation to the eastern diversion, where the Wahianoa aqueduct diverts waters from 22 streams, Ngati Rangi consider that there would be scope for agreement to be reached between Ngati Rangi and

[399] See *New Zealand Maori Council v Attorney-General* [1994] NZLR 513, TC, at 517.

> Genesis regarding how any reduced diversion could be redistributed between some or all of the 22 diverted tributaries.[400]

[424] The position of Whanganui iwi has been consistent for many years – they want the full closure of the western diversion.[401]

[425] Consistent with this position, a number of the iwi witnesses reiterated their desire for the return of the natural flow. For example, Ms Ranginui said:

> What I would like to see is something that could be given back to my mokopuna. I would like to see the river return to its normal state. I just feel as if the river has been stripped naked. It's like seeing one of our tupuna's korowai torn away from him.
>
> If the control of the river is returned to our people and the control of the water is carried out so that the river returns to what it once was then I will be happy. However, at the present time, I am just the river and I am grieving.[402]

Ms Ranginui reinforced her stance during cross-examination by Mr Majurey[403].

[426] Mr Takarangi said:

> So really that resource consent that Genesis wants we won't give it to them, we won't even give them half because its against what we are endeavouring to get.
>
> This is the Whanganui River today. We, the descendants of Tupoho, grieve. We will also share the fate of the river unless the natural water flow of old is returned to us – to the iwi, hapu and whanau of the Whanganui River. The Whanganui River bears the mana of our iwi and the prestige of all our people.[404]

[427] Other witnesses also conceded in cross-examination to Mr Majurey that the rivers and their tributaries be put back to their natural flow. Examples were detailed in Mr Majurey's careful submissions and there is no need for us to repeat them here.

[428] As we understand the customary evidence, the full restoration is sought to provide for the protection of the mauri/mouri, tapu and mana of their waterways. Concern was also expressed about the physical effects and their affect on the rivers' ecology including fisheries. However, it will be clear from our findings, that increases in minimum flows in either the western or eastern diversion will not address the concerns raised by the Maori

[400] Mr Ferguson's closing submissions, paragraphs 28 and 29.
[401] See the Whanganui River minimum flows case – Planning Tribunal, at page 12; and of the TPD hearings Committee in its joint decision at page 98.
[402] Ranginui, EiC, paragraphs 47 and 48.
[403] Transcript, pages 1013-1017.
[404] Takarangi, EiC, paragraphs 22 and 23.

appellants relating to physical matters. The evidence established that, in the main, such concerns do not arise as a result of the TPD.

[429] At least two of the customary witnesses suggested "sharing" the water. Ms Metekingi said:

> I think that the control of the river should be a sharing thing. Respectfully shared taking into consideration that its just not a large expanse of water to be used commercially and things like that. It's part of yourself, so you have to be respectful and be able to support it.

[430] Ms McDonnell after reading the evidence of her sister Ms Ida Taute, sought permission to share a spiritual revelation she had received at 4am that morning. After brief discussion, approval was granted by the Court, and her exultation to the people to "share the water", appears on page 785 of the transcript.

[431] The question of 'how much water', was raised by Mr Milne in his cross-examination of Mr Turama Hawira, an uri of Ngati Rangi and of Whanganui iwi. Mr Hawira read his evidence in Maori to the Court which was translated by an official Court translator. During cross-examination by Mr Milne[405] the following exchange took place:

> Q. So ultimately, your position is for restoration of flows in the Eastern Diversion?
> A. For restoration to the point where the equilibrium of a natural ecology is maintained in accordance with customary rights of Ngati Rangi.
> Q. What do you mean by equilibrium?
> A. Balance.
> Q. Where are we to find the explanation of that balance in the evidence being presented to this Court on behalf of Ngati Rangi?
> A. It is for us to answer that question.
> Q. It is not a trick question – where is the evidence - is there a specific kaumatua's evidence that preceded you that you would refer to as demonstrating that point of equilibrium that you can say the Court should be looking to?
> A. The alternate from – in accordance with that which I have heard from kaumatua would be to restore it to its full flow.
> Q. Thank you.
> A. But unfortunately we are in a position of having to compromise.

[432] The matter was further raised at the end of the evidence of Mr Wood. At the end of paragraph 6.5 he interpolated and said[406]:

[405] Transcript, page 807.
[406] Transcript, pages 816 and 817.

> There were questions asked about where is that balance? How much water needs to be retained to sustain the mauri? All that our people know, the environmental baseline that our people knew was before the TPD, and the mauri of those streams and rivers was well, and our people were well. And so I don't know that we know how much water you can take away from that baseline before that balance is put in jeopardy. ... ... I don't think we can sit here and say that it's so many cumecs minimum flows or not, because I don't think we actually know. All we know that these rivers are in a desperate plight at the moment. So that will be a challenge for the science to find it along the way. But we believe we haven't had any opportunity to interact in that science, and watch that science evolve. So someone asked the question, do we want, as Ngati Rangi people, to have the TPD removed from the landscape? I think from the korero after, at morning tea, the old people believe yes. But is that realistic? We talk about national interest. And we need to consider the proposed waterways, they come first. ... I don't believe that the continued diversion for 35 years, or for whatever time or into the future, is something that our people would be comfortable with. We might as well sort of be reasonably straight up about that. But we are trying to look for an opportunity to try and improve that situation, to make it better to look for a sustainable alternative to the degradation that is taking place.

Mr Wood sought a term of 10 years to enable further discussions to take place so that some equilibrium or balance could be arrived at by way of a consensus.

[433] The customary evidence as to the "sharing" of the waters lends some support to the pragmatic position advanced by counsel for the Maori appellants, namely that they "seek to reconnect where possible the headwaters of their tūpuna awa". Some support can also be found in the evidence of Mr Ross Wallis for Tamahaki, and in the cross-examination and questioning of Mr Taiaroa. In his evidence in chief, Mr Wallis says at paragraph 3.3:

> ...the only acceptable solution for the grievance of the hapu in relation to the TPD was the return of the natural flow of the Whanganui River Catchment.[407]

In response to Mr Majurey's cross-examination on the continued existence of the Western Diversion, Mr Taiaroa responded "return some water back"[408] and "we said give some water back"[409].

[434] The following exchange took place between the Court and Mr Taiaroa regarding the water sought by the Whanganui iwi:

> Q. I mean, are we talking about completely shutting off the headwaters of the Whanganui, or a day a week off, or the four – Tawhitikuri and the other tributaries, a reduction, or a shutting off once a week or – I mean, I

[407] Wallis, EiC, paragraph 3.3.
[408] Transcript, page 1122.
[409] Transcript, page 1123.

have no idea what you are thinking of, and I just wondered if you have ever got down to that sort of stage of discussion?

A. No, we haven't got down to that stage of discussion. I mean you have heard the people say, right, we want the water back.

Q. Right.

A. And I suppose that is it, until such time as discussions happen, if it does, in terms of – say for example we are generating out here, at Piriaka, and we are using water to generate electricity which is part of the Genesis scheme I think, now. I mean – so we are not against generation or use of river as such. We are against the diversion of the river somewhere else.[410]

[435] Further support for Mr Ferguson's submission, requesting us to release more water, comes from the saying which we have already quoted, and which we repeat here.

> I rere mai te awa nui, mai i te Kaahui Maunga ki Tangaroa, ko au te awa, ko te awa ko au

This saying underlies the importance to the Whanganui people of the unbroken link the river provides, from its source in the mountains to its destination, the sea. The saying was repeated in different forms in the evidence of many of the iwi witnesses.[411]

[436] We have given serious consideration as to whether we should close one or other of the intakes, in both the Western and Eastern diversions, to ensure the unbroken link that the river once provided is restored.

[437] Unfortunately, there is no evidence from which we could make a principled assessment of the quantitative nature of any restored flows that should be imposed for cultural reasons. No witness has been able to quantify how much water, other than full restoration of flow, should be returned to ameliorate the spiritual loss occasioned by the diversions. For this reason, Mr Ferguson could not in his submissions, quantify what minimum flow of water the Maori people now sought.

[438] Without such evidence, it would be presumptive of us to impose minimum flows, that we determine address Maori concerns. That is a matter only Maori can determine, and it should be determined in an appropriate Maori way.

[439] We therefore decline to interfere with the proposed minimum flow regime.

---

[410] Transcript, page 1126.

[411] For example: Richards, EiC, paragraph 2.1, Taute, EiC, paragraph 2.1, Mareikura, EiC, paragraph 2.2, Wood, EiC, paragraph 4.9, Potaka, EiC, paragraph 26; Henry, EiC, paragraphs 4 and 17; Mair, Appendix A, pg.4.

Reduced term

[440] The Maori appellants, taking a pragmatic position, sought a reduced term of consent rather than the 35 years sought by Genesis. Ngati Rangi's position was best put by Ms Rawiri:

> We are seeking a reduced consent term to 10 years to allow for the actual and potential TPD effects on Ngati Rangi iwi to be properly assessed, and for adverse effects to be avoided, remedied or mitigated accordingly. This will ensure that the TPD consents meet the requirement of sustainability within its full meaning as provided for by the RMA.[412]

[441] The Whanganui iwi position was put by Mr Taiaroa:

> However, until an enduring settlement has been reached with the Crown, the Whanganui iwi cannot conscionably resile from their obligations as kaitiaki of the Whanganui River when the Crown – or in the present case a Crown company, Genesis Power Limited – seeks to continue actions that denigrate the River.
>
> In the present case the situation is made all the more acute by the fact that while the Whanganui iwi are moving ever closer to a settlement with the Crown, Genesis seeks to advance its position – and thereby further entrench the ongoing damage to the Whanganui River – by pursuing a resource consent for 35 years or literally two generations. The prospect of the TPD continuing in its present form for 35 years, unaltered and without the opportunity for wholesale review, is abhorrent to the Whanganui iwi.[413]

The Whanganui iwi sought a 5 year term.

[442] As we understand the Maori appellants' position, a shorter term is sought principally:

(i) To enable a proper assessment of cultural effects and determine appropriate measures to avoid, remedy or mitigate such effects; and

(ii) To enable the consents to be fully reassessed, following a settlement between the Crown and Whanganui iwi in respect of their Waitangi Tribunal claim.

[412] Rawiri, EiC, paragraph 8.2.
[413] Taiaroa, EiC, paragraphs 12 and 13.

[443] We are mindful of the separate legal process as between the Waitangi Tribunal claim and the proceedings before us. While the two proceedings are separate in a legal sense, there may, for practical purposes, nevertheless be an overlap[414]. However, in these proceedings we confine ourselves to the resource management s that arise under the Resource Management Act

[444] In evidence Ms Melhuish advanced three grounds for a reduced consent term:

(i) The obligation of line companies to maintain "uneconomic lines" ceases in 2013;

(ii) The end of the first commitment period of the Kyoto Protocol;

(iii) The Comalco contract comes to an end.[415]

[445] We did not find any of the reasons advanced by Ms Melhuish compelling for the reasons given in the rebuttal evidence of Mr Carroll[416].

[446] Genesis seeks a 35 year term. It maintains that a 35 year consent term would promote sustainable management for a number of reasons including:

(i) The TPD has been in operation for between 20 and 40 years;

(ii) The environmental effects have been comprehensively investigated and are well known;

(iii) The TPD is a renewable and sustainable source of electricity generation;

(iv) The public interest in maintaining the viability and operating capacity of the TPD;

(v) Consultation and information collection for the applications was commenced over 10 years ago and has been ongoing;

(vi) The consultation, co-ordination and technical investigation process represents a significant investment of time and resources by Genesis;

[414] As recognised by the recommended condition of consent to enable a review under s.128 of the Act following a Treaty settlement.
[415] Melhuish, EiC, paragraph 3.15.
[416] Carroll, rebuttal, paragraphs 2-32.

(vii) Extensive mitigation measures are proposed;

(viii) Genesis has agreed to comprehensive review conditions, including a Treaty of Waitangi settlement review condition;

(ix) Genesis has reached agreement with many parties who have not opposed a 35 year term;

(x) Almost all other existing hydro power schemes re-consented under the Act have received 35 year terms;

(xi) The high degree of investment in the TPD by New Zealand taxpayers;

(xii) Achieving security of supply, and allowing the government and electricity industry to factor in certainty of TPD supply in future electricity decision-making;[417]

(xiii) Genesis' clients receiving contractual security in the present environment of increasing electricity demand and declining gas availability;[418]

(xiv) Genesis having a secure economic base from which to conduct its business.[419]

[447] In support of Genesis' proposition, we heard specific evidence from Dr Phillip Mitchell, an environmental consultant, Mr Carroll and Ms Hickman. Also important is the evidence of Mr Copeland and Mr Truesdale. Nor do we forget the extensive evidence we heard from others, regarding what we have called "national interest" matters.

[448] Dr Mitchell correctly opined that limiting the duration of the consent is one of five mechanisms in the Act that can be used to ensure that the effects of activities are acceptable or remain so. The others are:

(i) Using conditions to set standards that must be achieved;

(ii) Requiring compliance monitoring to be undertaken to ensure that the standards are being achieved, and providing these results to the Consent Authority;

[417] Genesis opening submissions, paragraph 220.
[418] Carroll, rebuttal evidence, paragraph 2.35(c).
[419] Carroll, rebuttal evidence, paragraph 2.35(b).

(iii) Requiring periodic, ongoing monitoring of the environment and/or the environmental effects of the activity and providing this information to the Consent Authority;

(iv) Incorporating review conditions to deal with the consequences of any unforeseen effects revealed by the monitoring[420].

[449] Dr Mitchell told us that all of the five mechanisms have been considered in assessing the appropriate term. He emphasised that it was his view that the most appropriate way of controlling effects on the environment and on Maori, is by appropriate conditions[421]. He reminded us that the conditions of consent as proposed, have been reached after some 10 years of consultation and technical research, undertaken in partnership with those affected and who wished to be involved.

[450] Mr Carroll, in his rebuttal evidence pointed to a number of factors that he considered justifying a 35 year consent term including:

(i) The high degree of investment that New Zealand taxpayers, via Genesis and its predecessors, had made to the TPD;

(ii) The public interest in maintaining the viability and operating capacity of the TPD;

(iii) The fact that it is a renewable and sustainable source of electricity generation.[422]

[451] As to Genesis' investment he emphasised that it is a publicly owned asset with a replacement value in excess of 1.5 billion dollars. He also referred to the need to continually contribute significant expenditure to maintain and upgrade the TPD. He concluded by saying:

> The TPD infrastructure is an existing and nationally important natural and physical resource producing electricity critical to New Zealand's supply, as evidenced especially in the 2001 and 2003 energy crisis. It follows therefore that 35-year consents is the appropriate consent term to reflect the importance of TPD in achieving sustainable management.[423]

---

[420] Mitchell, second statement of evidence, paragraph 4.3.
[421] We consider the conditions in the next section of this decision. Mitchell, second statement, paragraph 4.14.
[422] Carroll, rebuttal, paragraph 2.33.
[423] Carroll, rebuttal, paragraph 2.36.

[452] Of the fourteen reasons put forward by Mr Majurey, nine of them are what could be called "national interest matters"[424], three are "procedural"[425] and two relate to "environmental effects".[426] All are important. But, at the end of the day, we find that it comes down to a balancing of the effects on Maori against the national interest factors and determining whether the appropriate balance can be reached by either the proposed review conditions or a reduced term.

Consent conditions proposed by Genesis to meet Maori concerns

[453] At the Council level, Genesis proposed conditions to address concerns of tangata whenua. Before us, Genesis have again responded to tangata whenua concerns by suggesting new conditions and massaging some of the earlier conditions. The proposed conditions were further amended to take into account certain matters raised by Mr Ferguson in a memorandum "resource consent conditions" dated 15 December 2003. Generally, they provide for:

(i) Genesis to use its best endeavours to develop and reach agreement on a process that provides for ongoing cultural and spiritual advice and the preparation of a cultural management plan;

(ii) Genesis is, in February 2004, to provide the Council and the Maori appellants with a written report on the matters referred to in (i) including advice of any steps taken to avoid, remedy or mitigate any adverse effects on Maori;

(iii) The Council may, within 3 months of receiving the report required by (ii) initiate review proceedings under section 128(1) of the Act;

(iv) The Council shall, within 12 months of the enactment of legislation in respect of any settlement under the Treaty of Waitangi Act, initiate review proceedings under section 128(1) of the Act for the purpose of making the consent consistent with any such legislation.

These conditions are included in the 30 consents subject to appeal.

[424] Paragraph 446 – (i), (iii), (iv), (vi) and (x) – (xiv)
[425] Paragraph 446 – (v), (viii) and (ix).
[426] Paragraph 446 – (ii), (vii).

[454] Dr Mitchell discussed the consent conditions as now proposed, at some length in his second statement of evidence and how, in his view, they address tangata whenua concerns. A lengthy interpolation of his evidence was set out in full in Mr Majurey's closing submissions. As it encapsulates succinctly the position advanced by Genesis we quote it in full:

> The conditions of consent granted by the regional councils provide for tāngata whenua concerns in respect of the Eastern and Western diversions in a number of ways, namely, imposing a mandatory review condition to address resource management matters that arise from the settlement of Whanganui iwi's treaty claim; imposing a discretionary review condition to address resource management matters that arise from treaty claims in general; including an Advice Note on consent 101275, noting Genesis' intention to work with Ngati Rangi to continue to address cultural and spiritual matters, facilitate ongoing consultation and prepare and implement a Cultural Management Plan to, amongst other things, provide for kaitiakitanga to be exercised (this was originally proposed by Genesis as a consent condition on the Wahianoa Aqueduct consents); providing a recreational bathing hole in the Whangaehu River in response to Ngati Rangi's submission at the council hearing; requiring recreational amenities in Moawhango River, requiring a minimum flow and flushing flows in the Moawhango River downstream of the Moawhango dam; requiring minimum flows on the Whakapapa River, the Whanganui River, both at the intake and at Te Maire, and on the Mangatepopo Stream; requiring annual meetings with parties, including Moawhango tāngata whenua regarding the Moawhango River, requiring that a written report on all Western Diversion monitoring be provided to the Whanganui River Maori Trust Board on an annual basis. I have already stated in my first statement of evidence, that three changes be made to those conditions, namely: that the so-called mandatory Treaty review clause be extended to apply to all consents for the Eastern and Western Diversions; that the Advice Note on consent 101275 be included as a condition of consent for all Eastern Diversion consents – and the wording of that condition is set out on page .39 of Mr Majurey's opening; and that the Treaty review conditions be expanded to make it explicit that any such review could impose further or additional review conditions. As I have previously stated, I consider that these provisions are a realistic and appropriate way of providing for meaningful tāngata whenua input to the operation of the TPD on an ongoing basis to address sections 6(e), 7(a) and 8 matters. However, it does not necessarily resolve the potential dilemma for the Court in trying to consider how the various assessments could have incorporated cultural and spiritual aspects. Clearly, it would be desirable for any such evaluations to be available now, but apart from tāngata whenua's insistence that the diversions cease altogether or in some cases that only short term consents be granted, and concerns about customary fishing issues, mauri and resource ownership, I am no more advanced in understanding how these can be addressed that I was when I commenced work on the project in 1997. One way and the one suggested by Ngāti Rangi, is to grant short-term consents, during which time cultural assessments could be undertaken. As explained previously, I do not consider a short term consent to be appropriate in the current case, especially given that the lack of cultural components of the assessments are as a direct result of tāngata whenua choosing not to engage meaningfully with Genesis. The alternative and, in my opinion, only appropriate way I can think of for addressing this aspect would be to do two things. Firstly, incorporate a condition on all Eastern and Western Diversion resource consents, the same or similar to that I have previously proposed be included on the Eastern Diversion

> consents, namely, that the consent holder develop a process after consultation with tāngata whenua to: provide for ongoing cultural and spiritual advice; provide for ongoing consultation; prepare and implement a Cultural Management Plan that, in general, seeks to formulate and implement kaitiakitanga protocols. And secondly, impose an additional review condition on all Eastern and Western Diversion consents that provides for a review of conditions after five years, in order to address any matters raised by tāngata whenua in the consultation/cultural assessment/Cultural Management Plan process that I have just described[427].

[455] The Maori appellants do not accept that their concerns can be adequately addressed by the proposed conditions. It appears to us, that the main reasons the Maori appellants oppose their concerns being met by the proposed consent conditions are:

(i) the responsibility is on the Council to implement the conditions. The Maori people's position is secondary and they do not have any control; and

(ii) the review conditions are more limiting than a new application.

Evaluation of options

[456] We now evaluate the two remaining options; a reduced term versus proposed review conditions.

[457] Mr Wood encapsulated the dilemma of the Maori appellants. Before the TPD the mauri of the rivers was well, and the people were well. How is this to be restored? He accepted, that full restoration of flow is not now a realistic option, and recognised the need for a balance between the national interest and the mauri of the waterways. The challenge, he said is to find "a sustainable alternative to the degradation that is taking place. This he said can be found by the Maori people interacting with Genesis.

[458] To reach a sustainable balance as between Maori and the national interest is a complex issue. It can only be done by first identifying, with specificity, an inventory of Maori values and then, assisted through the application of technical methods, to formulate appropriate mitigation methods. Such methods will not necessarily be limited to instream flows and the river habitat but will involve practical ways for Maori to

[427] Transcript, pages 628-630.

exercise their rangatiratanga and discharge their responsibilities as kaitiaki. This may involve a number of "off-site" measures to be implemented.

[459] This requires, what we have already described as a meeting of the minds. As we have said, it is only by a meeting of the minds between the expert witnesses and the Maori witnesses that both parties can then explore the variety of options, that will assist in addressing values that require protection under Tikanga Maori. The question is – how can this best be done while at the same time achieving sustainable management – by a reduced term or by the proposed review conditions of consent?

[460] In addressing this issue, Mr Majurey, in his competent way, made strong submissions for the option of a 35 year term incorporating reporting, monitoring and review conditions to accommodate the effects on Maori. To do otherwise, he said, would penalise Genesis for the failure of the Maori appellants to:

(i) directly speak of their issues and interpret them;

(ii) despite the time and opportunity, to not disclose their customary evidence until August 2003. This only gave Genesis five weeks to respond to the Maori dimension; and

(iii) having asserted effects on their spiritual and cultural values, failing to support their cases and their claims with evidence.

As there is considerable merit in each of these matters, we consider each in turn.

(i) The appellants' refusal to directly speak of their issues and interpret them

[461] Mr Majurey submitted:

> From the outset, ECNZ (and subsequently Genesis) considered the only appropriate way to assess Maori spiritual and cultural effects was from tangata whenua directly. The appropriateness of this approach has been universally confirmed by tangata whenua, for example each Ngati Rangi pahake stating that it is for them and only them to speak of their issues and interpret them.[428]

[428] Genesis closing submissions paragraph 17.

[462] He then carefully detailed the extensive evidence relating to Genesis' attempts to incorporate the Maori dimension[429]. With regard to Ngati Rangi he referred to the extensive evidence of Ms Hickman and Ms Rawiri to which we have already alluded. We do not propose to discuss that evidence in detail. We think that the nub of their mutual difficulties is revealed in the following exchange between the Court and Ms Hickman.[430]

> Q. You mentioned in your evidence this afternoon about making available your experts to Ngati Rangi. What did you mean by that?
>
> A. That was an approach that we took, not just with Ngati Rangi but with all of the stakeholders that we were in discussions with and it meant on many occasions our technical experts such as Dr Boubee and others actually came to either stakeholder meetings or meetings with one or other party and presented the information that they collected and then were through those meetings really assisted to better understand what it says, because I mean a lot of the science is complex. It was really fit in with our objective of trying to achieve a common information base. That was our objective from day one and certainly a lot of the science is complex certainly for members of the public, let alone people that have a broad understanding of environmental issues. So the objective was to make available those scientists to present their information directly to the parties and to allow those parties to ask questions, to understand how it was collected, what it included, how they formed those conclusions and the like. And, as I said, that was something that the experts undertook quite commonly.[431]
>
> Q. And did it also involve a sharing of information from Ngati Rangi to the experts?
>
> A. That was something that we talked about throughout and that was certainly something we would have been willing to enter into, but we sort of got bogged down in the process of trying to define a consultative...
>
> Q. You may have answered my next question. It doesn't seem to have happened and I was going to ask why?
>
> A. That is a good question. It is something that we were prepared to do at all occasions. I mean I recall specifically and I have since confirmed this with Dr Mitchell – I mean it was something we proposed way back in a letter I wrote to – sorry, in discussions I had with Ngati Rangi in the year 2000 – March 2000 when we actually talked about that directly with Mr Pirere and Mr Wood and I recall again when we first met with the new Ngati Rangi Trust, including Ms Rawiri in – I am losing track of time but when the new trust was formed I guess 18 months or so ago – beginning of last year I think it was, sir – when we first met with that trust and we talked about the fact that because they hadn't been involved in the process there was an awful lot of information and I think I quoted that we would have to go over some of this information sharing ground and

[429] See Genesis closing submissions footnote 26 and paragraph 20 and following.
[430] Transcript, pages 1305-1309.
[431] Transcript, pages 1305-1309.

specifically recall saying if it would assist we are very happy to bring in the technical expert to present that information to you and to discuss it with you. Do you want me really to assist you in coming up to speed what had by that stage been a 10 year process of information collecting. But Ngati Rangi never took us up on that offer and I guess we never really got to a point in the process where that sort of dialogue and that sort of information sharing was forthcoming regrettably.

Q. It appeared from some of the answers Dr Boubee gave to some of the Court's questions this morning...

A. Yes.

Q. ....that it can be advantageous for scientists who work in the field to try and obtain anecdotal information from those who are actively involved in living and working in the area.

A. Yes, yes.

Q. And that doesn't seem to have happened.

A. No, and look, I absolutely agree that is our experience through this process that the scientists engaging with – whether it be tangata whenua or fishermen or landowners or whoever, and really an information sharing, that was something that we achieved in a lot of cases through this hearing and that led to successful outcomes. But the approach that we took throughout was to really set in place a process to start with involving Genesis and Ngati Rangi and then at the appropriate times to bring in the scientists to assist the discussion and to assist their understanding of the work that they had done and to include that information in it, but unfortunately with Ngati Rangi it has been a long process of us, you know – for many years, as Ms Rawiri talked about, Ngati Rangi were not prepared to enter into discussions with Genesis directly and it wasn't until 2000 where – I think in 1997 we actually formally advised Ngati Rangi that we would be applying for consents in 2000, so we are getting late in the piece when Ngati Rangi finally sort of agreed to enter into what Ms Rawiri described as – or engage in discussions with us. So we – I mean we had to proceed with collecting – with some of those scientists collecting that information prior to then because we had to prepare an assessment of environmental effects. So our approach really was to seek that information through us before the scientists went out and were involved in those discussions with us and that was the approach we took elsewhere as well.

Q. So the reason why it never eventuated was because no formal arrangement was ever entered into?

A. Well, remembering that this process started of information collecting and pulling together the information for the AEE started in 1991, 1992 and it wasn't until 1997 that Ngati Rangi decided that they wanted to meet with us directly and until 2000. Then you will recall from my principal evidence there and my rebuttal evidence that there was a number of years of Ngati Rangi not being prepared to talk with Genesis because of issues surrounding the split of ECNZ, and because of their affiliation with the Whanganui River Maori Trust Board. So that really, I guess, prohibited that happening in those years.

Q. Did Genesis ever write to Ngati Rangi, or to any Iwi I suppose, or request verbally or by e-mail, or whatever, along those lines, Dr Boubee is collecting information for our resource consent process. He would like to discuss – and he is a fisheries expert, he would like to discuss with a nominated person or persons the experience of Ngati Rangi in the tributaries of the Whangaehu River or anything of that nature?

A. Well, I can't recall specific letters but it was certainly inherent in the whole approach that we took through the consultative process which was to make our findings available, not just to present their information but to involve them in the process of hearing about the issues, hearing about that sort of information and that was really an inherent part of that process on consultation, of creating a forum of that dialogue and it wasn't – it included that sort of information.

...

Q. ...what I am really trying to say was Genesis proactive in saying we have got these scientists. They are going to give evidence before the Commissioners. They are going to give evidence before the Environment Court, we know you have got concerns, we are happy to send them along to find these out and so on?

A. Yes, we were throughout.

Q. Because not one of the experts that have given evidence on scientific matters has actually referred at all to the anecdotal evidence of the Maori.

A. No, and I guess the approach that we have taken, and perhaps covering ground that I have just been over, is – I mean if you asked them those questions involving other parts of the scheme where we were successful in entering into that dialogue, they came to those meetings, they were involved in that dialogue, they were involved in that consultation. That fed into the...that they produced, but in this situation regrettably we never achieved that dialogue to enable that free flow of information both ways. Certainly Dr Boubee, Mr Kennedy, Dr Smart attended many meetings with other Hapu, with other Iwi, with other stakeholder groups where precisely that happened sir.[432]

[463] This exchange, highlights the evidence of both Ms Hickman and Ms Rawiri that the consultation process never really got "off the ground" as the parties could not agree on a formal protocol. As we have said, this was due, in part at least, to the perceptions of both parties about the entrenched position of each other.

[464] With respect to Whanganui iwi, and Ngati Rangi up to the year 2000, Mr Majurey pointed out, that they refused to enter into negotiations unless the waters of the Whanganui River were released. As we have said, it is also apparent from the evidence

[432] Transcript, pages 1305-1309.

that Whanganui iwi did not want to pre-empt any settlement with the Crown by an agreement with Genesis.

[465] Mr Majurey's point was, that having withheld information, the Maori appellants cannot legitimately criticise Genesis for not taking such information into account.

[466] This argument has some attraction. We agree with Mr Majurey to the extent, that Genesis should not be criticised. However, the Maori appellants' actions in this regard need to be considered in context. We cannot ignore the historical context – particularly the peremptory manner in which the water was diverted. Nor can we ignore the depth of feeling that the Maori have with their tūpuna awa, as reflected in their continuous struggle over the years to have their grievances judicially recognised. A struggle, which has prompted a considerable reservation amongst Maori, a reservation amounting almost to a perceived feeling of mistrust. Despite the genuine efforts of Genesis, the formality and protocol required by them as a precursor to negotiation, compounded this perception.

(ii) Not disclosing the customary evidence until August 2003

[467] The evidence by the Maori appellants, and exchanged in August 2003, was more detailed than that adduced before the Hearing Committee. However, the grievances of the appellants have been known for many years. They are well documented in the Whanganui Report. They are also referred to in the *"Cultural Issues Report"* prepared by Mr Gerrard Albert, Manager Iwi Relationships for the Council. As he pointed out, it was not so much a recognition of the effects on Maori, but determining how those effects can be mitigated. His recommendation contained in his *"Additional Report on Cultural Issues"* dated November 2000 was:[433]

> It is my assessment that the Committee does not have sufficient information on cultural and spiritual effects of the TPD, or adequate information on the assessment of those effects under sections 6(e), 7(a) and 8 of the Act to grant consents for 35 years. It is therefore recommended that the Committee, in order to allow time for these effects to be adequately assessed by firstly the applicant (under signed agreements with tangata whenua), by iwi themselves and the consent authorities, grant consents for a period considerably less than 35 years.

His reasons were:

> The main rationale for this recommendation is to provide for the mitigation of adverse effects proactively, while at the same time allowing for the relationships

[433] Pages 6 and 7.

> entered into between the applicant and respective iwi to pinpoint the exact nature of those effects and their mitigation within a reasonable timeframe. ... And a reduced term of consent is not only to provide for the loss of mana that results from not being involved in decisions on the TPD consent applications, or to allow for Treaty of Waitangi claims to be settled. It is also about taking the time to consider the effects, and providing for their mitigation in real terms. This may mean not only reviewing specific consent conditions after 5 years, but revisiting the whole TPD within a reasonable period, whereupon all effects have been adequately assessed, and full weight can be given to their mitigation.

The situation has not advanced much since then.

(iii) The appellants are required to support their cases and substantiate claims with evidence

[468] Mr Majurey referred to the oft-quoted passage of the Planning Tribunal in ***McIntyre v Christchurch City Council***[434]:

> ...it is our understanding of the Law that on a resource consent application, like a planning application under the former regime, there is not a burden of proof on any party, but that there is an evidentiary burden on a party who makes an allegation to present evidence tending to support the allegation (***West Coast Regional Abattoir v Western County Council*** (1981) 10 NZTPA 297).[435]

And the following passage in ***Shirley Primary School v Christchurch City Council***[436]:

> To summarise on the issues of onus and burden of proof under the Act:
>
> 1. In all applications for a resource consent there is necessarily a legal persuasive burden of proof on the applicant. The weight of the burden depends on what aspects of Part II of the Act apply.
>
> 2. There is a swinging evidential burden on each issue that needs to be determined by the Court as a matter of evaluation.
>
> 3. There is no one standard of proof, if that phrase is of any use under the Act. The Court must simply evaluate all the matters to be taken into account under section 104 on the evidence before it in a rational way, based on the evidence and its experience; and giving its reasons for exercising its judgment the way it does.
>
> 4. The ultimate issue under section 105(1) is a question of evaluation towards the concept if a standard of proof does not apply.

[469] Mr Majurey then went on to say:

[434] [1996] NZRMA 289.
[435] At pages 306, 307.
[436] [1999] NZRMA 66.

> Having asserted effects on their spiritual and cultural values, the appellants are required to support their cases and substantiate their claims with evidence – that is not the role of Genesis (nor the Council or Court). Absent such evidence, the Court can only make findings on the material placed before it at this hearing. Nor, is it open to the Court to effectively penalise an applicant (via eg additional minimum flows or short terms) because of the failure of an appellant to adduce the evidence necessary to support its case when it has had numerous opportunities to do so.[437]

[470] It will be evident from this decision so far, that we have found that the evidence of the Maori witnesses have effectively established that the diversion of the waters has had a substantial and detrimental effect on their spiritual values. The difficulty is determining the appropriate measures to mitigate those adverse cultural effects.

[471] The instant reaction of Maori was to request restoration of the water. However, in recent times the Maori appellants have accepted the need to accommodate that extreme view. Just how, is a difficult question. It is apparent from the evidence that Maori are having extreme difficulty in identifying appropriate restorative action to meet the metaphysical effects on them. They ask for some time to work the matter through.

Our findings on evaluation of options

[472] In evaluating the various matters that we are required to under the Act and evaluating the matters on which evidence was presented, we have had some difficulty in weighing the metaphysical matters against the physical and scientific matters. Notwithstanding this difficulty, the Act nevertheless requires us to do so. In so doing, we have had to make a value judgment which reflects what is in our view the relative importance of these matters and the relevant magnitude of the various matters.

[473] We were at first attracted to Mr Majurey's plea for the matter to be resolved by Genesis' undertaking to incorporate proposed conditions of consent including: using its best endeavours to prepare with Maori a Cultural Management Plan; to provide the Council with a written report outlining the adverse effects on Maori; and provide for the Council's ability to initiate review proceedings. However, any such review would not have the same ameliorating power as a fresh application[438]. This is particularly so of the resource consents for the intakes of the Western Diversion. Each intake is the subject of a separate resource consent – thus it would not be possible, on a review, to require

[437] Majurey, closing submissions, paragraph 31.
[438] See *Prime Range Meats v Southland Regional Council,* EC, C127/98; and *Brightwood v Southland Regional Council*, EC, C143/99.

closure of one or more of those intakes (for example the intake on the main stem of the Whanganui River). To do so would effectively nullify the grant of consent[439].

[474] We are conscious of the desire of Genesis to have economic certainty and also the national interest factors that were canvassed in the evidence and submissions. Notwithstanding, we agree with Mr Taiaroa, that the prospect of the TPD continuing for a period of 35 years without the opportunity of "wholesale review" would be daunting to Maori – especially in the historical context of their many years of claims before different Courts and Tribunals.

[475] We consider, on balancing all the matters raised in the evidence and the submissions, and having regard to the single purpose of the Act, that an appropriate term of the consents, that are subject to these appeals, is 10 years. This will provide time for a meeting of the minds between the two parties on what is a complex and difficult issue. We consider a term of 10 years would concentrate and focus the minds of both parties.

[476] We have had regard to all the matters put forward in the submissions of Mr Majurey and the evidence of the Genesis witnesses, particularly Dr Mitchell. At the end of the day what has prevailed on us has been:

1. the magnitude of the effects on Maori;

2 the immense depth of feeling apparent from the Maori witnesses which reflects the magnitude of those effects;

3. the greater ameliorating power of a fresh application over review proceedings; and

4. a term of 10 years recognises the national interest factors and provides a correct balance.

Determination

[477] Accordingly, the appeals are allowed to the extent that the term of the consent is reduced from 35 years to 10 years. The application for resource consents are allowed

[439] See *Lyttleton Port Company Limited v Canterbury Regional Council*, EC, C8/01.

subject to the proposed conditions attached as Appendix 3 to this decision, save for the deletion of the conditions proposed by Genesis to meet Maori concerns and as summarised by us in paragraph 453 of this decision.

[478] Because of the complexity of the conditions leave is reserved for the Council to make an application to the Court for an amendment to the proposed conditions within 30 working days.

[479] The Draft Consent Orders awaiting approval can now be made in accordance with this decision. Counsel for Genesis is to file orders for sealing and issue.

[480] Costs are reserved.

DATED at **AUCKLAND** this 18th day of May 2004.

For the Court:

R Gordon Whiting
Environment Judge

APPENDIX 1

SUMMARY OF RESOURCE CONSENT APPLICATIONS SUBJECT TO APPEAL

Wahianoa Aqueduct and Mangaio Tunnel

101275 **Water permit** – To **divert** the full flow of water between tributaries of the Whangaehu River within the area defined by map references NZMS 260 T20: 358-000, T20: 428-990, T20: 428-980 and T20: 358-988.

101276 **Water permit** – To **dam, divert** and **take** water at a minimum combined quantity of up to 9 cubic metres per second from 22 waterways within the area defined by map references NZMS 260 T20: 358-000, T20: 428-990, T20: 428-980 and T20: 358-988.

101277 **Discharge permit** - To **discharge** water taken pursuant to Resource Consent Application No. 101276 and any material contained therein at a maximum rate of up to 9 cubic metres per second into the Mangaio Stream at or about map reference NZMS 260 T20: 446-989.

101278 **Discharge permit** - To **discharge** water taken pursuant to Resource Consent Application No. 101276 and any material contained therein into 21 waterways within the area defined by map references NZMS 260 T20: 358-000, T20: 428-990, T20: 428-980 and T20: 358-988 for the purpose of draining water from the Wahianoa Aqueduct.

Moawhango Section

101279 **Water permit** - To **dam** the Moawhango River at or about map reference NZMS 260 T20: 472-962 by means of the Moawhango Dam structure.

101280 **Discharge permit** – To **discharge** water and any material contained therein into the Moawhango River downstream of the Moawhango Dam structure, at or about map reference NZMS 260 T20: 472-962 via controlled release mechanisms as follows:

- Via the drawdown valve at a maximum rate of 75 cubic metres per second;
- Via the special release valve at a maximum rate of 3 cubic metres per second.

101281 **Water permit** - To **divert** and **take** water at a maximum rate of up to 25 cubic metres per second from Lake Moawhango at or about map reference NZMS 260 T20: 485-994.

Whakapapa to Mangatepopo Intakes/Western Diversion

101282 **Water permit** – To **dam** the Whakapapa River by means of the Whakapapa Intake structure and to **divert** and **take** water at a

maximum rate of up to 40 cubic metres per second from the Whakapapa River at or about map reference NZMS 260 S19: 234-289.

101283 **Water permit** – To **dam** the Okupata Stream by means of the Okupata Intake structure and to **divert** and **take** water at a maximum rate of up to 2 cubic metres per second from the Okupata Stream at or about map reference NZMS 260 S19: 287-351.

101284 **Water permit** – To **dam** the Taurewa Stream by means of the Taurewa Intake structure and to **divert** and **take** water at a maximum rate of up to 2 cubic metres per second from the Taurewa Stream at or about map reference NZMS 260 T19: 305-356.

101285 **Water permit** – To **dam** the Tawhitikuri Stream by means of the Tawhitikuri Intake structure and to **divert** and **take** water at a maximum rate of up to 2 cubic metres per second from the Tawhitikuri Stream at or about map reference NZMS 260 T19: 311-359.

101286 **Water permit** – To **dam** the Mangatepopo Stream by means of the Mangatepopo Intake structure and to **divert** and **take** water at a maximum rate of up to 5 cubic metres per second from the Mangatepopo Stream at or about map reference NZMS 260 T19: 313-361.

101287 **Discharge permit** – To **discharge** the water taken pursuant to Resource Consent Application Nos 101282, 101283, 101284, 101285 and 101286 and any material contained therein at a maximum rate of up to 51 cubic metres per second into Lake Te Whaiau at or about map reference NZMS 260 T19: 353-395.

Whanganui Intake

101288 **Water permit** – To **dam** the Whanganui River by means of the Whanganui Intake structure and to **divert** and **take** water at a maximum rate of up to 14 cubic metres per second from the Whanganui River at or about map reference NZMS 260 T19: 353-386.

101289 **Discharge permit** – To **discharge** the water taken pursuant to Resource Consent Application No 101288 and any material contained therein at a maximum rate of up to 14 cubic metres per second into Te Whaiau Stream at or about map reference NZMS 260 T19: 357-390.

Central Lakes/Rotoaira West

101290 **Water permit** – To **dam** Te Whaiau Stream at or about map reference NZMS 260 T19: 357-398 by means of the Te Whaiau Dam structure which forms Lake Te Whaiau.

101291 **Water permit** – To **divert** and **take** water at a maximum rate of up to 74 cubic metres per second from Lake Te Whaiau at or about map reference NZMS 260 T19: 360-398.

101292 **Discharge permit** – To **discharge** the water taken pursuant to Resource Consent Application No 101291 and any material contained therein at a maximum rate of up to 74 cubic metres per second into Lake Otamangakau at or about map reference NZMS 260 T19: 370-406.

101293 **Water permit** - To **dam** the Otamangakau Stream at or about map reference NZMS 260 T19: 367-410 by means of the Otamangakau Dam structure which forms Lake Otamangakau.

101294 **Discharge permit** – To **discharge** water and any material contained therein at a maximum rate of up to 3 cubic metres per second into the Otamangakau Stream downstream of the Otamanakau Dam structure via a controlled release mechanism at or about map reference NZMS 260 T19: 367-410.

101295 **Water permit** – To **divert** and **take** water at a maximum rate of up to 55 cubic metres per second from Lake Otamangakau at or about map reference NZMS 260 T19: 386-411.

Scheme-wide – Maintenance Activities

101296 incorporated with 101299 **Combined land use consent, water permit and discharge permit** - To undertake the following activities for the purpose of maintaining structures within the Tongariro Power Development –

(i) to **reconstruct** or **alter** any structure or part of any structure in, on, under or over the bed of a river or lake;
(ii) to **enter, pass across** or **disturb** the bed of a river or lake, including for the purpose of removing or flushing accumulated bed material in order to maintain the functional integrity and operational efficiency of a structure;
(iii) to **deposit** removed material on the bed of a river or lake;
(iv) to **dam** and **divert** water;
(v) to **discharge** water into water;
(vi) to **discharge** sediment and other materials into water-

within the area bounded by maps NZMS 260 S19, T19 and T20. This includes, but is not limited to:

- The flushing, removal and deposition of accumulated sediment and debris;
- Drainage and maintenance discharges from structures, culverts, pipelines and tunnels;
- Discharges from the Whakapapa–Tawhitikuri-Whanganui Tunnel bulkhead maintenance discharge to the Tawhitikuri Stream;
- Whakapapa-Tawhitikuri-Whanganui Tunnel drain valve maintenance discharge to the Whanganui River;
- Discharges from the testing of gates and structures.

Combined land use consent, water permit and discharge permit – To undertake the following activities for the purpose of removing sediment, weed, debris, plants and other material from watercourses within the Tongariro Power Development-

(i) to **disturb, remove, damage or destroy** any of the above in, on, under, over or adjacent to the bed of a river or lake;
(ii) to **enter, pass across** or **disturb** the bed of a river or lake;
(iii) to **divert** water;
(iv) to **discharge** water and or any of the above into water-
within the area bounded by maps NZMS 260 S19, T19 and T20.

101302 **Discharge permit** – To **discharge** materials onto or into land associated with the removal of sediment, weed, debris or other material from or adjacent to watercourses within the area bounded by maps NZMS 260 S19, T19 and T20.

101303 **Discharge permit** – To **discharge** materials into the air, onto land and into water from abrasive blasting activities associated with the maintenance of TPD structures within the area bounded by maps NZMS 260 S19, T19 and T20.

Scheme-wide – Other Activities (Manawatu-Wanganui Region)

101304 **Land use consent** – To **use** structures within the Tongariro Power Development for the purposes of damming, diverting, taking and conveying water; discharging water and any other materials contained therein; generating hydroelectricity; providing access across waterways (bridges); measuring flows and water quality; and any other activity necessary to enable the functioning of the Tongariro Power Development within the are bounded by maps NZMS 260 S19, T19 and T20.

101305 **Land use consent** – To **erect, place, alter, extend, maintain, remove** or **demolish** structures within the Tongariro Power Development for the purposes of measuring flows and water quality or any other monitoring within the area bounded by maps NZMS 260 S19, T19 and T20.

101306 **Land use consent** – To **place** structures in streams, rivers and lakes upstream of Tongariro Power Development structures for safety reasons or to prevent material entering the structures within the area bounded by maps NZMS 260 S19, T19 and T20.

101307 **Combined water permit and discharge permit** – To **take** water, **divert** water and **discharge** water and any material contained therein for the purpose of –

(i) Conveying surface water and ground water around, through, over, under or past structures within the Tongariro Power Development;

(ii) Providing for water leakage to, from and through structures within the Tongariro Power Development-

except as provided for by other resource consents, within the area bounded by maps NZMS 260 S19, T19 and T20.

101309 **Water permit** – To **take** up to 20 cubic metres of water per day within the area bounded by maps NZMS 260 S19, T19 and T20 for purposes related to the operation of the Tongariro Power Development other than generating hydroelectricity.

101310 **Discharge permit** – To **discharge** stormwater from buildings and other structures onto or into land, or into water, within the area bounded by maps NZMS 260 S19, T19 and T20.

APPENDIX 2


MANAWATU-
WANGANUI
REGION
Ruapehu D
WESTERN
DIVERSION
Okupate
Whakapapa
Dam & Intake
Tunnels
Canals

APPENDIX 3

Wahianoa Aqueduct Diversions
Manawatu-Wanganui Region
101275

Water permit – To **divert** the full flow of water between tributaries of the Whangaehu River *[diverted catchments above Wahianoa Aqueduct intakes]* within the area defined by map references NZMS 260 T20: 358 000, T20: 428 990, T20: 428 980 AND T20:358 988 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Scope of consent

1 This exercise of this resource consent shall only apply to streams being intercepted by the Wahianoa Aqueduct prior to the commencement of this consent. The flow capacity of any of the existing diversion structures and of the Wahianoa Aqueduct shall not be increased under the exercise of this resource consent.

Responsibility for structural integrity and erosion control

2 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of any Wahianoa Aqueduct diversion, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from the operation of that diversion.

Advice Note: A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.

Cultural and Spiritual Matters

3 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement ~~Ngati Rangi~~with Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Ngati Rangi~~between the Consent Holder and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

4 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council and Ngati Rangi Trust a written report on the matters referred to in condition 3, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

5 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 4, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or Cancellation of Conditions

6. The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

7. The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

8 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 7, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Wahianoa Aqueduct Take
Manawatu-Wanganui Region
101276

Water permit – To **dam, divert** and **take** water at a maximum combined quantity of up to 9 cubic metres per second from 22 waterways *[Wahianoa Aqueduct]* within the area defined by map references NZMS 260 T20: 358 000, T20: 428 990, T20: 428 980 AND T20: 358 988 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Areal Extent of Consent

1 The watercourses that this consent applies to are:

Intake No.	Watercourse	Point of Take
1.	Unnamed tributary of the Whangaehu River	NZMS 260 T20:424985
2.	Unnamed tributary of the Whangaehu River	NZMS 260 T20:419985
3.	Unnamed tributary of the Whangaehu River	NZMS 260 T20:417986
4.	Unnamed tributary of the Whangaehu River	NZMS 260 T20:416986
5.	Tomowai Stream	NZMS 260 T20:414987
6.	Unnamed tributary of the Whangaehu River	NZMS 260 T20:413986
7.	Unnamed tributary of the Whangaehu River	NZMS 260 T20:409985
8.	Unnamed tributary of the Whangaehu River	NZMS 260 T20:407985
9.	Unnamed tributary of the Whangaehu River	NZMS 260 T20:404984
10.	Makahikatoa Stream	NZMS 260 T20:401984
11.	Unnamed tributary of the Wahianoa River	NZMS 260 T20:397986
12.	Unnamed tributary of the Wahianoa River	NZMS 260 T20:394986
13.	Unnamed tributary of the Wahianoa River	NZMS 260 T20:393986
14.	Unnamed tributary of the Wahianoa River	NZMS 260 T20:387987
15.	Unnamed tributary of the Wahianoa River	NZMS 260 T20:383988
16.	Unnamed tributary of the Wahianoa River	NZMS 260 T20:378988
17.	Unnamed tributary of the Wahianoa River	NZMS 260 T20:376990
18.	Wahianoa River	NZMS 260 T20:376990
19.	Unnamed tributary of the Tokiahuru Stream	NZMS 260 T20:368992
20.	Unnamed tributary of the Tokiahuru Stream	NZMS 260 T20:368992
21.	Unnamed tributary of the Tokiahuru Stream	NZMS 260 T20:364993
22.	Unnamed tributary of the Tokiahuru Stream	NZMS 260 T20:362994

Intake structure design capacity

2 The rate of water diverted and taken pursuant to this resource consent shall be deemed to comply with this consent if the capacity of each intake structure is no greater than it was at the date of commencement of this consent.

Responsibility for structural integrity and erosion control

3 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of any Wahianoa Aqueduct diversion structure, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from the operation of that structure.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Cultural and Spiritual Matters

4 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement ~~Ngati Rangi~~with Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Ngati Rangi~~between the Consent Holder and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) *Preparation and implementation of a Cultural Management ~~Plan that~~*Plan for the Eastern Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

5 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council and Ngati Rangi Trust a written report on the matters referred to in condition 4, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

6 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 5, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or Cancellation of Conditions

7 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant

to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

8 Within 6 months of the commencement of this consent the Consent Holder shall construct a recreational bathing hole in the bed of the Whangaehu River. The location of that bathing hole shall be determined in consultation with the Ngati Rangi Trust and the Manawatu Wanganui Regional Council. The Consent Holder shall maintain the bathing hole for the duration of this consent.

Treaty Of Waitangi Claim Settlements

9 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

10 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 9, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Discharge to Mangaio Stream
Manawatu-Wanganui Region
101277

Discharge permit – To **discharge** water taken pursuant to Resource Consent 101276 and any material contained therein at a maximum rate of up to 9 cubic metres per second into the Mangaio Stream *[Mangaio Tunnel discharge]* at or about map reference NZMS 260 T20: 446 989 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Rate of Discharge

1. The maximum rate of discharge of water to the Mangaio Stream shall not exceed 9 cubic metres per second as measured at the outlet of the Mangaio Tunnel.

Discharge Restrictions

2. Discharge to the Mangaio Stream shall cease when:

   i The water level in Lake Moawhango is at or above 851.6 metres above Moturiki Datum, is rising and spill is likely to occur from the lake;
   ii The pH of water in the Wahianoa Aqueduct at Gate 51 is less than 5.

3. The Consent Holder shall operate and maintain two lahar detection devices at the following locations:

   i At or upstream of NZMS 260 T20: 376-989 (upstream of the Wahianoa Intake).
   ii At or upstream of NZMS 260 T20: 393-093 (on the Whangaehu River).

4. In the event that the lahar monitoring devices identified in condition 3 indicate that a lahar is likely to pass down the Wahianoa Aqueduct, the Mangaio Gate [Gate 51] shall be shut to prevent contaminated water entering the Mangaio Stream. The Mangaio Gate [Gate 51] shall remain closed until such time as the pH of water in Wahianoa Aqueduct exceeds 5.

5. The lahar detection devices located in accordance with condition 3 and the system triggering the closure of the gate shall be automated and shall be maintained in a sound working condition and tested every 6 months. The results of the tests shall be documented and provided to the Manawatu Wanganui Regional Council within 10 working days of their completion.

Flow and pH monitoring

6. The Consent Holder shall monitor the flow into the Mangaio Stream and the pH of water in the Wahianoa Aqueduct on a continuous basis and shall provide copies of that information to the Manawatu Wanganui Regional Council within 5 working days upon request.

Responsibility for erosion control

7. The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of the Mangaio Tunnel discharge point into the Mangaio Stream, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from that discharge.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Volcanic Activity Management Plan

8. Within twelve months of the commencement of this consent, the Consent Holder shall prepare a Volcanic Activity Management Plan to the satisfaction of the Manawatu Wanganui Regional Council. The Management Plan shall be prepared following consultation with the Department of Conservation, the Ruapehu District Council, Taupo District Council, the New Zealand Defence Force and the Manawatu Wanganui Regional Council. The purpose of the Plan shall be to detail procedures for the management of TPD structures in order to minimise, to the greatest extent practicable, risks to property, life and the natural environment arising from the operation of TPD structures during or following lahar flows and other volcanic events.

   The plan shall include:

   i an assessment of key environmental risks arising from the operation of TPD structures during or following a volcanic event.
   ii a description of the procedures to be followed to minimise these risks.
   iii the communications to be undertaken by the Consent Holder in order to give effect to the plan.

9. This consent shall be exercised in accordance with the Volcanic Activity Management Plan prepared in accordance with condition 8. Where there is any inconsistency between the provisions of the Volcanic Activity Management Plan and the conditions of this consent, then the conditions of this consent shall prevail.

Cultural and Spiritual Matters

10 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement ~~Ngati Rangi~~with Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

   i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.
   ii) Ongoing consultation ~~with Ngati Rangi~~between the Consent Holder and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.
   iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern Diversion of the TPD that:

      - ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Ngati Rangi Trust.
      - Provides ~~tangata whenua~~Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
      - ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Ngati Rangi Trust into the formulation and

implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

11 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council and Ngati Rangi Trust a written report on the matters referred to in condition 10, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

12 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 11, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

13 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

14 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 14, by giving notice of its intention to do so pursuant to section

127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Wahianoa Aqueduct Discharges to Whangaehu
Manawatu-Wanganui Region
101278

Discharge permit – To **discharge** water taken pursuant to Resource Consent 101276 and any material contained therein into the waterways below intakes 2 to 22 *[Wahianoa Aqueduct discharge]* within the area defined by map references NZMS 260 T20: 358 000, T20: 428 990, T20: 428 980 AND T20: 358 988 for the purpose of draining waters from the Wahianoa Aqueduct for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Areal Extent of Consent

1 The watercourses that this consent applies to are:

Intake No.	Watercourse	Point of Take
2	Unnamed tributary of the Whangaehu River	NZMS 260 T20:419985
3	Unnamed tributary of the Whangaehu River	NZMS 260 T20:417986
4	Unnamed tributary of the Whangaehu River	NZMS 260 T20:416986
5	Tomowai Stream	NZMS 260 T20:414987
6	Unnamed tributary of the Whangaehu River	NZMS 260 T20:413986
7	Unnamed tributary of the Whangaehu River	NZMS 260 T20:409985
8	Unnamed tributary of the Whangaehu River	NZMS 260 T20:407985
9	Unnamed tributary of the Whangaehu River	NZMS 260 T20:404984
10	Makahikatoa Stream	NZMS 260 T20:401984
11	Unnamed tributary of the Wahianoa River	NZMS 260 T20:397986
12	Unnamed tributary of the Wahianoa River	NZMS 260 T20:394986
13	Unnamed tributary of the Wahianoa River	NZMS 260 T20:393986
14	Unnamed tributary of the Wahianoa River	NZMS 260 T20:387987
15	Unnamed tributary of the Wahianoa River	NZMS 260 T20:383988
16	Unnamed tributary of the Wahianoa River	NZMS 260 T20:378988
17	Unnamed tributary of the Wahianoa River	NZMS 260 T20:376990
18	Wahianoa River	NZMS 260 T20:376990
19	Unnamed tributary of the Tokiahuru Stream	NZMS 260 T20:368992
20	Unnamed tributary of the Tokiahuru Stream	NZMS 260 T20:368992
21	Unnamed tributary of the Tokiahuru Stream	NZMS 260 T20:364993
22	Unnamed tributary of the Tokiahuru Stream	NZMS 260 T20:362994

Responsibility for erosion control

2 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of any Wahianoa Aqueduct discharge listed in condition 1, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from that discharge.

Advice Note: A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.

Public warning

3 Within 6 months of the commencement of this resource consent, the Consent Holder shall develop a system, to the satisfaction of the Manawatu Wanganui Regional Council, for warning potentially affected members of the public and potentially affected downstream property owners or occupiers of the likely increase in flows downstream of intakes 2 to 5 inclusive when this consent is exercised.

Cultural and Spiritual Matters

4 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement ~~Ngati Rangi~~with Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Ngati Rangi~~between the Consent Holder and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

5 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council and Ngati Rangi Trust a written report on the matters referred to in condition 4, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

6 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 5, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

7 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant

to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

8 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

9 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 8, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Moawhango Dam
Manawatu-Wanganui Region
101279

Water permit – To **dam** the Moawhango River *[Moawhango Dam]* at or about map reference NZMS 260 T20: 472 962 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Dam specifications

1 The dam spillway crest shall be maintained at 852.1 metres above Moturiki Datum and the width of the spillway shall be maintained at 128.1 metres. Compliance with this condition shall be satisfied provided that the dimensions are not altered from those existing at the date of commencement of consent.

Minimum Lake level

2 The normal minimum lake operating level shall be 835.75 metres above Moturiki datum. The Lake may be drawn down below this level for maintenance or dam safety purposes. In the event of this occurring, notification shall be provided to the Manawatu Wanganui Regional Council within 48 hours of the event.

Willow Control

3. Commencing in the year following the commencement of this consent and for each subsequent year that this consent is exercised, the Consent Holder shall undertake and maintain willow control measures on the Moawhango River in the vicinity of the Moawhango Village at a rate of not less than 200 metres per annum, as set out in the Willow Control Management Plan prepared pursuant to condition 4.

4. Within six months of the commencement of this consent, the Consent Holder shall prepare a Willow Control Management Plan to the satisfaction of the Manawatu Wanganui Regional Council, that sets out the specific measures to be utilised to satisfy the requirements of condition 3.

   The Willow Control Management Plan shall be prepared and updated annually, following consultation with the Moawhango community, the Department of Conservation and the Manawatu Wanganui Regional Council.

Dam safety

5. The Consent Holder shall have in place a Dam Safety Assurance Programme in accordance with the Dam Safety Guidelines issued by the New Zealand Society on Large Dams, dated November 1995 and as updated from time to time. Reports documenting the findings of surveillance, inspections and safety reviews shall be made available to the Manawatu Wanganui Regional Council upon request.

Lakeshore Erosion Monitoring and Responsibility For Lakeshore Erosion Control

6. The consent holder shall undertake monitoring of lakeshore erosion adjacent to the existing access road from the confluence of the Mangaio Stream with Lake Moawhango to a position 1 kilometre east of the Moawhango Dam. If in the opinion of the Manawatu Wanganui Regional Council any lakeshore erosion poses a risk to the structural integrity or safe use of the access road then, in consultation with the New Zealand Defence Force and the Ruapehu District Council, the consent holder shall design and implement lakeshore erosion

protection works and/or road repairs to the satisfaction of the Manawatu Wanganui Regional Council. The consent holder shall be responsible for the maintenance of any erosion control works established under the requirements of this consent condition.

Advice Note: A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at their sole expense prior to any works being undertaken.

Cultural and Spiritual Matters

7 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement ~~Ngati Rangi~~with Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Ngati Rangi~~between the Consent Holder and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

8 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council and Ngati Rangi Trust a written report on the matters referred to in condition 7, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

9 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 8, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

10 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

11 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

12 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 11, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Community facilities
Subject to being able to obtain landowner access and the necessary resource consents, the Consent Holder has agreed to install the "Community Amenity Facilities", as generally defined in the plan attached to this consent. The Consent Holder has agreed to install these facilities with 12 months of the commencement of this consent. The Consent Holder has also agreed to maintain these facilities for three years following their completion.

Private Agreements
In granting this consent particular regard has been had to the agreements reached by the Consent Holder with Ngati Tamakopiri, Ngati Whitikopeka and Ngati Hauiti, and with the Wellington and Taranaki Fish and Game Councils.

Moawhango Dam Discharge
Manawatu-Wanganui Region
101280

Discharge permit – To **discharge** water and any material contained therein into the Moawhango River downstream of the Moawhango Dam structure *[Moawhango Dam discharge]*:

i. Via the drawdown valve at a maximum rate of 75 cubic metres per second; and
ii. Via the special release valve at a maximum rate of 3 cubic metres per second, and
iii. Via the dam spillway.

at or about map reference NZMS 260 T20: 472 962 for a duration of 35 years from the commencement of this resource consent subject to the following conditions

Public warning system

1 As soon as practicable, but no later than 12 months following the commencement of this consent, the Consent Holder shall develop, to the satisfaction of the Manawatu Wanganui Regional Council, a system for warning members of the public and downstream property owners and occupiers when the discharge from the drawdown valve reaches 30 cubic metres per second or when flows occur over the spillway. The Consent Holder shall consult with the NZ Defence Force, property owners and occupiers adjacent to the Moawhango River from the dam to Moawhango Village, the Moawhango community generally, the Ruapehu and Rangitikei District Councils and the Manawatu Wanganui Regional Council regarding the development of the warning system.

Responsibility for structural integrity and erosion control

2 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of any discharge authorised under this consent, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from that discharge.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Flushing flows

3. The Consent Holder shall ensure that a minimum of four flushing flows from the Moawhango Dam to the Moawhango River occur during each summer that this consent is in force and as further defined in Condition 4. The magnitude of each flushing flow shall be not less than 30 cubic metres per second at the point of discharge from the dam. For the purposes of this condition, this flow is deemed to be that provided by opening the drawdown valve in accordance with the established rating curve for the valve (as attached to and forming part of this consent or the most recent updated rating provided in accordance with condition 6) to at least the opening required to maintain a flow of 30 cubic metres per second. The drawdown valve shall be opened in stages over a one hour period, held at the opening required to maintain a flow of 30 cubic metres per second for a period of at least nine hours, and closed in stages over a one hour period.

4. Unless otherwise agreed in writing by the Manawatu Wanganui Regional Council following Consent Holder consultation with the Moawhango community,

the flushing flow shall occur in each of the months of December, January, February and March. Two of the four flushing flows shall commence on days and at times fixed in consultation with the New Zealand Recreational Canoeing Association. The two flushing flows not fixed in consultation with the New Zealand Recreational Canoeing Association shall occur during the first natural fresh that occurs in the Moawhango River during each month, except that if a natural fresh has not occurred by the 21st day of any month, the flushing flows shall commence from the Moawhango Dam at 5 am on the following Monday.

Minimum residual flow

5. Upon the commencement of this consent, the Consent Holder shall provide a continuous flow release from the Moawhango Dam to the Moawhango River of not less than 600 litres per second at the point of discharge from the dam. For the purposes of this condition, this flow is deemed to be that provided by opening the special release valve in accordance with the established rating curve (attached to and forming part of this consent) for the valve to at least the opening required to maintain a flow of not less than 600 litres per second.

Discharge ratings

6 The Consent Holder shall maintain and update discharge ratings for the drawdown valve and special release valve. The ratings for the drawdown valve and special release valve shall be verified by alternative means of measurement within 3 months following the commencement of this consent. The results of that verification exercise shall be provided to the Manawatu Wanganui Regional Council within 10 working days of their completion.

Consultative meetings

7. During each year that this consent is exercised, the Consent Holder shall invite representatives of the Moawhango community, tangata whenua, and conservation and recreation interests to attend a Consultative Meeting to be held during the month of July. The Consent Holder shall notify its intention to hold a consultative meeting by public notice in a newspaper circulating in the area at least fourteen days and not more than one month in advance of the meeting.

   The purpose of the Consultative Meeting is to provide an opportunity to discuss all matters pertaining to this consent, including, but not limited to, the results of monitoring undertaken pursuant to this consent.

8. The Consent Holder shall circulate minutes of the Consultative Meeting to all attendees and the Manawatu Wanganui Regional Council within one month of the meeting.

9. Information on the flow in the Moawhango River at the Moawhango Village at NZMS 260 T21: 557-745 shall be made available to the public via a free telephone system. The flow information provided shall be updated hourly.

Eastern Diversion Monitoring Plan

10 Within 6 months following the commencement of this resource consent the Consent Holder shall prepare an Eastern Diversion Monitoring Plan to the satisfaction of the Manawatu Wanganui Regional Council. That Plan shall relate to the exercise of consents 101277, 101279 and 101280.

   The aim of the Plan shall be to detail the type, frequency and location of monitoring that will be undertaken by the Consent Holder to assess the effects of

the discharges from Lake Moawhango on: algal and periphyton growth in the Moawhango River; the invertebrate community present in the Moawhango River; and the potential effects of lake stratification on the Moawhango River, and the potential erosion of the edge of Lake Moawhango.

Changes to the Plan may be made on an annual basis, subject to the approval of the Manawatu Wanganui Regional Council, following the receipt by the Manawatu Wanganui Regional Council of the Report specified in condition 11 of this consent.

The Plan shall address:

i. methodologies and procedures to monitor flow into the Mangaio Stream and the pH of water in the Wahianoa Aqueduct as required by condition 7 of consent 101277,
ii. methodologies and procedures to assess the abundance and composition of algae, periphyton and invertebrates in the Moawhango River between the dam and the Moawhango Village,
iii. methodologies and procedures to assess water temperature downstream of the dam,
iv. methodologies and procedures to assess water quality of the discharge authorised by this consent in terms of dissolved oxygen, iron, manganese and soluble nutrients in the Moawhango River above the Aorangi Stream confluence so that the potential occurrence and consequential effects of thermal stratification within Lake Moawhango can be determined,
v. methodologies and procedures, developed after consultation with the Department of Conservation, to assess the adequacy of the minimum residual flow established by condition 5 of this consent in terms of its ability to support an invertebrate community generally representative (in terms of abundance and composition) of a healthy high country lake fed watercourse in the Moawhango River above the Aorangi Stream confluence,
vi. methodologies and procedures to assess the adequacy of the flushing flows established by condition 3 of this consent in terms of their ability to improve the physical and biological characteristics of the Moawhango River (particularly algal proliferations and offensive odours) between the dam and the Moawhango Village,
vii. methodologies and procedures to assess the extent and magnitude of shoreline erosion at Lake Moawhango adjacent to the access road from the confluence of the Mangaio Stream with Lake Moawhango to a position 1 kilometre east of the Moawhango Dam as required by condition 6 of consent 101279. These methodologies are to be developed in consultation with the New Zealand Defence Force, and shall include an initial baseline survey, regular ongoing monitoring, and utilise information derived from any previous lakeshore erosion monitoring undertaken by the Consent Holder,
viii. the standards and guidelines that any monitoring activities shall be designed in accordance with or required to comply with.

Reporting

11 The Consent Holder shall provide to the Manawatu Wanganui Regional Council and Ngati Rangi Trust a written report by 31 August each year that this consent is current. As a minimum this report shall include the following:

i. all data collected as required under condition 10 of this resource consent.

ii. a summary of the monitoring results required by condition 10 of this resource consent and a critical analysis of that information in terms of compliance and environmental effects,

iii. a comparison of data with previously collected data identifying any emerging trends,

iv. comment on compliance with conditions of consents 101277, 101279 and this consent,

v. any reasons for non-compliance or difficulties in achieving compliance with the conditions of consents 101277, 101279 and this consent,

vi. any works that have been undertaken to improve the environmental performance of the TPD activities authorised by consents granted by the Manawatu Wanganui Regional Council, and any such works that the Consent Holder proposes to undertake in the following 12 months ,

vii. recommendations on alterations to the monitoring required by condition 10 of this consent,

viii. any other issues considered important by the Consent Holder.

ix. report on and discuss complaints received regarding the activities authorised by consents 101277, 101279 and 101280 and consents 101296, 101302, 101303, 101304, 101306, 101307, 101309 and 101310 which authorise the scheme wide maintenance of structures and activities relating to the TPD.

x. report on and discuss feedback received from any community liaison activities.

Consent Review

12 The Manawatu Wanganui Regional Council may in June of the fifth year after the commencement of this resource consent, and in June every 5 years thereafter, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review conditions 3, 4 and 5 in terms of their adequacy in avoiding, remedying or mitigating adverse effects on the environment and to amend those conditions or add further conditions if necessary.

Specific purposes of the review shall be:

i. to review the adequacy of the flushing flows specified in condition 3 in terms of their ability to improve the physical and biological characteristics of the Moawhango River from the Moawhango Dam to the Moawhango Village (particularly algal proliferations and offensive odours), and to amend that condition or add further conditions if necessary, and

ii. to review the adequacy of the minimum flow specified in condition 5 in terms of its ability to maintain an invertebrate community containing species representative of a high country lake fed watercourse in the Moawhango River from the Moawhango Dam to the confluence with the Aorangi Stream, and to amend that condition or add further conditions if necessary; and

iii. to evaluate the results of the Moawhango River monitoring specified in this consent and to amend the conditions of this resource consent or add further conditions if necessary to avoid, remedy or mitigate any adverse effects identified by that monitoring.

Advice Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

Cultural and Spiritual Matters

13 The Consent Holder shall~~, after consultation with~~use their best endeavours to *develop and reach agreement* ~~Ngati Rangi~~with Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Ngati Rangi~~between the Consent Holder and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

14 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council and Ngati Rangi Trust a written report on the matters referred to in condition 13, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

15 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 14, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

16 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant

to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

17 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

18 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 17, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Private Agreements

In granting this consent particular regard has been had to the agreements reached by the Consent Holder with Ngati Tamakopiri, Ngati Whitikopeka and Ngati Hauiti, and with the Wellington and Taranaki Fish and Game Councils.

Lake Moawhango Take
Manawatu-Wanganui Region
101281

Water permit – To **divert** and **take** water at a maximum rate of up to 25 cubic metres per second from Lake Moawhango *[Moawhango Tunnel]* at or about map reference NZMS 260 T20: 484 994 for a duration of 35 years from the commencement of this resource consent subject to the following conditions

Intake structure design capacity

1 The rate of water diverted and taken pursuant to this resource consent shall be deemed to comply with this consent if the capacity of the intake structure is no greater than it was at the date of commencement of this consent.

Cultural and Spiritual Matters

2 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement ~~Ngati Rangi~~with Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) *Ongoing consultation* ~~with Ngati Rangi~~between the Consent Holder and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

3 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council and Ngati Rangi Trust a written report on the matters referred to in condition 2, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

4 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 3, serve notice on the Consent Holder under

section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

5 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

6 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 5, by giving notice of its intention to do so pursuant to section 127(1)(a) of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Private Agreements

In granting this consent particular regard has been had to the agreements reached by the Consent Holder with Ngati Tuwharetoa, Ngati Tamakopiri, Ngati Whitikopeka and Ngati Hauiti.

Whakapapa Intake
Manawatu-Wanganui Region
101282

Water permit – To **dam** the Whakapapa River by means of the Whakapapa Intake structure and to **divert** and **take** water at a maximum rate of up to 40 cubic metres per second from the Whakapapa River at or about map reference NZMS 260 S19: 234 289 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Intake structure design capacity

1 The rate at which water is taken and diverted pursuant to this resource consent shall be deemed to comply with the conditions of this consent provided the capacity of the intake structure is not increased above its capacity as at the date of commencement of this consent.

Minimum flow in the Whakapapa River

2 Subject to condition 3, the Consent Holder shall exercise this consent in such a way that the flow in the Whakapapa River at or about map reference NZMS 260 S19: 226-295 does not fall below 3 cubic metres per second or the natural flow of the river, whichever is less.

3. The flow in the Whakapapa River at or about map reference NZMS 260 S19: 226-295 may fall below 3 cubic metres per second as a result of the exercise of this resource consent for not more than 5% of any day, provided that:

i When the flow at or about map reference NZMS 260 S19: 226-295 drops below 3 cubic metres per second the Consent Holder shall take immediate action to restore the flow to 3 cubic metres per second or the natural flow whichever is less; and

ii The flow shall not be less than 3 cubic metres per second for more than one hour at any time as a result of the taking of water by the Consent Holder; and

iii The flow shall not fall below 2.8 cubic metres at any time as a result of the taking of water by the Consent Holder.

Advice Note: *The purpose of condition 3 is to allow the flow to drop below that specified in condition 2 only when:*

- *Reasonable projections of flow recession made by the Consent Holder have not occurred; or*
- *Other events beyond the direct control of the Consent Holder have occurred.*

Flow Maintenance

3A. Commencing by 0900 hours on two separate weekend days each calendar year, the Consent Holder shall, subject to condition 3B, exercise this consent such that the natural flow of the Whakapapa River is released from the Whakapapa Intake to the Whakapapa River, for a period of not less than eight consecutive hours on each occasion.

3B. Notwithstanding condition 3A, if the natural flow in the Whakapapa River is less than 16 cubic metres per second on any day in which a flow release is proposed pursuant to condition 3A, then that flow release shall be rescheduled to occur on another separate weekend day, provided that the natural flow on that day is not less than 16 cubic metres per second. The Consent Holder shall

liase with a representative appointed by the New Zealand Recreational Canoeing Association in relation to the rescheduling of any such flow release.

3C. Subject to condition 6(a) of resource consent 103875, in the event that any rescheduled flow required by condition 3B above is not required to occur, because the natural flow is less than 16 cubic metres per second, then the Consent Holder shall have no further obligation in respect of that flow release.

3D. The dates on which the flow releases described in conditions 3A to 3B above shall occur shall be determined on an annual basis between the Consent Holder and a representative appointed by the New Zealand Recreational Canoeing Association.

3E. If it is unlikely that flows will be sufficient for natural releases, the Consent Holder shall inform the Regional Council and a representative appointed by the New Zealand Recreational Canoeing Association a minimum of 24 hours prior to the scheduled release and take all reasonable steps to ensure that the public are also informed.

3F. The Consent Holder shall keep records of the time, duration and rate of release of all discharges made under this condition and forward a copy to the Regional Council within one week of the discharge occurring.

Monitoring the Whakapapa River flow

4 The Consent Holder shall monitor the flow in the Whakapapa River at or about map reference NZMS 260 S19: 226-295 on a continuous basis. Records of this flow monitoring shall be provided to the Manawatu Wanganui Regional Council within 5 workings days upon request.

5 The Consent Holder shall maintain a flow-rating curve for the Whakapapa River at or about map reference NZMS 260 S19: 226-295. This flow-rating curve shall be maintained so that it shows the true flow plus or minus 8% for 95% of the time.

Minimum flow in the Whanganui River

6. Other than provided for by condition 7 of this resource consent, the Consent Holder shall exercise this consent and consents 101288 and 101294 in such a way that the flow in the Whanganui River between 1 December and 30 May inclusive at or about map reference NZMS 260 S19: 998-490 (Te Maire) does not fall below 29 cubic metres per second, or the natural flow of the river, whichever is less.

7. The flow in the Whanganui River at or about map reference NZMS 260 S19: 998-490 (Te Maire) may fall below 29 cubic metres per second between 1 December and 30 May inclusive as a result of the exercise of this resource consent for not more than 10% of any week, provided that:

i The Consent Holder shall take immediate action to maintain a flow of 29 cubic metres per second or the natural flow whichever is less, when it becomes apparent that the flow is likely to fall below 29 cubic metres per second;

ii The flow shall not fall below 28.5 cubic metres for more than 8 hours per day as a result of the taking of water by the Consent Holder; and

iii The flow shall not fall below 28 cubic metres per second at any time as a result of the taking of water by the Consent Holder.

Advice Note: *The purpose of condition 7 is to allow the flow to drop below that specified in condition 6 only when:*

- *Reasonable projections of flow recession made by the Consent Holder have not occurred; or*
- *Other events beyond the direct control of the Consent Holder have occurred.*

Monitoring of the Whanganui River

8. The Consent Holder shall monitor the flow in the Whanganui River at or about map reference NZMS 260 S19: 998-490 (Te Maire) on a continuous basis. Records of this flow monitoring shall be provided to the Manawatu Wanganui Regional Council within 5 workings days upon request.

9. The Consent Holder shall maintain a flow-rating curve for Whanganui River at or about map reference NZMS 260 S19: 998-490 (Te Maire). This flow-rating curve shall be maintained so that it shows the true flow plus or minus 8% for 95% of the time.

River flow information

10. Information on the flow in the Whakapapa River at NZMS 260 S19: 226-295 (Footbridge) shall be made available to the public via a free telephone system upon the commencement of this consent and on the Consent Holder's website within 12 months of the commencement of this consent. The flow information provided shall be updated hourly.

Lahar Detection

11. The Consent Holder shall maintain two lahar detection devices at the following locations:

    i On the Whakapapaiti Stream at or upstream of map reference NZMS 260 S19: 236 225 (at SH 47 Bridge).

    ii On the Whakapapanui Stream at or upstream of map reference NZMS 260 S19: 267 256 (at SH 47 Bridge).

12. In the event that the lahar detection devices identified in condition 11 indicate that a lahar is likely to pass down the Whakapapa River, the Whakapapa Intake shall be shut to prevent contaminated water entering the Whakapapa – Tawhitikuri Tunnel.

13. The lahar detection devices located in accordance with condition 11 and the system triggering the closure of the intake shall be automated and shall be maintained in a sound working condition and tested by the Consent Holder every 3 months. The results of the tests shall be documented and provided to the Manawatu Wanganui Regional Council within 10 working days of their completion.

14. This consent shall be exercised in accordance with the Volcanic Activity Management Plan prepared in accordance with resource consent 101277. Where there is any inconsistency between the provisions of the Volcanic Activity Management Plan and the conditions of this consent, then the conditions of this consent shall prevail.

Intake specifications

15. The Whakapapa River intake structure spillway crest shall be maintained at 680.8 metres above Moturiki Datum and the width of the spillway shall be maintained

at 36.6 metres. Compliance with this condition shall be satisfied provided that the dimensions are not altered from those existing at the date of commencement of this consent.

Responsibility for structural integrity and erosion control

16. The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of the Whakapapa Intake structure, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from the operation of that structure.

Advice Note: A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.

Western Diversion Monitoring Plan

17. Within 6 months following the commencement of this resource consent the Consent Holder shall prepare a Western Diversion Monitoring Plan to the satisfaction of the Manawatu Wanganui Regional Council. That Plan shall relate to the exercise of consents 101282, 101286, 101288, 101290, 101293 and 101294.

The aim of the Plan shall be to detail the type, location and frequency of monitoring that will be undertaken by the Consent Holder to assess the effectiveness of minimum release or residual flows on the aquatic ecosystems (particularly blue duck habitat) and natural character of the watercourses affected by those activities.

Changes to the Plan may be made on an annual basis, subject to the approval of the Manawatu Wanganui Regional Council, following the receipt by the Manawatu Wanganui Regional Council of the Report specified in condition 18 of this consent.

The Plan shall address:

i methodologies and procedures to assess the state and extent of blue duck populations in the Whakapapa, Mangatepopo and Whanganui Rivers between the locations of the take and diversion structures to the confluence of the Whakapapa and Whanganui Rivers,

ii methodologies and procedures to assess the state and extent of trout and native fish populations in the Whakapapa, Mangatepopo and Whanganui Rivers from the locations of the take and diversion structures to the confluence of the Whakapapa and Whanganui Rivers,

iii methodologies and procedures to assess the abundance and composition of algae, periphyton and invertebrates in the Whakapapa, Mangatepopo and Whanganui Rivers from the locations of the take and diversion structures to the confluence of the Whakapapa and Whanganui Rivers,

iv methodologies and procedures to assess the adequacy of the minimum residual flows established by consents 101282, 101286, and 101288 in terms of their ability to safeguard blue duck habitat,

v the standards and guidelines that any monitoring activities shall be designed in accordance with or required to comply with.

Reporting

18. The Consent Holder shall provide to the Manawatu Wanganui Regional Council, the Ruapehu District Council, ~~and~~ the Whanganui River Maori Trust

Board and Tamahaki Incorporated Society a written report by 31 August each year that this consent is current. As a minimum this report shall include the following:

i all data collected as required under conditions 4, 8 and 17 of this resource consent.

ii a summary of the monitoring results required by conditions 4, 8 and 17 of this resource consent and a critical analysis of that information in terms of compliance and environmental effects,

iii a comparison of data with previously collected data identifying any emerging trends in terms of potential adverse effects on aquatic ecosystems or the natural character of watercourses directly affected by the operation of the TPD,

iv comment on compliance with conditions of consents 101282, 101286, 101288, 101290, 101293 and 101294,

v any reasons for non-compliance or difficulties in achieving compliance with the conditions of consents 101282, 101286, 101288, 101290, 101293 and 101294,

vi any works that have been undertaken to improve the environmental performance of the TPD activities authorised by consents granted by the Manawatu Wanganui Regional Council, and any such works that the Consent Holder proposes to undertake in the following 12 months,

vii recommendations on alterations to the monitoring required by conditions 4, 8 and 17 of this consent,

viii any other issues considered important by the Consent Holder,

ix report on and discuss complaints received regarding the activities authorised by consents 101282, 101286, 101288, 101290, 101293 and 101294 and consents 101296, 101302, 101303, 101304, 101306, 101307, 101309 and 101310 which authorise the scheme wide maintenance of structures and activities relating to the TPD,

x report on and discuss feedback received from any community liaison activities.

xi identification of each time the provisions of conditions 3 and 7 have been utilised and the reasons why these have occurred.

Consent Review

19. The Manawatu Wanganui Regional Council may in June of the fifth year after the commencement of this resource consent, and every 5 years thereafter, serve notice on the Consent Holder under section 128 (1)(a)(iii) of the Resource Management Act 1991 of its intention to review conditions 2 to 18 in terms of their adequacy in avoiding, remedying or mitigating adverse effects on the environment and to amend those conditions or add further conditions if necessary.

Specific purposes of the review shall be:

i to review the adequacy of the minimum flows specified in conditions 2 and 6 in terms of their ability to safeguard the lifesupporting capacity of the Whakapapa and Whanganui River ecosystems to the extent contemplated at the time of commencement of this consent, and to amend those conditions or add further conditions if necessary.

ii to review the locations of the minimum flow monitoring sites listed in conditions 4 and 8 in order to determine if additional or alternative monitoring sites located closer to the points of take on the Whakapapa and Whanganui Rivers are appropriate.

iii to review conditions 3 and 7 for the purpose of ensuring that flow projections undertaken by the Consent Holder are appropriate for meeting the requirements of conditions 2 and 6.

Advice Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

Dam safety

20 The Consent Holder shall undertake an annual surveillance inspection to ensure that the dam and associated structures are structurally sound, pose no undue risk to life or property and are able to perform satisfactorily under all foreseeable circumstances. This inspection shall be undertaken by an appropriately qualified Civil Engineer.

Cultural and Spiritual Matters

21 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

22 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 21, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

23 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 22, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

24 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act 1991 at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

25 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

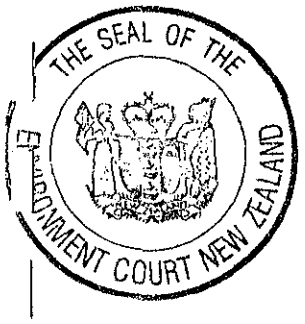
26 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 25, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying

out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.



Okupata Take
Manawatu-Wanganui Region
101283

Water permit – To **dam** the Okupata Stream by means of the Okupata Intake structure and to **divert** and **take** water at a maximum rate of up to 2 cubic metres per second from the Okupata Stream at or about map reference NZMS 260 S19: 287 351 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Intake structure design capacity

1 The rate at which water is taken and diverted pursuant to this resource consent shall be deemed to comply with the conditions of this consent provided the capacity of the intake structure is not increased above its capacity as at the date of commencement of this consent.

Dam specifications

2 The intake structure spillway crest shall be maintained at 704.1 metres above Moturiki Datum and the width of the spillway shall be maintained at 12.2 metres. Compliance with this condition shall be satisfied provided that the dimensions are not altered from those existing at the date of commencement of this consent.

Responsibility for structural integrity and erosion control

3 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of the Okupata Intake structure, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from the operation of that structure.

Advice Note: A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.

Cultural and Spiritual Matters

4 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.

- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

5 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 4, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

6 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 5, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

7 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act 1991 at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

8 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the

application or operation of the Resource Management Act 1991 or the application or operation of this consent.

9 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 8, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges
Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Taurewa Take
Manawatu-Wanganui Region
101284

Water permit – To **dam** the Taurewa Stream by means of the Taurewa Intake structure and to **divert** and **take** water at a maximum rate of up to 2 cubic metres per second from the Taurewa Stream at or about map reference NZMS 260 T19: 305 356 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Intake structure design capacity

1 The rate at which water is taken and diverted pursuant to this resource consent shall be deemed to comply with the conditions of this consent provided the capacity of the intake structure is not increased above its capacity as at the date of commencement of this consent.

Dam specifications

2 The intake structure spillway crest shall be maintained at 723.6 metres above Moturiki Datum and the width of the spillway shall be maintained at 7.6 metres. Compliance with this condition shall be satisfied provided that the dimensions are not altered from those existing at the date of commencement of this consent.

Responsibility for structural integrity and erosion control

3 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of the Taurewa Intake structure, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from the operation of that structure.

Advice Note: A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.

Cultural and Spiritual Matters

4 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.

- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

5 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 4, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

6 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 5, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

7 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act 1991 at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

8 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the

application or operation of the Resource Management Act 1991 or the application or operation of this consent.

9 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 8, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Tawhitikuri Take
Manawatu-Wanganui Region
101285

Water permit – To **dam** the Tawhitikuri Stream by means of the Tawhitikuri Intake structure and to **divert** and **take** water at a maximum rate of up to 2 cubic metres per second from the Tawhitikuri Stream at or about map reference NZMS 260 T19: 311 359 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Intake structure design capacity

1 The rate at which water is taken and diverted pursuant to this resource consent shall be deemed to comply with the conditions of this consent provided the capacity of the intake structure is not increased above its capacity as at the date of commencement of this consent.

Dam specifications

2 The intake structure spillway crest shall be maintained at 630.9 metres above Moturiki Datum and the width of the spillway shall be maintained at 12.2 metres. Compliance with this condition shall be satisfied provided that the dimensions are not altered from those existing at the date of commencement of this consent.

Responsibility for structural integrity and erosion control

3 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of the Tawhitikuri Intake structure, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from the operation of that structure.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Cultural and Spiritual Matters

4 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the

operation, effects and monitoring of the TPD and to implement them.

- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

5 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 4, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

6 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 5, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

7 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act 1991 at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

8 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the~~

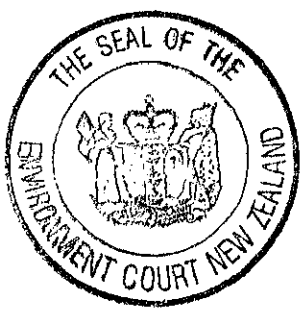
~~said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

9 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 8, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.



Mangatepopo Take
Manawatu-Wanganui Region
101286

Water permit – To **dam** the Mangatepopo Stream by means of the Mangatepopo Intake structure and to **divert** and **take** water at a maximum rate of up to 5 cubic metres per second from the Mangatepopo Stream at or about map reference NZMS 260 T19: 313 361 for a duration of 35 years from the commencement of this resource consent subject to the following conditions.

Intake structure design capacity

1 The quantity of water taken and diverted pursuant to this resource consent shall be deemed to comply with the conditions of this consent provided the capacity of the intake structure is not increased above its capacity as at the date of commencement of this consent.

Dam specifications

2 The intake structure spillway crest shall be maintained at 643.1 metres above Moturiki Datum and the width of the spillway shall be maintained at 16.8 metres. Compliance with this condition shall be satisfied provided that the dimensions are not altered from those existing at the date of commencement of this consent.

Responsibility for structural integrity and erosion control

3 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of the Mangatepopo Intake structure, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from the operation of that structure.

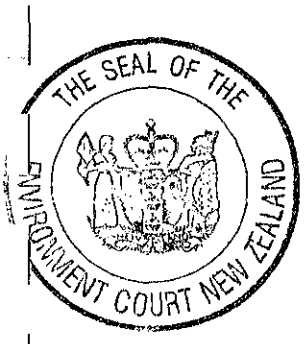
Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Minimum residual flow

4. As soon as practicable, but no later than 6 months following the commencement of this consent, the Consent Holder shall provide a continuous release from the Mangatepopo Dam structure to the Mangatepopo Stream of not less than 500 litres per second or the natural flow of the stream immediately above the influence of the Mangatepopo intake structure, whichever is less. For the purposes of this condition, the release flow is deemed to be provided by opening a control gate in the Mangatepopo Intake structure dam in accordance with an established gate rating curve to at least the opening required to maintain a flow in the Mangatepopo Stream immediately downstream of the structure of not less than 500 litres per second.

Minimum flow discharge verification

5 The Consent Holder shall maintain a discharge rating for the gate specified in condition 4. This rating shall be verified by alternative means of measurement within 3 months of the commencement of this consent. The results of that verification exercise shall be provided to the Manawatu Wanganui Regional Council within 10 working days of their completion.



Consent review

6. The Manawatu Wanganui Regional Council may in June of the fifth year after the commencement of this resource consent, and in June every 5 years thereafter, serve notice on the Consent Holder under section 128 (1)(a)(iii) of the Resource Management Act 1991 of its intention to review condition 4 for the purpose of assessing the adequacy of the specified minimum flow in terms of its ability to provide habitat suitable for blue duck and in terms of avoiding, remedying or mitigating adverse effects, and to amend that condition or add further conditions if necessary.

Advice Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

Cultural and Spiritual Matters

7 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui Iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

8 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 7, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

9 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 8, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

10 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act 1991 at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

11 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

12 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 11, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying

out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Te Whaiau Canal Discharge
Manawatu-Wanganui Region
101287

Discharge permit – To **discharge** the water taken pursuant to Resource Consents 101282, 101283, 101284, 101285 and 101286 and any material contained therein at a maximum rate of up to 51 cubic metres per second into Lake Te Whaiau *[Te Whaiau Canal]* at or about map reference NZMS 260 T19: 353 395 for a duration of 35 years from the commencement of this resource consent subject to the following conditions

Rate of discharge

1 The maximum discharge of water shall not exceed 51 cubic metres per second as measured at the Te Whaiau Canal flow measurement station at or about map reference NZMS 260 T19: 355-395.

Responsibility for structural integrity and erosion control

2 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of the point of discharge of the Te Whaiau Canal, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from that discharge.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Cultural and Spiritual Matters

3 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

4 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 3, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

5 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 4, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

6 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act 1991 at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

7 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

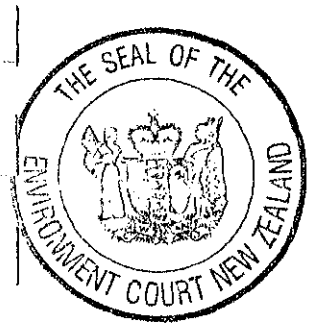
8 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 7, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi

claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.



Whanganui Intake
Manawatu-Wanganui Region
101288

Water permit – To **dam** the Whanganui River by means of the Whanganui Intake structure and to **divert** and **take** water at a maximum rate of up to 14 cubic metres per second from the Whanganui River *[Whanganui Intake]* at or about map reference NZMS 260 T19: 353 386 for a duration of 35 years from the commencement of this resource consent subject to the following conditions

Intake structure design capacity

1 The rate at which water is taken and diverted pursuant to this resource consent shall be deemed to comply with the conditions of this consent provided the capacity of the intake structure is not increased above its capacity as at the date of commencement of this consent.

Dam specifications

2 The intake structure spillway crest shall be maintained at 618.4 metres above Moturiki Datum and the width of the spillway shall be maintained at 10.1 metres. Compliance with this condition shall be satisfied provided that the dimensions are not altered from those existing at the date of commencement of this consent.

Responsibility for structural integrity and erosion control

3 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of the Whanganui intake structure, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from the operation of that structure.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Minimum residual flow

4. As soon as practicable, but no later than 6 months following the commencement of this consent, the Consent Holder shall provide a continuous release from the Whanganui Dam structure to the Whanganui River of not less than 300 litres per second or the natural flow of the river immediately above the influence of the Whanganui River intake structure, which ever is less. For the purposes of this condition, the release flow is deemed to be provided by opening a control gate (or gates) in the Whanganui Intake structure dam in accordance with an established gate rating curve to at least the opening required to maintain a flow in the Whanganui River immediately downstream of the structure of not less than 300 litres per second.

Minimum flow discharge verification

5 The Consent Holder shall maintain a discharge rating for the gate specified in condition 4. This rating shall be verified by alternative means of measurement within 3 months of the commencement of this consent. The results of that verification exercise shall be provided to the Manawatu Wanganui Regional Council within 10 working days of their completion.

Consent review

6. The Manawatu Wanganui Regional Council may in June of the fifth year after the commencement of this resource consent, and in June every 5 years thereafter, serve notice on the Consent Holder under section 128 (1)(a)(iii) of the Resource Management Act 1991 of its intention to review condition 4 for the purpose of assessing the adequacy of the specified minimum flow in terms of its ability to provide habitat suitable for blue duck and in terms of avoiding, remedying or mitigating adverse effects, and to amend that condition or add further conditions if necessary

Advice Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

Cultural and Spiritual Matters

7 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

8 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 7, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

9 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 8, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

10 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act 1991 at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

11 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

12 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 11, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying

out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Te Whaiau Culvert Discharge
Manawatu-Wanganui Region
101289

Discharge permit – To **discharge** the water taken pursuant to Resource Consent 101288 and any material contained therein at a maximum rate of up to 14 cubic metres per second into Te Whaiau Stream *[Te Whaiau Culvert]* at or about map reference NZMS 260 T19: 357 390 for a duration of 35 years from the commencement of this resource consent subject to the following conditions.

Rate of discharge

1. The maximum discharge of water to the Te Whaiau Stream shall not exceed 14 cubic metres per second as measured at the Te Whaiau Culvert flow measurement station at or about map reference NZMS 260 T19: 357-390.

Responsibility for structural integrity and erosion control

2 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of the point of the Te Whaiau Culvert discharge, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from that discharge.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Cultural and Spiritual Matters

3 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

4 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 3, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

5 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 4, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

6 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act 1991 at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

7 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

8 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 7, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi

claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Te Whaiau Canal
Manawatu-Wanganui Region
101290

Water permit – To **dam** and **divert** Te Whaiau Stream by means of the Te Whaiau Dam structure which forms Lake Te Whaiau *[Te Whaiau Dam]* and **discharge** water over the Te Whaiau dam spillway at or about map reference NZMS 260 T19: 357 398 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Dam specifications

1 The dam spillway crest shall be maintained at 611.98 metres above Moturiki Datum and the width of the spillway shall be maintained at 182.9 metres. Compliance with this condition shall be satisfied provided that the dimensions are not altered from those existing at the date of commencement of this consent.

Responsibility for structural integrity and erosion control

2 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of the Te Whaiau dam structure, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from the operation of that structure.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Dam safety

3. The Consent Holder shall have in place a Dam Safety Assurance Programme in accordance with the Dam Safety Guidelines issued by the New Zealand Society on Large Dams, dated November 1995 and as updated from time to time. Reports documenting the findings of surveillance, inspections and safety reviews shall be made available to the Manawatu Wanganui Regional Council upon request.

Cultural and Spiritual Matters

4 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the

operation, effects and monitoring of the TPD and to implement them.

- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

5 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 4, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

6 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 5, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

7 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act 1991 at any time within one month of the anniversary each year of the commencement of this consent.

Consent review

8 The Manawatu Wanganui Regional Council may in June of the fifth year after the commencement of this resource consent, and in June every 5 years thereafter, serve notice on the Consent Holder under section 128 (1)(a)(iii) of the Resource Management Act 1991 of its intention to review the conditions of this consent, for the purpose of dealing with any unforeseen adverse effects resulting from the Te Whaiau dam spillway discharge, and to amend conditions or add further conditions if necessary.

Advice Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

Treaty Of Waitangi Claim Settlements

9 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

10 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 9, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Otamangakau Canal Take
Manawatu-Wanganui Region
101291

Water permit – To **divert** and **take** water at a maximum rate of up to 74 cubic metres per second from Lake Te Whaiau *[Otamangakau Canal]* at or about map reference NZMS 260 T19: 360 398 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Cultural and Spiritual Matters

1 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

2 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 1, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 2, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying

or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

4 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

5 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 4, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Otamangakau Canal Discharge
Manawatu-Wanganui Region
101292

Discharge permit – To **discharge** the water taken pursuant to Resource Consent 101291 and any material contained therein at a maximum rate of up to 74 cubic metres per second into Lake Otamangakau *[Otamangakau Canal]* at or about map reference NZMS 260 T19: 370 406 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Cultural and Spiritual Matters

1 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

2 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 1, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

3 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 2, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying

or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

4 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

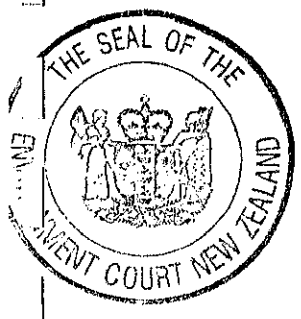
For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

5 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 4, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.



Otamangakau Dam
Manawatu-Wanganui Region
101293

Water permit – To **dam** and **divert** the Otamangakau Stream by means of the Otamangakau Dam structure which forms Lake Otamangakau *[Otamangakau Dam]* at or about map reference NZMS 260 T19: 367 410 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Lake Levels

1. The Consent Holder shall maintain the level of Lake Otamangakau:

   a. between a minimum of 610.75 metres and a maximum of 611.98 metres above Moturiki Datum during the period 1 November to 31 March inclusive, and

   b. between a minimum of 610.50 metres and a maximum of 611.98 metres above Moturiki Datum during the period 1 April to 31 October inclusive.

2. During the period 1 October to 31 May the Consent Holder shall use its best endeavours to maintain an average lake level of 611.10 metres above Moturiki Datum.

3. Notwithstanding condition 1 of this consent, the level of Lake Otamangakau shall be permitted to rise above a level of 611.98 metres above Moturiki Datum if:

   i TPD discharges to Lake Taupo have been discontinued due to the requirements of consents 103882 and 103863, or flood inflows to Lake Otamangakau are occurring, and

   ii the intake on the Whakapapa River is fully closed and the Lake Otamangakau drainage valve is fully open.

   The Consent Holder shall ensure that the level of Lake Otamangakau is reduced to at least the maximum level specified in condition 1 of this consent as soon as is practicable once the situations listed in (i) of condition 3 no longer prevail.

Consent review

4. The Manawatu Wanganui Regional Council may in June of the fifth year after the commencement of this resource consent, and in June every 5 years thereafter, serve notice on the Consent Holder under section 128 (1)(a)(iii) of the Resource Management Act 1991 of its intention to review conditions 1 to 3 for the purpose of assessing the adequacy of the specified lake level regime in terms of its ability to maintain the lake's trophy trout fishery and lake habitat, whilst providing adequate operational flexibility to the Consent Holder, and to amend those conditions or add further conditions if necessary.

Advice Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

Dam safety

The Consent Holder shall have in place a Dam Safety Assurance Programme in accordance with the Dam Safety Guidelines issued by the New Zealand Society on Large Dams, dated November 1995 and as updated from time to

time. Reports documenting the findings of surveillance, inspections and safety reviews shall be made available to the Manawatu Wanganui Regional Council upon request.

Cultural and Spiritual Matters

6 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

7 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 6, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

8 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 7, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual

effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

9 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act 1991 at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

10 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

11 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 10, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Otamangakau Dam Discharge
Manawatu-Wanganui Region
101294

Discharge permit – To **discharge** water and any material contained therein at a maximum rate of up to 3 cubic metres per second into the Otamangakau Stream downstream of the Otamangakau Dam structure via a controlled release mechanism *[Otamangakau Dam discharge]* at or about map reference NZMS 260 T19: 367 410 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Discharge rating

1 Within 6 months of the commencement of this consent the Consent Holder shall calibrate the flow release mechanism so that an accurate record of the flow released through it can be obtained by recording the days and times when it is used. The Consent Holder shall then record the days and times when it is used and that information shall be provided to the Manawatu Wanganui Regional Council within 5 workings days upon request.

Responsibility for structural integrity and erosion control

2 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of the Otamangakau dam structure, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from the operation of that structure.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Cultural and Spiritual Matters

3 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and

information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

4 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 3, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

5 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 4, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or cancellation of consent conditions

6 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act 1991 at any time within one month of the anniversary each year of the commencement of this consent.

Treaty Of Waitangi Claim Settlements

7 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

8 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 7, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Wairehu Canal Take
Manawatu-Wanganui Region
101295

Water permit – To **divert** and **take** water at a maximum rate of up to 55 cubic metres per second from Lake Otamangakau *[Wairehu Canal]* at or about map reference NZMS 260 T19: 386 411 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Fish passage

1. The Consent Holder shall take all practicable measures to prevent fish passage between Lake Otamangakau and the Wairehu Canal.

Cultural and Spiritual Matters

2 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi")~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Western Diversion of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi.
- Provides ~~tangata whenua~~Whanganui iwi with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

3 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui River Maori Trust Board and Tamahaki Incorporated Society a written report on the matters referred to in condition 2, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

4 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 3, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

5 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

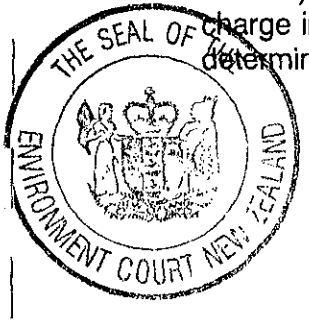
For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

6 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 5, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.



Maintenance of Structures and Watercourses
Manawatu-Wanganui Region
101296

Combined land use consent, water permit and discharge permit – To undertake the following activities for the purpose of maintaining structures or removing sediment, weed, debris, plants and other material from watercourses within the Tongariro Power Development:

i) to **reconstruct, alter, remove** or **demolish** any structure or part of any structure in, on, under or over the bed of a river or lake;

ii) to disturb, remove, damage, or destroy sediment, weed, debris, plants and other material in, on, under, over or adjacent to the bed of a river or lake;

iii) to **enter, pass across** or **disturb** the bed of a river or lake, including for the purpose of removing or flushing accumulated bed material in order to maintain the functional integrity and operational efficiency of a structure;

iv) to **deposit** removed material on the bed of a river or lake;

v) to **dam** and **divert** water;

vi) to **discharge** water into water;

vii) to **discharge** sediment and other materials into water —

within the area bounded by maps NZMS 260 S19, T19 AND T 20 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

NOTE The activities authorised by this consent include but are not limited to:

- The flushing, automatic or manual removal, excavation or sluicing and deposition of accumulated sediment and debris;
- Drainage and maintenance discharges from structures, culverts, pipelines and tunnels;
- Discharges from the Whakapapa-Tawhitikuri-Whanganui Tunnel bulkhead maintenance discharge to the Tawhitikuri Stream;
- Whakapapa-Tawhitikuri-Whanganui Tunnel drain valve maintenance discharge to the Whanganui River;
- Discharges from the testing of gates and structures;
- Construction of temporary dams and diversions.

Scope of Consent

1 This resource consent only applies to activities undertaken within 200 upstream or downstream of any TPD structure located within a watercourse.

2 This consent does not apply to the specific activities that are authorised by resource consents 101279, 101302 or 101303.

Responsibility for operations

3 The Consent Holder shall ensure contractors are made aware of the conditions of this resource consent and the need to comply with them.

Responsibility for structural integrity and erosion control

4 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of any activities authorised by this consent, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from those activities.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Fish passage and blue ducks

5 The activities authorised by this consent shall not prevent the passage of fish both upstream and downstream.

6 The activities authorised by this consent shall not disturb the nesting or breeding of blue ducks within a distance 200 metres upstream and downstream of the activity. This condition does not apply to the automatic sluicing of diversion or intake structures or essential works required to maintain the structural integrity or safe operation of a structure.

Effects of structure on water flow

7 The Consent Holder shall ensure that any machinery, equipment or materials associated with any activities authorised by this consent, but not in use, do not obstruct the flood channel of the watercourse.

Control of contaminants from operation of machinery

8 All machinery shall be operated in a manner which ensures that spillages of fuel, oil and similar contaminants are minimised to the fullest extent practicable, particularly during refuelling and machinery servicing and maintenance. Refuelling and lubrication activities shall be carried out away from any water body such that any spillage can be contained so it does not enter any water body.

Discharges to water

9 Any materials used for activities authorised by this consent shall be managed in ways that ensure risks to aquatic ecosystems are minimised to the fullest extent practicable.

10 Where as a result of the exercise of this resource consent, sections of the channel banks have in excess of five square metres of vegetation removed from them, the Consent Holder shall where necessary minimise channel bank erosion to the fullest extent practicable.

11 No dry cement shall be released into the watercourse. Any concrete placed in or adjacent to a watercourse shall be contained by a watertight form work in such a way that cement slurry is not able to seep out and enter the watercourse. New concrete shall not be exposed to the flow of water before it has hardened for at least 48 hours.

12 Any discharge of sediment directly associated with an activity authorised by this consent shall not occur for more than 5 consecutive days, nor for more than 12 hours on any one day within those 5 days.

Diversions

13 Any temporary diversion of water or cessation of flow required to undertake activities authorised by this consent shall be returned to its normal state within 2 working days of the completion of the activity.

14 Prior to implementing condition 13 of this resource consent, the Consent Holder shall inspect the temporary diversion or dewatered area and any fish impounded within it shall be returned to the original watercourse as soon as practicable following their discovery.

Rehabilitation of Disturbed Areas

15 Within 20 working days of the completion of any activities authorised by this consent, the Consent Holder shall stabilise and re-contour any disturbed areas to the satisfaction of the Manawatu Wanganui Regional Council in order to:

i limit sediment runoff or erosion to the greatest extent practicable,

ii remove any stockpiles of material and fill any depressions where these would adversely effect the flow of water.

16 Any disturbed areas shall be revegetated as soon as practicable in a manner consistent with existing vegetation cover at and about the site to the satisfaction of the Manawatu Wanganui Regional Council. The Consent Holder shall maintain the site until any re-vegetated area is established.

17 Any construction materials associated with activities authorised by this consent that are no longer required as part of the structure, and/or any temporary structures that are no longer required to undertake activities authorised by this consent, shall be removed within 2 working days following the completion of the activity.

Sediment Flushing

18 Where sediment and other material removed from structures is deposited into a watercourse, that sediment and other material shall not be deposited directly into flowing water. It shall be deposited in such a manner and location that it can be carried away by a flow in excess of the mean annual flow for that watercourse. This condition does not apply to the automatic sluicing of diversion or intake structures.

Notices warning of maintenance activities

19 Where the activities authorised by this consent are undertaken in an area accessible to the public, then the Consent Holder shall erect notices that are easily readable from a distance of 5 metres adjacent to any activities authorised by this consent. These notices shall provide warning of the activities and advice of the period over which they will be occurring. The notices shall be erected at least 5 working days prior to the commencement of any scheduled activity and shall not be removed by the Consent Holder for the duration of the activity. For non-scheduled activities the warning signs shall be erected as soon as practicable following the commencement of the activity and shall not be removed by the Consent Holder for the duration of the activity.

Advice Note: Refer to condition 25 which relates to scheduled activities.

Waterway access

20 The Consent Holder shall ensure that existing public access is maintained along watercourses at all times, except for areas and periods where the safety of the public and integrity of any structure would be endangered as a result of the activities authorised by this consent.

Fish spawning periods

21 There shall be no disturbance of any actively flowing channel as a result of the exercise of this resource consent in the Moawhango River or any tributary of the Whanganui River within the period 1 July to 1 November inclusive. This condition does not apply to the automatic sluicing of diversion or intake structures or essential works required to maintain the structural integrity or safe operation of a structure.

Notification to Council

22. For any scheduled maintenance activity involving the temporary use of machinery in a river or lake bed, or the temporary damming or diversion of water, the Consent Holder shall notify the Manawatu-Wanganui Regional Council in writing of its intention to exercise this consent not less than 10 working days prior to exercising the consent. The notification shall include:
    - i a description of the location in which the consent will be exercised;
    - ii a description of the scope and duration of the maintenance activities to be undertaken;
    - iii a description of the specific measures to be used to minimise the effects of the activities to be undertaken.

23 For any unscheduled maintenance activity involving the temporary use of machinery in a river or lake bed, or the temporary damming or diversion of water, the Consent Holder shall notify the Manawatu-Wanganui Regional Council in writing of the activity within 48 hours of its commencement. The details of the notification shall include those specified under condition 22 of this resource consent.

Complaint register

24 The Consent Holder shall maintain and keep a complaints register for any complaints about the maintenance activities received by the Consent Holder in relation to the degradation of water quality, adverse effects on aquatic ecosystems or wildlife, or the impedance of public access to or along watercourses. The register shall record, where this information is available:

- i the date, time and duration of the incident that has resulted in a complaint,
- ii the location of the complainant when the incident was detected,
- iii the possible cause of the incident,
- iv any corrective action undertaken by the Consent Holder in response to the complaint.

The register shall be available to the Manawatu Wanganui Regional Council at all reasonable times. Complaints received by the Consent Holder that may infer non-compliance with the conditions of this resource consent shall be forwarded to the Manawatu Wanganui Regional Council within 48 hours of the complaint being received.

Scheduled Maintenance Plan

25 By 30 June each year the Consent Holder shall provide to the Manawatu Wanganui Regional Council a Plan stating the activities authorised by this consent that are scheduled to be undertaken in the following 12 months. That Plan shall contain as a minimum:

- i details of the type, nature and location of each activity and the period during which it is intended to be undertaken,
- ii events that would potentially trigger unscheduled activities and the possible type, nature and location of such unscheduled activities.

Large Scale Dredging

26. This consent does not authorise any dredging in excess of 100 cubic metres of material per annum from Lake Te Whaiau, Lake Otamangakau or the Otamangakau Canal.

Cultural and Spiritual Matters

27 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi") and Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern and Western Diversions of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Whanganui iwi and Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi and Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

28 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui iwi and Ngati Rangi Trust a written report on the matters referred to in condition 27, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

29 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 28, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Change or Cancellation of Conditions

30 The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

Review (s128)

31 The Manawatu Wanganui Regional Council may in June of the fifth year after the commencement of this resource consent, and every 5 years thereafter, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review conditions 5 to 26 for the purpose of assessing their adequacy in avoiding, remedying or mitigating adverse effects on the environment and to amend those conditions or add further conditions if necessary.

Advice Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

Lapsing of Consent

32 Pursuant to section 125(1) of the Resource Management Act 1991 this consent shall not lapse until the consent duration of 35 years expires.

Treaty Of Waitangi Claim Settlements

33 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

34 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 33, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Private Agreements

In granting this consent particular regard has been had to the agreements reached by the consent holder with Ngati Tuwharetoa, Ngati Tamakopiri, Ngati Whitikopeka, Ngati Hauiti and the Lake Rotoaira Trust.

Maintenance Activity Discharges
Manawatu-Wanganui Region
101302

Discharge permit – To **discharge** materials onto or into land associated with the removal of sediment, weed, debris or other material from or adjacent to watercourses within the area bounded by maps NZMS 260 S19, T19 AND T 20 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Scope of Consent

1 This consent does not apply to the specific activities that are authorised by resource consents 101279, 101296 or 101303.

Responsibility for operations

2 The Consent Holder shall ensure contractors are made aware of the conditions of this resource consent and the need to comply with them.

Responsibility for structural integrity and erosion control

3 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of any activities authorised by this consent, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from those activities.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Control of contaminants from operation of machinery

4 All machinery shall be operated in a manner which ensures that spillages of fuel, oil and similar contaminants are minimised to the fullest extent practicable, particularly during refuelling and machinery servicing and maintenance. Refuelling and lubrication activities shall be carried out away from any water body such that any spillage can be contained so it does not enter any water body.

Site Management

5 Any accumulation of sediment onto land in excess of 50 cubic metres, resulting from the exercise of this resource consent, in any one location where it is readily visible to the public and which would otherwise be out of keeping with the character of the surrounding landscape shall be screened with vegetation or fencing to the satisfaction of, and in consultation with, the Manawatu-Wanganui Regional Council.

6. The activities authorised by this consent shall be managed in such a way so as to avoid, to the greatest extent practicable, runoff of sediment, weeds, debris or other material into surface water.

Advice Note: *This may require the installation and maintenance of sediment retention devices. A separate resource consent may be required to install such works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken*

7. There shall be no conspicuous oil, grease, scums or foams present in surface water after reasonable mixing as a result of the exercise of this consent.

Odour and Dust

8 The activities authorised by this consent shall not give rise to any offensive or objectionable odour, or offensive or objectionable deposition of dust or debris, beyond the boundary of land owned or controlled by the Consent Holder.

Warning Notices

9 Where activities authorised by this consent are undertaken in an area accessible to the public, then the Consent Holder shall erect notices that are easily readable from a distance of 5 metres adjacent to any materials deposition site. These notices shall provide warning of the activity. The notices shall be erected at least 5 working days prior to the commencement of any scheduled activity and shall not be removed by the Consent Holder for the duration of the activity. . For non-scheduled activities the warning signs shall be erected as soon as practicable following the commencement of the activity and shall not be removed by the Consent Holder for the duration of the activity.

Runoff management plan

10 Within 2 months of the commencement of this consent the Consent Holder shall provide a Management Plan to the Manawatu Wanganui Regional Council describing how the sediment, weed and debris deposition activities authorised by this consent will be managed and the methods to be adopted by the Consent Holder to achieve compliance with the conditions of this consent.

Complaint register

11 The Consent Holder shall maintain and keep a complaints register for any complaints about the discharge activities received by the Consent Holder in relation to the degradation of water quality, adverse effects on aquatic ecosystems or wildlife, odours, or adverse visual effects. The register shall record where this information is available:

i the date, time and duration of the incident that has resulted in a complaint,
ii the location of the complainant when the incident was detected,
iii the possible cause of the incident,
iv any corrective action undertaken by the Consent Holder in response to the complaint.

The register shall be available to the Manawatu Wanganui Regional Council at all reasonable times. Complaints received by the Consent Holder that may infer non-compliance with the conditions of this resource consent shall be forwarded to the Manawatu Wanganui Regional Council within 48 working days of the complaint being received.

Change or cancellation of conditions

12. The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

Review (s128)

13 The Manawatu Wanganui Regional Council may in June of the fifth year after the commencement of this resource consent, and every 5 years thereafter, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review conditions 5 to 11 for the purpose of assessing their adequacy in avoiding, remedying or mitigating adverse effects on the environment and to amend those conditions or add further conditions if necessary.

Advice Note: *Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.*

Lapsing of Consent

14. Pursuant to section 125(1) of the Resource Management Act 1991 this consent shall not lapse until the consent duration of 35 years expires.

Cultural and Spiritual Matters

15 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi") and Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern and Western Diversions of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Whanganui iwi and Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi and Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

16 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui iwi and Ngati Rangi Trust a written report on the matters referred to in condition 15, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

17 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 16, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying

or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

18 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

19 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 18, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Private Agreements

In granting this consent particular regard has been had to the agreements reached by the consent holder with Ngati Tuwharetoa, Ngati Tamakopiri, Ngati Whitikopeka, Ngati Hauiti and the Lake Rotoaira Trust.

Abrasive Blasting
Manawatu-Wanganui Region
101303

Discharge permit – To **discharge** materials into the air, onto land and into water from abrasive blasting activities undertaken for the maintenance of TPD structures within the area bounded by maps NZMS 260 S19, T19 AND T 20 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Responsibility for operations

1 The Consent Holder shall ensure contractors are made aware of the conditions of this resource consent and the need to comply with them.

Notification to Council

2. The Consent Holder shall notify the Manawatu-Wanganui Regional Council in writing of its intention to exercise this consent not less than 10 working days prior to exercising the consent. The notification shall include:
   - i A description of the location in which the consent will be exercised;
   - ii A description of the scope and duration of the activities to be undertaken;
   - iii A description of the specific measures to be used to minimise the effects of the activities to be undertaken.

Site management

3. Any abrasive media not in use shall be kept covered at all times.

4. The abrasive media used shall not contain more than 5 % silica on a dry weight basis.

5 The Consent Holder shall avoid to the fullest extent practicable any debris resulting from the abrasive blasting activities being deposited into any watercourse.

Advice Note: Compliance with this condition may require the use of physical barriers and tarpaulins to catch and contain debris.

6. All debris resulting from the abrasive blasting activities shall be removed, to the fullest extent practicable, by the Consent Holder immediately following the completion of the blasting activity and disposed of in a lawful manner.

7. The activities authorised by this consent shall not result in an objectionable deposition of dust on properties owned or occupied by any other person, unless prior written approval has been obtained from those owners or occupiers.

Scheduled Abrasive Blasting Plan

8. By 30 June each year the Consent Holder shall provide to the Manawatu Wanganui Regional Council a Plan stating the activities authorised by this consent that are scheduled to be undertaken in the following 12 months. That Plan shall contain as a minimum:
   - i details of the location of each activity and the period during which it is intended to be undertaken,
   - ii events that would potentially trigger unscheduled activities and the type, nature and location of such unscheduled activities,
   - iii measures to be undertaken to achieve compliance with conditions 5, 6 and 7 of this consent

Change and cancellation of conditions

9. The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

Review (s128)

10 The Manawatu Wanganui Regional Council may in June of the fifth year after the commencement of this resource consent, and every 5 years thereafter, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review conditions 3 to 8 for the purpose of assessing their adequacy in avoiding, remedying or mitigating adverse effects on the environment and to amend those conditions or add further conditions if necessary.

Advice Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

Lapsing of Consent

11. Pursuant to section 125(1) of the Resource Management Act 1991 this consent shall not lapse until the consent duration of 35 years expires.

Cultural and Spiritual Matters

12 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi") and Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern and Western Diversions of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Whanganui iwi and Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi and Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

13 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui iwi and Ngati Rangi Trust a written report on the matters referred to in condition 12, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

14 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 13, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

15 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

16 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 15, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Private Agreements

In granting this consent particular regard has been had to the agreements reached by the Consent Holder with Ngati Tuwharetoa, Ngati Tamakopiri, Ngati Whitikopeka Ngati Hauiti and the Lake Rotoaira Trust.

Use of Structures
Manawatu-Wanganui Region
101304

Land use consent – To **use** structures within the Tongariro Power Development for the purposes of damming, diverting, taking and conveying water; discharging water and any other materials contained therein; generating hydroelectricity; providing access across waterways (bridges); measuring flows and water quality; and any other activity necessary to enable the functioning of the Tongariro Power Development within the area bounded by maps NZMS 260 S19, T19 AND T 20 for a duration of 35 years from the commencement of this resource consent.

Cultural and Spiritual Matters

1 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi") and Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern and Western Diversions of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Whanganui iwi and Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi and Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

2 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui iwi and Ngati Rangi Trust a written report on the matters referred to in condition 1, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

3 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 2, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

4 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

5 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 4, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

Lapsing of Consent

6 Pursuant to section 125(1) of the Resource Management Act 1991 this consent shall not lapse until the consent duration of 35 years expires.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such

charge in which case the appropriate charge is payable when the objection or appeal is determined.

Private Agreements
In granting this consent particular regard has been had to the agreements reached by the consent holder with Ngati Tuwharetoa, Ngati Tamakopiri, Ngati Whitikopeka, Ngati Hauiti and the Lake Rotoaira Trust.

Monitoring Structures
Manawatu-Wanganui Region
101305

Land use consent – To **erect, place or extend** structures within the Tongariro Power Development for the purposes of measuring flows and water quality or any other monitoring within the area bounded by maps NZMS 260 S19, T19 AND T 20 for a for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Responsibility for operations

1 The Consent Holder shall ensure contractors are made aware of the conditions of this resource consent and the need to comply with them.

Responsibility for structural integrity and erosion control

2 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of any activities authorised by this consent, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from those activities.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Fish passage and blue ducks

3 The activities authorised by this consent shall not prevent the passage of fish both upstream and downstream.

4 The activities authorised by this consent shall not disturb the nesting or breeding of blue ducks within a distance 200 metres upstream and downstream of the activity. This condition does not apply to essential works required to maintain the structural integrity or safe operation of a structure.

Effects of structure on water flow

5 Activities authorised by this consent shall not cause any reduction in the ability of any channel to convey flood flows and debris.

Control of contaminants from operation of machinery

6 All machinery shall be operated in a manner which ensures that spillages of fuel, oil and similar contaminants are minimised to the fullest extent practicable, particularly during refuelling and machinery servicing and maintenance. Refuelling and lubrication activities shall be carried out away from any water body such that any spillage can be contained so it does not enter any water body.

Discharges to water

7 Any materials used for activities authorised by this consent shall be used in ways that ensure that risks to aquatic ecosystems are minimised to the fullest extent possible.

8 Where as a result of the exercise of this resource consent, sections of the channel banks have in excess of five square metres of vegetation removed from them, the Consent Holder shall, where necessary, construct temporary sediment retention devices within the same working day to minimise channel bank erosion to the fullest extent practicable.

9 No dry cement shall be released into the watercourse. Any concrete placed in or adjacent to a watercourse shall be contained by a watertight form work in such a way that cement slurry is not able to seep out and enter the watercourse. New concrete shall not be exposed to the flow of water before it has hardened for at least 48 hours.

10 Any discharge of sediment directly associated with an activity authorised by this consent shall not occur for more than 5 consecutive days, nor for more than 12 hours on any one day within those 5 days.

Diversions

11 Any temporary diversion of water required to undertake activities authorised by this consent shall cease within 2 working days of the completion of the activity.

12 Prior to implementing condition 11 of this resource consent, the Consent Holder shall inspect the temporary diversion and any fish impounded within it shall be returned to the original watercourse as soon as practicable following their discovery.

Rehabilitation of Disturbed Areas

13 Within 20 working days of the completion of activities authorised by this consent, the Consent Holder shall stabilise and re-contour any disturbed areas to the satisfaction of the Manawatu Wanganui Regional Council in order to:

i to limit sediment runoff or erosion to the greatest extent practicable,

ii remove any stockpiles of material and fill any depressions where these would adversely effect the flow of water.

14 Any disturbed areas shall be revegetated as soon as practicable in a manner consistent with existing vegetation cover at and about the site to the satisfaction of the Manawatu Wanganui Regional Council. The Consent Holder shall maintain the site until any re-vegetated area is established.

15 Any construction materials associated with activities authorised by this consent that are no longer required as part of the structure, and/or any temporary structures that are no longer required to undertake activities authorised by this consent, shall be removed within 2 working days following the completion of the activity.

Council Notification

16. The Consent Holder shall notify the Manawatu-Wanganui Regional Council in writing of its intention to erect or place any new structure or to extend any existing structure not less than 10 working days prior to exercising the consent. The notification shall include:

i A description of the structure to be erected, placed or extended;

ii A description of the duration for which any new structure is intended to be erected or placed;

iii A description of the specific measures to be used to minimise the effects of the activities to be undertaken;

iv A description of the location in which any new structure is to be erected or placed or where any structure is to be extended.

Change or Cancellation of conditions

17. The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act at any time

within one month of the anniversary each year of the commencement of this consent.

Review (s128)

18 The Manawatu Wanganui Regional Council may in June of the fifth year after the commencement of this resource consent, and every 5 years thereafter, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review conditions 3 to 16 for the purpose of assessing their adequacy in avoiding, remedying or mitigating adverse effects on the environment and to amend those conditions or add further conditions if necessary.

Advice Note: Costs associated with any review of the conditions of this resource consent will be recovered from the consent holder in accordance with the provisions of section 36 of the Resource Management Act 1991.

Lapsing of Consent

19. Pursuant to section 125(1) of the Resource Management Act 1991 this consent shall not lapse until the consent duration of 35 years expires.

Cultural and Spiritual Matters

20 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi") and Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern and Western Diversions of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Whanganui iwi and Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi and Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

21 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui iwi and Ngati Rangi Trust a written report on the matters referred to in condition 20, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

22 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 21, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

23 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

24 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 23, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

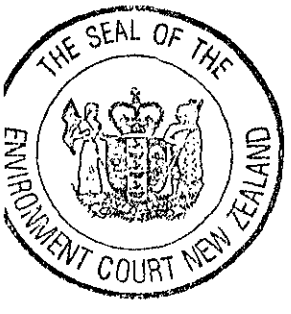
Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying

out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Private Agreements

In granting this consent particular regard has been had to the agreements reached by the Consent Holder with Ngati Tuwharetoa, Ngati Tamakopiri, Ngati Whitikopeka, Ngati Hauiti and the Lake Rotoaira Trust.



Land Use – Booms and Screens
Manawatu-Wanganui Region
101306

Land use consent – To **place** structures in streams, rivers and lakes upstream or downstream of Tongariro Power Development structures for operational and public safety reasons or to prevent material entering the structures within the area bounded by maps NZMS 260 S19, T19 AND T 20 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Responsibility for operations

1 The Consent Holder shall ensure contractors are made aware of the conditions of this resource consent and the need to comply with them.

Responsibility for structural integrity and erosion control

2 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of any activities authorised by this consent, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from those activities.

Advice Note: A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.

Activity location

3. No structure shall be placed in any water body (other than any artificial watercourse) more than 200 metres upstream or downstream of any TPD structure existing at the time that this consent commences.

Fish passage and Blue Ducks

4 The activities shall not prevent the passage of fish both upstream and downstream, other than for the purposes of:

i avoiding the entrainment of fish into diversion or intake structures, or

ii avoiding the transfer of fish between water bodies.

5 The activity shall not disturb the nesting or breeding of blue ducks within a distance 200 metres upstream and downstream of the activity.

Effects of structure on water flow

6 Activities authorised by this consent shall not cause any reduction in the ability of any channel to convey flood flows.

Notices warning of maintenance activities

7 Where activities authorised by this consent are undertaken in an area accessible to the public, then the Consent Holder shall erect notices that are easily readable from a distance of 5 metres adjacent to the location of any structure authorised by this consent. These notices shall provide warning of the activity. The notices shall be erected at least 5 working days prior to the commencement of any scheduled activity and shall not be removed by the Consent Holder for the duration of the activity.

Council notification

8. The Consent Holder shall notify the Manawatu-Wanganui Regional Council in writing of its intention to place any new structure in a stream, river or lake not

less than 10 working days prior to placement of the structure. The notification shall include:

i A description of the structure to be placed;

ii A description of the duration for which any new structure is intended to be installed;

iii A description of the specific measures to be used to minimise any adverse effects of the placement of the structure;

iv A description of the location in which any new structure is to be placed;

v A description of the intended purpose of the structure.

Change or cancellation of conditions

9. The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

Lapsing of Consent

10. Pursuant to section 125(1) of the Resource Management Act 1991 this consent shall not lapse until the consent duration of 35 years expires.

Cultural and Spiritual Matters

11 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi") and Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern and Western Diversions of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Whanganui iwi and Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi and Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

12 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui iwi and Ngati Rangi Trust a written report on the matters referred to in condition 11, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

13 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 12, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

14 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

15 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 14, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying

out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Private Agreements

In granting this consent particular regard has been had to the agreements reached by the Consent Holder with Ngati Tuwharetoa, Ngati Tamakopiri, Ngati Whitikopeka, Ngati Hauiti and the Lake Rotoaira Trust.

Conveyance of Water Around Structures
Manawatu-Wanganui Region
101307

Combined water permit and discharge permit – To **take** water, **divert** water and **discharge** water and any material contained therein for the purpose of:

i) Conveying surface water and ground water around, through, over, under or past structures within the Tongariro Power Development;

ii) Providing for water leakage to, from and through structures within the Tongariro Power Development:

except as provided for by other resource consents within the area bounded by maps NZMS 260 S19, T19 AND T 20 for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Responsibility for structural integrity and erosion control

1 The Consent Holder shall construct and maintain any works necessary to remedy riverbed or riverbank erosion occurring up to 100 m downstream of any activities authorised by this consent, if in the opinion of the Manawatu Wanganui Regional Council that erosion directly results from those activities.

Advice Note: *A separate resource consent may be required as a result of the need to undertake erosion control works. Any such consent shall be obtained by the consent holder at its sole expense prior to any works being undertaken.*

Lapsing of Consent

2. Pursuant to section 125(1) of the Resource Management Act 1991 this consent shall not lapse until the consent duration of 35 years expires.

Cultural and Spiritual Matters

3 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi") and Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern and Western Diversions of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Whanganui iwi and Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi and Ngati Rangi Trust into the

formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

4 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui iwi and Ngati Rangi Trust a written report on the matters referred to in condition 3, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

5 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 4, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

6 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

7 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 6, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

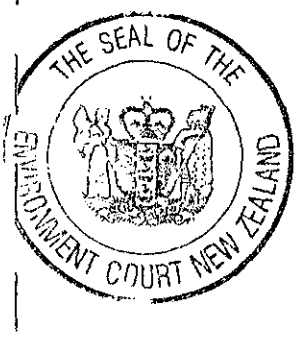
GENERAL ADVICE NOTES:

Administration charges

Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Private Agreements

In granting this consent particular regard has been had to the agreements reached by the Consent Holder with Ngati Tuwharetoa, Ngati Tamakopiri, Ngati Whitikopeka, Ngati Hauiti and the Lake Rotoaira Trust.



Water Take
Manawatu-Wanganui Region
101309

Water permit – To **take** up to 20 cubic metres of water per day for purposes related to the operation of the Tongariro Power Development other than generating hydroelectricity within the area bounded by maps NZMS 260 S19, T19 and T 20, for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Responsibility for operations

1 The Consent Holder shall ensure contractors are made aware of the conditions of this resource consent and the need to comply with them.

Recording of take locations

2 The Consent Holder shall maintain a record of the locations at which this consent is exercised and shall provide a copy of that record to the Manawatu Wanganui Regional Council upon request.

Take rate from rivers

3. The maximum rate of extraction of water from any river shall not exceed 10% of the discharge of the river at the point of taking at the time the water is taken.

Change or cancellation of conditions

4. The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

Lapsing of Consent

5. Pursuant to section 125(1) of the Resource Management Act 1991 this consent shall not lapse until the consent duration of 35 years expires.

Cultural and Spiritual Matters

6 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi") and Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern and Western Diversions of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Whanganui iwi and Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki

~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.

- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi and Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

7 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui iwi and Ngati Rangi Trust a written report on the matters referred to in condition 6, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

8 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 7, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

9 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

10 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other

than condition 9, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges
Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Private Agreements
In granting this consent particular regard has been had to the agreements reached by the Consent Holder with Ngati Tuwharetoa, Ngati Tamakopiri, Ngati Whitikopeka, Ngati Hauiti and the Lake Rotoaira Trust.

Stormwater Discharge
Manawatu-Wanganui Region
101310

Discharge permit – To **discharge** stormwater from buildings and other structures onto or into land, or into water within the area bounded by maps NZMS 260 S19, T19 and T 20, for a duration of 35 years from the commencement of this resource consent subject to the following conditions:

Responsibility for operations

1 The Consent Holder shall ensure contractors are made aware of the conditions of this resource consent and the need to comply with them.

Discharge conditions

2 The discharge shall not drain any unroofed or unenclosed area or structure used for the storage, use or disposal of any hazardous substances or waste management purposes.

3. Where stormwater discharges onto land, the stormwater shall be directed away from any bare soil surfaces.

4. There shall be no conspicuous oil, grease, scum or foam present in surface water after reasonable mixing as a result of the exercise of this consent.

5. Appropriate erosion protection and energy dissipating devices shall be provided, where necessary to avoid erosion from the discharge, at any stormwater discharge outlet structure.

6. Any structure installed for the purpose of meeting condition 5 shall not prevent the passage of fish both upstream and downstream.

Change or cancellation of conditions

7. The Consent Holder may apply to the Council for a change or cancellation of any of the conditions to this consent by giving notice of its intention to do so pursuant to Section 127(1)(a) of the Resource Management Act at any time within one month of the anniversary each year of the commencement of this consent.

Lapsing of Consent

8. Pursuant to section 125(1) of the Resource Management Act 1991 this consent shall not lapse until the consent duration of 35 years expires.

Cultural and Spiritual Matters

9 The Consent Holder shall~~, after consultation with~~use their best endeavours to develop and reach agreement with the Whanganui River Maori Trust Board and Tamahaki Incorporated Society (collectively "Whanganui iwi") and Ngati Rangi Trust~~, develop a process to address the following matters~~ on a process that provides for:

i) The provision of ongoing cultural and spiritual advice to the Consent Holder about the TPD project ~~area that is within~~as it affects their rohe.

ii) Ongoing consultation ~~with Whanganui iwi~~between the Consent Holder and Whanganui iwi and Ngati Rangi Trust on matters pertaining to the operation and effects of the TPD.

iii) Preparation and implementation of a Cultural Management ~~Plan that~~Plan for the Eastern and Western Diversions of the TPD that:

- ~~Makes provision for tangata whenua to have easy entry to the process through the creation of a co-operative environment to facilitate~~Facilitates on-going ~~consultation~~consultation between the Consent Holder and Whanganui iwi and Ngati Rangi Trust.
- Provides ~~tangata whenua~~Whanganui iwi and Ngati Rangi Trust with full opportunity to formulate appropriate kaitiaki ~~protocols~~protocols in relation to the operation, effects and monitoring of the TPD and to implement them.
- ~~Allows tangata whenua the opportunity for input into the formulation and implementation of management plans and monitoring programmes~~Provides for the input of advice and information by Whanganui iwi and Ngati Rangi Trust into the formulation and implementation of management plans and monitoring programmes in relation to the operation and effects of the TPD.

For the avoidance of doubt, it is expected that discussion about management plans and monitoring programmes referred to in this condition will include scientific matters.

10 The Consent Holder shall, ~~during calendar year~~in February 2009, provide to the Manawatu Wanganui Regional Council, Whanganui iwi and Ngati Rangi Trust a written report on the matters referred to in condition 9, including advice as to the steps taken by the Consent Holder to avoid, remedy or mitigate any cultural or spiritual effects of the activities authorised by this consent.

Consent Review (Cultural and Spiritual Matters)

11 The Manawatu Wanganui Regional Council may, within 3 months of receiving the report required by condition 10, serve notice on the Consent Holder under section 128 (1) of the Resource Management Act 1991 of its intention to review the conditions of this consent in terms of their adequacy in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend those conditions or add further conditions if necessary.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of ensuring the adequacy of the conditions in avoiding, remedying or mitigating the cultural and spiritual effects of the activities authorised by this consent and to amend the conditions or add further conditions if necessary.

Treaty Of Waitangi Claim Settlements

12 The Manawatu Wanganui Regional Council shall, within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD, serve notice on the Consent Holder under section 128 of the Resource Management Act 1991 of its intention to review any or all the conditions of this consent for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

For the avoidance of doubt, any review pursuant to this condition may impose further or additional review conditions for the purpose of making the consent consistent with all ~~Resource Management Act 1991 matters contained in the~~

~~said settlement~~matters contained in the said legislation that affect the application or operation of the Resource Management Act 1991 or the application or operation of this consent.

13 The Consent Holder may apply to the Manawatu Wanganui Regional Council for a change or cancellation of any or all of the conditions of this consent, other than condition 12, by giving notice of its intention to do so pursuant to section 127(1)~~(a)~~ of the Resource Management Act 1991 within 12 months of the ~~Crown settling~~enactment of legislation which settles any Treaty of Waitangi claim ~~by iwi~~ in respect of ~~rivers or lakes dammed or diverted~~any rivers, lakes or other waterways dammed or diverted or otherwise affected by the TPD.

GENERAL ADVICE NOTES:

Administration charges
Charges, set in accordance with section 36 of the Resource Management Act 1991, and Section 690A of the Local Government Act 1974, shall be paid to the Manawatu Wanganui Regional Council for the carrying out of its functions in relation to the administration, monitoring and supervision of this resource consent and for the carrying out of its functions under Section 35 (duty to gather information, monitor, and keep records) of the Act, except where an objection or appeal is lodged against any such charge in which case the appropriate charge is payable when the objection or appeal is determined.

Private Agreements
In granting this consent particular regard has been had to the agreements reached by the Consent Holder with Ngati Tuwharetoa, Ngati Tamakopiri, Ngati Whitikopeka, Ngati Hauiti and the Lake Rotoaira Trust.

TAB 10

IN THE DISTRICT COURT
AT QUEENSTOWN

CRI-2016--59-000664
[2017] NZDC 3251

QUEENSTOWN LAKES DISTRICT COUNCIL
Prosecutor

v

ALLENBY FARMS LIMITED
Defendant

Hearing: 17 February 2017

Appearances: M Walker for the Prosecutor
J Riddle for the Defendant

Judgment: 17 February 2017

SENTENCING NOTES OF JUDGE JJM HASSAN

Introduction

[1] Allenby Farms Limited ('Allenby') appears for sentencing on a single charge relating to its part in clearing indigenous vegetation, namely kānuka, on part of its farm on Mt Iron, Wanaka.

[2] As is accepted, the clearance was in contravention of a rule of the proposed Queenstown Lakes District Plan ('proposed plan'), rule 33.5.8. That is because it occurred in an area of the farm that the proposed plan proposes to treat as a significant natural area ('SNA') and the clearance exceeded 50m^2 in area.

[3] Contravening that rule of the proposed plan is an offence under s 338 of the Resource Management Act ('RMA' or the 'Act') because Allenby did not have a resource consent or existing use rights to authorise the clearance it undertook.

[4] Allenby is a family company and its managing director, Mr Lynden Cleugh, is in attendance for sentencing, as is appropriate.

[5] Allenby entered a plea of guilty and is hereby convicted. Both counsel agree that a two-fold approach to sentencing is appropriate by way of the imposition of the fine and the making of an enforcement order, the latter under ss 339(5) and 314 of the Act.

[6] The parties presented an agreed position as to the terms of that enforcement order and why it is appropriate (by a joint memorandum of counsel, dated 16 February 2017).

[7] For reasons I later traverse, I agree that the proper approach in this instance is to impose a fine in conjunction with making the enforcement order. However, the Council (represented by Mr Walker) and Allenby (represented by Ms Riddle) differ somewhat on the quantum of appropriate fine. That is a matter I next address.

[8] As to applicable purposes and principles of sentencing under the Sentencing Act 2002 and the RMA, and also *Machinery Movers,*[1] there was no material difference between counsel. Meaning no disrespect to Ms Riddle, it is convenient for me to record my acceptance and reliance on what Mr Walker has set out at paragraphs [4.1] to [9.3] of his submissions.

[9] For completeness, as I raised with counsel, my discretion to make an enforcement order is "instead of or in addition to imposing a fine." I return to this matter, and the broad relevance of the proposed enforcement order to the setting of a fine, later in this sentencing.

[10] Where counsel differed, to some extent, was on how the applicable purposes and principles pertain to the consideration of the facts and circumstances of the offence.

---

1 *Machinery Movers Limited v Auckland Regional Council* [1994] 1 NZLR 492 (HC).

[11] Counsel also each assisted me with reference to various sentencing cases. While I have considered these, particularly with a view to sentencing consistency, it is with the rider that facts and circumstances can differ greatly and my primary focus is on the proper application of the statutory purposes and principles to the facts and circumstances before me. I now turn to these matters.

Facts

[12] A statement of facts was filed with the Council's submissions and was subsequently confirmed as agreed. Therefore, I accept and rely on it in determining sentence.

[13] By way of summary, the unlawful clearance activity occurred on Allenby's 90 hectare property on Mt Iron, Wanaka. The vegetation, kānuka, was cleared from within a part of that farm that the proposed plan had identified as an SNA. The relevant plan rules specified a permissible clearance limit of $50m^2$ in any continuous five year period. It also specified certain other allowable clearance activity but the parties accept those do not apply in the circumstances.

[14] While the Council and Allenby have different positions on how Allenby's imputed knowledge bears on culpability, the defendant was informed of the Council's consideration of the farm as an SNA; exchanged correspondence on this matter with relevant Council staff in 2015 ahead of notification of the proposed plan in October 2015, and a made a submission on the proposed plan seeking specific changes in relation to the farm property including by way of reduction of the SNA's proposed northern boundary and extension of its proposed southern boundary. As matters stand, the SNA boundary issue remains to be determined as part of the proposed plans maps hearing, likely this year.

[15] I have read the copy of Allenby's proposed plan submission as provided by the Council.

[16] Following receipt of a complaint about the clearance in June 2016, Council officers inspected the property accompanied by an ecologist. With the aid of GPS,

the officer's estimated that the total area of clearance was in the order of 9,100m^2 and occurred along fence or boundary lines, four larger cleared areas near the centre of the farm and along internal tracks.

[17] I observe that the precise extent of clearance is somewhat in issue, in that the defendants have provided to the court a copy of a report from its ecologist, Kevin Lloyd of Wildlands dated January 2017, noting that some kānuka vegetation was spread over grassland where kānuka stumps were not evident, and noting that the defendant's surveyors mapped the cleared area as just over half a hectare.

[18] I simply record that I find any differences here immaterial to my task, in that even if I take the lower number it is still undeniably well in excess of the proposed plan's specified permissible limits.

[19] As to the ecological values impacted, the Council has supplied me with two reports by its ecologist, Rebecca Teele of Davis Consulting Group. Those are dated 13 October 2016 and 9 December 2016. As noted, Allenby has provided me with the January 2017 report of its consultant, Mr Lloyd.

[20] The essence of the Teele reports is as summarised in the agreed statement of facts, namely:

> The ecologist who accompanied council officers to the property on 24 June 2016 confirmed that the vegetation cleared was indigenous vegetation and that the vegetation is ecologically significant. The clearance of the larger areas is of greatest significance. The effect of the vegetation clearance is the loss and fragmentation of indigenous vegetation and habitat within a chronically threatened environment, as defined by the Threatened Environment Classification for New Zealand. Habitat destruction and degradation, is widely considered to be a main driver in species decline and extinction, ultimately decreasing indigenous biodiversity, which in this instance is expected to provide habitat for native lizards, birds (e.g: bellbirds, fantails and grey warbler) and invertebrates.

[21] I have also noted the slight contrasting opinion of Mr Lloyd, informed by his site visit on 30 November 2016.

[22] I agree with Mr Walker's submission that on any matter of conflict of opinion I should, and do, prefer the opinion stated in the joint statement in that it is agreed. On that basis, I now find that the cleared vegetation has the ecological significance above described, with clearance of the larger areas of greatest significance and the overall effect is one of loss and fragmentation of vegetation and habitat within a chronically threatened environment, of the above description.

[23] Mr Walker accepted that the last above-quoted sentence on habitat destruction and degradation is a general observation, rather than one specifically informed by what was observed on site and on the site an issue. He also acknowledged that Mr Lloyd's report is not in conflict insofar as it reports on direct observations from a site visit. In particular, from his site visit, Mr Lloyd pointed out that the kānuka woodland has relatively low invertebrate bio-diversity (apart from rock outcrops) and provided poor habitat for lizards and rare plant species. He noted that kānuka woodland is relatively extensive elsewhere on Mr Iron and on nearby terraces of the Clutha River. In summary, he expressed the following conclusions as to adverse effects:

> ...the clearance is unlikely to have destroyed the habitat or populations of any of the Threatened and At Risk plant, lizard and invertebrate species known from the site. ...
>
> The clearance is not concentrated in one site, but occurs as linear strips and small patches, thus is not likely to have disrupted any connectivity values that may exist. In any case, the kānuka woodland is bisected by numerous paths and tracks, and contains open areas of grassland and herbfield, thus the additional fragmentation of habitat is not likely to be important. During our site visit, indigenous forest birds were observed throughout the areas of kānuka woodland indicating no indigenous forest bird species have been displaced from this habitat. ...

[24] This report also showed evidence that kānuka was re-sprouting among the cut vegetation, as is to be expected for this species.

[25] Subject to my earlier reservations, I accept those factual observations.

[26] Turning to the joint memorandum of counsel on the requested enforcement order, the Council and Allenby agree on the following:

(a) Allenby will implement an agreed remediation plan to remedy the harm caused by the clearance work. This has been with extensive input by, and with the support of the defendant's ecological expert, Wildlands Consultants Limited;

(b) under that remediation plan, Allenby will replant the four larger cleared areas (shown on attached map, at Schedule 1A of the joint memorandum as A, B, C and D). In addition, Wildlands was instructed to develop a replanting strategy to mitigate the clearance along the existing track and fence lines that went beyond the proposed plan's permissible limits. This strategy is to involve the planting of additional varieties of native trees in Area D where there is an appropriate supporting soil depth and terrain. Wildlands' professional opinion, accepted by the parties and me, is that this planting of what is termed "higher value" natives, will enhance the ecological value of the site;

(c) in addition to those agreed remediation and mitigation measures, Allenby will undertake additional enhancement planting of natives. This will involve replanting of kānuka and other natives to a total area of 6,000m^2 on one, or all, of areas marked E, F, G and H. Again, this commitment is made on the advice of Wildlands and with its support;

(d) all these measures are backed by the terms of the jointly proposed enforcement order attached to the joint memorandum; and

(e) Wildlands has estimated that the costs of the defendant's compliance with the enforcement order would be $100,637.43 (excluding GST), comprising $25,352.43 for kānuka replanting in Areas A, B and C (in a total area of 1,800m^2), $12,547.49 for replanting kānuka and other natives in Area D (a total area of 1,200m^2) and $62,737.44 for the additional enhancement planting.

[27] On the basis that all of these matters are agreed, I accept them for the purposes of determining the appropriate level of fine.

[28] I note that there is some difference of position as between Mr Walker and Ms Riddle on how I account for remediation and enhancement commitments in determining the level of seriousness of the offending in terms of impact on the environment. I will return to that shortly.

Determination of fine

[29] I now turn to the fixing of a fine according to the applicable purpose and principles of sentencing. These are as set out in the Sentencing Act 2002 and *Machinery Movers* and are well known and were not traversed in detail in submissions. In the present context, those of primary relevance are as to the nature of the affected environment and the extent of damage and the deliberateness and attitude of the defendant, and remorse.

[30] As to the process of determining sentence, I follow the now well-established three step process in the *R v Taueki,*[2] first establishing a starting point, then adjusting for mitigating or aggravating factors personal to the defendant, then adjusting for the early guilty plea.

[31] The maximum fine under the RMA for a one-off offence, such as I am dealing with here, is $600,000.

[32] As an initial point, Mr Walker emphasised to me that the specified statutory maximum signals a clear parliamentary intention that environment offences under the RMA are to be treated seriously. While that is a fair submission in a general sense, particularly when considering the RMA also imposes strict liability, it loses sight of the fact that context can differ widely for such offending. Put simply, humans are capable of inflicting a great deal of harm to our environment. Hence it is important that the RMA allows for a proportionate response to offending, as circumstances warrant.

---

2 *R v Taueki* [2005] 3 NZLR 372, (2005) 21 CRNZ 769.

[33] I agree with Ms Riddle, on this matter, that what is more helpful is to carefully consider the facts and context before me, including the true nature of the environmental harm and at issue, including what is accepted as its temporary nature.

[34] At the time of filing his written submissions, Mr Walker did not have the opportunity to consider the implications of both Mr Cleugh's affidavit (which he now accepts) and the joint memorandum concerning the enforcement orders. Those initial submissions proposed a starting point in the range of $50,000 to $70,000.

[35] In terms of the "three tier measure" of offending set out in the *Waikato Regional Council v G A & B G Chick Ltd*[3] decision, this would have placed the offending in the most serious class. He argued for this by reference to two main factors, firstly the deliberateness of the offending and secondly the environmental impacts of it.

[36] Mr Walker modified that starting position point before me to being in the range of $40,000 to $50,000 and generally, in terms of the *Chick* tiering system, this would put the offending in the second category of moderately serious. That modification was for two reasons. The first was in view of its consideration of Mr Cleugh's affidavit on which he was satisfied that it provided a fair and proper understanding of what led to the offending. Rather than his initial impression of recklessness or deliberate blindness, he accepted it was more a matter of imprudent lack of due care. The second matter was the subsequent agreed position on remediation and probable enhancement under the terms of the agreed enforcement order. That movement, on Mr Walker's part, put him more closely in line with Ms Riddle's starting position of $30,000.

[37] I start with the first factor of Allenby's carelessness concerning its legal obligations, which I agree is the most pertinent factor in this case bearing in mind the important of deterrence.

[38] On deliberateness of the offending, while making the concession I have noted Mr Walker still put Allenby's culpability as high. He drew comparison with

---

3 *Waikato Regional Council v G A & B G Chick Ltd* (2007) 14 ELRNZ 291 (DC).

Waimakariri District Council v R H Wobben and Netherland Holdings Ltd,[4] a decision of Judge Borthwick. There, indigenous vegetation, the subject of a QEII covenant and district plan rules, was cleared. The court found the relevant defendant to demonstrate indifference on his legal obligations and, ultimately, that informed the court's finding that his culpability was high.

[39] Together with the court's finding on the seriousness of the environmental harm caused, the court reached an overall assessment that the offending involved was serious.

[40] In addition, counsel has referred me to a sentencing decision of Judge Dwyer in *Southland Regional Council v Hardegger*.[5] Of particular note is the court's finding that, on a property dissected by a number of significant waterways (one subject to a Water Conservation Order), lack of inquiry by the defendant as to whether a contractor's works required consent was reckless and showed a complete want of care. That led the court to determine a $50,000 starting point for the offending (in essence broadly between the starting points argued by the Council initially and the defendant here).

[41] As I noted to counsel, little if any assistance is given by any fine-grained analysis of other cases. The simple point, as noted, is that no two cases are ever the same. The facts and circumstances of Allenby's offending is what I must directly consider in applying statutory purpose and principles. Having noted that, I find that Allenby's culpability is relatively less on this matter than those decisions report. Specifically, I reach that view on the evidence of both the Council and Allenby concerning Allenby's participation in the proposed plan process.

[42] Allenby rightly accepts that it ought to have reasonably known about the immediate legal effect of the SNA rules of the proposed plan. On the evidence I find that to be an obvious and valid concession. However, Mr Cleugh's affidavit explains Allenby's extensive engagement with the Council officers with a view to securing a consensus about the final SNA regime for the land in issue. As there had not been

---

4 *Waimakariri District Council v R H Wobben & Netherland Holdings Limited*, (DC Christchurch CRN 14061500003 and 4, 25 November 2014).

5 *Southland Regional Council v Hardegger* [2016] NZDC 21850.

any indication in those discussions from the Council officer's that the SNA rules would take immediate effect, he assumed that they would not and that Allenby's submission would put things on hold as those discussions continued.

[43] Mr Walker referred me to correspondence in 2015 including, as he put it, explicit Council notice to Allenby that it required a resource consent. He produced, by consent, a letter from the Council to Allenby dated 20 April 2015. However, what it actually says on the issue is as follows:

> Where land is scheduled in the District Plan as a Significant Natural Area, a resource consent would be required to undertake specified activities including the clearance of indigenous vegetation.

[44] Mr Walker conceded that the words "District Plan" do not, in fact, support his submission that the letter put to Allenby on notice that it required resource consent under the proposed plan. He also agreed that, while s 86B of the Act is explicit that significant indigenous vegetation rules of a proposed plan take immediate effect (by contrast to other plan rules), that subtlety in the law may not readily be known to an uninformed person.

[45] For the defendants, Ms Riddle submitted that the proper starting point ought to be in the vicinity of $30,000. She emphasised the carefully considered approach Allenby took to the clearance to minimise harm, allow farming to continue, protect against erosion risk and allow continued usage of the land by the wider public, including to access the Department of Conservation track. She noted the long history of stewardship that the Cleugh family have shown, including, in particular in deliberately cultivating the coverage of kānuka on Mt Iron.

[46] However, she also conceded to the fact that Mt Iron is a highly prominent feature in the Wanaka environment. Ignorance of the law does not, of course, excuse. Given the prominence of Mt Iron and the wider environs of Wanaka, I find Allenby displayed a high level of imprudence in what it did without first checking on whether or not it needed a resource consent to do it. I find the lack of clarity is not such as to adequately excuse this recklessness, albeit on this single occasion.

[47] In the final analysis on this matter, I find myself midway between Mr Walker's and Ms Riddle's positions.

Environmental consequences

[48] Turning to environmental consequences; as an initial matter I reject and put to one side the Council's submissions as to community outrage at the clearance. I do so accepting Ms Riddle's submission that this was not a matter backed by the agreed statement of facts, being the Council's primary evidence.

[49] The issue is more properly one of considering the ecological impacts on the values that are accepted to be present on the site and are the subject of the SNA rule regime.

[50] A particular issue on this matter concerns whether I must consider the impact at the time of offending (which was generally Mr Walker's position) or whether I am entitled to take a broader view and account for the accepted future remedial and enhancement effects of Allenby's implementation of its remediation plan under the enforcement order (which was generally Ms Riddle's position).

[51] I find the most helpful and realistic approach is to consider both dimensions. Firstly, I consider the immediate impact of the offending itself, which I find on the evidence to be extensive and moderately serious for the values in issue. At this stage, prior to remediation, on the evidence, I find as follows:

(a) the cleared indigenous vegetation was extensive and was ecologically significant;

(b) the impact of the clearance is greatest for the larger cleared areas and is the loss and fragmentation of indigenous vegetation and habitat within a chronically threatened environment as defined by the Threatened Environment Classification for New Zealand. On the other hand, what has been impacted has relatively low invertebrate biodiversity and provided poor habitat for lizards and rare plant species. Also, it is unlikely to have destroyed the habitat or populations of any of the

threatened and at risk plant, lizard and invertebrate species known from the site;

(c) the clearance is also not likely to have disrupted any connectivity values that may exist, including for forest bird species; and

(d) some kānuka resprouting is occurring amongst the cut vegetation, as is to be expected for this species, but it is unsafe and unsatisfactory to rely only on natural regeneration. Intervention, according to a careful remediation strategy, is required.

[52] Mindful of the nature of the victim in this case, the environment and the community, it is valid to also consider the likely future state of the environment, post implementation of the remediation plan, under the enforcement order. I accept Mr Walker's submission on this that this is a medium term horizon.

[53] Hence I find the environmental impacts moderately serious but of a temporary nature, likely to be progressively and fully remediated within five or so years of the implementation of remediation.

My overall finding concerning the starting point

[54] Overall, as a starting point and having regard to decision in *Chick*, I find this offending at level two, that is moderately serious.

[55] As noted, I find myself between the respective positions of Mr Walker and Ms Riddle and determine the starting point is $35,000.

Personal factors

[56] I now consider personal factors. On the evidence and for the reasons given, I find no aggravating factors that would warrant any uplift in the level of fine. I have already given my reasons for not accepting the Council's submissions on these matters.

[57] On the other side of the ledger, I find there are a number of mitigating factors. It is helpful that I follow the suggested subdivision of these proposed by Mr Walker,

and which align with the Sentencing Act 2002, namely good character, remorse and thirdly, co-operation (before getting to the early guilty plea discount).

Good character

[58] As the Council rightly notes, Allenby is a first time offender and has a demonstrably good history in terms of environmental and other important community issues. These are well described in Mr Cleugh's affidavit. Mt Iron stands as a prominent part of the Wanaka landscape. In that context, I accept that the defendant has shown a long history of generosity to the community (including in allowing access over its land) and environmental stewardship (including, in particular, in husbandry of kānuka on its land).

[59] Rather than accounting for participation and planning processes in a negative way, as the Council has invited, I consider it also demonstrates a proactivity in regard to ensuring proper identification and due protection of SNA's on the farm. In addition, I consider the significant component of enhancement that the defendant has volunteered to undertake, in close co-operation with the Council, demonstrates sincere remorse.

[60] Mr Walker has proposed that I recognise good character with a 5% reduction on the starting point for a fine. Ms Riddle has invited me to make a 10% reduction for this factor.

[61] For the reasons given, I find Ms Riddle's submission properly proportionate and accept that 10% is an appropriate write-down on this matter. That would see the starting point reduce to $31,500.

Remorse

[62] What is of particular relevance for this factor is what Allenby has volunteered under the remediation plan. I find it commendable, and entirely in keeping with Allenby's good character record, that it has already invested in ecological advice

(supported by the Council) in developing a comprehensive remediation enhancement plan that both parties and I have confidence will be effective.

[63] It is also commendable that it has gone very much further than simple remediation with the estimated costs predominantly being in further enhancements. Again, I find that a genuine initiative, consistent with Allenby's past and current endeavours for the community, and backed by the enforcement order.

[64] I find this to demonstrate an extraordinary degree of remorse, taking this factor significantly beyond the usual range of five to 10%. For this factor alone, I allow for a further 15% discount. That would reduce the fine further to $26,775.

Early guilty plea

[65] The parties agree that the appropriate discount for the early guilty plea is 25%, resulting at this point in a reduction to $20,081.25. I accept that.

Co-operation with the prosecution

[66] I agree with Mr Walker that it is not appropriate for me to ascribe a specified further discount for this factor. While I accept that Allenby has shown helpful co-operation, I find it already accounted for in the discounts I have described and to some minor further extent, in the rounding I now determine.

Looking at matters in the round

[67] According to the accepted stages for determining sentence, it is now appropriate that I step back from that detail to appraise matters in the round. I have done so and find that, subject to sensible rounding, the outcome of this fine (in conjunction with the making of the enforcement order) is duly proportionate. Applying round, I determine the appropriate level of fine is $20,000.

Appropriate to make enforcement order

[68] The 16 February 2017 joint memorandum attaches a proposed draft enforcement order under s 314(1)(b)(ii) of the Act. The order is against Allenby and would also bind its successors and assigns. I am satisfied with the terms of the order, and the parties' joint submission that it satisfies relevant RMA requirements and is appropriate. As such, I now make the order sought and which will issue together with my notes of sentencing.

[69] As I am sure the defendant is aware, breaching an enforcement order attracts the strict liability offences set out in the Act. I make that observation as it is relevant to my overall consideration of how it impacts on the matter of the fine.

[70] Having now made that determination, I find that the making of that order should be in addition to the fine, not in substitution for it.

[71] I reach that view because the making of the order does not address all of the factors that weigh in sentencing and, in particular, the importance of deterrence. Related to that, I refer to my findings on the matter of carelessness concerning compliance with the strict liability legislation relevant to the issue of deterrence.

Costs

[72] As is requested by the Council, I am making an order under s 342 of the RMA that 90% of the fine is to be paid to the Council. Mr Walker has informed that, as he is an in-house solicitor at the Council, I may leave aside any consideration of solicitor's fees. He and Ms Riddle agree that, in the particular circumstances of this case, I can be satisfied that my s 342 order fully accounts for what could be otherwise recoverable under the Costs in Criminal Cases Act 1967 and associated regulations. Having regard to those circumstances, and also to the *Interclean Industry Services Limited v Auckland Regional Council*[6] decision of Honourable Justice Randerson, I agree.

---

6 *Interclean Industrial Services Limited v Auckland Regional Council* [2000] 3 NZLR 489.

Outcome

[73] On the charge in CRN ended 085, Allenby is fined $20,000. Under s 342 of the Resource Management Act 1991, I make a mandatory order that 90% of that fine be paid to the Council. I make the enforcement order in the terms jointly requested and that is attached to my sentencing notes.

[74] There is no order under the Costs and Criminal Cases Act and regulations.

J J M Hassan
District Court Judge

IN THE DISTRICT COURT
AT QUEENSTOWN

CRI-2016-59-000664
[2017] NZDC 3251

	IN THE MATTER	of the Resource Management Act 1991
	AND	of an enforcement order under section 339 of the Act
	BETWEEN	QUEENSTOWN LAKES DISTRICT COUNCIL
		Informant
	AND	ALLENBY FARMS LIMITED
		Respondent

Court:	Judge JJM Hassan District Court Judge/Environment Judge
Hearing:	17 February 2017
Appearances:	M Walker for the informant J Riddle for the respondent
Date of Order:	17 February 2017

ENFORCEMENT ORDER

A: Under sections 314(1)(b)(ii) and 339(5) of the Resource Management Act 1991, by consent, the District Court orders that Allenby Farms Limited:

(1) must, by **Friday 1 December 2017**, replant three of the cleared areas denoted on the map at Schedule 1A as **"A"**, **"B"** and **"C"** with kānuka in accordance with the spacing proposed by Davis Consultants in its report attached at Schedule 2 (being an area of approximately 1,800m^2);

(2) must, by **Friday 1 December 2017**, replant the largest cleared area denoted on the map at Schedule 1 as **"D"** (and "M" on the map forming part of Wildlands Consulting Limited's report attached at Schedule 3 ('Wildlands Report')) with kānuka and other natives described in Table 1 of

the Wildlands Report in accordance with the planting strategy proposed therein (being an area of approximately 1,200m^2);

(3) must, by **Friday 1 December 2017**, complete additional planting in one or more of the areas identified on the map at Schedule 1A as **"E"**, **"F"**, **"G"**, **"H"** or the area identified as **"I"** on the map at Schedule 1B with kānuka and other natives described in Table 1 of the Wildlands Report in accordance with the planting strategy proposed therein (such areas to comprise a total of approximately 6,000m^2);

(4) must not harm, disturb or damage or allow any person to harm, disturb or damage the kānuka and other natives planted in accordance with the above orders; and

(5) must, to the extent reasonably practicable, maintain the kānuka and other natives planted once implemented for a period of three years. If survival rates drop below 70%, infill planting is to be considered and implemented if appropriate.

B: Under section 314(3) of the Resource Management Act 1991 these orders are binding on the successors and assigns of Allenby Farms Limited.

C: For clarity, Schedule 1, 2 and 3 attached form part of these orders to the extent they are referred to above.

REASONS

[1] The reasons for making this order are set out in the decision *Queenstown Lakes District Council v Allenby Farms Limited.*[1]

J J M Hassan
District Court Judge/Environment Judge

---

[1] *Queenstown Lakes District Council v Allenby Farms Limited* [2017] NZDC 3251.

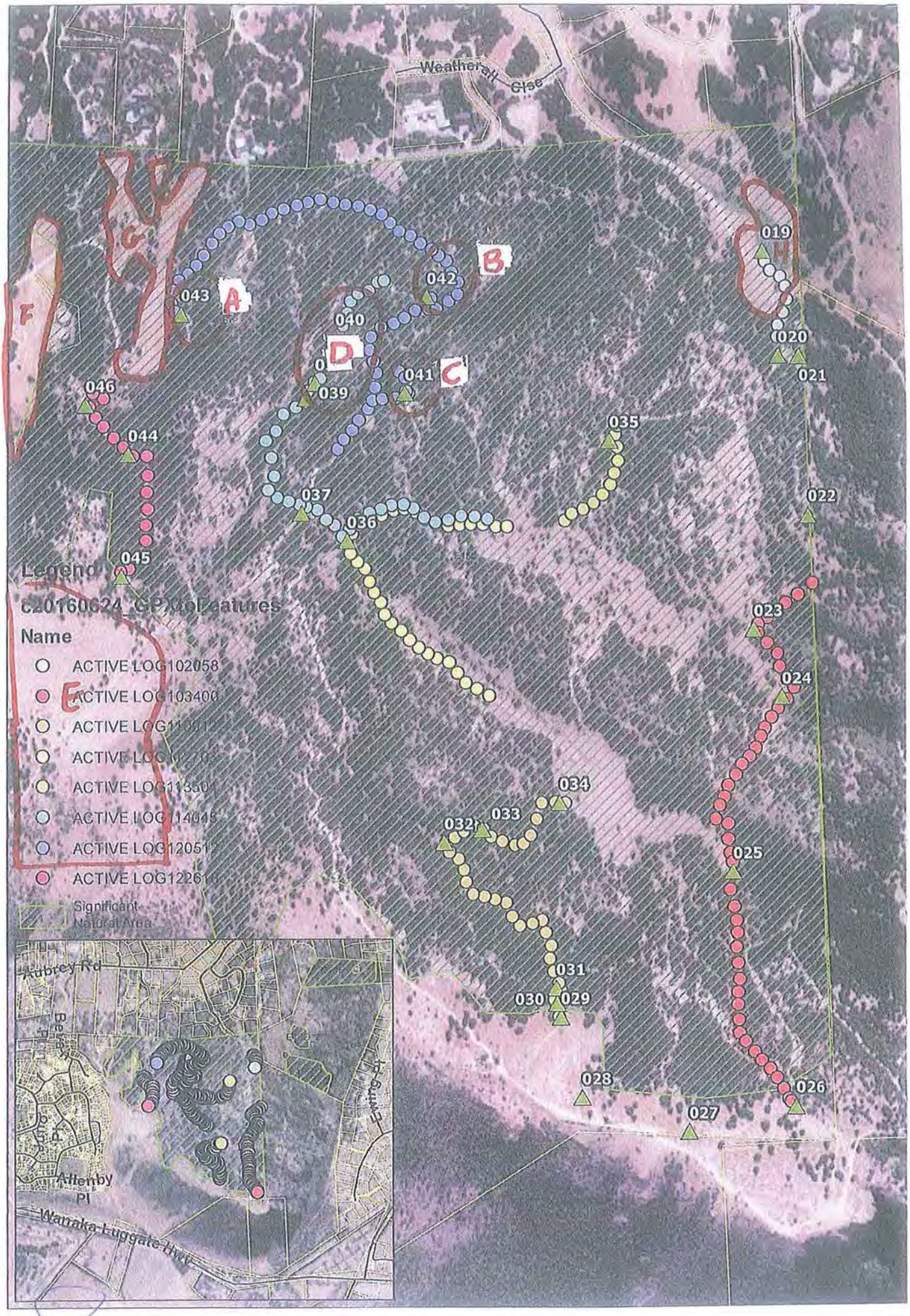
ANNEXURES

Schedules 1A and 1B

Schedule 2 – Davis Consulting Group report dated 9 December 2016

Schedule 3 – Wildlands Report dated February 2017

Schedule 1A


Weatherall Close
A
B
C
D
E
F
G
H
019
020
021
022
023
024
025
026
027
028
029
030
031
032
033
034
035
036
037
039
040
041
042
043
044
045
046
Legend
c20160624_GPXtoFeatures
Name
ACTIVE LOG102058
ACTIVE LOG103400
ACTIVE LOG113512
ACTIVE LOG113600
ACTIVE LOG114045
ACTIVE LOG120512
ACTIVE LOG122616
Significant Natural Area
Aubrey Rd
Allenby Pl
Wanaka-Luggate Hwy
Ewing Pl

Schedule 1B

Schedule 2

9th December, 2016
Queenstown Lakes District Council
Private Bag 50072,
Queenstown 9348.

Re: Mt Iron Estimated Remediation Cost

1.0 Introduction

Queenstown Lakes District Council (QLDC) has requested a cost estimate for the restoration of land on Mt Iron, Wanaka, where 9,100 m^2 of indigenous vegetation was cleared without resource consent. Restoration projects generally include the hand planting of eco-sourced native plants at approximately one metre centres. Another method is supporting natural regeneration where an existing seed source is present.

For the cleared areas on Mt Iron, remediation via hand planting should be undertaken to advance the restoration of the cleared areas. Given the clearance activities have occurred within stands of kanuka woodland, it is also our expectation that kanuka will seed into the cleared sites and support the restoration plantings. However, the likely performance of germination and seedling establishment is uncertain.

Davis Consulting Group Limited (DCG) has experience in managing revegetation projects within the District, and have calculated a remediation cost based on our experience in the implementation of similar projects.

2.0 Remediation Cost Estimate

The estimated cost to remediate the areas cleared of indigenous vegetation on Mt Iron is $128,171.00 (excluding GST). Table 1 below provides a breakdown of the total cost, which is based on replanting at one metre centres with revegetation sized native plants over a 9,100 m^2 area. The necessary remediation includes the purchase of eco-sourced native plants, plant protection from animal browse, and plant installation and maintenance.

Natural regeneration could aid remediation, but might still require similar, if not greater, costs related to maintenance (e.g. weed control) and plant protection from rabbit/hare browse; plants would also take a longer timeframe to establish. Revegetation via hand planting restores native habitat sooner than natural regeneration alone.

Table 1: A cost estimate for the remediation of the cleared areas on Mt Iron, Wanaka.

Work Item		N#	Cost	Subtotal	Total (ex GST)
Planting/Site Preparation	N/A*1	-	-	-	-
Native Plants	V150 grade	9100	$2.55	$23,205.00	$23,205.00
Plant Protection	Plant shelters	9100	$1.70	$15,470.00	
	Fertiliser	9100	$0.10	$910.00	
	Water crystals	9100	$0.06	$546.00	$16,926.00
Plant Installation	Planting	9100	$1.60	$14,560.00	
	Installation of plant shelters	9100	$2.80	$25,480.00	$40,040.00
Plant Maintenance	First 3 years (2 weeks per year)	6	$6,000.00	$36,000.00	
	Years 4 and 5 (1 week per year)	2	$6,000.00	$12,000.00	$48,000.00
Total Cost (ex GST)					$128,171.00

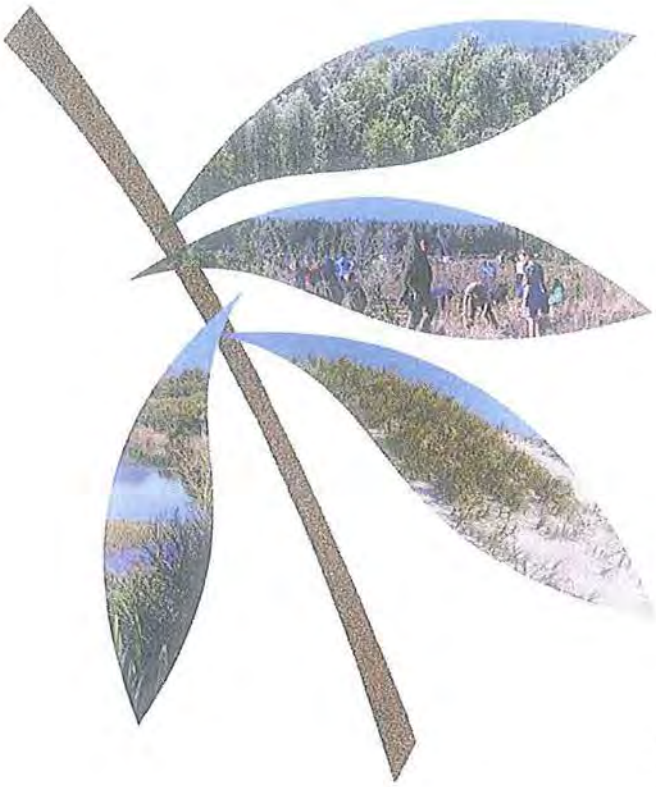
*1 Unlikely to need due to clearance providing mulch for weed control.

Please note the following limitations to the cost estimate provided in Table 1:

- The estimate may vary based on inflation and price variation between companies, e.g. for nursery and contractor rates;
- One metre planting distances could be increased in more sheltered locations;
- No cost has been included for site preparation due to the clearance possibly providing mulch for weed control, however, if revegetation is delayed there may be weed control required;
- The maintenance cost will vary depending on site conditions and weather conditions each season, which influences weed growth;
- Restoration projects generally have a required survival rate of at least 70 %, three to five years after planting and consequently:
    - If a 70% survival rate is not achieved, additional planting would generally be required, which has not been included in this cost estimate; and,
    - To determine a 70 % survival rate annual monitoring is often required, which has not been included.
- The estimate does not allow for an irrigation system if necessary;
- The cost estimate excludes any project management fees; and,

Schedule 3

PLANTING PLAN TO MITIGATE CLEARANCE OF KĀNUKA SHRUBLAND WITHIN A PROPOSED SNA ON MT IRON, WANAKA



providing
outstanding
ecological
services to
sustain
and improve our
environments

Wildlands

R4204b

PLANTING PLAN TO MITIGATE CLEARANCE OF KĀNUKA SHRUBLAND WITHIN A PROPOSED SNA ON MT IRON, WANAKA

This cleared area of kānuka woodland, within the proposed SNA, would make a suitable revegetation site for high value indigenous tree species.

Contract Report No. 4204b

February 2017

Project Team:
Kelvin Lloyd - Report author

Prepared for:
Allenby Farms Ltd
P.O. Box 196
Wanaka 9343

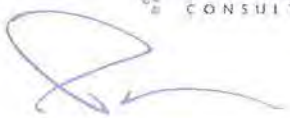
DUNEDIN OFFICE: 764 CUMBERLAND STREET, DUNEDIN 9016
Ph 03-477-2096, 03-477-2095

HEAD OFFICE: 99 SALA STREET, P.O. BOX 7137, TE NGAE, ROTORUA
Ph 07-343-9017; Fax 07-343-9018, email ecology@wildlands.co.nz, www.wildlands.co.nz

CONTENTS

Reviewed and approved for release by:

William Shaw
Principal Ecologist/Director
Wildland Consultants Ltd



1. INTRODUCTION

Allenby Farms Ltd own a parcel of land on the southwestern side of Mt Iron, at Wanaka (Figure 1). Part of the Allenby Farms land is covered by Mt Iron SNA C in the proposed Queenstown Lakes District Plan. Mt Iron SNA C largely covers kānuka (*Kunzea serotina*) woodland vegetation, and the SNA was apparently imposed after a desktop assessment, with no field work to confirm site values. Plan rules relating to significant natural areas (SNAs) had immediate effect in the proposed plan. Allenby Farms Ltd cleared some of the kānuka, mostly along access tracks and boundaries, after the plan was proposed, and thus did not comply with the new rules.

Figure 1: Allenby Farms property (yellow boundary) showing low elevation swales with deeper soils (white polygons) that could be used as sites for planting of higher value indigenous tree species (Table 1).

A previous report addressed the ecological effects of the kānuka woodland clearance, and identified options for remediation and mitigation of the adverse effects (Wildland Consultants 2017). That report concluded that planting of a selection of 'high value' indigenous shrub and tree species (i.e. high ecological value) would help to mitigate the adverse effects of clearance, and should be governed by a planting plan. This report comprises an indigenous tree and shrub planting plan for the site.

2. METHODS

Relevant literature on the pre-settlement vegetation of the Central Otago area was reviewed to identify indigenous tree and shrub species that were almost certainly originally present in Central Otago, but are either currently absent or present at very low abundance. Previous field work at the site in December 2016 included inspection of the areas of cleared kānuka.

3. PLANTING PLAN

3.1 Planting locations

It is suggested that planting of higher value tree and shrub species should be partly located in suitable habitats within the cleared areas of kānuka woodland, and partly in areas of exotic grassland and herbfield on deeper soils at lower elevation (Figure 1).

Within the cleared areas of kānuka woodland, the northern part of Area M, as mapped by Patterson Pitts Group (2017), comprises a gentle swale and toeslopes, sheltered by adjacent uncleared kānuka, that would be an ecologically appropriate site for 'high value' planting (Figure 1; photo on title page).

Other planting sites include swales with deeper soils in the northern part of the land owned by Allenby Farms Ltd, an area in the southern part of the site that would be close to State Highway 85a and highly visible from adjacent walking tracks, and toeslopes adjacent to walking tracks in the western part of the site (Figure 1).

3.2 Composition of plantings

A selection of ten 'higher value' indigenous shrub and tree species that would be ecologically appropriate in suitable habitats at Mt Iron is presented in Table 1, as per Wildland Consultants (2017). There is good evidence that most of these species were historically present in Central Otago (c.f. Wood and Walker 2008), and some of these species are still present. These include broadleaved trees such as broadleaf (*Griselinia littoralis*), kōhūhū (*Pittosporum tenuifolium*), lowland ribbonwood (*Plagianthus regius*), and fierce lancewood (*Pseudopanax ferox*), small-leaved shrubs and small trees (*Olearia odorata* and *O. lineata*), slow-growing, long-lived podocarps, matai (*Prumnopitys taxifolia*) and Hall's tōtara (*Podocarpus laetus*), and cabbage tree (*Cordyline australis*) and kōwhai (*Sophora microphylla*). The historic presence of matai in Central Otago is somewhat speculative but it could be trialed. In addition, kānuka could be planted between 'higher value' trees to help form an indigenous canopy more quickly. Kānuka would ultimately be overtopped where it is planted in this way among taller broadleaved trees.

Table 1: Higher value indigenous tree and shrub species suitable for planting at the Mount Iron site.

Species	Common Name	Notes
Cordyline australis	Cabbage tree, Ti kouka	Fast initial height growth, food source for indigenous birds, will grow in most locations within the site.
Griselinia littoralis	Broadleaf	Hardy, exposure tolerant tree, will grow in most locations within the site
Olearia lineata		Small tree that prefers deep soils, often in riparian habitats, important for invertebrates
Olearia odorata		Shrub that prefers fertile sites on toeslopes, important for invertebrates
Pittosporum tenuifolium	Kohuhu	Moderate growth rate, hardy small tree, will grow in most locations within the site.
Plagianthus regius	Lowland ribbonwood	Tall tree with fast growth on fertile soils, better planted in deeper soils.
Podocarpus laetus	Hall's totara	Slow growing but hardy tree, fruit source for indigenous birds when mature, will grow in most locations within the site, including rocky habitats.
Prumnopilys taxifolia	Matai	Slow-growing, long-lived tall tree, fruit source for indigenous birds when mature. Best planted in sheltered microhabitat in deeper soils.
Pseudopanax ferox	Fierce lancewood	Small tree with moderate growth rate, fruit source for indigenous birds when mature. Best planted on deeper soils.
Sophora microphylla	Kowhai	Slow growing tree, can grow in deep soils or in rocky habitats, important food source for indigenous birds.

3.3 Plant spacing, sizes, and numbers

As a general rule, planted trees should be approximately 0.3 m tall at planting, to reduce the potential for imbalance between shoots (which transpire water) and roots (which take up water from the soil). Lowland ribbonwood, which grows fast, may be planted as slightly taller individuals.

High value trees and shrubs listed in Table 1 should generally be planted at 3 m spacing, to reduce the potential for loss of high value trees through self-thinning. Kānuka could be used to help suppress exotic herb and grass growth and to achieve a more rapid canopy closure, by planting additional kānuka individuals among the high value trees to achieve an approximate overall spacing of 1.3 m. This would require approximately 1,200 high value trees, and 5,200 kānuka trees, per hectare. Where vigorous regenerating individuals of kānuka are present in areas of cleared kanuka, the need for additional planting of kanuka can be adjusted as necessary. Kānuka may not need to be planted among the 'higher value' tree species in these instances, or can be planted at lower density, depending on the density of regenerating kanuka.

3.4 Proportions of different species

Table 2: Higher value indigenous tree and shrub species suitable for planting at the Mount Iron site.

Species	Common Name	Proportion of Plantings (%)	Number Required (per ha)
Cordyline australis	Cabbage tree, Ti kouka	3	192
Griselinia littoralis	Broadleaf	3	192
Kunzea serotina	Kānuka	81	5,200
Olearia lineata		0.5	32
Olearia odorata		1	64
Pittosporum tenuifolium	Kohuhu	4	256
Plagianthus regius	Lowland ribbonwood	3	192
Podocarpus laetus	Hall's totara	1	64
Prumnopitys taxifolia	Matai	0.5	32
Pseudopanax ferox	Fierce lancewood	1	64
Sophora microphylla	Kowhai	2	128
Totals		100	6,400

3.5 Seasonal timing

Planting is probably best undertaken in early spring at the Mt Iron site, when soil moisture should not be limiting, and frosty conditions are less likely. Shelter will be important due to the likely prevalence of windy weather at this time of year. Alternately, planting could be undertaken in autumn if sufficiently-hardened plants are used.

All plants should be 'hardened' outdoors for at least two months prior to planting.

3.6 Habitat requirements

The notes in Table 1 indicate habitat preferences. Some species (e.g. kowhai and Hall's totara) can be planted in most sites, while lowland ribbonwood and the two species of *Olearia* require deeper, more fertile soils.

In swale habitats, such as within Area M (Patterson Pitts Group 2017), lowland ribbonwood and matai should be planted predominantly in the swale centres, while the remaining species can be planted throughout the swale habitat.

Similarly, on toeslopes, lowland ribbonwood and matai should predominantly be planted on the lower elevation sites on deeper soils, while the other indigenous tree species can be planted throughout these sites.

The two species of *Olearia* require more specific habitats. Both species can be planted within existing shrubland on toeslopes on the southern side of the Allenby Farms property, and beside the ephemeral stream between Mt Iron and Little Mt Iron in the northern part of the site.

3.7 Planting requirements

Some of the plant species listed in Table 2 will require protection from rabbit browse, especially broadleaf, kōhūhū, fierce lancewood, *Olearia* spp., lowland ribbonwood, and cabbage tree. Tree shelters are usually used for this purpose, and also help to protect against climatic factors such as wind and frost. Rabbit browse effects are generally reduced to an insignificant level as the planted trees become larger, and rabbits can no longer obtain access to new shoots and foliage. Species such as kōwhai, Hall's tōtara, kānuka, and kōwhai regenerate naturally in the presence of rabbits and hares, and may not need the same level of protection, especially if planted in spring when alternative food sources are more available for rabbits. The straggly growth form of matai means it does not fit easily into standard plant shelters, and it is not clear whether it would be browsed by rabbits. A small planting trial would be helpful to determine whether plant shelters are needed on the less-preferred trees.

A square of old carpet or similar material is useful to supress weeds around the base of the planted trees after planting. A small square that fills the base of the tree shelter can be used for trees planted in shelters, while a larger square (c.0.5 × 0.5 m) can be used around plants that do not have shelters. High value trees without shelters should be marked with bamboo poles, fibreglass rods, or electric fencing standards, or similar, to enable easy detection in the event of tall grass and herb swards developing around them.

As noted by Davis Consulting Group (2016), addition of fertiliser and water crystals into the planting hole prior to planting can assist the planted tree to establish, at relatively low cost.

3.8 Initial maintenance requirements

Initial walk-through checks on the planted trees should be undertaken over the first few days after planting and these checks should reveal any issues with browse by feral animals. Survival of planted trees should be recorded annually, starting some six months after planting. For any trees that have died, the species of tree should be recorded, and its planting site, and whether it had a tree shelter or not.

Planted trees should be checked 2-3 times over summer and if necessary released from competing exotic grasses and herbs. When planted trees are at least 1 m tall, there is generally no need to undertake further releasing. This is likely to occur 1-3 years after planting depending on species. A pre-emergence herbicide is sometimes spot-sprayed prior to planting to help reduce initial weed growth, but generally loses its effectiveness the following year. The costs of planting the trees and erecting the shelters is made on the same pro-rata basis as Davis Consulting Group (2016), and the same five year maintenance costs are used.

3.9 Costs

Costs of the planting plan are made on the same basis as those estimated by Davis Consulting Group (2016) to allow comparison, but use current prices for tree saplings from Pukerau Nursery (www.pukeraunursery.co.nz) (Table 3) for the high value tree species listed in Table 2. Plant protection assumes all plants will require tree shelters.

but if the suggested trial proves otherwise for less palatable species such as kānuka, the requirement for tree shelters will be much less. In addition, no allowance has been made for natural regeneration of kānuka, or existing kānuka individuals, contributing to the number of kānuka trees required. These existing kanuka individuals are certain to be present, especially in Area M (Figure 1). What is uncertain is the extent to which they would substitute for the need to purchase and plant additional kānuka. Maintenance requirements assume two weeks of maintenance per year in the first three years, and one week per year in the subsequent two years. Maintenance requirements may be overstated in the seasonally dry habitats at Mt Iron that limit the development of dense swards of exotic grasses and herbs but allow trees with deeper root systems to grow. The costs are also made on the basis of 1 ha of tree planting, which may be more than is required given the plantings would allow higher value indigenous forest to establish, compared to the current relatively low value of kānuka woodland.

Table 3: Cost estimate for implementation of the planting plan over a one hectare area at the Mount Iron site.

Category	Species/item	Grade	Number	Cost per item	Subtotal	Total (excl. GST)
Native plants	Cabbage tree	V150	192	2.55	489.6	
	Broadleaf	V150	192	2.75	528	
	Kanuka	V150	5,200	2.55	13260	
	Olearia lineata	V150	32	2.55	81.6	
	Olearia odorata	V150	64	2.55	163.2	
	Kōhūhū	V150	256	2.55	652.8	
	Lowland ribbonwood	V150	192	2.55	489.6	
	Hall's tōtara	V150	64	2.75	176	
	Matai	V150	32	2.75	88	
	Fierce lancewood	V150	64	3.40	217.6	
	Kowhai	V150	128	2.75	352	16,498.40
Plant protection	Tree shelters	Combo tree protector	6,400	1.70	10880	
	Fertiliser	12 month slow release	6,400	0.1	640	
	Water crystals		6,400	0.06	384	11,904
Planting	Planting		6,400	1.60	10240	
	Shelters		6,400	2.80	17920	28,160
Maintenance					48,000	48,000
Total cost (excl. GST)						$104,562.40

ACKNOWLEDGMENTS

Lynden and Zita Cleugh (Allenby Farms Ltd) provided guidance to the areas that had been cleared of kānuka, along with historic photographs that allowed estimation of the age of the kānuka at the site.

REFERENCES

Davis Consulting Group Ltd 2016: Re: Mt Iron estimated remediation cost. Letter to Queenstown Lakes District Council, dated 9 December 2016.

Patterson Pitts Group 2017: Mt Iron vegetation clearance areas. Plan W2930, dated 17 January 2017.

Wildland Consultants 2017: Ecological effects and mitigation options for clearance of kānuka shrubland within a proposed SNA on Mt Iron, Wanaka. *Wildland Consultants Ltd Contract Report No. 4204a*. Prepared for Allenby Farms Ltd.

Wood J.R. and Walker S. 2008: Macrofossil evidence for pre-settlement vegetation of Central Otago's basin floors and gorges. *New Zealand Journal of Botany 45*: 239-255.

Wildlands

Providing outstanding ecological services to sustain and improve our environments

Call Free 0508 WILDNZ
Ph: +64 7 343 9017
Fax: +64 7 3439018
ecology@wildlands.co.nz

99 Sala Street
PO Box 7137, Te Ngae
Rotorua 3042,
New Zealand

Regional Offices located in
Auckland, Hamilton, Tauranga,
Whakatane, Wellington,
Christchurch and Dunedin

ECOLOGY RESTORATION BIODIVERSITY SUSTAINABILITY

www.wildlands.co.nz

TAB 11

Decision No. C20/2005

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an appeal under section 120 of the Act
BETWEEN	C SUTHERLAND AND J FOLLIS
	(RMA 898/03)
	Appellants
AND	QUEENSTOWN LAKES DISTRICT COUNCIL
	Respondent

BEFORE THE ENVIRONMENT COURT
Alternate Environment Judge F W M McElrea (presiding)
Environment Commissioner O M Borlase
Environment Commissioner C E Manning

Hearing at WANAKA on 13-16 December 2004

Appearances
Ms G Clarke for C Sutherland and J Follis
Mr G M Todd and Mr E Goldman for Queenstown Lakes District Council
Mr J R Haworth for Upper Clutha Environmental Society Incorporated

DECISION

Introduction

[1] The central issue in this case is the extent which a site on the morainic headwall at the south of Lake Hawea and east of the township can absorb development for largely rural lifestyle purposes. A subsidiary, but not insignificant, issue is the degree of separation between the eastern edge of the township and rural living activities to ensure that the township does not creep gradually eastward.

The site and its surrounds

[2] Mr Sutherland and Ms Follis own a property of 9.68 hectares on the southern shore of Lake Hawea. Between the foreshore and the site the land is owned by Contact Energy Limited. The foreshore and part of the Contact Energy land are flooded from time to time as lake levels are allowed to rise so that water is available for hydro-electric generation at times of peak demand. The public is permitted access to the Contact Energy land, and a track runs along it in front of the land owned by Mr Sutherland and Ms Follis.

[3] The land which is the subject of this case rises in hummocky fashion to the south. Its southern boundary is just below the ridgeline. The land is divided by the Gladstone Gap, a broad ancient water channel which occurs naturally, but which has been modified by the construction of a low earth and rock stopbank some 250 metres south of the lakeshore. The Gap is an unusual feature as it allows water to flow out of rather than into the lake, in times of very high lake levels. To the west of the Gap there is a covering of pasture grasses interspersed with pines. A number of native trees have been planted in this area, and there has also been some planting along the southern boundary. To the east of the Gap, the vegetation is denser and includes both pine trees and native species.

[4] The site is bordered on the south by the cemetery reserve, which lies predominantly to the south of the ridgeline of the moraine, but spills over to the north. A comparatively small portion of this reserve is occupied by graves. Muir Road runs along the western boundary of the site, and marks the boundary between urban development in Lake Hawea and the rural area. To the east of the site the land is owned by a private company, CDL New Zealand Limited. The Council has already consented to a building platform on that company's seven hectare allotment.

[5] The wider area of the moraine ridge and the Hawea flats to the south and east is characterised by large holdings and only limited signs of human habitation. On the southern lakeshore this sense of remoteness persists from the edge of the township to the small rural-residential settlement of John's Creek tucked at the foot of the mountains at the south-eastern edge of the lake. This sense of remoteness will be broken by the

consented development on CDL land, and by the development on Lot 2 of the applicant's site, which is no longer contested.

The proposal

[6] The applicants propose to divide their lot into three to create two lots with building platforms, and to add an area of 369 m^2 to the road reserve of Muir Road to enable widening near a difficult corner. Lot 1 would be 5.57 hectares on the western side of the gully and Lot 2 4.02 hectares on the east. The Council consented to a building platform on Lot 2 and to the subdivision to create additional road reserve, but declined the building platform on Lot 1, and required Lots 1 and 2 to be amalgamated. Between the primary and the appeal hearings differences concerning the location of the building platform on Lot 2 have been resolved.

[7] The essence of the case before us is whether the subdivision and a building platform to the west of the Gladstone Gap (ie the side nearer the township of Hawea) should be allowed, in addition to the platform on Lot 2 to the east of the Gap.

[8] Mr Sutherland and Ms Follis recognise that care will be needed to ensure that the effects of their proposal will be acceptable. They therefore offer a range of conditions, including:

- restriction of the height of the building on Lot 1 to 3.5 metres;
- a condition that the house on Lot 1 be constructed to the same or similar design to that shown in an attachment to their landscape architect's rebuttal evidence with limitation on the material and colour of roofs and walls. The roof pitch must be less than 30 degrees;
- an open space covenant extending over Lot 1 for 200 metres from Muir Road;
- planting in accordance with their landscape architect's plan, including more extensive planting to screen views from the lake;
- removal of a line of exotic trees from the southern boundary, and over time, the staged removal of wilding pines;
- an open space covenant in the area of the Gladstone Gap;

- a building platform size of 750 m^2;
- access to the building platform only from the south, with shared access with Lot 2 from a presently unformed area of Cemetery Road;
- a deed of covenant preventing further subdivision of the lots created in perpetuity.

[9] Contact Energy and CDL New Zealand Limited have now consented to the proposal, so we disregard any effects on them it may have.

Legal issues

[10] The parties were agreed that the Resource Management Act as it was prior to the 2003 Amendment Act should apply.

[11] Queenstown Lakes District Council has a partly operative District Plan. However the subdivision provisions of that plan are not yet operative, so we are required to have regard to the Transitional District Plan as well. The Council has recently announced decisions on Variation 18 to the partly operative District Plan. These decisions are still subject to appeal, so we cannot give them full weight, although we recognise that they represent the judgement of the consent authority after a process of public submission.

[12] Under the Transitional District Plan (TDP) the land is zoned Rural 2. In that zone, in accordance with Rule 3.11.4.2, land may be subdivided for farming purposes, for existing dwelling houses or any other permitted uses. As the proposed subdivision is not for any of those purposes, it is a non-complying activity pursuant to s 405(2)(a) of the Act.

[13] Under the partly operative District Plan (PODP) the land is zoned Rural-General. In this zone all subdivision is a discretionary activity. However, because of its status under the TDP, the proposal requires consent as a non-complying activity.

[14] We are therefore required to have regard to the matters set out in s 104(1) of the Act, find whether the conditions in s 105(2A) are fulfilled, and if so, exercise our

discretion to grant or refuse consent under s 105(1)(c). As there is no operative plan formulated under the Resource Management Act, we must also consider whether circumstances exist for refusing consent for subdivision under s 406(1) of the Act.

[15] We identify the following matters as relevant under s 104(1):

- any actual or potential effects of allowing the activity (para (a));
- the QLDC Transitional Plan (TDP), PODP, Variation 18 (para (d));
- any other matters relevant and reasonably necessary to determine the application (para (i)).

Our consideration of these matters is subject to Part II.

The category of landscape

[16] The PODP describes the landscapes of the district as falling broadly into three categories:

outstanding natural landscapes and features ("ONL");
visual amenity landscapes ("VAL");
other rural landscapes.

All three landscape architects who gave evidence in this case provided us with an assessment of landscape effects based on the premiss that this was a visual amenity landscape. However Ms E A Steven, the landscape architect called by the Upper Clutha Environmental Society Incorporated, was of the view that the landscape "is in a transition area between ONL (Lake Hawea) and VAL". She told us that she had assessed the application using the VAL criteria only reluctantly and noting the consensus among the parties.

[17] We too will apply the VAL assessment criteria, since there is agreement amongst the witnesses to that effect. However, we make no definitive finding on landscape category, noting that the moraine adjoins the outstanding natural landscapes of Lake Hawea as well as the mountains to the east, and along with the unmodified part of the

Gladstone Gap, is a significant and clearly visible part of the natural history of the area. This leaves open the possibility of a fuller case being mounted to classify the area as part of an ONL.

[18] The Council has consented to a building platform on the CDL land and to one building platform on the Sutherland and Follis land east of the Gladstone Gap. In each case these are the result of resource consent hearings and are now beyond challenge. We consider that although these consents have not yet been implemented, the Sutherland and Follis consent is part of the permitted baseline for the site, and the CDL consent part of the receiving environment.

Effects on the environment of allowing the activity (s 104(1)(a))

[19] The applicants called evidence from Mr G J M van Maren, an expert in computer programming and geographic information systems. Mr van Maren is employed by Data Interface Technologies, a company which produced three dimensional spatial modelling software which enables a viewer to see a three dimensional model of a landscape on a computer screen, from any height and any angle.

[20] Mr van Maren received from the applicants' land surveyor's digital terrain data and models of generic buildings within the building platform areas, aerial photographs from Air Logistics Limited and models of existing vegetation and proposed planting from Ms Tina Batistic, the applicants' landscape architect. From these he was able to supply the Court with three dimensional images of buildings on the site from various viewpoints, on construction, and two and eight years after construction. During the course of the hearing he was able to build into the model the precise building design proposed by Ms Batistic for Lot 1, if it is permitted, and to provide images from additional viewpoints.

[21] Ms Batistic indicated that the heights provided for the vegetation were based on conservative growth rates under optimum conditions including regular watering and provision of appropriate quantities of mulch and fertiliser. While we are prepared to make an assessment on the basis of what was shown, we note the evidence of Mr Sutherland, the applicant, that his purpose in subdividing the land is to provide a capital injection into his deer farming operation, and for this purpose to sell Lot 1 while

retaining Lot 2 for his own personal use. We cannot tell whether any potential owner will have the skills or the commitment to provide optimum conditions for growth. In other words Ms Batistic's estimation of growth rate and success of mitigatory planting may be optimistic, and as Ms Ramsay noted the application relies on 100% success rate of a lot of vegetation.

[22] From the simulations provided we note that:

- the proposed building will not be visible from Muir Road because of the topography of the site;
- from some viewpoints on Lake Hawea the building will be visible in varying degrees and will break a ridgeline. Over a period of eight years, planting to the south of the building platform will disguise the effect of the property breaking the ridgeline. Over the same period, planting to the north will reduce the impact of the building but not obscure it completely;
- the building on Lot 1 will be visible from the foreshore of the lake in the vicinity of the Gladstone Gap. The proposed planting, if it grows as Ms Batistic indicates, will provide substantial, but not complete, screening from this viewpoint after eight years;
- there will be glimpses of the building for a period and a more substantial view of the accessway onto the site from the ridge in cemetery reserve. If the planting is successful, views of the building will be eliminated after eight years.

[23] We are also aware that the building will be visible from parts of the track on Contact Energy land. However Contact Energy have consented to the proposal, and we consider that in doing so they have consented to the effect on those who use the land with their permission. But, as we noted above, the building will also be visible from a section of the foreshore in the vicinity of the Gap, and this is an area to which the public has access as of right, and would be able to use even if Contact Energy were to revoke its present policy of allowing the public to have access across its land – not that such revocation is in contemplation.

[24] On the basis of the simulations provided and the other conditions offered Ms Batistic considered that the visual and landscape effects of the proposal would be minor. In particular she considered that the planting to the north-west, north and north-east of the building platform would provide adequate mitigation of the views of the development from the lake and foreshore.

[25] That was also the opinion of Mr K J Hovell, a planner called by the applicants. Mr Hovell told us that the topography of the site lent itself to two dwellings inasmuch as there were two separate knolls on which development of the type proposed would be without significant effect. He considered that in declining consent for a building on Lot 1 the Council had over-estimated the extent of the adverse effect of the building platform on views from the lake and foreshore, and had insufficient regard to the effects from Muir Road. We take this latter comment to refer to the beneficial effects of a 200 metre "no-build" zone alongside Muir Road and to a covenant to prohibit further subdivision of the lots created. Mr Hovell could not give us any estimation of the use of Lake Hawea to help us appreciate the significance of adverse visual effects on views from the lake.

[26] Ms R E Ramsay, a qualified landscape architect called by the Council, considered that viewing existing houses in the township would enable a better appreciation of the visual effects of development as seen from the lake than the computer-generated simulations of the site. She noted that even well-established dwellings in recessive colours in the township are visible, and opined that, in the context of this proposal, the contrast between the natural setting and built form would cause a dwelling to be noticed even where only a roof-line or part of the side of a house were visible. She was not shaken in her view by cross-examination.

[27] Ms Ramsay (who we regarded as a very careful witness) freely and properly conceded that close in to shore a dwelling would be hidden by topography, but she noted that at a distance of 200 metres from shore north of the Gladstone Gap, a building pole on Lot 1 was visible in its entirety. Our site visit inclined us to accept Ms Ramsay's evidence, for it was not only the brightly coloured houses with limited screening which were apparent in the built-up area. We consider that without complete screening, which is not proposed and may not be possible, users of the lake from 200 metres or so

offshore would be conscious of a dwelling on this site. Ms Ramsay accepted that it would not be highly visible, but did not agree that it would be difficult to see[1].

[28] Mr Hovell also accepted, though rather reluctantly, that a dwelling on Lot 1 would be visible from the foreshore area, and would break the skyline.

[29] Counsel for the applicants referred us to a passage in *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council*[2] (Sharpridge) where the Environment Court, differently composed, said:

> We also find on Ms Lucas' evidence that the curtilage area and possibly houses on building platforms 1 and 2 may be visible in a slightly more than minor way from Lake Wanaka. We place very little weight on this because most people travelling past in boats are likely to be either concentrating on navigation or looking at the wider landscape.

In this case, however, the point from which the dwellings are viewed from Lake Hawea is readily accessible from the Hawea township, and the proposed building would be located on a landform of considerable general and scientific interest which can be expected to attract attention.

[30] Also relevant is the Court's decision in *Just One Life Limited v Queenstown Lakes District Council*[3] where the Court gave consent to a dwelling on Roy's Peninsula, in the outstanding natural landscape of Lake Wanaka in circumstances where the dwelling would be visible but reasonably difficult to see from Lake Wanaka. We comment later in this decision on the extent of visibility of the proposed dwelling on Lot 1 in the case before us. But the *Just One Life* consent differs from this in that an area of approximately 80 hectares was offered to be subject to a no further subdivision proposal, the land management regime proposed by *Just One Life Limited* was considered by the Court to provide "a significant enhancement of indigenous ecosystems and diversity of habitat on Roy's Peninsula"[4], and the area in question was not adjacent to Wanaka township. By contrast the proposal we have to consider is for a second dwelling on nine hectares or thereabouts where, with the exception of the removal of

1 Pages 309 and 317 of transcript.
2 C47/2004 at para 11.
3 C163/2001 3.

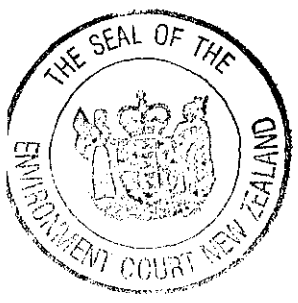
some wilding pines, landscaping is confined to that required for mitigation, and where the dwelling will be seen from a part of the lake that is easily accessed from Hawea township.

[31] Ms Ramsay and Ms E A Steven, the landscape architect called by the Upper Clutha Environmental Society Incorporated (UCESI), gave evidence that subdivision would result in more intensive land use patterns which differed markedly from those prevalent in the wider pastoral landscape with its much larger holdings. Ms Steven maintained that landholdings of the size proposed tended to promote either intensive productive use, or amenity plantings which turned the holding into a large garden. In her view such an outcome would be totally out of context in the landscapes of large-scale working farms.

[32] One of the results of these effects from the visibility of dwellings and the change in land use patterns will be a change in the type of rural amenity experienced in and close to the area concerned. An additional dwelling would be constructed in an area predominantly characterised by wide spaces and a virtual absence of human structures. We consider that this represents a reduction in the quality of the rural amenity currently experienced.

[33] The significance of this would be greater were we not considering subdivision of a nine hectare lot which already offers the possibility of more intensive use than is found on the much more extensive neighbouring holdings. However we accept Ms Ramsay's evidence that subdivision will exacerbate the possibilities of more intensive use that are already present.

[34] There is also the question of cumulative effect, a matter to which we consider the applicants' witnesses have given insufficient attention. Ms Batistic acknowledged in cross-examination that she had given no consideration to the cumulative effects of the two buildings on site plus a consented building platform on the neighbouring CDL site. Mr Hovell told us that there were no cumulative effects of the proposal. We accept that this evidence had been prepared prior to the Council's consent to the CDL proposal, but



[4] Para 31.

the Court cannot ignore the likelihood that the granting of the appeal would result in three approved building platforms within a space of 400 metres, and that cumulatively this would represent a loss of rural amenity.

[35] Part of the applicants' case was that the Council had consented to the building platform on CDL land with limited guarantees as to the future visibility of a dwelling constructed on that site from the lake and foreshore. While the argument that the Council needs to apply consistent standards is well made, the consequence is that we are required to assess the effect of the present proposal when added to a building on CDL land which would impinge on the perception of the area by users of the lake and foreshore as a landscape with a working pastoral character.

[36] The appellant suggested that all three dwellings would not be seen at once. That is not necessarily the case from the lake and foreshore. We also note that during cross-examination Ms Steven opined that users of the legal road on the southern boundary of the property would see a considerable amount of this development. We accept that this was a response in discussion rather than a result of a previous assessment from this viewpoint, but in general we found this witness careful and professional in her replies to questions, which lends some credence to her opinion. Moreover we do not consider it necessary for all three buildings to be seen at once for people to be conscious of their presence. That consciousness is an effect on people's perception of the landscape. It could be gained from a single glance, or from a growing awareness while moving across the lake or foreshore. We consider there would be cumulative adverse effects resulting from consent to this proposal.

[37] When these effects on the existing landscape are evaluated, we consider they are of some significance. However before we finalise our view on the extent of adverse effects we need to consider two other matters, the so-called "permitted baseline" for changes to the site, and the positive effects of the proposal, including those of the covenant in perpetuity against further subdivision offered by the applicant. One of the consequences of applying the pre-2003 Amendment Act provisions of the Resource Management Act is that we can only bring to account those effects which are over and

above those permitted to occur *(Arrigato Investments Limited v Auckland Regional Council)*[5].

The permitted baseline

[38] The permitted baseline includes:

- those activities lawfully existing on site, including those permitted by resource consent;
- those activities which are permitted to exist on the site by the relevant district plan(s), provided they are not fanciful.

In *Arrigato* the Court of Appeal also held that the consent authority has the discretion to disregard those activities allowed by extant though unimplemented resource consents[6]. In this case we consider that the Court should use its discretion to include within the "baseline" the building platform on Lot 2 whose location has so recently been agreed.

[39] Ms Clarke submits that the effects of vegetation changes resulting from smaller allotment size should not be brought into account, in that all the proposed planting is permitted by the district plans. We note that the only restriction on tree planting is within 50 metres of a road boundary[7]. While we consider it fanciful to assume that the proposed vegetative patterns would develop on a holding of a size typical in the area, in this case we are dealing with subdivision of a nine hectare allotment. We do not consider that in such a situation vegetation of the type and intensity proposed is fanciful. Therefore we agree that its effects must be discounted.

[40] In terms of our findings on rural amenity, while some of the adverse effects upon it stem from changes in the pattern of vegetation, there are a number of other adverse effects, including effects of buildings, human habitation and all those things which accompany it.

5 [2001] NZRMA 483 at para 29.
6 [2001] NZRMA 483 at para 35.
7 Planting within 50 metres of a road boundary by Rule 5.3.3.3(xii) is a discretionary activity as a result of Council decisions on Variation 18.

[41] Farm buildings are a discretionary activity on any holdings less than 100 hectares in area, by virtue of Rule 5.3.5.1((xi)(a)(i). The plan defines "holding" as "an area of land in one ownership and may include a number of lots and titles". During Mr Todd's cross-examination of Mr Hovell, there was some discussion of whether the Lake Hawea property owned by Mr Sutherland and Ms Follis could be considered part of an area of more than 100 hectares by being considered along with a 170 hectare holding owned by Mr Sutherland in Mangawera Valley. While the definition does not state that the titles in a "holding" must be contiguous, we consider that that is implicit in the use of the singular form "area", rather than the plural, "areas". We find that the property subject to this application is less than 100 hectares in area. Therefore farm buildings are not part of the permitted baseline.

[42] Even if we are wrong in this we note that, in accordance with Rule 5.3.3.2(i)(d) farm buildings on any holding are a controlled activity. The Environment Court has found in *Kalkmann v Thames-Coromandel District Council*[8] that only permitted activities are part of the baseline. The result is that both discretionary activities and controlled activities are excluded from the permitted baseline. This limits the value of the no-build zones offered by the applicant in that building of any sort on the land would require resource consent. It does not mean they have no value, inasmuch as a permanent covenant offers a higher degree and longer term of protection than rules in a plan which require a resource consent process to be undertaken, and can change from time to time.

Positive effects

[43] In analysing the degree of effects of the proposed development on the environment, we not only discount those effects which are permitted by the plan and are not fanciful, but also add into the equation any positive effects which result from the proposal. In closing the appellant's case Ms Clarke appeared to be offering a deed of covenant registered against the title, which would preclude further subdivision of the property. Given that the property borders cemetery reserve on the south, the result would be that for some distance from where Muir Road turns south there would be a permanent separation of approximately 260 metres[9] between the township and any

8 A152/02 at para 102.
9 (as scaled off the plan attached to Ms Batistic's evidence-in-chief)

residence east of Muir Road. This would be a significant long-term gain from the perspective of a clear demarcation between "town" and "country".

[44] There are also positive effects to Mr Sutherland and Ms Follis from the grant of consent, and to a potential purchaser who would be able to live in a visual amenity landscape with views over the outstanding natural landscapes of Lake Hawea and the neighbouring mountains. That is not to say that to refuse the appeal would be to deprive potential purchasers of the opportunity to enjoy a rural residential lifestyle in the vicinity, as land is provided for that purpose to the south of the present township, and at John's Creek which is situated at the eastern end of the lake's southern shore.

[45] Having discounted the effects of planting, we now evaluate the effects of the visibility of the building on Lot 1, and the cumulative effects of it when added to consented buildings on Lot 2 and the CDL land, in the light of the positive benefits. Overall we conclude that the adverse effects remain more than minor, though the covenant offered makes this a less clear-cut finding than it otherwise would have been.

District plan provisions

Transitional District Plan

[46] The parties in this case did not place great emphasis on the Transitional District Plan (Vincent County Section). However, because the subdivision provisions of the partly operative District Plan are not yet operative, we are required to have regard to it. Two policies of that plan were brought to our attention, namely the policy to protect land most suitable for farming purposes from uses which would compromise its productive potential[10], and the policy to encourage environmentally sensitive development which is in keeping with the natural and cultural characteristics of the site and its locality[11].

[47] Despite Mr Sutherland's stated intention to break the ground in so that it could support deer, Mr Hovell's statement that the land is of small size and poor quality soils was not challenged. We do not consider the proposal runs counter to the policy of protecting land most suitable for farming purposes.

10 Policy 4.2.1(b).
11 Policy 4.2.2(b).

[48] We accept that the various conditions offered by the applicant are an attempt to make a proposed dwelling on Lot 1 as sensitive as possible. However, the locality is characterised by large holdings and an absence of obvious signs of human habitation. The proposal for a dwelling on Lot 1 will add to the extent to which these characteristics are already compromised by dwellings on Lot 2 and the CDL land. The proposal is at least inconsistent with the policy on landscape protection.

[49] The evidence put before us would not sustain the proposition that a residential building on Lot 1 is contrary to the objectives and policies of the TDP as a whole, even though it is inconsistent with a significant policy.

The Partly Operative District Plan

Objectives and Policies

[50] Mr Hovell cited to us a number of policies[12] from the subdivision section of the plan relating to the provision of services and the responsibility of subdividers to meet the cost of that provision, which he considered the proposal satisfied. Mr S W Fletcher, the planning witness called by the Council, accepted this and so do we. Nor do we understand that there is any dispute about the ability of the proposal to meet an objective and policy relating to natural hazards[13]. The eventual removal of wilding pines, which the applicant proposes, also implements a policy of the PODP[14].

[51] The objectives and policies which are relevant to this case, and about which there is a contest are contained in the District-Wide, and the Rural section of the Plan. The importance of the District-Wide landscape objectives and policies for rural areas is highlighted by the recurrence of a number of them in very similar words in the rural section of the Plan. In particular we note a policy to consider fully District-Wide landscape objectives and policies in assessing subdivision, use and development in the Rural General zone[15].

12 Following from Objectives 15.1 and 15.2.
13 Policy 4.8.3.
14 Policy 2.5.16.
15 Policy 5.2.1.1.

[52] The District-Wide landscape and visual amenity objective is that subdivision, use and development avoids, remedies or mitigates adverse effects on landscape and visual amenity values[16]. The primary policies by which it seeks to achieve that are to avoid or mitigate the adverse effects of subdivision use and development where these values are vulnerable to degradation and to locate development in areas with the capacity to absorb change[17]. These policies are largely reiterated in the rural policies of the Plan[18].

[53] Mr Hovell conceded that the landscape and visual amenity values of the site are vulnerable to degradation. However he considered that the wide variety of mitigation offered satisfied the first of these policies. We accept that a number of the measures proposed, especially the covenant against further subdivision, do provide a degree of mitigation, but we have found that they do not do so to the point where the adverse effects become minor. We find that to allow the activity would be at least inconsistent with, if not contrary to, this significant policy.

[54] The proposed plan affords discretionary status to activities in visual amenity landscapes ... "because in visual amenity landscapes the relevant activities are inappropriate in many locations"[19]. The relevant policy is to avoid remedy or mitigate the effects of activities on visual amenity landscapes which are visible from public roads or highly visible from public places or areas frequented by members of the public generally. A further policy added by Variation 18 is to discourage linear planting along roads as a means of achieving these goals[20].

[55] The applicants have produced a design for their dwelling which will not be visible from Muir Road. The development will be visible from the unformed legal road that runs to the south of the site. Ms Steven maintained under cross-examination that the development would be highly visible from the lake, noting that the roof remained visible in most of the images shown by Mr Van Maren. Ms Ramsay accepted in cross-examination that the building would not be highly visible but consistently maintained that it would be seen. In the light of the rural setting of this proposal, and the contrast of

16 Objective 4.2.5.
17 Policy 4.2.5.1(a) and (b).
18 Policies 5.2.1.6 and 5.2.1.7.
19 Policy 1.5.3.
20 Policy 4.2.5.4.

that with built form noted by Ms Ramsay to which we referred in paragraph 26, we are inclined to accept Ms Steven's point.

[56] There is also the question of views from cemetery reserve and the foreshore. Cemetery reserve is a public reserve. Mr Todd told us that the administering authority does have power to restrict public access under s 23(3) of the Reserves Act, but that he had ascertained from Council officials responsible that they are unaware of the Council ever having invoked such powers. Indeed, the Queenstown Lakes District Council Parks Strategy 2002 which was produced as Exhibit C indicates that the reserve may in the future enjoy much greater public use than at present. From the ridge in this reserve part of the building will be visible in a view over the land to the outstanding natural features of the lake and the mountains beyond for a period. After eight years vegetation will obscure the building. However, as Ms Steven points out, many aspects of domestication will remain including an accessway through a significant cutting. From a point where the top of this building is seen there will also be views of the accessway to this house, and a building on Lot 2. We accept that some of the effects of the driveway could be ameliorated by appropriate conditions of consent.

[57] Also from the foreshore in the vicinity of the Gap, the building is likely to be partly visible, even after eight years' growth of mitigation planting.

[58] We note that this policy allows the possibility of mitigation as well as avoidance of adverse effects. We note however that we do not consider that the effects will be reduced to the point of being minor. We also indicate that while the plantings may be part of the permitted baseline and cannot therefore be counted as an adverse effect, if they are of a kind and intensity which are perceived as accompaniments of a residence (which would be likely to be true here), they can have only limited value as mitigation of broadly "domestic" effects.

[59] We accept the evidence of Mr Hovell that the proposal we are considering does not constitute urban development, and therefore does not infringe the policy which deals with that[21]. The imposition of a no further subdivision covenant would also be a means

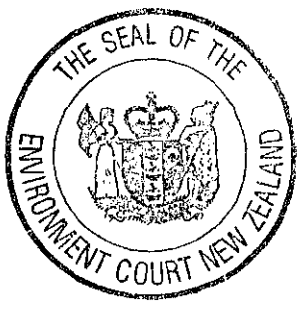
[21] Policy 4.2.5.6.

of implementing a policy which requires the edges of urban areas to be clearly *identified*[22].

[60] There is a District-Wide policy to avoid cumulative degradation of the landscape. This is to ensure that subdivision and development do not increase to the point where the benefits of further planting and building are outweighed by the adverse effect of over-domestication on landscape values[23]. It would have been helpful if more witnesses had provided us with supplementary evidence updated as a result of the Council's uncontested consent to a building on the CDL land. What constitutes over-domestication depends not only on the density of development itself but on the landscape context. Ms Steven's evidence that the wider landscape possesses the attributes of spaciousness, openness and visual simplicity associated with working farms was not effectively challenged. Ms Ramsay noted that the land to the east of the current township is currently undomesticated. Both views accorded with our own impression on our two site visits.

[61] That will change with the implementation of the unchallenged consents for building platforms on Lot 2 and on the CDL land. We are not unaware that Ms Ramsay, as well as Ms Batistic and Mr Hovell, opined that there was no danger of over-domestication in this neighbourhood. Ms Steven however indicated that on this site – and on the neighbouring CDL site – there would be a change from a working pastoral farm landscape with no domestic dwellings (apart from the Urquhart farmstead to the south) to one with small holdings with residential dwellings. Consent to a building on Lot 1 would contribute to this change and will certainly contribute to a level of domestication out of keeping with the wider landscape context. At the very best, the proposal sits uncomfortably with this policy.

[62] There is a District-Wide policy on structures that they are to be designed and located so that they are in harmony with the landscape, use colours complementing the colour of the landscape, and avoid adverse effects on skylines, ridges and prominent slopes. This policy applies in the case of outstanding natural landscapes and features and visual amenity landscapes. A further limb of this policy applies only to visual



22 Policy 4.2.5.7.
23 Policy 4.2.5.8(a).

amenity landscapes, and favours the use of vegetation to screen structures and to maintain and enhance the natural qualities of the environment[24].

[63] It is agreed that the natural qualities of the environment, particularly in terms of biodiversity, will be improved by the removal of pine trees and planting native species. Ms Ramsay told us that there are no locations on Lot 1 where a residence could be sited with less effect, and we accept that the building designed by Ms Batistic represents a serious attempt to limit any adverse effects on the landscape of any structures to be built. Nevertheless the building will break the skyline from some viewpoints on Lake Hawea and from the foreshore in the middle of the Gladstone Gap. We also note that the planting achieves only partial screening from a number of viewpoints.

[64] Mr Hovell in his statement given to the Court told us that "the low elevation of buildings ... will ensure that buildings do not break the line and form of the skyline". When he was cross-examined by Mr Todd, he acknowledged that he had stood on the foreshore in the Gladstone Gap and had seen a 3.5 metre profile pole breaking the skyline, but had not subsequently amended his evidence. If a witness knows evidence is incorrect, it should not be left to counsel to ferret this out (or not) in cross-examination.

[65] In respect of the policy on structures, we recognise that the applicants have had regard to it in formulating their proposal. However there remains more than a little discomfort between this policy and allowing the activity.

[66] The Rural provisions of the plan also contain an objective and policies relating to landscape and visual amenity values[25]. They do not raise considerations we have not already considered.

[67] A further objective and series of policies[26] relate to retaining the life-supporting capacity of soils and/or vegetation to meet the needs of future generations. They include ensuring that land with potential value for productive activities is not compromised by developments, and encouraging land use management practices which avoid remedy or

24 Policy 4.2.5.9.
25 Objective 5.2.1 and policies 5.2.1.1, 5.2.1.6 and 5.2.1.7.
26 Objective 5.2.2 and policies 5.2.1.3, 5.2.2.1 and 5.2.2.4.

mitigate adverse effects on soil or vegetation. Mr Hovell told us that parts of the land may be useable for productive purposes but not of a scale of any significance. We accept this. We do not consider the objective and policies described will be offended by this proposal.

[68] An objective also seeks to avoid remedy or mitigate adverse effects on rural amenity[27]. There is no suggestion that the plan seeks to preclude rural residential activity from the rural general zone. It does however require a recognition that some permitted activities result in effects which may be noticeable to residents. In this case we do not consider that the proposal maintains the level of rural amenity that exists in this area. We recognise that already consented development will compromise that level of rural amenity. We consider allowing this proposal will compromise it further. We find that consent would be contrary to this policy.

[69] In addition to the subdivision objectives and policies we have referred to earlier, we note that a policy in this section of the plan also requires avoidance of potential adverse effects on landscape and amenity values[28]. A further policy draws particular attention to subdivision patterns and sizes, dimensions and location of lots and requires avoidance of a pattern of land uses which adversely affect landscape, visual and other amenity values[29]. In line with our earlier findings, we do not consider that these policies are satisfied.

[70] In terms of our overall assessment of the proposal against the objectives and policies of the Partly Operative District Plan we find that while the proposal satisfies some policies, it sits uncomfortably with some, and is contrary to others. In the context of this case we find that the objectives and policies to which this proposal is contrary, in the strong sense of the term used in *New Zealand Rail v Marlborough District Council*[30], are sufficiently significant that consent to it would at the very least be inconsistent with the objectives and policies of the PODP considered as a whole.

27 Objective 5.2.3.
28 Policy 15.1.3.4.3.
29 Policy 15.1.3.5.1.
30 [1994] NZRMA 70 at page 80.

Assessment criteria

[71] The District Plan contains an extensive series of criteria by which proposals for development in visual amenity landscapes are to be addressed[31]. There are also a number of general criteria to be applied to proposals in the Rural General zone[32]. Many of the matters they address have been considered earlier in this decision and, where that is so, our comments will be brief.

[72] We are required to consider the following matters related to the natural and pastoral character of visual amenity landscapes:

> (i) where the site is adjacent to an Outstanding Natural Landscape or Feature, whether and the extent to which the visual effects of the development proposed will compromise any open character of the adjacent Outstanding Natural Landscape or Feature;
>
> (ii) whether and the extent to which the scale and nature of the development will compromise the natural or arcadian pastoral character of the surrounding Visual Amenity Landscape;
>
> (iii) whether the development will degrade any natural or arcadian pastoral character of the landscape by causing over-domestication of the landscape;
>
> (iv) whether any adverse effects identified in (i)-(iii) above are or can be avoided or mitigated by appropriate subdivision design and landscaping, and/or appropriate conditions of consent (including covenants, consent notices and other restrictive instruments) having regard to the matters contained in (b) to (e) below.

[73] The site is adjacent to an outstanding natural landscape comprising both Lake Hawea and the mountains beyond. The area is exposed, wind blown and drought prone, and has an austere aspect. It is part of a wider visual amenity landscape characterised by a sense of remoteness and few signs of human habitation. As time goes by this becomes an increasingly rare and valuable asset, for New Zealanders and visitors alike. The proposal represents an intensification of human activity which will impact on that "wilderness" experience. We have found that consent to this proposal will contribute to a level of domestication out of keeping with the wider landscape context.

[74] In considering these assessment matters, along with the relevant policy on over-domestication, we accept that the uncontested consents to building platforms on Lot 2 and the CDL land will cause a loss of some of those characteristics we have referred to.

---

[31] Rule 5.4.2.2.

In this context we have given careful consideration to the comments of the Court in *Pigeon Bay Aquaculture Limited v Canterbury Regional Council*[33]:

> But it is also possible to imagine effects – often on amenities rather than on ecosystems – where the first cut is the deepest: a new house in a spare landscape, the first helicopter pad in a wilderness area; the first apartments in a suburban area. If there is one house, helicopter pad or apartment block, does that not set a precedent in that the second may have much less effect than the first? The amenity effects may be radically decelerating with increasing numbers of activities so that once the first resource consent is granted, there is no good reason under the Act for refusing further applications (until the accumulation of ... effects comes back into play).

There is no doubt in our minds that the existing consents are deep cuts to the level of existing rural amenity. However we do not consider they have reached the point that a further cut, even in an area of diminished amenity, will have no more than a minor effect on the perception of the level of domestication people will experience from the lake, the foreshore or the land adjacent to the subdivision. Indeed, as Ms Ramsay agreed, those two approvals make it all the more important to retain the area west of the Gap free of domestic signs, to preserve a clear buffer east of the town. The issues in this case would however have been less complex had no consents for building platforms existed in the vicinity.

[75] We have noted the extensive conditions offered by the applicant to mitigate the effects of their proposal, and that some mitigation is achieved, but not in our view to the extent that the effects of consent would be no more than minor.

[76] In assessing the visibility of development, the plan[34] requires consideration of whether the development will result in a loss of the natural or arcadian pastoral character of the landscape, having regard to whether and the extent to which:

> (i) the proposed development is highly visible when viewed from any public places, or is visible from any public road;
>
> (ii) the proposed development is likely to be visually prominent such that it detracts from public or private views otherwise characterised by natural or arcadian pastoral landscapes;

32 Rule 5.4.2.3.
33 [1999] NZRMA 210 at para 52.
34 Rule 5.4.2.2(3)(b)

(iii) there is opportunity for screening or other mitigation by any proposed method such as earthworks and/or new planting which does not detract from or obstruct views of the existing natural topography or cultural plantings such as hedge rows and avenues;

(iv) the subject site and the wider Visual Amenity Landscape of which it forms part is enclosed by any confining elements of topography and/or vegetation;

(v) any building platforms proposed pursuant to rule 15.2.3.3 will give rise to any structures being located where they will break the line and form of any skylines, ridges, hills or prominent slopes;

(vi) any proposed roads, earthworks and landscaping will change the line of the landscape or affect the naturalness of the landscape particularly with respect to elements which are inconsistent with the existing natural topography;

(vii) any proposed new boundaries and the potential for planting and fencing will give rise to any arbitrary lines and patterns on the landscape with respect to the existing character;

(viii) boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape and/or landscape units;

(ix) the development constitutes sprawl of built development along the roads of the District and with respect to areas of established development.

[77] We have concluded earlier that buildings will remain obvious from the lake and foreshore, even though they will not be highly visible. We also note that the building will break ridges and skylines from some viewing points. The cut required to provide for a building platform and for access to it will exceed 3 metres in places, and affect the naturalness of the scientifically interesting landform. However Mr Fletcher was of the opinion that the effects of the earthworks required could be dealt with by conditions of consent. The applicants' agreement to remove a line of trees planted on the southern boundary will assist in preventing arbitrary lines on the landscape, and we do not consider the proposal constitutes sprawl. While the proposal does satisfy a number of these criteria, we consider that the proposal is visible enough to detract from public views from the lake and foreshore.

[78] A number of criteria relate to the form and density of development and require us to take into account whether and to what extent:

(i) there is the opportunity to utilise existing natural topography to ensure that development is located where it is not highly visible when viewed from public places;

(ii) opportunity has been taken to aggregate built development to utilise common access ways including pedestrian linkages, services and open space (ie. open space held in one title whether jointly or otherwise);

(iii) development is concentrated in areas with a higher potential to absorb development while retaining areas which are more sensitive in their natural or arcadian pastoral state;

(iv) the proposed development, if it is visible, does not introduce densities which reflect those characteristic of urban areas.

(v) If a proposed residential building platform is not located inside existing development (being two or more houses each not more than 50 metres from the nearest point of the residential building platform) then on any application for resource consent and subject to all the other criteria, the existence of alternative locations or methods:

(a) within a 500 metre radius of the centre of the building platform, whether or not:

(i) subdivision and/or development is contemplated on those sites;

(ii) the relevant land is within the applicant's ownership; and

(b) within a 1,100 metre radius of the centre of the building platform if any owner or occupier of land within that area wishes alternative locations or methods to be taken into account as a significant improvement on the proposal being considered by the Council

- must be taken into account.

(vi) recognition that if high densities are achieved on any allotment that may in fact preclude residential development and/or subdivision on neighbouring land because the adverse cumulative effects could be unacceptably large.

[79] We accept that the proposal does not introduce densities characteristic of urban areas, that with the certainty of development on the CDL land no alternative locations for development within 500 or 1,100 metres were suggested to us, and that the decision to provide access to both Lots 1 and 2 via the unformed portion of Cemetery Road reduces the effect of provision of access on the landscape.

[80] It was not suggested to us that any area of the site has greater capacity to absorb change, but the reliance on vegetative screening – which after eight years will still leave buildings obvious on the most favourable view of growth rates – demonstrates the limitations of topography in reducing the visibility of development. We do not know of any proposals for further development on neighbouring properties. However, the concerns we have raised about cumulative degradation of the spacious and remote pastoral environment of the surrounding landscape suggest that consent to this proposal

would reduce the likelihood of development being acceptable on neighbouring properties.

[81] A series of assessment criteria outline matters to be taken into account in assessing cumulative effects of development on the landscape. The development will not require the provision of additional urban style infrastructure, and at least some potential cumulative effects will be avoided by the covenant against further subdivision which will preclude any more development between Muir Road and the Gladstone Gap. However we have already found that in the context of the limited development present in the vicinity, domestication in addition to that already permitted by resource consent will detract from the pastoral and natural character of the environment. We are inclined to Ms Steven's position that the landscape is at a threshold of its ability to absorb change.

[82] The question of cumulative effects is one which has weighed heavily on us in the course of considering this appeal. Our conclusion is that taken as a whole the relevant assessment criteria, like the relevant policy, militate against consent.

[83] A number of assessment criteria relate to the maintenance of the rural amenity of visual amenity landscapes. We accept that the proposed development would not compromise the ability to undertake agricultural activities on surrounding land, nor would it require urban style infrastructure. Conditions of consent could ensure that landscaping, fencing and entranceways were consistent with traditional rural elements. Contact Energy as owners of neighbouring land have consented to the proposed siting of the building on Lot 1.

[84] However one of the criteria relating to rural amenity gives us cause for concern, namely:

> (i) the proposed development maintains adequate and appropriate visual access to open space and views across arcadian pastoral landscapes from public roads and other public places; and from adjacent land where views are sought to be maintained.

We have already considered the maintenance of visual access from the lake. We consider appropriate visual access from Muir Road can be maintained. Ms Steven told us that the north-west corner of the building platform is visible from the Chinn residence west of Muir Road, but accepted that a condition of consent precluding building in this area could deal with the matter. We considered at para [56] above the question of views from cemetery reserve. Cumulatively the range of public viewpoints from which development will be apparent suggests that appropriate visual access across pastoral and arcadian landscapes will not be maintained.

[85] The general assessment criteria dealing with natural hazards, and with residential units in the Rural-General zone do not raise any matters we have not considered elsewhere in this decision. However the assessment matters for nature conservation values include the following:

> (a) the extent to which activities will result in the protection and enhancement of indigenous biodiversity or indigenous ecosystems;
>
> ...
>
> (c) any need to avoid, contain, and/or monitor the adverse effects of plant species/forms which have the potential to spread and naturalise.

[86] We consider that the offer of a condition requiring, over time, the removal of wilding pine species is in accord with these criteria. The environmental results they promote would be furthered by the proposal.

[87] We accept that some of the assessment criteria actively favour the application, and that the proposal at least satisfies others. But there are a significant number of important criteria which the application fails to meet. On balance the assessment matters indicate that the proposal should be declined.

Other relevant matters

[88] Witnesses for both the Council and UCESI referred us to the Hawea Community Plan, which describes the long-term environmental goals of the Hawea community for their local environment. These goals were arrived at by a process of public consultation. However we can give very little weight to this document except insofar as its goals are incorporated into the statutory documents. When Ms Ramsay was questioned on the

Council's application of this plan to another resource consent matter, she properly said "it would be impossible to apply".

[89] Counsel for the applicant raised the question of the consistency of the Council's approach to a building on Lot 1, and a building on the CDL land, particularly with respect to the significance of the visibility of a building from the lake. We are not in a position to make a judgement on the CDL case, although we do note Mr Hovell's acceptance that allowing one building on the CDL land (7.04 hectares) and one on the appellants' land (lots 1 and 2, 9.68 hectares) is reasonably similar treatment. However, even if inconsistency of approach was demonstrated, the hearing by this Court is *de novo*, and we are bound to make a decision after evaluating the evidence placed before us. In general if an error be made by a consent authority in another case – and parties will note the conditional tense – the Court should not compound it in the name of consistency. This Court is not dealing only with private property interests. In saying this we are not detracting from the need for consistency of approach from councils, nor for an adequate explanation to be provided if a change of approach occurs.

[90] Precedent is a matter appropriately considered under s 104(1)(i). Mr Fletcher expressed concern that the proposal would create a precedent which might lead ultimately to the development of rural lifestyle character along the southern shore of Lake Hawea.

[91] Whether a precedent would be created depends on whether land to the east of the Gladstone Gap displays a character that can be distinguished from the land proposed for this allotment. (A covenant would protect land to the west, ie between Muir Road and the Gap.) It was Mr Hovell's evidence that the topography of this site sets it aside from the more open and level land to the east. Ms Ramsay's evidence that the land in the vicinity may be able to absorb a small number of rural dwellings, if they were appropriately located, seems to be in conflict with this. This has some persuasive force in that it occurs not in the context of precedents but of over-domestication. However the matter is certainly not clear, and we do not consider precedent a matter of great significance in this case.

Part II matters

[92] As the case was argued, no matters of national importance under s 6 of the Act require consideration.

[93] We have found that the proposal will have more than minor effects on a visual amenity landscape, and detract from the level of rural amenity currently enjoyed. It will therefore not maintain or enhance amenity values or the quality of the environment. These are matters to which we are required to have regard under s 7(c) and s 7(f) of the Act.

[94] The matters in ss 6 and 7 are to be applied in achieving the purpose of the Act, that is the promotion of sustainable management of natural and physical resources, defined as:

> ... managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –
>
> (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
>
> (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
>
> (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

[95] Allowing the activity would enable both the applicants and future owners of the land to provide for their social and economic welfare. However to decline the application would not prevent potential purchasers acquiring a suitable allotment for rural residential living as land is available for that purpose to the south of the township and in John's Creek. Consent to the proposal would not sustain the potential of the visual amenity landscape to provide for the needs of future generations, nor would it provide adequate mitigation for the adverse effects it creates. In these circumstances the overall purpose of the Act is better served by declining the appeal than by granting it.

The requirements of s 105(2A)

[96] We may not grant a resource consent for a non-complying activity, unless we are satisfied that:

(a) The adverse effects on the environment (other than any effect to which s 104(6) applies) will be minor; or

(b) The application is for an activity which will not be contrary to the objectives and policies of, –

...

(iii) Where there is a relevant plan and a relevant proposed plan, either the relevant plan or the relevant proposed plan.]

[97] We have found that the adverse effects on the environment of allowing the activity will be more than minor. But we have also found insufficient evidence to conclude that the activity will be contrary to the objectives and policies of the Transitional District Plan, and that the activity will be inconsistent with, rather than contrary to the objectives and policies of the partly operative District Plan. Discretion to allow the activity therefore exists.

Exercise of discretion under s 105(1)(c)

[98] Prior to exercising that discretion, we summarise our main findings:

- the effects on the environment of allowing the activity will be more than minor;
- allowing the activity would be inconsistent with a significant policy of the TDP and inconsistent with the objectives and policies of the PODP as a whole;
- the assessment matters of the PODP on balance indicate that the proposal should be declined;
- no matters under s 104(1)(i) deserve significant weight;
- the overall purpose of the Act as outlined in s 5 would be better served by declining the appeal than by granting it.

[99] Having regard to those matters in particular but to the evidence overall we exercise our discretion to decline the appeal in relation to the subdivision and a building platform on Lot 1. There is thus no need for us to consider whether circumstances exist for refusing consent pursuant to s 406(1) of the Act.

[100] Counsel indicated to us that whatever the decision of the Court in respect of these matters was, it should issue an interim decision so that the matters agreed in terms of the building platform on Lot 2 could be incorporated into a consent memorandum and become the subject of a final decision. We agree that this course should be followed, and reserve leave for the parties to submit a draft consent order dealing with these matters.

[101] The question of costs is reserved. Applications should be made within 15 working days of the issue of this decision. Any responses should be received within a further 15 working days.

DATED at Auckland this 11th day of February 2005.

F W M McElrea
Alternate Environment Judge

Issued:

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

TAB 12

ORIGINAL

Decision No. C 114/2007

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal pursuant to section 120 of the Act

BETWEEN **UPPER CLUTHA ENVIRONMENTAL SOCIETY INCORPORATED**

(ENV-2006-CHC-000381)

Appellant

AND **QUEENSTOWN LAKES DISTRICT COUNCIL**

Respondent

AND **CROSSHILL FARM LIMITED**

Applicant

BEFORE THE ENVIRONMENT COURT

Environment Judge R G Whiting (presiding)
Environment Commissioner K Prime
Environment Commissioner M P Oliver

HEARING at Wanaka on 16-19 April, and at Queenstown on 14 May 2007

APPEARANCES

Mr A Borick for Upper Clutha Environmental Society Inc.
Ms J E Macdonald for Queenstown Lakes District Council
Mr P T Cavanagh QC and Mr W Goldsmith for Crosshill Farm Ltd

THE SEAL OF THE ENVIRONMENT COURT

DECISION

Introduction

[1] Crosshill Farm Limited owns 550 hectares of land generally located between the Clutha River, Dublin Bay on Lake Wanaka and Mt Brown. The company applied for, and was granted subdivision consent to divide the property into three lots. A range of land use consents was also granted providing for building platforms on each lot, the construction of a boutique lodge on Lot 1 and the construction of a residence on Lot 3 (the balance lot).

[2] The consents were granted by the Council under the delegated authority of a Hearing Commissioner on 2 August 2006 in a comprehensive decision of 58 pages. From that decision the Upper Clutha Environmental Society Incorporated appealed.

[3] There were a number of grounds of appeal. But before us the focus of the Society's case was that the proposed development on Lot 1 and the balance lot would result in significant adverse visual and amenity effects and adverse effects on landscape values.

The Proposal

[4] Lot 1 is proposed to be 11.2 hectares. It will have a common boundary with the adjoining DoC Reserve on the true left bank of the Clutha River just downstream of the Clutha Outlet. Its other boundaries will be with proposed Lot 2.

[5] A building platform of 2,696m^2 was originally proposed on Lot 1. Any building platform in excess of 1000m^2 requires a non-complying land use consent. Of the consents sought, this consent was the only non-complying activity. This resulted in the Hearing Commissioner considering the application overall as a non-complying activity. On 19 March 2007 a memorandum was lodged with the Court amending the application by reducing the size of the building platform on Lot 1 down to 1000m^2 in area. The

purpose of the amendment was to change the status of the non-complying activity consent to a discretionary consent in accordance with the provisions of the partially operative district plan. Consequently, the entire proposal was considered as a discretionary activity before us.

[6] A luxury tourist lodge is proposed to be constructed on Lot 1. The main complex of the lodge, which comprises a single-story modular building, will provide visitor accommodation in five suites with associated common areas. A separate two-storey manager's residence is also provided for.

[7] A building platform of 995m^2 has been sought for Lot 2, which will be 257.5472 hectares in area. This lot will have frontage to Dublin Bay Road. At present a consent for a residential dwelling has not been sought. The building platform on Lot 2 is not subject to appeal. However the subdivision consent is effectively under challenge because Lot 1 is under challenge.

[8] The balance lot will comprise 287.9789 hectares. This lot sits on the southern flank of Mt Brown. A building platform of 985m^2 is sought on which it is proposed to build a residential dwelling. The proposed two-storeyed building is of a contemporary design with a curving footprint that extends out from the hillside and follows the natural contours. Some concern was expressed in the evidence of Ms Kidson and Ms Lucas[1] about the skyline effect of a two-storey building. The applicant's counsel filed a memorandum dated 11 May 2007 advising that the applicant would be prepared to lower the RL level of the house by three metres if that was what the Court preferred – a matter we discuss later in this decision.

[9] Access to the building platforms will be over existing farm tracks which will be upgraded. It is proposed that Lot 1 has a right-of-way over Lot 2 to provide legal and physical access to Dublin Bay Road. Easements for electricity, telecommunications and water will be provided within the subdivision. Water for domestic purposes will be

[1] The landscape architects called by the Council and the Society respectively.

sourced from an existing ground water bore on the site. Wastewater will be disposed of via on-site wastewater treatment and disposal systems.

[10] The proposal will also include extensive landscaping provisions, which include landform modification and planting, and a vegetation management plan. An amended landscaping plan was filed with the memorandum of counsel for the applicant partway through the hearing, to meet some visual concerns raised during the hearing particularly in the evidence of Ms Kidson and Ms Lucas.

The Site and its Vicinity

[11] The site was succinctly described by Mr Rhys Girvan in his report dated 13 April 2006[2]. We adopt what he said.

[12] The site forms a roughly "u" shaped allotment that extends between the margin of the Clutha River to the south, Mt Brown to the north and wrapping around existing residential development within Dublin Bay. The site extends to adjoin the Albert Town – Lake Hawea Road in the site's north-east corner. Dublin Bay Road bisects this area and essentially separates the site into northern and southern blocks. The site is zoned Rural General in the partially operative plan.

[13] Proposed Lots 1 and 2 are contained within the southern portion of the site. This part of the site is characterised by an area of elevated undulating pasture bounded by the Clutha River to the south, Lake Wanaka to the west and Dublin Bay Road to the north. The southern and western boundaries of this land adjoin crown land that extends along the edge of Lake Wanaka and along the margin of the Clutha River. A public road, "Fisherman's Track" follows its western periphery. Pine trees presently extend up river terraces rising from the Clutha River and into a more elevated and undulating pastoral terrain stretching from the top of the escarpment ridge. This expresses an elevated hummocky moraine characteristic of underlying glacial processes.

[2] Girvan, Report 13 April 2006, paragraphs 1-5.

[14] Proposed Lot 1 is located on the south-west tip of the site and comprises a total area of 11.2 hectares. Proposed Lot 2 includes the remaining area of land to the south of Dublin Bay Road covering a total area of 257.5 hectares. The balance allotment contains the remaining area of land to the north of Dublin Bay Road. This covers a total area of 287.9789 hectares and includes much of the southern flank of Mt Brown that plunges into Lake Wanaka and the lower undulating pastoral area that extends to the east until it intersects with the Albert Town Lake Hawea Road.

The Partially Operative District Plan

[15] At the time the resource consent applications were lodged the relevant parts of the plan were fully operative. The nature of the proposal is such that a number of the provisions of the district wide (Part 4) and Rural General zone (Part 5) apply. These and other provisions of the plan were discussed in some detail by the planning witnesses. We propose to discuss only those provisions that are pertinent to the contested issues before us.

[16] The central issue that dominated the hearing before us, was the effects of the proposal on the landscape, and the ability of the proposal to be absorbed into the landscape. Accordingly it is the provisions of the plan that relate to that issue that are relevant.

[17] The applications are to be considered overall as a discretionary activity. Specifically Part 1.5.3 – Status of Activities, discusses discretionary activities with the following excerpt being relevant:

> (iii) **Discretionary Activities** require a resource consent, and may be subject to standards specified in the plan. Activities have been afforded such status where:
>
> ...
>
> (iii) Because in or on outstanding natural landscapes and features the relevant activities are inappropriate in almost all locations within the zone, particularly within the Wakatipu Basin or in the Inner Upper Clutha area;

...

[18] The plan recognises that the landscape provides a backdrop to development while at the same time providing an economic base for activity.[3]

[19] The plan establishes a tripartite classification of landscapes:[4]

(i) Outstanding natural landscapes 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.

(ii) Visual amenity landscapes

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. The plan identifies the key resource management issues for the visual amenity landscapes to be managing adverse effects of subdivision and development (particularly from public places including public roads) to enhance natural character and enable alternative forms of development where there are direct environmental benefits.

[3] See Part 4.2.4(1).
[4] See Part 4.2.4.

(iii) Other rural landscapes

The other rural landscapes are those landscapes with lesser landscape values (but not necessarily insignificant ones) which do not qualify as outstanding natural landscapes or visual amenity landscapes.

[20] The plan proposes to manage the future development of the district having regard to the classification of the particular landscapes. The relevant objectives and policies say:

4.2.5

Objective:

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

Policies

1. Future Development

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

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

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

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

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

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

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

(d) To recognise and provide for the importance of protecting the naturalness and enhancing amenity values of views from public places and public roads.

...

4. Visual Amenity Landscapes

(a) To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:

- highly visible from public places and other places which are frequented by members of the public generally; and

- visible from public roads.

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

(c) To discourage linear tree planting along roads as a method of achieving (a) or (b) above.

5. Outstanding Natural Features

To avoid subdivision and/or development on and in the vicinity of distinctive landforms and landscape features, including:

(a) in Wanaka/Hawea/Makarora, ...[adjourned issue]

(b) in Wakatipu; the Kawarau, Arrow and Shotover Gorges; Peninsula, Queenstown, Ferry, Morven and Slope hills; Lakes Hayes; Hillocks; Camp Hill; Mt Alfred; Pig, Pigeon and Tree Islands;

- unless the subdivision and/or development will not result in adverse effects which will be more than minor on:

(i) Landscape values and natural character; and

(ii) Visual amenity values

- recognising and providing for:

(iii) The desirability of ensuring that buildings and structures and associated roading plans and boundary developments have a visual impact which will be no more than minor in the context of the outstanding natural feature, that is, the building etc is reasonably difficult to see;

(iv) The need to avoid further cumulative deterioration of the outstanding natural features;

(v) The importance of protecting the naturalness and enhancing the amenity values of views from public places and public roads;

(vi) The essential importance in this area of protecting and enhancing the naturalness of the landscape.

[21] The plan implements the relevant objectives and policies relating to landscape and visual amenity issues in the Rural Areas – Rules (Part 5) by setting out a detailed process for the analysis of landscape classification and application of respective assessment matters.

[22] There are three steps in applying the assessment matters[5].

(i) An analysis of the site and the surrounding landscape. The plan requires that an analysis of the surrounding landscape must include a range of factors that have generally become known as the "amended Pigeon Bay criteria". They are:

[5] See Part 5.4.2 of the partially operative plan.

- Natural science factors (the geological, topographical, ecological and dynamic components of the landscape;
- Aesthetic values (including memorability and naturalness);
- Expressiveness and legibility (how obviously the landscape demonstrates the formative processes leading to it);
- Transient values (such as the occasional presence of wildlife; or its values at certain times of the day or of the year);
- The value of the landscape to tangata whenua; and
- The landscape's historical associations.

(ii) A determination as to which of the tripartite landscape categories the site and surrounding landscape falls into.

(iii) An application of the assessment matters that apply to the landscape category determined.

[23] The assessment matters that apply to the different landscape categories recognise the hierarchy of the tripartite classification. They are lengthy, and of necessity repetitive. They have been exhaustively detailed in the evidence of the respective planning and landscape witnesses. Specifically they provide,

(i) Outstanding Natural Features – District-Wide

(a) effects on openness of landscape;
(b) visibility of development;
(c) visual coherence and integrity of landscape;
(d) nature conservation values;
(e) cumulative effects of development on the landscape;
(f) positive effects;

(g) other matters.

(ii) Outstanding Natural Landscapes – District-Wide

(a) potential of the landscape to absorb development;
(b) effects on openness of landscape;
(c) cumulative effects on landscape values;
(d) positive effects

(iii) Visual Amenity Landscapes

(a) effects on natural and pastoral character;
(b) visibility of development;
(c) form and density of development;
(d) cumulative effects of development on the landscape;
(e) rural amenities.

[24] Each of the assessment matters that apply to the respective landscape category are in turn qualified by a number of specific detailed matters that the consent authority, or this Court on appeal, must be satisfied with or must take into account in making the assessment. We do not propose to set them out in full. As we have said many of the assessment matters and the specific matters to be taken into account are repetitive. The purpose of the detailed assessment matters to be taken into account, or to be satisfied on, are clearly designed to avoid subjectivity when making landscape assessments. Notwithstanding, the four landscape architects who gave evidence before us were unable to agree on their conclusions.

[25] It was this difference of opinion between the landscape architects that dominated these proceedings. There was a difference of opinion as to the classification of the relevant landscapes following the process set down in the partially operative plan. There was also divergence of opinion as to the application of the various assessment matters to the proposed developments.

[26] There are four issues that require our determination.

(i) The landscape classification of Mt Brown. It was agreed by all of the landscape architects that Lake Wanaka should be classified as an outstanding natural landscape. This should include the area surrounding Mt Brown. The difference of opinion arose as to whether or not Mt Brown was also an outstanding natural feature within the outstanding natural landscape of Lake Wanaka.

(ii) The landscape classification of the Lodge site on Lot 1. Again there was general agreement that Lake Wanaka was an outstanding natural landscape. The difference of opinion lay as to the location of the boundary between the outstanding natural landscape of Lake Wanaka and the hinterland which the parties agreed to be visual amenity landscape.

(iii) The landscape classification of the residential site on the balance lot. Again the difference of opinion was defining the boundary between the outstanding natural landscape of Lake Wanaka and the hinterland which the parties agreed to be a visual amenity landscape.

(iv) The application of the assessment matters to the proposal before us.

[27] A consideration of the landscape needs to be made within the context of the relevant objectives and policies of the partially operative plan. They include district-wide landscapes and visual amenity provisions in Part 4 to which we have already referred. Those provisions are complemented by Objective 1 and the policies thereunder in Part 5 – Rural Areas:

> Objective 1 – Character and Landscape Value
>
> To protect the character and landscape value of the rural area by promoting sustainable management of natural and physical resources and the control of adverse effects caused through inappropriate activities.

Policies

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.

1.5 Provide for a range of buildings allied to rural productive activity and worker accommodation.

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.

1.9 Ensure adverse effects of new commercial Ski Area activities on the landscape and amenity values are avoided or mitigated.

The Landscape Evidence

[29] The main issues that require our determination are essentially landscape issues. We heard detailed landscape evidence from four landscape architects: Mr Kruger, called by Crosshill Farms; Ms Lucas and Mr Girvan called by the Society; and Ms Kidson called by the Council. We also heard evidence of a landscape nature from the planning

witnesses, but in the main their evidence reflected the evidence of the landscape architects called by the respective parties. Mr Haworth also gave evidence of a landscape nature. As President of the Society, he has had some considerable involvement in the process and hearings relating to the partially operative plan, and Section 120 appeals. He has thus become quite familiar with the local landscape issues.

[30] Perceptions of the landscape and its assessment can sometimes be quite subjective. As we have said, the plan's detailed assessment matters, which are required to be addressed, provide a methodology designed to eliminate subjectivity as much as possible. Notwithstanding, the landscape architects could not agree.

[31] In an endeavour to narrow the issues, the presiding Judge directed that the landscape architects meet and produce a Minute setting out the issues on which they agree and disagree. This they did. And as directed, produced a Minute setting out the issues on which they differed. A copy of this Minute dated 17 April 2007 was filed with the Court. A copy of this Minute is attached to this Decision as Appendix A. Attached to the Minute is a plan identifying the areas of agreement and disagreement as between the experts on the drawing of the line between the ONL and VAL. The result was that the ambit of the main issues was further narrowed. Consequently in this Decision we concentrate on the issues as narrowed by that Minute.

[32] The oral and written evidence of the witnesses was complemented by a K2Vi simulation model, which is a form of computer landscape modelling. The model contained data which produced a model of the landscape, models of objects currently in the landscape, and models of the proposed modifications to the landscape. The information is obtained from different sources, and is then integrated into the three dimensional model. The K2Vi software allows the user to "fly around" the scene, and to view the subject site and landscapes from an infinite number of angles. The site can be viewed from any height, any distance, angle or position from the air, sea, or from ground level. The position (latitude, longitude and altitude) of any viewpoint can be read out on the screen. Any scene can be seen with or without objects currently in, or proposed to be in, the landscape.

We were thus able to take modelled guided tours of the site with and without the current vegetation showing, and with the proposed vegetation showing.

[33] Our consideration of the evidence was greatly assisted by the three site visits that we made – one at the beginning of the case; one part way through; and one following completion of the evidence. Our site visits entailed travelling to and from the site, walking over the site on two occasions, travelling to different view points identified by the landscape architects, including viewing the sites from a boat on Lake Wanaka.

[34] We now turn to consider the main issues.

Issue 1 – Mount Brown

[35] When viewed from the lake in Dublin Bay, Mt Brown has the appearance of a resting dinosaur rising gently from the north in a south-west direction to a 561 metre peak. This elongated rise falls steeply southwards towards the lake edge with rolling contours to the north and west of Mt Brown.

[36] Mount Brown is a ***roche moutonnee.*** Roches moutonnees and their importance to the greater Wanaka landscape were described by Ms Lucas

> Glacially sculpted isolated mountains, or **Roches Moutonnees**, of varying scales protrude through the lands and waters of the lake basin. Hard rock that has been overridden by ice that has gouged and plucked their surfaces, **Roches Moutonnees** typically have ice-gouged and smoothed upstream surfaces and summits and steep, ice plucked, downstream surfaces. They form important features providing much of the character and quality in the greater Wanaka landscape. These hard rock peninsulas, islands and hills provide a contrast with the containing mountains that have had their sides shorn by ice but not their summits, so that they remain craggy above. Other lands are all deposition lands, lands deposited by glacial and fluvial processes.

[37] Because of the distinctive characteristics, the roche moutonnee are singled out by the landscape experts as requiring careful consideration in their classification. There was a divergence of opinion between the landscape architects as to the appropriate classification of Mt Brown. Ms Lucas and Mr Girvan were both of the view that as a feature, Mt Brown contributes outstanding natural science, legibility and aesthetic values

to the wider landscape of the eastern lands and waters of Wanaka.[6] They assess it should be appropriately identified as an outstanding natural feature

[38] On the other hand Ms Kidson and Mr Kruger, while accepting Mt Brown as a notable feature in the landscape, consider it more appropriately sits within the outstanding natural landscape of Lake Wanaka. They said this ONL categorisation sufficiently recognises Mt Brown's characteristics and role in the landscape. When asked if Mt Brown was in her opinion an outstanding natural feature, Ms Kidson replied:

> No, in my opinion it is not – it doesn't warrant elevation above the outstanding natural landscape classification. The feature is not distinct enough or distinctive in my opinion, enough to be elevated in status outside of that surrounding outstanding landscape.[7]

[39] As we have said, the partially operative plan broadly divides the landscapes of the district into three separate categories. The first of the categories is referred to as ***Outstanding Natural Landscapes and Features***, which reflects the wording of Section 6B of the Act. The plan does not define the term "*landscape*" or "*features*". While the first ***Queenstown Landscape*** decision[8] discussed the meaning of *"outstanding"*, *"natural"* and "*landscapes*", it did not discuss the meaning of "features". In ***Wakatipu Environmental Society and Another v The Queenstown Lakes District Council***[9], the Environment Court said:

> We consider the words "landscape" and "feature" are used deliberately in Section 6B and that "feature" means: 'a distinctive or characteristic part of a landscape'.[10]

We agree.

[40] We also agree with Mr Krugar when he said:

> They [ONF] differ from ONL because they are too small to be a landscape in themselves or – if located within an ONL – are of such eminence that they require further attention and distinction ...[11]

---

[6] See Lucas, EIC, paragraph 106.
[7] Transcript Page 151, lines 20-24.
[8] Environment Court Decision C180/99,Chapter 6.
[9] Environment Court Decision C129/2001.
[10] Paragraph 33.
[11] Krugar, EIC, paragraph 33.

[41] It was common ground that Mt Brown and Lake Wanaka are part of the outstanding natural landscape of the district. There was disagreement as to whether Mt Brown was also an outstanding natural feature. The difference may appear to be somewhat academic, but it has some practical significance since there are different objectives and policies in the plan for "*features*" as opposed to "*outstanding natural landscapes – district-wide*".

[42] The issue is whether Mt Brown while being accepted as being within the ONL of Lake Wanaka, is sufficiently distinct enough to warrant elevation above the Outstanding Natural Landscape classification. In our view it is not. We prefer the evidence of Ms Kidson and Mr Krugar.

[43] We accordingly find that Mt Brown is part of the ONL of Lake Wanaka and it is not an Outstanding Natural Feature.

[44] It is not necessary for us to determine the ONL boundary to the north of Mt Brown, i.e. to the north and west of Point C of the plan attached to the Minute of 17th April 2007. We agree with the landscape experts that:

> ....this line should be assessed at the time the Maungawera Valley is assessed. In terms of final location, everything between point B and C is to be assessed at the time Maungawera Valley is assessed.[12]

Issues 2 and 3 - The ONL Boundary

[45] The boundaries between the ONLs and the VALs have largely been defined within the Wakatipu Basin area of the District. However as they have not been defined in many parts of Wanaka, including for the area and land the subject of this appeal, it is necessary for all three steps of the process to be applied in this case.

[46] All of the landscape experts agreed that the determination of an ONL/VAL line is a complex exercise involving consideration of a range of factors. These are the factors to which we have previously referred and which have become known as the "amended Pigeon Bay criteria".[13] In addition, consideration may include any other relevant matter in relation to the broad description of the landscape categories contained in Part 4.2.4 of

[12] Minute 17 April.
[13] See paragraph 23.

the Plan, and including the landscape maps in Appendix 8. The two primary factors which tend to be focussed on are the topographical/geomorphological factors and the visual catchment/containment factors.

[47] Mr Goldsmith submitted that while both factors were relevant, greater weight should be placed on the topographical/geomorphological considerations as they were inherently more transparent and certain. By contrast the visual containment/catchment factors are more variable and subjective.[14]

[48] On the plan, filed with the Court by the landscape architects, a line was drawn between points where the landscape experts had reached agreement on the boundary between the ONL and VAL landscape units as they affected the wider Dublin Bay area, including Crosshill Farms' land. That plan showed seven points marked "A" to "G". Of relevance in this case, agreement was reached on all but two lengths of the line. The disputed areas were between points C to E, which affects the area near to the dwelling site on the Balance Lot, and between points F to G which affects the area of the Lodge site and along parallel to part of the true left bank of the Clutha River from the mouth of the river.

Points F to G – The Lodge Site and Clutha River True Left Bank

[49] This length of the line is from the tip of the promontory that separates Dublin Bay from the Clutha River, around the northern flank of the outlet and then along the true left bank of the River.

[50] This was the area of greatest disagreement between the landscape experts. Mr Kruger and Ms Kidson placed the line below the Lodge building site such that it would be in the VAL unit, whereas Ms Lucas and Mr Girvan placed the line above the building site such that the buildings would be in the ONL unit.

[51] Within the Clutha River itself, all of the landscape experts were agreed that the landscape unit line followed the escarpment associated with the formation of the River which is dominant along the true left bank from Albert Town (in the east) and continues north west towards the Clutha River outlet. Before reaching the outlet, as Ms Kidson

[14] Goldsmith, closing submissions, paragraphs 13, 14 and 16.

stated, there is a transitional area between the escarpment associated with the River to the Lake Wanaka escarpment.[15] In this transitional area Ms Kidson considered that the steeper Clutha River escarpment (a fluvial escarpment) was the dominant and outstanding natural landform. The land behind that was a flatter moraine area with some higher areas immediately behind. Ms Kidson considered this more eastern area had the nature of the VAL due to the hummocky forms of the glacial outwash terraces and minor moraine dumps. She considered it misleading to include these two areas in the same land type given the different processes and time frame involved in their formation.[16]Ms Kidson concurred with the line drawn by Mr Kruger in this area.

[52] In Mr Kruger's opinion the line must be placed along the top of the steep escarpment formed by the Clutha River.[17]He considered that the criteria of "Expressiveness (legibility)" and "Natural Science" were the easiest to grasp and apply to the landscape. Combining those two criteria led to the line he had drawn. In considering the "Natural Science" factors Mr Kruger had used a plan of landform components prepared by Ms Lucas (Lucas Associates) in 1995. On this plan Mr Kruger's line was drawn between the "lake shore benches and beaches" (classified as 13d) and the "extensive ablation and terminal moraines" (classified as 13a). As part of the evidence for this hearing Ms Lucas produced an amended version of this plan[18], at a different scale, which had relabelled the 'lake shore benches and beaches" from 13d to 16b, and reclassified the 13a landform from "extensive ablation and terminal moraines" to "moraine and terrace scarps" and labelled it 13d. The amended 13d area had been enlarged around the northern side of the River outlet. Mr Kruger did not agree with these alterations to the landform classifications and mapping.[19]

[53] Under questioning, Ms Lucas clarified that the original 1995 plan contained an error in the legend: the area around the Dublin Bay foreshore marked as 13d should have been marked as 16b (Major Lake). Secondly, the label was omitted from the strip of land identified along the true left bank of the Clutha River from the outlet: it should have shown the label 13j, being "Moraine and terrace scarps".[20]Further Ms Lucas explained

[15] Kidson, EIC, paragraph 46.
[16] Kidson Rebuttal, paragraph 5.
[17] Krugar, Report: Crosshill Farms Ltd, Landscape Boundaries, Dublin Bay, Version:Final, 24 August 2005, page 12.
[18] Lucas, EIC, Attachment 4.
[19] Transcript pages 124 and 125.
[20] Transcript pages 196 – 200.

that in moving from the broad scale 1:50,000 maps of the 1995 report to the plan at Attachment 4 to her current evidence, she was able to further refine the mapping and the area labelled 13a (extensive ablation and terminal moraines) in the 1995 plan is more accurately described as 13d (moraine and terrace scarps).[21]

[54] In response to questions from the Court[22] about the "Aesthetic" factors, Mr Kruger accepted that the visual catchment from the lake was a relevant matter in determining the ONL of Lake Wanaka. He considered that the most relevant viewpoints were ones that are closest to the Lodge site and he referred to a plan of viewpoints used in his visual assessment of the Lodge site.[23]This showed nine of the viewpoints to be on the land close to the lake and below the proposed Lodge building site, and six more distant viewpoints (three on the land to the south generally known as Peninsula Bay, one on the lake off Beacon Point, one on the lake at 470 metres out from the Lodge site, and one on the southern side of the river outlet). Mr Kruger explained that from the closest viewpoints the top of the lower lakeshore escarpment, clearly shown by the closeness of the contour lines, was the limit of the visual catchment. Mr Kruger could not identify from the contours any ridge visible behind and inland from this escarpment. He described the land behind the lower lakeshore escarpment as being of humps and hollows typical of moraine terrace.

[55] Ms Lucas analysed the landscape firstly from the geomorphological basis due to its high legibility and significance at Wanaka, and then considered the land cover and land use overlay.[24] She emphasised the intensively ice-sculptured landscape of the Lake Wanaka area and described the paths of the various glaciers from the Southern Alps that had moved across the area, to eventually retreat and leave a complex ice-sculptured landscape. The ice front scarplands from the retreating Wanaka glacier enframe Dublin Bay, with the inland boundary of the ice front scarp forming the skyline to the lake.

[56] Ms Lucas considered that the crest of these scarplands formed the skyline to the lake waters and was an appropriate geomorphological, topographic and landscape boundary to the ONL and accordingly she supported recognising that skyline as the Lake Wanaka ONL boundary, with VAL beyond, being the moraine plateau (labelled as 13a+b

[21] Transcript page 201.
[22] Transcript pages 126 and 127.
[23] Krugar,Crosshill Farm Ltd, Landscape Assessment Report – MPA 794Q,Attachment C dated:30 August 2005.
[24] Lucas EIC, paragraph 21.

on Ms Lucas' Attachment 4). Within these scarplands she recognised variations which she described as including terraces, ledges and benches. These complex ice front scarplands were formed by the retreat of the glacier, rather than as a scarp that has been cut. Around the headland towards the south it includes the smooth, sharp fluvial scarp that has been cut.[25]

[57] The River outlet and Dublin Bay areas with their enclosing lands in her opinion met the criteria for ONL.[26]She considered that the flatter moraine lands above the skyline were less associated with the lake.[27]She considered that the crest of the scarplands was a strong match between the geomorphological line and visual catchment boundary and thus the delineation of the ONL of the Lake and the VAL beyond.[28]Ms Lucas had coined the term "scarplands" as an umbrella term to embrace the various types of scarps.[29]In comparison to Mr Kruger, Ms Lucas had identified the summit from out on the lake and not from within a close distance to the lake edge or from the land around the wider Dublin Bay.[30]

[58] Mr Haworth supported Ms Lucas' line, noting that using the top of the escarpment would then include all of the iconic mouth of the Clutha River and the slopes above it in ONL. He believed that this would be even more obvious should the pines be removed, as is proposed in the application.[31]

Points C to E – The Balance Lot

[59] This length of the line is between the lower slopes of the south-east part of Mt Brown and then southwards towards Dublin Bay Road and includes the location of the proposed dwelling.

[60] All of the landscape experts agreed that in the area between points C to E it was extremely difficult to assess where the boundary line between the ONL and VAL landscape units should be.[32] Mr Kruger described the area as a "geological mess" as a

[25] Transcript page 201.
[26] Lucas, EIC, paragraph 78.
[27] Lucas, EIC, page 90.
[28] Transcript page 201.
[29] Transcript pages 202 and 232.
[30] Transcipt pages 248 and 249.
[31] Haworth, EIC, paragraph 44.
[32] Transcript, pp 42 – 43.

result of so many geological events and said that it was not clear where the lines should be. The experts described it as a "transition" area.

[61] The ONL is on the Lake Wanaka side of the line, rising from Dublin Bay, and the VAL landscape is in the inland area. The proposed dwelling on the Balance Lot is located in or close to this transition area. The experts were not in agreement about exactly where the demarcation line would be and which landscape unit the proposed dwelling would be in.

[62] Immediately behind (inland) the proposed dwelling the landform ridge dips to form a small saddle. The dwelling is to be located on the lakeside and just below the saddle.

[63] Mr Kruger considered that the proposed dwelling was situated in a VAL, but acknowledged that the building site is very close to the landscape boundary. He had drawn his line using geomorphological factors.

[64] Ms Kidson and Mr Girvan also considered that the dwelling would be within a VAL. Ms Kidson agreed that the skyline can be a method to determine the edge of an ONL incorporating a shoreline to a lake or river, but considered that the land visible as the skyline must also incorporate outstanding characteristics to be part of such an ONL. She considered that the landscape around the building platform appeared more connected with the VAL to the east due to the cultural treatment of its surface and the continuity of this appearance on the moraine landscape to the east.

[65] She agreed with the location of Mr Kruger's line to the west of the building platform.[33]However she also stated that the proposed dwelling site was contained by the same topographical feature as the existing residences in Dublin Bay[34]and she agreed with Mr Kruger's analysis and methodology of linking the high points of the dominant landform (being the lakeside escarpment) to form the ONL landscape line which then largely follows the 'bay' form of Dublin Bay created by the terminal moraine and the ancient lake shore beaches and benches before joining Mt Brown.[35]

[33] Kidson, Rebuttal, paragraph 6.
[34] Kidson, Rebuttal, paragraph 12.
[35] Kidson, EIC, paragraph 44.

[66] From viewpoints on the lake in Dublin Bay Ms Kidson identified the ridgeline immediately behind the proposed dwelling as the skyline and sought to mitigate the effect of the dwelling breaching through this ridgeline.[36] Mr Girvan similarly identified these skyline effects as a matter of concern.[37]

[66] Consistent with her analysis of the area near to the Lodge site, Ms Lucas identified the skyline behind the proposed dwelling site as being the ONL boundary with VAL beyond.

Evaluation of ONL/VAL Boundary

[67] The primary matter to be considered in determining the location of the ONL/VAL boundary in the two disputed areas (F – G and C – E) in this case relates to identifying the boundary as it relates to part of the ONL that includes Lake Wanaka itself. The land areas around these points do not merit classification as ONL in their own right. They are significant because of their relationship to the Lake Wanaka ONL.

[68] For both areas under contention we find Ms Lucas' evidence more persuasive.

[69] In relation to the area near to the Lodge site and Clutha River (F – G) we consider that the information Mr Kruger referred to in his visual analysis was more relevant to a visual assessment of the Lodge building site, rather than an assessment of the visual catchment of the Lake Wanaka ONL. We find that Ms Lucas' evidence that the crest of the broader scarplands formed the skyline to the lake waters was consistent with our assessment of the landscape of the lake when viewed from several locations, both on the lake and from public lands, during our three site visits. We agree with Ms Lucas that the strong match she identified in this area between the geomorphological line and the visual catchment boundary make the crest of the scarplands the appropriate location for the delineation between the ONL of Lake Wanaka and the VAL beyond.

[70] For the area through part of the Balance Lot (C – E) we accept that the ridgeline immediately behind (inland) the proposed dwelling site is the appropriate limit to the Lake Wanaka ONL. This largely reflects the identification of this ridge as the skyline by

[36] Transcript page 82, lines 23 – 27.
[37] Transcript pages 190 and 191.

three of the landscape experts[38]when making their assessments from the lake in Dublin Bay.

[71] For the balance of the area to be determined in this case, that is the landscape boundary line other than between points C-E and F-G, we accept the line as agreed by the landscape experts and shown in the minutes and plan of the meeting of 17 April 2007.

Issue 4 – Application of Assessment Matters – for Outstanding Natural Landscapes

[72] As we have found that Mt Brown is not an outstanding natural feature the assessment matters that apply to them are not applicable[39]. We have found that the Lodge on Lot 1 and the residence on the balance lot are within an outstanding natural landscape. Accordingly the assessment matters that apply to such a landscape are relevant[40].

[73] Having found that both the Lodge and the residence are within the outstanding natural landscape of Lake Wanaka we must turn to the evidence that address the relevant assessment matters. Surprisingly, the applicant's evidence did not address the outstanding natural landscape assessment criteria in the written evidence adduced, notwithstanding that the issue was hotly contested. For the assessment of the applicant, we have to turn to the oral evidence of Mr Kruger[41] and to Mr Sergeant's (planning consultant) written supplementary evidence. The assessment of the appellant is contained in the written evidence of Ms Lucas, Mr Girvan, and Mr Haworth. For the Council, Ms Kidson, like Mr Kruger did not address the ONL assessment matters in her evidence. This was because she had classified both the Lodge site and residence site to be in the VAL. Her view was briefly contained in her oral evidence[42].

[74] As we have said, the landscape experts, after meeting as directed, filed a minute with the Court. This minute identified the real issue between them on landscape assessment as:

> We disagree on the potential visibility of both the Lodge development and the balance lot with respect to both areas and degree.

[38] Ms Kidson, Ms Lucas and Mr Girvan.
[39] See Part 5.4.2.2(1) of the partially operative plan.
[40] See Part 5.4.2.2(2) of the partially operative plan.
[41] Transcript, pages 92-104.
[42] Transcript, page 150.

[75] The real issue was the visibility of the Lodge and residence in the landscape and the consequential affect of that visibility when applying the relevant assessment matters detailed in the plan, with particular reference to: the ability of the landscape to absorb the development; the effect on the openness of the landscape; and the cumulative effect of the proposal on the landscape.

[76] As visibility was the key issue identified by the landscape architects as being in dispute, we confine our consideration of the evidence to that issue.

The Lodge

[77] Ms Lucas pointed out, that the proposed "Lodge" *"would be located on a bench high on the scarplands above the outlet"*[43] Ms Lucas considered the visibility of the Lodge from various viewpoints including:

(i) the lake;

(ii) the outlet track and camp ground on the shore opposite (referred by some witnesses as Beacon Track or Beacon Road);

(iii) the shore of the Peninsula.

[78] Ms Lucas opined that the Lodge would be highly visible from the identified viewpoints. She was also of the opinion that the mitigation measures proposed were "minimal" and *"will have very little screening effect from public places beyond"*[44].

[79] She said:

> At the special times of dawn and dusk when the outlet waters are highly valued, when the dramatic context is one of high naturalness, when Lodge rooms above are lit, the extensive complex would be clearly evident and detract very considerably from the experience of this place.[45]

[43] Lucas, EiC, paragraph 137.
[44] Lucas, EiC, paragraph 146.
[45] Lucas, EiC, paragraph 144.

And:

> In this landscape of wildness and remoteness, introduction of the Lodge complex would be very visually prominent. The extensive Lodge would read as a complex of perhaps six houses clustered together on the scarplands. The complex would appear perhaps akin to an urban streetscape of attached buildings, of a row of connective houses or apartments. The extensive complex would very seriously detract from the naturalness and wildness. It would domesticate the outlet landscape. It would most definitely dominate the experience of this outstanding area of the Lake.[46]

[80] Ms Lucas concluded that because of its high visibility, the Lodge would adversely affect the open space values over a considerable area[47]. Further, the Lodge would introduce a large built complex into an entirely unbuilt landscape[48].

[81] Mr Girvan said that the proposed Lodge sits on an elevated ledge on the northern entrance to the Clutha Outlet. In this location it would, he considered, appear visible from the surface of Lake Wanaka from approximately 550 metres in an ark that extends from the north-west to the south of the site. It would also be intermittently visible from parts of Beacon Point Road[49].

[82] Mr Girvan concluded:

> From the surface of Lake Wanaka, the Clutha River and along Beacon Point Road, the proposed development has potential to appear prominent on the stepped terrace riser that extends along the face of the larger elevated moraine escarpment. In this location, I consider the scale of the building has potential to dominate the presently open and natural landscape character of this largely unmodified lake margin area. At night time, lighting within the building would contribute further evidence of domestic activity in this area that diminishes this presently natural and isolated lake outlet experience.[50]

[83] Mr Girvan acknowledged that the proposed landscaping would assist the building's visual integration with the site but he:

> ...did not consider this proposed mitigation, however removes the loss of open and natural character appreciated in this area.[51]

---

[46] Lucas, EiC, paragraph 145.
[47] Lucas, EiC, paragraph 166.
[48] Lucas, EiC, paragraph 175.
[49] Girvan, Report to Council, paragraph 15.
[50] Girvan, Report to Council, paragraph 16.
[51] Girvan, Report to Council, paragraph 17.

[84] Mr Haworth acknowledged that the proposed 269 hectare site may be able to absorb a lodge complex and a residential complex. However in his opinion the Lodge and the residence are proposed in inappropriate locations[52]. He referred to the Lodge being visible from parts of Beacon Track, the surface of Lake Wanaka and the Clutha River[53]. Because of its size, he considered it would be visually prominent and would be entirely at odds with the current, open, undeveloped and natural character of the site, the Clutha Outlet and vicinity[54].

[85] Mr Haworth did not regard the mitigation being offered as being in any way adequate in significantly reducing the adverse visual effects of the Lodge. He considered that its significant scale and the clear visibility from the adjoining surface of the Lake will degrade the present open and natural character exposed along this easily accessible area of the Lake[55].

[86] Mr Kruger pointed out that the issue of visibility needs to be considered in the context of the building's location, and the proposed mitigation by way of landscaping. As for location he told us that the proposed Lodge has been located on the edge of a shallow basin or small plateau. In order to reduce the visibility of the Lodge and the associated building, they have been set back from the edge of the terrace face[56].

[87] As to mitigation by way of landscaping this has been designed using four elements:[57]

(i) Existing vegetation – all existing indigenous vegetation greater than 0.5 metres high will be retained where possible. Where practicable remnant native grasses and ground cover will be salvaged and transplanted from all construction areas.

All wilding trees and noxious weeds will be removed over time in conjunction with the revegetation programme.

---

[52] Haworth, EiC, paragraphs 57 and 58.
[53] Haworth, EiC, paragraphs 162 and 163.
[54] Haworth, EiC, paragraph 187.
[55] Haworth, EiC, paragraphs 191 and 192.
[56] Kruger, Landscape Assessment Report, paragraph 2.1.5.3.
[57] Kruger, Landscape Assessment Report, paragraphs 2.1.5.2-2.1.5.5.

(ii) Modification of landform – to further reduce the visibility of the Lodge, re-modelling of the existing landform at the edge of the escarpment is proposed. Low hummocks or ridges extend towards the Lodge at right angles to the terrace riser. These are proposed to be planted with local species.

(iii) Proposed vegetation – the landscape concept focuses on re-establishing locally appropriate plant associations. This landscape concept was partly amended to add further mitigation measures suggested by Ms Kidson in a landscape plan attached as BI to a memorandum by counsel for the applicant dated 11 May 2007.

(iv) Vegetation management – a medium to long term vegetation management plan to remove all plant pests co-ordinated with the active revegetation programme.

[88] Mr Kruger accepted that the Lodge site had been chosen as it offers lake views. Consequently the reverse applies, and it can be seen from the lake and some public places.[58]However, he opined that whilst the Lodge would be visible, it would not be visually prominent. He emphasised that in his view, the selected land-form modifications, in combination with the proposed planting programme will further filter the views.[59] As for the Lodge's appearance at night, it was his opinion that the setting of the buildings and the proposed re-contouring will render many windows invisible from the surface of the lake and Beacon Point Road.

[89] Mr Kruger referred to the K2Vi simulation and said:

> Those viewpoints that we have seen represent, I believe, a good cross section of what is visible of the Lodge, and it is my opinion that from none of those the proposed structure would be visually prominent, and certainly I don't believe there will be dominating views that are otherwise characterised by natural landscapes.
>
> .....I think in particular with the maturing indigenous vegetation cover that is proposed, and the complete removal of the pine trees given effect,and we are

[58] Krugar, EIC paragraph 50.
[59] Krugar, EIC paragraphs 55 and 56.

> talking for that to happen a number of years down the track, probably 15 – 20 years, I believe that the natural character will be significantly enhanced over what is currently present on the site, and I believe that the Lodge is going to be absorbed by this landscape in a way that it definitely will not detract or dominate."[60]

[90] Because of the existing vegetation cover, and having regard to the proposed vegetation, Mr Kruger was of the view that the Lodge would not be within *"a broadly visible expanse of open landscape"* [61]. He again emphasised that the Lodge would be contained within a shallower dish of the large edge that extends to the east and north of the escarpment. This, together with the existing vegetation, and the proposed vegetation that would replace some of it, would contain the adverse effects of the proposal.[62]

[91] While Mr Kruger accepted that the Lodge would have some cumulative effect – simply by being a new activity, he said:

> I do not consider this building to contribute effects of over domestication to this landscape due to the unique nature of the proposed activity and the substantive mitigation measures proposed.[63]

[92] Ms Kidson told us that the proposed Lodge would be visible from:[64]

(i) the surface of Lake Wanaka – with the visibility starting from the middle of the Clutha outlet and continuing in a north westerly direction. She was of the opinion, however, that the visibility from the lake would not be highly visible. But she considered the visibility should be decreased through additional planting;

(ii) Beacon Point Road – however, she considered the view would be generally obscured by vegetation;

(iii) the shores of the lake in the vicinity of Beacon Point and towards the Clutha Outlet – views she considered to be similar to those from the lake;

---

[60] Transcript page 101, lines 20 – 35.
[61] Transcript 102, line 45.
[62] Transcript 103, line 10.
[63] Landscape Assessment Report, page 20, paragraph 2.2.5.4
[64] Kidson, EIC paragraph 61.

(iv) the Clutha River in the vicinity of the Outlet – oblique views to the width of the proposed building that should be screened by the proposed planting.

[93] Ms Kidson concluded:

> The visibility of the Lodge on Lot 1 should be reduced to ensure only roofline and the top of walls are visible from the Beacon Point shoreline and track and I do not consider that such expansive views are necessary of the lake. Reducing visibility could be achieved through an increase in planting to the west and south of Lot 1 and also the orientation of the southern three suites could be pulled around to the west/north/west.

[94] The revised landscape plan produced by Mr Kruger meets Ms Kidson's concerns about reducing the visibility of the lodge. When asked if she agreed with Mr Kruger's evidence with respect to the assessment matters, she answered:

> Yes; I am in general agreement. However, I differ in terms of the areas that I led the Court to yesterday with the K2Vi simulation in terms of the prominence of the building. I don't think it's overly prominent, however, I do believe additional mitigation is required and I believe that mitigation will be sufficient to meet the "reasonably difficult to see" criteria.[65]

Evaluation of Lodge

[95] As we have said, the landscape witnesses identified their areas of disagreement to be the "potential visibility" of the Lodge development. We were greatly assisted in this issue with our three site visits which helped us to properly assess the evidence.

[96] We are satisfied that the location of the proposed Lodge back from the edge of a shallow basin and small plateau, together with the proposed landscaping, will result in it being unlikely to be visually prominent. There is potential for the landscape to absorb the development. Further, the Lodge would be contained by the natural topography and vegetation (by present and proposed replacement vegetation). It will not, in our view, compromise the existing natural character of the landscape. Nor will it contribute effects of over domestication to the landscape.

[97] In coming to our view we rely predominantly on the evidence of Mr Kruger and Ms Kidson. We particularly found Ms Kidson's evidence to be balanced and objective. We accept their assessment of the relevant assessment matters.

[65] Transcript page 150, lines 17 – 22.

The Balance Lot Residence

[98] As with the Lodge, the concern of those opposed to the proposal was the visibility of the residence in the landscape, and hence the lack of ability of the landscape to absorb it.

[99] Ms Lucas pointed out that the residence as proposed, would be located close to the summit of the lands enclosing the lake.[66] It would be visible from a number of public places including:

(i) the waters of Dublin Bay – where the proposed residence would appear on the skyline as a very substantial structure;

(ii) the Peninsula;

(iii) Beacon Point and the scarplands of "Peninsula Bay"; and

(iv) Fisherman's Track.

[100] Ms Lucas concluded that:

> The sight of the house on the crest and the skyline to the Bay would significantly further detract from the natural character of the Bay. It would detract from the legibility values of the enclosing ice front scarp formed by the snout of the glacier that now encloses the Bay.[67]

And

> The scarp forms the skyline to the Bay and thus would be disrupted. The aesthetic values of Dublin Bay would be significantly adversely affected by the disruption at the scarp crest. The elevated location and upper limit to the land form make this a particularly visually vulnerable location.[68]

[101] Again, Mr Girvan and Mr Haworth supported Ms Lucas. Mr Girvan described the building platform for the proposed residence as being *"set within the top of a gully area that rises to the east of Dublin Bay".*[69] He considered that in this location, visibility

[66] Lucas, EIC paragraph, 119 and following.
[67] Lucas, EIC, paragraph 128.
[68] Lucas, EIC, paragraph 129.
[69] Girvan, Report to Council, paragraph 36.

of the dwelling from public places would include brief sections of Dublin Bay Road, a section of Hogan's Track with more distant and elevated vantage points including Mt Iron and limited areas spread east across the Upper Clutha Basin. Like Ms Lucas, he was concerned that the building would also appear visible from the surface of the lake within Dublin Bay at a distance of approximately 1.5 kilometres.[70] He said:

> Visibility from the lake surface allows the proposed building to break the skyline when viewed from areas close to the lake shore (a distance of approximately 1.5 kilometres).

[102] Mr Girvan concluded:

> The proposed building platform and associated dwelling identified on the balance allotment sits at the top of the localised gully area that extends to the west within Dublin Bay. This building platform has been sited to sit within the folds of the topography and designed to minimise its prominence from surrounding private and public vantage points. It nonetheless would establish a 985 metre square building that breaks the skyline when viewed from the surface of the lake within Dublin Bay.[71]

[103] Mr Haworth also addressed in some detail the visibility of the proposed residential complex on the Balance lot. He described it as very large and considered that its location, 372 metres high at the top of the gully, will cause it to appear prominent in the landscape and uncharacteristic of development normally anticipated within an open pastoral setting. In his view the character of the pastoral landscape would be markedly changed and degraded.[72]

[104] Ms Lucas, Mr Girvan and Mr Haworth all expressed the view that the proposed landscaping and noxious plant control would not mitigate the effects the proposed residence would have on the landscape.

[105] Mr Kruger acknowledged that the proposed residence would be visible from areas in the lake and from Hogan's Track, and for a short period from Dublin Bay Road. Its potential visibility was demonstrated by reference to the K2Vi modelling.[73]He said:

> I regard that the Balance lot dwelling once constructed and the proposed landscape integration installed and mature to a degree that's shown in the simulation, that this building would not detract from those views, otherwise

[70] Girven, Report to Council, paragraph 37.
[71] Girven, Report to Council, paragraph 60.
[72] Haworth, EIC, paragraph 209.
[73] Transcript, Page 93, line 25, Page 98, line 35 – 47.

> characterised by natural landscapes, in particular in light of the distances that the building can be viewed from, and I might just add that this building obviously is situated at a transition between a landscape that is characterised as more natural which is the ONL, and it is embedded in a landscape that is more characterised by an arcadian character of the VAL ...[74]

[106] Mr Kruger also acknowledged that the proposed residence would be another addition to the existing "*node of human habitation*" in the Dublin Bay area. There will thus be a cumulative effect arising from it. But he said:

> I don't think that settlement has reached the threshold to the degree that this building cannot be absorbed.[75]

[107] Ms Kidson's only concern with the proposed residence was the "skyline" issue, also identified by Ms Lucas and Mr Girven.[76]Mr Kruger proposed plantings behind the proposed building. Ms Kidson during cross examination by Mr Cavanagh QC accepted that in some cases such mitigation can be appropriate. However, it was a question of degree depending on the time involved between the original effect and the softening or mitigation of that affect. In her opinion the time that there would be an adverse effect would be too great in the present case.[77]

[108] Ms Kidson was satisfied, after considering further documentation filed by Counsel for Crosshill Farm Ltd with the Memorandum dated 11 May 2007, that a lowering of the building so that the RL of the roof (disregarding the chimney) was three metres lower at RL 375.8 masl.

Evaluation of Balance Lot Residence

[109] Again our evaluation of the landscape evidence was greatly assisted by our three site visits. We are satisfied, that provided the roofline (disregarding the chimney) is lowered by three metres to RL375.8masl then the proposed dwelling complex will not offend the landscape provisions of the partially operative plan. While it would be visible from the lake and some other vantage points, the lowering of the roofline by three metres, together with the other mitigation measures proposed, would enable it to be absorbed sensitively into the landscape.

---

[74] Transcript, Page 93, lines 30 – 40.
[75] Transcript, Page 100, lines 25 – 33.
[76] Kidson, EIC, paragraph 60.
[77] Transcipt, Page 154, lines 25 – 36.

[110] Again we accept Mr Kruger's assessment of the relevant assessment matters as modified by Ms Kidson.

Determination

[111] Having found for Crosshill Farm Ltd on the application of the assessment matters, it follows that its application for resource consents must be successful. In so deciding, we also have regard to the large body of evidence which did not address the contested issues. We also have regard to the careful and comprehensive decision of the Hearing Commissioner.

[112] Accordingly, the Council's decision is upheld and the appeal dismissed save for the following:

(i) The ONL/VAL line is to be determined in the two disputed areas as follows:

(a) area C – E as determined and drawn by Ms Lucas

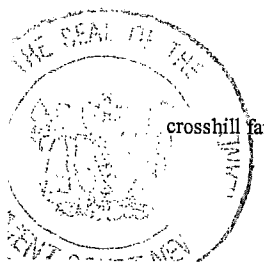
(b) area F – G as determined and drawn by Ms Lucas

(c) for the Balance area, that is the landscape boundary line other than between points C – E and F – G the line is to be as agreed by the landscape experts and shown in the minutes and plan of meeting 17 April 2007

(ii) the conditions of the consent are to be amended to incorporate the further mitigation measures proposed by Mr Kruger and agreed to by Ms Kidson

(iii) the conditions of consent are to be amended to provide for a lowering of the roof (disregarding the chimney) of the residence complex on the Balance lot by three metres to RL375.8 masl.

[113] The Council is, after consultation with the parties, to file with the Court within 28 working days amended Conditions of Consent to give effect to this decision.



[114] The Council is within 28 working days to confer with the four landscape architects and prepare and file a plan of the ONL/VAL line as it has been determined in this case.

[115] Costs are reserved. Any party is to apply for costs within 14 working days of receipt of this Decision, with a further seven days allowed for a response. However, it is our tentative view that costs should lie where they fall.

DATED at Auckland this 22nd day of August. 2007.

For the Court:

R Gordon Whiting
Environment Judge

Appendix A – Minute of 17 April 2007

MEETING OF LANDSCAPE ARCHITECTS FOR CROSSHILL

17 April 2007

Present at Meeting
Liz Kidson
Di Lucas
Ralph Kruger
Rhys Girvan

LANDSCAPE

Point A.
Ignore Kruger line where it detaches; agree from the common line at the west of the southern flank of Mt Brown.

Point B.
Northern extent of the outstanding area agree that Kidson line is the highest extent (in elevation) of the possible delineation and Lucas is the lowest.

Agree that this line should be assessed at the time the Maungawera Valley is assessed. In terms of final location everything between Point B and C is to be assessed at the time Maungawera Valley is assessed.

Point D
Between Point C and E agree there is a difficult area for drawing a line as there is a transition area in the landscape.

The residence (Lot 3) is in the vicinity of the ONL/VAL boundary however continue to disagree on what side of the line the residence sits.

Between Points E and F agree that the ONL/VAL boundary runs along the top of the escarpment/containing lands and can be more generic than shown by the Lucas line.

Between Points F and G there is a different methodology being applied by the landscape architects.

Girvan and Lucas: Identify the containing landforms – the summit to be the ONL boundary with VAL.

Kruger and Kidson: Identify the top of the escarpment as the ONL boundary with VAL.

Agree to delete "dashed" Lucas line along the true left bank of the Clutha.

Agree with Lucas "dashed" ONL/ONF line that runs across the Clutha Outlet as representing the transitional area between the ONL of Lake Wanaka and the ONF of the Clutha.

From Point G downstream on true left bank of the Clutha we agree that the line runs along the top of the escarpment/containing lands.

We disagree on the potential visibility of both the lodge development and the balance lot with respect to both areas and degree.

We disagree on the status of Mt Brown.

attachment 9

landscape classification (Kruger, Kidson 2007)

CROSS HILL LANDSCAPE ARCHITECT'S MEETING 17-04-2007

ATTACHMENT TO NOTES

TAB 13

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

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

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

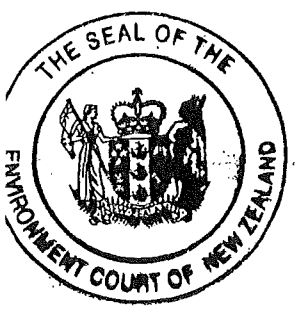
A: Subject to Orders B and C below:

(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

Table of Contents Para

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 Station[2] 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 m^3 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 m^2 and 8,719 m^2;

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.

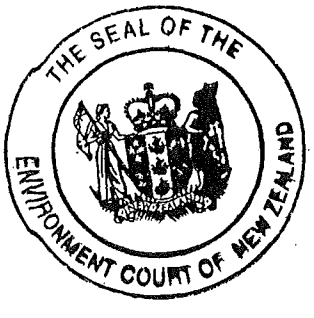
2 Computer Freehold Register (Certificate of Title) 478353 Otago Land Registry.

- 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 trees[3]. The lakeside buildings will be approached from Mt Aspiring Road by a five metre wide sealed entry road[4]. 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 m^2 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 impact[6]. In general the curtilage area would be between 900 m^2 and 1,400 m^2, though on house site 10 it would be 1,942 m^2.



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 facilities[7].

[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 vehicles[8].

[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 evidence[9] 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 designer[10] 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 witnesses[11] 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 memorandum[12] 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 Steven[13], 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 appellant[14] 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 appellant[15] 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 Cutler[16], 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 Neal[17], a landscape architect, and Mr S Fletcher[18], a planner.

[15] The third appellant[19] in these proceedings is the Upper Clutha Tracks Trust[20] ("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 evidence[21] 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 considered[22] 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) operative[23] 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 earthworks[24];
- the restaurant bar and golf pro shop in the clubhouse as commercial activities ancillary to and located on the same site as recreational activities[25];
- the shearers' quarters, and any of the 42 residences/ visitor accommodation which are let to visitors as visitor accommodation[26];

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 jetty[27].

[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 m^2 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 limit[28]);
- a restriction on earthworks, except for specific activities, to an area of 2,500 m^2 per site within any consecutive 12 month period, and to a volume of moved earth of 1,000 m^3 in any consecutive 12 month period[29];
- 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 metres[30]).

[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 quality[32] 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 delta[34] of the Fern Burn; to the west is successively lake shore beach[35], then "moraine and fluvial outwash"[36] followed by a small area of alluvial deposits[37] 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 grasses[42] and weeds[43], pines, and close to the lake shore willows[44] and poplars[45]. 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 use[46] and recreational activity although it contains no houses. The Parkins Bay flats are cultivated and close to the shore there are stands of poplar[47] 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 consent[48] 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 moutonées* 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 important[51] because it determines what the applicable objectives, policies and assessment matters are. Chapter 5 of the district plan identifies three steps[52] 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 follows[53]:

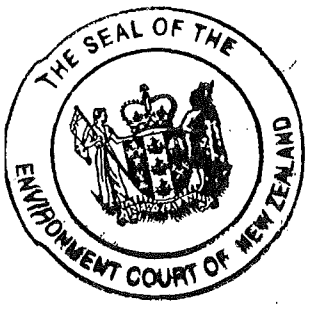
> **(1) Protection of Outstanding Natural Landscape and Features**
> The Outstanding Natural Landscapes are the romantic landscapes – the mountains and the lakes – landscapes to which Section 6 of the Act applies. The key resource management issues within outstanding natural landscapes are their protection 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 evidence[54] 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 appendices[55], 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 evidence[56]:

> 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 evidence[58] 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 rejects[59] 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 evidence[61] 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 introduced[62] new terms – 'the project scale' and the 'project level landscape development' both of which he appears to contrast with 'development site' scale[63]. He describes these as follows[64]:

> 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 acknowledges[65]. 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 landscape[68] 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 wrote[69]:

> *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 Act[72]. 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-dimensioned 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 landscape[73]; 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 practice[74] 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 landscape[76]. 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 paragraph[80] 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 that[83]:

> 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 occasions[84], 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 suggested[85] 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 prepared[86] 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 Crown[87], 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 oxymoron[88] under the RMA.

[61] We were reminded by Mr Kruger of one of the starting points for assessing the naturalness of a landscape. He referred[89] to a paper written by Ms R Maplesden in 1995 in which she presented this description of the continuum:

Degree to Which Natural Environment Character is Present

High	↑	Pristine	Original landforms, natural processes native and endemic fauna and flora
		Natural	Anything produced by nature i.e. Pasture, exotic tree species, wild and domestic wildlife
		———	**Natural Character Compromised** ———
		Modified	The inclusion of less significant man-made structures such as 'baches', moorings, small marinas etc
Low		Largely Modified	Heavily built up urban coastal environments containing structures such as large ports, marinas, high-rise apartments etc

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 wrote[91]:

> 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 whenua[95]. 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 that[97]:

> 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 plan[98] 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 contains[99] "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

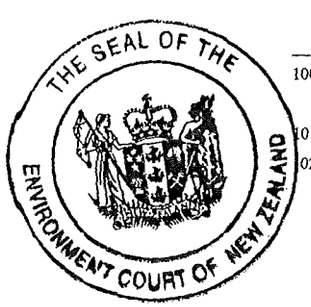
[71] The majority of Commissioners, in reaching their decision, adopted a boundary line which separated the flat land on the shore of Parkins Bay either side of the Mt Aspiring Road from the moraine and ice-sculpted landscapes. Commissioner Marquet, one of the majority, cited with approval the evidence to the Commissioners of Mr Rackham[101]:

> 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 assume[102] 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 wrote[103] 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 that[105]:

> ... 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 vegetation[106].

[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 landscape[107].

[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 high[108].

[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 lake[109]. 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 landscape[110] 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 context[111]. Mr Kruger on the other hand considered the fact that a site's landform was unmodified by structures or earthworks highly significant. He said[112]:

> [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 sense[113]. 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 relevant[114] objective for the **natural environment** - objective 1 – requires[115] (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 policies[116] relating to Objective 1 are to encourage the protection of geological features[117] – this applies to the proposed earthworking of the site; to encourage the removal or management of existing vegetation with the potential to spread and naturalise[118] – this applies to weeds such as sweet-briar and Douglas-fir; to take opportunities to promote the protection of indigenous ecosystems[119] – this is relevant as to environmental compensation for adverse effects of the proposal; to encourage the protection of significant habitats of indigenous fauna[120]; to maintain or enhance the natural character of the beds and margins of lakes, rivers, and wetlands[121]; and to encourage and promote the regeneration and reinstatement of indigenous ecosystems on the margins of lakes, rivers and wetlands[122] – this is relevant to what happens to the streams and lake around the edges of the site; and to encourage the planting of trees[123]:

[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 policy[124] 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 that[125]:

> 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 are[126]:

> 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 requires[128]:

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 is[129]:

...
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 requires[130]:

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 are[131]:

...
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 values[132]. The most relevant implementing policy is[133]:

> 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 needs[134]. The (marginally) relevant policy is[135]:

> 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 mitigated[136]. 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) states[137]:

> **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 are[138]:

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 states[139]:

Objective 3 – Rural Amenity
Avoiding, remedy or mitigating adverse effects of activities on rural amenity.

The relevant related policies are[140] 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 m^2)
- Building coverage of the site or lots in excess of 15%
- A concentration of over 10 adjacent dwellings, VA units[141], 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 day[142], 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 proposed[143] 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 objective[144] 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 sport[147] 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, wrote[148] 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 this[149]:

> 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 are[150] (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 opinion[151] "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 Greenaway[152] 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 components[154]. In his opinion the Parkins Bay conditions of consent are consistent with best practice[155]. He referred to the proposals for:

- monitoring the application rate and amount of fertilisers applied to the green and fairways[156];
- preparation of an integrated pest management plan[157];
- computerised irrigation rates and flows[158];
- 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 read[159]:

---

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 plan[160]. 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 visible[161]. 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 that[162]:

> 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 that[163]:

> 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 development[164].

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 3[165]. 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 witnesses[166].

[117] Mr Kruger considered that the site is[167] "... 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 Bluff[168] 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.

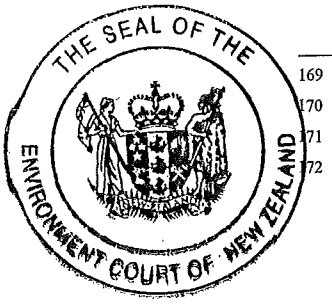
He concluded that[169]:

> 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 see[170].

[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 Bay[172]. 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 accept[173] 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 opinion[175] the effects of the proposal on the landscape have been "significantly understated". He wrote that[176] "... 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 beach[177].

[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 wrote[179]:

> 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 stated[181]:

> ... 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 detraction 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 evidence[182] 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 evidence[184] 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 wrote[185]:

> 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 view[186], 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 critical[187] 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 that[188]

> [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 that[189]. However, we accept the evidence of Mr Baker[190] – 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 m^3 over an area of 40 hectares will[191] "... 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 conclusion[192]. 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 landscape[193].

[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 notice[194] for Jacks Point and described its effects as being[195]:

---

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.
194 7017246.4.
195 M Christensen, closing submissions para 2.9 [Environment Court document 39].

> 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 continued[197]:

> At Parkins Bay, it is proposed that a covenant be registered on the certificate of title prohibiting the fencing of the individual house-sites[198], 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 1987[199].

[133] In general we accept Dr Steven's evidence[200], 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 conditions[201] 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 vegetation[205]. 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 m^3 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 considered[206] that the earthworks, buildings and roads will compromise the integrity[207] 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 not[208].

(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 considered[210] the site is within such an expanse, and in the opinions of Mr Kruger[211] and Ms Neal[212], 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 space[213], 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 are[215]:

(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 comments[217]:

> 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 Neal[220] 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 opinion[222]:

> 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 assessed[223] 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 opinion[224]:

> 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 continued[225]:

> 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 <u>will</u> 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 Christensen[226] 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 <u>no</u> 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 that[227]:

> 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 Darby[228], the assessment of "Ability to absorb change" in the Boffa Miskell Study[229] 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 this[230]:

> 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 part[231] of the district plan. For convenience we deal with them here. Mr Kruger pointed out[232] 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 criterion[233] 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 exception[234] 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 stages[236]. Dr Roper-Lindsay identified[237] 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 weeds[238] as will, for safety reasons, some old poplars[239] close to the visitors' accommodation by the clubhouse. Most of the other poplars and willows will be retained[240]. Wetlands and gullies in the golf course will be planted with native vegetation[241]. Elsewhere kanuka will be planted in drier areas[242], and "some" native species will be planted in the rough. Kanuka will be planted for multiple purposes[243]: 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-off[244]. 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 control[245].

[157] Around the houses indigenous shrubland will be planted or allowed to regenerate as shown in the Master Plan[246]. 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 Darby[248] 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 regenerate[249]. There may be some further planting here[250]. 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 maximum[251], an area of 65 hectares. At first sight that looks generous. But it only amounts to (65 ÷ 42 =) 1.5 hectares per house which is small mitigation compared with other recent developments in the southwestern corner of Lake Wanaka. Dr Roper-Lindsay attached[252] 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 recovering[259].

[161] Dr Roper-Lindsay considered there would be no adverse effects on birds using Parkins Bay or the shoreline from increased activity. She wrote[260]:

> 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 Grebes[261] 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' Quarters[262]. 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 review[263].

[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 as[264]:

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 costs[265] 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 compensation[266] 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 Greenaway[267].

[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 Greenaway[268] 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 review[271]. 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 unavoided 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 submissions[272]. We consider each in turn. We are assisted in this by the Greenaway Review[273].

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 accept[275] 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 Wanaka[277]. As we understand it that end point is simply where the shingly shoreline reaches Glendhu Bluff. We accept Mr Greenaway's view[278] 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 site[279] and which is part of PBPL's proposal.

[174] A consequence of that diversion is that there is no need to end the lakeshore track[280] 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 relatively[281] 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 places[282]. Mr Greenaway had not considered that at the time of the hearing[283]. For the UCT Trust Ms Tait said[284], 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 Trust[285].

[176] The Greenaway Review states[286] 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 unjustifiable[287]) 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 Bay[288] 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 states[289]:

> 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 cost[290] for signs, stiles and poles might be $8,000.

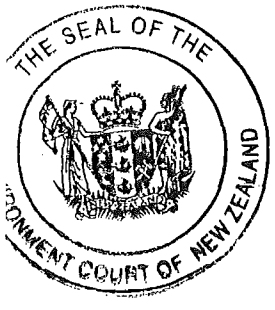
[178] Two other options close to Glendhu Hill (782 masl) are also considered in the Greenaway Review. First there is the option, raised by the court, of a track up Glendhu Hill from the golf course, or east side. The Greenaway Review states[291]:

> 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 plan[292] 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 states[293]:



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 $10,000[294]. 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 value[295]. 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 alternative[296]. 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 subdivision[297].

[182] The Greenaway Review[298] 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 access[299]. Mr Greenaway recommended[300] that the tracks be 'walking track' standard as defined in the New Zealand Standards[301]. That allows for mountain biking use[302]. The Standards describe these tracks as enabling use by relatively inexperienced visitors ... wanting a low level of risk[303] . Various prescriptions as to grade (15° maximum) a width (0.6 to 0.75 metres) and formation are given[304], 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 stated[305]:

> 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 costs[306] 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 reduced[307] 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 stated[308]:

---

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 Plan[309].

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 considering[310]. 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 wrote[311]:

> 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 subdivision[312] 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 implementation[313] 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 capacity[314] 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 Delta[315]:

> 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.

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

[201] Of Area F1, the Fern Burn, Mr Kruger wrote[316]:

> 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 wrote[317]:

> 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 homestead[318] 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 explained[319] 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 wrote[320]:

> 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' area[321] 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 evidence[322] 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 case[324] 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 Bay[325] 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* case[326] 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 safety[328] 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 kanuka[329]. 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.

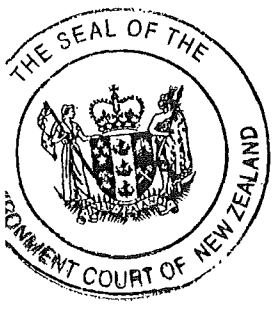
Section 6(a)

[225] We hold that the clubhouse and the accommodation[331] 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 report [336] 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 Darby[337], Mr Roche[338] and Mr Bayliss[339].

[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 wrote[342]:

> 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 analysis[343]:

> ... 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 analysis[344] in this table:

Table 2 Parkins Bay Golf Course Development Benefits

8% discount rate[345] ($ 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 were[347]:

---

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 conceded[348] 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 assumptions[349] he wrote that there would be benefits in the form of non-market returns[350] 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 2002[351]. This provided an opportunity to update my previous estimate of recreational user benefits[352] 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 wrote[353]:

---

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 claimed[354] 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 repeated[355] his earlier comment that evaluation of the impact of changes to the landscape be left to the experts.

[240] Dr Hazledine wrote[356]:

> [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 trannelled 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 answered[357] 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 overseas[358].

---

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 that[359]:

> 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 questioned[360] 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 evidence[361] (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 evidence[362] 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 designer[363] 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 follows[364]:

> 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].
363 J G Darby, evidence-in-chief para 2.3 [Environment Court document 2].
364 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 descriptions[366] of the issues, off the point where he refers to 'privatising' of the views[367], 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 conditions[368]. 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 Eglantine[369].

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 change[371] without detraction 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 eglanteria*). 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 topography[372] and will very likely improve local ecosystems[373].

[250] In terms of the most relevant objective and related policy in the urban growth section[374] 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 policy[375] about open space and recreation. The district plan is alert[376] 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 facilitate[377] "... 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 relative[379] 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 landscapes[380] and the visual amenities[381] 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 policy[382] and is part of the first[383] objective in Chapter 4). While we accept that the proposal is for residential development, the diagrams[384] 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 limited[385]. At this point we must not downplay the importance of the existing policy[386] 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 sprawls[387] along Mt Aspiring Road and we will consider that when we turn to (ac)cumulative[388] effects.

[256] We consider the proposal does recognise and protect[389] 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 policy[390] requiring structures to preserve the coherence of outstanding natural landscapes. We find this policy has been expressly addressed[391] in that:

- the proposed houses are long and low thus mimicking the line and form[392] 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 located[393] 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 roofs[394]) will complement[395] the existing dominant colours in the landscape.

Finally there are generous setbacks from Mt Aspiring Road which would maintain amenity values[396].

[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 consistent[397] with the patterns, topography and ecology of the immediate area, and will not obstruct views[398] 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 site[399]. 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 retained[400], and indeed enhanced by substantial further planting[401].

The golf course

[261] The land use promoted for the flats (which are the more open part of the site) would minimise[402] 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 evidence[404] 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 plans[405] 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 report[406] 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

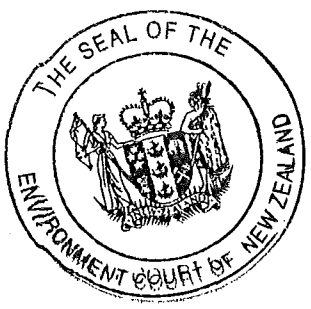
[276] PBPL's proposal is in many ways highly laudable. Because of its careful siting and thoughtful design it achieves many of the objectives of the operative district plan. Further, to the extent it constitutes "urban growth" – which in our view is more theoretical than practical in these proceedings – 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 evidence[407] bring the proposal closer to achieving the purpose of the RMA. But in his reply[408] 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 evidence[409] 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

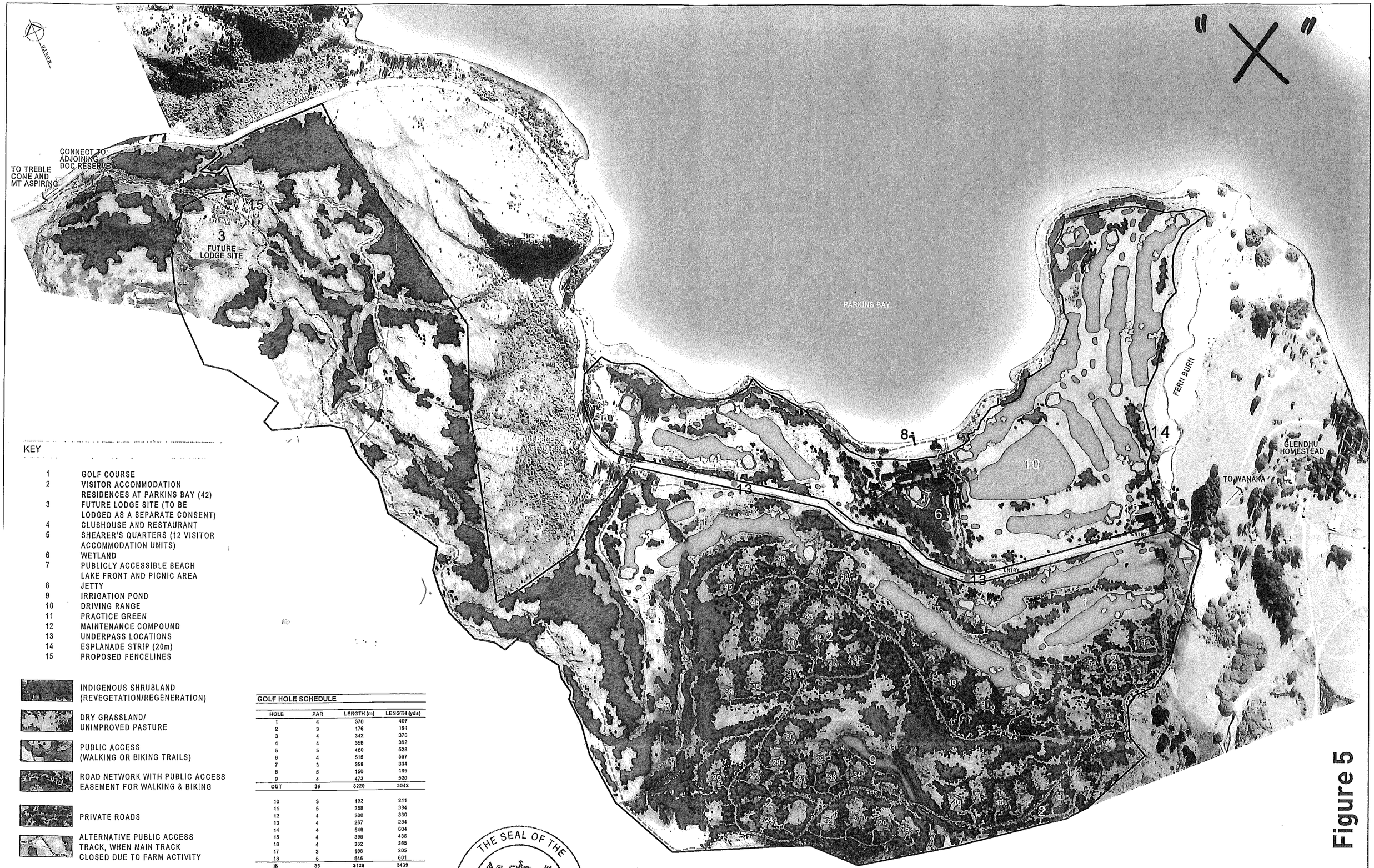
Attachments:

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)

Jacksoj/Jud_Rule/D/2008-CHC-113.doc.



KEY

1	GOLF COURSE
2	VISITOR ACCOMMODATION RESIDENCES AT PARKINS 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	356	392
5	5	460	528
6	4	515	567
7	3	358	394
8	5	150	165
9	4	473	520
OUT	36	3220	3542
10	3	192	211
11	5	358	394
12	4	300	330
13	4	257	284
14	4	549	604
15	4	398	436
16	4	332	365
17	3	186	205
18	5	546	601
IN	36	3126	3439
OUT	36	3220	3542
TOTAL	72	6346	6981

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

DARBY PARTNERS LIMITED
Level 1 Seymour Wharf, Lower Beach Street, Queenstown
P.O. Box 1181, Queenstown, New Zealand
T+643 441 1481 F+643 441 1431 E zone2@darbypartners.co.nz

0 500m

CRITCHER STATION
Parkins Bay Golf Course Master Plan

Scale: 1:2000 (2xA0); 1:8000(A3)

MDP-Rev EC, SEP 2009

REVISION: EC

Figure 5

MATUKITUKI RIVER

WANAKA - MT ASPIRING RD

ROYS PENINSULA

WEST WANAKA STATION

GLENDHU BAY

PARKINS BAY

ALPHA BURN STATION

CC5

CA4

CC2

CC1

QEII

CC4

CC5

QEII

CA3

CA6

A

CC1

CA1

CC3

Diamond Lake

CA5

Matukituki River

CA2

c

B

GLENDHU STATION
2900 Ha

b

a

WANAKA - MT ASPIRING RD

CATTLE FLAT STATION

MOTATAPU RIVER

MOTATAPU STATION

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

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

BARRY PARTNERS LIMITED

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 2019

"Z"

WEST WANAKA STATION

ALPHA BURN STATION

MOTATAPU STATION

MOTATAPU RIVER

C1

C2

CROWN

A

B

D

E

F

G

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.

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

PARKS BAY PARTNERS LIMITED

100 200 400 600 800m

Scale 1:25,000 (A3)

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_Pr covenants-option 2 | March 2010 | EC | REVISION

TAB 14

BEFORE THE ENVIRONMENT COURT

Decision No. [2012] NZEnvC 74

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
(sitting alone under section 279(1) of the Act)

In Chambers at Christchurch

Date of Decision: 27 April 2012

Date of Issue: 2 May 2012

THIRD (FINAL) DECISION

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Under sections 279 and 291 of the Resource Management Act 1991 the Environment Court confirms the grant of resource consent to Parkins Bay Preserve Limited for the construction, provision and use of:

- an 18 hole championship golf course located either side of the Mt Aspiring Road;
- 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 m^2 and 8,719 m^2;
- ecological enhancement of approximately 65 hectares in accordance with a revegetation strategy including planting of locally appropriate native plants in the golf course and around the proposed houses;
- covenanted areas from which stock are precluded to allow natural revegetation to occur;
- 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 along Parkins Bay, northwest of the Clubhouse to form a link to the second underpass under Mt Aspiring Road; 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

– upon the terms and conditions set out in Appendix B to this decision and in accordance with the plans and maps set out in Appendix C.

REASONS

[1] By decision[1] dated 1 March 2012 the Environment Court granted consent[2] to Parkins Bay Preserve Limited to construct, plant, create and use:

- an 18 hole championship golf course located either side of the Mt Aspiring Road;
- a series of lakeside buildings, including:
  (a) a club house with restaurant and café;

1 Decision [2012] NZEnvC 43.
2 Decision [2012] NZEnvC 43, Order C.

(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 m^2 and 8,719 m^2;

– conditionally upon certain matters being attended to.

[2] Attached marked "A" is an appendix setting out counsel's analysis (in a memorandum dated 13 April 2012) of:

(1) changes requested by the court; and
(2) the consequential amendments made to the conditions of consent and/or plans.

The applicant has now volunteered all the matters suggested by the court.

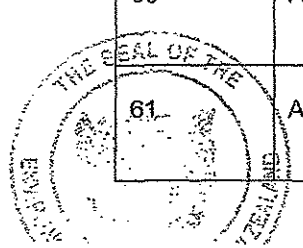
[3] I have been through the analysis in the attachment and examined the plans and conditions. The amendments look appropriate to deal with the court's concerns and therefore final orders can now be made.

J R Jackson
Environment Judge

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Paragraph reference	Amendment Requested by the Court	Amendment made to the Conditions of Consent and/or Plans
62	Reinstatement of the track along the marginal strip to the northwest of the clubhouse.	The track has been reinstated on the Concept Master Landuse Plan and the Proposed Clubhouse Plan Figure 10a. It is also included in the Public Access Tracks Plan.

Paragraph reference	Amendment Requested by the Court	Amendment made to the Conditions of Consent and/or Plans
50	Additional condition requiring that the crossing be fenced off immediately above and below the culvert to keep the integrity of the marginal strips. Such fencing could be temporary or permanent. A new stock crossing of the Fern Burn is to be established upstream in Wetland E.	Condition 41(y) has been amended to incorporate these recommendations. Condition 41(y) provides for two crossing points adjacent to Wetland E to enable this additional crossing point.
51	That Wetland E should be fenced at the top of the demarcating bank on the eastern side.	Condition 41(y) has been amended to incorporate these recommendations.
56	Amendments to the track conditions to include reference to the "QLDC".	Schedule A of the conditions has been amended to incorporate reference to the "Council".
58 - 59	Amendments to the condition for the Motatapu Road track, so that the track follows the first 400m of road where it goes through a low cutting to reach the terraces above the Mt Aspiring Rd. The track could be located on either the McRae land (or the road margin if that can be accomplished) for the first 400m to clearly show users of Te Araroa footpath where they are to go when they turn away from the lake. The Court also considered that neither the fencing nor the track should go beyond the existing road boundary fence where that is directly above Wetland E.	Condition 41(d) has been amended to incorporate the changes requested.
60	Amendments to the fencing around Wetland E.	Condition 41(y) has been amended to incorporate the suggested changes.
61	Amendments to the condition for the Motatapu River Track.	The additional wording suggested by the Court has been included within condition 41(f).

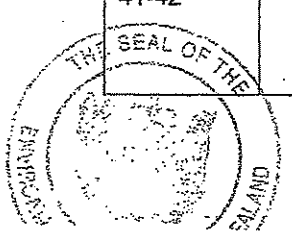


Paragraph reference	Amendment Requested by the Court	Amendment made to the Conditions of Consent and/or Plans
41, 42 and 47	• Location of the site boundary and stock route on the eastern side of wetland C;	A boundary adjustment has been undertaken on Plan B to include the ephemeral stream on the western side of Wetland C within the site boundary to ensure it is not within the proposed stock route.
41-42	• Removal of any unnecessary fencing on Plan B.	Plan B has been amended to remove any necessary fencing. This is further indicated by the words "Existing Fences to be retained" in the Key to Plan B and BI.
44	Amendment to the wording of Covenant Area G to enable 'regeneration of native forest or other vegetation'.	Condition 41(a)(viii) has been amended to include the changes requested.
46 - 48	A more detailed plan showing the proposed stock route, boundaries of the development site and fencing in the vicinity of Wetland C.	An additional plan (Plan BI) has been prepared which shows an enlarged view of Wetland C, including the location of the wetland, the stock route and the development site. The plan shows the separation between Wetland C, the stock route and the site boundary. The plan also includes the proposed culverts within the stock route.
46	Identification of the location of the public access track through Covenant Area D to generally follow the stock route.	The location of this track has been identified in the key on the Parkins Bay Golf Course Master Plan.
47	That a slight boundary adjustment is made to the plans southwest of Wetland C so that Covenant Area D includes the fall line of the ephemeral stream rather than crossing and recrossing the stream.	The site boundary has been amended on the Parkins Bay Golf Course Master Plan and Plan B. The location of the ephemeral stream in relation to the site boundary is also indicated on Plan BI.

Appendix A

Table of changes requested in the Environment Court Decision, dated 1 March 2012

Paragraph reference	Amendment Requested by the Court	Amendment made to the Conditions of Consent and/or Plans
32	That the additional condition proposed (outlined in paragraph 5.5 of Mr JG Darby's second supplementary statement of evidence at paragraph 5.5) be deleted as it is not necessary.	Condition 41(w) on the conditions attached at Appendix 2 has been deleted.
34	That the condition for Covenant Area E be amended to ensure that further subdivision (after exclusion of the delta block) would not result in residential accommodation on the delta.	Condition 41(a)(v)(ff) regarding the construction of an additional residential unit ancillary to the existing house has been deleted.
36	That the condition regarding the limitations of use of a marquee within Covenant Area E be amended enable a marquee to be erected the day before an event and taken down the day after an event (subject to future resource consent approval).	Condition 41(a)(v)(dd) has been amended to reflect the changes recommended by the Court.
41-42	That Plan B be amended to: • Provide additional fencing of the ephemeral stream paths above and in the vicinity of Wetlands B and C;	The area of the stream from Wetland A where it flows under the existing fence line has been included with Area 2 and Wetlands B and C in one enlarged Area 2 as shown on Plan B attached at Appendix 3.
41-42	• Fencing off of the stock route from the streams which follow the runnel (above and below the crossing points);	Additional fencing has been included on Plan B to ensure that the stream which follows the runnel is fenced both above and below the proposed stock crossing points.



Appendix B – Conditions of Consent (clean version)

Parkins Bay Conditions of Consent [April 2012]

General Conditions

1. That the activity be undertaken in accordance with the application and subsequent amendments (except to the extent that they are inconsistent with the following conditions) as shown on the plans referenced:

- Glendhu Station Stage 0: Master Plan, revision EC, dated Sep 2009;
- Glendhu Station Stage 1: Master Plan, revision S1 EC, dated Sep 2009;
- Glendhu Station Stage 2: Master Plan, revision S2, EC, dated Sep 2009;
- Glendhu Station Stage 3: Master Plan, revision S3, EC, dated Sep 2009;
- Glendhu Station Parkins Bay Golf Course Master Plan, revision EC, dated April 2012;
- Parkins Bay Indicative Vegetation Categories Plan dated Sep 2009;
- Parkins Bay Glendhu Station Concept Master Landuse Plan, dated 12 April 2012;
- Parkins Bay Glendhu Station Public Access Tracks Plan, dated 12 April 2012;
- Parkins Bay Glendhu Station Covenant Areas Plan, dated June 2011;
- Parkins Bay Detail A Proposed Public Easement and Covenant area, dated Sep 2009
- Parkins Bay Detail B Proposed Covenant Areas, dated June 2011;
- Parkins Bay Detail 1 Proposed Club House area Figure 10a, dated 12 April 2012;
- Parkins Bay Detail 2 Maintenance Compound Site Plan, September 2009;
- Parkins Bay Visitor Accommodation Residences Site Location Plan;
- Parkins Bay Visitor Accommodation Residences Building Mitigation Plan;
- Parkins Bay Proposed Golf Course Earthworks Plan, dated August 2009;
- Parkins Bay Entry Gate elevation, dated September 2009;
- Parkins Bay Plan B, dated 12 April 2012;
- Parkins Bay Plan BI, dated 12 April 2012;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan; House Site 1, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 3 and 4, date; Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 5, dated Sep 2011;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 6, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 8, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 9, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 10, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 11, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 13, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 16 & 17, dated Sep 2011;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 18, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 19, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 20, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 21 & 22, dated Sep 2009;

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 24, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 26, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 27, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 29 & 30, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 31 & 32, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 33 & 34, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 35 & 36, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 37, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 38 & 39, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 40, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 41 & 42, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 43 & 44 , dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 45, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 46 & 47, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 48, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 49, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 50, dated Sep 2009;

a. The Clubhouse is to be moved back 3 metres from the position identified in the plan referenced Parkins Bay Detail 1 Proposed Club House area Figure 10a, dated 12 April 2012, and any necessary amendments required to be made to the layout accordingly;

b. The south-western boundary of Development Site is to be located as shown on the Parkins Bay Glendhu Station Concept Master Landuse Plan, dated 12 April 2012;

c. The public access track through the visitor accommodation residential units area (Area B) shall be in the location outlined on the plan referenced Parkins Bay Glendhu Station Concept Landuse Master Plan, dated 12 April 2012.

2. The consent holder shall pay to the Council an initial fee of $240 for the costs associated with the initial monitoring of this resource consent in accordance with section 35 of the Resource Management Act 1991 and any ongoing costs associated with the monitoring of this decision.

3. Upon completion of the proposed activity, the consent holder shall contact the Monitoring Section at Council to arrange a time for an inspection of the proposed work to ensure all conditions have been complied with

Timeframe and Staging

The lapsing date of this consent under section 125 of the Resource Management Act 1991 shall be ten years from the commencement of the consent

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

5. The programme for implementation of the consent, including landscaping, shall be staged generally in accordance with the timing outlined below, subject to compliance with Condition 8 below, relating to certification of planting for visitor accommodation residences. Each stage shall be completed to the satisfaction of Council, within the specified timeframe and before the next stage commences.

The proposed staging is as follows:

i. **Stage 1 - within approximately 24 months of the works commencing on site.**

- Eco source seed stock and grow-on in nursery
- 18 hole golf course/driving range and maintenance compound
- Clubhouse
- Shearer's quarters
- 10 x Visitor Accommodation Residences (Units 24, 29, 31, 32, 34, 35, 36, 42, 43 & 44)
- Access road, car park and golf underpasses
- Jetty
- Roading earthworks
- Earthworks for the building platforms of the 42 visitor accommodation residences
- Re grass/sow-out exposed golf villa earthworks
- Sow out entire golf course. This is to be done progressively as holes are completed and irrigation is available.
- 2ha mitigation revegetation planting as detailed in the Revegetation Strategy prepared in accordance with Condition 6
- Creation of the public access tracks and appropriate access easements.
- Install new farm fencing as required
- The removal of the row of Douglas Fir Trees to the southeast of the development site
- Removal of conifers as required by Condition 41(r).
- The golf course shall be constructed prior to the occupation of the visitor
- accommodation residences specified in Stage 1

ii. **Stage 2 - within 24 months of the completion of Stage 1**

- 6ha of mitigation revegetation as detailed in the Revegetation Strategy prepared in accordance with Condition 6
- 20 x Visitor Accommodation Residences (Units 1, 3, 4, 5, 8, 9, 10, 11, 13, 16, 18, 19, 20, 30, 33, 38, 47, 48, 49 & 50)

iii. **Stage 3 – within 24 months of the completion of Stage 2**

- Remaining revegetation as detailed in the Revegetation Strategy prepared in accordance with Condition 6
- 12 x Visitor Accommodation Residences (Units 6, 17, 21, 22, 26, 27, 37, 39, 40, 41, 45, 46).
- Fencing off the Stock Route shown on Parkins Bay Plan B dated 12 April 2012 to prevent stock accessing the regeneration areas in Covenant Area D identified on the Parkins Bay Glendhu Station Covenant Areas Plan dated June 2011.
- Fencing of the areas required by Conditions 41(w) and 41(y).

Planting Plan

6. The consent holder shall prepare and implement a Revegetation Strategy that achieves the following objectives:

To provide a vegetation cover framework of Kanuka and other appropriate native species in the short term, which can be become the basis for biodiversity enhancement as the project develops,

- To provide screening for residential buildings for viewers from the road in accordance with the attached plans and the Revegetation Strategy,
- To reflect the underlying of landform and soils in the native vegetation cover of the site,
- To achieve eventual revegetation of the Gully shown on Parkins Bay Plan B dated 12 April 2012 with a mix of locally sourced native species including Totara.
- To achieve eventual revegetation of the Moraine Slope shown on Parkins Bay Plan B dated 12 April 2012.
- To ensure that the "rough" areas of the golfcourse, being the vegetated areas not required to be mowed or otherwise maintained, regenerate naturally (excluding noxious weeds).
- To link with other revegetated areas outside the site;

The Revegetation Strategy shall identify those steps that need to be undertaken in each of the three areas shown on the attached plans referenced Glendhu Station Stage 1: Master Plan, Glendhu Station Stage 2: Master Plan, Glendhu Station Stage 3: Master Plan, dated September 2009 to give effect to the Strategy.

The Revegetation Strategy shall include:

- timing of planting and replacement/additional planting over 5 years;
- details of the management proposed from the time of granting consent up to 10 years after initial planting - site preparation, weed control, pest control, any watering or fertilisers, stock control and maintenance;
- details of plant sources;
- protection measures for existing values - wetlands, lake shore, lake water quality;
- integration of planting with other components of the development - earthworks, construction;
- fencing of the regeneration area for stock to pass through parts of the site;
- the replacement of the existing poplar trees next to the clubhouse and shearer's accommodation if they become diseased or die. Root stock shall be sourced from the existing healthy Lombardy poplars which are to be taken and grown on for this purpose

Prior to the commencement of the construction the consent holder shall provide the Revegetation Strategy for certification by Council.

7. Prior to the commencement of any construction of the visitor accommodation/residential units the consent holder shall provide for the certification of the Council details of all earth mounds, if any, and their respective volumes, location and elevations required to provide screening for the visitor accommodation/residential units which shall be tied into existing landforms and organically shaped to be congruent with their respective surroundings.

8. Prior to the construction of visitor accommodation / residential units for:

Stage 1 and 2 (as specified in Condition 5), certification shall be obtained from the Council that the planting conforms to the certified Revegetation Strategy for those stages and that more than 75% of the plants are live and healthy at a period of 12

months from the date of establishment. All diseased or dying plants shall be replaced to the satisfaction of the Council.

b. Stage 3 (as specified in Condition 5), certification shall be obtained from the Council that the planting conforms to the certified Revegetation Strategy for that stage and that more than 75% of the plants are live and healthy and at an average height of 3 metres. All diseased or dying plants shall be replaced to the satisfaction of the Council.

9. Planting for all visitor accommodation residences implemented in accordance with the Revegetation Strategy shall be irrigated for a period of five years from establishment to ensure optimal growth rates. To avoid fire risk all planting shall be located at an appropriate distance from any residential villa.

10. All planting implemented in accordance with the Revegetation Strategy is to be:

a. Maintained for a period of ten years from the first season of planting to the satisfaction of Council.

b. All diseased or dying plants shall be replaced to the satisfaction of Council.

c. An annual report on the maintenance and health of planting is to be provided to the Council for a period of ten years from the first season of planting.

The Council may serve notice of its intention to review, amend or add to the Revegetation Strategy to require additional planting, as may be required in order to achieve the Objectives outlined in Condition 6. Revegetation is to be protected by a covenant registered on the land title that will protect the planting in perpetuity.

Lighting

11. All exterior lighting shall be fixed and no higher than 1 metre above finished ground level, capped, filtered or pointed downwards and screened so as to reduce lux spill. There shall be no lighting of the vehicle access ways within the site. The lighting shall be limited to:

a. Lighting at the entry point to the golf course.

b. Sensor lights in the arrival forecourts for each of the visitor accommodation residences to allow for safe navigation from the garage. These will be limited to downlights on either side of the garage and entry doors and will be located on the south side of the buildings.

c. Bollard and subtle up-lighting around the Clubhouse and the Shearers' Quarters.

d. Solar LED lights on the path between the Clubhouse and the Shearers' Quarters.

e. A navigation light at the end of the jetty.

f. Road lighting limited to low wattage, solar LED catseye lights placed at intersections in the middle of the road. These are to provide a visual cue to denote the intersection.

Ongoing Management Obligations

12. No person is permitted to remove or physically alter the approved earth mounds and landscaping.

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

13. No person shall be permitted to plant exotic trees other than those tree species (or similar, subject to approval by Council) specified within the Planting Plan approved pursuant to Condition 6).

14. The consent holder shall provide for the on-going management of wilding plants and animal pests over the Development Site as outlined in the Revegetation Strategy approved pursuant to Condition 6.

Engineering

15. All engineering works shall be carried out in accordance with the Council's policies and standards, being New Zealand Standard 4404:2004 with the amendments to that standard adopted on 5 October 2005, except where specified otherwise.

16. The owner of the land being developed shall provide a letter to the Council advising who their representative is for the design and execution of the engineering works and construction works required in association with this development and shall confirm that these representatives will be responsible for all aspects of the works covered under sections 1.4 and 1.5 of NZS4404:2004 "Land Development and Subdivision Engineering", in relation to this development.

17. Prior to the commencement of any building construction the consent holder shall provide to the Council a geotechnical report, prepared by a suitably qualified and experienced geotechnical engineer, which certifies that all building platforms are capable of supporting the proposed buildings, are suitable for the activity and are free from inundation, subsidence, erosion and slippage and otherwise suitable for the proposed use.

18. Prior to the commencement of any work on the land being developed the consent holder shall provide to the Council for review copies of specifications, calculations and design plans as is considered by Council to be both necessary and adequate, in accordance with Condition (15), to detail the following engineering works required:

    a. The construction of all roads within the development to be in accordance with the guidelines provided for in Table 3.2(a) of the NZS4404:2004 amendments as adopted by the Council in October 2005. Internal roads serving the Shearers Quarters, Golf Course and Clubhouse shall be constructed to the standards of a Local road as a minimum standard. All internal roads may remain in private ownership and shall be maintained by the consent holder. Passing bays are to be provided on one way carriageways as required but at maximum intervals of 100 metres.

    b. The construction of the intersections of the new roads to serve the development with the Wanaka–Mt Aspiring Road to be in accordance with Council's standards and in accordance with the information supplied with the application with respect to sight distances. The sight distance from the main golf course entrance to the west is to be improved by removing obstructing trees and shrubs on the bend in Wanaka–Mt Aspiring Road. This visibility splay is to be maintained by the consent holder on a continuing basis. The intersections for both the main golf course roads and the residential chalets road shall be formed in accordance with Diagram 4 of the PODP and also in accordance with the Council's Rural Roading Corridors – Corridor Management Guideline (particularly Section 4.10 – Slip Lanes).

    c. The construction of all vehicle manoeuvring areas and car parks specified in the application to serve the development are to be constructed in accordance with the attached Plan referenced "Parkins Bay Detail 1 Proposed Clubhouse Area, Figure 10a, dated 12 April 2012. This plan shows 12 covered parking spaces adjacent to the clubhouse, a 40 space gravel car parking area adjacent to the clubhouse, a ten space gravel car park area adjacent to the bus turning bay/parking area and 16 spaces to be provided on all weather surfacing along the access road under the trees; one gravel bus

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

turning bay/parking area and an overflow parking area for at least 150 vehicles that is not required to be formed

d. All walking and cycling tracks marked by blue dotted lines on the attached plan referenced Parkins Bay Glendhu Station Concept Master Landuse Plan dated 12 April 2012 shall be constructed and maintained in accordance with the Walking Track Standard as defined in the Standard New Zealand Handbook for Tracks and Outdoor Visitor Structures (SNZ HB 8630; 2004), except as specified in Condition 41.

e. The construction of the underpasses under Wanaka–Mt Aspiring Road are to be designed by a suitably qualified and experienced engineer. These underpasses are to be approved by the Council and all necessary permits and licenses are to be applied for and granted prior to undertaking any development on site. If the necessary Council approvals are not granted then the consent holder shall submit a revised traffic assessment for approval that addresses any issues with the golf course and other internal traffic crossing Wanaka–Mt Aspiring Road.

f. The consent holder shall obtain approval from the Council and all necessary permits and licences are to be applied for and obtained prior to commencing construction of the jetty including the pontoon.

g. The provision of a water supply to each residence and all other components of the development in terms of Council's standards. Each residence shall be supplied with a minimum of 2100 litres per day of potable water that complies with the requirements of the Drinking Water Standard for New Zealand 2005. All other components of the development are to be supplied with the quantity of potable water that complies with the requirements of the Drinking Water Standard for New Zealand 2005 specified in the application.

h. The provision of fire hydrants with adequate pressure and flow to service each residence with a Class W3 fire risk in accordance with the NZ Fire Service Code of Practice for Firefighting Water Supplies 2003. Any lesser risk must be approved in writing by Fire Service NZ, Dunedin Office.

i. The provision of fire hydrants with adequate pressure and flow to service each component of the development with the appropriate Class of fire risk in accordance with the NZ Fire Service Code of Practice for Firefighting Water Supplies 2003. Any lesser risk must be approved in writing by Fire Service NZ, Dunedin Office.

j. The provision of sealed vehicle crossing to each residence site from internal roads to be in terms of Diagram 2, Appendix 7 and Rule 14.2.4.2 of the Partially Operative District Plan. This shall be trafficable in all weathers and be capable of withstanding a laden weight of up to 25 tonnes with an axle load of 8.2 tonnes or have a load bearing capacity of no less than the public roadway serving the property, whichever is the lower. Provision shall be made to continue any roadside drainage.

k. The provision of a stormwater disposal system that is to provide stormwater disposal from all impervious areas within the site. The proposed stormwater system shall be designed by a suitably qualified professional as defined in Section 1.4 of NZS4404:2004 and subject to the review of Council prior to implementation.

l. The provision of an access way to each residence that complies with the guidelines provided for in Table 3.2(a) of the NZS4404:2004 amendments as adopted by the Council in October 2005.

m. The provisions of an effluent disposal system designed by a suitably qualified professional as defined in section 1.4 of NZS4404:2004in terms of AS/NZS 1547:2000 that will provide sufficient treatment / renovation to effluent from on-site disposal, prior to

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

discharge to land. To maintain high effluent quality such a system would require the following:

- Specific design by a suitably qualified professional engineer.
- A requirement that each component of the development must include systems that achieve the levels of treatment determined by the specific design.
- Regular maintenance in accordance with the recommendations of the system designer and a commitment by the owner of each system to undertake this maintenance.
- Intermittent effluent quality checks to ensure compliance with the system designer's specification.
- Disposal areas shall be located such that maximum separation (in all instances greater than 50 metres) is obtained from any watercourse or water supply bore.
- The system is to be designed and constructed in accordance with the information supplied in the application in particular the report prepared by Glasson Potts Fowler (ref 9198GLE-1A dated July 2006)

n. The drinking water supply is to be monitored in compliance with the Drinking Water Standards for New Zealand 2005 for the presence of E.coli, by the management group for the development, and the results forwarded to the Council. The Ministry of Health shall approve the laboratory carrying out the analysis. Should the water not meet the requirements of the Standard then the management group for the lots shall be responsible for the provision of water treatment to ensure that the Drinking Water Standards for New Zealand 2005 are met or exceeded.

o. In the event that the number of persons to be accommodated in any residence is to be greater than three, then the Council will require commensurate increases in the water supply to that lot at the rate of 700 litres per extra person per day.

p. All water tanks to be underground.

19. Prior to the occupation of any visitor accommodation residential unit, or of the Clubhouse, or of the Shearers Quarters, or of the Maintenance Compound the consent holder shall complete the following for each stage (as specified in condition 5):

a. The submission of 'as-built' plans and information required to detail all engineering works completed in relation to or in association with the appropriate part of this development.

b. The completion of all relevant works detailed in condition 18 above.

c. The consent holder shall provide a suitable and usable power supply and telecommunications connection to the residences and all other components of the development. These connections shall be underground from any existing reticulation and in accordance with any requirements/standards of Aurora Energy/Delta and Telecom.

20. Prior to commencing work on the site the consent holder shall obtain all necessary consents relevant to that work from the Otago Regional Council. This shall include, but is not restricted to, all necessary consents for the construction of a jetty in Lake Wanaka.

21. Prior to commencing any work on the site the consent holder shall install a vehicle crossing, which all construction traffic shall use to enter and exit the site. The minimum standard for this crossing shall be a minimum compacted depth of 150mm AP40 metal. This crossing shall be

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

upgraded in accordance with Council's standards, or removed, at the time development is undertaken on the site.

22. Prior to commencing works, the consent holder shall submit to Council for review a site management plan for the works.

23. All retaining systems, permanent or temporary, shall be designed by a suitably qualified and experienced engineer. The designs shall be submitted to the Council for approval prior to installation.

24. The consent holder shall provide Council with the name of a suitably qualified professional as defined in section 1.4 of NZS4404:2004 who is to supervise the excavation procedure. This engineer shall continually assess the condition of the excavation and implement any design changes / additions if and when necessary.

25. All temporary retention systems shall be installed immediately following excavation to avoid any possible erosion or instability.

Landscape

26. Final colours for the maintenance building, visitor accommodation/residential units and jetty shall be submitted to Council for approval prior to development commencing on the site. In this instance, the final colour scheme for these buildings and structures shall appear appropriately recessive throughout all seasons of the year and within the natural colour ranges of browns, greens and greys as indicated throughout the surrounding landscape.

27. Prior to development commencing on the site, elevations of all buildings within the maintenance compound shall be submitted to Council for approval. The external appearance of these buildings shall be consistent with the rural context within which they are located.

28. A site plan shall be submitted to Council for approval prior to development commencing, which indicates the location and form of all batter slopes and areas of fill. The consent holder should aim to achieve batter slopes and areas of fill which have a maximum gradient of 1:3 (rise:run), with natural undulations across vertical and horizontal planes, as well as smooth transitions in changes in slope, to ensure that these are integrated as much as possible into the existing landform character.

29. In regards to golf course holes 1, 2, 5, 8 and 9; prior to development commencing on the site, further details of the proposed earthworks and finishing of the proposed golf course holes shall be submitted to Council for approval in relation to achieving a naturalised contour.

30. At the completion of earthworks for each stage (as specified in Condition 5), grassing shall occur within six weeks, to ensure that exposed areas of soil do not direct additional attention to the earthworks.

31. Any fencing within the development site shall be restricted to post and wire fencing to a maximum height of 1.2m only, with the exception of the fencing of the regeneration area for stock to pass through as identified within the Revegetation Strategy prepared in accordance with Condition 6.

Earthworks

32. Prior to commencing earthworks on the site the consent holder shall submit to the Council a detailed site plan of all of the earthworks proposed including depth of cut and fill and the proposed finished shape of the land. The accurate earthwork volumes need to be firmly calculated. Earthwork calculations and finished levels of all earthworks are to be supplied to Council.

33. The consent holder shall undertake measures to prevent sediment run off from the site and to prevent a dust nuisance resulting from the works on the site. These measures shall be installed prior to commencing earthworks on the site.

34. A suitably qualified engineer shall assess site conditions and determine safe working conditions with regards to batters and any retention that may be required.

35. The consent holder shall implement suitable measures to prevent deposition of any debris on surrounding roads by vehicles moving to and from the site. In the event that any material is deposited on any roads, the consent holder shall take immediate action, at their expense, to clean the roads. The loading and stockpiling of earth and other materials shall be confined to the subject site.

36. At the completion of the earthworks for each stage (as specified in Condition 5) a suitably qualified Registered Engineer experienced in soils investigations shall provide certification, in accordance with NZS 4431 for all areas of fill within the site on which buildings are to be founded.

37. The earthworks shall be undertaken in a timely manner. Any excavation shall not remain open long enough to enable any instability (caused by over exposure to the elements) to occur.

38. No earthworks, temporary or permanent, are to breach the boundaries of the site

39. At the completion of the earthworks, all earthworked areas shall be topsoiled and grassed or otherwise permanently stabilized as soon as practicable, subject to Condition 29.

40. Upon completion of the earthworks, the consent holder shall remedy any damage to all existing road surfaces and berms that result from work carried out for this consent.

Covenants

41. Prior to the construction of any buildings on the site the consent holder shall register a covenant, in accordance with section 108(2)(d) of the RMA, in favour of the Council.

For the purpose of Condition 41(a) Stage 3 shall be 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).

The covenant shall provide for the following:

Development Restrictions

a. In respect of the areas identified on the attached plans referenced "Parkins Bay Glendhu Station Covenant Areas Plan" dated June 2011 and "Parkins Bay Detail B Proposed Covenant Areas" dated June 2011:

i. The area marked A Bull Paddock shall be covenanted as follows:

aa. 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 there shall be no further development except that this restriction does not prohibit subdivision;

bb. Regardless of titling structure and/or ownership, the clubhouse shall at all times be available to cater to, and for use by, users of the golf course as a place for rest, shelter, refreshment and possibly entertainment. If at any time in the future the land containing the proposed or existing clubhouse is subdivided from the land containing the proposed or

existing golf course, a consent notice shall be registered against both resulting titles recording this ongoing consent obligation.

cc. All activities which are carried out within, and any future allotments which are created from, A Bull Paddock area shall share one access off Mt Aspiring Road.

ii. 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 of the golf course and the 42 house-sites, and the subdivision and development of eight visitor accommodation/residential units.

Advice Note: For the avoidance of doubt this consent only authorises 42 visitor accommodation/residential units. Any future application for up to eight additional visitor accommodation/residential units within Area B will require a variation to this consent or a new consent and a rigorous assessment of the measures proposed to sufficiently mitigate any potential adverse visibility/domestication effects.

iii. 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;

iv. The area marked C2 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 implementation of Stage 3, against further development not associated with usual farming activities, but not prohibiting:

aa. activities for camping purposes;
bb. subdivision to separate the area marked C2 from the rest of the land currently contained in Certificate of Title 478353;
cc. a subdivision which will create a separate certificate of title for the area marked X within C2; and
dd. any boundary adjustment which does not create additional titles;

v. Subject to subclause vi below, the area marked E shall be covenanted in perpetuity from the date of the grant of consent against further development, but not prohibiting:

aa. 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;

bb. Any alterations, repairs or extensions to the existing dwelling located on the land;

cc. The construction of a shed for the purpose of storing farming and landscaping equipment;

dd. The erection of any temporary buildings such as marquees and other shelters used for the purpose of conducting weddings and reception functions, for not more than 12 calendar days per year, and a maximum of 6 occasions.;

ee. The construction of a chapel;

vi. The restriction detailed in v. above relating to temporary buildings for weddings and reception functions shall take effect on and from the date the clubhouse is constructed and operational.

vii. The area marked F 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:

aa subdivision to separate the area marked F from the rest of the land currently contained in Certificate of Title 478353;
bb subdivision for farming purposes;
cc any boundary adjustment which does not create additional titles;
dd the relocation, repair and replacement of the existing homestead and ancillary buildings;
ee the construction, repair and relocation of any improvements or buildings which relate to the farming activities carried out on the land;
ff the construction of two further residential dwellings on the land and any subsequent repairs and alterations to those residential dwellings;

viii 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 or regeneration of native forest or other vegetation, but not prohibiting any boundary adjustment which does not create additional titles.

Public Access Easements

b. The consent holder will enable public access by way of a registered easement in gross over the area identified in red, as number 12, on the attached plan referenced "Parkins Bay Detail A Proposed Public Easement", dated September 2009, in favour of the Council to enable public access to this area in perpetuity.

c. The consent holder will enable public access by way of a registered easement in favour of the Council along a route between Rocky Hill (CA1) and the Matukituki River in the location approximately shown as a blue dotted line on the attached plan referenced "Parkins Bay Glendhu Station Concept Master Landuse Plan" dated 12 April 2012, subject to the following conditions:

- The access route shall be restricted to a route connecting Rocky Hill (CA1) and the Matukituki River that will be marked by bollards and/or poles and signs erected by the consent holder.
- Public access shall be restricted to walking access only.
- The conditions detailed in Schedule A.

Advice note: The Council shall be responsible for the maintenance of the access route.

d. The consent holder will enable public access by way of a registered easement in favour of the Council along a route along the Motatapu Road between the Mt Aspiring Road and the Motatapu Track, in the location approximately shown as a blue dotted line on the attached plan referenced "Parkins Bay Glendhu Station Concept Master Landuse Plan" dated 12 April 2012, subject to the following conditions:

- The access route shall be restricted to a specific route (which shall be for the first 400m of the road where it goes through a low cutting to reach the terraces above Mt Aspiring Road). And shall be a formed and marked walking/cycling track either on the farm land or the road margin (if that can be achieved), to clearly show users of Te Araroa footpath where they are to go when they turn off from the lake.
- Public access shall be restricted to walking access only.

- The conditions detailed in Schedule A.

Advice note: The Council shall be responsible for the maintenance of the access route.

e. The consent holder will enable public access by way of a registered easement in favour of the Council along a route from the development site to Glendhu Hill, in the location approximately shown as a blue dotted line on the attached "Parkins Bay Glendhu Station Concept Master Landuse Plan" dated 12 April 2012, subject to the following conditions:

- The access route shall be restricted to a specific route that will be marked by bollards and/or poles and signs erected by the consent holder.
- Public access shall be restricted to walking access only.
- The conditions detailed in Schedule A.

Advice note: The Council shall be responsible for the maintenance of the access route.

f. The consent holder will enable public access by way of a registered easement in favour of the Council along a route between easement areas V and W on SO 347712 along the Motatapu River, in the location approximately shown as a blue dotted line on the attached plan referenced "Parkins Bay Glendhu Station Concept Master Landuse Plan" dated 12 April 2012, subject to the following conditions

- The access route shall be restricted to a specific route that will be marked by bollards and/or poles and signs erected by the consent holder. This route will use both the marginal strip and enable access by way of easement over parts of the adjacent land where access along the marginal strip is not available due to erosion of the river bank;
- Public access shall be restricted to walking and mountain biking access only.
- In the event that the river erodes both the marginal strip and the land over which the easement runs, the landowner will, when requested, provide an alternative easement (to be surveyed and registered, formed, and maintained by the council at its request).
- The conditions detailed in Schedule A.

Advice note: The Council shall be responsible for the maintenance of the access route.

g. The consent holder will enable public access by way of a registered easement in favour of the Council along a route from the development site to the Motatapu Road and continuing southeast to the boundary with Alpha Burn Station, in the location approximately shown as a blue dotted line on the attached plan referenced "Parkins Bay Glendhu Station Concept Master Landuse Plan" dated 12 April 2012, subject to the following conditions:

- The access route shall be restricted to a specific route that will be formed and marked by signs erected by the consent holder.
- Public access shall be restricted to walking and mountain biking access only.
- The conditions detailed in Schedule A.

Advice note: The Council shall be responsible for the maintenance of the access route.

h. The consent holder will enable public access by way of a registered easement in favour of the Council along a route between Rocky Hill (CA1) and the Motatapu River in the location approximately shown as a blue dotted line on the attached plan referenced "Parkins Bay Glendhu Station Concept Master Landuse Plan" dated 12 April 2012, subject to the following conditions:

- The access route shall be restricted to a route connecting Rocky Hill (CA1) and the Motatapu River that will be marked by bollards and/or poles and signs erected by the consent holder.
- Public access shall be restricted to walking access only.
- The conditions detailed in Schedule A.

Advice note: The Council shall be responsible for the maintenance of the access route.

i. The consent holder will procure variation of the terms of the easement EI 6594177.5, so that mountain biking is permitted over the easement areas V, W and Section 19 on SO 347712, and will procure registration of an instrument providing for that variation on the relevant certificate of title.

j. The consent holder will procure variation of the terms of the easement EI 6594177.7, so that mountain biking is permitted over the easement areas X and U on SO 347712, and will procure registration of an instrument providing for that variation on the relevant certificate of title.

k. Subject to Condition (l) below, the consent holder shall be entitled to close or restrict access to the tracks within the Development Site, as the consent holder considers necessary, for golf course operations (including tournaments), maintenance, repair, safety or security purposes.

l. The consent holder shall be entitled to close or restrict access to the track along the Parkins Bay foreshore, where the track passes through the Development Site, as the consent holder considers necessary, for golf course operations (including tournaments), maintenance, safety or security purposes, for up to 25 individual days per year (but not exceeding 5 weekends).

Vegetation

m. Preventing the removal and or physical alteration of the earth mounds and landscaping located around each visitor accommodation/residential unit approved in accordance with Conditions 6 and 7.

n. The ongoing maintenance of planting implemented to give effect to the Revegetation Strategy approved in accordance with Condition 6.

o. The establishment of exotic species within the areas identified as A, B and D on the attached plan referenced "Glendhu Station Covenant Areas Plan" dated June 2011 other than those species specified within the Revegetation Strategy approved in accordance with Condition 6 is prohibited.

p. The ongoing management of wilding plants and animals pests by the consent holder in accordance with the Revegetation Strategy prepared in accordance with Condition 6.

q. In order to achieve appropriate control of wilding trees and noxious weeds on an ongoing basis the following requirement shall apply within Covenant Area B identified on the attached plan referenced "Parkins Bay Glendhu Station Covenant Areas Plan" dated June 2011:

i. For the purposes of this condition "Plant Pests" means and includes any fir or conifer species with potential to spread naturally, sweet briar; lupins, gorse, broom, and any other Pest Plant as specified in the Regional Pest Management Strategy for Otago.

ii. Prior to occupation of any dwelling the relevant house-site shall be cleared of all Plant Pests.

iii. The owner of any house-site shall keep the house-site clear of any Plant Pests.

iv. Any areas managed and maintained by a Parkins Bay Residents and Owners Association (or similar body) shall keep those areas clear of any Plant Pests.

r. Prior to completion of Stage 1 of the development the consent holder shall remove all conifers (including any conifers or firs with wilding potential) from Covenant Areas A, B and D and from that part of Covenant Areas F and G located between Covenant Area B and the Fern Burn, all Covenant Areas as identified on the attached plan referenced "Parkins Bay Glendhu Station Covenant Areas Plan" dated June 2011.

Clubhouse

s. The installation or use of fires that emit smoke are prohibited except for any fire installed at the clubhouse.

Golf Course

t. That the 18 hole golf course will be available for green fee players to use at all times, other than when the golf course is being used for tournaments or functions held at the golf course. Affiliated members of the Wanaka Golf Course will be entitled to use the golf course at a discounted rate of no less than 20% off the green fee rate which is charged to the general public at any time.

Visitor Accommodation Residential Units

u. In respect of the curtilage areas identified for the visitor accommodation/residential units within Area B on the plan referenced "Glendhu Station Covenant Areas Plan" dated June 2011:

- The curtilage area for each visitor accommodation/residential unit shall be restricted to the curtilage areas defined on the attached plans referenced "Parkins Bay Visitor Accommodation Residences – Detail Site Plan, House Sites 1, 3-4, 6, 8-11, 13, 18-22, 24, 26-27, 29-50 " dated September 2009 and "Parkins Bay Visitor Accommodation Residences – Detail Site Plan, House Sites 5, 16 and 17" dated September 2011;

- All domestication including hard landscaping and ancillary structures associated with the visitor accommodation/residential units shall be restricted to the designated curtilage area. No domestic elements shall be located outside the designated curtilage areas;

- No introduced planting over 0.5m is permitted within the designated curtilage areas unless it is from the approved Kanuka/Grey shrubland plant list detailed in the Revegetation Strategy prepared in accordance with Condition 6;

- No structures or fences over 0.75m in height are permitted within the designated curtilage areas (this allows for the extension of the existing stone retaining walls), except as required under the Fencing of Swimming Pools Act 1987;

- No introduced planting is permitted outside the designated curtilage areas unless it is from the approved Kanuka/Grey shrubland plant list detailed in the Revegetation Strategy prepared in accordance with Condition 6.

v. The keeping of cats at the consented visitor accommodation/residential units is prohibited.

Stock and Water Quality

w. Prior to completion of Stage 3 of the development the areas detailed below shall be fenced to prevent stock access into those areas. The fencing shall be maintained permanently to prevent stock accessing those areas. The areas are approximately detailed on Parkins Bay Plan B dated 12 April 2012 as follows:

i. The wetter area of Wetland A, comprising an area of approximately 150 metres by 20 metres, subject to monitoring and assessment under Condition 51.

ii. Wetland B and Wetland C and Areas 1 and 2.

iii. The Gully and the Moraine Slope.

x. The consent holder shall ensure that any stock access to or across the watercourse running between Wetland A and Wetland C and any other watercourses shown on Parkins Bay Plan B dated 12 April 2012 has a firm rocky or pebbly substrate to prevent pugging and erosion caused by stock movements.

y. Prior to completion of Stage 3 of the development the consent holder shall fence the eastern and western riparian boundaries of the Fern Burn (approximately 20m from each bank) to exclude cattle from the Fern Burn riparian corridor between the Motatapu Road culvert/bridge and Lake Wanaka. When implementing such fencing the consent holder may install gates to enable cattle to cross the Fern Burn riparian corridor at two crossing points, one identified as "Stock Route" on Parkins Bay Plan B dated 12 April 2012 and the other located south of Wetland E shown on Parkins Bay Plan B dated 12 April 2012. When cattle use either of those crossing points the consent holder shall ensure that the cattle move straight across from the private land on one side of the riparian corridor to the private land on the other side of the riparian corridor without lingering in the Fern Burn. Fencing installed under this condition shall be installed as close as is reasonably and practically possible to the boundary between the freehold title and the public marginal strip except that along the eastern boundary of Wetland E fencing shall be located at the top of the bank which separates the wetland from the farmland on the eastern side of Wetland E. The fencing shall ensure that no part of the wetland is separated from the marginal strip. Temporary fencing shall be erected when stock are using the crossing points to ensure that stock do not access the marginal strip on either side of the crossing point.

z. Area 1, Area 2, the Gully and the Moraine Slope (all identified on Parkins Bay Plan B dated 12 April 2012) which must be fenced as required under w. above, shall be kept free of Plant Pests (as defined in q. above).

Review

42. In accordance with sections 128 and 129 of the Resource Management Act 1991, the Council may serve notice of its intention to review; amend, delete or add to the conditions of this consent at the consent holders expense yearly for the first ten years after the commencement of consent and thereafter at two yearly intervals and at any other time when the consent holder shall be in default in a material particular in the implementation or compliance with the consent for the purposes of requiring the consent holder to:

THE SEAL OF THE ENVIRONMENT ... OF NEW ZEALAND April 2012

- deal with any adverse effect on the environment which may arise from the exercise of this consent and which it is appropriate to deal with at a later stage, or which became evident after the date of commencement of the consent, or

- review the effectiveness of the conditions of this resource consent in avoiding or mitigating any adverse effects on the environment from the exercise of this resource consent and if necessary require the consent holder to avoid, remedy or mitigate such effects by way of further or amended conditions.

Poplar Trees

43. Prior to the commencement of earthworks on site, further detailed arboricultural advice shall be sought on the potential effects of the earthworks on those trees most at risk from earthworks and construction. A substantial barrier fence is to be erected in accordance with the recommendation of the arboriculturalist to ensure protection of the trees and their associated root system.

44. Regular inspections and monitoring of tree health is to be undertaken every two years and a report provided to the Council. This work is to be undertaken by a qualified Arborist.

45. Where the two year inspection and reporting programme identifies evidence of tree decline, a more detailed inspection shall be arranged and the recommendations of the more detailed inspection reported to the Council.

Golf Course Management

46. Fertilisers are only to be applied to green and fairway areas in small and frequent applications at a level which ensures that the rate of application accurately meets plant demands and no more. Details of the application rates are to be supplied to the Council for review prior to the commissioning of the golf course.

47. An integrated pest management plan is to be prepared which demonstrates that the use of chemical pesticides is targeted in application only to those areas where treatment has been identified as being necessary.

48. Irrigation of the golf course is to be computerised to ensure that the rate of water application to the green and fairway is appropriate to maintain soil moisture at the correct level avoiding wastage of water, the saturation of soils, ponding, excess soil drainage and contaminant leaching.

49. Riparian vegetative buffer strips are to be maintained between the golf course and Lake Wanaka and the golf course and the edge of the Fern Burn watercourse. These buffer strips must be a minimum of 20m wide and not be subject to the application of any fertiliser, pesticide or irrigation

Monitoring

50. Monitoring of water quality is to be undertaken every six months as detailed below 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. The following monitoring is required:

    a. Monitoring of water quality within Parkins Bay close to the shoreline adjacent to the golf course.

b. Monitoring of stream water from streams upstream of the golf course/house-sites development areas, at the points where such streams cross from Glendhu Station into the golf course/house-sites development areas.

Note: The purpose of a. and b. above is to monitor the effect of golf course activities on water quality.

51. The areas of Wetland A detailed on Parkins Bay Plan B dated 12 April 2012 which are outside that part of Wetland A fenced under Condition 41(w) shall be monitored 5 years after the date the golf course is commissioned, within 2 weeks after the area has been grazed by stock, for the purpose of assessing any adverse effects caused by stock on the balance dry wetland areas on the margins of the fenced wetter area. If this monitoring reveals an inappropriate degree of adverse effect then the area of Wetland A required to be fenced under Condition 41(w) may be reviewed.

52. There shall be no netting erected associated with the driving range.

Accidental Discovery Protocol and Archaeology

53. That if any koiwi (human skeletal remains), waahi taoka (resource of importance), waahi tapu (place or feature of special significance) or artefact material are discovered as part of the development process, then work shall stop to allow a site inspection by the appropriate runanga and their advisors, who would determine whether the discovery is likely to be extensive and whether a thorough site investigation is required. Materials discovered should be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to their removal or preservation.

54. An archaeological authority shall be obtained from the New Zealand Historic Places Trust, should further site investigation confirm that the historic house site identified in the report of Mr Petchey is affected by construction activities.

55. The camp site identified in the report of Mr Petchey shall be protected during construction with fencing in a location approved by a registered archaeologist.

Limitations on curtilage areas

56. The curtilage area for each visitor accommodation/residential unit shall be limited to 1000m^2, including the building platform but excluding the driveway, as identified on the attached plans referenced "Parkins Bay Visitor Accommodation Residences Detail Site Plans, House Sites 1, 3-4, 6, 8-11, 13, 18-22, 24, 26-27, 29-50 " dated September 2009 and "Parkins Bay Visitor Accommodation Residences – Detail Site Plan, House Sites 5, 16 and 17" dated September 2011.

57. All domestication including hard landscaping and ancillary structures associated with the visitor accommodation/residential unit shall be restricted to the designated curtilage area.

58. No introduced planting over 0.5m is permitted within the designated curtilage areas unless it is from the approved Kanuka/Grey shrubland plant list detailed in the Revegetation Strategy approved in accordance with Condition 6.

59. No structures over 0.75m are permitted within the designated curtilage areas (this allows for the extension of the existing stone retaining walls) except as required under the Fencing of Swimming Pools Act 1987.

60. No introduced planting is permitted outside the designated curtilage areas unless it is from the approved Kanuka/Grey shrubland plant list detailed in the Revegetation Strategy approved in accordance with Condition 6.

Fencing

61. Fencing is to be retained and up-graded along the frontage of the Wanaka–Mt Aspiring Road ensuring that people are directed to use the underpasses.

62. No gates or monumental structures are permitted at or near entrances ways which would potentially distract motorists on the Wanaka–Mt Aspiring Road. The design of any entrance gate designs shall be submitted to Council for approval.

63. There shall be no fencing of the individual visitor accommodation residential units;

Car Parks

64. All car parks on-site (excluding carparks for private residences) shall be publicly available and shall not be restricted for specified activities or purposes.

Signs

65. Signage design for the purpose of readily identifying the clubhouse and shearers quarters, the location of car parking, public walkways, cycleways, public picnic area and jetty and the lake foreshore shall be submitted to Council for prior consent. Specific signage on the lakeside walkway and the jetty shall indicate that these areas are available for public use.

66. The existing public access along the edge of the lake, parallel to the length of the development site, shall be identified by signage to the satisfaction of the Council.

Sundry

67. There shall be no permanent mooring at the jetty. The owner shall have priority for one berth.

68. All covenants as offered by the consent holder shall be in form approved by the Council. Any easements referred to in Condition 41 which have been registered prior to the registration of Covenant(s) under Condition 41 need not be referred to in such Covenant(s).

69. This proposal may generate a demand for network infrastructure and reserves and community facilities. If so, an invoice will be generated by the Queenstown Lakes District Council. Payment will be due prior to application under the Resource Management Act for certification pursuant to section 224(c). Pursuant to section 208 of the Local Government Act 2002 the Council may withhold a certificate under section 224(c) of the Resource Management Act 1991 if the required Development Contribution has not been paid.

70. Any easement proposed to be granted in favour of the Council under Condition 41 may instead be granted in favour of another public body or entity nominated by the Council provided such body or entity agrees to accept the benefit of the easement and acknowledges responsibility for maintenance of the relevant access route or other area subject to the easement for the purposes of the easement.

SCHEDULE A (Refer Condition 41)

[Standard Conditions Applicable to Public Access Routes]

1. The access route may be closed by the consent holder for such periods as it deems necessary to carry out its farming activities, provided that periods shall not exceed more than 3 consecutive days or a total of more than 10 days (cumulatively) in any calendar year, provided that prior approval is obtained from the Council for such closure.

2. In addition to the periods specified in 1 above, any access route through an area being used for sheep farming may be closed for one period (in any calendar year) of up to 6 weeks during the lambing season to prevent disturbance of ewes with lambs.

3. The access route may be closed by the consent holder for periods as shall be reasonably necessary if the actions of public users result in significant adverse effects to farming operations, provided that prior approval is obtained from the Council for such closure.

4. Dogs (other than dogs used by the farmer for farming activities) are prohibited on the access route (unless prior approval from the consent holder has been obtained).

5. Use or carrying of firearms is prohibited on the access route (unless prior approval from the consent holder has been obtained).

6. Camping is prohibited on the access routes at all times.

7. Such other conditions as the consent holder and the Council reasonably considers necessary to protect the public and to control the public use of the easement area (for example restrictions relating to noxious substances, noise, rubbish, track maintenance, repairs, fire risk or for safety and/or security purposes);

Note: When the relative easements are registered, the references above to 'consent holder' will become references to 'grantor'.

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Appendix C

BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

ENV-2011-CHC-113, 117, 124

IN THE MATTER	of an appeal pursuant to section 120 of the Resource Management Act 1991
BETWEEN	**UPPER CLUTHA TRACKS TRUST**
	Appellant
AND	**UPPER CLUTHA ENVIRONMENTAL SOCIETY INCORPORATED**
	Appellant
AND	**D THORN**
	Appellant
AND	**QUEENSTOWN LAKES DISTRICT COUNCIL**
	Respondent
AND	**WANAKA GOLF CLUB INC**
	Section 274 party
AND	**M BAYLISS**
	Section 274 Party
AND	**PARKINS BAY PRESERVE LTD**
	Applicant

COMPLETE SET OF PLANS REFERRED TO IN THE CONDITIONS OF CONSENT

APRIL 2012

ANDERSON LLOYD
LAWYERS
QUEENSTOWN

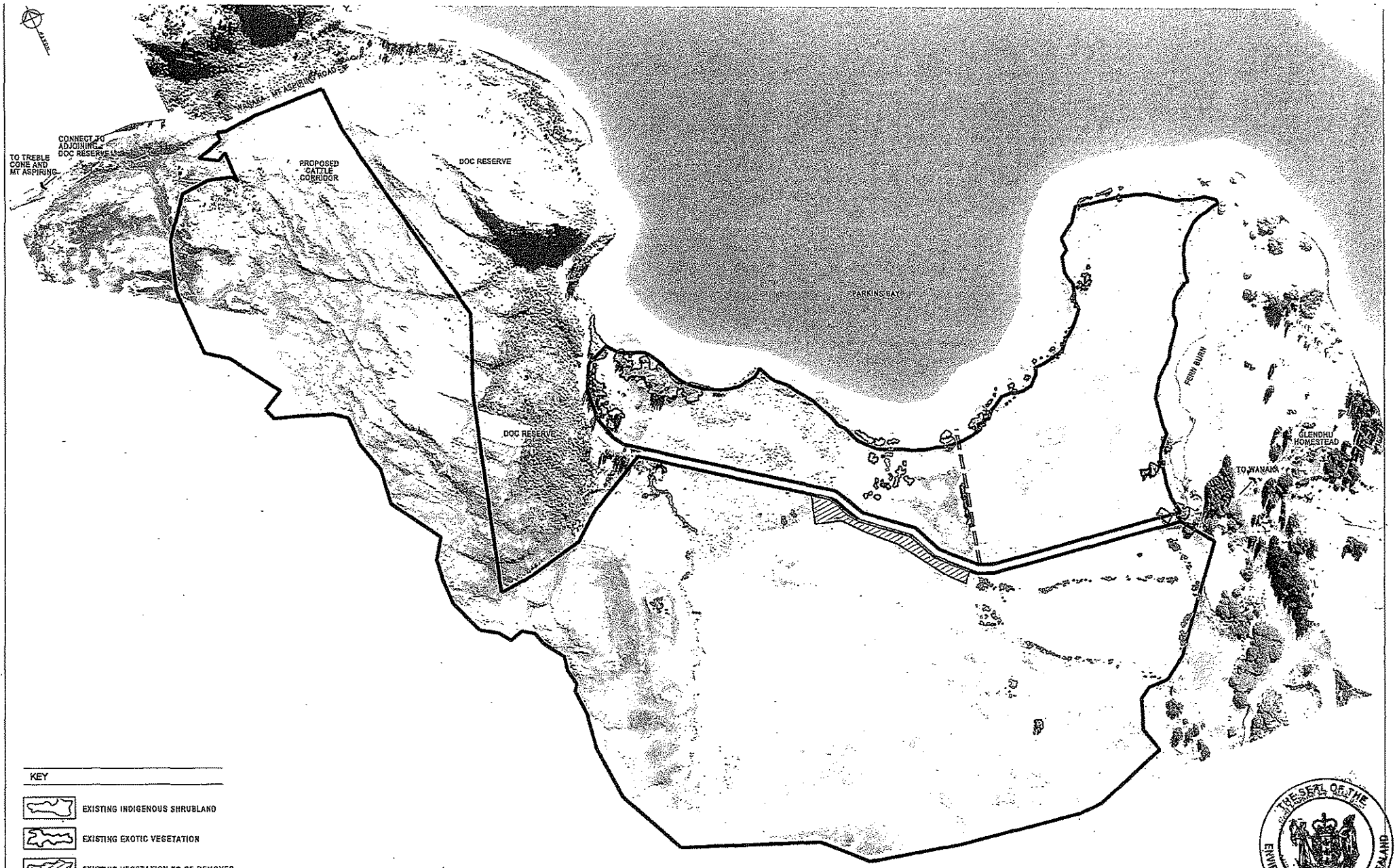
Solicitor: W P Goldsmith/A C Ritchie

Level 2,
13 Camp Street,
PO Box 201,
QUEENSTOWN 9348
Tel 03 450 0700
Fax 03 450 0799

Plans referred to in Condition of Consent 1

- Glendhu Station Stage 0: Master Plan, revision EC, dated Sep 2009;
- Glendhu Station Stage 1: Master Plan, revision S1 EC, dated Sep 2009;
- Glendhu Station Stage 2: Master Plan, revision S2, EC, dated Sep 2009;
- Glendhu Station Stage 3: Master Plan, revision S3, EC, dated Sep 2009;
- Glendhu Station Parkins Bay Golf Course Master Plan, dated April 2012;
- Parkins Bay Indicative Vegetation Categories Plan, dated Sep 2009;
- Parkins Bay Glendhu Station Concept Master Landuse Plan, dated 12 April 2012;
- Parkins Bay Glendhu Station Public Access Tracks Plan, dated 12 April 2012;
- Parkins Bay Glendhu Station Covenant Areas Plan, dated June 2011;
- Parkins Bay Detail A Proposed Public Easement and Covenant Area, dated Sep 2009
- Parkins Bay Detail B Proposed Covenant Areas, dated June 2011;
- Parkins Bay Detail 1 Proposed Club House area Figure 10a, dated 12 April 2012;
- Parkins Bay Detail 2 Maintenance Compound Site Plan, September 2009;
- Parkins Bay Visitor Accommodation Residences Site Location Plan;
- Parkins Bay Visitor Accommodation Residences Building Mitigation Plan;
- Parkins Bay Proposed Golf Course Earthworks Plan, dated August 2009;
- Parkins Bay Entry Gate elevation, dated September 2009;
- Parkins Bay Plan B, dated 12 April 2012;
- Parkins Bay Plan BI, dated 12 April 2012;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan; House Site 1, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 3 and 4, date; Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 5, dated Sep 2011;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 6, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 8, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 9, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 10, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 11, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 13, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 16 & 17, dated Sep 2011;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 18, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 19, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 20, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 21 & 22, dated Sep 2009;

- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 24, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 26, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 27, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 29 & 30, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 31 & 32, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 33 & 34, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 35 & 36, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 37, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 38 & 39, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 40, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 41 & 42, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 43 & 44 , dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 45, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 46 & 47, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 48, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 49, dated Sep 2009;
- Parkins Bay, Visitor Accommodation Residences Detail Site Plan, House Site 50, dated Sep 2009.



Scale: 1:2000 [2xA0]; 1:4000(A3)

MDP-Rev EC, SEP 2009

REVISION: EC