BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of Hearing Stream 02 – Rural, Rural Residential and Lifestyle, Gibbston Character Zone, Indigenous Vegetation and Biodiversity, and Wilding Exotic Trees

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CASEBOOK FOR QUEENSTOWN LAKES DISTRICT COUNCIL

HEARING STREAM 02 – RURAL CHAPTERS OF THE PROPOSED DISTRICT PLAN

2 MAY 2016

Simpson Grierson
Barristers & Solicitors

J G A Winchester / S J Scott
Telephone: +64-3-968 4018
Facsimile: +64-3-379 5023
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140

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BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 100

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under section 120 of the Act

BETWEEN STAUFENBERG FAMILY TRUST NO. 2
(ENV-2011-CHC-43)

AND J A AND M C FEINT
(ENV-2011-CHC-47)

Appellants

AND QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

AND ROSS AND JUDITH YOUNG FAMILY TRUST

Applicant

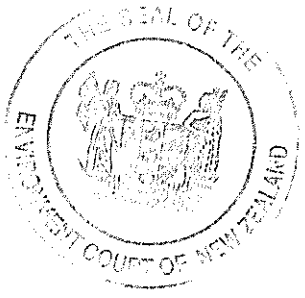
Court: Environment Judge J R Jackson
Environment Commissioner H-A McConachy
Environment Commissioner J R Mills

Hearing: at Wanaka on 23, 24, 27 and 31 July 2012
(Final submissions received 11 September 2012)

Appearances: V J Robb and A Ritchie for Staufenberg Family Trust No. 2
K Feint for J A and M C Feint
M A Ray for Queenstown Lakes District Council
J Caunter for Ross and Judith Young Family Trust

Date of Decision: 9 May 2013

Date of Issue: 9 May 2013



DECISION

A: Under section 290 of the Resource Management Act 1991 the Environment Court:

(1) cancels the decision of the Queenstown Lakes District Council in relation to (QLDC reference) RM 100608;

(2) refuses resource consent for an entertainment complex at the corner of Mt Barker Road and State Highway 6.

B: Costs are reserved. Any application must be made within 20 working days and any reply within a further 20 working days.

REASONS

(Minority) Judgment of Judge Jackson

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(Minority) Judgment of Judge Jackson

Introduction

1.1 The issues

[1] The ultimate issue in these proceedings is whether an entertainment complex, including facilities for go-karts, bumper boats, a bowling alley, and a café, should be allowed in the Rural General Zone adjacent to Wanaka Airport in the Queenstown Lakes District.

[2] What follows are my reasons as to why I would refuse the appeals and confirm the decision of the Queenstown Lakes District's Hearing Commissioners. However, the two Environment Commissioners have taken a different view of the merits and of the appropriate result. Consequently their majority judgement will be the decision[1] of the court.

[1] Section 265(3) RMA.

[3] I first describe the proposal and the proceedings leading to this hearing under section 290 of the Resource Management Act 1991 ("the RMA" or "the Act"). After ascertaining the status of the proposal under the district plan, I turn to the substantive issues in the proceedings:

- what is the existing environment? (Part 2)
- what are the relevant objectives and policies in the district plan? (Part 3)
- what are the likely adverse effects of the proposal? (Part 4)
- does the proposal pass a section 104D gateway test? (Part 5)
- should consent be granted? (Part 6)

1.2 The proposal

[4] On 22 September 2010 the Ross and Judith Young Family Trust applied[2] to the Queenstown Lakes District Council ("the QLDC") to establish a commercial recreational entertainment complex on land at the corner of Wanaka-Luggate Highway (State Highway 6) and Mt Barker Road, Wanaka, opposite the Wanaka Airport.

[5] The property is nearly flat and contains 20.09 hectares[3]. However, the site is only a small (3.6 hectare) triangle at the eastern end of the land. The proposed entertainment complex and surrounding landscaping is shown on the (amended) landscape concept plan[4] annexed marked "A". At present the site is substantially hidden behind a row of mature exotic conifers, planted along the State Highway. These conifers are partly on road reserve and partly on the site as shown on plan "A".

[6] The main building would be 1,214 m^2 in area with a maximum height of 5.3 metres. It would be entered from the southeastern side adjacent to the car parking area and would contain:

- an eight alley ten-pin bowling facility;
- associated machinery and seating;
- a café (including, it is hoped, the right to sell alcohol);
- reception and administration offices; and
- toilet facilities.

An outdoor play area is located to the west of the main building, where outside seating is also situated.

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2 QLDC resource consent number RM100608.

3 The legal description of the property is Lots 1 and 10 DP305038 and Part Section 9 Block VIII Lower Hawea Survey District, held in Computer Freehold Register 112402.

4 R Lucas, Rebuttal evidence [Amended] Attachment 2 Revision J [Environment Court document 18A].

[7] The main building would be located with a northeast/southwest alignment between two sets of overhead power lines[5] that traverse the site parallel to State Highway 6. It is proposed to be constructed of pre-cast concrete with profiled colour coated roofing, powder coated aluminium joinery and will be painted in a range of browns, greens and greys with a reflectivity value of less than 35% (although no specific colours have been chosen)[6]. The workshop building is described[7] as "ancillary to the operation, storage and repair of the go-karts", and would also serve as changing rooms for go-karters. The workshop includes a verandah extending over the go-kart track and pits. The material and colours would be the same as for the main building.

[8] As shown on plan "A", the go-kart track is proposed to be to the northwest of the main building. The concreted course would measure 4,358 m^2 in area. Mr Vivian wrote that the applicant proposes that[8]: "... up to ten karts may be operated on the course at any one time for a duration of up to 15 minutes". The bumper boat area is located to the west of the main building and would be 743 m^2 in area with a maximum depth of 0.7 metres. Here the proposal is to have a maximum of ten boats operating at any one time for up to ten minutes each[9].

[9] The entertainment complex would be accessed from Mt Barker Road, approximately 100 metres southwest of the intersection with State Highway 6. The access road would run 80 metres onto the site before entering the car parking area. Room for 80 cars and two dedicated bus parks would be provided. The car park includes an eleven (11) metre radius turning circle for buses at its southern end.

[10] The site is proposed to be extensively landscaped with mounding (to 1.5 metres in height, also acting as a noise barrier) and tree, native scrub and native grass planting. The proposed earthworks[10] are as follows:

Main building	1213.79 m^2 x 0.5 m	= 606.89 m^3 cut
Workshop building	160 m^2 x 0.5 m	= 80 m^3 cut
Pond	742.69 m^2 x 0.7 m	= 519.88 m^2 cut
Go-kart track	4357.12 m^2 x 0.2 m	= 871.42 m^3 cut
Soakage pits	41.83 + 5.81 m^3	= 47.61 m^3 cut
Total cut		= 2125.80 m^3

5 Owned by Aurora Energy Limited – W R Young, evidence-in-chief para 6 [Environment Court document 7].
6 C Vivian, evidence-in-chief para 3.1.2 [Environment Court document 19].
7 C Vivian, evidence-in-chief para 3.1.6 [Environment Court document 19].
8 C Vivian, evidence-in-chief para 3.1.9 [Environment Court document 19].
9 C Vivian, evidence-in-chief para 3.1.12 [Environment Court document 19].
10 C Vivian, evidence-in-chief para 3.1.15 giving the calculations of GM Designs Limited [Environment Court document 19].

All earth is to be used on site for earth mounding and it is likely that other fill material will have to be brought on to the site to complete the mounding. The total on-site earthworks (cut and fill) is likely to be 4,251.60 m^3 (plus additional imported fill for mounding).

[11] The complex is proposed to be open to the public seven days per week at the following times[11]:

- outdoor activities, specifically go-karts and bumper boats will be limited to 10:00 – 20:00 (all year);
- outside seating and table areas will be limited to 10:00 – 22:00 in summer (October to March inclusive) and between 10:00 and 20:00 from April to September inclusive;
- at the closing of outdoor seating and table areas, seating will be stacked and made unavailable for use - and from that time no glasses will be allowed to be taken outside;
- the consent holder will seek a condition of the liquor license that no liquor is to be served one hour before closing;
- indoor activities (including recreation activities) are to cease by 23:30, and staff will vacate the premises by midnight.

The planner called for the applicant, Mr C Vivian, pointed out[12] that outdoor activities are proposed to cease earlier (as early as 17:00) during the winter time due to poor light conditions at dusk.

[12] A total of 15 staff is proposed: ten for the inside activities, café and reception area, and an additional five to manage the outdoor activities. The complex would be serviced with reticulated electricity, telecommunications, on-site waste and stormwater disposal. Water is to be supplied from an existing bore located on the northern boundary of the site.

[13] A condition has been volunteered that the part of the site nearest the submitters' properties not required for this development (83% of the twenty hectare property) would be used only for farming purposes. To give effect to that the Hearing Commissioners[13] also proposed this condition:

> 28. Prior to the operation of the complex, pursuant to section 108(2)D of the Act, a land use covenant shall be registered on the title of Lots 1 and 10, DP 305038 which specifies that with the exception of farm buildings, there shall be no buildings (as defined in the Queenstown Lakes District Plan) established on [the movements] of the property .... [That] area ... shall be registered on the Title Plan, and shall be used only for farming

11 As amended by condition 21 of the council's decision.
12 C Vivian, evidence-in-chief para 3.1.26 [Environment Court document 19].
13 Hearing Commissioners' Decision 16 May 2011.

> purposes. The covenant shall remain in place for as long as the site is zoned Rural General or any subsequent equivalent rural zoning.

[14] Ms Lucas recorded at the landscape experts' meeting that the intention was to retain the property (outside the site) as pasture[14]. Indeed the landscape experts defined the property as "... the entire property including the site and the area to remain as pasture" (underlining added).

1.3 The proceedings leading to this hearing

[15] The application was publicly notified on 12 October 2010. Twelve submissions were filed with the Council. The application was heard (for the council) by Commissioners D W Collins and S Middleton in early March 2011. They issued their decision granting consent subject to conditions on 16 May 2011. The decision was re-issued[15] on 25 May 2011 after correcting an error to a condition.

[16] The council's decision was appealed to this court by two submitters to the QLDC: J A and M C Feint ("the Feints") and the Staufenberg Family Trust No. 2 ("the Staufenberg Trust"). The grounds for the appeals are similar. In summary, the appellants say that the proposal puts too much emphasis on recreational opportunities, especially since the principal activity (ten-pin bowling) is not outdoors, and insufficient importance on maintaining amenities and protecting landscape values.

[17] The council applied to the court to call evidence opposing the council's decision. By procedural decision[16] dated 29 April 2011 the court refused leave to the council.

1.4 Zoning and status under the district plan

[18] The land, including the site, is zoned Rural General under the district plan. Activities are generally permitted[17] in the zone provided first that they comply with all site and zone standards, and second that they are not in the long lists of prohibited, non-complying discretionary or controlled activities. The proposed activities do not comply with various standards and so resource consents are needed for them.

The construction of the buildings

[19] It was common ground that construction of the two buildings – the main building and a workshop building – is a discretionary activity[18].

Recreational activities

[20] Consent is also needed for recreation and commercial recreation activities. There are several relevant definitions:

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14 "Draft Landscape expert joint statement" pages 1 and 7 – Attachment 8 [Environment Court document 18]. Despite being headed "Draft" this was signed by both Ms Lucas and Mr Blakely.

15 Under section 133A of the Resource Management Act.

16 [2011] NZEnvC 113; [2012] NZRMA 223.

17 Rule 5.3.3.1 [QLDP p. 5-9].

18 Under rule 5.3.3.3 (i) (Buildings and Building Platforms).

- "Recreation" is defined in the district plan to mean[19]:

  ... activities which give personal enjoyment, satisfaction and a sense of wellbeing.

- A "recreational activity" is defined as[20]:

  ... mean[ing] the use of land and/or buildings for the primary purpose of recreation and/or entertainment. Excludes any recreational activity within the meaning of residential activity.

- "Commercial recreation activities" are defined in the plan to mean[21]:

  ... the commercial guiding, training, instructing, transportation and provision of recreational facilities to clients for recreational purposes including the use of any buildings or land associated with the activity, excluding ski area activities.

[21] Neither commercial recreation activities nor recreation activities are listed as a non-complying or prohibited under the operative district plan. However there are two site standards which the activities do not met. The most relevant site standard is that for Commercial Recreation Activities which states[22] (relevantly) that:

> No commercial recreational activities shall be undertaken except where:
> (a) The recreation activity is outdoors;
> (b) The scale of the recreation activity is limited to five people in any one group.

The proposed recreational activities (excluding the playground area) do not meet this standard because the ten pin bowling and arcade are indoors, and all four activities are likely to attract groups of five people or more. Thus, the proposal is a restricted discretionary activity[23].

[22] A second relevant site standard[24] relates to the scale and nature of activities:

> The following limitations apply to all activities ... other than farming, factory farming, forestry and residential activities ... :
> (a) The maximum gross floor area of all buildings on the site, which may be used for the activities shall be 100 m^2;
> (b) No goods, materials or equipment shall be stored outside a building; and
> (c) All manufacturing, altering, repairing, dismantling or processing of any goods or articles shall be carried out within a building.

The maximum gross floor area of the buildings on the site used for recreational activities exceeds 100 m^2 in area. The proposal does not meet this standard and a restricted discretionary activity is required in respect of the size of the buildings above 100 m^2.

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19 District plan, p. D-9.
20 District plan, p. D-9.
21 District plan, p. D-2.
22 Rule 5.3.5.1 (ix) [District Plan, p. 5-18].
23 Under 5.3.5.1 Site Standard (ix) Commercial Recreation Activities.
24 Rule 5.3.5.1 Site Standard (iii) Scale and nature of Activities [District Plan p. 5-16].

[23] Consequently the proposed activities are discretionary[25], with the exercise of the council's discretion being confined to the matters specified in any standard(s) not complied with (provided the activity complies with all the relevant zone standards).

[24] Two zone standards are also relevant to the recreational aspects of the proposal[26]:

> ...
>
> v **Noise**
>
> (a) Sound from non-residential activities measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008 shall not exceed the following noise limits at any point within the notional boundary of any residential unit, other than residential units on the same site as the activity:
> (i) daytime (0800 to 2000 hrs) 50 dB LAeq (15 min)
> (ii) night-time (2000 to 0800 hrs) 40 dB LAeq (15 min)
> (iii) night-time (2000 to 0800 hrs) 70 dB LAF max
>
> (b) Sound from non-residential activities which is received in another zone shall comply with the noise limits set in the zone standards for that zone.
>
> (c) The noise limits in (a) shall not apply to construction sound which shall be assessed in accordance and comply with NZS 6808:1999.
>
> (d) The noise limits in (a) shall not apply to sound associated with airports or windfarms. Sound from these sources shall be assessed in accordance and comply with the relevant New Zealand Standard, either NZS 6805:1992, or NZS 6808:1998.
> For the avoidance of doubt the reference to airports in this clause does not include helipads other than helipads located within any land designated for Aerodrome Purposes in this Plan.
>
> (e) When associated with farming and forestry activities, the noise limits in (a) shall only apply to sound from stationary motors and stationary equipment.
>
> (f) The noise limits in (a) shall not apply to sound from aircraft operations at Queenstown Airport.
>
> vi **Lighting**
>
> All fixed exterior lighting shall be directed away from adjacent sites and roads.

It was common ground that the zone's noise standard is met by the proposal. With respect to the lighting standard the Hearing Commissioners imposed a condition[27] to cover that issue. That is accepted by the applicant.

Earthworks

[25] The proposed earthworks exceed the maximum area of bare soil exposed within any one consecutive 12 month period, and the maximum volume of moved earth would be greater than 1000 m^3 per site within any one consecutive 12 month period. As such, the proposal requires a restricted discretionary activity resource consent in respect of the proposed area and volume of earthworks.

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25 Rule 5.3.3.3 (Discretionary Activities xi [QLDP p. 5-13].

26 District Plan, pages 5-20 and 5-21.

27 Condition 29.

The café

[26] The café area is approximately 100 m^2 in area, and would contain about 16 booth tables. As a commercial activity[28], it is non-complying[29] unless it comes within an exception. One of the exceptions is[30]:

> ...
> (c) commercial activities ancillary to and located on the same site as recreational activities; or
> ...

- in which case it would be discretionary. The applicant says the proposal is designed to ensure the café/bar remains ancillary or subservient to the commercial recreation activity and that is ensured by the conditions.

[27] There are two reasons for considering the café may be a non-complying activity. The first is rather technical and depends on a close reading of the rules in the district plan. The starting point is that those rules provide for "commercial activity" ancillary to "recreational activities" as a discretionary activity. However, the argument – identified by the Hearing Commissioners in their decision[31] - is that while "recreational facilities" are defined, so are "commercial recreational facilities". Thus "commercial activities" ancillary to the latter are not within the rule relating to (private) "recreational activities" and are therefore non-complying. The second argument – raised by Ms V S Jones for the Staufenberg Family Trust[32] - is that the café would be too large to be considered "ancillary" to the recreational activities. I conclude it is safer to treat the café as non-complying, and thus the proposal as a whole as non-complying also.

2. The existing environment

2.1 <u>The site and its context</u>

[28] The site and the land of which it is part appear nearly flat, being a very wide terrace of the Clutha River (several kilometres to the north). The property is rough pasture in two paddocks: one large paddock, and a small one along the State Highway; it is nearly an isosceles triangle with State Highway 6 and the Mt Barker Road as the two (almost) equal sides. Two sets of power lines run across the site. Any buildings in the proposal must be offset at least 9.5 metres from these[33]. As shown on plan "A" a

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28 Commercial Activities are defined in the District Plan to mean:

> Means the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or services, and includes shops, postal services, markets, showrooms, restaurants, takeaway food bars, professional, commercial and administrative offices, service stations, motor vehicle sales, the sale of liquor and associated parking areas. Excludes recreational, community and service activities, home occupations, visitor accommodation and homestays [Page D-2 of the District Plan].

29 Rule 5.3.3.4 (i) [QLDP p. 5-14].

30 Rule 5.3.3.4 (i) [QLDP p. 5-15].

31 Hearing Commissioners' Decision 16 May 2011 paras 24 to 29.

32 V S Jones, evidence-in-chief paras 5.21 to 5.23 [Environment Court document 14].

33 Transcript p. 139.

shelter belt of large pine trees runs rather raggedly along the road reserve of State Highway 6.

[29] The property and the surrounding land are part of an undulating remnant river terrace[34] over a previously glaciated landscape[35]. Mr P R Blakely, the landscape architect called by the Staufenberg Trust, wrote[36]:

> I agree that the site has gentle undulations and old channels but to most people at first glance it appears flat. West of the site between Mount Barker Road and the intersection of SH6 and Ballantyne Road, signs of the outwash terrace are surprisingly obvious and legible in the form of stones, boulders and rock outcrops, outwash channels and undulations and some remnant indigenous shrubs. The "cloak of human activity" has been very light in this area possibly due to poorer soil. I agree however that the overall character of the wider landscape is, predominantly pastoral and rural and that beyond this immediate area of less developed land, the "cloak of human activity" is more obvious in the form of farm buildings and plantings, shelterbelts and pasture and agricultural/horticultural activity.

Beyond the property and the large terrace on which it and the airport sit, the land falls away to the lower terraces (trending northwest and southeast) of the Clutha River. To the south are higher terraces and then the foothills of the Pisa and Criffel Ranges. Southwest at a distance of 3.6 kilometres from the site is an outstanding natural feature – the roche moutonée of Mt Barker. Beyond that, forming the western skyline, Mt Alpha and Roy's Peak (above Wanaka) are visible at a distance of about 13 kilometres[37], as are other mountains receding to the southwest.

[30] The site is located opposite the Wanaka Airport at what the landscape experts agreed was an "important and main entrance to Wanaka"[38] by which they appear to mean the Wanaka Basin rather than Wanaka town (which is over 7 kilometres to the west). The Wanaka Airport is subject to a designation[39] in the district plan. There are a number of buildings, some of them large, and other non-rural features (roads, carparks, runways) and a café associated with the airport. There is also a large Toy and Transport Museum on the north side of State Highway 6. There is also the potential for further development within the Windermere Rural Visitor zone which is north of State Highway 6 immediately west of the airport. Permitted activities in that zone include the activities for which consent has been sought in this case. Resource consent[40] has already been granted for the "Pittaway hangar development" with eleven new buildings – up to seven metres high – eight with a gross floor area of 636 m^2 each and three rather smaller

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34 DLEJS: R Lucas, evidence-in-chief attachment 8 [Environment Court document 18].

35 Draft Landscape Expert Joint Statement, 7 March 2012 ("DLEJS"): R Lucas, evidence-in-chief attachment 8 [Environment Court document 18].

36 P R Blakely, evidence-in-chief para 5.3 [Environment Court document 13].

37 P R Blakely, evidence-in-chief para 5.6 [Environment Court document 13].

38 R Lucas, evidence-in-chief para 32 [Environment Court document 18]. I accept that evidence for the purpose of this decision, but confess to some doubts about it. Is not the entrance to Wanaka township in the vicinity of the Albert Town turnoff? There are about 6 kilometres between the airport and that point.

39 See Planning Map 18A and Appendix 1 (pA1-54).

40 C Vivian, evidence-in-chief attachment CV6 at p. 5 [Environment Court document 19].

(500 m^2 each). Despite its name the Windermere Rural Visitor Zone is not a rural area but a Special Zone.

[31] The airport and the Rural Visitor Zone are shown on the attached plan (marked "B") which is a copy of a plan called "Commercial Development Node Diagram" produced[41] by Ms R Lucas, the landscape architect called for the applicants. That diagram illustrates the position taken by Ms Lucas and Mr C Vivian, a planner for the Young Family Trust on the relationship of the proposal to adjacent land uses. It shows a node in the form of a circle centred on the Wanaka Transport and Toy Museum on the northeastern side of State Highway 6. That circle encloses the site and the "Have-a-Shot" buildings. I note that the diagram also shows buildings at the airport but outside the "node" and the Rural Visitor zone to the northwest of the circle. To reflect better the rectangular dimensions of the airport, one could also draw the node as an ellipse encompassing both those areas. The site would still be included. I note that the Queenstown Lakes District Council's Commissioners considered the site to be within this "node of existing and future development". I agree.

[32] The land to the west of the property is held in small (approximately 10 hectare) blocks such as that owned by the Staufenberg Trust, and the witnesses Dr M F Barker and Dr K P Wood.

2.2 The expert evidence on landscape

[33] While it was agreed that the property is part of a visual amenity landscape ("VAL") within the meaning of the Queenstown Lakes District Plan, the character of the site, the property and their landscape setting were in dispute.

[34] The two landscape architects who gave evidence about the site and its surrounding environment in the proceedings, Mr Blakely and Ms Lucas, met in February 2012 and subsequently signed a joint statement on 7 March 2012 (before the statements of evidence were served). I have some reservations about the accuracy and objectivity of both witnesses, but particularly of Mr Blakely for reasons I now address. Since the experts' assessments in part depended on photographs and visual simulations which were the subject of evidence, cross-examination and submissions I now turn to consider the disputes about the photographs, before turning to assess the written landscape evidence.

The photographic evidence

[35] That Ms Lucas' photographs were prepared in accordance with the *Best Practice Guideline* (2010) of the New Zealand Institute of Architects was confirmed in a separate brief of evidence[42] by another landscape architect in her office, Ms J Dey, who prepared the simulations and panoramas from the photographs taken by Ms Lucas. There was

41 R Lucas, rebuttal evidence Attachment 13 [Environment Court document 18A]. This plan was prepared for a resource consent application (the Pittaway Hangar Development).

42 J Dey, evidence-in-chief para 5 [Environment Court document 17].

initially some question by another landscape architect, Mr P Sewter[43] (called by the Staufenberg Trust), as to whether in fact Ms Lucas had complied with the *Best Practice Guideline*. However neither Ms Dey nor Mr Sewter was sought to be cross-examined, nor did counsel for the appellants pursue this in their final submissions.

[36] Most photographs were taken[44] by Ms Lucas with a 50mm lens and 1.5 multiplier giving a horizontal field of view of 27°; some with a 35mm lens and multiplier giving a horizontal field of view of 38°. That is adequate for portraying information about objects and places but where views are in issue it is important to replicate the field of view which the human eyes see when working together (i.e. binocular vision, not peripheral vision). According to Ms Dey – referring to the *Best Practice Guideline* – "The primary field of view for the human eye [is] ... up to 124 degrees"[45]. To give such a panorama while retaining the depth of field that human eyes obtain, several photographs have to be "stitched together"[46]. A number of panoramas in Ms Lucas' evidence were prepared in that way, e.g. her photographs C to I[47]. I hold that when viewed in the correct size and at the distance recommended they give a fairly accurate idea of what can be seen in reality. That is consistent with the approach taken by the court in other cases about landscapes – see for example *Maniototo Environmental Society Inc and Ors v Central Otago District Council and Otago Regional Council*[48].

[37] We received some technical evidence about Ms Lucas' photographs and simulations from Mr P Sewter[49] for the Staufenberg Trust. He was critical[50] of Ms Lucas' simulations as not following the NZ Institute of Landscape Architects' *Best Practice Guidelines* principally in relation to the size of the photographs and simulations. His criticisms were largely answered by Ms Dey, who explained that the photographs attached to the evidence were smaller for convenience but that larger photographs would be (or they were) provided at the hearing. His other (technical) objections about the identified viewing distances were also answered by Ms Dey. I do not find Ms Lucas' photographs deficient in any significant way.

[38] Ms Dey in turn, criticised Mr Blakely's photographs and simulations. Superficially the latter's photographs appear to be properly taken and produced. Each photograph identifies where it was taken from and then all show the same "metadata"[51]:

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43 P Sewter [Environment Court document 15].

44 R Lucas, evidence-in-chief Attachment 6 "Photograph and Visual Simulation Methodology" [Environment Court document 18].

45 J Dey, evidence-in-chief para 13 [Environment Court document 17].

46 J Dey, evidence-in-chief para 12 [Environment Court document 17].

47 R Lucas, evidence-in-chief para 13 [Environment Court document 17].

48 *Maniototo Environmental Society Inc and Ors v Central Otago District Council and Otago Regional Council* Decision C103/2009 at [430].

49 P Sewter, evidence-in-chief [Environment Court document 15].

50 P Sewter, evidence-in-chief para 41 *et ff* [Environment Court document 15].

51 See P R Blakely, evidence-in-chief Appendix C Photograph Viewpoint 1 [Environment Court document 13].

Camera:	Canon EOS 1000D DSLR
Focal Length:	49mm (x 1.6 focal length multiplier = 78.4mm film equivalent)
HFOV:	25.9 degrees
Width of Image:	230mm
Reading Distance:	500mm
Date/time taken:	14/03/2012, 1pm
Way point:	S44 43.439 E169 14.457

Those descriptions imply that Mr Blakely's photographs were taken by him. However, he conceded in cross-examination[52] that his photograph 4 was taken by Mr Staufenberg. Further as Ms Caunter submitted out[53] that admission suggests all his photographs were in fact taken by Staufenberg because they are all apparently taken with a Canon EOS DSLR which Mr Blakely had identified as Mr Staufenberg's camera.

[39] Further, Mr Blakely made no attempt to show the wider landscape views as they are perceived, or the simulated proposal in the landscape it would be perceived. This is the subject of evidence by Ms Dey who wrote as follows[54]:

> An example to show why including a wider horizontal field of view is important when preparing a Visual Assessment can be seen when comparing Ms Lucas' Attachment 5, photograph D with Mr Blakely's Appendix C, Photograph Viewpoint 2. Both of these images were taken from a very similar viewpoint; however Ms Lucas' photograph shows the context of this view to include SH6 and the neighbouring commercial development either side of the central view towards the site. Mr Blakely's evidence omits this side detail and therefore does not give a true representation of what the eye would see ... (Mr Blakely shows only 26 degrees). In this case, context is a vitally important consideration and one that should not be omitted. Our photographs were therefore scaled to an appropriate size to include this data.

That evidence is unchallenged: she was not cross-examined. That probably explains why that passage was not put directly to Mr Blakely in cross-examination. However while the field of view issue was not addressed squarely by him, it is referred in the Guidelines which he said he complied with[55]. Further this issue is not a question of fact but of professional approach on which the court has expressed the need for care before. As the Planning Tribunal stated in *Oggi Advertising Ltd v Waitakere City Council*[56]:

> Great care must be taken with photographic evidence of this nature, to ensure that the photograph represents what is normally seen by the human eye and that attempts are not made to present a photograph which portrays only a portion of the scene in order to highlight a particular aspect and give unnecessary prominence to parts of it.

Mr Blakely should know of the general importance of giving photographs of views as they are experienced.

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52 Transcript p. 62 lines 21-27; evidence-in-chief para 7.3 (discussed later).

53 J Caunter, Closing submissions para 114.

54 R Lucas, evidence-in-chief para 13 [Environment Court document 17].

55 Transcript p 63.

56 *Oggi Advertising Ltd v Waitakere City Council* Decision W55/95 (Judge Treadwell presiding) at p. 4.

[40] I have studied the photographs Ms Dey mentions. Size A3 copies are conveniently attached to her evidence. So that the reader can better understand Ms Dey's point I attach an A3 size copy of Mr Blakely's photograph[57] from viewpoint 2 as Attachment "C" and an A3 copy of Ms Lucas' photograph "D" (showing various features and the outline of the proposed buildings) as attachment "D". It should be noted that these photographs have to be viewed at different distances – 500mm and 308mm respectively[58]. The photographs were taken from very similar points on the southern edge of State Highway 6. It is remarkable how much more of the view is contained in Ms Lucas' photograph. It should be borne in mind at all times that her view is much closer to what the observer sees in reality than Mr Blakely's photograph. I find that Ms Dey's point is correct and that Mr Blakely's photograph is misleading in its focus on the site. The same criticism can be made of all the other photographs of views produced by Mr Blakely. (I will review those in the appropriate places). The net effect is to undermine my confidence in Mr Blakely's assessments and opinions. That is reinforced by other considerations to which I now turn.

[41] Mr Blakely agreed with Ms Lucas' viewpoints and her 'before and after' photographs (the latter being simulations) as he conceded in cross-examination[59]. However, in his evidence-in-chief, he produced some further simulations from slightly different viewpoints, to convey what he thought[60] were significant effects of the proposal. Apart from the misleadingly narrow point of view in his photographs, there are several other difficulties with that approach: first it would have been fairer to Ms Lucas to raise them with her at the conferencing; secondly, he should (as Ms Lucas did with hers) have given "before and after" photographs.

[42] Ms Caunter cross-examined him about his simulation[61] from viewpoint 4 on Mt Barker Road. The photograph from viewpoint 4 purports to be part of his assessment of the effects of the proposal. This shows the extent of the proposed buildings on the site with a red outline and blocks out the walls in black. He explained[62] that he produced this photograph to show that the main building would be visible from Mt Barker Road travelling east. He concluded in his evidence-in-chief that the proposed development is "visually prominent". I consider that further later. The important point here is that at present the Transport and Toy Museum is in fact visible (on the same line) from his viewpoint 4. The black colouring in his simulation obscures the Toy and Transport Museum behind (to the north of the site) as he accepted[63] in cross-examination. In my judgment a much fairer way of showing the building outlines was

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57 P R Blakely, evidence-in-chief Appendix C Photograph Viewpoint 2 [Environment Court document 13].

58 When printed (without any trimming of margins) at A3 scale.

59 Transcript p. 68 lines 16 and 17.

60 Transcript p. 66 lines 21-23.

61 P R Blakely Appendix C Photograph 4 [Environment Court document 13].

62 Transcript p. 65.

63 Transcript p. 66 line 17.

shown in the photograph[64] of Ms Lucas' that he was criticising. That shows the proposed building transparently with the existing building on the other side of the State Highway visible through gaps in the trees along the highway. I am not suggesting that Mr Blakely blotted the museum out deliberately: if the proposal proceeds it would indeed be hidden behind the main building on this site. I think what has happened is that to some extent he has lost objectivity. Because he considers the site is "pastoral/arcadian/natural" he simply cannot see past it to the fact that views from his viewpoint 4 already have buildings in them.

[43] Counsel for the Staufenberg Trust in her closing submissions defended Mr Blakely as follows[65]:

> The Applicant criticised Mr Blakely's photomontages stating that they were out of context. Mr Blakely's evidence clearly describes the purpose and context of each photomontage and he further justified his approach when questioned about Photograph 4. He felt the photograph taken by Ms Lucas, while useful, was taken too far back from the development and that there needed to be a photograph taken closer because the development has a greater effect as one moves East along Mt Barker Road[66]. Mr Blakely did not see the sense in repeating the same photographs as Ms Lucas, he took photographs from differen[t]ce locations because he felt that Ms Lucas' photographs did not show all the locations that were significant when viewing the development[67].

While I accept that Mr Blakely considered, after the meeting with Ms Lucas, that other views were important, he still needed to give accurate objective evidence to the court. Nor, does Mr Blakely describe the visual context of each photomontage – that was precisely Ms Dey's point. His simulations focus on the building with a small horizontal field of view (26°). That is much less than the eyes see as I have explained.

[44] While Ms Lucas made two or three errors – and I will refer to those at the appropriate points - there is also a disconcerting number of basic errors or omissions in Mr Blakely's evidence:

- when cross-examined about his Map 1 of outstanding natural landscapes he conceded that "there's the odd drafting error"[68];
- he was cavalier about directions of roads and features[69]. For example he states[70] that the proposal will be visually prominent from:
  a. the key intersection of Mount Barker Road and State Highway 6;
  ...
  c. from the north east end of Mount Barker Road before the site and adjacent to the site.

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64 R Lucas Attachment 5 photo B [Environment Court document 18].
65 Ms Robb, Closing submissions para 9.20.
66 Transcript p. 65 line 28.
67 Transcript p. 66 line 17.
68 Transcript p. 58 line 5.
69 Also Transcript p. 62 lines 21-27; evidence-in-chief para 7.3 (discussed later).
70 P R Blakely, evidence-in-chief para 8.34 [Environment Court document 13].

But as Plan "B" attached shows, the northeast end of Mt Barker Road is the intersection north of State Highway 6 (in other words a. and c. are the same point).

- he omitted[71] to take into account as part of the existing environment the Pittaway Hangar development in which resource consent has been granted for eight large buildings (636m^2 floor area) and three slightly smaller (500m^2) up to 7 metres in height;
- his simulations in his photographic simulations 1, 2 and 4 purported to show the proposed planting but failed[72] to portray the (Alder, Poplar and Birch) trees shown on "A";
- he is critical of the proposed earth bunding around the development on a number of occasions, saying it is "... for the sole purpose of screening"[73]. That is not its sole purpose; it is equally an acoustic barrier[74].

[45] Another subject on which Mr Blakely's evidence comes across confusingly is the subject of bunding. I have already referred to some of his evidence on mounding/bunding. In the conference of the two landscape experts he and Ms Lucas agreed[75] that planting could be reduced on top of two of the bunds. However, he was then critical[76] of the bunding. Nor would he favour planting on top (or in front of) the bunding because[77] "The mitigation will emphasise that there is something to hide behind them". The applicant cannot win. If this was a significant issue (I find it is not) then mitigation could be designed to look like a permitted small woodlot. In my view that would be more adverse than the proposed planting which is (as I come to) encouraged by policies in the district plan.

[46] On the whole, I found Ms Lucas relatively more reliable and objective in her assessments in this case, although I will be careful to treat each assessment in the proceedings separately.

2.3 Assessment of the landscape context

[47] The landscape experts agreed that airport and surrounding buildings "... degrade the overall landscape character of the landscape in the vicinity"[78] and that "... the commercial/industrial land [of the airport and related activities] is an anomaly and influences the character of the site"[79]. In her evidence-in-chief Ms Lucas upgraded that to say that the commercial/industrial node "... strongly influence the character of the

71 Transcript p. 61 line 3.
72 Transcript p. 77 lines 12-23.
73 P R Blakely, evidence-in-chief para 8.26 [Environment Court document 13].
74 See R Lucas Attachment 8 "Landscape Concept Plan" [Environment Court document 18]; also M J Hunt, evidence-in-chief para 5.11 [Environment Court document 5].
75 Joint Statement: R Lucas Attachment 8 p. 8 [Environment Court document 18].
76 Joint Statement: R Lucas Attachment 8 p. 9 [Environment Court document 18].
77 Joint Statement: R Lucas Attachment 8, p. 9 [Environment Court document 19].
78 DLEJS 7 March 2012, p. 2, R Lucas, evidence-in-chief attachment 8 [Environment Court document 18].
79 DLEJS p. 2, R Lucas, evidence-in-chief attachment 8 [Environment Court document 18].

landscape in the immediate vicinity of the site"[80]. It is rather unprofessional of her to disagree with her own (joint) statement without identifying the disagreement and explaining why she has come to a different view.

[48] Mr Blakely disagreed that the influence was "strong". He reiterated, in effect, the joint statement and then described[81]:

> ... the intersection as having ... commercial/industrial character on the north side of SH6 and this has spilled across the highway with the Have a Shot commercial recreational activity. However the land to the south of SH6 and west of Mt Barker Road is clearly rural and provides visual relief to the commercial and built form across SH6.

Ms Lucas elaborated on the effect of the power lines, describing them as[82]:

> ... degrad[ing] the visual appearance of the site and result in a reduction of naturalness. The power lines also add the visual clutter of the area ... particularly when viewed from SH6 over Have a Shot and from the intersection of SH6 and Mt Barker Road.

[49] Mr Blakely's response was[83]:

> In my view they are a factor affecting the character of the Site and only reduce the naturalness and visual quality of the Site to a relatively minor extent. Power poles and lines are structures expected in rural land and people are used to seeing them in this location. They also do not block views or disrupt openness or pastoral character. As an example in the Cardrona Valley there are powerlines and poles down the middle of the Cardrona Valley. These do not unduly degrade or impede the view from the road. They are an accepted part of the "working landscape" of the Cardrona Valley.

As the use of the word "unduly" by Mr Blakely implies, power lines in the Cardrona Valley and elsewhere do detract from the landscape unit they are set in. The real question is "how much?" in each case, and that usually depends on the distance from the power lines. Here the power lines run through the centre of the site and close to the roads from which views are obtained. Further if he is prepared to "accept" the power lines in the outstanding natural landscape which is the Cardrona Valley it is difficult to understand why the Wanaka Airport is so degrading to the containing VAL.

[50] In my view Ms Lucas' second opinion is justified by her photograph D[84] which contains a number of horizontal wires apparently[85] in parallel across most of the view. The wires are:

- the fence on the Have-a-Shot boundary with State Highway 6;
- internal fence(s) on Have-a-Shot land;
- the power lines;

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80 R Lucas, evidence-in-chief para 28 [Environment Court document 18].
81 P R Blakely, evidence-in-chief para 5.9 [Environment Court document 13].
82 R Lucas, evidence-in-chief para 28 [Environment Court document 18].
83 P R Blakely, evidence-in-chief para 5.12 [Environment Court document 13].
84 R Lucas, evidence-in-chief attachment 5 PhD [Environment Court document 18].
85 I write "apparently" because in fact the power lines are approaching State Highway 6.

– and those are reinforced by the horizontal lines of the Have-a-Shot signs. I consider Ms Lucas' description of the context is relatively more accurate. I find that Mr Blakely's approach underplays the influence (already admitted by him) of the commercial/industrial activity across both roads from the site. His approach appears to have no room for a concept of influence diminishing with distance, and he gives little weight to the presence of the power lines on the site.

2.4 The landscape classification

[51] I pause to recollect what a "visual amenity landscape" is, and its place in the scheme of the district plan. Broadly Chapter 4 of the plan categorises (most[86]) landscapes within the district into three categories:

- outstanding natural landscapes
- visual amenity landscapes
- other rural landscapes

[52] Visual amenity landscapes are described as follows[87]:

> ... 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 extra quality that these landscapes possess which bring them into the category of 'visual amenity landscape' is their prominence because they are:
>
> - adjacent to outstanding natural features or landscapes; or
> - landscapes which include ridges, hills, downlands or terraces; or
> - a combination of the above
>
> The key resource management issues for the visual amenity landscapes are 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.

Two points about that passage should be made. First, "pastoral" does not, in this context, mean simply paddocks of introduced grasses (and weeds). Utilitarian farmers might be relieved to know the majority of working farms of much of New Zealand are not 'pastoral' in the poetic and picturesque senses, nor are they 'Arcadian'. Pastoral and Arcadian areas in the Wanaka basin are to be found southwest of the Wanaka Airport, e.g. the Feint property. Other examples are dotted across the landscape towards and around the north side of Mt Barker. The word "Arcadian" was introduced to reinforce that "pastoral" is not meant in the utilitarian pastoral lease sense. In effect "pastoral" and "Arcadian" are nearly synonyms in the district plan. Second, visual amenity

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86 There is a lacuna – in Chapter 4 anyway – as to the place of urban landscapes.

87 Para 4.2.4 (3) under the heading: Maintenance and Enhancement of Visual Amenity Landscapes [QLDP p. 4-9].

landscapes may be categorised as such for their own characteristics or because they are adjacent to an outstanding natural landscape or feature.

[53] Case law has developed the application of the landscape categorisations in Chapter 4 of the district plan. Importantly the High Court stated in *Queenstown Lakes District Council v Trident International Ltd*[88] that there is no fourth category. Fogarty J stated[89]: "The analysis of whether the site falls within outstanding natural, visual amenity or other rural landscape ... is exhaustive". *Trident* was about an application to subdivide Rural-General zoned land immediately adjacent to a hillside suburb in Queenstown. The Environment Court found that the site was in a townscape[90] (as a fact) but then held that the district plan "... does not require that urban landscapes be assigned to a class of rural landscape rather than recognised for what they are"[91]. That is the point which the High Court held was wrong. In other words even if heavily influenced by an adjacent urban zone (or area) any rural area must be categorised into one of the three categories identified in Chapter 4.2 of the district plan. While crude, at least that approach does have the advantage of concentrating minds on clean urban edges as required by a policy I will come to.

[54] Before and after *Trident,* a number of attempts were made to define small areas of the Rural-General Zone with reduced naturalness as "other rural landscapes" rather than as VALs. In a sequence of cases starting with *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*[92] the Environment Court has reiterated that landscapes are not "landscape units", they must be approached as a whole: see *Parkins Bay Preserve Inc v Queenstown Lakes District Council*[93]. In other words, a small area of a VAL may have very low visual amenity values indeed (because of its proximity to existing development and because it possesses low natural values) but it still needs to be categorised as part of a VAL because there is no other pigeonhole to put it into as a landscape. This is, in effect, a "wash over"[94] principle where a small area of low landscape value looked at by itself may be in a higher category landscape simply because most of the surrounding land is of higher landscape value. The quality of a landscape varies within a continuum.

[55] Finally, on the scheme of the district plan in respect of landscape categorisations, it appears to apply only to rural areas, that is rural zones which are the subject of

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88 *Queenstown Lakes District Council v Trident International Ltd* HC, Christchurch C1V 2004-485-002426, Fogarty J 15/3/05.

89 *Queenstown Lakes District Council v Trident International Ltd* HC, Christchurch C1V 2004-485-002426, Fogarty J 15/3/05 at para [26].

90 *Queenstown Lakes District Council v Trident International Ltd* HC, Christchurch C1V 2004-485-002426, Fogarty J 15/3/05 at [10].

91 *Trident International Ltd v Queenstown Lakes District Council* EC Decision C146/2004 at para [37].

92 *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* Decision C3/2002.

93 *Parkins Bay Preserve Inc v Queenstown Lakes District Council* [2010] NZEnvC 432 at [52].

94 This approach was enunciated in the UK in *Meyrick Estate Management v Secretary of State for Environment, Food and Rural Affairs* [2005] EWHC 2618 (Admin) at para [83].

Chapter 5 of the district plan. No other chapter in the plan requires the 3-stage (or any) analysis of landscapes that Chapter 5 stipulates. That is of some relevance to these proceedings because despite its name – the Windermere Rural Visitor Zone – the new zone across State Highway 6 from the applicant's property is not a rural zone. Hence the land in it is not a visual amenity landscape.

[56] Ms Lucas considered[95] that the site is "... at the lower end of a VAL character continuum due to the modified nature of the land, the existing power lines and poles and the nearby commercial activity". Ms Lucas initially described the rest of the surrounding area as having a "pastoral rural character"[96]. She continues a little later[97]:

> Human habitation and use of the land for farming has modified the area resulting in an Arcadian or Visual Amenity Landscape. Open farmland is predominantly grazed and contains shelter and amenity tree planting.

I find that to be an accurate description, although I consider the VAL results (in terms of its explanation) both from its proximity to the ONL and from the amenity tree planting rather than simply from grazing per se. There is at least a suspicion here that Ms Lucas is confusing two senses of "pastoral" – the working paddock sense, and the poetic/Arcadian one.

[57] For his part Mr Blakely for the Staufenberg Family Trust wrote[98]:

> I disagree the site is at the lower end of the VAL character continuum. The site is part of a clearly rural, pastoral landscape on the south side of the SH6 separate from the commercial development of the Airport. The powerlines and poles have a minimal effect on the character of the site and importantly do not affect the natural/pastoral/arcadian character of the landscape. The Have a Shot is a further incursion of commercial activity that has spilled across the highway but it is small scale on the other side of Mt Barker Road to the [s]ite and is ... contained beneath the terrace.

I struggle with Mr Blakely's characterisation of the site as having a "natural/pastoral/arcadian character". Since those are two different characteristics it is hard to resist the conclusion that he has not thought about which is the most appropriate description of the land.

[58] I find that the site is not "arcadian" at all: rough introduced pasture close-grazed by rabbits and surrounded on two sides by pines and roads has minimal arcadian character. The site has a pastoral character, that is pastoral with a small "p" (as in, it grows pasture in the "pastoral lease" sense familiar in the high country), not "Pastoral" as in bucolic. Finally, natural character is relatively low given the fact the ground cover is introduced grass, the surrounding environment and the power lines crossing it (as shown on Plan "A"). This is reinforced by Mr Blakely's earlier description of the site

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95 R Lucas, evidence-in-chief para 28 [Environment Court document 18].
96 R Lucas, evidence-in-chief para 28 [Environment Court document 18].
97 R Lucas, evidence-in-chief para 31 [Environment Court document 18].
98 P R Blakely, evidence-in-chief para 33 [Environment Court document 13].

and surrounding landscape[99] which I have already quoted. A useful test for the effect of the power lines and poles is to ask whether anyone would readily build a residence on the site: the answer is very probably 'no'. The preferred house sites would be further southeast on the property and off the proposed site.

2.5 Conclusions

[59] To conclude on classification: the site and the property are both within a visual amenity landscape but the issue is where in the VAL spectrum the site and the rest of the property respectively sit. There is low quality pasture on the property but there are very few trees and these are confined to the tip of the property at the State Highway 6/Mt Barker Road intersection (see Plan "A" attached). Even the pines on the adjacent road reserve are more characteristic of a working farm than of a bucolic landscape. Further, there are strong local influences which reduce the site's amenities even further. First, the power lines running through the site strongly reduce its amenities. This effect does not apply to the remainder of the property to the same extent. A second factor not mentioned by the landscape architects, is the presence of the adjacent roads. That is emphasised by the fact that the roads are not at right angles, but only – see Attachment "B" - at (approximately) a 40 degree angle[100]. Their tarsealed surfaces and the traffic on them cumulatively reduce the naturalness of the site. For a similar finding (concerning only one adjacent road), see *Maniototo Environmental Society Inc and Ors v Central Otago District Council and Otago Regional Council*[101]. Third, there is the presence across State Highway 6 of the much larger commercial node (the airport and all the buildings on it) and the likely extension in the Rural Visitor zone. I find that the site has very few, if any, Arcadian or pastoral qualities as those terms are used in the district plan.

[60] It is unclear whether Mr Blakely considers the Wanaka Airport and the Rural Visitor Zone to be part of the VAL. His map[102] of "Indicative location of landscapes" appears to exclude them by colouring them a different colour (pink) from the VAL (light blue). However, his evidence reads consistently as if these two areas are within the VAL and the buildings at the airport degrade the VAL. I consider that is incorrect at law at least as far as the Rural Visitor Zone (a Special Zone – see Chapter 12 of the plan, not a "Rural Area" covered by Chapter 5) is concerned. Further there is a large air of unreality about regarding the airport café and ancillary buildings as improper intrusions onto a VAL which is what Mr Blakely's (and the planner Ms V S Jones') approach requires. Ms Lucas acceded to that proposition, although Mr Vivian recorded his doubts.

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99 P R Blakely, evidence-in-chief section 5 [Environment Court document 13].

100 Except at the intersection when Mt Barker Road is, for a few metres, at a right angle to the State Highway.

101 *Maniototo Environmental Society Inc and Ors v Central Otago District Council and Otago Regional Council* Decision C103/2009 at para 299.

102 P R Blakely, evidence-in-chief Appendix B Map 1.

[61] Further the landscape experts show an imperfect understanding of how the district plan explains VALs in paragraph 4.2.4(3) of Chapter 4. Consequently while I accept that the property is part of a VAL, it is for a different reason than the experts gave. It is not a VAL because of its pastoral or Arcadian qualities. It has very few at best. The plain of which the property is a part only starts to show these qualities around or beyond the Staufenberg property and then more firmly (but still intermittently) further west. The reason I find that the property and its surrounds are a VAL is that they fall into the category of being:

- adjacent to outstanding natural features or landscapes[103]

- rather than as a:

- landscape ... include[ing a] ... terrace.

(I accept that in technical geological language the property and the airport are on a terrace but it is so large it looks like a plain.)

[62] Consequently I consider the most important natural quality of the VAL in this area is the lack of buildings and trees – its open character. That openness is being eroded further west as houses are built (e.g. the Staufenberg house), and some Arcadian qualities are developing. One of the most open areas is the Young property which is the subject of this application. I find that what makes most of the property – that part beyond the site and the trees which screen it from most views along State Highway 6 – important is its open character as a foreground to the mountains to the south and west.

3. What are the relevant objectives and policies of the district plan?

3.1 Chapter 5: the objectives and policies for rural areas[104]

[63] Recreational activities are contemplated within rural areas of the district. The resource management issues[105] for rural areas include "Open Space and Recreation" and then refer back to the Chapter 4 (District Wide) objectives and policies relating to that issue. The general rural "Character and Landscape"[106] and "Rural Amenity"[107] objectives in Chapter 5 have policies to "allow for" and "ensure" a range of activities. Those descriptions of activities in the zones include commercial recreation activities[108].

[64] There is a more specific objective – it is called a "purpose" - for the Rural General Zone. Paragraph 5.3.1.1 Rural General Zone states[109]:

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103 4.2.4 Issues (3) first bullet point [QLDP P. 4-9].

104 In the district plan called "sections" but to avoid confusion with sections in the RMA, I will call them Chapters.

105 Para 5.1, Chapter 5 Rural Areas [QLDP p. 5-1].

106 Objective (5.2) 1 [QLDP p. 5-2].

107 Objective (5.2) 3 [QLDP p. 5-4].

108 e.g. Assessment Matter xv [QLDP p. 5-35].

109 Para 5.3.1 Zone Purposes [QLDP p. 5-9].

> The purpose of the Rural General Zone is to manage activities so they can be carried out in a way that:
> - protects and enhances nature conservation and landscape values;
> - sustains the life supporting capacity of the soil and vegetation;
> - maintains acceptable living and working conditions and amenity for residents of and visitors to the Zone; and
> - ensures a wide range of outdoor recreational opportunities remain viable within the Zone.

This zone purpose is not usually referred to because the first three components of the purpose are effectively subsumed in the earlier statement of objectives and policies for all rural areas – including the Rural General Zone. However, the fourth component is the only place where the maintenance of (outdoor) recreational opportunities is identified as an objective of the zone. In my view all the other objectives and policies in the district plan need to be read in conjunction with this purpose. Further, that fourth purpose is particularly important in this case because two (go-karts and bumper boats) of the proposed recreational activities are outdoors.

[65] The other important and relevant objective with implementing policies for rural areas is to avoid, remedy or mitigate adverse effects of activities on rural amenity[110].

3.2 How much of the remainder of Chapter 4 (district-wide issues) is relevant?

What does Chapter 5 say about the relevance of district-wide issues?

[66] Chapter 5 (Rural areas) objective 1 "Character and Landscape Value" and its first implementing policy expressly[111] refer to the need to consider the objectives in part 4.2 and the statement of issues for Chapter 5 also identifies the following issues in Chapter 4 as potentially relevant[112]:

- Natural Environment - part 4.1
- Landscape and Visual Amenity - part 4.2
- Open Space and Recreation - part 4.4

...

However, neither 4.5 (Energy Efficiency) or 4.9 (Urban Growth) are referred to in that list. With the express exceptions identified above, this district plan adopts the approach explained by the Planning Tribunal in *NZ Rail Ltd v Marlborough District Council*[113]:

> ... where there are relevant general objectives and policies that might be thought to be in conflict with more specific relevant objectives and policies, ... for the purposes of section 105(2)(b)(ii) [now section 104D] of the Act it is the latter that should be regarded as being applicable, otherwise absurd results could follow. A general objective and policy could be read as precluding a development referred to in a more specific objective and policy.

I conclude that, as a matter of construction of the district plan, parts 4.5 and 4.9 have no relevance to a resource consent application under Chapter 5. I note that urban growth

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110 Objective (5.2) 3 [QLDP pp. 5-4 and 5-5].
111 Objective (5.2) 1 [QLDP p. 5-2].
112 Para 5.1 [QLDP p. 5-1].
113 *NZ Rail Ltd v Marlborough District Council* (1993) 2 NZRMA 449 to 960.

issues (the subject of part 4.9) policies are mirrored (in abbreviated form) in part 4.2's policies 6-8 in any event.

3.3 What are Chapter 4's policies on landscape and visual amenity issues?

[67] The district-wide objectives[114] on landscape and visual amenity values in Chapter 4 of the district plan include one rather bland landscape objective[115] for undertaking subdivision, use and development in the District so as to avoid, remedy or mitigate adverse effects on landscape and visual amenity values. There is a long list of implementing policies which give rather more guidance[116] to a decision-maker. A number of these are relevant:

> **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.
>
> ...
>
> **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 (except any trail as defined in this Plan); and
> - visible from public roads.
>
> (b) To mitigate loss of or enhance natural character by appropriate planting and landscaping.
>
> ...
>
> **6. Urban Development**
>
> ...
>
> (b) To discourage urban subdivision and development in the other outstanding natural landscapes (and features) and in the visual amenity landscapes of the district.
>
> ...
>
> (d) To avoid remedy and mitigate the adverse effects of urban subdivision and development in visual amenity landscapes by avoiding sprawling subdivision and development along roads.
>
> ...
>
> **7. Urban edges**
>
> To identify clearly the edges of:
>
> (a) Existing urban areas
>
> ...
>
> by design solutions and to avoid sprawling development along the roads of the district.
>
> **8. Avoiding Cumulative Degradation**
>
> In applying the policies above the Council's policy is:

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114 Part 4.2.5 of the QLDP.

115 Objective 4.2.5 [QLDP p. 4-9].

116 Policy (4.2.5) 1(1).

(a) to ensure that the density of subdivision and development does not increase to a point where the benefits of further planting and building are outweighed by the adverse effect on landscape values of over domestication of the landscape[117].
(b) to encourage comprehensive and sympathetic development of rural areas.

9. Structures
To preserve the visual coherence of:
...
(b) visual amenity landscapes
- by screening structures from roads and other public places by vegetation whenever possible to maintain and enhance the naturalness of the environment; and

...

17. Land Use
To encourage land use in a manner which minimises adverse effects on the open character and visual coherence of the landscape.

Several points need to be made about the application of these policies:

(a) Because the proposed entertainment complex contains a large building for a bowling alley and a café that appear to be "urban development" as that phrase is now defined[118] in the district plan (i.e. they are non-rural activities), policies 6(b) and (d) are relevant to the application, and policy 7 probably is also.

(b) As for policy 8(a): "Domesticate" is defined in *The Shorter Oxford English Dictionary*[119] as meaning:

1. To cause to be at home; to naturalize
2. To make domestic; to attach to home and its duties
3. To tame or bring under control; ... to civilize ...

- and "domestication" is defined as "the action of domesticating; domesticated condition". I suppose it falls within the meaning of domestication to say that commercial buildings might be "over domestication" so I hold that this policy is relevant to the proposal.

(c) In relation to policy 17 it is worth observing that while "open character" is not defined in the district plan, the term "open space" is[120]. The latter means "... any land or space which is not substantially occupied by buildings and which provides benefits to the general public as an area of visual, cultural, educational, or recreational amenity values". In *Just One*

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117 Over domestication has been defined as the threshold at which the character of the landscape is diminished by the introduction of a density of residential development which the land cannot absorb (*Hawthorn Estates v QLDC* C83/04 paragraph 78).
118 QLDC Plan Change 30.
119 *The Shorter Oxford English Dictionary* [Third Edition OUP] p. 593.
120 Volume 1B: Definitions Chapter [QLDP p. D-8].

Life Ltd v Queenstown Lakes District Council[121] the Environment Court held that the district plan must have intended a difference, and that the district plan differentiated between "open character" and "open space" on the basis that open character is characterised by lack of trees as well as lack of structures whilst open space is primarily a lack of buildings.

(d) The differences go rather further than that. "Open space" is used to describe areas (not simply characteristics) as in the suite of recreation issues, objectives and policies identified next. "Open space" is (or was[122]) an important concept in the collection of development contributions, whereas "open character" is simply (but importantly) a key description of one of the characteristics that make the lakes' natural landscapes unique (and in many areas, outstanding) – a lack of buildings and trees. That is the quality that makes "Central Otago" in the wider, non-territorial, sense so special in many people's memories.

3.4 Recreation issues in Chapter 4

[68] The first relevant district-wide recreation objective relates to the environmental effects of recreation and is[123] to undertake recreational activities or build and use facilities so as to avoid, remedy or mitigate "significant adverse effects" on the environment or on "the recreation opportunities" available in the district. The relevant implementing policies are[124]:

> 2.1 To avoid, remedy or mitigate the adverse effects of commercial recreational activities on the natural character, peace and tranquility 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.
>
> ...
>
> 2.5 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.
>
> ...

[69] The third recreation objective is[125] to use open space and recreational areas effectively when meeting the needs of the district's residents and visitors. The implementing policies are[126]:

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121 *Just One Life Ltd v Queenstown Lakes District Council* Decision C163/2001 at [44].

122 Development contributions are now collected under the Local Government Act 1974.

123 Objective (4.4.3) 2 [QLDP p. 4-25].

124 Objective (4.4.3) 2 [QLDP p. 4-25].

125 Objective (4.4.3) 3 [QLDP p. 4-26].

126 Objective (4.4.3) 3.1 to 3.3 [QLDP p. 4-26].

3.1 To recognise and avoid, remedy or mitigate conflicts between different types of recreational activities, whilst at the same time encouraging multiple use of public open space and recreational areas wherever possible and practicable.

3.2 To ascertain and incorporate the needs of communities by encouraging effective public participation in the design, development and management of public open space and recreational areas.

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.

I note that the policies encourage increased use not only of private open space, but also of (private) recreational facilities - which implicitly includes indoor facilities.

4. What are the likely adverse effects of the proposal?

4.1 Introducing the assessment

[70] When considering the adverse effects the court should consider the proposals as mitigated (e.g. by conditions) but must not consider the positive effects: *Elderslie Park Ltd v Timaru District Council*[127]. The court may in its discretion disregard an adverse effect if the district plan permits an activity with that effect[128]. Further, that discretion expressly applies[129] to the determination of an application for a non-complying activity. Mr Vivian for the applicant identified[130] the following activities as permitted on its land – recreational activities such as a go-kart track, motorbike riding, and shooting; farming activities including use of motorbikes and equipment, viticultural activities. In his opinion the potential adverse effects that could arise from the permitted baseline would be that[131]:

- Farming, forestry, recreation and small scale commercial recreation activities (such as 5 go-karts operating) can adversely affect rural amenity in terms of noise.
- Earthworks can change the form of the land over time, for example by creation of ponds and mounds. Earthworks can also cause temporary noise and dust effects.

Ms Jones accepted these but pointed out[132] that those activities would have to meet the noise standards.

[71] The Hearing Commissioners proposed, and the applicant accepts, a number of conditions to mitigate potential effects. I summarise the relevant conditions[133] briefly.

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127 *Elderslie Park Ltd v Timaru District Council* HC, Timaru CP10/94; Williamson J 24/2/95.

128 Section 104 (2) RMA.

129 Section 104D (2) RMA.

130 C Vivian, evidence-in-chief paras 9.2.2-9.2.4 [Environment Court document 19].

131 C Vivian, evidence-in-chief 12 March 2012 para 9.2.7 page 30.

132 V S Jones, evidence-in-chief para 6.14 [Environment Court document 14].

133 All proposed conditions are taken from the final version attached to Ms Caunter's submissions in reply [Environment Court document 22].

Lighting

[72] There is a condition[134] that there shall be no pole-mounted exterior lighting. Any exterior lighting must be fixed to the buildings (or mounted at a height of no more than one metre above ground level) and in either case directed no higher than horizontal.

Screening of carpark

[73] A condition stipulated that plants must be of sufficient height and density to achieve complete screening of cars in the car park (except for any view from the entrance) within eight years of commencement of the consent. To achieve that a detailed planting plan has to be lodged and approved prior to construction. There are also maintenance and irrigation conditions.

Conditions: Operating hours

[74] The winter operating hours for outdoor activities are proposed to cease at dusk, as there is no outdoor lighting proposed for these areas. The variable weather in Wanaka in the winter months mean some flexibility is required here, but obviously the condition must be clear in its terms. In the darker months (particularly May, June and July) outdoor activities and seating are likely to finish around 17:00 as darkness falls. However, in the latter part of winter (August and September), the evenings are much lighter and warmer, and I accept that these activities could remain operating until 18:00. Rather than suggesting a condition with different hours for the shoulder seasons of spring and autumn, the applicant offers fixed winter hours that provide it with a later finishing time when the conditions allow it (that is, closing at dark in mid-winter, and no later than 18:00 hours during the entire winter period described). A finishing time of 18:00 is consistent with other activities in the area.

[75] The applicant maintains its 20:00 finishing time in summer for outdoor activities is appropriate. It is not dark in Wanaka until around 22:00 during the peak summer months and many activities occur until at least 20:00 or 21:00, including airport flights. I have already recorded the applicant's agreement that it will have no outside lighting in the outdoor activity area.

Carpark

[76] The applicant has agreed to reduce the size of the carpark to allow for 57 carparks and 2 bus parks. The planning witnesses agreed that less carparks could service the site than proposed initially, Ms Jones originally said 33 parks would be appropriate[135] and then accepted something closer to 51 – 57[136]. It is now proposed that the carpark surface be gravelled rather than sealed, in keeping with the rural character of the area. These details are included in the amended conditions.

134 Hearing Commissioners' Decision 16 May 2011 condition 29.
135 V S Jones, evidence-in-chief, paragraph 5.23.
136 Transcript page 92 line 15.

[77] The applicant has confirmed[137] that the sign to be erected at the site will be no more than the $2m^2$ size permitted in this zone and will not be illuminated.

The café/bar

[78] The Commissioners proposed[138] that the café/bar would operate only if at least one of the main recreation activities approved (go-karts, bumper boats and/or ten pin bowling) is operating at the time. Other conditions to ensure that the cafe is in fact ancillary to the commercial recreation operations are proposed which require:

> 32. The café/bar elements of the facility shall be managed by the same operator as the recreation facilities and not a separate business. The café/bar element shall not be advertised independently from the main recreation activities.
>
> 33. The separate bar facility shall be deleted from the proposal and alcohol served only from the café area.

4.2 What are the general potential effects of the commercial recreation activities?

[79] Despite the fact that overall the proposed entertainment complex is being treated as non-complying, it is useful to consider the possible adverse effects in the light of the two relevant lists of assessment matters in the district plan. The first list, for "commercial recreation activities"[139] in the Rural General Zone serves as a useful introduction to the effects of the proposed centre. The second list relates to the effects of the proposal in its visual amenity landscape setting and will be considered in detail below.

[80] I need to bear in mind that these assessment matters are not "tests" which are required to be passed in each case. They are guidelines which need to be considered when a decision is made and "not meeting a guideline is simply one factor among many to be considered by the consent authority in making a decision": *Lakes District Rural Landowners Inc. v Queenstown Lakes District Council*[140]. There is one general assessment matter in this list which raises a number of issues. Rather curiously it is the second matter – *adverse effects* – in the list. It requires:

> ...
> (b) Any adverse effects of the proposed activity in terms of:
> (i) noise, vibration and lighting, which is incompatible with the levels acceptable in a low-density rural environment.
> (ii) loss of privacy or a sense of remoteness or isolation.
> (iii) levels of traffic congestion or reduction in levels of traffic safety which are inconsistent with the classification of the adjoining road.
> (iv) pedestrian safety in the vicinity of the activity.
> (v) litter and waste.
> (vi) any cumulative effect from the activity in conjunction with other activities in the vicinity.

137 J Caunter, Submissions in reply para 180.
138 Hearing Commissioners' Decision 16 April 2011 condition 31.
139 Rule 5.4.2.3 xv [QLDP p. 5-35] which supplies a list (a)-(m) of matters to be considered.
140 *Lakes District Rural Landowners Society Incorporated v Queenstown Lakes District Council* Decision C75/2001 para [55].

I assess these potential effects at the appropriate places in what follows, except that no issues were raised about litter and waste[141] and traffic issues are dealt with (in part) next.

[81] I now consider each of the remaining assessment matters in turn under its heading (italicised):

(a) Levels of traffic or pedestrian activity

[82] The first matter to assess in the "commercial recreation" list is whether the proposal will result in levels[142] of traffic or pedestrian activity which are incompatible with the character of the surrounding rural area. Because of the site's location opposite the Wanaka Airport and because all access is to be off Mt Barker Road I consider that the levels of traffic are acceptable. There was no expert evidence to the contrary. I return, briefly, to traffic issues later.

(c) and (d) Compatibility with local environment

[83] Two of the more important assessment matters to consider are[143]:

> (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.

In many ways the answer to these questions depends on whether one takes a view that the proposal fits in with the airport and related industrial/commercial complex or with the rural environment.

[84] Ms Jones agreed[144] that the proposed buildings are compatible with those across the State Highway and on the other side of Mt Barker Road at the State Highway intersection (the Have-a-Shot buildings) but considered they would be[145] "... entirely out of character with the surrounding farming and residential activities on land contiguous to the site". However, the buildings are much closer (200 metres) to all the Airport buildings on the northern side of the State Highway, and to the Have-a-Short building than they are to the nearest residential neighbour, at 1.2 kilometres, as inspection of Ms Lucas' "Site Location Map[146] shows.

[85] Since more than 300° of the land[147] surrounding the site has commercial development on it or is zoned for non-rural activity, I consider that the proposal and its

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141 Rule 5.4.2.3 xv (b) (v) [QLDP p. 5-35].
142 Rule 5.4.2.3 xv (a) [QLDP p. 5-35].
143 Rule 5.4.2.3 xv (c) and (d) [QLDP p. 5-35].
144 V S Jones, evidence-in-chief para 6.21 [Environment Court document 14].
145 V S Jones, evidence-in-chief para 6.22 [Environment Court document 14].
146 R Lucas, evidence-in-chief Attachment 4 [Environment Court document 18].
147 See Plan "B" attached.

buildings are largely compatible with the character of the local environment and its buildings. To the extent the proposal is not compatible with farming and residential activity on adjacent land, that incompatibility has been minimised by the site's location as far away from those activities as it is possible to be on the property.

(e) Adverse effects of proposed buildings

[86] This matter refers to another (non-existent) assessment matter "iia", so I ignore it.

(f) Code of Practice

[87] No code of practice was identified by any witness.

(g) and (h) Effects on water quality and soils

[88] As to any potential adverse effects of the activity on the quality of ground and/or surface waters[148], I am satisfied these will be managed by the proposed engineering conditions. In particular run-off from the impervious surfaces (roofs, car parking) will be managed on site as Mr Vivian recorded. The effect of the recreational activities on the life-supporting capacity of soils[149] will be minimal. As I have recorded, the soil quality on the property is low. In any event the remainder of the property outside the site is to be kept in grass.

(i) Effect on amenity values for residents

[89] An important consideration is[150]:

> (i) The extent to which the proposed activity will result in a loss of privacy, amenity values or sense of security for residents within the rural environment.

Since the nearest dwelling (at present) – the Staufenberg house - is at least 1.2 kilometres for the site, there is no credible allegation that privacy or security are likely to be reduced as a consequence of the proposal (if granted). The more serious issue is whether the amenities (other than visual amenities discussed separately below) will be reduced. The only serious issue is the question of noise which I will discuss below in part 3.2 of these Reasons.

[90] The recreational activities on the site will not adversely affect the range of recreational opportunities[151] available in the District or the quality of experience of the people partaking of those opportunities. To the contrary, the range of opportunities will increase, and the quality of the experience is likely to improve. Because the activities are on private land they will not compromise[152] the levels of public safety nor will there be conflict between operators.

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148 Rule 5.4.2.3 xv (g) [QLDP p. 5-35].
149 Rule 5.4.2.3 xv (h) [QLDP p. 5-35].
150 Rule 5.4.2.3 xv (i) [QDLP p. 5-35].
151 Rule 5.4.2.3 xv (j) [QLDP p. 5-35].
152 Rule 5.4.2.3 xv (k) [QLDP p. 5-35].

(j) and (k) Adverse effects on range of recreational opportunities

[91] The proposal would add to the range of opportunities, rather than detract from them. There is no opposition from Have-a-Shot or the museums across the State Highway.

(l) Effects on nature conservation values

[92] There will be no adverse effects on nature conservation values[153] since there are none on the land at present, but they will be improved in future as proposed native planting proceeds (see Attachment "A").

(m) A visual distraction?

[93] There is potential for the activities to cause a visual distraction[154] to drivers on an arterial route (the State Highway). However, the existing trees on the road reserve and the proposed planting along the highway boundary will reduce that risk to an acceptable level (again, see Attachment "A").

4.3 What will the noise effects be?

The noise evidence

[94] The applicant engaged Mr Hunt to report on the acoustic aspects of the resource consent application and then called Dr Chiles who peer-reviewed the report as an additional noise expert. Both witnesses were confident that the proposal will comply with the noise limits in the district plan. Dr Chiles described[155] how he visited the site and surrounding environment on 24 January 2012 and measured ambient noise levels. He also measured sound levels of one of the proposed go-karts. He spoke to the acoustics experts, Messrs Hunt and R Hay, who were involved in the council hearing. Dr Chiles recommended, and the applicant accepts[156], amendments to conditions 16 to 27.

[95] As for the existing noise environment Dr Chiles measured existing ambient noise levels on Mt Barker Road at the Staufenberg property as 35 to 40 dB (excluding sporadic traffic on Mt Barker Road) and noted that at times the level may have been closer to 30 dB when road and air traffic was less frequent. Dr Chiles also wrote that on calm nights the ambient levels could be lower than he measured, but[157]:

> ... we would not expect the levels to fall this low for most of the period between 2000h and [midnight] when there will still be traffic on the State Highway.

153 Rule 5.4.2.3 xv (l) [QDLP p. 5-35].
154 Rule 5.4.2.3 xv (m) [QDLP p. 5-35].
155 Dr S G Chiles, evidence-in-chief Attachment A para 1 [Environment Court document 6].
156 Dr S G Chiles, evidence-in-chief Attachment A para 4.3 [Environment Court document 6].
157 Dr S G Chiles evidence-in-chief Attachment A, section 4.2, page 4 [Environment Court document 6].

[96] The appellants did not call expert noise evidence but the lay witnesses expressed concerns about the go-karts and revellers on site causing a noise nuisance.

Noise from go-karts

[97] As I have recorded, the applicant has made a deliberate choice to use four stroke "Sodi" go-karts rather than the notoriously noisy two stroke go-karts used for racing. Dr Chiles carried out and described his noise testing of one of the go-karts. Cross-examined he made these points:

- the go-karts will not all travel in and out of bends at the same time, hence the sound effect is less[158];
- there is no screaming noise from the go-karts. They are all going through different phases at different times[159];
- there is no screeching of wheels from these non-racing go-karts[160];
- he expected farm bikes would be noisier than go-karts, and the difference in the noise heard may be intermittency of sound[161];
- it was highly unlikely the go-karts would be going all day long every day[162];
- the key ingredient to measuring sound levels is the distance from the source[163] (because noise attenuates exponentially with distance);
- people with particular sensitivities to an activity establishing in their environment will hear noise, whether it actually occurs or not. He did not agree that a reasonable person would find the noise from these activities distracting[164].

Noise from other activities, especially at night

[98] Both Dr Chiles and Mr Hunt conceded in cross-examination that the applicant's activities might be audible at the appellants' properties. Each was confident that would not be distracting and would not cause a nuisance or interfere with normal domestic life. Dr Chiles had written[165]:

> ... even if the proposal were to generate say 10 dB higher levels we would still consider that acceptable in this environment.

My only reservation about that is that Dr Chiles appears to have been ignorant of the district-wide policy that seeks[166]:

158 Transcript page 22 lines 4-8.
159 Transcript page 22 lines 8 and 9.
160 Transcript page 22 line 11.
161 Transcript page 22 lines 17-23.
162 Transcript page 23 lines 24-31.
163 Transcript page 24 line 3.
164 Transcript page 24 line 21 – page 26 line 2.
165 Dr S G Chiles, evidence-in-chief Attachment A, section 4.2, page 4 [Environment Court document 6].
166 Policy (4.4.2) 2.1 [QLDP p-25].

2.1 To avoid, remedy or mitigate the adverse effects of commercial recreational activities on the natural character, **peace and tranquillity** of the District. **[emphasis added]**[167].

[99] Dr Chiles continued[168]:

> ...in [the proposed] environment, vehicle movements and people talking outside on the site could be audible at the Staufenberg property. However at either the 20 dB activity sound level predicted by MHA or the 25 dB level predicted by Mr Hay, this should not cause disturbance, and again would not interfere with normal domestic activity. Inside the Staufenberg property these sound levels would be further reduced. The levels are significantly lower than World Health Organisation guidelines for the prevention of sleep disturbance, even if sleeping outside the house, or inside with windows open. We consider that the resulting change in amenity from the low sound levels predicted is acceptable, and remains substantially below the District Plan benchmark.

Both Mr Hunt and Dr Chiles were of the opinion that the best practicable option[169] has been exercised through the site layout adopted, the various mitigation proposed and the noise management methods to be used[170] [171].

[100] Despite that Ms Jones, planning witness for the Staufenbergs, stated that there will still be a loss in amenity values for residents in Mt Barker Road. She wrote[172]:

> For example, given that the bowling facility is not required to close until 11.30pm and that the premises will be licenced, it may be difficult to contain drinking and socializing indoors as is required to meet the noise standards.

That is just speculation: the standards and conditions must be met. If they are not enforcement action can be taken.

4.4 Effects on the visual amenity landscape

[101] A principal issue is whether a further expansion of the airport node to the south and west along State Highway 6 would further degrade the visual amenity landscape to an unacceptable degree.

[102] The district plan contains specific assessment matters[173] for visual amenity landscapes against which applications are considered. In this case it is preferable to consider the second assessment matter – visibility of development[174] – first, because it is the most obvious of the "effects on natural and pastoral character" which is the first assessment matter.

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167 Policy (4.4.2) 2.1 [QLDP p-25].
168 Ibid, page 4.
169 Section 16 of the Resource Management Act.
170 M J Hunt, evidence-in-chief, paragraph 10.8 [Environment Court document 5].
171 Dr S G Chiles, evidence-in-chief, Attachment A, section 4.2, page 4 [Environment Court document 6].
172 V S Jones, evidence-in-chief para 6.24b [Environment Court document 14].
173 Para 4.2.4 (3) [QLDP p. 5-28 *et ff*].
174 Rule 4.2.4 (3) (b) [QLDP pp. 5-28 and 5-29].

Visibility of development[175]

[103] This assessment matter requires the court to examine whether there would be a loss of natural or arcadian pastoral character having regard to whether and the extent to which the development:

- would be ... visible from any public road; or
- would be visually prominent in a way which might detract from public or private views of natural or arcadian landscapes;
- could be screened in a way that does not detract from or obstruct views of the existing topography or cultural planting;
- is enclosed by confining elements of the topography and/or vegetation;
- might constitute sprawl of built development along roads.

[104] Because questions of visibility are affected by topography and vegetation it is useful to assess those first. As for topographical features, while the site is basically flat – although the go-kart area is lower[176] - there are folds and bumps on the larger property which mean that the proposed bunds, while higher and more uniform, are not totally out of character. Secondly, there is a full landscaping concept as shown on Ms Lucas' site plan already attached to my Reasons as "A". Thirdly, there are existing exotics which qualify as "cultural" plantings in that they are typical of farm windbreaks throughout the district (and New Zealand). The landscape experts were agreed that the conifers on the State Highway 6 road reserve "intermittently obscure views into the site"[177] from the highway at present, but there is no screening along the Mt Barker frontage.

[105] There are six sets of views to be considered:

(1) the static view from the entrance to Wanaka Airport, and from the opposite side of State Highway 6;
(2) the static view from the State Highway 6/Mt Barker Road intersection;
(3) the views from State Highway 6 when travelling from Luggate (down river) towards Wanaka;
(4) the views from State Highway 6 when driving from Wanaka towards Luggate;
(5) the views from Mt Barker Road after turning off by the site and travelling southwest;
(6) the views from Mt Barker Road when travelling in the opposite direction to (5), i.e. towards the airport;

175 Rule 4.2.4 (3) (b) [QLDP pp. 5-28 and 5-29].
176 Transcript p. 72 line 27.
177 DLEJS p. 2 R Lucas, evidence-in-chief attachment 8 [Environment Court document 18].

[106] I find that over time (6-10 years):

- the buildings will largely be screened by landscaping and vegetation;
- the screening by planting and mounds is likely to obstruct some public views of the lower one-third of the mountains towards the south of the site;
- parts of the development will be visible from State Highway 6 and Mt Barker Road;
- the proposal would extend development along the south side of State Highway 6 (but less than existing or proposed (zoned) development to the north).

Static views near the airport entrance

[107] A person standing on the side of State Highway 6 opposite the entrance to the airport and looking west with the State Highway will see (in their approximately 120° view[178]):

- in the foreground the wine mesh boundary fence running parallel with the state highway, and a grass sward either side of the fence;
- in the middle ground from left to right:
  - the Have-a-Shot building with eight large, colourful signs;
  - the Have-a-Shot carpark and fencing and two free-standing signs;
  - a line of pine trees, almost in the centre of the view;
  - a stone gate structure to the Have-a-Shot complex off Mt Barker Road;
  - glimpses of the Mt Barker Road surface;
  - the fence along Mt Barker Road;
  - two mounds on the site;
  - a row of pine trees stretching from the Mt Barker Road-State Highway 6, along the latter highway;
  - a road sign stating "Have-a-Shot" at the road intersection; and
  - State Highway 6;
- immediately behind and above the Have-a-Shot building and the first block of pine trees (to the southwest of Mt Barker Road) are two lines of power lines (three sets being visible);
- little of the middle distance can be seen on the fluvioglacial plain;
- in the distance there are views of mountains:
  - Pisa Range to the south);
  - Mt Barker (an isolated roche moutonée) and behind that:
  - the mountains on the western side of the Cardrona Valley emerging from behind the Pisa Range and stretching across the view to the right pine trees (with Mt Alpha at 1,630m and Roy's Peak 1,581m being prominent).

[178] R Lucas, evidence-in-chief attachment 5 Photograph D [Environment Court document 18].

[108] None of the witnesses put any value on that view when viewed statically, i.e. from the side of the road. There is little reason for anyone to stop in that place, or to look west if they do. The relevance of this view is that it is seen dynamically by travellers driving or cycling west (towards Wanaka) from Luggate and beyond.

The static view from the Mt Barker Road/State Highway 6 intersection
[109] Mr Blakely wrote[179]:

> - From the Mt Barker intersection the proposed development will be visually prominent from the State Highway and obscure part of Mt Barker, as well as visual access to open pastoral VAL. This view is important not only in terms of its significance to the foreground to Mt Barker but also because of the visual relief it provides to the built up development on the north side of the road. The traveller's eye is drawn to the south side of the highway away from the wall of development on the north side.

That evidence is ambiguous: if the "traveller" is travelling along State Highway 6 in a car then the view will be visible for about two seconds (see below); if they are turning left into Mt Barker then their view will be changing continually as they then bear right on to the main west-south-west line of Mt Barker Road. There will be little time for a responsible driver to look at the view during those two turns, and a front-seat passenger would be on the wrong side through the first turn. Mr Blakely did <u>not</u> give evidence that the view was important because people were likely to be standing at the corner.

[110] Despite that, Ms Feint submitted in closing[180] that "Ms Lucas was willing to concede that turning into Mt Barker [Road] was a 'significant viewpoint'[181] and afforded a 'dominant[182] view of Mt Barker". As for the first point, I consider that Ms Feint has misunderstood the passage of cross-examination of Ms Lucas (by Ms Robb) on the effects of the proposal. The passage is[183]:

> Q. If I'm referring to the assessment matter effects on natural and pastoral character –
> A. Yes will there's two, two different views of the, of the mountains though. So there's one from the intersection on the state highway which is a two second glimpse down the view corridor that's formed by Mt Barker Road, once you turn into Mt Barker Road which is where I took a photograph from at the entry to Have a Shot and where the visual simulation is, is also taken from then, yes, you're past the, the commercial node and, and you can see Mt Barker and that is a significant viewpoint.

In fact from the viewpoint shown by Ms Lucas the buildings in her simulation appear not to obscure Mt Barker at all, although they do obscure about one-third of the height of the Mt Alpha/Roy's Peak Ridge.

179 P R Blakely, evidence-in-chief para 7.2, third bullet [Environment Court document 13].
180 K Feint Closing submissions para 5.15 [Environment Court document 21].
181 K Feint Closing submissions footnoting Transcript p. 144 [Environment Court document 21].
182 K Feint Closing submissions footnoting Transcript p. 156 [Environment Court document 21].
183 Transcript pp. 143 line 26 to p. 144 line 2.

[111] As for the word "dominant" the passage Ms Feint is referring to is in her cross-examination of the witness[184]:

> Q. But on turning into the intersection they've got their back to the airport, they're looking out to Mt Barker and their views would be obscured by the development wouldn't they?
> A. Yes for five seconds and 100 metres.
> Q. Now it's not in contest that Mt Barker is an outstanding natural feature.
> A. No.
> Q. Would you agree that the views of Mt Barker are better as you draw closer to the Mt Barker area travelling along State Highway 6.
> A. Well if you're travelling from Luggate to Wanaka you can't see Mt Barker until you're past the terrace and so that first glimpse is long the, down the Mt Barker Road and then glimpses only are possible through the pine trees but then there is very, very good views of Mt Barker across the site once, once you pass the pine trees and travelling in the other direction it's the same but in reverse.
> Q. But the views of Mt Barker travelling in a southerly direction would be open for longer but do you agree that they would, the views are better as you draw closer travelling south along State Highway 6?
> A. Yes until the pine trees obscure the views.
> Q. Would you agree that on Mt Barker Road the views of Mt Barker are really dominant for that location?
> A. Yes Mt Barker is dominant as you drive along Mt Barker Road.

I find the penultimate question incomprehensible because there <u>are</u> no views of Mt Barker as one draws close to the property travelling south (actually southeast) along State Highway 6. In any event the witness did <u>not</u> say that Mt Barker was a dominant feature as one turns into that road off State Highway 6, but that it is dominant as one drives along Mt Barker Road in a southwesterly direction (actually more west-south-west).

[112] As I have found, Mr Blakely's photograph 1 can be given little weight for several reasons. Because its field of view is only 26°, (which is much less than the 124° that human eyes usually take in), the photograph is especially misleading in a landscape which is valued precisely for its wide views and open character. Another 98° of view in a panorama is a completely different view.

The views from State Highway 6 when travelling west from Luggate

[113] The road from Luggate rises up a long gentle hill to emerge at the southern end of Wanaka Airport on a large terrace. The road then turns to run parallel with the airport's boundary in a northwesterly direction. The proposed earthworks and bunding will come into view when the viewer is approximately 175[185] metres from the Mt Barker turn-off on the left hand side. So the proposal will be in a view for about six seconds (assuming travel at 100 kph) before a traveller passes the first pines after which only "intermittent… "[186] views will be available through the pines.

184 Transcript p. 156.
185 P R Blakely, evidence-in-chief para 7.2 [Environment Court document 13].
186 P R Blakely, evidence-in-chief para 7.2 [Environment Court document 13].

[114] The court had two photographs of the view from State Highway 6 east of the site before it:

- Ms Lucas' photograph D;
- Mr Blakely's viewpoint 2.

Of those two Ms Lucas' photograph D is more objective. It shows the field of view that humans enjoy – including the clutter and prominence of the Have-a-Shot advertising signs. On the other hand Mr Blakely's photograph (and "simulation") with its 26° field of view conveniently focuses the eye in what he calls the "Cardrona Mountains" – actually part of the Mt Alpha and Roy's Peak Ridge behind Wanaka township. In my view this is self-serving evidence and should be discounted.

[115] Mr Blakely wrote about this view[187]:

> - Ms Lucas states that when first visible from SH6 the proposal will be viewed across the Have a Shot property with the Wanaka Airport and associated activities located immediately opposite. However, there is a clear viewshaft through to the development site and towards the Cardrona Range ONL from this location approximately 65m before the intersection (see Appendix C, Photograph Viewpoint 2). The Have a Shot buildings and carpark are further to the left which allows for an open view through to the Site that is not impeded by the existing development.

Of that view Ms Lucas stated ... "that a view corridor is available from the intersection of SH6/Mt Barker Road for less [than] 2 seconds". Mr Blakely's response was this may be correct for passing travellers on SH6 but does not account for travellers turning into Mt Barker Road who would have a much longer viewing time of the development. That is misleading because Ms Lucas discusses that later in her evidence.

[116] The fundamental point is that travellers only have Mr Blakely's "important view" of Mt Barker for two seconds while travelling along the State Highway. It is, unreasonable to be concerned about that: a two-second view would only be important in the most exceptional circumstances. I rely on Ms Lucas' photograph "D" (also attached to this decision as "D") to find that this complicated view from State Highway 6 does not qualify as such.

View travelling southeast on State Highway 6 (from Wanaka to Luggate)

[117] The witnesses agreed that when travelling southeast toward Luggate the proposal is first visible from approximately 1.4 km before the intersection of Mt Barker Road and State Highway 6. The proposal remains visible for 550 metres until it is obscured by the first grouping of pines on the south side of the highway. It then comes into full view again for approximately 310 metres before the main grouping of pines and then intermittently through the gaps in the pines to the intersection. In this view from State Highway 6 travelling towards Luggate, the proposal will be visible across open

187 P R Blakely, evidence-in-chief para 7.2 [Environment Court document 13].

farmland, with the Have-a-Shot located into the background northeast corner, and the terrace face on the southeast side of Mt Barker Road. The southeastern end of the range that forms the eastern enclosing mountains to the Upper Clutha Basin is also visible in the distant background.

[118] In her evidence-in-chief Ms Lucas wrote that "No natural or arcadian pastoral landscapes are obscured"[188]. Mr Blakely disagreed with Ms Lucas. In his opinion the proposal[189]:

> ... will obscure the VAL on the Site of the development and across Mt Barker Road onto the narrow strip of land before the terrace face. The terrace face is also VAL and the base of the terrace will be partially obscured.

Ms Lucas' photographs E, F, G show successively closer views of the site when travelling along State Highway 6 past the airport en route to Luggate. They also show the extent of built form. Clearly in this instance Mr Blakely is correct and a small area at the foot of the terrace (or the far-southern-side of Mt Barker Road) will be obscured in those views, and replaced with (principally) a view of the landscaping on the northwestern side of the development. I predict that any adverse effect on those views will be minor.

Mt Barker Road travelling southwest

[119] The expert witnesses agreed that when travelling southwest along Mt Barker Road the proposal will be visible from the State Highway 6 intersection until the traveller is approximately 115 metres[190] along Mt Barker Road and past the proposal. The earth bunds and planting will be visible in the foreground to Mt Barker at the eastern end of Mt Barker Road but that "the Mount" will become visible as the viewing angle changes towards Mt Barker.

Mt Barker Road travelling northeast

[120] The landscape witnesses agreed that when travelling along Mt Barker Road towards State Highway 6 at the airport the proposal will be first visible from a distance of 2.1 km from the intersection with State Highway 6; that it will be visible until the traveller is past the site and arrives at the intersection with State Highway 6; and that the proposal will have a backdrop of pine trees and the Wanaka Airport when viewed from this location. However, I referred in part 2.2 of my Reasons to Mr Blakely's lack of objectivity in relation to his assessment of the existing environment when assessing these views.

188 R Lucas, evidence-in-chief para 68 [Environment Court document 12].
189 P R Blakely, evidence-in-chief para 7.2 [Environment Court document 13].
190 Transcript p. 72 line 1.

[121] Mr Blakely added[191]:

> In addition to those agreed comments I consider:
>
> a. From Mt Barker Road the distant view south west of the proposal includes the enclosing mountains on the eastern side of the District (south of Grandview Mountain).
> b. The view of the lower portion of the Cardrona Range ONL will also be obscured alongside the proposal by the bunding and planting. The upper parts of the buildings will obscure the views for up to a minimum of 8 years until the native plantings reach 2.5 metres sufficient to screen the buildings.
> c. Importantly the view of open VAL in the foreground of Mt Barker and the Cardrona Range ONL will be partly obscured for the distance of the proposal from the intersection of Mt Barker Road when travelling south west along Mt Barker Road. This blocking effect will change with the viewing angle and will lessen towards the end of the proposal on Mt Barker Road as more of the open VAL is revealed.

As I have already found, Mr Blakely's point a. is wrong by 180° since Mt Grandview is north-north-east of the proposal[192]. As for his point c. that ignores the fact that the bunding and landscaping will be there but his simulation does not show that.

[122] As for the view of Mt Barker and the range behind it, the applicant's proposal would place two buildings in the centre[193] of that view between the two groups of pine trees when viewed from the intersection. For a vehicle travelling within the speed limits, the view (and buildings) would be visible for a matter of seconds from the time the vehicle reaches the flats after driving up the terrace edge from Luggate.

[123] It is worth considering how many potential viewers that might affect, and for how long. The only quantified information the court has about traffic volumes is in the Hearing Commissioners' Decision[194] where they record:

> ... the additional traffic generated by the activity (up to 440 vehicles per day) means that the section of Mount Barker Road between the State Highway and the site entrance needs to be upgraded to meet the Council's standard for local roads carrying between 250 and 500 vehicles per day.

I infer from that passage that Mt Barker Road at present carries probably (500-440=) 60 vehicles per day past the site, and up to a maximum of 249 vehicles per day would turn into the site. Taking the maximum average number of cars that are likely to drive past the site at present and assume half travel each way, and relying on Ms Lucas' evidence that each car takes 10 seconds to pass from the intersection to the southwestern corner of the site, then the total time for which the Mt Barker view to the southwest is obscured in (diminishing) part is:

0.5 x 249 x 10 secs = 20.5 minutes[195] per day

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191 P R Blakely, evidence-in-chief para 7.3 [Environment Court document 13].
192 As shown in R Lucas' photograph B referred to by Ms Caunter when cross-examining Mr Blakely: Transcript p. 66.
193 See R Lucas, evidence-in-chief attachment 5 [Environment Court document 18].
194 Hearing Commissioners' Decision 16 May 2011 para 68.
195 This makes no allowance for the fact that some vehicles will be travelling at night.

I consider that is a minor effect.

Effects on natural and pastoral character

[124] I return to the first assessment matter. The court needs to take into account[196] whether, and the extent to which the scale and nature of the development:

- will compromise[197] any open character of any adjacent outstanding natural landscape or feature[198];
- would compromise the natural or arcadian pastoral character of the surrounding visual amenity landscape;
- will degrade any natural or arcadian pastoral character of the landscape by causing "over domestication"[199] of the landscape;
- any of these adverse effects can be avoided or mitigated[200] by design, landscaping and or appropriate conditions of consent.

[125] The first matter only applies if the site is adjacent to any outstanding natural landscape or outstanding natural feature. "Adjacent" means "... near to; adjoining, bordering (not necessarily *touching*)[201]. In Mr Blakely's opinion[202] the outstanding natural landscape boundary follows the 400 metre[203] contour to the south of the site, that is about 400 metres from the closest boundary (along Mt Barker Road) of the site. In Ms Lucas' opinion[204] the closest outstanding natural landscape boundary to the site is the Pisa/Criffel Range at a distance of 1.2 to 4 kilometres. The District Plan Landscape Classification Map[205] shows the northern extent of the Pisa Range and Criffel Range as a dotted line (rather than a bold line) which means that the outstanding natural landscape/visual amenity landscape boundary has not been determined by the council. The difference between the two landscape witnesses is that Mr Blakely appears to have drawn the outstanding natural landscape at the first large change in topography from the horizontal, i.e. at the foot of the first terrace. Ms Lucas wrote[206] that without undertaking a specific analysis of th[e] area "she could not agree whether the 400 metre contour chosen by Mr Blakely is appropriate or not". For the purposes of this decision I will assume Mr Blakely is correct.

[126] However, Mr Blakely's main concern was not with the effect of the proposal on that part of the outstanding natural landscape but with its effect on Mt Barker, an

196 Para 4.2.4 (3) (a) [QLDP p. 5-28].
197 Para 4.2.4 (3) (a) (i) [QLDP p. 5-28].
198 Para 4.2.4 (3) (a) (ii) [QLDP p. 5-28].
199 Para 4.2.4 (3) (a) (iii) [QLDP p. 5-28].
200 Para 4.2.4 (3) (a) (iv) [QLDP p. 5-28].
201 *The Shorter Oxford English Dictionary* [Third Edition, Clarenden Press 1973, p. 24].
202 P R Blakely, evidence-in-chief Appendix B Map 1 [Environment Court document 13].
203 400 metres above sea level.
204 R Lucas, evidence-in-chief para 43 [Environment Court document 18].
205 QLDC Plan Appendix B Map 1 "Landscape Classification Map – Wanaka Area".
206 R Lucas, rebuttal evidence para 11 [Environment Court document 18A].

outstanding natural feature. I find that because Mt Barker is 3.6 kilometres away[207], it is not adjacent to the site and therefore this assessment matter is irrelevant. That finding is consistent with the decision in *Roberts v Queenstown Lakes District Council* where the court[208] found that the Roberts' site – which happens to be a little closer to Mt Barker than the current site – has "... no ONL or Outstanding Natural Feature ... adjacent"[209].

[127] In any event Mt Barker is 3.6 kilometres away. On Mr Blakely's calculation views of the lower part of Mt Barker will be obscured for 165 metres along the road. That is 0.4% of the distance from the intersection to Mt Barker. The partial obscuring of the feature is a minor effect in spatial terms, and earlier I calculated the total time each day (about 20 minutes) for which there is an obscuring effect.

[128] The next factual question here is the extent to which the surrounding visual amenity landscape has (at present) a "natural or arcadian character". I have already found that I prefer Ms Lucas' evidence, which is that the site is at the lower end of the visual amenity landscape spectrum. I also prefer her evidence that the landscape within the Rural General Zone around the intersection has a commercial character and not a rural character, although I also find that the ruralness rapidly increases with distance from the south side of the intersection.

Form and Density of Development[210]

[129] As far as form and density of development are concerned:

- because the land is basically flat, there is no opportunity to use its topography to screen development on the site;
- the development is located in as close proximity to the existing development as is possible. The volunteered "no further development condition" will assist to protect the existing pastoral qualities of the site as a whole;
- the development will largely be screened from State Highway 6. Density of development, at least from that viewpoint, is not a significant issue while the trees survive. However, the existing pines along State Highway 6 are not on the site so are not within the applicant's control. The applicant proposes to remedy that by planting new trees inside its boundary;
- the applicant has recognised that the higher density of development on the site[211] means that further urban-style development should be precluded from the rest of the property.

[130] Mr Blakely has overlooked that the assessment matter also requires consideration of whether more sensitive areas are retained. this follows from his blanket

207 R Lucas, evidence-in-chief para 43 [Environment Court document 18].
208 Judge McElrea and Environment Commissioners Mills and McConachy.
209 *Roberts v Queenstown Lakes District Council* [2011] NZEnvC 43 at [81].
210 Rule 5.4.2.2 (3) (c) [QLDP p. 5-29].
211 Rule 5.4.2.2 (3) (c) (vi) [QLDP p. 5-30].

assessment of the whole of the property as having the same character (thus ignoring the proximity of the development around much of the site). Thus he gives no credit for the proposal to retain the open character of the remainder of the property under the volunteered covenant.

Cumulative effects[212]

[131] The issue here is whether this part of the Rural General Zone, being part of a visual amenity landscape, is at a threshold of over-domestication of urbanization, with respect to the vicinity's ability to absorb further change. The answer to this question depends on whether the viewer is looking at the adjacent existing and proposed buildings and development at the airport, in the Rural Visitor Zone, and on the Have-a-Shot, or looking the other way across the property to the south and southwest along Mt Barker Road and on the south side of the State Highway.

[132] The evidence for the appellants on the alleged adverse cumulative effects is unconvincing. The key landscape witness opposed to the development when giving reasons for his assertion that "in combination the existing and proposed development will result in adverse cumulative effects"[213] stated[214]:

> I consider this development will lead to further degradation and domestication of the landscape so that the existing development represents a threshold with respect to the vicinities ability to absorb further change of the nature and scale proposed.

That is illogical, in that it works backwards for the proposal to conclude that the existing development represents a threshold. The proper question is the other way round: does the existing development in this vicinity constitute a threshold?

[133] Nor did Mr Blakely[215] give any credit for the covenant over the rest of the property referred to in the Hearing Commissioners' decision and in the applicants' evidence. He asserted that "the site is not unique and there are similar sites within the vicinity with a similar character"[216]. He did not identify any such sites, but I am prepared to infer that he was referring to possible sites in the Rural Visitor Zone across the State Highway.

[134] Counsel for the appellants seem to argue that because in *Roberts v Queenstown Lakes District Council*[217] the Environment Court held that the VAL in the vicinity of that site was at a threshold which could not absorb further development, therefore the VAL in the vicinity of the site in this case cannot absorb further change. That is not a correct approach at law: each site and its place in its landscape must be considered on its own facts. To hold otherwise is to turn the VAL overlay into a zone.

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212 Rule 5.4.2.2 (d) [QLDP p. 5-30].
213 P R Blakely, evidence-in-chief para 8.61 [Environment Court document 13].
214 P R Blakely, evidence-in-chief para 8.62 [Environment Court document 13].
215 P R Blakely, evidence-in-chief para 8.63 [Environment Court document 13].
216 P R Blakely, evidence-in-chief para 8.63 [Environment Court document 13].
217 *Roberts v Queenstown Lakes District Council* [2011] NZEnvC 43.

[135] Relying on the evidence of Ms Lucas[218] and Mr Vivian[219] (not significantly weakened by cross-examination) I find that the property and its immediate environment is not at such a threshold for three reasons: first, more of the site is surrounded by commercially developed properties than it is by rural use (at least 300° of the circle versus 60°); second, only the site is to be developed, the remaining 80% of the property is to have its pastoral character maintained and indeed enhanced, and its "naturalness" increased by the native plantings; third, this proposal is at the start of (or before the start as I discuss later) the truly important views across land with an open character to the outstanding natural landscapes and features.

[136] Consequently I find that any adverse cumulative effects of development of the site are likely to be minor. Indeed considering the property as a whole I think the effects are likely to be positive. I will return to that issue later, if the proposal passes a threshold test.

Rural amenities[220]

[137] The most relevant consideration is[221]:

> ...
> - the extent to which the development maintain[s] adequate and appropriate visual access to open space and views across arcadian pastoral landscapes from public roads and places and from adjacent land where views are sought to be maintained.

In order to satisfy this, the applicant has volunteered the covenant already mentioned. In its final form[222] it reads:

> Prior to construction occurring on site, the consent holder shall register a covenant in accordance with section 108(2)(d) of the RMA, in favour of the Queenstown Lakes District Council, over the land marked as "C" on the approved Site Plan.
>
> The covenant shall provide for the following:
>
> (a) The area marked C shall be covenanted for a period of twenty years from the date of the grant of consent.
> (b) Throughout the period of the covenant:
> (i) There shall be no buildings or structures (as those terms are defined in the Queenstown Lakes District Plan) in the area marked C [being the remainder of the property excluding the site].
> (ii) The area marked C must be retained as open and pastoral land but may be used on an ongoing basis for grazing purposes.
> (iii) Other farming activities (as defined in the Queenstown Lakes District Plan) are prohibited in the area marked C.
> (iv) The covenant may not be varied or cancelled in reliance on section 317 of the Property Law Act 2007. This condition will take priority.

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218 R Lucas, evidence-in-chief para 86 to 94, especially 93 [Environment Court document 18].
219 C Vivian, evidence-in-chief para 9.6.2 and 9.6.3 [Environment Court document 19] and Transcript pp. 202-203.
220 Rule 5.4.2.2 (3) (e) [QLDP pp. 5-30 and 5-31].
221 Rule 5.4.2.2 (3) (i) [QLDP p. 5-30].
222 Attached to Ms Caunter's submissions in reply.

(v) Any variation or cancellation of the covenant must be notified to the owners of land legally described as Lot 3 DP 305038 (Staufenberg) and Lot 2 DP 20109 (Feint).

While I consider the covenant and the term of the consent should be for the same number of years, unless the land is rezoned for urban development, in general this covenant is likely to be very effective in maintaining more than adequate and appropriate visual access to open space (lack of buildings) and views (no restriction by trees on the property, except for the 17% of its area – the site – at the eastern end).

[138] As for the other rural amenity assessment matters I find that:

- the proposed development is unlikely to compromise agricultural activities on adjacent land. The site is well buffered from land to the south by the remainder of the property, and most other points of the compass are not used for agricultural purposes. The exception is land directly to the south across Mt Barker Road. There was no evidence to suggest that there will be "reverse sensitivity effects" either way in respect of that land;
- the proposal will not require urban infrastructure (e.g. lighting) as shown by the conditions;
- the proposed landscaping is "consistent with traditional rural elements"[223];
- finally and importantly the buildings are set back[224] as far from residential neighbours as they can be.

5. Does the proposal pass a gateway test (under section 104D of the Act)?

5.1 The gateway tests

[139] Because the application is for (overall) a non-complying activity under section 104D RMA it must pass one of two gateway tests. Either[225]:

(1) any adverse effect must be not more than minor; or
(2) the proposal must not be contrary to the objectives and policies of the district plan.

[140] I have found in part 4 of this decision that any adverse effects of the proposal, when mitigated as proposed, are only minor. So the first gateway test is passed.

[141] As for the second gateway test, to be contrary to the objectives and policies of the district plan a proposal must be repugnant to the relevant provisions when read as a

223 Rule 5.4.2.2 (3) (e) (v).
224 Rule 5.4.2.2 (3) (e) (v).
225 Section 104D RMA.

whole, unless there is an exceptional focussed policy which expressly or impliedly over-rides all others: *Akaroa Civic Trust v Christchurch City Council*[226].

5.2 Is the proposal contrary to the objectives and policies in Chapters 5 and 4.2 of the district plan?

[142] Whether the proposal is contrary to Rural Areas objective 3 - which requires avoiding, remedying or mitigating adverse effects on rural amenity[227] - is best answered by considering the more detailed policies in Chapter 4.2.

Landscape and Visual Amenity (Chapter 4.2)

Future development

[143] Ms Jones considered that overall the proposal was contrary to the 'Future Development' policy[228]. In her opinion the airport and related development and the small Have-a-Shot operation "... makes the values associated with this site vulnerable to degradation"[229]. Ms Jones' assertion is a core part of the appellants' cases. For example in her closing submissions Ms Robb wrote that "[i]t is the case for Staufenberg that because there are few rural aspects in this location remaining[,] the sensitive development of this site is even more important." I am dubious about Ms Jones' opinion for a number of reasons:

(a) the neighbouring Rural Visitor Zone (and possibly the designated aerodrome) cannot legally be part of a VAL since the Rural Visitor Zone is not a rural area;

(b) the argument seems to be that the mere presence of some adjacent development makes an area or site automatically more vulnerable to degradation. The logical inference is that no new development should be placed next door to existing development. However, that is contrary to the subsequent policies[230] as to avoiding sprawling development. Further, I consider the influence of adjacent development needs to be considered case-by-case.

(c) the values Ms Jones is referring to are identified earlier in the same paragraph[231] as being "particularly" views "... of the landscape from the State Highway, in a westerly and southerly direction". However, those views are barely being affected (negatively) by the application, indeed they are largely to be maintained and enhanced under the volunteered covenant because 83% of the property is to be retained as open pasture. The views south from State Highway 6 of the site (as opposed to the balance of the property) were agreed by the landscape architects to be only intermittent, and such as there are will have further landscaping introduced to plug the

226 *Akaroa Civic Trust v Christchurch City Council* [2010] NZEnvC 110 at [74].
227 Objective (5.2) 3 [QLDP p. 5-4].
228 Policy (4.2.5) 1 [DLDP p. 4-9].
229 V S Jones, evidence-in-chief para 8.10 [Environment Court document 14].
230 Policies (4.2.5) 6 and 7.

gaps. I accept there will be a minor adverse effect on views when travelling southeast (from Wanaka to Luggate) as the development may obscure the terrace rises, the slope behind the Have-a-Shot business.

(d) it is unclear what Ms Jones means by 'the site'. I have followed the landscape experts in distinguishing the site from the property because, as I have stated, the values of the property increase from east to west with distance from the airport and other commercial activities at the State Highway/Mt Barker Road intersection. That the influence of the commercial activities decreases with distance is not recognised by Ms Jones at all. Consequently her conclusion is much diminished in effect – it applies most forcefully at the western end of the property, but barely at all at the eastern end, where they are already reduced.

[144] The property is clearly an area where the landscape and visual amenity values are vulnerable to degradation so the adverse effects of development need to be avoided, remedied or mitigated[232]. However, I find that within the property, the site has greater potential to absorb change[233] because:

(1) it is within an indent in existing non-rural activities of the Wanaka Airport node;
(2) it is already substantially screened from view by the conifers along State Highway 6.

Consequently I prefer Mr Vivian's evidence on this policy as more realistic, and site-directed. I find the proposal is not contrary to this sub-policy. No witness suggested the proposal was contrary to sub-policies (b) and (c).

Visual amenity landscapes policies

[145] As for the important policy in respect of visual amenity landscapes[234] Ms Jones merely noted that buildings will be visible even when the proposed vegetation is fully established[235]. She did not conclude that any adverse effect would be more than minor. Nor did Mr Vivian: indeed he pointed out that "such visibility ... is not necessarily an adverse effect when you consider the ... receiving environment"[236].

[146] In Mr Blakely's opinion neither the bunding nor the planting on top of it will enhance the natural character of the site. In Ms Lucas' view that is simplistic because there is planting around the sides of the berms. I predict that, reasonably assessed, there will be no adverse visual effect from the planting.

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231 V S Jones, evidence-in-chief para 8.10 [Environment Court document 14].
232 Policy (4.2.5) 1 (a) [QLDP p. 4-9].
233 Policy (4.2.5) 1 (b) [QLDP p. 4-9].
234 Policy (4.2.5) 4 [QLDP p. 4-10].
235 V S Jones, evidence-in-chief para 8.15 [Environment Court document 14].
236 C Vivian, evidence-in-chief para 10.15 [Environment Court document 19].

[147] Both Ms Lucas[237] and Mr Blakely considered the proposal will lead to some linear planting which is discouraged by the visual amenity landscapes' third sub-policy[238]. Ms Jones considered the proposal is therefore contrary to this policy. However, it seems that this was not designed by Ms Lucas to mitigate loss of natural character (the concern of the policy) but to "continue the lineal planting pattern of the pine[s] ... along the northern boundary"[239]. However, she overlooked this when she wrote her rebuttal evidence[240]. While that confusion does not reinforce confidence in Ms Lucas, either way the proposed cedars are not contrary to the policy.

Urban development (in part 4.2)

[148] I accept for present purposes Ms Jones' evidence[241] that the proposal is partly "urban development" as (now) defined in the district plan. As for the policy that urban-style development is to be discouraged in visual amenity landscapes[242] Ms Jones considered[243] that because the proposal is for urban development therefore it is contrary to the policy. I find that is an over-statement: certainly the policy is not achieved, but I hold that the proposal is not repugnant to the policy.

[149] As for "avoiding sprawl ..."[244], Ms Jones considered this policy would be offended too. She wrote:

> Being a corner site it is unavoidable that the development will result in sprawl along both the State Highway (for a distance of around 280 metres) and Mount Barker Rd (for a distance of around 260 metres).

The term "sprawl" used in the district plan is a linear concept – as Ms Jones implied. But not every development beside a road is sprawl. Mr Vivian's opinion was that the present proposal is not sprawl but "... consolidates what [is] there by creating a tight cluster of urban development centred on the ... intersection"[245]. I consider that is a more accurate depiction of how the proposal will be perceived. Consequently this policy is met.

[150] The second part of the policy 7.5 is to strongly discourage "urban extensions" in rural areas[246]. It is difficult to see how a proposal could ever be contrary to this policy – unless perhaps the Council formally endorsed the proposal as a political gesture? Further, the term "extensions" is not defined. It must be assumed to be different from and more than, mere urban development. This proposal is not an urban extension, it is, as Ms Lucas described it, infill.

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237 R Lucas, evidence-in-chief para 75 [Environment Court document 18].
238 Policy (4.2.5) 4 (c) [QLDP p. 4-10].
239 R Lucas, evidence-in-chief para 75 [Environment Court document 18].
240 R Lucas, rebuttal evidence para 25 [Environment Court document 18A].
241 V S Jones, evidence-in-chief para 8.22 [Environment Court document 14].
242 Policy (4.2.5) 6 (b) [QLDP p. 4-11].
243 V S Jones, evidence-in-chief para 8.21 [Environment Court document 19].
244 Policies (4.2.5) 6 (d) and (4.2.5) 7 [QLDP p. 4-11].
245 C Vivian, evidence-in-chief para 10.26 [Environment Court document 19].
246 "Rural areas" appears, from Chapter 5, which uses that title, to include all rural zones.

Urban edges[247]

[151] The policy has two parts: the second about urban sprawl I have already considered. The first is to identify clearly the edges of any new or existing "urban area" by "design solutions". Clearly the application is not contrary to this proposal (nor did anyone claim it was).

Avoiding cumulative degradation[248]

[152] There was no evidence that the proposal is contrary to this policy. At most the effect of Mr Blakely's and Ms Jones' evidence[249] was that this policy would not be achieved – and I consider that later.

Structures[250]

[153] This policy requires preservation of the coherence of visual amenity landscapes in a number of ways which will be considered later. Only in one respect is the proposal alleged to be contrary to the policy. That is (b) which seeks to screen buildings from roads "wherever possible". Mr Blakely considered that the benefits of planting do not offset "the loss of naturalness resulting from the proposal, that the bunds do not enhance natural character and that overall the screening does not enhance naturalness". On that basis Ms Jones considered[251] the proposal contrary to policy 9(b) although she noted[252] that condition 30 of the Council's decision "... goes some way toward alleviating that concern". In my view that condition has the consequence that, at least, the proposal is not contrary to policy 9(b).

Land use

[154] Ms Jones considered[253] the proposal is contrary to this proposal. I fail to see how a land use proposal can be contrary to a policy which requires the Council "to encourage" certain land uses.

5.3 Is the proposal contrary to other objectives and policies in Chapter 4?

Recreation

[155] There was no evidence that the proposal was contrary to any of these policies. Since the purpose of the application is to establish several commercial recreational activities[254] on the site, together with measures to mitigate any adverse effects, the principal district-wide objective to be met is that the site is used effectively to meet the needs of the district's residents and visitors[255]. The most relevant policy amplifies and

247 Policy (4.2.5) 7 [QLDP p. 4-11].
248 Policy (4.2.5) 8 [QLDP p. 4-11].
249 V S Jones, evidence-in-chief para 8.32 to 8.34 [Environment Court document 14].
250 Policy (4.2.5) 9 [QLDP p. 4-11].
251 V S Jones, evidence-in-chief para 8.39 [Environment Court document 14].
252 V S Jones, evidence-in-chief para 8.39 [Environment Court document 14].
253 V S Jones, evidence-in-chief para 8.43 [Environment Court document 14].
254 As that term is defined: QLDP Volume 1B.
255 Objective (4.4.3) 3 [QLDP p. 4-26].

qualifies that objective when it seeks[256] [t]o encourage and support increased use of private ... recreational facilities in order to meet [those] needs ..., subject to meeting policies relating to the environmental effects of recreational activities and facilities".

[156] These objectives and policies are the focus of the "Commercial Recreational Activity" assessment criteria in rule 5.4.2.3 of the district plan, considered in part 3 of this decision. Based on my findings there I consider the proposal will not be contrary to these objectives and policies, but in fact is likely to achieve them.

Conclusion

[157] The proposal is not contrary to any of the relevant objectives and policies in the district plan. I record that Ms Jones, for the Staufenberg Trust, was of the opinion that the proposal was contrary to a number of other policies in Chapter 4 of the district plan. Those objectives and policies are legally irrelevant to this application.

6. Consideration of overall merits

6.1 The actual and potential effects on the environment

What are the positive effects?

[158] The positive effects of the proposal include[257] "... economic wellbeing (from initial construction and the ongoing employment of 15 staff) family-orientated recreational facility for residents and visitors, and the covenant ensuring against further development of the remaining [area] of the property".

[159] In respect of the latter point, I have recorded that the applicants' 20 year covenant would ensure the remainder of the property (outside the site) would retain an (improved) open character. Ms Robb was critical in her closing submissions of the "heavy reliance"[258] by Ms Lucas and Mr Vivian on the covenant to retain "open pasture"[259] because she submitted, the proposed covenant would not have that effect. She referred to a passage in cross-examination where Ms Lucas agreed that the covenant would not preclude horticulture or viticulture[260]. As it happens that potential has now been avoided by the reworked covenant put forward by Ms Caunter in her closing submissions which expressly states that there shall be no buildings or structure on the balance of the property, and that it will be retained as "open and pastoral land"[261]. That intention can hardly be a surprise to the appellants or their witnesses because it was recorded in the Joint Experts' Statement before circulation of the evidence. I consider that covenant is useful although I view the 20 year term as on the low side. As stated earlier I would only consider granting a consent for the entertainment complex for the

256 Policy (4.4.3) 3.3 [QLDP p. 4-26].
257 Planners' Joint Statement 29.02.12 para 6.4 Attachment CV1 to C Vivian, evidence-in-chief [Environment Court document 19].
258 V J Robb Closing submissions para 9.8 [Environment Court document 20].
259 Transcript p. 140 lines 15 and 16.
260 Transcript p. 141.
261 J Caunter Closing submissions Attachment 28.

same term as the covenant (unless the property was earlier rezoned residential or otherwise for urban growth).

The evidence of the appellants and their witnesses

[160] Of the two appellants, the closest is the Staufenberg Trust which owns a property at 154 Mt Barker Road and holds it for the family of the same name. Mr U Staufenberg gave evidence that he lives at that address with his wife and three school-age children. He identified his family's principal concerns about the proposal as being:

(a) The visual effect of the commercial facility including the mounding and planting when viewed from surroundings roads.
(b) The impact of the activity on the rural experience of the area.
(c) That granting consent for this proposal will create a precedent for further commercial development on the western side of SH6.

[161] Mr J A Feint, who described himself as a "semi-retired" surgeon[262], and his wife Mrs M Feint live on a 60 hectare block with its front gate to Mt Barker Road being 1.85 kilometres from that road's intersection with State Highway 6 outside the Wanaka Airport. Mr Feint believes that their rural lifestyle will be compromised[263] if the proposed entertainment complex is built and operated. In particular Mr Feint considers the proposal will be out of character for a rural area[264]; the large buildings and the overall size of the complex will be a "considerable intrusion on the essentially rural character of the surrounding countryside"[265]; its use will cause noise problems – "the constant buzzing noise of four-stroke[266] go-karts is likely to be extremely irritating"[267]; it will cause an increase in traffic[268]; and it will be a precedent causing development creep along State Highway 6 or even along Mt Barker Road.

[162] I have read the evidence of two other witnesses called for Mr and Mrs Feint. The first is from Dr M F Barker[269], a retired Associate Professor of Marine Science, who lives with his wife on a 4.13 hectare lot at 662 Ballantyne Road about 1.7 kilometres[270] from the development (in a straight line, I infer it must be further by road). Dr Barker was concerned that the proposal would "... significantly alter the character of the Mt Barker area and the views of the surrounding landscape"[271], would cause noise

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262 J A Feint, evidence-in-chief, para 1 [Environment Court document 10].
263 J A Feint, evidence-in-chief para 4 [Environment Court document 10].
264 J A Feint, evidence-in-chief para 16 [Environment Court document 10].
265 J A Feint, evidence-in-chief para 17 [Environment Court document 10].
266 Mr Feint wrote "2-stroke" in his evidence as circulated and lodged; at the hearing he changed this to "four-stroke".
267 Mr Feint, evidence-in-chief para 26 [Environment Court document 10].
268 J A Feint, evidence-in-chief paras 30-31 [Environment Court document 10].
269 M F Barker, evidence-in-chief [Environment Court document 11]. This evidence was entered into the record by consent since no party wished to cross-examine the witness and his presence was excused.
270 M F Barker, evidence-in-chief para 2 [Environment Court document 11].
271 M F Barker, evidence-in-chief para 4 [Environment Court document 11].

pollution at his house – mainly from the go-karts[272] - and light pollution at night[273], may cause increase in drunken drivers[274], and will act as a nucleus for further development[275].

[163] Dr K P Wood also provided written evidence[276] for Mr and Mrs Feint. She and her husband are medical practitioners in Dunedin. They own a block to the north of Mt Barker Road (with a right-of-way over the Staufenberg property). They hope to build a house this year. She and her husband:

> ... object to [the] commercial entertainment complex ... on the grounds that it is entirely inconsistent with the virtues of the rural setting[277].

Dr Wood wrote that there is a direct view from their property to "the Young ... property. We are as close as the Staufenbergs, but behind them on a diagonal angle [sic] we estimate about 900 m direct line of sight from our house"[278]. That is unlikely to be correct since the Staufenberg house was agreed to be 1.6 kilometres away. They shared the appellants' concerns about potential noise, lighting, traffic, hours of operation and the precedent effect[279].

Findings on adverse effects on amenities

Views from appellants' properties

[164] The landscape witnesses agreed[280] that neither of the proposed buildings will be visible from the appellants' existing buildings. At a distance of one kilometre or more I consider that Dr Wood and Dr Barker will be unlikely to see more than glimpses of any buildings on the site. Any light pollution could be the subject of further conditions. As for the other visual impacts of the proposal I have discussed that in detail above and consider any adverse effect will be minor (at worst).

Noise

[165] Counsel for the appellants referred to the *Mobil Oil*[281] and *Kaupokonui*[282] cases. I accept the principle stated in *Mobil Oil New Zealand Ltd v Taupo District* Council[283].

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272 M F Barker, evidence-in-chief paras 6 and 7 [Environment Court document 11].
273 M F Barker, evidence-in-chief para 8 [Environment Court document 11].
274 M F Barker, evidence-in-chief para 9 [Environment Court document 11].
275 M F Barker, evidence-in-chief para 10 [Environment Court document 11].
276 K P Wood, evidence-in-chief [Environment Court document 12] entered into the record by consent.
277 K P Wood, evidence-in-chief para 3 [Environment Court document 12].
278 K P Wood, evidence-in-chief para 4 [Environment Court document 12].
279 K P Wood, evidence-in-chief para 5 [Environment Court document 12].
280 See for example P R Blakely, evidence-in-chief para 7.3 e and f [Environment Court document 12].
281 *Mobil Oil New Zealand Limited v Taupo District Council* A149/88.
282 *Kaupokonui Beach Society Inc v South Taranaki District Council* W030/2008.
283 *Mobil Oil NZ Ltd v Taupo District Council* Decision A149/98 at [54]; applied in *Doolan v Queenstown Lakes District Council* NZEnvC C004/07 and *Kaupokonui Beach Society Inc v South Taranaki District Council* W030/08.

> The test is not whether the plan's noise levels are met, but are the potential adverse effects of noise going to detract from the residential amenity of the neighbourhood, and will the noise be reasonable.

Each case like this turns on its own factual circumstances and the predicted likely effects (adverse or positive). For example *Mobil Oil* concerned an application for a service station (adjacent to a residential area) which wanted to change its closing time from 10.30pm to a 24-hour operation. The main amenity issue was the noise from people and cars in the forecourt area on nearby residents. The residents were very close, not as here, 1.7-2 kilometres away. The Environment Court noted that its assessment must be whether the noise was reasonable and whether it would detract from amenity value.

[166] *Kaupokonui Beach Society v South Taranaki District Council*[284] concerned a proposed quarrying operation by a hydraulic digger in a rural zone. The existing daytime background noise level was measured at between 35 and 43 decibels. The court found that the noise environment would change from one dominated by "the natural sounds of sea, river and wildlife to one where the industrial noises of a quarrying operation are a prominent feature." I agree with Ms Caunter that *Kaupokonui* bears little resemblance to the applicant's proposal: a quarry activity is more intrusive, and the noise environment here is not dominated by natural sounds as in *Kaupokonui*. Here the airport and SH6 are important noise contributors to this noise environment (although only the latter contributes noise during hours of darkness).

[167] The applicant has included extensive noise mitigation in its proposal. Without conceding that there are more than minor adverse effects on rural amenity from activities on its site, it now proposes further amended conditions to address the appellants' concerns[285].

> Outside activities (specifically go-karts and bumper boats) will be broken into two seasons and operating hours:
>
> (a) Summer (1 October to 31 March) 10:00 – 20:00 hours
>
> (b) Winter (1 April to 30 September) 10:00 – 18:00 hours
>
> Outdoor seating opening hours will match the hours of the outdoor activities. Smokers will not be able to access this area once it is closed and will need to smoke outside the front of the building, where no seating is provided.

[168] In her closing submissions Ms Feint suggested there would be annoying special audible characteristics. She referred to Dr Chiles' description of the special audible characteristics of go-karts. It is important that it is not taken out of context. The relevant part of the cross-examination by Ms Feint went as follows[286]:

284 *Kaupokonui Beach Society Inc v South Taranaki District Council* W030/2008.
285 J Caunter Submissions in reply para 176.
286 Transcript pp. 20-21.

Q. So the final paragraph has that sentence[287] saying that subjectively the go-karts exhibit some noticeable audible characteristics when standing adjacent to them, can you explain what you mean by that?

A. Yes certainly. There's a motorized engine in the go-karts which is a technical machine and you can refer to the technical characteristics you can hear when you're standing close to the engine. When you're at a distance in my experience when you've got a group of go-karts going round the track you then lose the short term cycles of the engine and you hear the overall noise from the go-karts going round the track.

Q. So how would you describe the character of that sound?

A. As I say it's a motorized engine so in a very crude term a high end lawn mower but it's a more engineered silence so in terms of that character it's a combustion engine... .

Q. So it would emit a hum or a buzzing sound at a distance?

A. At a distance I think Mr Hunt was trying to make the point there's quite a distinction between a racing go-kart and a fun go-kart... .
... but the question asked about a buzz and so forth there isn't (is) a distinctive tone or character like that. You can hear (it) at a distance a group of go-karts.

That discussion occurred in cross examination, with reference to sound characteristics when standing close to the engine, or adjacent to it[288]. The questioning then turned to sound at a distance. Dr Chiles did not say there would be special audible characteristics or a loud sound at a distance[289].

[169] Further I put a question about this to Dr Chiles[290]:

Q. And for a reasonable person could it get to the stage where it could be distracting as you say?

A. Not for a reasonable person no ... we're talking about 30 as the predicted level in this instance and in the evenings when the outdoor go-karts stop in the later evening period I think the prediction from Mr Hunt was 20 and so it's very low levels sound and this is at the Staufenberg's. As you go further away to the Feint's property I mean we're even lower levels...

That passage is important because even in her final submissions Ms Feint misunderstands, with respect, the noise evidence. She refers to the statement by Dr Chiles that[291] "Even if the proposal were to generate say 10 dB higher levels than we would still consider that acceptable in this environment." (I note that there is no evidence that is likely to be the case). Then she refers to Mr Hunt's agreement that a 10 dB increase in volume is "... definitely noticeable, perceived as twice as loud"[292]. But that would still only be a level of (20 + 10) = 30 dB outside the Staufenberg property which is within the limits of what Dr Chiles considered reasonable. In other words twice as loud as very quiet, is still quiet. Further it has to be remembered that the night-time ambient noise level at the Staufenberg property is not consistently 20 dB or less because as Dr Chiles wrote[293] "... between [20:00] and [00:00] hours ... there will still be traffic on the State Highway".

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287 Dr S G Chiles, evidence-in-chief, p. 2 - final paragraph [Environment Court document 6].
288 Transcript page 21 lines 8-25.
289 Transcript page 21 lines 8-25.
290 Transcript p. 21.
291 Dr S G Chiles, evidence-in-chief Attachment A p. 4 [Environment Court document 6].
292 Transcript p. 11.
293 Dr S G Chiles, evidence-in-chief Attachment A p. 4 [Environment Court document 6].

[170] Ms Feint then seized on the lawn-mower analogy and submitted[294] that "most people would regard a lawn-mower-type sound as irritating. But as I understand Dr Chiles' evidence, there is only a lawn-mower sound from these go-karts if you are standing close to them, not listening from 1.2 kilometres away. Further the other acoustic expert, Mr Hunt, was asked whether the noise would be a buzzing sound or "like a swarm of high pitch bees buzzing inside your head". Mr Hunt answered 'No' and said that the case counsel was referring to in cross-examination concerned competitive racing karts, some of them being the fastest in the country and were not used at amusement parks[295]. Asked what the sound from the Sodi go-karts was like Mr Hunt replied[296]:

> ... I would say if you were across the road you would struggle to hear them and the sound that you do hear it's a very muffled sound from the exhaust so not actually readily detectable ... none of the harsh almost chainsaw characteristics that you get with the racing two stroke go-kart.

I find that the noise from the go-karts will not be unreasonable. Like so much background noise it will only be heard if a person is listening for it.

Visual amenity

[171] Counsel referred to *Roberts v Queenstown Lakes District Council*[297] where the Environment Court declined subdivision consent for a single allotment on the north side of State Highway 6 further west towards Wanaka. The court concluded that the *Roberts* site was in a "visually sensitive area" adjacent to State Highway 6. Further, the State Highway was "a major road corridor between the airport and Wanaka" and accordingly an important part of the visual amenity landscape. I consider this further under district-wide policy (4.2.5)4 "Visual Amenity Landscapes" shortly.

Traffic

[172] We received no expert evidence on this issue, merely unquantified assertions by the appellants' witnesses. I recorded earlier that the additional traffic generated by the activities might be up to 440 vehicles per day between the State Highway 6 corner and the entrance to the entertainment complex. The volume of extra traffic continuing to (or coming from) the southwest is so small as to be not worth worrying about.

Precedent effects

[173] I consider these under 'other matters' in 6.3 below.

6.2 Having regard to relevant provisions in the district plan

[174] The planning witnesses agreed that the most relevant provisions are in the district plan. The provisions of the Otago Regional Council's planning instruments are

294 Ms Feint Closing submissions para 6.11 [Environment Court document 21].
295 Transcript page 13 line 28 – page 14 line 12.
296 Transcript page 14 lines 15-22.
297 *Roberts v Queenstown Lakes District Council* [2011] NZEnvC 43.

too broad to be useful in the context of this case. There are no relevant National Policy Statements or Standards or other statutory instruments.

Rural-General Zone objectives (purpose) and policies

[175] The basic scheme of these Rural-General objectives and policies is that the court must ensure that a (wide) range of outdoor recreational opportunities remains viable[298] while protecting the character and landscape value of the rural area[299] and avoiding remedying or mitigating adverse effects on rural amenity[300].

[176] The two outdoor activities proposed – the go-karts and the bumper boats – are what the first part of the (fourth) rural-general purpose[301] are about. The other two inside activities – the bowling alley and the café – must occur where the character of the rural area will not be adversely impacted[302] and be located in areas with the potential to absorb change[303]. In general terms I consider those are met, but will reserve my final decision until after considering the more detailed policies in part 4.2 of the district plan. I now turn to those.

Does the proposal achieve the policies in part 4.2 of the plan?

Future Development

[177] I accept that the applicant's property is in an area with landscape and visual amenities which are vulnerable to degradation[304]. However, since the property (including the site) are in an a visual amenity landscape with a later more specific set of policies it is preferable to consider the proposal under that policy (4.2.5)4 "Visual Amenity Landscapes"[305] which I come to shortly.

[178] The second future development policy[306] encourages development to occur in areas with greater potential to absorb change without detracting landscape and visual amenity values. Ms Jones did not express an opinion on policy 1(b). Mr Vivian's evidence[307] was that this policy encourages the development to occur on the site because it has greater potential to absorb change without detraction from landscape and visual amenity values. An illuminating passage in cross-examination by Ms Robb of Mr Vivian went as follows:

> Q. So you're interpreting that policy to say that because there's already degradation in this area it can absorb further degradation and that it's the pristine areas of the VALs that should not be developed. It's not what the policy says is it?
> A. Well I think it is what the policy says. I think it's exactly what the policy says.

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298 Para 5.3.1.1 [QLDP p. 5-9].
299 Objective (5.2) 1 [QLDP p. 5-2].
300 Objective (5.2) 3 [QLDP p. 5-4].
301 Para 5.3.1.1 [QLDP p. 5-9].
302 Policy (5.2) 1.4 [QLDP p. 5-3].
303 Policy (5.2) 1.7 [QLDP p. 5-3].
304 Policy (4.2.5) 1 (a) [QLDP p. 4-9].
305 QLDP p. 4-10].
306 Policy (4.2.5) 1 (b) [WLDP p. 4-9].
307 C Vivian, evidence-in-chief para 10.11 [Environment Court document 19].

This is going too far the other way. Both extremes are wrong: each application turns on its own facts. Here the proposal is infill, not a leprous bulge, and so I consider Mr Vivian was correct on the facts even if he put the general principle too strongly.

[179] The third sub-policy about future development is[308] to ensure development harmonises with local topography and ecological systems as far as possible. It is often difficult for buildings to harmonise with a flat landscape, but efforts are proposed by landscaping to soften the impact of the buildings in this area. The words "... as far as possible" mean that it is likely that most proposals anywhere will not actually be contrary to this policy.

[180] One way of considering that issue is to ask "Can the visual amenity landscape along State Highway 6 between the eastern end of the Wanaka Airport and the Cardrona river absorb further change or has it reached a threshold?" In *Roberts v Queenstown Lakes District Council*[309] the Environment Court appeared to ask that question and answered "yes". However, I remind myself that a "Visual Amenity Landscape" is not a zoning; that not all parts of a visual amenity landscape are necessarily of the same quality – the description is a broad-brush approach and washes over pockets of lesser landscape and visual amenity; and that each case has to be considered on its own facts.

[181] The particular important facts of this case are that the site is nearly surrounded by commercial development. The site is ringed for between 300 to 330° of the circle by other properties with non-rural activities. So much so that Ms Lucas described the proposal as infill. Mr Blakely disagreed, but proportionately she is more correct than he was.

[182] Another way of looking at the proposal put forward by the appellants is that the visual amenity landscape has already been degraded by the airport and a sequence of "ad hoc" resource consents: The Toy and Aviation Museums, the Pittaway Hangar development all on the northeastern side of State Highway 6, and the Have-a-Shot on the southeastern side. In Mr Blakely's Appendix A[310] as elsewhere[311] he regards the existing development of Wanaka Airport as an excrescence[312] (his word) in the visual amenity landscape. In his opinion further development on the applicant's site would aggravate that: in other words the site has less potential to absorb change because of the neighbouring activities, not more. I consider that approach is incorrect.

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308 Policy (4.2.5) 1 (c) [QLDP p. 4-9].

309 *Roberts v Queenstown Lakes District Council* [2011] NZEnvC 43.

310 P R Blakely, evidence-in-chief Appendix A part (c) (vi) [Environment Court document 13].

311 Joint Statement: R Lucas, evidence-in-chief Attachment 7 p. 7 "The extent of Airport development in addition to the Have-a-Shot has a degrading effect on the landscape and has reached a threshold".

312 P R Blakely, evidence-in-chief Appendix 1 (d) (iii) [Environment Court document 13].

[183] The point has not arisen before to my knowledge in relation to a designation, but the presence of permitted buildings and infrastructure (e.g. runways and aprons) under a designation cannot be treated as mere temporary aberrations. They are important parts of the existing environment regardless of the underlying zoning and any consequential landscape classification. Further this approach ignores the presence of the Rural Visitor Zone (which I have held is not, as a matter of law, part of the VAL). Given that, I do accept that as a matter of fact the developments around the Wanaka Airport cast a shadow over adjacent land affecting its landscape and amenity values to a greater or lesser extent, depending on a variety of circumstances including topography, vegetation, presence of roads, land use, and property boundaries. However, the question whether any particular property has potential to absorb change should not be answered by a decision (akin to a zoning decision) that the whole of a visual amenity landscape along a highway has reached a threshold. It must be answered by considering the particular facts of the property in question.

[184] I have already identified that the site is largely surrounded by development. It is also pinched between two roads and two sets of power lines. I hold that the applicant's proposal does meet the second 'future development' policy[313]. It also makes adequate attempts to meet the third policy[314] harmonise with local topography ecological systems by using many native plants in the landscaping around the site – see plan "a" attached. Mr Blakely was critical of the bunding and doubtful about the survival and growth rates of many plants. However, cross-examination showed that he had put forward similar designs only a few kilometres away at Ballantyne Road (near Wanaka town). Ms Lucas' photographs showed[315] planted bunds and thriving plants.

Visual Amenity Landscapes[316]

[185] In part 5 of this decision I held that the proposal was not contrary to this policy and its three sub-points. A more difficult issue is how far the policy is achieved. The entertainment complex will be slightly visible from the two roads – so the question is "will any potential adverse effect be adequately remedied or mitigated?" I bear in mind that remediation or mitigation occurs in an existing environment which is highly modified already.

[186] I accept that State Highway 6 west of the airport is an important entrance to the Wanaka Basin. However, I consider Ms Lucas is correct when she identified the point at which those views open up. It is at the northwestern end of the conifers along the road reserve of State Highway 6. Her description of the drive northwest from Luggate towards Wanaka, in answer to Ms Robb, was[317]:

313 Policy (4.2.5) 1 (b) [QLDP p. 4-9].
314 Policy (4.2.5) 1 (c) [QLDP p. 4-9].
315 R Lucas, Rebuttal evidence [Environment Court document 18A].
316 Policy (4.2.5) 4 [QLDP p. 4-10].
317 Transcript p. 140.

> ... when you're driving along the highway you get a two-second glimpse down the road corridor of Mt Barker which forms a view corridor to Mt Barker and the mountains behind but that's two seconds and you've got the airport on the other side of the road and then a whole line of the pine trees. So you get glimpses through but then once you're past the pine trees and you're past the airport and that development you have wide, expansive views on both sides of the road and I think those views are more significant than any view that you can get from the intersection of Mt Barker Road and the highway and just passed the intersection in the area that we've located the development.

The covenant over the remainder of the property will ensure that the important views are maintained. As for the site I consider that the siting of the buildings and the proposed landscaping (see Attachment "A") will either avoid or adequately remedy any adverse effects.

[187] The second sub-policy[318] requires that loss of natural character be mitigated by appropriate planting and landscaping. The applicant's landscape expert has drawn up the landscape concept plan and modified it to meet concerns of the appellants. I prefer the evidence of Ms Jones and Mr Vivian as a more reliable assessment of the appropriateness of the landscaping and planting in this context.

Urban development[319] *(Policy 4.2.5)6*

[188] The building components of the entertainment complex are discouraged in the VAL by one sub-policy[320] and so the proposal does not achieve that policy. However the fourth sub-policy[321] states that if development does occur in a rural amenity landscape then sprawling development along roads should be avoided. That is a strong policy. However I consider this site does meet it because of the substantial infill component to the proposal combined with the covenant ensuring that the remainder of the site remains with an (enhanced) open character.

Urban edges[322]

[189] This is an important policy. Its intention is that there should be clear 'design' solutions urban areas (i.e. any non-rural uses) rather than simple lines on planning maps. 'Design' solutions can involve a number of features: topography, rivers and lakes, roads (subject to some reservations about how easy they are to cross), shape of urban development (e.g. sharp concave boundaries are much less easy to defend than convex surfaces[323]); vegetation changes.

[190] Ms Jones relied in her evidence-in-chief on State Highway 6 as a "strong and defensible edge"[324] to the large scale commercial development at the airport. The presence of the "Have-a-Shot" operation on the southwestern side of State Highway 6

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318 Policy (4.2.5) 4 (b)[QLDP p. 4-10].
319 Policy (4.2.5) 6 [QLDP p. 4-22].
320 Policy (4.2.5) 6 (b) [QLDP p. 4-11].
321 Policy (4.2.5) 6 (d) [QLDP p. 4-11].
322 Policy (4.2.5) 7 [QLDP p. 4-11].
323 A concave shape (in 2D) is one on which no line can be drawn that crosses the boundary of the shape more than twice.
324 V S Jones, evidence-in-chief para 8.30 [Environment Court document 14].

was regarded as an anomaly due to contemporary uncertainty about the proposed district plan.

[191] Roads are sometimes used as urban boundaries, and there may, on occasions, be good reasons for that to occur (especially if reinforced by reserve status of the non-urban land on the other side). But roads are not particularly robust boundaries. They are tenuous because they are inefficient boundaries in urban settings. For transport and other servicing reasons it may make more economic sense to develop both sides of roads as Ms Jones seemed to accept[325]. It is preferable to rely on natural topographical boundaries – hillsides, rivers, lakes, or on plains – the shape of development – so that urban boundaries are generally convex.

[192] Further Ms Jones has overlooked an important aspect of the context of the proceedings: that there are two roads between the Wanaka Airport (north) and the Rural Visitor Zone, and the outstanding natural landscape starting on another higher terrace to the south. I hold that, if a road is to be used as the edge of the Wanaka airport node, then an equally tenable edge would be Mt Barker Road rather than the State Highway 6. In fact the proposal strengthens the (rather tenuous) boundary constituted by Mt Barker Road by adding the no-building and 'retain in pasture' covenant over the property. Together those should prove to be considerably tougher to breach than one (or two) roads by themselves.

Avoiding cumulative degradation

[193] The last point shows also that the second of the two 'cumulative' policies is achieved: a comprehensive and sympathetic development[326] of the property. As for the first policy under this heading, Ms Jones relied[327] generally on the evidence of Mr Blakely and opined that "the adverse effects on the landscape are greater than any benefits that might arise from the planting, built form, activity itself, or the covenanting of the balance land". Neither Ms Lucas nor Mr Vivian expressed an opinion on this because they had understood (with some justification) 'domestication' to apply to residential development. I do not accept Ms Jones' opinion because it is expressly based on the evidence of Mr Blakely and (for the reasons stated in part 2 of this decision) I find he has strongly overstated the adverse effects of the proposal on the surrounding landscape. I return (briefly) to the question of the costs and benefits of the proposal in relation to section 7(b) of the RMA later. I judge that the adverse effects of "over-domestication" (in a loose sense since this proposal is not for residences) do not outweigh the benefits of further planting and building[328]. I underline building because in this effects-based plan this policy is one of the few which expressly recognises that buildings in the rural area bring benefits. Reiterating an earlier point: while I accept

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325 Transcript p. 120.

326 Policy (4.2.5) 8 (b) [QLDP p. 4-11], and see C Vivian, evidence-in-chief para 10.33 [Environment Court document 19].

327 V S Jones, evidence-in-chief para 8.32 [Environment Court document 14].

328 Policy (4.2.5) 8 (a) [QLDP p. 4-11].

that development State Highway 6 from the airport to Mt Iron (at the entrance to Wanaka town) is close to a threshold, it is not so at every point. In particular it is not on this site. This policy would therefore be achieved.

Structures[329]

[194] The long simple lines of the proposed buildings are in harmony with the line and form of the terrace on which the property sits, and of the terrace on the southern side of Mt Barker Road. The structures avoid any adverse effects on skylines when viewed from the adjacent roads, nor did any witness claim that they would. Mr Blakely opined that, when viewed from the Mt Barker/State Highway 6 intersection, the main building (housing the bowling alley and café) would obscure views of Mt Barker and the 'Cardrona' Range beyond. However, the policy requires us only to consider the adverse effects on "prominent slopes". There is no evidence that the lower slopes of the Mt Alpha and Roy's Peak are prominent from this vicinity. I accept that the obscured slopes of Mt Barker may be prominent when viewed in Mr Blakely's photograph 1. However, I have already expressed my concern over the unbalanced (narrow field of view) character of Mr Blakely's photographs, including that one. Ms Lucas does not have a panorama from the same viewpoint. But she does have one from opposite the entrance to the site (her photograph C – lower view), which is 30 or 40 metres closer to Mt Barker. When that panorama is viewed in the correct size reproduction (as on the display boards during the hearing). I bear in mind that in three-dimensional reality Mt Barker is usually seen more vividly and clearly than in even the best simulation. However, even so I do not consider Mt Barker is prominent from the intersection (see photograph "D" attached).

[195] I find that none of the views of prominent mountain slopes are obscured. Consequently I hold that this first sub-policy is achieved. So is the second[330] by use of existing and proposed vegetation to screen the proposal from the roads. The third policy[331] is achieved in part by the very small sign proposed for the site which is in stark contrast to the Have-a-Shot operation's signs next door. The policy for greater setbacks[332] is not achieved by the proposal. However, it is not met by the power lines across the site either, and the structures are to be placed between and below those, so the existing situation is not exacerbated much.

Land use

[196] This policy[333] is strongly achieved: adverse effects on the open character (i.e. absence of structures and trees) are minimised by the volunteered covenant. As I will discuss shortly the most likely alternative use of the land will probably introduce trees which will reduce the open character and visual coherence of the landscape.

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329 Policy (4.2.5) 9 [QLDP p. 4-11A].
330 Policy (4.2.5) 9 (b) [QLDP pp. 4-12 and 4-13].
331 Policy (4.2.5) 9 (c) [QLDP p. 4-13].
332 Policy (4.2.5) 9 (c) [QLDP p. 4-12].
333 Policy (4.2.5) 17 [QLDP p. 4-13].

Other Chapter 4 matters (if relevant)

Recreation (Part 4.4)

[197] The objective[334] requiring effective use of recreational areas would be achieved in an efficient way by the provision of go-karts, bumper boats and ten-pin bowling together. This objective is of course subject to meeting the environmental bottom-line[335] of avoiding adverse effects on the environment already discussed.

Conclusion under section 104(1)(b)

[198] Neither of the planners is wholly convincing. However Mr Vivian basically applied the correct objectives and policies. In contrast Ms Jones relied on irrelevant policies (e.g. energy[336], urban consolidation[337]) and applied the urban edge policy in a way that favoured her client without considering either the fact that there is another road that could act as a (weak) barrier, or the volunteered covenant (or any improvement of it to give effect to the applicant's known intentions).

[199] Neither of the planners considers Recreation objective 3 which favours the proposal by seeking effective use of "open space and recreational areas" to meet the needs of residents and visitors[338] or its implementing policy which encourages increased use of private recreational facilities[339]. In my view that quite strongly supports the proposal provided any adverse effects on amenities or landscapes are mitigated as required by the plans and conditions.

6.3 Having regard to other relevant matters[340]

Alternatives

[200] The appellants say that the applicant failed to consider alternative sites. They suggested the Three Parks Zone near Mt Iron, or the Rural Visitor Zone just across State Highway 6.

[201] Ms Caunter submitted that the applicant was not obliged to consider alternatives, given the assessment of environmental effects had indicated there were no more than minor effects on the environment. The consideration of alternatives is only required[341] when there are significant adverse effects on the environment from the activity proposed. She relied on *Progressive Enterprises Limited v North Shore City Council*[342] where the Environment Court stated:

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334 Objective (4.4.3) 3 [QLDP p. 4-26].
335 Objective (4.4.3) 2 [QLDP p. 4-25].
336 V S Jones, evidence-in-chief para 8.53 et ff. [Environment Court document 14].
337 V S Jones, evidence-in-chief para 8.73 et ff. [Environment Court document 14]; Transcript p. 114 line 28 et ff.
338 Objective (4.4.4) 3 [QLDP p. 4-26].
339 Objective (4.4.4) 3 [QLDP p. 4-26].
340 Section 104 (1) (c) RMA.
341 Clause 1(b) of the Fourth Schedule.
342 *Progressive Enterprises Ltd v North Shore City Council* (W75/2008) at para 16.

> What needs to be said here is that in the absence of credible evidence that there will likely be ... any significant adverse effect on the environment ... arising from the proposal – thus bringing into play the requirements of Schedule 4 to the Act to demonstrate a consideration of alternative locations or methods in the application process – possible alternative sites are irrelevant. Unless clause 1(b) applies, every proposal must be assessed on its own merits without regard to whether there might, or might not, be a better site. That has been the clearly held view of the Court over a long period: - see e.g. *Dumbar v Gore*[343], *Te Kupenga O Ngati Inc v Hauraki DC*[344] and *All Seasons Properties Ltd v Waitakere CC*[345].

[202] However, there is a more specific requirement in the district plan. It requires[346], "... a general assessment of the frequency with which appropriate sites for development will be found in the locality." I consider that there are few better alternative sites in the locality – since they will not have the large advantage of this site that it fits into the airport node. That is a positive for the application; against that is the factor that the proposal might fit into the new Rural Visitor Zone just across the State Highway as a controlled activity. While that weighs against the proposal, it is not a heavy matter since I have held that adverse effects on landscape and amenity values will be minor.

[203] Further I question whether the appellants and their supporting witnesses have thought this through. An entertainment complex at the northwestern end of the Rural Visitor Zone might well be closer to the Staufenberg house, and would almost certainly be closer to Dr Barker's house since that is in Ballantyne Road which runs west off State Highway 6 less than one kilometre from the corner of the Rural Visitor Zone. Dr Wood's house is north of the Staufenberg house so it would probably be closer too. There would probably be fewer controls on a complex in the Rural Visitor Zone, and so any adverse effects – provided they complied with site and zone standards – might be greater than on the Young Trust site. Unfortunately as Ms Caunter said in her closing submissions these issues arose so late that it was not possible to put them to the appellants' witnesses.

[204] As for the Three Parks Zone alternative I accept Ms Caunter's submissions on the difficulties of this site. While the issue was not tested in evidence because this alternative only arose during cross-examination, I also accept that the applicant would not want to place his external entertainment (go-karts and bumper-boats) in the shadow of Mt Iron in winter.

The relevance of Roberts v Queenstown Lakes District Council[347]

[205] *Roberts* was concerned with an application to subdivide a 6 hectare property into two by excising a 1.55 hectare lot close to State Highway 6 at a distance of 1.5 kilometres from the Wanaka Airport (to the east). Consent was also sought for a building platform close to the State Highway. The court described the evidence that the

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343 *Dumbar v Gore* (W189/1996).
344 *Te Kupenga O Ngati Inc v Hauraki DC* (A10/2001).
345 *All Seasons Properties Ltd v Waitakere CC* (W021.2007).
346 Rule 5.4.2.1 Step 3 [QLDP p. 5-24].
347 *Roberts v Queenstown Lakes District Council* [2011] NZEnvC 43.

Roberts' site lay between two "nodes"[348] of development (Wanaka township's outskirts underneath Mt Iron, and the Airport). It continued[349]:

> A key issue in this case is whether the proposed subdivision, allowing a new rural-residential activity close to SH6 in the middle of this section of the highway, would serve to connect these two nodes and/or to compromise the pastoral character of the surrounding landscape, including the opportunities on this important approach to Wanaka for clear views of the expansive and memorable landscape to the north.

[206] In its findings on landscape matters the court stated[350]:

> ... This is a sensitive location which (having regard to existing and consented development) is already at a threshold of development for sites close to SH6. This influences our view as to the extent to which the development will result in a loss of the natural or pastoral character, and a reduction of rural amenity.
>
> We accept that there will be not only a loss of rural views across the landscape but also of views of closer landscape features which can be seen passing the site, such as the moraine hill and the Clutha Terraces – views which we observe typify a VAL landscape. The evidence demonstrates that the development (including associated planting) would obstruct those views, reducing the natural and pastoral character of the surrounding VAL, and increase the level of domestication. These are consequences that would be acceptable in Rural-Residential or Rural Living zones, but are out of place in this particular location, especially given the importance of this section of SH6 as an approach to Wanaka.

[207] The differences between this case and *Roberts* are first that two of the four activities (the go-karts and the bumper boats) are outdoor recreational activities, encouragement of which is one of the purposes of the Rural-General Zone; second, that the activities can take place in one of the development nodes recognized by the district plan – the Wanaka Airport and the Rural Visitor Zone; third, as I have found, the adverse effects of the proposal on the visual amenity landscape and on neighbours are minor at worst; fourth, the pastoral and open character of 80% of the property (beyond the site) would be enhanced at least for the life of the resource consent.

Other (residential) use of the land

[208] Both planners confirmed[351] to the court that if this development does not proceed then a residential development is likely to occur elsewhere on the property. The property is one of a number that occur in clumps around the district where small lot sizes have been allowed in subdivision plans but no building platforms were applied for[352]. Construction of a residential building otherwise requires a discretionary consent so such a proposal is not part of a permitted baseline. However I consider the probability of such residential development is another relevant matter: the court asked

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348 *Roberts v Queenstown Lakes District Council* [2011] NZEnvC 43 at [58].

349 *Roberts v Queenstown Lakes District Council* [2011] NZEnvC 43 at [58].

350 *Roberts v Queenstown Lakes District Council* [2011] NZEnvC 43 at [108] and [109].

351 Transcript pp 116-117 (Ms Juner); Transcript pp 203-205 (Mr Vivian).

352 That is important because construction of a new building on an approved building platform is a controlled activity: Rule 5.3.3.2 i (b).

Mr Vivian whether he knew of any case relating to such an allotment where the council has declined approval. He answered that he did not[353].

[209] I find that it is quite likely that, if the resource consents are refused, a large residence would be built on the property with ancillary buildings such as sheds and barns, and a tennis court or swimming pool (or both). I accept Ms Caunter's submission[354] that

> ...the level of development is not fanciful. One of the witnesses for the Feints, [Dr] Wood, was granted a non-notified consent for a dwelling on her land in 2009[355]. The site is 22 hectares in size. This consent authorises a 214.10m^2 dwelling with a maximum height of 5.5m, a barn of 92m^2 with a maximum height of 5.2m, a 34m^2 swimming pool, a 293m long driveway, planting that includes eucalyptus and cypresses along the southern boundary and partially along the eastern and western boundaries, native and exotic trees north of the dwelling, and an olive grove. The Council decision notes that the development will be visible from SH6 (when travelling towards Wanaka) for approximately 2km and visible for a distance of 1.6km along Mt Barker Road. The views of the development from SH6 were assessed as being hidden, in time, by the olive grove[356]. None of this development fits well with the VAL landscape classification in the way that the appellants say it must be interpreted and applied, nor will it protect that landscape.

In my view it is likely that if consent is refused for the entertainment complex then the very likely outcome is that a residential unit will be placed on the land as a discretionary activity, just as already occurred on the nearby sections owned by the Staufenberg Trust and as has been granted on Dr Wood's land. Any such development is likely to contribute to the sense of sprawl considerably more than the present proposal. I also note, given Mr Blakely's description of this area's rough character (quoted earlier) I see creation of a Pastoral/Arcadian character here as quite difficult. A more landscape-sensitive approach would be to follow the Staufenberg landscaping prototype.

Would a consent create a precedent?

[210] The appellants are concerned that if the resource consent for the complex is confirmed that will create a precedent for further applications. I consider this argument should be given no weight at all. There are no other sites nearby surrounded by commercial development in the vicinity of the airport. Even the Rural Visitor Zone could not be located as infill (whereas the site is) and had to be tacked on to the area covered by the Wanaka Airport designation. A good test for infill is whether the existing development and the new (infill) proposal fit within a tight circle or ellipse, i.e. there is no concave curve in the node's outline as a result of the infill. That test would preclude the "Rising Star" site – another possible development site one kilometre along State Highway 6 to the west – referred to in cross-examination of Ms Jones[357] and Mr Vivian[358]. Equally there is no other site close to the airport, which is tucked within the acute angle of two roads and (fortuitously) screened by large conifers.

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353 Transcript pp 203 and 204.
354 J Caunter closing submissions para 29 [Environment Court document 22].
355 Queenstown Lakes District Council resource consent RM080825 (Wood).
356 Decision at page 9 under Visibility of Development.
357 Transcript p. 124.
358 Transcript p. 172.

How long would it take for the screening to work?

[211] The experts seemed to agree it might take up to 8 years, given the difficult growing conditions of the site, for the planting to be fully effective in screening most of the development and the bunds from view from the roads. However, that does not mean that the buildings will be wholly visible either: Ms Lucas said the vegetation would be 0.4 metres tall on planting, and there are nurturing and replacement conditions. I consider that is adequate mitigation. Of course from State Highway 6 the existing conifers can be relied on so long as they are there.

6.4 Having regard to the Council's decision[359]

[212] The Hearing Commissioners noted[360] that the purpose of the Rural General zone and the stated "environmental results anticipated" include "retention of a range of recreational activities". In their opinion the proposal would not adversely affect other recreational activities such as "Have-a-Shot" and the toy and transport museum, but would likely enhance their viability by adding to the range of recreation attractions in the Wanaka area.

[213] The Commissioners found[361] that indoor and outdoor recreation activities, including "commercial recreation facilities" are anticipated in the Rural General zone. They considered a site within the node of existing and future development (in the Rural Visitor zone) and the State Highway is preferable to sites where rural amenity values have not been compromised. They wrote[362]:

> ... there are few rural aspects remaining in this location to be maintained. This proposal will not significantly degrade them further.

It was the case for the Staufenberg Trust that because there are few rural aspects in this location remaining the sensitive development of this site is even more important. That is quite ingenious but disregards the landscape context – the proximity of the two roads which are the boundaries to the site, the power lines running through it, and the large conifers to the north and in particular the fact that the site is within the convex space constituted by the Rural Visitor Zone and the airport designation. Given those facts the Hearing Commissioners were, in my view, correct.

[214] The Commissioners wrote[363]:

> Ms Caunter noted that the proposed development would "complete" development on the remaining corner of the State Highway 6/Mount Barker Road intersection, and suggested it would therefore "not set a precedent for other development to follow". We are not sure about that because the more the node of development centred at the airport consolidates, the stronger

359 Section 290A RMA.
360 Hearing Commissioners' Decision 16 April 2011 para 61.
361 Hearing Commissioners' Decision 16 April 2011 para 65.
362 Hearing Commissioners' Decision 16 April 2011 para 61.
363 Hearing Commissioners' Decision 16 April 2011 para 82.

> the argument becomes that this locality is particularly suitable for those non-farming activities anticipated in appropriate places within the Rural General Zone. However, we do not see this as a bad thing – a commercial recreational development on this site, in combination with the other commercial recreational activities within the node will encourage any other commercial recreational developments not based on specific rural resources to co-locate rather than intrude into other rural localities.

Overall the Commissioners were satisfied that the adverse effects on the environment of the proposal would be no more than minor and the purpose of the Act would be best met by granting consent, subject to a set of stringent and detailed conditions designed to minimise potential adverse environmental effects. I consider I should place considerable weight on their proportionate and practical decision.

6.5 Part 2 – purpose and principles of the Act

[215] Turning to Part 2 of the Act, counsel identified three relevant matters in section 7 to which particular regard is to be had. However I consider there are four:

> ...
> (b) the efficient use and development of natural and physical resources
> ...
> (c) the maintenance and enhancement of amenity values
> ...
> (f) maintenance and enhancement of the quality of the environment
> (g) any finite characteristics of natural and physical resources

[216] In respect of section 7(c), I hold that the rural amenity values will be maintained and enhanced more than diminished by the proposal. I accept there is some very minor reduction in views through the site, but that will be outweighed first by the amenity added by the planting as it matures in a decade, and secondly by the maintenance of the open character of 83% of the land. That will retain expensive views over much of the land where the views are continuous (i.e. west of the conifers along State Highway 6). In respect of the quality of the environment (section 7(f)) the same considerations apply, with the added consideration that the natural character of the site will be enhanced by the extensive native plantings. Section 7(g) is not particularly important in this context, but it is relevant. I consider that the limited resources which are the VALs of the district have an even more limited subset of areas which are capable of absorbing some development. I judge that this is one.

[217] This leads to the fourth and last matter – section 7(b) of the RMA. I judge that it is an efficient use of the site to allow it to be used for the proposed entertainment complex. At present it is used for grazing a few sheep, more rabbits, as a conduit for electricity (on poles) and for limited viewing by the public (a positive externality). A much higher value for society would be achieved if the complex was built and operated. Some of the very slight positive externality of a view from the State Highway 6/Mt Barker Road corner would be lost – but that may be lost elsewhere on the property anyway when (if) a residence is built. In contrast the current proposal ensures those views over the parts of the property with higher landscape values – the open

character areas – will be retained and deleterious permitted activities not established. It seems extraordinary to sacrifice 15 jobs and profits for the landowners for the sake of 15 seconds per car of changed view southwest along 105 metres of Mt Barker Road, and even more fleeting changed (not obliterated) views from State Highway 6. The costs of the entertainment complex are in my judgement simply overwhelmed by the benefits.

[218] There are no matters of national importance to be provided for under section 6. Nor is section 8 of the RMA relevant.

6.6 Recommended result

[219] In the end the case comes down to this – does the proposal effectively use the site to meet the needs of the district's residents and visitors[364], while avoiding, remedying or mitigating adverse effects[365] on the amenities of this particular area and on the surrounding landscape. In my view the proposal effectively uses a small piece of 'nothing' land – the site which is at present bounded (on the road reserve) by typical ugly pines and crossed by two sets of power lines - for a set of recreational facilities that gain synergy from proximity to other recreational facilities at and by the airport. At the same time, the minor adverse effects are appropriately mitigated by the landscape plan and conditions and the recreation policies of the district plan are implemented. Further there would be positive gains for at least 20 years with the applicant's volunteered covenant to keep and improve the open character of the remainder of the property.

[220] If my decision was a majority view, then, because I find the purpose of the RMA would be better achieved by granting consent, I would confirm the Council's decision and grant the resource consent (for the same term it is prepared to volunteer the no-development covenant) and on the other conditions volunteered. It is not, so the court's orders will be to allow the appeals and cancel the QLDC's decision.

J R Jackson
Environment Judge

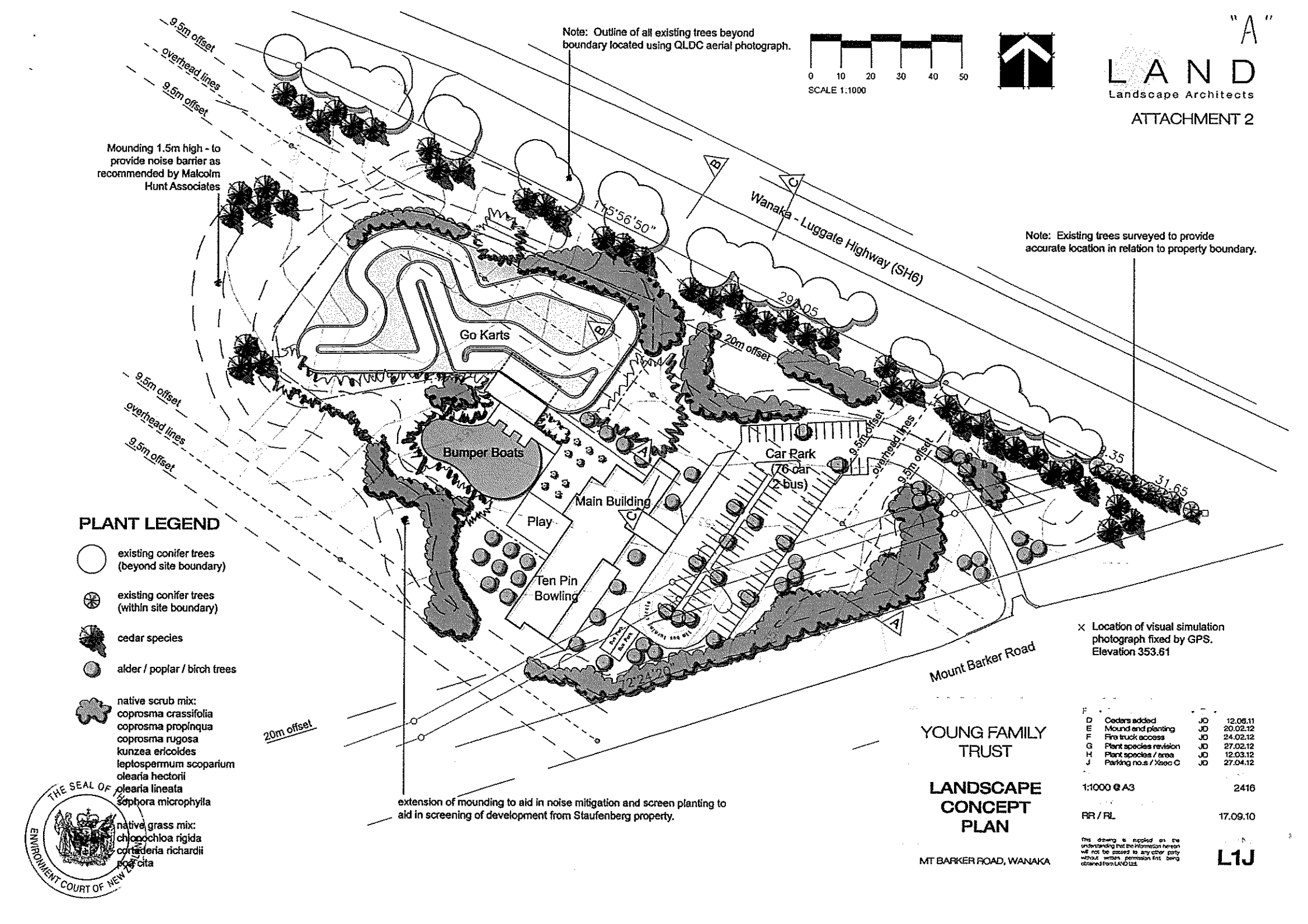
THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Attachments:

A: Site plan.
B: Commercial Development Node Diagram (R Lucas Rebuttal evidence Attachment 13).
C: Mr Blakely's photograph of viewpoint 2.
D: Ms Lucas' photograph D.

JacksojVJud_Rule/D/2011-CHC-43 Staufenberg and Feint-new draft.doc.

364 Objective (4.4.3) 3 [QLDP p. 4-26].
365 Objective (4.4.3) 2 [QLDP p. 4-26].



YOUNG FAMILY TRUST

LANDSCAPE CONCEPT PLAN

MT BARKER ROAD, WANAKA

D	Cedars added	JD	12.06.11
E	Mound and planting	JD	20.02.12
F	Fire truck access	JD	24.02.12
G	Plant species revision	JD	27.02.12
H	Plant species / area	JD	12.03.12
J	Parking no.s / Xsec C	JD	27.04.12

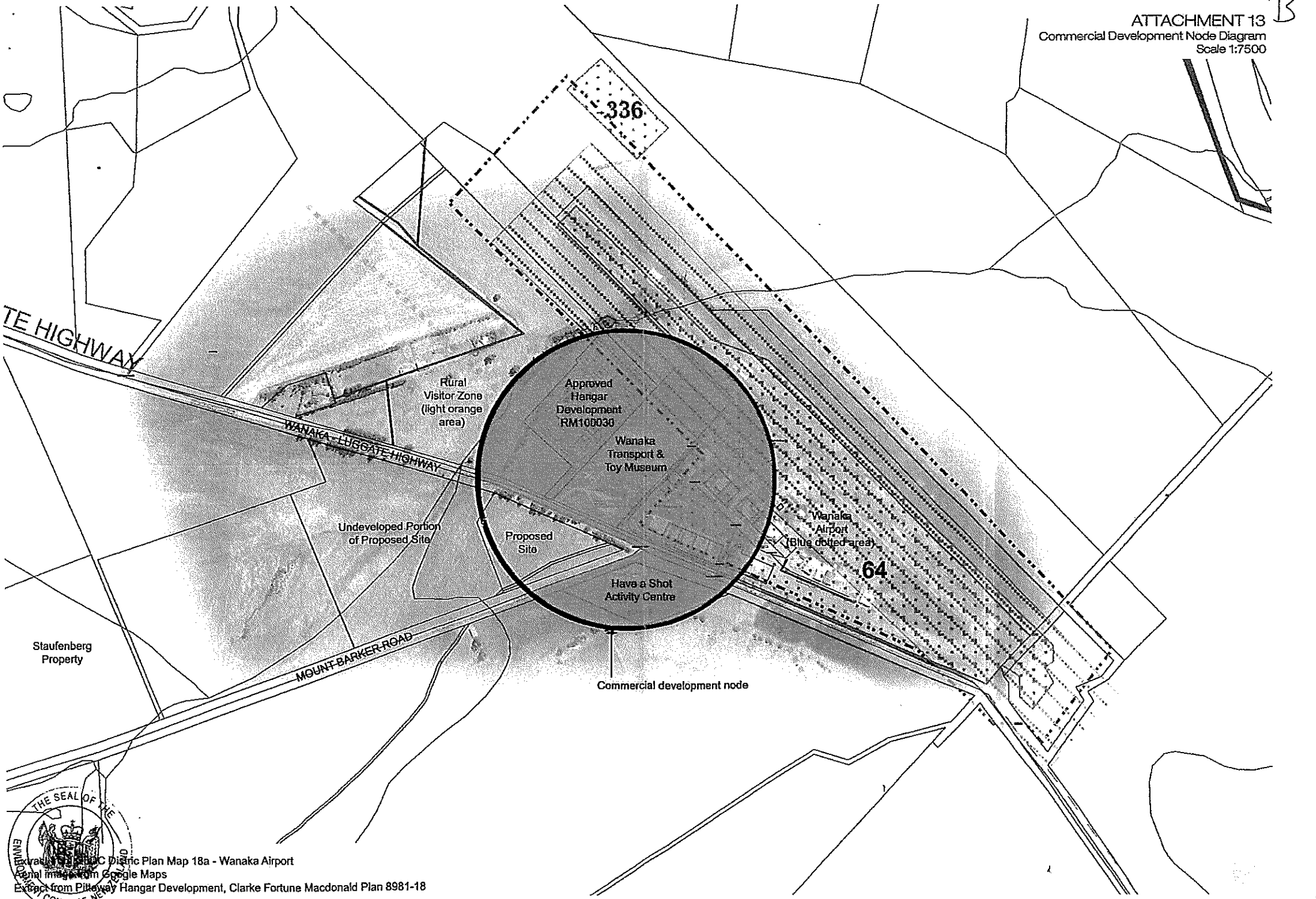
1:1000 @ A3 — 2416

RR / RL — 17.09.10

L1J

"B"

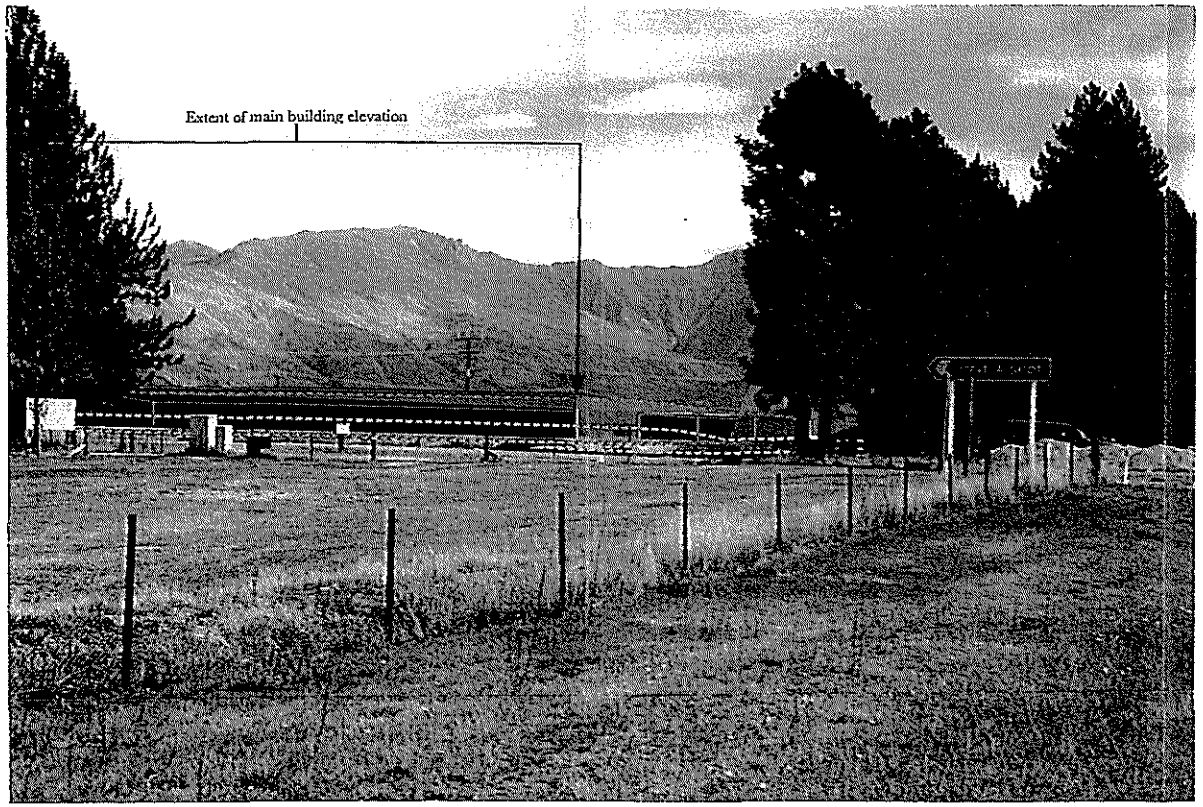
ATTACHMENT 13
Commercial Development Node Diagram
Scale 1:7500



Extract from QLDC Distric Plan Map 18a - Wanaka Airport
Aerial image from Google Maps
Extract from Pitteway Hangar Development, Clarke Fortune Macdonald Plan 8981-18

THE SEAL OF THE ENVIRONMENT COURT OF NEW

"C"



Appendix C: Photograph Viewpoint 2. View from road reserve on SH6 (with Visual Simulation of Proposal)

Legend

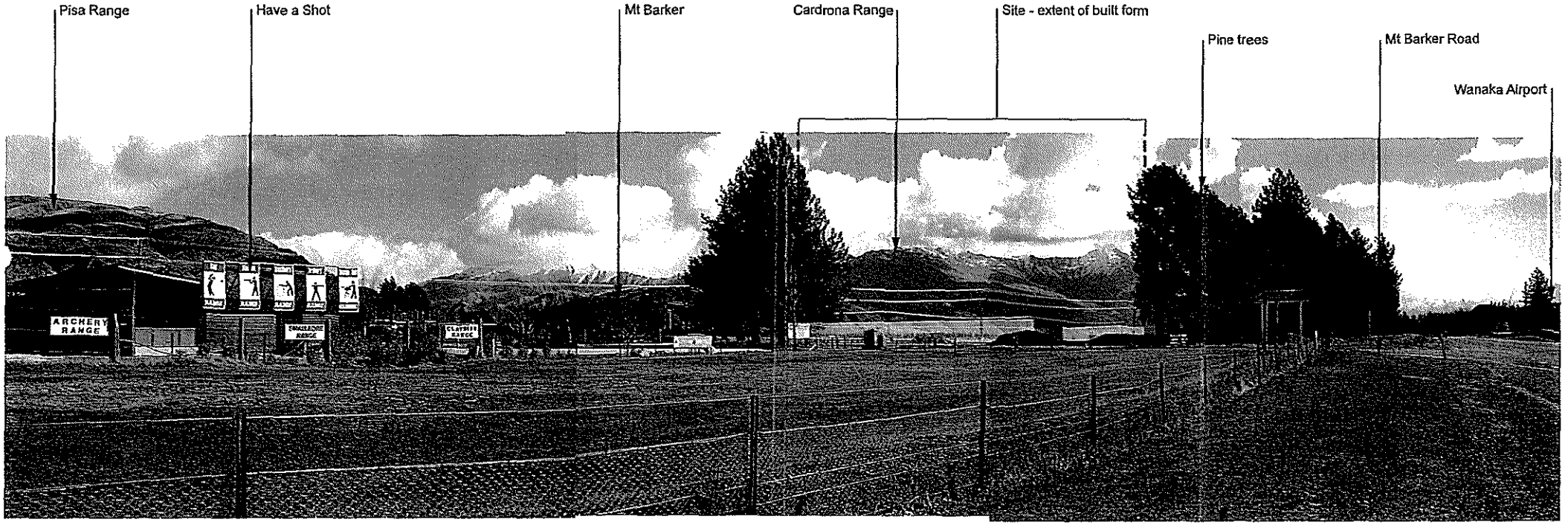
- Proposed building
- Proposed native vegetation shown at maximum height of 2.5m (Approx.)
- Bunding at 1.5m high (Approx.)
- Proposed Cedar species (shown at 6.5m high)

Metadata
Camera: Canon EOS 1000D DSLR
Focal length: 49mm (x 1.6 focal length multipier = 78.4mm film equivelent)
HFOV:25.9 degrees
Width of Image: 230mm
Reading distance: 500mm
Date/time taken: 14/03/2012, 1pm
Waypoint: S44 43.455 E169 14.505

Blakely Wallace Associates
Landscape Architecture & Planning
PO Box 121, Arrowtown
Tel : 03 4420303 Fax : 03 442 0307
Email : office@blakelywallace.co.nz

Project Title	Sheet Title	Date	Project #	Drawing #	Drawn By
R & J Young Family Trust	Appendix C: Photograph 2	05/04/12	185	Photograph 2	PS
Client	**Sheet Scale**	**Consultant**	**CAD File Name**	**Revision**	**Checked By**
Staufenburg Family Trust Number 2	N/A		185-STF-P2		PB

"D" ATTACHMENT 5



Photograph D

View of site from State Highway 6 south of Mt Barker road traveling towards Wanaka.

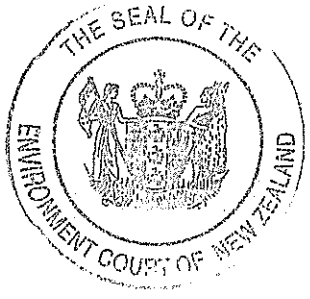
THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Image should be viewed at a reading distance of 308mm

BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 100

IN THE MATTER	of an appeal pursuant to Section 120 of the Resource Management Act 1991 (**the Act**)
BETWEEN	STAUFENBERG FAMILY TRUST NO. 2 (ENV-2011-CHC-000043)
	J A & M C FEINT (ENV-2011-CHC-000047)
	Appellants
AND	QUEENSTOWN LAKES DISTRICT COUNCIL
	Respondent
AND	ROSS AND JUDITH YOUNG FAMILY TRUST
	Applicant



DECISION OF ENVIRONMENT COMMISSIONERS MCCONACHY AND MILLS

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COSTS 42

INTRODUCTION

[1] The Ross and Judith Young Family Trust propose to establish and operate a recreational activities centre, which includes bumper boats, go cart racing, ten-pin bowling and cafe facilities on land on the corner of the Wanaka-Luggate Highway (**SH6**) and Mount Barker Road, Wanaka. The proposed site is grassed and is contiguous with an open rural landscape but it is also adjacent to compatible activities. Consent was granted by the Commissioners for the Queenstown Lakes District Council (**QLDC**). This decision was appealed to the Environment Court by two neighbours, the Staufenberg Family Trust No.2 (**Staufenberg**) and J A & M C Feint (**the Feints**).

The Site and Environs

[2] We have spent some time examining the setting as detailed by the experts, those living there, and the planning maps of the Operative District Plan (ODP) as we consider that the current environment is a critical component in this decision. We set out the factual matters below.

[3] The property is legally described as Lot 1 and Lot 10 DP305038 and Part Section 9 Block V11 Lower Hawea Survey District, held in Computer Freehold Register 112402. The development covers a 3.6 hectare triangle (**the site**) at the northern end of a 20.09 hectare parcel of land (approximately 17%).

[4] This property and those neighbouring are formed from glacial and fluvial processes and are part of an ancient terrace of the Upper Clutha Basin which shapes the Wanaka Flats. The site is within a Visual Amenity Landscape (**VAL**) which stretches across the plain to the surrounding Mountains which are recognised as Outstanding Natural Landscapes (**ONL**) in the ODP. Rising out of the plain 3.6km to the west is a distinctive roche mountonne, Mt Barker, regarded as an Outstanding Natural Feature (**ONF**). Beyond and to the west is the Cadronna Range (with Middle Peak some 20km Mt Alpha 13km and Roys Peak 13km from the site). Somewhat closer to the south west are the Criffel/Pisa Ranges with distances varying between 1.2km - 4km. Swinging to the south is the Dunstan Range joining to Grandview Range in the east about 11km distant. Behind the Grandview is another Range but this lies within the neighbouring district

[5] Landscape witnesses agree that the landscape classification of the site and surrounding landscape is a VAL. And that the nearby ONL comprises Mt Barker, Cadronna range and the northern end of Pisa/Criffel.

[6] The land on the site appears flat but the landform includes undulations, hummocks boulders and river terraces. An unfenced, unvegetated water path meanders across the property beyond the proposed development. Pasture grass is the dominant vegetation cover and the site is mown and grazed. A shelterbelt of conifer trees (approx 25m high) stretches along the SH6 road reserve. Two power lines, about one hundred metres apart transect the site from northwest to southeast echoing the orientation of SH6. Winds are predominately westerly.[1] The landscape architects are not aware of any flora or fauna of significance on the site. There are presently no buildings.

[7] Surrounding rural uses include deer and cattle grazing, tree and stock food cropping. There are accompanying shelter belts and farm buildings. Homesteads across the plain sit within landscaped grounds generally surrounded by mature trees adding to the Arcadian qualities of the area. Indigenous remnants are found further along Mt Barker Road at the Criffel Station woolshed entry where natural habitats remain on rocky outcrops.

[8] Directly across SH6 are a Toy and Transport Museum and Beer Works on Rural General land which sits between the Wanaka Airport to the south west and a 23 hectare Windermere Rural Visitor Zone to the north-east. Across from the intersection on Mount Barker Road and SH6 is a shooting range 'Have a Shot', while small in scale, is clearly visible by way of large signage advertising the activities available. It sits beneath a high terrace which divides this landscape from that beyond.

[9] Mt Barker Road and SH6 form two boundaries which join to create an intersection at the eastern apex of the site. The roads separate the commercial developments from the VAL. The landscape witnesses agreed that it is an important main entrance to Wanaka

The Proposal

[10] We generally adopt the proposal description as set out by Mr Carey Vivien, planner for the applicant, and as modified during the hearing.

[11] The proposed complex would comprise:

[a] a main building;

[b] a go kart track;

---

[1] MJ Hunt, EIC at [5.15]

[c] a workshop and storage building;

[d] a bumper boat pond;

[e] access and parking for 2 coaches and 76 cars;

[f] outdoor play and seating area;

[g] landscaping including planting, mounding and fencing; and

[h] water tanks.

[12] There is no illustration showing where the tanks, waste and stormwater system are to be situated.

[13] The main building would be approximately 70m long and cover 1,214m^2 in area with a maximum height of 5.248 metres. It is proposed to be constructed of pre-cast concrete with profiled colour coated roofing, powder coated aluminium joinery and will be painted in a range of browns, greens and greys with a reflectivity value of less than 35% (although no specific colours have been chosen).[2]

[14] This building would be entered from the southeastern side adjacent to the car parking area and would contain:

[a] an eight alley ten-pin bowling facility;

[b] associated machinery and seating;

[c] a café (including the right to sell alcohol).

[d] reception and administration offices;

[e] toilet facilities; and

[f] an arcade area.

[2] Vivian C, EIC at [3.1.2] (Environment Court document 19)

[15] An outdoor play area is located between the bumper boats and main building and next to the outdoor seating associated with the café.

[16] The workshop building, approximately 160m^2 is for changing rooms, the storage and repair of the go karts and the storage of the outdoor furniture. The workshop includes a verandah extending over the go kart track under which is the pit stop. Likewise a verandah to the west of the workshop facilitates the bumper boats. We assume both these activities are at least partially managed from the workshop. The material and colours are to follow those for the main building.

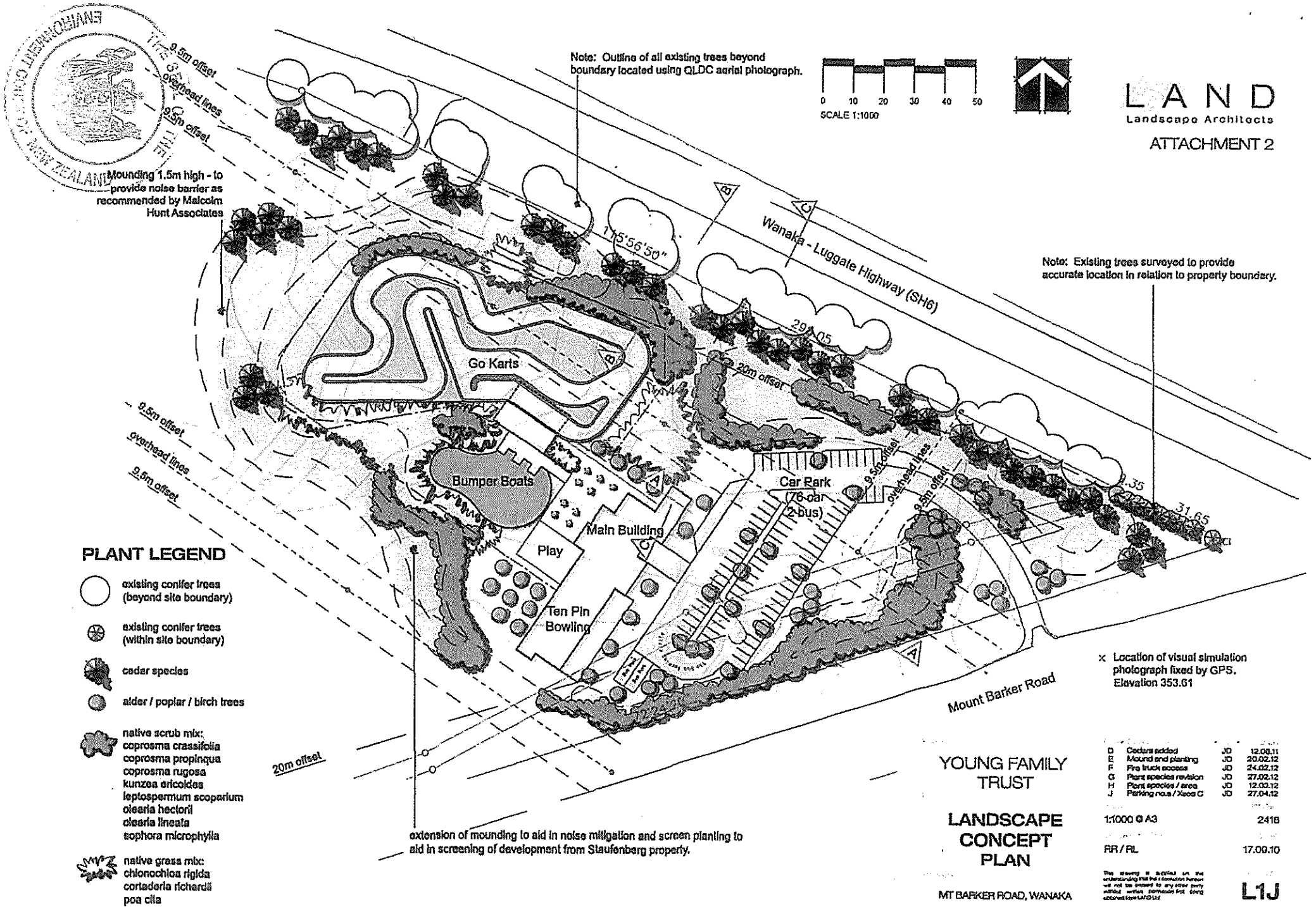
[17] The go kart track is situated to the northwest corner of the site, slightly recessed because of the topography. The concreted course area measures 4,358m^2 in area approximately 120m x 50m. The application was initially for 15 go carts but has been reduced to 10 by the commissioners' decision – the proposal before us is that only 10 run at a time.

[18] The bumper boat area is located to the west of the main building just beyond the play and outdoor seating area. The pond would be 743m^2 in area with a maximum depth of 0.7m. Here the proposal is to have a maximum of ten boats operating at any one time for up to ten minutes each.[3] The bumper boats are stored on a stand outside.

[19] The complex would be accessed from Mount Barker Road, approximately 100m southwest of the intersection with SH6. The access road would run 80m onto the site before entering the car parking area. There is room for 76 cars and two dedicated bus parks would be provided. The car park includes an 11m radius turning circle for buses at its southern end.

[20] The site is proposed to be landscaped with trees and native shrubs and grasses. For visual and noise management there will be mounding up to 1.5m in height. Fencing is to be post and rail and/or rough sawn timber. The Landscape Concept Plan of the site follows:

[3] Ibid at [3.1.12]


Note: Outline of all existing trees beyond boundary located using QLDC aerial photograph.
0 10 20 30 40 50
SCALE 1:1000
LAND
Landscape Architects
ATTACHMENT 2
Mounding 1.5m high - to provide noise barrier as recommended by Malcolm Hunt Associates
9.5m offset
overhead lines
9.5m offset
Wanaka - Luggate Highway (SH6)
Note: Existing trees surveyed to provide accurate location in relation to property boundary.
Go Karts
Bumper Boats
Play
Ten Pin Bowling
Main Building
Car Park (76 car 2 bus)
20m offset
Mount Barker Road
× Location of visual simulation photograph fixed by GPS. Elevation 353.61
extension of mounding to aid in noise mitigation and screen planting to aid in screening of development from Staufenberg property.
PLANT LEGEND
existing conifer trees (beyond site boundary)
existing conifer trees (within site boundary)
cedar species
alder / poplar / birch trees
native scrub mix:
coprosma crassifolia
coprosma propinqua
coprosma rugosa
kunzea ericoides
leptospermum scoparium
olearia hectorii
olearia lineata
sophora microphylla
native grass mix:
chionochloa rigida
cortaderia richardii
poa cita
YOUNG FAMILY TRUST
LANDSCAPE CONCEPT PLAN
MT BARKER ROAD, WANAKA
D Cedars added JD 12.08.11
E Mound and planting JD 20.02.12
F Fire truck access JD 24.02.12
G Plant species revision JD 27.02.12
H Plant species / area JD 12.03.12
J Parking no.s / Xsec C JD 27.04.12
1:1000 @ A3
2416
RR / RL
17.09.10
L1J

[21] The proposed earthworks, as calculated by GM Designs Limited[4], are:

Main building	1213.79m^2 x 0.5m	= 606.89m^3 cut
Workshop building	160m^2 x 0.5m	= 80m^3 cut
Pond	742.69m^2 x 0.7m	= 519.88m^3 cut
Go-kart track	4357.12m^2 x 0.2m	= 871.42m^3 cut
Soakage pits	41.83 + 5.81m^3	= 47.61m^3 cut
Total Cut		**= 2,125.80m^3**

[22] All earth is to be used on site for earth mounding. It is likely that other fill material will have to be brought on to the site. The total on-site earthworks (cut and fill) is likely to be 4,251.60m^3 (plus additional imported fill for mounding).

[23] There was no detail given of the signage but experts agreed signage would be necessary. Mr Vivian[5] stated that a 2m^2 sign was permitted in the rural zone.

Hours of Operation

[24] The complex is proposed to be open to the public 7 days per week at the following times (as amended by Condition 21 of the Council's decision):

[a] Outdoor activities, specifically go karts and bumper boats shall be limited to 10.00 – 20.00 hours (all year);

[b] Outside seating and table areas shall be limited to 10.00 – 22.00 hours in summer (October to March inclusive) and between 10.00 and 20.00 hours in winter (April to September inclusive), seating shall then be stacked and made unavailable for use, and from that time no glasses are to be taken outside; and

[c] The consent holder will seek a condition of the liquor license that no liquor is to be served one hour before closing.

[25] Indoor activities (including recreational activities) are to cease by 23.30 hours. Staff shall vacate the premises by 24.00 hours.

[4] Ibid at [3.1.15]
[5] Transcript, at page 202

[26] A total of 15 staff is proposed: ten for the inside activities, and an additional five to manage the outdoor activities.

[27] The complex would be serviced with reticulated electricity and telecommunications. Waste and stormwater disposal will occur on-site. Water supply is proposed from an existing bore located on the northern boundary.

Public Notification, Submissions, Hearing and Appeals

[28] We adopt the account of public notification, submissions hearing and appeals proposal from the evidence of Mr Vivian.

[29] The application was publicly notified on 12 October 2010. There were twelve submissions on it. The application was heard by Commissioners D W Collins and S Middleton in early March 2011. They issued their decision granting consent subject to conditions on 16 May 2011. The decision was re-issued[6] on 25 May 2011 after correcting an error to Condition 14(a).

[30] The Council's decision was appealed to this court by two submitters, J A and M C Feint and Staufenberg Family Trust No. 2. The grounds for these two appeals are nearly the same, being:

[a] The extent to which there would be adverse cumulative effects in combination with existing activities in the neighbourhood;

[b] The complete weight put on compliance with the noise limits in the operative district plan;

[c] That it was an error to find that commercial recreation development of the site (in combination with other commercial recreational activities) would create a positive effect;

[d] That there was a failure to give appropriate consideration to individual aspects of potential noise generating activities relevant to the granting of consent and/or the imposition of appropriate conditions of consent;

[6] Under Section 133A of the Act

[e] That the application was contrary to the objectives and policies of the district plan; and

[f] That the application was contrary to Part 2 of the Act as the proposal will not promote the sustainable management of the resources involved.

[31] In addition the Feints raise matters on:

[a] Landscaping, night lighting and traffic safety.

The Issues

[32] We were provided with caucusing statements from the planners, Mr Vivian and Ms Victoria Sian Jones for Stauphenberg, and landscape architects, Ms Rebecca Lucas for the applicant and Mr Ronald Blakley for Staufenberg. These highlighted the primary matters of dissention which goes to the acceptability or otherwise of this activity in this location.

[a] Does the planting and bunding mitigate the adverse effects of the buildings and activities and also meet the provisions of the plan in regard to Visual Amenity Landscapes?

[b] Do the land use activities to the north and northeast enable the proposal to fit readily into an existing commercial hub?

[c] Do roads as edges provide a suitable barrier between different land use activities or is that better achieved by covenanting?

[33] Then there may be another matter - that of the consideration of alternative locations.

Resource Consent Requirements

[34] The site is zoned Rural General under the ODP. The planners agree that there is no listed Prohibited Activity relevant to this application and that the proposal requires the following resource consents:

[a] Discretionary Activity pursuant to:

[i] *Rule 5.3.3.2(i)* - the construction, alteration and addition of building, and associated roading, landscaping and earthworks;

[ii] *Rule 5.3.3.3(ii)* Commercial activities; for commercial activities ancillary to and located on the same site as recreational activities; and

[iii] *Site Standard 12.2.4.1(i)* as the proposed activity is not identified in Table 1 and the activity is not a permitted or controlled activity within the zone in which is located.

[b] Restricted Discretionary pursuant to:

[i] *Rule 5.3.3.3(xi) Site Standard 5.3.5.1(viii)(1)*:

1. Volume and scale of earthworks. To carry out earthworks exposing greater than 2,500m^2 in a 12-month period. The applicant proposes to expose an area of 6,470m^2.

2. Volume and scale of earthworks. To carry out earthworks exceeding 1,000m^3 in volume in a 12-month period. The applicant proposes to undertake earthworks with a total volume of 2,125.80m^3.

[ii] *Rule 5.3.5.1 Site Standard (iii)* Scale and Nature of Activities:

1. Is breached in respect of the size of the building above 100m^2. The proposed buildings have a combined floor area of 1,374m^2; and also,

2. Due to the outside storage of the bumper boats.

[iii] *Rule 5.3.5.1 Site Standard (ix)* Commercial Recreation Activities:

1. The recreation activity must be outdoors. The indoor recreational activity on this site involves the ten pin bowling rink and an arcade area;

2. The proposal does not comply with the limitation of 5 people as the proposal will involve more than 5 using the ten pin bowling rink, go karts, bumper boats, and arcade games activities on site.

Is the Cafe a Discretionary or Non-Complying Activity?

[35] The Commissioners' found the proposal to be non-complying[7] based on the status of the cafe which they concluded was probably non-complying. There are two rules in the Plan considered relevant that were discussed at length.

[36] The District Plan states:

> **5.3.3.4 Non Complying Activities**
>
> (a) The following shall be Non-Complying Activities, provided that they are not listed as a Prohibited Activity:
>
> i **Commercial Activities**
>
> Commercial activities, except for:
>
> (a) retail sales of farm and garden produce and wine grown, reared or produced on-site; or
>
> (b) retail sales of handcrafts produced on the site; or
>
> (c) *commercial activities ancillary to and located on the same site as recreational activities*; or
>
> (d) commercial activities associated with ski area activities within Ski Area Sub-Zones; or
>
> (e) cafes and restaurants located in a winery complex within a vineyard.
>
> ...
>
> **5.3.3.3 Discretionary Activity**
>
> ...
>
> ii **Commercial Activities**
>
> (a) Commercial activities ancillary to and located on the same site as recreational activities, except commercial activities associated with ski area activities within Ski Area Sub-Zones.
>
> (b) Cafes and restaurants located in a winery complex within a vineyard.

[7] Commissioners' Decision at [21]

[37] Commercial Activities are defined in the District Plan:

> **Commercial Activity** Means the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or services, and includes shops, postal services, markets, showrooms, restaurants, takeaway food bars, professional, commercial and administrative offices, service stations, motor vehicle sales, the sale of liquor and associated parking areas. Excludes recreational, community and service activities, home occupations, visitor accommodation and homestays *(Page D-2 of the District Plan)*.

[38] The café area is approximately 100m^2 in area, and would contain about 16 booth tables and a further 9 - 10 tables outside. Planners agreed that the GM Design Plan 3146-A002 provides seating for approximately 124 people. The Commissioners imposed the following conditions:

> Café/Bar Conditions:
>
> 31 The café/bar elements of the recreation facility shall operate only if at least one of the main recreation activities approved (bumper boats, go carts and or ten pin bowling is in operation simultaneously...
>
> 32 The café/bar elements of the facility shall be managed by the same operator as the recreation facilities and not as a separate business. The café/bar element shall not be advertised independently from the main recreation activities
>
> 33 The separate bar facility shall be deleted from the proposal and alcohol only served from the café area.

[39] Ms V S Jones, the planner for the Staufenberg Family Trust, held the view that the cafe was non-complying. She agreed that the conditions (as above) were helpful in managing the activities of the café but that they did not go far enough. She considered the café would be too large to be considered *ancillary* to the recreational activities. Illustrative of this was that numbers to be accommodated both in the restaurant and the car park were out of scale with the patronage numbers who were using the recreational facilities. She suggested 33 car parks would suffice and this would reduce the environmental affect of the hard landscaping involved.

[40] While Ms Jones believed the parking was overly catered for Mr Vivian was of the opinion that reduced parking capacity would be an unnecessary risk to good site management with the potential for overflow parking on grass verges, plants or roadways. When cross-examined Ms Jones agreed that *in this context it probably wouldn't be an effective* tool to

manage patronage.[8] We understand parking is a permitted activity in the Rural Zone and that there are no maximum requirements. We do not support a reduction in car parking as a method for managing the café. While we support the suggestion that a smaller car park would have lesser effect this may be able to be achieved by a greater use of permeable surfaces. We note the difficulty in calculating patronage of the complex as a whole, and that because of the location transport to the site by vehicular means will be necessary. We do not see car parking or even the seating numbers provided (excluding those outside which we recognize would not be for the exclusive use of the café) to be out of scale with the possible patronage of the recreational facilities at peak times. This is a large facility with a wide range of recreational activities.

[41] Ms Jones agreed in cross-examination that further conditions could be developed to ensure the ancillary nature of the café. The applicant appears willing to find a working solution to this issue. Given this agreement and our view that the café size and parking is not untoward we accept that with suitably drafted conditions the status of the activity as a whole can be regarded as discretionary.

STATUTORY REQUIREMENTS

[42] The Act requires us under Section 104 to have regard to the effects on the environment of the activity and the relevant provisions of various statutory documents. The planners agreed that the Regional Plan had little to contribute to the assessment of this application because matters relevant were more detailed in the ODP. The Operative District Plan was regarded as the dominant document where plan provisions guide the environmental outcomes.

[43] Consideration is *subject to* Part 2 of the Act which sets out the broad purpose and principles of the Act. Relevant Part 2 matters in this case are the broadly enabling purpose set out in Section 5, including the imperative to avoid, remedy or mitigate adverse effects on the environment and some Section 7 matters to which we are required to have *particular regard*:

- (b) the efficient use and development of natural and physical resources
- (c) the maintenance and enhancement of amenity values
- (f) the maintenance and enhancement of the quality of the environment'

[8] Transcript, at page 85

Queenstown Lakes District Plan

[44] There are two parts in the ODP covering matters relevant to this proposal. Part 4 deals with district wide issues Conservation, Landscapes, Energy, Recreation, Rural General and Urban Growth, and Part 5 Rural Landscape categories, rules and assessments to guide resource consent issues and environmental outcomes. The relevant plan provisions were detailed in the Planners Conferencing Statement and contentious issues noted. Likewise the caucusing statement of the landscape architects helped refine the landscaping issues.

ODP Part 4 Objectives and Policies

[45] This is a case about structures in the landscape and our attention was drawn to a discussion in Part 4 which is pertinent:[9]

> i **Settlement** - structures may be visible in the landscape due to their form and colour. As the presence of structures increases, the apparent level of modification in a landscape and its overall quality may change. The popularity of the District means that there is a demand for new settlement areas and there are pressures for growth at most existing settlements. Uncontrolled expansion may change the existing landscape. The location and impact of new development must be managed to ensure that the changes that occur do so in a manner that respects the character of the landscape and avoids adverse effects on the visual quality of the landscape.

[46] And the Plan has this to say about roads:[10]

> ... Likewise the views from roads within the district assume increasing importance as they give visual access to the mountains, lakes and landscapes that, in turn, are integral to the economic wellbeing of the district, and provide a sense of place to both visitors and residents.

And we bear these in mind as we traverse the objectives and policies.

Conservation Values

[47] Most of the 20 policies around the Conservation Objective One were considered irrelevant but Ms Jones noted the need to protect geological features and to ensure the planting plan did not rely upon retaining the radiata pines, being recognised now as a wilding species.

[9] ODP Part 4.2.3(i)
[10] ODP Part 4.2.4(1) Issues

Landscape and Visual Amenity[11]

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.*

[48] There are 17 policies to achieve this with seven considered relevant:

> **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....

[49] We accept that the site is vulnerable to degradation because of the generally flat terrain and its proximity to two public roads. The local topography is subtle with water courses and past geomorphic processes featuring lightly in the landscape and consequently offering little absorption opportunity. The vegetation on site is also simply delineated into pasture and road side trees.

[50] In order to mitigate the adverse effects of the development the applicant has chosen to surround the built environment with planting and bunding. The planting palette for the site makes use of locally featured exotic trees and a native shrub mix which has been moderated by Mr Davis, an ecologist who appeared before us, to ensure an appropriate ecological mix. With the development of a condition relating to maintenance Mr Blakley accepted the viability of the native mix but remained sceptical about the ability of the exotics to perform as well as suggested thereby limiting their contribution to visual mitigation. Ms Lucas has refined bunding to the south to more closely align with the natural topography. Mr Blakley does not consider that the proposed bunding will harmonise with the current landscape as natural terraces are found further north of the site.

> **4. Visual Amenity Landscapes**
>
> (a) To avoid, remedy or mitigate the adverse effects of subdivision and development on the visual amenity landscapes which are:

[11] 4.2.5 Objective and Policies

- highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); 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.

[51] During construction and for a number of years this proposal with its large buildings and outdoor activities will be highly visible and continue on to be visible from public roads.

[52] Quite naturally planting has been proposed around the development to minimize the adverse effects arising. The planting will block views of the site and hinterland from the public roads and it achieves this by planting the only space available – that next to the road.

[53] Along SH6 there is already linear planting on the road reserve and this is to be replicated by planting cedars within the site to echo the current pine framework. To increase impermeability of views a further barrier of mixed natives planted beyond the cedars is proposed. The planting extends about 120m along Mt Barker Road and 300m along SH6. Ms Lucas opines that this is not linear planting. Mr Vivien agrees but adds that the plants will block views.

[54] We accept that the mitigation planting of indigenous species enhances the biodiversity attributes of the site. However, on balance the natural character of the site is diminished due to the site coverage of the buildings and the hard landscaping involved for the carpark, accessway and outdoor activities. We also acknowledge improvements to the design to decrease the length of the road side planting. Nevertheless, we agree with Mr Blakley who asserts that the planting along the roads is linear in nature and discouraged as a design tool in this policy.

6. Urban Development

...

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

...

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

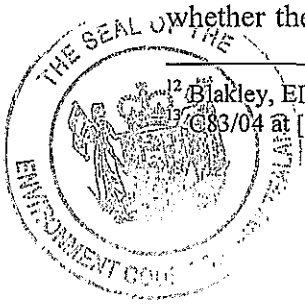
[55] We note that there is a clear directive to discourage urban development in VAL landscapes and to avoid sprawl along roads. This proposal, sited within the apex of two roads has a difficult task – in fact a task which cannot meet either part of this policy because of the physical site parameters. Mr Blakeley[12] regarded the development as a sprawl because it would extend development from the commercial area into an area currently open and undeveloped. Ms Lucas view was that this development was not sprawl but rather the in-fill of a corner of a node that is currently empty. These are critically disparate views which we discuss more fully later in this decision.

> **8. Avoiding Cumulative Degradation**
>
> In applying the policies above the Council's policy is:
>
> (a) to ensure that the density of subdivision and development does not increase to a point where the benefits of further planting and building are outweighed by the adverse effect on landscape values of over domestication of the landscape.
>
> (b) to encourage comprehensive and sympathetic development of rural areas.

[56] Again the use of the imperative *avoids* lends weight to the importance of this policy matter. Have *rural areas* around the site been degraded? The proposal sits close to a zone which provides for commercial development and we do not include this in our discussion. There was general agreement that the 'Have a Shot' development was small in scale and was able to be absorbed by the terrace sitting behind it. However, the signage attached was generally deemed degrading to the rural neighbourhood. The rural site containing the museum was also seen as being absorbed by the commercial zone on either side. The land contiguous to the site is an open pastoral landscape and does not provide the same level of absorption. We would see the development without the bunding and planting to be a degradation of the landscape values of the rural area and therefore becoming cumulative on the commercially developed rural sites. Does the planting mitigate the rural degradation? There was an acceptance that in order to mitigate the adverse effect of the built activities, another effect, that of loss of views, is then created.

[57] Over domestication has been discussed in ***Hawthorn Estates v QLDC***[13] and defined there as the threshold at which the character of the landscape is diminished by the introduction of a density of development which the land cannot absorb. In this case the development building and activities cannot be absorbed. The adverse effect on the landscape values are to be mitigated by planting and bunding. So the question in this instance is whether the bunding and planting outweigh the capacity of the site to absorb the mitigation

[12] Blakley, EIC at [8.45]
[13] C83/04 at [78]



measures. The landscape values of the plan are established by defining this landscape as a visual amenity landscape. In this location those values are of an open rural working landscape. The development is not sympathetic to these values although the development can be described as comprehensive.

> **9. Structures**
>
> To preserve the visual coherence of:
>
> ...
>
> (b) Visual amenity landscapes
>
> - by screening structures from roads and other public places by vegetation whenever possible to maintain and enhance the naturalness of the environment; and
>
> (c) All rural landscapes by
>
> - limiting the size of signs ,corporate images and logos
> - providing for greater development set backs from public roads to maintain and enhance amenity values associated with views from public roads.

[58] In about eight years planting will screen most of the structures from view. Although some positive effects may be had from the increased treed vegetation for the most part natural processes on site will be interrupted by the built environment. We had no clarity relating to signage. Although questions were put the answers failed to indicate in any real way what was planned. Neither were signs shown on any visual simulation. Considering the concern expressed in relation to the 'Have a Shot' signage this was surprising and somewhat disingenuous. Given the type of business proposed, effective signage will by necessity be visually prominent.

[59] While we note that the building has been set back in accordance with the Plan, greater set back is encouraged in rural landscapes. We were given the example of the Staufenberg property mounding set back some 100m from the road. The development is unable to be set-back further from the public roads because the activities are spread across the limited space available.

> **17. Land Use**
>
> To encourage land use in a manner which minimises adverse effects on the open character and visual coherence of the landscape.

[60] The site is presently of an open character. Its visual coherence is high as it seamlessly blends with the surrounding land. The visual evidence supplied by Ms Lucas illustrates that proposed structures and bunding will disrupt the present open vista. Vegetation, over time

may hide the buildings in part but will not avoid, mitigate or remedy the change to the open character and coherence of the site. The proposal fails to meet this policy.

[61] In summary, we have found that the proposal fails to meet policies that are relevant to enhancing and protecting the rural landscapes in particular the VAL. This is generally brought about through the siting of the proposal on an open and highly visible landscape with two roads frontages. The site will be extensively used for the development so there is no opportunity for set back or absorption. Although substantial screen planting is proposed, some of which enhances nature conservation values this will further exacerbate the disruption to the local landscape values. Inevitably signage will be a new intrusion into this rural landscape.

Recreation

[62] Recreational activity is, in some cases permitted in the rural zone. In this case the activity is discretionary. A district wide recreational objective was drawn to our attention:[14]

> **Objective 2 – Environmental Effects**
> *Recreational activities and facilities undertaken in such a way which avoids, remedies or mitigates significant adverse effects on the environment or on the recreation opportunities available in the district.*

Some implementing policies are relevant:[15]

> ***Policies:***
>
> *2.1 To avoid, remedy or mitigate the adverse effects of commercial recreational activities on the natural character, peace and tranquility 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.*
>
> ...
>
> *2.4 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.*
>
> *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.*

[63] We observe that although there are other recreational objectives and policies these are targeted at managing recreation where the physical environment is a component of the

[14] 4.4.3 Objective and Policies

activity. That is not the case here. The recreational activities, both indoor and outdoor are developed independently of their physical context requiring only a generally flat area of sufficient size.

[64] In our view, the activity is well served by its proximity to other commercial activities and we do not find that the movement of goods or people will be an issue on these roads. While amenity concerns of noise and lights relating to the night time use of Mt Barker Road, were raised by neighbours there this issue sat. There is a compatibility of building and land use effects with the adjacent commercial activity but the reverse is also true for the surrounding farmland land of the Wanaka flats. It certainly enables a range of recreational activities within the district to be accessed and there was no issue relating to the quality of the facility. However, the rural area is valued for the qualities it now presents. Neighbours have developed lifestyles compatible with the rural ambience that is an integral quality of this area. The scale of the buildings and activities will create a significant adverse effect on this environment.

Energy

[65] Energy Efficiency was raised as an issue:[16]

> **Objective 1 - Efficiency**
> *The conservation and efficient use of energy and the use of renewable energy sources.*

[66] No renewable energy source for the building design was put before us and this we regard as a shortcoming. Nothing we were provided gave us any reassurance that the ODP energy policies with their anticipated environmental outcomes had been considered or acted upon. Two of the eight supporting policies were discussed:

> 1.1 To promote compact urban forms, which reduce the length and need for vehicle trips and increase the use of public or shared transport.
>
> 1.2 To promote the compact location of community, commercial service and industrial activities within urban areas, which reduce the length of and need for vehicle trips.
>
> ...

[16] 4.5.3 Objectives and Policies

[67] It was Mr Vivian's opinion that the form of design was compact and so partly met this policy. Rather we think this policy is directed at locating activities in urban areas thereby compacting the urban form so that vehicle trips are reduced. We do not agree these policies are met by the proposal as it is not located in an urban centre.

[68] We were told no public transport is anticipated in the near future to this area which will increase the length and need for vehicle trips for those visiting the site. However, there may be some synergies with the related activities nearby.

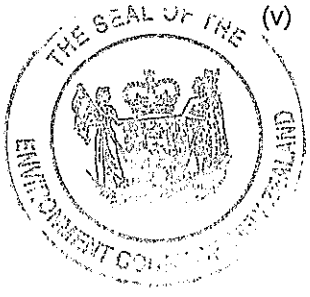
ODP Part 5 Rules

[69] Within Part 5 is found guidance for analysing and then managing the different landscapes in the district's rural environment. Rules and standards in relation to resource consents are thereby more readily targeted. The rural general overview is provided below:

> **5.3.1.1 Rural General Zone**
>
> The purpose of the Rural General Zone is to manage activities so they can be carried out in a way that:
>
> - protects and enhances nature conservation and landscape values;
> - sustains the life supporting capacity of the soil and vegetation;
> - maintains acceptable living and working conditions and amenity for residents of and visitors to the Zone; and
> - ensures a wide range of outdoor recreational opportunities remain viable within the Zone.
>
> The zone is characterised by farming activities and a diversification to activities such as horticulture and viticulture ...
>
> *[our emphasis]*

[70] Relevant environmental results anticipated

> **5.2.1 Environmental Results Anticipated**
>
> The following environmental results are anticipated in the Rural General Zone:
>
> (i) The protection of outstanding natural landscapes and features from inappropriate subdivision, use and development.
>
> ...
>
> (iii) Strong management of the visual effects of subdivision and development within the visual amenity landscape.
>
> (iv) Enhancement of natural character of the visual amenity landscape.
>
> (v) A variety of form of settlement pattern within visual amenity landscapes based upon the absorption capacity of the environment.



(vi) Retention and enhancement of the life-supporting capacity of the soil and vegetation

(vii) The continued use and development of land in the rural area.

(viii) Avoid land use and land management practises which create unacceptable or significant conflict with neighbouring land based activities, including adjoining urban areas

(ix) Maintenance of a level of rural amenity, including privacy rural outlook, spaciousness, ease of access and quietness, consistent with the range of permitted rural activities in the zone.

(x) Retention of the amenities, quality and character of the different rural environments within the District and development and structures which are sympathetic to the rural environment by way of location and appearance.

(xi) Retention of a range of recreational opportunities.

[our emphasis]

[71] The applicant's witnesses relied upon what they saw as recreation development opportunities anticipated by the ODP. We have underlined the matters which were given greatest discussion in the evidence and it is clear to us that recreational opportunities cannot be separated from the broader factors making up the economic, environmental and social fabric of the Queenstown Lakes District. As anticipated in the Act, it requires an approach that weighs up many factors and we have been guided by the facets given relevance in the ODP.

[72] The ODP outlines a three step process which guides how landscapes are recognised and managed:

[a] Firstly, the analysis of the site and surrounding landscape;

[b] Secondly, determination of the appropriate landscape category; and

[c] Thirdly, the application of the assessment matters.

[73] In respect of the first we have already detailed the site and surrounding landscape and for the second we accept the determination of the landscape architects and QLDC that this site sits within a VAL. However, around this agreement there was some measure of concern which we feel should be addressed before embarking upon VAL assessment matters and the rules relating to the resource consents.

When is a VAL not a VAL?

Firstly does this site have any physical properties which separate or distinguish it from the Visual Amenity Landscape of which it is part?

[74] This property is clearly contiguous with the surrounding rural properties it shares boundaries with across the Flats. It appears to be seamlessly part of that rural Visual Amenity Landscape. We were not convinced that there is any physical change or site specific characteristic which separates it from its rural neighbours.

Do the presence of powerlines diminish the site's character?

[75] VAL landscapes wear a cloak of human activity and in rural landscapes this includes powerlines and poles. It is indisputable that the presence of the power lines running across this site degrade the naturalness and visual quality of the site. However, power lines are an accepted part of a working landscape and they do not impede or disrupt views through to the mountains.

[76] In relation to this issue we have also examined Photograph 4[17] in the vicinity of Stevensons Road 1.1km along the SH6 towards Wanaka. It presents a similar view typical of this VAL, that is, extensive views across an open pastoral landscape to the outstanding mountains which ring it. Human structures are fences, power lines and power poles. A dominant element is the open pasture, here with the textual component created by mowing. The pasture, with the higher golden blades and the low green of the new growth create a visual contrast in height and colour. A power pole sits as the dominant vertical form within the primary viewing shaft as part of this landscape. Within an ONL this may be a greater issue and a greater effort may be made to manage the landscape disruption. We consider that this view relates closely to the photograph C Attachment 11.[18] Equal elements are the depth, width and openness of the view. Power poles, power lines, fences and grassland pasture are the foreground human elements. While it would be a laudable achievement to better manage the visual intrusion of power lines/poles we do not accept that their presence denigrates the site to a degree it should be separated from the surrounding countryside.

[17] Lucas R, Attachment 11, Photograph 4, 4th May
[18] Lucas R, Attachment 5, Photograph C, 4th May

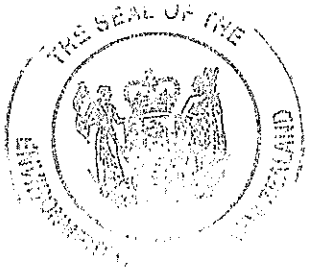
Does the commercial and visitor zoning across the road affect the quality of the site?

[77] Concern was expressed that the proximity of other activities, across the road on two sides, effectively diminishes the quality of the site. We agree the commercial/industrial land of the airport is a factor and influences the character and context of the landscape of this area, but like Mr Blakley we do not accept Ms Lucas' assessment that the presence of Wanaka Airport and Have-A-Shot *strongly* influences the character of the site. The pastoral and commercial land uses are clearly separated by road corridors. In our opinion, this enables the eye of the passing traveller to recognise two separate landscapes.

[78] The landscape architects agreed the intersection at Mt Barker Road and SH6 was an important arrival zone for those travelling to Wanaka. That view of the site is seen in the context of the open vista of the VAL and ONL backdrop. We agree that is important as it is the first view of the Wanaka landscape because of the terrace which has blocked the vista for those who travel SH6 either as airport arrivals or from the Luggate direction. Ms Lucas says those going down SH6 are soon past and that better views become available further along SH6. Those turning down Mt Baker Road will inevitable slow and the view is seen for considerably longer. The site is the first in what continues to be an extensive view over the VAL to the ONL mountains. A strong sense of place for the Mt Barker rural farmland was described to us with by the local residents who value its current rural character. 'Have a Shot' and the built environment along SH6 are readily seen. However, they are obviously separated from the wider vista in both cases by a road corridor.

[79] We find that the property is an integral part of the VAL. It has importance being the foregound to the ONL view. The contrast to the commercial development heightens rather than diminishes the sites importance at this entry point to the Wanaka landscape. We do not see that the site currently has a close relationship with the commercial sites. The proposal would bring the VAL arrival zone to be accessed further along both highways in an arbitrary manner.

[80] The question is to what extent do these factors influence the assessment of the site as a VAL? While arcadian (the term used by Mr Blakley) is something of an exaggeration for the site, it is certainly open and pastoral and in our opinion provides relief from the industrial character of the airport to the north. For these reasons we do not agree that the site is at the lower end of the VAL continuum – but sits fairly within such a landscape.



Rule 5.4.2.2 Assessment Matters

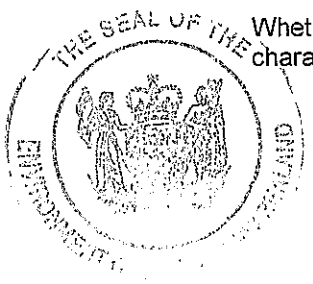
[81] These guide the effects on the rural landscape. Although there are only five matters each has greater specificity through detailed sub clauses. We also note that the failure to meet an assessment criteria is not in itself fatal but that a judgement is called for 'whether' or 'the extent' to which adverse effects arise.

[82] We deal with each of the assessment matters in turn:

> **(a) Effects on natural and pastoral character**
>
> In considering whether the adverse effects (including potential effects of the eventual construction and use of buildings and associated spaces) on the natural and pastoral character are avoided, remedied or mitigated, the following matters shall be taken into account:
>
> ...
>
> (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;

[83] We do not consider the commercial developments on the other side of SH6 are part of this particular discussion which relates only to the *rural landscape*. Mr Blakley offers that there is a pattern of land use intensity which includes the site and land adjacent towards Mt Barker. We note that this is the sector where neighbours have shown the most concern and we had evidence relating to the rural practises and amenity of this neighbourhood. Ms Lucas had not studied that aspect initially, but now agrees. We also agree with Mr Blakley's assessment. The site is highly visible from the intersection of SH6 and Mt Barker Road. The built development will sit squarely between the two roads on what is now open pasture. It will be visual prominent for at least 8 years until the mitigation plantings are established. We find the nature and scale of the activity sited here will have an adverse effect on the present arcadian pastoral character of the VAL.

> **(b) Visibility of Development**
>
> 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 and in the case of proposed development in the vicinity of unformed legal roads, the Council shall also consider present use and the practicalities and likelihood of potential use of unformed legal roads for vehicular and/or pedestrian, equestrian and other means of access; and

(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;

(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;

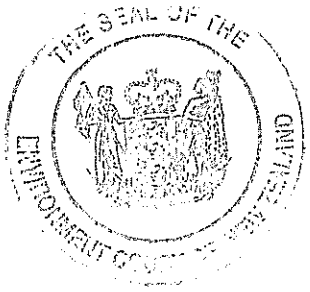
(viii) boundaries follow, wherever reasonably possible and practicable, the natural lines of the landscape and/or landscape units;

(ix) the development constitutes sprawl of built development along the roads of the District and with respect to areas of established development.

[84] In our opinion, this development will be highly visible from two public roads and particularly visible for 8 years until the screening vegetation is at a height of 2.5m.

[85] The site is presently is open and devoid of any buildings. It will be visually prominent as a built environment in those initial years, and then the mounding and vegetation will be visually dominant. The proposed development will impact on what naturalness remains and impede views of Mt Barker and the Cardrona Mountains beyond.

[86] One of the roads from which the development will be visible is SH6, as we have noted. The cedar plantings proposed for this boundary appear almost as a line down the highway, despite the District Plan provisions discouraging linear planting along roads as a method of reducing visibility from a road for a development.



[87] The landscape witnesses agree that there is presently no screening along Mt Barker Road. Therefore Mt Barker Road will allow a view of the larger of the two buildings for a distance of 280m and will interfere with views of Mt Barker. We agree with Mr Blakley, who says of the latest plan which has a reduction in the bunding and planting:[19]

> I consider this will have limited affect in reducing the adverse effects on the views of Mt Barker and the existing openness of the Visual Amenity Landscape (VAL). There will still be 115 of linear bunding planting next to the road reserve on Mt Barker Road which I consider to be inappropriate in this location.

[88] The linear boundary planting will block most views in time along that stretch of road closest to the proposal. The site in not enclosed by topographic features.

[89] It was agreed that the present pines along SH6 give some intermittent screening – but of course these are not subject to the control of the applicant. Cedars are planned to replicate the pine spacings along the boundary. Mr Blakley accepted that native plantings if carefully managed could reach 2.5m in 8 years but was uncertain about a time frame of this being reached by the conifers and we had conflicting evidence on this.

[90] There was a general agreement that terracing is a feature of the area but the landscape experts agreed the hummocky ground was found closer to Mt Barker.[20] The landscape design has changed over the course of the application and Ms Lucas described improvements to the design to align it more closely with the natural topography.

[91] Views into the site will remain. We conclude that the development will be highly visible because of lack of topographic containment. Bunding and planting over time will reduce the visibility but the obscuring of views and change of character will remain.

(c) Form and Density of Development

In considering the appropriateness of the form and density of development the following matters the Council shall 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 (i.e. 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;

[19] Blakley, EIC at [4.6]
[20] Lucas R, Joint Witness Statement, page 2, Attachment 8 to 12 March 2012 Attachments

(iv) the proposed development, if it is visible, does not introduce densities which reflect those characteristic of urban areas.

...

(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 would be unacceptably large.

[92] Ms Lucas suggests that the buildings are absorbed by the backdrop mountains. These, as we have described earlier are at a distance of some 13km – 20km. In our view they are too distant to be seen as absorbing the development. Ms Lucas stated that there is a 2m gradient differential across the site but this was not clear from the illustrations and both landscape experts agreed that the site appeared flat. The buildings are not placed where they can be absorbed internally because of the limited land for development between the two roads.

[93] The landscape experts agreed that the backdrop terrace will enable absorption of the development when viewed exiting Wanaka along SH6 once the planting has reached building coverage height. Until then the buildings will read as part of the existing built development across SH6. No ONF or ONL is impeded from this viewing corridor but Mr Blakley opines significance lies in the built form across a currently open area of landscape.

[94] The development has been aggregated in one place leaving the rest of the property covenanted for rural uses. However, the development is on a highly sensitive corner which will present as a concentrated built environment. Overall, we find that the form and density is not appropriate for this rural landscape.

(d) Cumulative effects of development on the landscape

In considering whether and the extent to which the granting of the consent may give rise to adverse cumulative effects on the natural or arcadian pastoral character of the landscape with particular regard to the inappropriate domestication of the landscape, the following matters shall be taken into account:

(i) the assessment matters detailed in (a) to (d) above;

(ii) the nature and extent of existing development within the vicinity or locality;

(iii) whether the proposed development is likely to lead to further degradation or domestication of the landscape such that the existing development and/or land use represents a threshold with respect to the vicinity's ability to absorb further change;

(iv) whether further development as proposed will visually compromise the existing natural and arcadian pastoral character of the landscape by exacerbating existing and potential adverse effects;

(v) the ability to contain development within discrete landscape units as defined by topographical features such as ridges, terraces or basins, or other visually significant natural elements, so as to check the spread of

development that might otherwise occur either adjacent to or within the vicinity as a consequence of granting consent;

(vi) whether the proposed development is likely to result in the need for infrastructure consistent with urban landscapes in order to accommodate increased population and traffic volumes;

(vii) whether the potential for the development to cause cumulative adverse effects may be avoided, remedied or mitigated by way of covenant, consent notice or other legal instrument (including covenants controlling or preventing future buildings and/or landscaping, and covenants controlling or preventing future subdivision which may be volunteered by the applicant).

Note: For the purposes of this assessment matter the term "vicinity" generally means an area of land containing the site subject to the application plus adjoining or surrounding land (whether or not in the same ownership) contained within the same view or vista as viewed from:

- from any other public road or public place frequented by the public and which is readily visible from that public road or public place; or
- from adjacent or nearby residences.

The "vicinity or locality" to be assessed for cumulative effect will vary in size with the scale of the landscape i.e. when viewed from the road, this "vicinity", will generally be 1.1 kilometre in either direction, but maybe halved in the finer scale landscapes of the inner parts of the Wakatipu basin, but greater in some of the sweeping landscapes of the upper Wakatipu and upper Clutha.

[95] We have found little enabling capacity in the landscape for absorption by topography for views over the VAL when approaching Wanaka. However, when viewed exiting Wanaka along SH6 this development would be read as:

[a] cumulative to the airport and other commercial buildings; and

[b] absorbed by the high terrace back drop running along the south-west.

[96] It will be apparent however that when viewed travelling towards the airport from both Mt Barker Road or SH6 that development has crossed a road and is incongruent with the rural nature of the surrounds. The landscape experts agreed that in time planting will mitigate the visibility and therefore the adverse effect of the built development will be reduced.

[97] As we have discussed there is a variety of existing development within the neighbourhood. Ms Lucas provided an illustration purporting to show that the development was infill within a commercial node. We regard this illustration as misleading. The plan suggests *vicinity* (as above) as being around 1.1km. A kilometre circle extending from the proposed site, readily drawn on Ms Lucas Attachment 4 Site Location Map, is clearly illustrative of the commercial development tracking along, and contained by the northern side of SH6 with a rural landscape on the other side. There is no commercial development node which includes both sides

of the road. The 'Have a Shot' development is a small enterprise. We consider this business to be an anomaly and we were told it had gained consent under a different planning environment. The proposal would cause a distinct change to the current environment and would potentially encourage further commercial in filling and expansion across the rural environment.

[98] The remainder of the property is to be covenanted so that rural uses will continue. It is suggested that this would provide a barrier to further development along the SH6. We agree that it would ensure rural views across the VAL for that area of the property and prevent further cumulative commercial development on the remaining 17 hectares.

[99] The intensity of the site use, being commercially active up to 14 hours per day 7 days a week was not seen by the neighbours as compatible with rural amenity values.

[100] Mr Blakley acknowledges no shortcomings in the design of mitigation proposed and we agree. We are also of the view that the layout is well-designed. However, these do not ameliorate the change of character arising from the proposal overall. The site plantings and mounding, calculated by Mr Blakley as over 600 lineal metres, are clearly in response to the adverse effects of the development rather than reading as natural elements of land form.

[101] The one entrance to the site appears to be appropriately placed and we had no evidence that the roads could not accommodate population and traffic volumes for expected use of the site.

(e) Rural Amenities

In considering the potential effect of the proposed development on rural amenities, the following matters the Council shall take into account whether and to what extent:

(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;

(ii) the proposed development compromises the ability to undertake agricultural activities on surrounding land;

(iii) the proposed development is likely to require infrastructure consistent with urban landscapes such as street lighting and curb and channelling, particularly in relation to public road frontages;

(iv) landscaping, including fencing and entrance ways, are consistent with traditional rural elements, particularly where they front public roads.

(v) buildings and building platforms are set back from property boundaries to avoid remedy or mitigate the potential effects of new activities on the existing amenities of neighbouring properties.

[102] Ms Lucas stated: [21]

> In summary, the proposed development will be visible from SH 6 and Mt Barker Road. The earth bunds planting of the proposal will be visible in the foreground of the mountains when viewed from the intersection of SH 6/Mt Barker Road. A varying proportion of Mt Barker will also be obscured depending on the viewing angle. At most however, the obscured portion will be up to one third of the base of the mountain. No built form will be visible in front of Mt Barker, only earth bunds and planting. This view corridor has a very brief duration of less than two seconds as it is confined by the pine trees within the subject site and Have-A-Shot. All other views of the site will have a low visual effect. The proposed buildings will not break the skyline or any ridgeline.

[103] Both Ms Lucas and Mr Blakley supplied us with a number of photomontages portraying how the development may appear from a number of viewing positions on both SH 6 and Mt Barker Road. It is clear from studying these that at least until the screening vegetation is well established, one or both of the buildings will be visible from a number of view points and the larger building visible for its entire length when travelling along the boundary of the site on Mt Barker Road. Notwithstanding the presence of Have-A-Shot and the airport buildings, we hold that the proposed buildings on this open pastoral site constitutes an adverse effect.

[104] We had no evidence that the development would compromise the ability of farmers to undertake agricultural activities on the surrounding land. There is to be no urban style infrastructure and the lighting is to be carefully managed through conditions. The fencing choices are in accordance with rural traditions. Mr Blakley considered the need for extensive bunding and landscaping was not consistent with a rural arcadian landscape as views across the pastoral landscape were valued.

[105] There is no issue of set back with neighbours as the development is compatible with those across both roads and rural neighbours will be protected by the covenant which will ensure a buffer of open pastoral land will remain.

Assessment Matters General

[106] Because this application has both a discretionary and restricted discretionary component there are a number of assessment criteria which are relevant. To avoid replication that will arise in doing this singularly we have conflated issues from the various matters where effects were of concern.

[21] Lucas, EIC at [40]

Traffic Effects

> x **Discretionary Activity – Commercial**
>
> (a) The extent to which the commercial activity may:
>
> (i) result in levels of traffic generation or pedestrian activity, which is incompatible with the character of the surrounding rural area, or adversely affect safety.
>
> ...
>
> xv **Discretionary Activity - Commercial Recreational Activities (other than on the Surface of Lakes and Rivers)**
>
> (a) The extent to which the recreational activity will result in levels of traffic or pedestrian activity which are incompatible with the character of the surrounding area.

[107] No traffic evidence was called. Nevertheless, rural neighbours believed that the commercial use leading to increased traffic volumes until midnight would be incompatible with the current character of Mt Barker Road which is still not sealed in parts.

Amenity Effects

[108] Any adverse effects on the proposed activity in terms of :

> xv **Discretionary Activity - Commercial Recreational Activities (other than on the Surface of Lakes and Rivers)**
>
> ...
>
> (b) Any adverse effects of the proposed activity in terms of:
>
> (i) Noise, vibration and lighting which is incompatible with the levels acceptable in a low density rural environment.
>
> ...
>
> x **Discretionary Activity – Commercial**
>
> (a) The extent to which the commercial activity may:
>
> ...
>
> (ii) have adverse effects in terms of noise, vibration and lighting from vehicles entering and leaving the site or adjoining road.

[109] We accept the evidence of Mr Hunt and Dr Chiles that although go-karts may be heard from the Staufenberg property, they will not create significant amenity effects and they will comply with the noise limits in the District Plan. While the lighting will be seen from elevated sites (Feint property), from the state highway and possibly from Mt. Barker Road the conditions of consent will ensure these effects, although adverse, will be at the low end of the

spectrum. However, the lighting will signal to passing motorists on both roads that the activity being conducted on the site is not of a residential nature. Neighbours noted that Have-A-Shot closes at 5pm and there are no airport night flights. There would be a change in night time ambience caused by noise and lights from the vehicles entering and exiting until midnight. This they believed had an adverse affect on the what they regard now as a quiet rural road. (Mt Barker)

Cumulative Effects

> **xv Discretionary Activity – Commercial Recreational Activities (other than on the Surface of Lakes and Rivers)**
>
> ...
>
> (b) Any adverse effects of the proposed activity in terms of:
>
> ...
>
> (vi) any cumulative effect from the activity in conjunction with other activities in the vicinity

[110] The District Plan considers cumulative effects as a subset of landscape effects – but it also specifically raises the matter above for commercial recreational activities. Ms Jones wrote:

> In my opinion, this is an issue in that whilst the Have-A-Shot facility currently exists in a relatively isolated fashion, being the only such commercial recreation activity on this side of the State Highway, the addition of the proposed development would transform this into a node with built non-residential development on all four corners and would result in a significant change in character, in my view.[22]

[111] The joint witness statement was silent on Rule 5.4.2.3(xv)(vi) which discusses cumulative effects on commercial recreational activity. Nor did Mr Vivian consider cumulative effects under Rule 5.4.4(xv)(iv) instead he considered them under landscape effects and wrote:

> I agree with Ms Lucas, the proposed development will not result in adverse cumulative effects on landscape values. I also agree that it is appropriate to concentrate development when rural amenity is already reduced, such as the subject environment. I consider the proposed development will cumulatively improve the aesthetic of the area, particularly when travelling along the State Highway towards Wanaka (as you approach and pass the Have-A-Shot facility) by providing a well developed and well landscaped backdrop to that facility.[23]

[22] Jones, EIC at [6.35]
[23] Vivian, EIC, at [9.6.3]

[112] We do not agree that the development will improve the aesthetic characteristics of the site. The Have-A-Shot facility has the benefit of the terrace situated close by that helps absorb the facility in a visual sense as one travels on SH6 both towards and away from Wanaka. The buildings associated with it are of modest dimension. The addition of this proposal on the opposite side of the Mt Barker Road with its large scale buildings that bear no resemblance to the farm/residential buildings more generally found in the Rural General Zone will strengthen the area as a commercial zone. While it can be argued that these buildings would be in keeping with the buildings associated with the airport we think that they will breach any acceptable threshold for commercial development outside of the airport and give rise to an adverse effect.

Effect on Local Character

> **xv Discretionary Activity – Commercial Recreational Activities (other than on the Surface of Lakes and Rivers)**
>
> ...
>
> (c) The extent to which any proposed buildings will be compatible with the character of the local environment, including the scale of the other buildings.

[113] As we have already noted the proposed buildings are in keeping with the industrial structures associated with the airport. To a much lesser extent they will be compatible with the Have-A-Shot buildings – in that the buildings on Have-A-Shot and the two proposed for this site are both associated with commercial recreational enterprises. However, the proposed buildings are of a significantly larger scale. If the State Highway and to a lesser extent Mt Barker Road are to be considered *defining edges*, as we believe they are, between commercial/built development and the Rural General Zone then the argument that the proposed buildings are incompatible (in terms of scale and character) has considerable force.

> (d) The extent to which the nature and character of the activity would be compatible with the character of the surrounding environment.

[114] The assessment of this provision is (in our opinion) closely related to the provision immediately above. There is no question that the proposed activity is compatible with the Have-A-Shot and some of the activities in the airport precinct. If either SH6 or Mt Barker Road are to be considered *edges* separating commercial activity from rural based activities then the proposed activity is manifestly out of character with the surrounding farming and residential activities on land contiguous to the site.

[115] In summary, the issue of traffic was not pursued and we accept that the SH6 has ample capacity to accommodate the traffic associated with this development. However, we recognise that traffic noise and lights will contribute, to some extent, to changes in the surrounding rural character of the area. Although the facility will be compatible with the commercial complexes nearby we find that when viewed as a whole the effects of the built form and the activities give rise to incompatible amenity effects on the rural neighbourhood.

Positive Effects

[116] The Planners noted three positive effects:

[a] Economic well-being – from initial construction to the ongoing employment of 15 people;

[b] Social well-being in terms of its family oriented facility for residents and visitors;

[c] Imposition of a covenant against development for two-thirds of the property; and we agree that there is also

[d] A bio-diversity contribution from the native shrub and ground cover plantings.

[117] In isolation these can be viewed as positive effects. However, the recreation to be carried out is not site-specific and could be achieved at an alternative locality where both the social and economic benefits may be equally realised.

Permitted Baseline

[118] In answers to questions from the Court Mr Vivian explained that if a building site was identified on this property then the activity status for a residential unit would be discretionary activity. It seemed likely, from the answers given by Mr Vivian that consent would be granted for a residential building somewhere on the site.

[119] Ms Jones also agreed that house building sites for this lot, the lot to the south on Mt Barker Road and the 2 lots to the west that front SH6 would mostly likely be granted consent. In a *perfect world* her preference would have been to have the buildings as a clustered development of the two (or three if this proposal is declined) and the remainder of the land

would offer long expansive views of pastoral land – preserving the gateway into Wanaka on the south of the State Highway.

[120] In her opinion the more likely outcome was "*there would be three houses go in there set well off the road ... very subtle mounding ...*". We see this outcome as the permitted baseline.

[121] In light of the evidence and existing development in the Rural General Zone it is our opinion that substantial farm buildings, glass houses or forestry are unlikely to be constructed (or planted) on these sites.

[122] For the purposes of our permitted baseline assessment we assume that the covenant offered by the applicant for the remainder of the site will achieve the sense of open pastoral space that is anticipated and will remain effective while the site is zoned Rural General.

[123] Mr Vivian's evidence[24] was that the proposed development was preferable to residential development. His reasons included:

[a] That this was the best site in the Upper Clutha for such a development;

[b] That Dr Marion Read (Reporting Landscape Architect for QLDC) supported the application;

[c] No reverse sensitivity issues – the site is large enough to accommodate the development and the covenant offered by the applicant; and

[d] There are a lot of *social positives for Wanaka families.*

[124] If a house was to be consented for this site Mr Vivian assumed it would be further down the Barker Road in the direction of the Staufenberg house. We agree.

[125] However, we do not agree with Mr Vivian that this is the best site in the Upper Clutha for this development. On this issue we prefer the evidence of Ms Jones, who favours either the Three Parks Zone or the Windemere Rural Visitor Zone. The Plan (1.5.3(iii)) requires a general assessment of the frequency of appropriate sites in the locality. The Windemere Rural Visitor Zone, across the road from the proposed development, has, according to Ms

[24] Ibid, pages 204 - 205

Jones a 23 hectare capacity with resource consents approved for an aviation park comprising 11 hangers. Commercial activities are controlled in this zone, and it is her view that:[25]

> Due to the controlled activity status afforded commercial recreational I consider that such activities are indeed anticipated in this zone and that the proposed developments likely to be more appropriate there than on the site suggested.

[126] Mr Vivian places some reliance on the opinions expressed by Dr Marion Read, a Reporting Landscape Officer for the Council hearing. We acknowledge the experience of Dr Read, but because she is not giving evidence to this Court, we are unable to give any weight to her opinions.

[127] We agree with Mr Vivian that reverse sensitivity issues will not be a factor and that there is ample room on this site for both the proposed development and a generous area of covenanted open space.

[128] Ms Jones is of the opinion that provided a suitably sized site is chosen in either the Rural Visitor Zone or in the Three Parks Zone then any adverse effects will be *internalised* within the site and reverse sensitivities will not arise.

[129] We also agree with Mr Vivian in respect of the *social positives* for Wanaka families should this development go ahead. However, these benefits will be realised whatever site is chosen.

[130] Ms Caunter submitted that residential development could include a large and potentially high house, farm buildings and associated swimming pool, sleep-out, barns etc. We agree.

[131] Indeed the developments on the Staufenberg property provide a reasonable basis for us to compare such effects with those likely if the proposed development goes ahead.

[132] Ms Caunter further submitted that this level of domesticity and residential development does not fit well with the VAL landscape classification – nor will it protect the landscape.

[133] Although no building sites were identified at the time of subdivision, it is reasonable to assume that some development was anticipated on the three undeveloped sites between Mt Barker Road and Ballantyne Road on the southside of the State Highway.

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[25] Jones EiC at [6.7]

[134] If a house was to be placed towards the south eastern corner of the site on the Mt Barker Road, the open vistas from SH 6 as one drives towards Wanaka would be preserved. These views would be available as soon as one cleared Have-A-Shot down Mt Barker Road and then again when one cleared the existing pine trees on the State Highway. In fact, the open pastoral nature of this site when viewed from the highway would be much as it is currently. A small part of Mt Barker view would be obscured by the future house.

[135] If this proposal was to proceed the view beyond Have-A-Shot would be of mounding, screening, planting and roof-line (of the larger building). Further there would be signage of some description reinforcing this corner of the subject site as a commercial site and further signalling the southern side of the highway as a commercial node.

[136] We are in no doubt that a residential development carefully placed, mounded and screened is more easily absorbed and accommodated in this VAL than the application before us. Indeed neighbours, Kathleen Wood and Michael Barker told us of the rigourous resource consent process and compliance they had encountered when building their homes.

Precedent

[137] We consider precedent effects under Section 104C(1) of the Act – other matters - irrespective of the activity status of the application. Ms Caunter submitted that:

> ... although precedent effect is less relevant to a discretionary activity, the extensive area of land to be covenanted will ensure that any adjacent land owner will struggle to seek to establish any similar development on their land.[26]

[138] Ms Caunter went on to submit that it would be extremely difficult for any future land owner of adjacent sites either along Mt Barker Road or SH6 to say that they are connected to the airport commercial node.

[139] We accept that submission – to a point. Travelling away from this proposed development on Mt Barker Road both sides of the road are either open farm or rural residential and the argument for extending a commercial node would be less persuasive. Travelling away from the proposed development on SH6 towards Wanaka one has the airport and associated development zone on one side of the highway, extending to almost opposite the western boundary of the subject land – the precedent argument certainly gains strength - for the following reasons:

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[26] Caunter, Submissions in Reply at [199]

[a] The commercial node on the corner of the State Highway and Mt Barker Road will be strengthened, meaning that both sides of both Mt Barker Road and the SH6 will have commercial development; and

[b] There is nothing to prevent a future applicant on a neighbouring site from applying for further commercial development (relying on this consent – if successful) and offering a similar covenant to that proposed by this applicant.

[140] And Ms Jones' evidence is that there are similar sites to the subject site both within the vicinity and elsewhere in the Rural General Zone. We note that the Commissioners at the Council hearing found,[27]

> 81. Resource consents do not create precedents in the strict sense ...
>
> 82. Ms Caunter noted that the proposed development would "*complete*" development on the remaining corner of the State Highway 6/Mt Barker Road intersection, and suggested it would therefore "*not set a precedent for other development to follow*". We are not sure about that because the more the node of development centred on the airport consolidates, the stronger the argument becomes that this locality is particularly suitable for those non-farming activities anticipated in appropriate places within the Rural General Zone. However, we do see this as a bad thing – a commercial recreational development on this site, in combination with the other commercial recreational activities within the node will encourage any other commercial recreational developments not based on specific rural resources to co-locate here rather than intrude into other rural localities.

[141] We agree with these findings on precedent but do not see it in the same positive light as the Commissioners. We do not accept that the provision of the covenant will provide an adequate reason for decision-makers of future commercial applications in the immediate vicinity to automatically decline similar applications.

[142] As we have already noted – both Mt Barker Road, and in particular the State Highway provide a clear and defensible *edge* separating the commercial operations associated with the airport and Have-A-Shot facility from the remainder of the Rural General Zone. To allow this proposal to broach this edge considerably weakens the state highway in particular as a boundary between commercial activity and the Rural General Zone and in our opinion opens the door for future *like* applications.

[27] At [81] – [82] of Commissioner's Decision

The Act – Section 290A and Part 2

[143] We are required under the Act to *have regard to* the decision under appeal. Our conclusion does not align with that decision but reflects the 42A Report prepared on behalf of the Council which declined on the grounds that:[28]

[a] Adverse effects on the environment would be more than minor due to the nature, scale and location of building and associated activities which effects could not be appropriately avoided or mitigated;

[b] The proposal was inconsistent with the key objectives and policies of the ODP; and

[c] The proposal was not in keeping with the purpose and principles of the Section 91 of the Act.

[144] Although our assessment has not been predicated on a non-complying basis but rather discretionary the issues before us were the same

[145] The Commissioners granted consent because they were satisfied that the stringent suite of conditions developed would *minimise potential adverse effects*. Illustrative of this were:

[a] controls on sound emissions;

[b] reducing the number of go carts and bumper boats that may be operated at any one time from 15 to 10 (33%);

[c] limiting the hours of operation; and

[d] prohibiting the use of an outdoor sound system.

[146] There has however been no reduction in the physical size or scale of the development plan before us. There are risks in micro managing through conditions; conditions may be readily changed because the constraints have an economic effect. This suggests to us that this proposal would be better placed where the capacity of the business was not constrained by the effects on the environment.

[28] QLDC, Submissions at [2]

[147] We note that Section 1.5.3 of the District Plan states activities which have been afforded discretionary activities status in Visual Amenity Landscapes do so because they are *inappropriate in many locations*. It appears to us, as we have detailed, that the proposal failed to meet the requirements of development in this landscape.

[148] The ODP provides a number of areas more enabling for developments such as this. The Wanaka area attracts high visitor numbers who make a substantial contribution to this community's economic wellbeing. We were told that the district plan has been through changes so that that a range of commercial activities can be catered for and we have discussed two such zones in this decision

[149] We have found that there are positive recreational opportunities to be enjoyed by the public at this entertainment centre but that the size, scale and location is inappropriate in this Visual Amenity Landscape. However, the opportunity to situate this type of business is well provided for in more appropriately zoned land – one of which is just a short distance away.

[150] We regard the matters in Part 2 as having been discussed sufficiently in the ODP analysis. As we have signalled throughout this decision we have found that the commercialisation of rural land in an important arrival zone is not consistent with the thrust of the relevant ODPs objectives and supporting policies designed to manage the landscape amenity of the Wanaka environs. It does not therefore meet the purpose of Act.

[151] The appeal is upheld.

COSTS

[152] Costs are reserved.

DATED at Auckland/Wellington this 3rd day of May 2013

For the Court:

Environment Court Commissioner
H-A McConachy

Environment Court Commissioner
J R Mills

BEFORE THE ENVIRONMENT COURT

Decision No. [2014] NZEnvC 108

IN THE MATTER of the Resource Management Act 1991

AND of an application for resource consent referred directly to the court under section 87G of the Act

BY SKYDIVE QUEENSTOWN LIMITED

(ENV-2012-CHC-116)

Applicant

Court:	Environment Judge J R Jackson Environment Commissioner J R Mills Environment Commissioner W R Howie
Hearing:	At Queenstown on 13 to 16 and 21 to 24 May 2013, and 5 May 2014. Final submissions received 13 May 2014.
Appearances:	R E Bartlett for Skydive Queenstown Ltd J G A Winchester and S J Scott for the Queenstown Lakes District Council R Brabant and A C Ritchie for Jacks Point Residents and Owners Association Incorporated and the Jacks Point Commercial Interests Group M C Holm for RCL Queenstown Pty Ltd and Henley Downs Ltd M J Issott for Lakeside Estates Homeowners Association Inc C G Geddes for himself
Date of Decision:	16 May 2014
Date of Issue:	16 May 2014

DECISION

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

A: Under section 290 of the Resource Management Act 1991, the Environment Court refuses a replacement resource consent to Skydive Queenstown Ltd to

operate more flights from the airstrip at Remarkables Station, (SH6), near the shores of Lake Wakatipu.

B: Any application for costs may be made by 4 July 2014 and any reply by 30 July 2014.

REASONS

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1. Introduction

1.1 The issue

[1] This is a direct referral to the Environment Court under section 87G of the Resource Management Act 1991 ("the RMA" or "the Act"). The primary question to be decided is whether Skydive Queenstown Ltd ("Skydive") should be granted a replacement resource consent to operate a grass airstrip at the foot of the Remarkables Mountains, near Queenstown, as an "airport" for its existing skydiving business at the site. The core issue is whether Skydive should be given the opportunity to fly more flights than its maximum 35 per day at present, or whether that would impose unsustainable adverse effects on the neighbours.

1.2 The application

[2] Skydive[1] has operated a commercial parachute and associated transport operation on an airstrip on Remarkables Station for about 20 years. We attach a site plan marked "Attachment 1"[2]. Since 1997 it has operated from the airstrip under a resource consent[3] ("the 1997 consent") which, amongst other conditions, restricts the operation to 35 flights per day in total and no more than two aircraft.

[3] Remarkables Station is owned by the D S and J F Jardine Trust and is located on State Highway 6 (Kingston Road). The legal description of the land/farm is Lots 2 and 6 DP 443832[4]. Skydive leases the airstrip and an area for its buildings from the Station.

[4] Skydive applied[5] to the Queenstown Lakes District Council on 26 January 2012 for a new resource consent, in essence to increase the number of flights from the airstrip. This consent is intended to replace[6] an existing consent. The rationale behind the application is that Skydive would like to increase the number of flights it launches. It believes it can increase the number of flights while keeping the total noise to which neighbours are exposed below the noise potentially allowed under the existing resource consent and below what it says is a reasonable objective exposure level in decibels. The reason for the applicant's confidence is that Skydive has recently replaced its aircraft with Cessna Supervans. They are modern turbo-powered aircraft which are generally quieter than the earlier piston-engined Cessna 185 aircraft.

[5] After requesting and receiving further information from Skydive the council notified the application on 23 May 2012. Eighty-one submissions were lodged with the council. The process then diverted from the normal flight path when Skydive applied to the council to refer the application direct to the Environment Court. On 30 July 2012 the council gave its consent to a direct referral.

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1 It operates as "Nzone", and most jumps are tandem drops.
2 Produced by J W Trevathan, evidence-in-chief Attachment 1 [Environment Court document 11].
3 QLDC ref RM 960447.
4 Computer Freehold Register 555574 Otago.
5 QLDC ref RM 120052.
6 See *Sutton v Moule* (1992) 2 NZRMA 41 (CA).

[6] On 17 October 2012 Skydive applied to the court under section 87G of the RMA. After the court issued directions, section 274 notices were received from 22 submitters and the council. A timetable for service of evidence was then set and complied with.

[7] In its evidence[7] Skydive amended its application to operate within these restrictions:

- a maximum of 75 flights per day;
- a maximum average of 50 flights a day over any 7 day period; and
- a maximum noise level on any one day of 57 dB L_{dn};
- a seven-day average noise limit of 55 dB L_{dn} at residential[8] locations.

(A glossary of acoustic terminology is annexed marked "2"). Further, while the application lodged with the council shows a maximum of 60 dB L_{dn} would be received at the nearby Jacks Point Lodge, Mr Day's evidence[9] referred to the "generally accepted noise limit of 55 dB L_{dn} at residential locations in the adjacent Jacks Point land". In his recommended conditions of consent[10] Mr Day adopted the 55 dBA L_{dn} limit.

[8] At the hearing in May 2013 the court received inadequate evidence of the heights at which aircraft operated by Skydive flew over adjacent land (off-site) when taking off and landing. Because the court needed some basic facts about those heights, in December 2013 it sought further evidence. The court subsequently received further expert evidence from Captain L Sowerby and from Mr J N Fogden, and some measurements and opinion evidence from Mr C G Geddes, a nearby resident (and a party to the proceeding).

[9] Due to the other commitments of witnesses and the court's members it was not possible to reconvene the court and resume the hearing until 5 May 2014. Mr Bartlett then sought leave to make further submissions on that evidence and resulting cross-examination. Leave was granted. On 13 May 2014 he advised the Registrar that he did not wish to give further submissions after all.

1.3 The section 274 parties who appeared at the hearing

[10] Immediately adjacent to the airstrip is a residential area which is part of the Jacks Point development. The residents and owners have formed an incorporated society — Jacks Point Residents and Owners Association Inc — which is one section 274 party. Another, also associated with the Jacks Point Zone, is a group of companies[11] including

7 M J G Garland, evidence-in-chief para 34 page 14.
8 C W Day, rebuttal evidence para 3.7 [Environment Court document 9A].
9 C W Day, evidence-in-chief para 2.2 [Environment Court document 9].
10 C W Day, evidence-in-chief para 7.2 [Environment Court document 9].
11 Listed in the evidence of J G Darby at para 1.2 [Environment Court document 12].

Jacks Point Golf Course Ltd. The Association and the group put forward a common case opposing the application. We will call these two section 274 parties collectively "the Jacks Point Interests".

[11] The northern part of the Jacks Point Zone is also earmarked for development. At the time of the hearing it was owned by other section 274 parties, RCL Queenstown Pty Ltd and Henley Downs Ltd, whose counsel appeared with a watching brief. The southern part of the zone is Homestead Bay which is owned by the Jardine family of The Remarkables Station.

[12] Mr C G Geddes, who lives at 13 McKellar Drive about 1.2 kilometres[12] north of the airstrip, lodged a section 274 notice opposing the grant of the resource consent and gave evidence in the proceeding.

[13] Finally, there is another residential enclave — several kilometres south of the airstrip — called Lakeside Estates. The Lakeside Estate Homeowners' Association joined the proceeding as a section 274 party and its president, Mr M J Issott, gave evidence[13] opposing the application.

1.4 Activity status under the Queenstown Lakes District Plan

[14] The district plan contains[14] the following relevant definitions:

Air Noise Boundary	Means a boundary, the location of which is based on predicted day/night sound levels of L_{dn} 65 dBA from future airport operations. The location of the boundary is shown in Figure 31a.
Airport) Aerodrome)	Means any defined area of land or water intended or designed to be used whether wholly or partly for the landing, departure, movement or servicing of aircraft.

The words 'airport' and 'aerodrome' are treated as synonyms[15] by the district plan. The airstrip in this case is "defined" both practically in that it is formed on the ground (and mown, not grazed) and legally in that there is a lease from the landowner to Skydive.

The airstrip

[15] The airstrip is in the Rural General Zone. Consequently, the parties agreed that the application requires the following resource consents:

12 C G Geddes, evidence-in-chief para 15 [Environment Court document 18].
13 M J Issott, statement dated 14 March 2013 [Environment Court document 19].
14 Queenstown-Lakes District Plan.
15 Queenstown-Lakes District Plan p D-1.

- a discretionary activity consent[16] for an "airport"; and
- a restricted discretionary activity consent for an outdoor commercial recreational activity involving more than five persons[17].

[16] If a noise limit of 55 dBA L_{dn} is not met at all residential locations (and we note that 60 dBA L_{dn} was included in the application), a non-complying activity consent would be required[18]. However, as recorded above, the evidence provided by Skydive was based on compliance with the 55 dBA L_{dn} limit.

1.5 The matters to be considered

[17] We record the agreement of the parties that the relevant version of the RMA is that after the Resource Management (Simplifying and Streamlining) Amendment Act 2009 and the 2011 Amendment Act were enacted but prior to the 2013 amendments.

[18] Under section 104 of the RMA we must, subject to Part 2 of the Act, have regard to:

> (a) any actual and potential effects on the environment of allowing the activity; and
> (b) any relevant provisions of —
> (i) a national environmental standard:
> (ii) other regulations:
> (iii) a national policy statement:
> (iv) a New Zealand costal policy statement:
> (v) a regional policy statement or proposed regional policy statement:
> (vi) a plan or proposed plan; and
> (c) any other matter the [Court] considers relevant and reasonably necessary to determine the application.

We understand that to mean that the local authority, or on appeal or direct referral, the Environment Court must make a broad judgment weighing four sets of considerations. The first two are compulsory:

> (a) any actual and potential effects on the environment of allowing the activity; and
> (b) any relevant provisions of [the listed hierarchy of statutory instruments].

[19] The third and fourth considerations are to be considered if necessary. They are:

> (c) any other matter the consent authority considers … relevant; and
> (d) Part 2 of the Act.

It is well-established that the words "subject to" show that Part 2 of the Act only needs to be resorted to if there is a conflict in or between any of the other three sets of considerations in section 104(1) of the Act: *Minister of Conservation v Kapiti Coast*

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16 Under rule 5.3.3.3(v) [QLDP p 5-13].
17 Under rule 5.3.3.3(xi) and site standard 5.3.5.1(ix) [QLDP p 5-18].
18 Under rule 5.3.3.4(vi) and zone standard 5.3.5.2(v)(d) *Noise*.

District Council[19] relying on an earlier decision of the Court of Appeal — *Environmental Defence Society v Mangonui County Council*[20] (on the Town and Country Planning Act 1977) where Cooke J stated "... the qualification "subject to" [is] a standard method of making clear that the other provisions referred to are to prevail in the event of a conflict".

[20] As for the "environment", we hold that the environment includes the actual and practical potential effects of the 1997 consent but subject to the consent holder's duty under section 16 of the RMA to use the best practicable option to ensure that noise from the airstrip does not exceed a reasonable level. We describe that environment in part 2 of this decision.

[21] We are to have regard[21] to several statutory instruments, but the only one with any real significance in the opinion of the expert witnesses is the Queenstown Lakes District Plan ("the district plan"). We outline the relevant provisions in part 3 of this decision.

[22] Finally, we bear in mind that "[i]n a basic way there is always a persuasive burden" on an applicant for resource consent: *Shirley Primary School v Telecom Mobile Communications Ltd*[22]. There is also a legal burden[23]: "... even if the Court hears no evidence from anyone other than the applicant it would still be entitled to decline consent". Both statements were approved by the Court of Appeal in *Ngati Rangi Trust v Genesis Power Ltd*[24].

2. Skydive's environment and its operations

2.1 The airstrip and its surrounds

[23] The airstrip is located west of State Highway 6 as that road runs south along the lake from Frankton to Kingston. Access to the airstrip is gained by the main entrance to the Remarkables Station which has its homestead and principal farm buildings at Homestead Bay to the southwest of the airstrip. The Skydive base is about 500 metres from the highway at the end of a shelterbelt of pines and the airstrip runs on an east-west alignment from the base.

[24] To the north and west of the airstrip, and between it and Lake Wakatipu the topography rises to a lumpy tableland on which past glacial processes are more obvious. At the southern end of the tableland is a rounded high point, with some exposed schist

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19 *Minister of Conservation v Kapiti Coast District Council* (1994) 16 ELRNZ 234, [1994] NZRMA 385 at [8].

20 *Environmental Defence Society v Mangonui County Council* [1989] 3 NZCR 257 at [260]; [1989] 13 NZTPA 202.

21 Section 104(1)(b) RMA.

22 *Shirley Primary School v Telecom Mobile Communications Ltd* [1999] NZRMA 66 at [121].

23 *Shirley Primary School v Telecom Mobile Communications Ltd* [1999] NZRMA 66 at [122].

24 *Ngati Rangi Trust v Genesis Power Ltd* [2009] NZRMA 312 at [23] per Ellen France J and at [49] per Chambers J.

outcrops called Jacks Point. That hill has given its name to a large zone and development between the Lake and the State Highway in the Jacks Point Zone. The Jacks Point development at present contains more than 200 houses (there are plans for more), and connecting roads. It also has a range of recreational facilities[25]: an 18 hole golf course and clubhouse, a series of walking and cycling tracks, extensive ecological areas, sports fields, tennis courts and a playground.

[25] Noise from the existing and future Skydive operations is a central issue of concern to the neighbouring Jacks Point residents, the Jacks Point Golf Club, to the nearby Lakeside Estate residents and to the developers of Henley Downs. There are concerns about aircraft-generated noise both from aircraft on the ground when idling and taxi-ing, and when taking off and landing. Some of the objectors also complained of noise generated by the skydivers "whooping and hollering" as they descended.

2.2 Skydive's existing operations

[26] Skydive was New Zealand's first professional tandem skydiving operation[26] when it commenced in 1990. It has grown since then to become an important part of Queenstown's appeal as an adventure destination. Its Managing Director, Mr L Williams, wrote, with justifiable pride, of its safety policies and procedures and of the awards Skydive has won[27]. In 2007 the company was the Supreme Winner in the New Zealand Tourism Awards[28]. Including its Queenstown office, Skydive employs 65 to 70 staff during the peak (summer) season[29].

[27] Skydive's facilities on the site are modern and well-maintained. They include a large operations building which includes a reception area, offices, and a large floor in a hangar-like space for packing parachutes and for other aspects of the skydiving experience. A smaller building to the south of the carpark provides a tea-room and toilets. To the north of the main building is a concrete apron, although passengers usually board aircraft on the airstrip further to the north again.

[28] At the time of the application and section 87F report[30], Skydive was using both a Cessna Supervan 900 (a "Supervan"[31]) and a Cresco 750 aircraft. It has since stopped[32] using the Cresco aircraft and now uses two Supervans, each of which can carry up to 19 passengers.

25 J G Darby, evidence-in-chief para 4.8 [Environment Court document 12]; S J Dent, evidence-in-chief para 4.101 [Environment Court document 20].
26 L Williams, evidence-in-chief para 2 [Environment Court document 8].
27 L Williams, evidence-in-chief paras 2-4 [Environment Court document 8].
28 L Williams, evidence-in-chief para 4 [Environment Court document 8].
29 L Williams, evidence-in-chief para 11 [Environment Court document 8].
30 W A Baker, evidence-in-chief para 23 [Environment Court document 14].
31 A modified Cessna Caravan.
32 W A Baker, evidence-in-chief para 23 [Environment Court document 14].

[29] The "Supervan 900" is 12.7 metres (42 feet) long with a 15.88 metre (52 feet) wingspan. In the lay opinion of a nearby resident, Mr C G Geddes who is a party to this proceeding, the aircraft has a significant "presence" for persons in the vicinity when within 500 feet of the ground on either takeoff or landing[33].

[30] Aircraft generated noise received on the golf course is considerably greater than the noise level suggested for the residential lots and sites for accommodation. Other existing recreational facilities near to the western end of runway or the east-west flight path, such as the sports grounds, the playground and some of the walking and biking tracks are also affected by aircraft noise and presence. A proposed lodge ("The Lodge site") and a large lot residential area known as Lot 14 'The Preserve' are located close to the east-west flight path and are similarly affected. (See the site plan which is Attachment 1).

[31] Take-off is always to the west along a slightly downward sloping grass runway. The current flight path then climbs westward over the rising ground of the golf course. With the Supervans the take-off heading is maintained until clear of the tableland and the aircraft is over Lake Wakatipu. On takeoff the flight path takes the Supervans over, or up to 50 metres south of, Tee 3 and Hole 3 and the edge of a residential enclave (not yet fully developed) known as 'The Preserve' on the Jacks Point Golf Course. The typical observed average heights at which those points are crossed was (from a small sample size):

Tee 3	226 feet above ground level ("feet agl")[34]
	308 feet agl[35]
(Average)	331 feet agl
Hole 3	468 feet agl[36]
	324 feet agl[37]
(Average)	396 feet agl
The Preserve	487 feet agl[38]
	388 feet agl[39]
	378 feet agl[40]
(Average)	418.5 feet agl

33 C G Geddes, supplementary evidence 16 April 2014 para 13 [Environment Court document 37].
34 C G Geddes, evidence-in-chief 17 December 2013 para 10 [Environment Court document 29].
35 L Sowerby, Further Report 31 January 2014 Table 4 [Environment Court document 34].
36 C G Geddes, evidence-un-chief 17 December 2013 para 10 [Environment Court document 29].
37 L Sowerby, Further Report 31 January 2014 Table 4 [Environment Court document 34].
38 C G Geddes, supplementary evidence 16 April 2014 App 1 [Environment Court document 29].
39 C G Geddes, supplementary evidence 16 April 2014 App 1 [Environment Court document 37].
40 L Sowerby, Further Report 31 January 2014 Table 4 [Environment Court document 34].

The minimum measured heights (recorded by any party) of the aircraft above those points on takeoff were respectively 285 feet agl[41], 314 feet agl[42], 344 feet agl[43].

[32] The aircraft[44] then climbs following a route generally over the lake and along the face of The Remarkables to heights (above the airstrip) of 9,000ft, 12,000ft and 15,000ft where, at each level, skydivers leave the aircraft. The ascent in a Supervan takes some 15 minutes[45]. A reducing level of aircraft noise can be heard over the general Jacks Point area during the climb.

[33] The aircraft descent takes about 10 minutes[46]. The aircraft approaches the runway more often from the south over Homestead Bay making a low level right hand turn onto the runway, but sometimes from the west over the lake and the golf course. Aircraft noise levels received at the sensitive spots mentioned during this period of the flight do not seem to attract significant adverse reaction except on the golf course on the fewer occasions when the approach is from the west.

[34] As for the height of Skydive's aircraft above neighbouring land on landing approach, Captain Sowerby calculated the theoretical height maximum of the aircraft above key points on landing flight path 'C' which curves around on the inside (the southeastern side) of the trig on Jacks Point and gave one set of measurements of height above ground on that landing path. Mr C G Geddes' evidence was rather more useful about heights on the less frequently used direct flight path (the reciprocal of the takeoff flight path). He recorded[47] the average approach heights when measured from directly below (or slightly to the north, but abeam[48] of) the aircraft as follows[49]:

		Approach
1st Green		Height ft
12/12/2013		148
		154
		115
17/12/2013		236
13/04/2014	1108	102
	1130	93
	1200	84
	1224	162
Average		**129**
Minimum		**84**

41 C G Geddes, supplementary evidence 16 April 2014 App 1 [Environment Court document 29].
42 L Sowerby, Further Report 31 January 2014 Table 4 [Environment Court document 34].
43 C G Geddes, supplementary evidence 16 April 2014 App 1 [Environment Court document 29].
44 From this point all references to aircraft will be to Supervans unless we specifically state otherwise.
45 C W Day, evidence-in-chief Figure 2 [Environment Court document 9].
46 C W Day, evidence-in-chief Figure 2 [Environment Court document 9].
47 C G Geddes, Statement 17 December 2013 paras 5 and 6 [Environment Court document 29].
48 Transcript 5 May 2014 p 41 lines 20 to 27.
49 Compiled from C G Geddes, Statement 17 December 2013 para 10 [Environment Court document 29] and Supplement Statement 16 April 2014 [Environment Court document 37].

2nd Fairway		
12/12/2013		295
		305
		322
16/12/2013		390
17/12/2013		223
		371
Average		**318**
Minimum		**223**
2nd Green		
16/12/2013		308
		285
17/12/2013		177
Average		**257**
Minimum		**177**
3rd Tee		
17/12/2013		308
Preserve Road		
17/12/2013		512
08/04/2014	Time	
	1433	288
	1523	714
Average		**508**
Minimum		**288**

[35] We find that, on the balance of probabilities, Mr Geddes was correct when he said[50] that Skydive's aircraft are "consistently flying below 500ft over ground at all of the locations at which height measurements were made"[51].

[36] We return to the jettisoned skydivers: after they leave the aircraft they plummet in freefall for between 25 and 60 seconds depending on the drop height, and then, popping their parachutes, circle their way down for 5 minutes[52] over the general area around the runway landing near their point of departure beside the runway. Popping of the parachutes and the excitement of the adventure is clearly audible on occasions from the ground.

[37] The drop zone, centred a few metres from Skydive's buildings on site, is one of the two approved by Civil Aviation Authority within the Wakatipu Basin.

[38] At present, on relatively calm days an average of 16-20 flights (32-40 movements) occur from the airstrip. That is because the number of potential

50 C G Geddes, supplementary evidence 16 April 2014 para 14 [Environment Court document 37].
51 C G Geddes, supplementary evidence 16 April 2014 para 14 [Environment Court document 37].
52 Section 87F report page 15 para 4.

parachutists, various logistical difficulties, and/or the weather prevent the 35 flights allowed in the existing resource consent. The highest monthly average number of flights per day in the year from 1 November 2011 to 31 October 2012 was 21.63 in January 2012[53]. In 2009 the number was slightly higher than in recent years.

2.3 The Jacks Point development

[39] The central part of the Jacks Point Zone has been substantially developed with subtle landscaping in a palate of (predominantly) native species with extensive (exotic) grassed areas, and contains neighbourhoods of houses, built with a limited range of materials (often schist) and colours which are carefully sited to fit into the landscape and gain maximum views and solar advantage. The residential development looks superior (and expensive — there is not much sign of affordable housing).

[40] Mr J G Darby, a director of various companies which are members of the Jacks Point Interests, and a practicing landscape architect, wrote that[54]:

> The public and recreational amenities were an essential part of the vision for the JPZ. These recreational activities include the numerous pedestrian, equestrian and cycle trails that have been constructed along with the tennis courts, golf course, playing fields constructed south of the Clubhouse and the Lake Tewa recreational area for kayaking and fishing ... . A new community playground is also currently being constructed within the zone.

[41] He described[55] the costs of creating the golf course in rather general terms[56]:

> A golf course is a land use that provides open space protection for the community. Leaving the issue of land cost aside, championship golf courses typically cost between $10 million and $12 million to construct and approximately $1.5 million per annum to maintain. Without the associated visitor, residential and commercial development, a championship golf course would not be viable in terms of capital investment and annual operating costs.

[42] As for the existing noise environment, Dr J W Trevathan, the acoustic expert called by Jacks Point Interests, wrote[57]:

> ... ambient noise in the area includes distant traffic noise at some locations, other aircraft noise both distant and flying over, sound associated with the natural environment, residential activities and with the golf course (producing noise levels in the order of 30 to 50 dB LA_{eq}).

He added[58]:

> Subjectively however, I was surprised at how distinctive and audible the noise from the aircraft at altitude was, ...

[43] We heard further subjective evidence on the effect of Skydive's existing operations from Mr P M Tataurangi, a professional golfer and consultant golf course

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53 Ex 8.1.

54 J G Darby, evidence-in-chief para 4.8 [Environment Court document 12].

55 J G Darby, evidence-in-chief para 6.7 [Environment Court document 12].

56 We assume to avoid breaching commercial sensitivities.

57 J W Trevathan, evidence-in-chief para 4.19 final bullet point [Environment Court document 11].

58 J W Trevathan, evidence-in-chief para 4.19 final bullet point [Environment Court document 11].

designer. To set the context he described the sense of drama he said is provided by good courses[59], and then he described his experience at Jacks Point[60]. He concluded[61]:

> In New Zealand the remote coastal locations of Kauri Cliffs and Cape Kidnappers have this [dramatic] quality. Jack's Point is in this league but in the grandeur of a mountain/lake setting. The layout enjoys a seamless relationship with the natural surrounds traversing several different environments and giving the golfer the sense at times of being atop one of the surrounding peaks and throughout most of the round of golf at one with nature.

[44] In relation to the existing Skydive operations (under the 1997 consent) he wrote[62]:

> However, unfortunately, I was very surprised to find that encountering low flying aircraft on the opening holes is a part of the golfing experience at Jack's Point. Not only are the aircraft a noise disturbance but for visitors the planes are so low above their heads as to seem a hazard that makes them uncomfortable. An integral part of golf etiquette is to play without undue delay; however when aircraft are flying at such a low altitude on your intended line of play, this causes most players to back-off and wait until the plane has gone. I have also had international guests tell me their experience was compromised by the low flying aircraft. They have all said they were looking forward to a peaceful round at the world-class golf course and did not feel the regularity of the aircraft flying low overhead was commensurate with that.

Cross-examined by Mr Bartlett about how Skydive's flying operations affects the quality of the day and the round of golf[63] Mr Tataurangi answered[64]:

> ... By pure measure of holes two, three and five, when the aircraft is overhead and the noise is, ... at the loudest, ... by percentage, you know, there's three holes out of, of the course of 18 and by average it's 45 minutes to an hour of playing time of those particular holes. However, ... I guess the experience had on those particular holes, because they're the starting holes of the golf course, can have an effect on setting the scene for the golfing experience and because you're aware of them in such a obvious manner in your opening five holes of the golf course, ... therefore you are aware of the activity the whole 18 holes ... which you're playing.

[45] Mr Bartlett submitted at the hearing[65] that because Mr Tataurangi wrote[66] that "... golf is more than just a professional career to me, it is a passion and why I play socially as well as professionally" he was "totally disqualified [from] presenting himself as an independent advisor to the court". We do not accept that. Mr Tataurangi gave evidence about the golf course and the potential effects of Skydive's proposal on it and its users, not about the game of golf in itself. He gave evidence about his experience[67] and knowledge that was not challenged, and he certified[68] that he had read, understood and complied with the code of conduct in the Environment Court Practice Note. He

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59 P M Tataurangi, evidence-in-chief para 13 [Environment Court document 15].
60 P M Tataurangi, evidence-in-chief para 14 [Environment Court document 15].
61 P M Tataurangi, evidence-in-chief para 15 [Environment Court document 15].
62 P M Tataurangi, evidence-in-chief para 16 [Environment Court document 15].
63 Transcript p 447.
64 Transcript p 448.
65 Transcript p 281.
66 P M Tataurangi, evidence-in-chief para 13 [Environment Court document 15].
67 P M Tataurangi, evidence-in-chief paras 2-4 [Environment Court document 15].
68 P M Tataurangi, evidence-in-chief paras 6-9 [Environment Court document 15].

gave his answers to questions in a considered and dispassionate manner. We are prepared to accept his opinion evidence and give it some weight.

[46] Mr A J Tod, an expert[69] on golf management, covered the subjects of golf tourism within New Zealand, the development of New Zealand golf tourism, golf tourism marketing, golf tourism development in the Queenstown Lakes and Central Otago regions, the role of Jacks Point, and the impact of Skydive's current operation and of its proposed consent. As for the characteristics of the Jacks Point Golf Course, he wrote[70]:

> Jacks Point is a significant golf course for the Queenstown region. Feedback I receive from any clients who have played there is that it is one of the Top 4 courses that they play in New Zealand. The design features of Jacks Point have been carefully considered to make the most of the surrounding landscape with a journey around the course, bringing up a number of delightful experiences and surprises on the way.
>
> I agree with the description of the golfing journey outlined in Mt Tataurangi's evidence. It is this experience and the stunning views and the condition of the golf course which are often commented on being some of the best for any golf course in New Zealand, and an underrated player on the world stage[71].
>
> Distinguished golf writer, Mike Nuzzo, believes that there are three types of golfer: Those who relish the playing challenge; those who revere the courses environment; and those who place the enjoyment-factor above all else[72]. In my experience (both as a player and the operator of guided golf tours in New Zealand) Jacks Point is one of the courses in New Zealand that ticks all the boxes for these three criteria.

2.4 The noise from aircraft

[47] Aircraft generate noise while idling, taxi-ing, taking off and landing, and in the air. As for the assessment of that noise, the court was greatly assisted by the experienced acoustic experts called by the parties. Skydive engaged Mr C W Day of Marshall Day Acoustics Limited who produced evidence-in-chief[73] and a rebuttal statement[74]. The section 274 parties engaged Dr J W Trevathan of Acoustic Engineering Services Limited. He produced evidence-in-chief[75], evidence-in-reply[76] and a supplementary statement[77].

[48] The council engaged Dr S Chiles of Chiles Limited (and a contractor to URS New Zealand Limited) who also provided a statement of evidence. He gave a subjective, but independent over-view of noise from Skydive's current operations[78]:

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69 A J Tod, evidence-in-chief paras 2.1 to 2.7 [Environment Court document 16].
70 A J Tod, evidence-in-chief paras 8.1 to 8.3 [Environment Court document 16].
71 http://www.travelgolf.com/blogs/jason.scott/2013/03/12/reflecting-upon-my-recent-golf.
72 Mike Nuzzo — *Golf Architecture — A Worldwide Perspective.*
73 C W Day, evidence-in-chief [Environment Court document 9].
74 C W Day, rebuttal evidence [Environment Court document 9A].
75 J W Trevathan, evidence-in-chief [Environment Court document 11].
76 J W Trevathan, evidence-in-reply [Environment Court document 11A].
77 J W Trevathan, supplementary evidence [Environment Court document 11B].
78 S Chiles, evidence-in-chief para 29 [Environment Court document 10].

> On calm weather days during my two site visits, I have experienced quiet periods around Jack's Point. Much of the area is at least partly screened from the nearby State Highway, and at times there are few anthropogenic sounds audible. Under these conditions, the skydiving plane can be heard for the majority of its ascent; the parachutes can be heard as they open, and some of the parachutists can be heard shouting in the air. At other times, when there is activity on the ground nearby, these sounds from the air are generally not noticeable, although could still be heard if the listener is focused on them. For example, in some areas around the club house the air conditioning plant is relatively noisy and dominates that environment. Elsewhere, sounds such as from grass mowing are louder than sounds from parachutists. The distinctive sounds from the plane, parachutes and parachutists in the air are all noticeable at times and do affect the amenity in Jacks Point, but they are all at relatively low sound levels.

As the Skydive activity already exists, noise measurements were made of the current operations by Mr Day and by Dr Trevathan.

[49] Each aircraft idles while on the ground during the loading of the passengers. Depending on the type and orientation of the aircraft, noise levels at the closest residential boundaries (e.g. at 39 Hackett Road, Jacks Point) at times exceeded levels considered acceptable by all the parties and their acoustic experts because of the idling noise from the Supervans. During taxi-ing aircraft generated noise levels at the closest residential boundaries does at times, as the aircraft faced those sensitive locations, also exceed those suggested acceptable noise levels. The occurrence is brief and depends on the aircraft being flown.

[50] Dr Trevathan reported that the noise level at the closest residential site — 39 Hackett Road (as yet unbuilt on) — from 35 flights of a Supervan is 58 dB L_{dn} with ground idling dominating[79]. If compared to the district plan noise limits Dr Trevathan said ground idle noise from the Supervan when received at 39 Hackett Road exceeds the daytime limit by 10 dB for 4 hours per day.

[51] At the "Jacks Point Residential" location on Jacks Point Rise, Dr Trevathan measured noise[80] from the Supervan at 53 dB L_{dn}. Mr Day measured aircraft noise levels at "The Village" at 78 dB L_{eq} from the Supervan 900.

[52] On the golf course Dr Trevathan measured aircraft noise levels for take-off that followed a track over the golf course[81] of 85 dB L_{max} at hole 2 and 80 dB L_{max} at hole 5. Landing (reversing the same track) produced noise levels of 88 dB L_{max} at hole 2 and 85 dB L_{max} at hole 5. Take-off noise that would disrupt speech lasted 20 seconds and during landing it lasted for 10 seconds. Background noise levels were 30–50 dB.

[53] We have recorded that golfers and others engaged in outdoor activities in the area now experience a fly over event on average 20–40 times a day (i.e. 10–20 flights per day). In a 12 hour day that is an event each 18–36 minutes on average. On the golf course aircraft noise levels are significant with maximum levels of up to 88 dB L_{Amax}.

79 J W Trevathan, evidence-in-chief para 4.20 bullet point 1 [Environment Court document 11].
80 J W Trevathan, evidence-in-chief para 4.20 bullet point 3 [Environment Court document 11].
81 J W Trevathan, evidence-in-chief para 4.20 bullet point 4 [Environment Court document 11].

Three holes of the golf course are particularly affected and if each takes about 15 minutes to play, a golfer can expect (at most) between 1 and 3 fly-overs while on those three holes. Those figures are reduced by the facts that some landings use a flight path that avoids the rise and the tableland by coming in from the south (over Homestead Bay) and that due to various factors flights often do not turn around so frequently. This is the existing condition that the golf course and its members and visitors come to, so it is part of the environment for them.

[54] At the Lodge site Dr Trevathan measured[82] aircraft noise levels of 48 or 51 dB L_{dn} depending on the flight path. Mr Day reported 85 dB L_{eq} at this location. At "The Preserve" (Lot 14) Dr Trevathan measured 55 or 51 dB L_{dn} again depending on the flight path. The council's noise expert, Dr Chiles, did not make any onsite aircraft noise measurements and chose to rely on those made by Dr Trevathan and Mr Day. Dr Chiles also relied on the modelling of aircraft noise generation carried out by those two experts.

[55] The court visited the site, and in particular the locations where the aircraft generated noise was of greater concern, while Skydive operations were being carried out. On the golf course the aircraft take-off was very noticeable and distracting for the 20 seconds or so that the aircraft travelled over the course. The combination of noise, speed, the size of the aircraft and its low path made the temporary event intimidating when directly beneath the flight path.

2.5 The 1997 resource consent

[56] The 1997 consent expressly limits the operation to a maximum of two aircraft and 35 flights per day. The applicant claims that the 1997 consent contains no limitation on aircraft size or type, no limitation on take-off or landing flight paths, no specific noise standards to be complied with, and no termination condition. In fact previous aircraft (smaller Cessna 185s) operated by the company followed a climb path that turned right after take-off and climbed to the north[83] because of a lower climb rate and the need to avoid the rising ground of the tableland. These earlier aircraft had a different "noise signature" — they were noisier in the air. It seems to us that the flight path described by Mr Day which involved a right-turn to the north over or before the golf clubhouse might be an implicit part of the 1997 consent, but for the purpose of this decision we accept the applicant's assertions.

[57] Mr Williams[84] advised that with two Supervans, five flights can be completed in an hour. In ideal conditions and with demand he said 7-8 flights an hour could be achieved. We understand this frequency requires operating the planes near their maximum capability and no holdups on the ground and possibly climbing to levels lower than 15,000ft, and in fact ideal conditions arise relatively infrequently as the tables of daily flights showed.

82 J W Trevathan, evidence-in-chief para 4.20 bullet point 5 [Environment Court document 11].
83 C W Day, rebuttal evidence para 3.3 and Figure 3 [Environment Court document 9A].
84 L Williams, rebuttal evidence para 3 [Environment Court document 8A].

3. The relevant objectives, policies and rules and the noise standard

3.1 The objectives, policies and rules in the district plan

[58] Three chapters[85] in the district plan are relevant to these proceedings. They are:

- Chapter 4 District-wide
- Chapter 5 Rural Areas
- Chapter 12 Special Zones

Chapter 4 (District-wide issues)

[59] Few of the district-wide objectives and policies are relevant, but some in sub-chapter 4.4 (recreation) are. The first recreation objective[86] provides for reserves and is not relevant. The second district-wide recreation objective relates to the environmental effects of recreation. It is[87] to undertake recreational activities or build and use facilities so as to avoid, remedy or mitigate "significant adverse effects" on the environment or on "the recreation opportunities" available in the district. The most relevant implementing policy is[88]:

> 2.1 To avoid, remedy or mitigate the adverse effects of commercial recreational activities on the natural character, peace and tranquillity of the District.

[60] The third recreation objective is[89] to use open space and recreational areas effectively when meeting the needs of the district's residents and visitors. The relevant implementing policies are[90]:

> 3.1 To recognise and avoid, remedy or mitigate conflicts between different types of recreational activities, whilst at the same time encouraging multiple use of public open space and recreational areas wherever possible and practicable.
>
> ...
>
> 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.

Chapter 5 (Rural Areas) of the district plan

[61] Outdoor recreational activities, such as skydiving, are contemplated within rural areas of the district (which include the Rural General Zone). The resource management issues[91] for rural areas include "Open Space and Recreation" and then refer back to the Chapter 4 (District Wide) objectives and policies relating to that issue. We have already quoted the relevant policies in that chapter. The general rural "Character and

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85 The divisions in district plan are called "sections" but to avoid confusion with the RMA's provisions, we will call them "chapters".

86 Objective (4.4.3) 1 [QLDP p 4-24].

87 Objective (4.4.3) 2 [QLDP p 4-25].

88 Objective (4.4.3) 2 [QLDP p 4-25].

89 Objective (4.4.3) 3 [QLDP p 4-26].

90 Objective (4.4.3) 3.1 to 3.3 [QLDP p 4-26].

91 Para 5.1, Chapter 5 Rural Areas [QLDP p 5-1].

Landscape"[92] and "Rural Amenity"[93] objectives in Chapter 5 have policies to "allow for" and "ensure" a range of activities including commercial recreation activities[94]. The other important and relevant objective with implementing policies for rural areas is to avoid, remedy or mitigate adverse effects of activities on rural amenity[95].

[62] A more specific objective — called a "purpose" — for the Rural General Zone states[96]:

> The purpose of the Rural General Zone is to manage activities so they can be carried out in a way that:
> - protects and enhances nature conservation and landscape values;
> - sustains the life supporting capacity of the soil and vegetation;
> - maintains acceptable living and working conditions and amenity for residents of and visitors to the Zone; and
> - ensures a wide range of outdoor recreational opportunities remain viable within the Zone.

The first three parts of the purpose are subsumed in the earlier statement of objectives and policies for all rural areas. The fourth bullet point is the only place where the maintenance of outdoor recreational opportunities is expressly identified as an objective of the zone.

[63] The environmental results anticipated in these areas are (relevantly)[97]:

> ...
> (viii) Avoid potential land uses and land management practices ... which create unacceptable or significant conflict with neighbouring land based activities, including adjoining urban areas.
> ...
> (xi) Retention of a range of recreation opportunities.

Chapter 12 (Resort Zones)

[64] We have described how the land adjacent to the airstrip is in a large-scale development called Jacks Point. It is part of the Jacks Point Zone — one of the resort zones which the district plan recognises as having potential to contribute to visitor, employment and economic development within the District. The Resort Zones provide for golf courses and a range of outdoor and indoor sporting and recreational activities. Hotel and other visitor accommodation along with support facilities and services are proposed for Jacks Point. The Resort Zones recognise the special amenities of the rural area in which the development is located and provides for the ongoing implementation of the activities of the resorts.

92 Objective (5.2) 1 [QLDP p 5-2].
93 Objective (5.2) 3 [QLDP p 5-4].
94 e.g. Assessment Matter xvi [QLDP p 5-36].
95 Objective (5.2) 3 [QLDP pp 5-4 and 5-5].
96 Para 5.3.1 Zone Purposes [QLDP p 5-9].
97 Para 5.2.1 [QLDP p 5-8].

[65] The objective and relevant implementing policies for the Jacks Point Zone are:

> **Objective 3 – Jacks Point Resort Zone**[98]
>
> To enable development of an integrated community, incorporating residential activities, visitor accommodation, small-scale commercial activities and outdoor recreation — with appropriate regard for landscape and visual amenity values, servicing and public access issues.
>
> **Policies**
>
> ...
>
> 3.4 To require development to be located in accordance with a Structure Plan to ensure the compatibility of activities and to mitigate the impact on neighbouring activities, the road network and landscape values.
>
> 3.5 To control the take-off and landing of aircraft within the zone.
>
> ...
>
> 3.9 To ensure that development within the sensitive areas of the Zone results in a net environmental gain.

[66] More detail as to what Jacks Point is about can be gained from the Zone Purposes at the start of the Resort Rules[99]. The relevant part of the purpose states[100]:

> The purpose of the Jacks Point Zone is to provide for residential and visitor accommodation in a high quality sustainable environment comprising of two villages, a variety of recreation opportunities and community benefits, including access to public open space and amenities.
>
> ...
>
> In addition, the zoning anticipates an 18-hole championship golf course, a luxury lodge, small-scale commercial activities, provision for educational and medical facilities, craft and winery activities, outdoor recreation and enhanced access to and enjoyment of Lake Wakatipu.

The rules for the Rural General Zone: Airports

[67] As stated earlier, resource consent for the airstrip as an 'airport' is needed for a discretionary activity. That is under Rule 5.3.3.3 which states (relevantly):

> **5.3.3.3 Discretionary Activities**
>
> The following shall be Discretionary Activities, provided that they are not listed as a Prohibited or Non-Complying Activity and they comply with all of the relevant Zone Standards; and they have been evaluated under the assessment criteria in rule 5.4.
>
> ...
>
> v Airports
>
> ...
>
> xi Any activity, which is not listed as a Prohibited or Non-Complying Activity and which complies with all the relevant Zone Standards, but does not comply with one or more of the

98 QLDP pp 12-5 and 12-6.
99 Para 12.2 [QLDP p 12-9].
100 Para 12.2.1 [QLDP p 12-9].

Site Standards, shall be a Discretionary Activity with the exercise of the Council's discretion being confined to the matter(s) specified in the standard(s) not complied with.

[68] The most relevant zone standard[101] states (relevantly):

> v Noise
>
> (a) Sound from non-residential activities measured in accordance with NZS 6801:2008 and assessed in accordance with NZS 6802:2008 shall not exceed the following noise limits at any point within the notional boundary of any residential unit, other than residential units on the same site as the activity.
>
> (i) Daytime (0800 to 2200 hours) 50 dB L_{Aeq} (15 min)
>
> ...
>
> (b) Sound from non-residential activities which is received in another zone shall comply with the noise limits set in the zone standards for that zone.
>
> ...
>
> (d) The noise limits in (a) shall not apply to sound associated with airports .... Sound from these sources shall be assessed in accordance and comply with the relevant New Zealand Standard, either NZS 6805:1992, or NZS 6808:1998. For the avoidance of doubt the reference to airports in this clause does not include helipads other than helipads located within any land designated for Aerodrome Purposes in this Plan.

In effect the district plan rules for the Rural Areas set[102] maximum noise levels of 50 dB $L_{Acq(15min)}$ during daytime, but they exclude noise associated with an airport. Instead assessment of airport noise is to be in accordance with NZS 6805:1992[103] and the airport noise levels are to comply with the standard. Sub-paragraph (b) of that rule provides that sound from the airport which is received at Jacks Point must comply with the noise limits set in the zone standards for the Jacks Point zone.

[69] Mr Bartlett submitted in respect of the rule and the standard and their application[104]:

> 59. The District Plan identifies the noise standard that is to be applied. The application seeks no departure from that standard. To the extent that NZS6805 contains provision for flexibility, as has been described in the evidence, Mr Day has proposed that the flexibility be applied in a way that restricts the applicant.
>
> 60. In the absence of any means of avoiding the District Plan rule which sets no standards for Open Space, Mr Brabant seeks to persuade the Court that a separate amenity issue arises within which the Court may again consider the noise issue, and potentially impose a noise standard unfettered by the provisions of the District Plan.
>
> 61. Noise is a component of amenity. The District Plan cannot be read in a way that enables submitters to have two bites — one on the basis that there is a rule and another on the basis that there is not a rule.
>
> 62. NZS6805 applies a "bucket of noise" approach. The District Plan adopts NZS6805 which does not treat flight frequency as a separate issue for assessment.

101 Rule 5.3.5.2v [QLDP pp 5-20 and 5-21].
102 Rule 5.3.5.2 v (a) [QLDP pp 5-20 and 5-21].
103 Rule 5.3.5.2 v (d) [QLDP p 5-21].
104 Skydive, Closing submissions paras 59-64 [Environment Court document 25].

63. If the District Plan or the framers of the Jack's Point zone had wanted to establish special noise standards to apply to outdoor spaces for that part of the district alone, they could have done so.

64. It would be inappropriate for the Court in the context of a resource consent application to invent an outdoor noise standard in a way that created anomalies with other parts of the district.

[70] Those submissions are incorrect on the key assertions as a matter of simple interpretation of the rules. An airport, as defined in the district plan, is one of the situations which the district plan states is a discretionary activity. The provisos at the start of rule 5.3.3.3 — that is all the words after "... provided that ..." — add to the tests for the activities identified as discretionary.

[71] In other words every activity listed as a discretionary activity must also meet three sets of conditions as set out in the introductory words of rule 5.3.3. A listed activity is a discretionary activity if:

(1) it is not listed as a prohibited or non-complying activity elsewhere in the district plan; and
(2) it complies with all the relevant zone standards; and
(3) it has been evaluated under the assessment criteria in rule 5.4.

[72] In relation to the three preconditions for discretionary status we record first that airports are not listed as a prohibited or non-complying activity.

[73] If Mr Bartlett's submission was correct then the council's discretion would be limited to the matters in the Zone Standard. But if that was the case then the structure of rule 5.3.3.3 and especially sub-rule **xi** (quoted above) show that airports would not have been listed separately in sub-rule **v.** Instead sub-rule **xi** would have applied to airports in addition to commercial recreation activities.

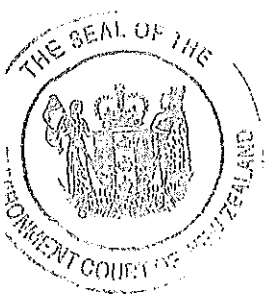
[74] There are two relevant sets of assessment matters for the district's rural areas. They are headed respectively[105]:

xv **Discretionary Activity – Commercial Recreational Activities (other than on the Surface of Lakes and Rivers)**

and

xvii Discretionary Activity - Airports

Their requirements are considered in the next part of this decision where we consider the actual and potential effects of the proposed activity. However, we hold that the discretion is not confined to assessment under those provisions. Rather the assessment



[105] *Queenstown Lakes District Council – District Plan* pp 5-35 and 5-36.

informs the discretion, and compliance with the standard is a bottom line. Depending on the circumstances stronger conditions may be imposed or consent refused.

[75] We hold that because the operation of the airstrip is a fully discretionary activity and not a restricted discretionary activity, any actual or potential adverse effect, may be considered in the overall weighing exercise under section 104 RMA. In particular the effects of the airport are not confined to noise effects (to be assessed primarily under NZS 6805) but include number of flights and their effects on persons underneath (or nearly so) the flight paths.

The rules for the Jacks Point Zone

[76] Similar rules apply to the Jacks Point Zone[106], but curiously in this case there is no requirement to comply with the standard. It refers only to the assessment of airport noise. So, on the face of it, the planes' compliance with the airport noise standard in the Jacks Point Zone is not required. That leaves an absence of specific airport noise standards in the Jacks Point Zone.

The rules for rural areas — commercial activities

[77] The path in the district plan directing that a resource consent is also required for the Skydive operations as a restricted discretionary activity is more tortuous because the Rural Areas rules do not have a separate list of restricted discretionary activities. The relevant rule is simply headed[107] "Discretionary Activities" as quoted above. We have already referred to sub-rule (v) which makes "Airports" a discretionary activity[108]. Rule 5.3.3.3 xi[109] makes the commercial recreation a limited discretionary activity.

[78] Turning to the Site Standards we find (relevantly)[110]:

> **ix Commercial Recreation Activities (other than on the surface of lakes and rivers)**
>
> No commercial recreational activities shall be undertaken except where:
>
> (a) The recreation activity is outdoors;
>
> (b) The scale of the recreation activity is limited to five people in any one group.
>
> ...

[79] Since the matter not being complied with in the Skydive operation is that more than five people (in fact up to 19) may be in any one group, it appears the council's discretion (and ours in this direct referral) in respect of the limited discretionary activity is limited[111] to the effects of the extra people in the groups.

---

106 Rule 12.2.5.2 ix (a) and (e).
107 QLDC Plan p 5-12.
108 QLDC Plan p 5-13.
109 QLDC Plan p 5-13.
110 Rule 5.3.5.1 [QLDP p 5-18].
111 Rule 5.3.3.3 xi [QLDP p 5-13].

3.2 The New Zealand Standard on airport noise management

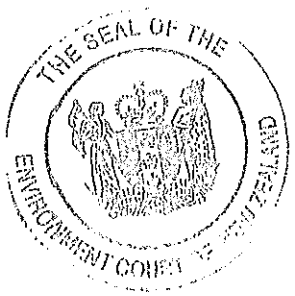
[80] We have noted that the New Zealand Standard for airport noise management and land use planning (NZS 6805:1992) needs to be complied with according to the district plan rules. NZS 6805 states:

> **PART 1 AIRPORT NOISE MANAGEMENT USING THE AIRNOISE BOUNDARY CONCEPT**
>
> **1.1 Scope**
>
> **1.1.1**
> This Standard is for use by territorial or regional government for the control of airport noise. It establishes maximum acceptable levels of aircraft noise exposure around airports for the protection of community health and amenity values whilst recognizing the need to operate an airport efficiently. The Standard provides a guide for territorial authorities wishing to include appropriate land use controls in their district plans, as provided for in the Resource Management Act 1991. In this Standard the words "Airport" and "Aerodrome" are synonymous.
>
> **1.1.2**
> The Standard uses the Airnoise Boundary concept as a mechanism for local authorities to establish compatible land use planning and to set limits for the management of aircraft noise at airports where noise control measures are needed to protect community health and amenity values.
>
> **1.1.3**
> The approach advocated is a recommendation for the implementation of practical land use planning controls and airport management techniques to promote and conserve the health of people living and working near airports, without unduly restricting the operation of airports.
>
> **1.1.4**
> The Standard provides the minimum requirement needed to protect people from the adverse effects of airport noise. A local authority may determine that a higher level of protection is required in a particular locality, either through use of the Airnoise Boundary concept or any other control mechanism [underlining added].
> ...

The wording in paragraph 1.1.4 of the standard reinforces that compliance with it is a bottom line for consent. As Mr Day acknowledged in cross-examination[112] the standard does not impose "... a reasonable level but a minimum requirement". In certain contexts there may be other factors relating to noise which should be weighed by the local authority (here the court) and stricter noise controls then imposed. A key issue in this case is whether the minimum is adequate in the circumstances.

[81] NZS 6805 continues:

> **1.1.5**
> The main features of the recommended method of airport noise management are:
>
> (a) The Standard establishes maximum levels of aircraft noise exposure at an Airnoise Boundary, given as a 24 hour daily sound exposure averaged over a three month period (or such other period as is agreed).



112 Transcript p 138.

(b) The Standard establishes a second, and outer, control boundary for the protection of amenity values, and prescribes the maximum sound exposure from aircraft noise at this boundary.

(c) In establishing the Airnoise Boundary, the Standard requires consideration of individual maximum noise levels from aircraft during any proposed night-time operations.

(d) Noise control measures are necessary when the exposure of the residential community, determined according to Part 2 of this Standard, exceeds 100 pasques (or an L_{dn} of 65), and may be necessary when the exposure exceeds 10 pasques (or an L_{dn} of 55).

(e) The Standard prescribes compatible land uses for those areas in the immediate vicinity of the airport. Compatible land uses at different levels of sound exposure are specified in table 1 and table 2.

1.1.6
The measurement of sound around an airport for use in setting the Airnoise Boundary and monitoring to ensure that the limits are not exceeded, is detailed in Part 2 of this Standard.
...

In this case the district plan contains no Airnoise Boundary or Outer Control Boundary in respect of the airstrip.

[82] The standard continues with some tables giving recommended control measures. These are explained as follows:

1.8 Explanation of tables

C1.8.1
All considerations of annoyance, health and welfare with respect to noise are based on the long term integrated adverse responses of people. There is considerable weight of evidence that a person's annoyance reaction depends on the average daily sound exposure received. The short term annoyance reaction to individual noise events is not explicitly considered since only the accumulated effects of repeated annoyance can lead to adverse environmental effects on public health and welfare. Thus in all aircraft noise considerations the noise exposure is based on an average day over an extended period of time usually a yearly or seasonal average. [Underlining added].
...

1.8.2
Table 1 enumerates the recommended criteria for land use planning within the airnoise boundary i.e. 24 hour average night-weighted sound exposure in excess of 100 Pa^2s (65 L_{dn}).

1.8.3
Table 2 enumerates the recommended criteria for land use planning within the outer control boundary i.e. 24 hour average night-weighted sound exposure in excess of 10 Pa^2s.

[83] The most relevant table in the NZ Standard is Table 2. It states:

Table 2
RECOMMENDED NOISE CONTROL CRITERIA FOR LAND USE PLANNING INSIDE THE OUTER CONTROL BOUNDARY BUT OUTSIDE THE AIR NOISE BOUNDARY

Sound exposure Pa^2s (1)	Recommended control measures	Day/night level L_{dn} (2)
>10	New residential, schools, hospitals or other noise sensitive uses should be prohibited unless a district plan permits such uses, subject to a requirement to incorporate appropriate acoustic insulation to ensure a satisfactory internal noise environment. Alterations or additions to existing residences or other noise sensitive uses should be fitted with appropriate acoustic insulation and encouragement should be given to ensure a satisfactory internal environment throughout the rest of the building.	>55

NOTE -

(1) Night-weighted sound exposure in pascal-squared-seconds of "pasques".

(2) Day/night level (L_{dn}) values given are approximate for comparison purposes only and do not form the base for the table.

[84] In summary, the Airport Noise Standard NZS 6805:1992 *is concerned with land use planning and the management of aircraft noise in the vicinity of an airport, or aerodrome, for the protection of community health and amenity values*[113]. It establishes a maximum level of aircraft noise exposure of 65 dB L_{dn} at an Airnoise Boundary. The noise level is expressed as a 24 hour daily sound exposure averaged over a three month period (or such other period as agreed). It also establishes a second, and outer, control boundary for the protection of amenity values and prescribes the maximum sound exposure from aircraft at this boundary of 55 dB L_{dn}. The Standard advises local authorities to show the areas enclosed by these boundaries on the district plan. The consequences of this planning process are that the airport operator is required to manage its operations so that aircraft noise at the boundaries is not exceeded, the aircraft operator is required to keep aircraft noise emissions as low as possible and the local authority should prohibit new residential, schools, hospitals or other noise sensitive uses within the 55 dB L_{dn} noise contour or require acoustic insulation to ensure a satisfactory internal environment.

[85] However, it is important to note first that neither Skydive nor the council has given any indication that they intend to start the full process described in NZS 6805, i.e. to establish an Airnoise Boundary and an Outer Control Boundary for the airstrip on Remarkables Station. Second, on its face Table 2 does not set a standard or noise control. It is, in the words of Mr Day the acoustic expert for Skydive, " ...a land use planning guideline"[114].

113 Foreword NZS 6805:1992.
114 Transcript p 138 lines 4 and 5.

4. Predicting the effects on the environment

4.1 Introducing the assessment

[86] For the purposes of assessing the potential effects of the proposal on the environment, Mr Bartlett submitted we should compare those effects with those of the current Skydive operations. He submitted that the latter was the maximum allowable under the resource consent (i.e. the effects from 35 flights) even if that is very rarely achieved in practice. In contrast, Mr Brabant submitted we should compare the average predicted effects for the exercise of the consent Skydive is seeking, with the effects of the average number of flights at present. We consider the latter is incorrect: The "environment" in section 104(1)(c) of the RMA — and in part 2 of the Act — usually includes the reasonably likely future environment: see the Court of Appeal's decision in *Far North District Council v Te Runanga a Iwi o Ngati Kahu*[115]. In this case that includes the probability that Skydive will attain a higher average number of flights per day.

[87] However, while initially attracted to Mr Bartlett's idea, on reflection we consider Mr Bartlett was not wholly correct either. Even if demand increases throughout the year so that the number of potential skydivers on any given day is not a limiting factor, the weather and practical problems certainly are[116]. Accordingly we think it is fanciful to suggest that Skydive might sustain maximum numbers of flights for 265 days per year at more than 75% (i.e. 26 flights per day) of the theoretical maximum. On average over 100 days per year are not flown at all and in the year from 1 November 2011 to 31 October 2012 the maximum (actually 34 flights) was only achieved twice, on 26 December 2011 and 9 January 2012[117]. So 26 flights per day (52 movements) is the practical maximum average in the existing environment in 7 day period when flying occurs. We suspect that is being generous since Skydive's own proposed maximum 7 day average is 50 which is only 67% of the daily maximum it proposes.

[88] To describe the potential for a maximum of 26 flights per day ("the practical maximum average") as the existing environment could potentially have caused problems because none of the experts used that figure. Fortunately they did use figures either side of it (average flights of 16-20 per day existing / 50 flights per day proposed; and maximum flights of 35 per day existing / 75 proposed).

[89] The practical maximum average we have identified tends to increase the total noise in the "existing" environment. However, there is another factor which must be taken into account which tends to decrease it. The environment must be assessed on the basis that all obligations imposed by resource consents, district or other plans, and the RMA itself are being fully complied with. That is an important point because, as we

115 *Far North District Council v Te Runanga a Iwi o Ngati Kahu* [2013] NZCA 221 at [80].
116 L Williams, evidence-in-chief para 3 [Environment Court document 8].
117 Source Exhibit 8.1.

have pointed out, the RMA imposes an extra duty on noise emitters. Under section 16 of the RMA Skydive must "... adopt the best practicable option to ensure that the emission of noise does not exceed a reasonable level". The moves from Cessna 185s to Supervans and the alteration in holding position to reduce the effect of idling noise from the Supervans can (and should) be seen as easy and thus appropriate steps to comply with the section 16 duty.

[90] Skydive's existing operations (as measured) showed little effort to comply with section 16. The existing operations had not (before the hearing) altered the idling position to reduce noise. Nor had Skydive retained the old take-off flight path with its right-hand turn (to the north) to reduce noise affecting people on the golf course or on the cycling and walking tracks on the rise, or systematically used an alternative landing flight path over Homestead Bay (when conditions allow). Those are simple relatively inexpensive steps that could have been taken which would reduce the existing sound exposure levels. To that (unquantified) extent the noise measurements of the existing environment are exaggerated. (We accept that Skydive appears to have since altered its practices for the better).

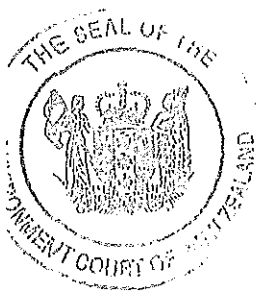
[91] As recorded, there are two relevant sets of assessment criteria in the district plan. The court may in its discretion disregard an adverse effect if the district plan permits an activity with that effect[118] but that is not relevant here.

The commercial recreation assessment matters

[92] The proposal is largely positive when assessed under the commercial recreation criteria. It will not "... result in levels of traffic or pedestrian activity which are incompatible with the character of the surrounding rural area"[119]. Whether there would be any adverse effects of the proposed activity in terms of noise and vibration incompatible with the levels acceptable in a low-density rural environment is a question we consider below.

[93] Given the location of the landing pad at the eastern end of the airstrip we consider it will not result in levels of traffic congestion[120] or produce levels of traffic safety which are inconsistent with the classification of the adjoining State Highway 6, compromise pedestrian safety[121] in the vicinity of the activity, or cause extra litter and waste[122]. No new buildings are proposed, so the question of their compatibility[123] with the character of the local environment does not arise. We were not referred to any relevant Code of Practice[124] so the extent to which the proposal might have been audited and certified is irrelevant. There was no evidence that the activity would have adverse

118 Section 104 (2) RMA.
119 Assessment criteria 5.4.2.3 (xiv)(a) [QLDP p 5-34].
120 Assessment matter 5.4.2.3 (xiv)(b)(iii) [QLDP p 5-35].
121 Assessment matter 5.4.2.3 (xiv)(b)(iv) [QLDP p 5-35].
122 Assessment matter 5.4.2.3 (xiv)(b)(v) [QLDP p 5-35].
123 Assessment matter(s) 5.4.2.3 (xiv)(c) and (e) [QLDP p 5-35].
124 Assessment matter 5.4.2.3 (xiv)(f) [QLDP p 5-35].



effects on the quality of ground and/or surface waters[125] or on the life-supporting capacity of soils[126]. There was no suggestion that the use of the airstrip for the recreational activity will compromise levels of public safety[127], or cause a visual distraction to drivers on arterial routes[128], or cause adverse effects on nature conservation values[129].

[94] There is no evidence of cumulative effects[130] from the activity in conjunction with other activities in the vicinity apart from the (important) fact that the proposal would add to the noise from the existing Skydive operations.

[95] The extent to which the nature and character of the activity would be compatible[131] with the character of the surrounding environment raises questions in relation to the Jacks Point Zone. However, we find that the proposed activity will not result in a loss of privacy or sense of security for residents within the rural environment[132]. Similarly there will be minimal loss of privacy or reduction in any sense of remoteness or isolation[133]. The extent to which it may result in a loss of amenity values is a matter we consider below.

[96] An important assessment matter is[134]:

> The extent to which the recreational activity will adversely affect the range of recreational opportunities available in the District or the quality of experience of the people partaking of those opportunities.

This is a key issue and it is repeated in the airport assessment matters we consider next.

Assessment matters for "airport" noise

[97] A more focused set of assessment matters relates to "airport" noise[135] (bearing in mind that the airstrip falls within the definition of an "airport" under the district plan). Relevantly it requires consideration of:

> (a) The extent to which noise from aircraft is/will:
>
> (i) [be] compatible with the character of the surrounding area.
>
> (ii) adversely affect the pleasant use and enjoyment of the surrounding environment by residents and visitors.

125 Assessment matter 5.4.2.3 (xiv)(g) [QLDP p 5-35].
126 Assessment matter 5.4.2.3 (xiv)(h) [QLDP p 5-35].
127 Assessment matter 5.4.2.3 (xiv)(k) [QLDP p 5-35].
128 Assessment matter 5.4.2.3 (xiv)(m) [QLDP p 5-35].
129 Assessment matter 5.4.2.3 (xiv)(l) [QLDP p 5-35].
130 Assessment matter 5.4.2.3 (xiv)(b)(vi) [QLDP p 5-35].
131 Assessment matter 5.4.2.3 (xiv)(d) [QLDP p 5-35].
132 Assessment matter 5.4.2.3 (xiv)(i) [QLDP p 5-35].
133 Assessment matter 5.4.2.3 (xiv)(b)(ii) [QLDP p 5-35].
134 Assessment matter 5.4.2.3 (xiv)(j) [QLDP p 5-35].
135 Assessment matter 5.4.2.3 (xiv) [QLDP p 5-36].

(iii) adversely affect the quality of the experience of people partaking in recreational and other activities.

(b) The cumulative effect of a dispersed number of airports.

(c) Convenience to and efficient operation of existing airports.

(d) The visual effect of airport activities.

(e) The frequency and type of aircraft activities.

(f) Assessment of helicopter noise pursuant to NZS 6807:1994 ... .

As for (a)(i), we consider that noise from aircraft is generally compatible with the character of the surrounding area given that aircraft taking off and landing on the Queenstown Airport regularly fly over the area (at several thousand feet). We consider (a)(ii) to (e) in the remainder of this decision. Assessment factor (f) is irrelevant as helicopters are not proposed to be used.

4.2 Convenience to and efficient operation of existing airports

[98] The airstrip (as an airport) does already exist, and is very conveniently sited inside the circuits for the larger (commercial) Queenstown Airport.

[99] We received expert evidence for the applicant[136] from Captain Sowerby and for JPROA[137] from Mr J M Fogden in relation to air safety. We accept the evidence of both witnesses, that the proposed activity can be undertaken without significant adverse safety effects. Indeed Captain Sowerby was of the (unchallenged) opinion that allowing Skydive to operate more flights from the airstrip would improve overall safety because it would enable Skydive to move flights (and drops) away from the much busier Queenstown Airport. He wrote[138]:

> The current requirement for [Skydive] to conduct overflow operations from Queenstown International Airport adds complexity to the operation, increased workload for ATC and exposure to the mixture of traffic operating to and from Queenstown International Airport.
>
> The requirement that overflow operations depart/arrive from Queenstown International Airport is driven solely by the current 35 daily flights limitation.

Captain Sowerby concluded[139]:

> In a practical sense, safety is enhanced by the circumstance that all flights, up to the limit of thirty five, remain within close proximity to sole use Jardines Airport, do not transit any populated area and remain clear of the Queenstown International Airport traffic circuit.

[100] We also record that the Queenstown Airport Corporation ("QAC") lodged a submission raising air safety issues, but did not join the proceedings as a section 274

136 L Sowerby, evidence-in-chief para 8.6 [Environment Court document 6].
137 J M Fogden, evidence-in-chief [Environment Court document 17].
138 L Sowerby, evidence-in-chief paras 7.7 and 7.8 [Environment Court document 6].
139 L Sowerby, evidence-in-chief para 5.12 [Environment Court document 6].

party. Captain Sowerby's evidence (and its attachments) state that a condition of consent has been agreed upon and that based upon that condition being included in any consent, QAC will "withdraw" its submission. The condition reads:

> At the completion of the first twelve (12) months of the operation authorised by this consent, Skydive Queenstown shall undertake a review of airspace safety issues arising from these operations. The review shall be conducted in such a way as to require Skydive Queenstown to consult with the QC, Airways NZ, a representative of the Scheduled Airline Operators that utilize Queenstown Airport and the CAA with respect to airspace safety matters. If as a result of the consultation and review, adverse effects on airspace safety are demonstrated to have occurred from the consented operations, then Skydive Queenstown shall be required to immediately adapt its operations to avoid such effects in the future. The results of this review and any measures taken by Skydive Queenstown to adapt its operations shall be reported to the parties listed above within one (1) month of the completion of the review.

4.3 Would the consent impose unreasonable noise on residents?

[101] First we find that the noise from the skydivers (parachutists) is unlikely to have serious adverse effects on the amenities of any of the parties. Nor are they likely to constitute an unreasonable invasion of privacy. The first important effects issue this proceeding turns, rather, on the noise from the aircraft as they takeoff and land.

[102] For Skydive Mr Garland's opinion on the effects of aircraft was that[140]:

> The actual take-offs and landings will have no adverse effect on privacy, amenity values or sense of security for residents with the rural environment. While residents within the Jacks Point urban environment have expressed concerns, these are related to the presence of the drop zone which would remain if aircraft were to operate from another aerodrome.

[103] Focusing on the assessment criteria relating to airport noise[141] he was a little more expansive[142]:

> It is important to note that the extent of noise from the operation consented to in 1997 has been modelled and that it is not proposed to exceed that level of noise exposure. As I understand it, the applicant is happy to be restricted to noise exposure levels rather less than that which would be possible under that consent. When the original consent was granted, no consideration was given to types of aircraft, only to the number of movements. Currently the company is free to use whatever type of aircraft it wishes. That is the level of adverse effects that Jacks Point residents have come to in later years — no noise control, only control of aircraft movements. In my experience, having lived in Wakatipu and largely because of recreational activity, the area is generally noisier than I have experienced in a suburban city area. This is part and parcel of what draws people to the District. Nonetheless, there should be protection from excessive noise and this is what the applicant is proposing while allowing its own established operation to evolve and prosper like any other commercial recreational activity.

Mr Garland admitted[143] that he did not consider the frequency and type of aircraft activities.

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140 M J G Garland, evidence-in-chief para 20(i) referring to commercial recreation assessment matter (i) [Environment Court document 13].

141 Rule 5.4.3.2 xvi [QLDP p 5-36].

142 M J G Garland, evidence-in-chief para 21 [Environment Court document 13].

143 Transcript p 390.

[104] Mr Issott, Mr Geddes and Mr S Dent, a planner for the Jacks Point Interests addressed the effects of noise on the surrounding environment in their evidence. Their evidence related to their living environments and their predicted loss of amenity due to the noise from the aircraft, parachutes and parachutists. Mr Issott and Mr Geddes each expressed their opinion that the current operation is already detrimental to amenity in terms of noise effects and that any increase in the number of flights would cause a further loss of amenity. We consider that their opinions (for the little weight we can give them, given they are parties) are not significantly further weakened by their concessions. Mr Issott and Mr Geddes each conceded that they understood fully the current resource consent held by Skydive Queenstown when they each chose to purchase their dwellings; and that they accepted the effects resulting from the exercise of that consent.

The experts' calculations

[105] Further consultation between the noise experts during the hearing resulted in an agreed table of calculated aircraft noise levels. The aircraft operating was the Cessna Supervan 900 and four levels of operation were modelled for 35 flights per day, 50 flights per day, 75 flights per day and 50 flights per day with idling noise mitigation. Because the Cessna Supervan 900 has a maximum noise signature when operating on the ground that is oriented in a 60 degree cone ahead of the aircraft, mitigation of the significant idling noise on the residential locations can be achieved very simply by facing the aircraft away from the residences. This is referred to as idling mitigation.

[106] The resulting table is reproduced below.

Flights/day	35	50	75	50*
[The Village/ Residential]	44 dB L_{dn} 48 dB L_{eq15}**	46 B L_{dn}	47 dB L_{dn}	46 dB L_{dn} 51 dB L_{eq15}***
[The Lodge]	52 dB L_{dn} 56 dB L_{eq15}**	53 dB L_{dn}	55 dB L_{dn}	53 dB L_{dn} 59 dB L_{eq15}***
[39 Hackett Road]	58 dB L_{dn} 62 dB L_{eq15}**	54 dB L_{dn}*	56 dB L_{dn}*	52 dB L_{dn} 59 dB $L_{eq\,15}$***

* denotes noise received with idling noise mitigation.
** denotes one flight each 15 minutes.
*** denotes two flights each 15 minutes.

[107] In terms of the sound exposure level of 55 dB L_{dn} applied from the standard, NZS 6805:1992, only two cases would cause noise levels at 39 Hackett Road to exceed that level; viz. 35 flights per day with no mitigation of ground idling noise and 75 flights

per day with ground idling noise mitigation. Calculated noise levels at the other locations fall within the limit.

[108] A further column was provided by Mr Day in his evidence for the noise received at The Village/Residential and at The Lodge from the operation of the piston engine aircraft that had been used in the past. That data has not been included in the table above; first, because now only the two Cessna Supervan 900 aircraft (with a turbine engine) are used, and secondly, because the evidence showed no attempts by Skydive to avoid unreasonable noise.

[109] The table also includes an assessment of the aircraft noise, in $L_{eq15min}$ terms, received at the three sensitive sites for 35 flights per day and for 50 flights per day with idling noise mitigation. These measurement units relate to the provisions in the District plan. Those figures show $L_{eq15min}$ units are between 4 and 7 dB higher than the L_{dn} units but, because of various averaging and other adjustment procedures that the acoustic experts say apply, Dr Trevathan considered that the increase would normally be about 2 or 3 dB[144].

[110] At the Village/Residential location, if the aircraft noise was to be compared to the general noise limits of the District plan, flight numbers up to about 50 per day would be acceptable. But on the same basis aircraft noise levels at The Lodge and at Hackett Road would not be acceptable, even at the current maximum numbers of flights per day of 35.

[111] The experts agreed that "55 dB L_{dn} is an appropriate criterion for aircraft noise from this skydiving operation to control noise effects on residential and visitor accommodation activities"[145]. The noise sensitive areas to which this criterion should apply were agreed to be lots on the south side of Jacks Point Rise and Hackett Road, Jacks Point Village, the Lodge site and The Preserve[146]. It is important to note that agreement relates to controlling noise effects on residential and visitor accommodation activities not on other activities (e.g. recreation).

[112] Other items where agreement was reached related to:

- aircraft idling noise being included within the 55 dB L_{dn} criterion;
- the effectiveness of a noise barrier on aircraft idling noise;
- that up to 50 flights per day could comply with the 55 dB L_{dn} criterion with "Noise Abatement Idling";
- a flight track to the south should be used wherever practicable;
- an assumption that only aircraft activity authorised by this consent will use the airstrip; and

144 Transcript p 327 lines 6-8.
145 Joint Statement Acoustic Experts para 5.
146 Annexure A to Joint Statement Acoustic Experts.

- proposed conditions with the exception of those topics where agreement had not been reached.

[113] Three planners were called in the proceeding — Mr M J G Garland for Skydive, Ms W Baker for the council and Mr Dent. In their joint statement[147] they agreed that a "maximum level of 55 dBA L_{dn} at all residential and visitor accommodation locations is an appropriate level". They also agreed that visual effects of the proposal on the landscape would be "minimal"[148], and that "... there are other non-acoustic matters to consider in the context of th[e] application"[149] — without identifying what those are.

[114] The three planners also agreed that a maximum noise level of 55 dBA L_{dn} at all residential and visitor accommodation locations is appropriate. However, they disagreed on how that is to be measured and in particular noise averaging. They wrote[150]:

> We have each relied on expert evidence in regards to the acoustic effects and each based our evidence on the acoustic evidence as provided by those experts engaged by the respective parties. This has resulted in us reaching the same conclusions (and disagreement) in relation to whether or not it is appropriate to include the ability to average the noise over a 7 day period. Specifically, our disagreement with regards to including averaging in the overall noise level is appropriately and adequately summarized by the acoustic experts in paragraphs 14 – 17 of their Joint Statement dated 17 April 2013. This means Ms Baker and Mr Garland are of the view that averaging is appropriate, whereas Mr Dent does not consider it appropriate.

Averaging

[115] In fact for the experts to say they had reached agreement about the maximum "noise bucket" which could be thrown onto residential and visitor accommodation was slightly ingenuous. The figure of 55 dB L_{dn} is a calculated figure, and it is reliant (inter alia) on averaging over a chosen period of time. What period of time is chosen is critical to the calculation.

[116] We accept that it is standard practice for the measurement of sound pressure levels to be averaged over time, (except in the case of maximum levels). For example, the district plan rule for non-airport noise relates to the average over 15 minutes and is a common criterion. The airport noise standard uses the average over a 24 hour period with a penalty added during the night hours. In this case averaging over a 24 hour period when operations are confined to daytime appears to unduly diminish the reported sound level. We were told that if the sound pressure levels were averaged over only the daytime period the levels would be 3–4 dB higher[151]. The airport noise standard NZS 6805:1992 suggests a three month averaging period to determine the location of the airnoise boundaries for inclusion in the district plan. It recognises other averaging periods can be used.

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147 Joint Statement of Planning Experts para 8 [Environment Court document 13B].
148 Joint Statement of Planning Experts para 10 [Environment Court document 13B].
149 Joint Statement of Planning Experts para 9 [Environment Court document 13B].
150 Joint Statement of Planning Experts para 13 [Environment Court document 13B].
151 Transcript p 326 line 30.

[117] NZS 6805 suggests[152] a "yearly or seasonal average". However, the effect of using averages over one year, in this case, would enable Skydive to run large numbers of flights (because down days over winter come into the calculation) so all three experts agreed that was inappropriate.

[118] The averaging of the actual sound levels received at the noise sensitive locations proposed by the applicant and Mr Day was based upon averaging the sound levels measured or deduced over a consecutive seven day period. The idea is that if two of the seven days experienced weather that prevented skydiving then a higher level of activity on the remaining fine five days would be permitted with aircraft noise levels exceeding the criterion on the busier days but, when averaged over the seven days, would not exceed the criterion. Dr Chiles agreed that the seven day averaging of the sound levels would adequately protect residential amenity. However he also considered a cap on total flights in any one day of 50% more than the average would be appropriate, i.e. 75. Dr Trevathan disagreed. In his opinion the averaging is likely to result in the maximum noise exposure occurring on the "best" weather days when residents also wish to enjoy the outdoors.

[119] Dr Trevathan's comment on Dr Chiles' evidence was[153]:

> 2.2 The weather dependence of the operation in conjunction with a 7 day average noise limit creates two issues:
>
> 1. noise on any given day could be very high if there were a number of non-flying days in a week, and
>
> 2. even if there are only 1 or 2 non-flying days in a week, the 7 day average will be skewed by these 'outliers' in the data (the non-flying days) allowing high noise levels on the remaining days.
>
> Only the first of these issues is addressed by the peak day L_{dn} noise limit which Dr Chiles has proposed.
>
> 2.3 The second of these issues has not been addressed. This is a common problem in statistics where one extreme value in a small sample can unduly influence the average. Some solutions are to exclude any outliers, or to consider the 'median' value rather than the mean. This is not an issue for more typical airfields which use a 3 month averaging period so the average is not significantly affected by one-off extreme days, and the 'extreme' days may be more infrequent and moderate.
>
> 2.4 The issue in terms of effects and the 55 dB L_{dn} limit is that the high flying intensity days will correspond with the best weather, whereas on the low or no flying days people are less likely to be outdoors, have doors or windows open and noise may be generated by wind and rain. Some of the L_{dn} levels reported for individual days may also have actually arisen from a part day of very high intensity activity, interrupted by poor weather — which creates the same issue on a smaller scale (in that case the L_{dn} may not appropriately account for the degree of effect on that individual day).

152 NZS 6805 para C 1.8.1.

153 J W Trevathan, evidence-in-reply paras 2.2 to 2.5 [Environment Court document 11A].

> 2.5 The basic problem is that the 'average' noise levels produced in this case will not correlate well with people's experience of the noise.
>
> ...

Numbers of flights

[120] One of the relevant assessment matters is "the frequency and type of aircraft activities"[154]. We note that this in itself suggests that the district plan is not simply concerned with the overall noise bucket but also with the wider effects experienced from takeoff and landing of aircraft. On this issue it will be recalled that we found at the beginning of this part of the decision that the existing environment is — allowing for future increased efficiency in the Skydive operation — 26 flights (52 movements) per day on the 265 days when, on average, parachuting is possible. In contrast the applicant seeks an average of 50 flights (100 movements) per day.

[121] The other topic on which agreement was not reached related to a "limit" on the number of flights per day. Dr Trevathan considered 50 flights should not be exceeded on any single day. Drs Trevathan and Chiles considered a limit on the number of flights daily is required to control amenity on the golf course and in the wider area. Mr Day considered the 55 dB L_{dn} criterion, including the 7 day averaging, is sufficient control of the aircraft noise levels permitted. He added that if a limit on the number of flights is imposed then there would need to be a procedure to change the limit if aircraft type and noise emission changes in the future. Mr Day wrote[155]:

> The proposal is based on the widely accepted principle that noise exposure and community response from aircraft noise is based on a combination of the noise level from individual aircraft movements and the total number of flights.

[122] However, Dr Trevathan considered the unique nature of the Skydive operation compared to a more conventional "airport", requires control over not only the received noise level but also over the number of flights[156]. He referred us to a Swedish study by Rylander and Bjorkman[157] which found that the time aircraft were overhead and the frequency of the events both affected the perception of people subject to the noise. That study is quite important because it suggests that the principle behind Skydive's application is incorrect.

[123] Dr Trevathan relied on the Rylander and Bjorkman study for a qualification to the principle stated by Mr Day. That study found that[158] "... for areas below the breakpoint, (i.e. 70 events per 24 hours) the number of events seems to be the crucial factor". Above that breakpoint the maximum noise level affected responses and below, the number of events was important. Seventy events correspond to 35 flights.

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154 Assessment matter 5.4.2.3 (xvi)(e) [QLDP p 5-36].

155 C W Day, evidence-in-chief para 3.6 [Environment Court document 9].

156 J W Trevathan, evidence-in-chief para 5.3 first bullet point [Environment Court document 11].

157 R Rylander and M Bjorkman "Annoyance by Aircraft Noise Around Small Airports" *Journal of Sound and Vibration* (1997) **205(4)**, 533-537.

158 R Rylander and M Bjorkman "*Annoyance by Aircraft Noise Around Small Airports*" op cit at 536.

[124] Mr Bartlett criticised Dr Trevathan's evidence in two ways. First he discussed[159] the Rylander and Bjorkman paper:

> 25. A discussion of the paper prepared by Rylander and Bjorkman concerned the proposition that notwithstanding compliance with an agreed or acceptable dB L_{dn} limit, the frequency of events required consideration as a separate issue.
>
> 26. Far from creating a difficulty for the applicant, the Rylander and Bjorkman paper supported a view that there was no significant difference in effect between 50 flights and 75 (100 and 150 events) where the authors had identified 70 events as the point at which the extent of annoyance flattened out. Coincidentally, 70 is precisely the number of events available in the presently consented environment (but not subject to the proposed noise mitigation practices that have been discussed in the context of the hearing) and which would be enforceable at any level of activity under the new consent.

We do not accept Mr Bartlett's analysis. First he relies on the Jacks Point environment as, in the future, involving 35 flights (70 movements per day) being the maximum permissible under the 1997 consent. While he is correct — as we have found — in allowing for some future improved performance by Skydive, he has overstated the position.

[125] Second our understanding of the studies on aircraft noise before Rylander and Bjorkman and referred to by them[160] is that the breakpoint of 70 movements per 24 hours was for airports with that much traffic almost every day. Here we had evidence from Mr Williams for Skydive that on average it loses 100 days per year from the weather, i.e. there are no flights of all. Adjusting for that reduces the actual effects of flights on the environment to[161] 51 movements per day on average. In other words, Mr Bartlett has not allowed for the 100 days (on average) in each year on which no parachuting can take place, or the other days on which 100% efficiency cannot be attained through no fault of Skydive's.

[126] Third, Mr Bartlett wrote that[162]:

> Under cross-examination by Mr Winchester, Dr Trevathan[163] confirmed his understanding that NZS6805 was the standard that the Queenstown Lakes District Plan required be used for assessing noise from airports.
>
> He went on to confirm that there were no other suitable standards available in New Zealand for assessing aircraft noise and that in terms of NZS6805 the recreational and open space areas were non-residential uses. When asked by Mr Winchester if recreational facilities and walking tracks were noise sensitive for the purpose of the standard, he avoided the question by repeating that the "focus" of the standard was on residential and similar activities.

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159 Applicant's summary of issues paras 25 and 26 [Environment Court document 21].

160 R Rylander and M Bjorkman "Annoyance by Aircraft Noise Around Small Airports" *Journal of Sound and Vibration* (1997) **205(4)** 533 at 534 and 536.

161 70 x 265 ÷ 365 = 50.9.

162 Skydive Final submissions paras 52-53 [Environment Court document 25].

163 Transcript p 250, lines 26-30.

[127] The precise question actually asked by Mr Winchester[164] was:

> ... and in your opinion and based on your understanding of the standard are the recreational facilities and walking tracks noise-sensitive uses for the purposes of the standard?

And Dr Trevathan's answer was[165]:

> I think when viewed as a whole, the focus of the standard is on residential and similar activities when it talks about land use controls.

That is a reasonable answer. We can find no reference in the NZS 6805 to recreational facilities or walking tracks. So we do not regard Dr Trevathan's answer as evasive. In fact during the hearing we gained the impression that Dr Trevathan was a professional witness attempting to give accurate and objective answers.

[128] We conclude that Dr Trevathan was entitled to put some weight on the Rylander and Bjorkman's study, and in turn that his opinion — that flight numbers are important[166] — should be given some weight.

4.4 Effects on the golf course and recreational users

[129] There was very little evidence-in-chief from the applicant, Skydive, in relation to the effects of increased flight numbers on recreationalists in the Jacks Point Zone. Mr Garland was the planning witness called by Skydive. He is a very experienced planner and has wide, international, experience of airport planning. He wrote, more generally, of the effects of the proposed Skydive operation on neighbours[167]:

> While it may result in more flights, the proposed noise controls will result in less noise exposure to nearby properties than can occur under the existing consented regime which simply limits flight numbers rather than aircraft type or noise footprints.

[130] Mr Garland's one sentence on the effects of the aircraft on the quality of the experience of people involved in recreation[168], was[169]:

> One of the most significant recreational activities nearby is boating activity on the lake — water skiing, fishing and just exploring the lake. Having spent many hours doing just that and at the same time observing the sky diving operation, I do not believe there is any adverse effect.

As that sentence shows, he did not consider the effects of the aircraft and their noise on the experience of those using the playground, on golfers, or on walkers.

[131] Skydive's acoustic expert, Mr Day, did not consider the effects of aircraft activities or noise on recreationalists in his evidence-in-chief, but contented himself with

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164 Transcript p 251.
165 Transcript p 251.
166 For confirmation of this in cross-examination see Transcript p 252.
167 M J G Garland, evidence-in-chief para 9 [Environment Court document 13].
168 Assessment matter 5.4.2.3 (xv)(a)(ii) and (iii) [QLDP p 5-35].
169 M J G Garland, evidence-in-chief para 21 [Environment Court document 13].

calculating the overall noise exposure (L_{dn}) at various residential and visitor accommodation sites[170].

[132] The Jacks Point Interests' witness, Mr Darby, expressed his opinion that[171]:

> The proposed increase in flights will adversely affect the experience of individual users of the trails, and may cause safety issues with the equestrian riders.
>
> When people come to Jacks Point (or decide to reside within JPZ), they have an expectation that they are coming to an area of spectacular scenery with high amenity. This is true not only in terms of the championship golf course, but also the network of recreational elements and trails within the JPZ. From a master planning perspective, the large green backyard, with recreation, golf, and limited outside noise influences is part of the attraction for people visiting the area.
>
> I have significant concerns that an increase in the number of daily flights will degrade the quality of this experience.

However, Mr Darby was not purporting to speak as an independent expert so we can give little weight to that.

[133] Mr Darby also wrote that[172]:

> The presence of the skydive operation was known at the time of the Jacks Point plan change. However, there was never any anticipation that the operators would seek to increase the number of flights or the noise generated from the skydive operations. It was anticipated that, at the very least, that the runway would be realigned so that planes would have a different take-off and landing flight path, so that they would not fly over the lodge and golf course sites.

He was cross-examined on this by Mr Bartlett on the theme that there was no justification for that assertion. The results of the cross-examination were inconclusive on their face. However, we note that there is some independent evidence for Mr Darby's statement. The council's decision on the 1997 consent expressly records[173]:

> Mr Williams[174] confirmed that [the consent holder] ... did not envisage any problem with the number of flights being restricted to 35 per day.

[134] As to the impacts of the proposal on club membership and patronage, Mr Darby considered it would have an impact but could not quantify that[175]. In Mr Tod's opinion[176]:

> In my view, an increase in flight numbers from that which currently exists will hugely degrade the initial part of the journey around the Jacks Point golf course, to the degree that it will become a significant and detracting feature in "Clubhouse" conversation back at the travelling golfers home course.

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170 C W Day, evidence-in-chief Table 2 [Environment Court document 9].
171 J G Darby, evidence-in-chief paras 7.9 to 7.11 [Environment Court document 12].
172 J G Darby, evidence-in-chief para 7.2 [Environment Court document 12].
173 QLDC RM 960447 (dated 7 February 1997) at p 2.
174 Then a director of Parachute Adventures Queenstown Ltd and now a director of Skydive — see L Williams, evidence-in-chief [Environment Court document 8].
175 Transcript p 366.
176 A J Tod, evidence-in-chief paras 9.7 and 9.8 [Environment Court document 16].

> Jacks Point is a remarkable world class course in an outstanding setting. It is an important part of the golf tourism market in Queenstown and New Zealand. I have concerns that an increase in flight numbers by Skydive Queenstown, and the corresponding increase in noise will be detrimental to the experience at the course, and ultimately golf tourism in Queenstown.

[135] He was cross-examined on that by Mr Bartlett[177] as follows:

> Q. So it's not very upfront marketing is it, describing Jacks Point in what is to be one of the biggest suburbs of Queenstown, as being, having the remoteness or naturalness of Kauri Cliffs or Cape Kidnappers, is it?
>
> A. Well I certainly, I disagree, I can make comparisons to the quality of the golf course, and this is just purely the quality of the golf course, this is the playing environment as being very similar to Cape Kidnappers and Kauri Cliffs. They are, they are both, and also Kinloch, Kinloch has got a residential element to it and I have absolutely no issue with expressing that Jacks Point is a course of the same stature as these courses and it is because the course is away from the residential at Jacks Point, that you don't feel like you are in a residential community. There is not, there is some of those houses in the middle of the course. However, there is not an element of real estate or residential that impacts on the game of golf that you have at Jacks.

Despite some initial concessions, we consider the last part of Mr Tod's answer is correct and so his evidence was not weakened to the point where we should put little weight on it. Further, to cross-examine Mr Tod on advertising he is not responsible for, is not helpful to the court. We give some weight to Mr Tod's evidence that increasing flight numbers may have an adverse effect on patronage of the golf course.

[136] Mr Tataurangi gave evidence[178] that the proposed increase in flights would be detrimental to the golfing experience at Jacks Point. In an attempt to undermine Mr Tataurangi, Mr Bartlett followed his witness, Mr Day, in portraying this as a more-or-less routine "airport" case. For example, Mr Bartlett invited us to ignore or at least devalue Mr Tataurangi's evidence with his submission[179] that the witness "... may well be in the group of hyper-sensitive individuals whose responses are routinely put to one side by consent authorities deciding airport noise cases". We will return to the issue of whether this is a routine airport case later.

[137] In the meantime we accept that Mr Tataurangi has no expertise in NZS 6805 or the district plan requirements[180] but hold that, as a golf professional and consultant, he is entitled to express an opinion about the effects of aircraft and their noise on him and on other users of golf courses. While the latter point is arguably outside the traditional scope of opinion evidence, the court is not bound by the rules of evidence[181] and Mr Tataurangi's is the best evidence the court heard on that issue. No golf professional was

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177 Transcript pp 468-470.
178 P M Tataurangi, evidence-in-chief paras 19 *et ff* [Environment Court document 15].
179 Closing submission for the applicant para 58.
180 Not that he claimed any.
181 Section 276 RMA.

called for Skydive, and its expert recreational witness, Mr Greenaway, who could have given a more objective and authoritative opinion, did not express one in his evidence.

[138] Consequently we are prepared to put some weight on Mr Tataurangi's evidence[182] that an increase in flights is likely to reduce patronage of the club. We find it realistic that an increased number of flights by Skydive could do so, and that the long-term reputation of the golf course might suffer.

[139] Mr Dent, the planner for the Jacks Point Interests, considered the issue in rather more detail. In his opinion the effects of the Skydive operation went beyond the brief period when speech (or golf shots) would be interrupted. He wrote[183]:

> 4.97 While noise associated with an aircraft arrival or departure may affect the participants in a golf game from playing a shot or cause speech interruption between their companions for a short period during each flight event, the overall amenity of playing on a championship golf course with constant aircraft activity overhead and alongside will have a negative adverse effect on the participants overall experience. Mr Tataurangi attests to this at paragraph 16 of his evidence.

Mr Dent was not weakened on that in cross-examination[184].

[140] Mr Tod was of a similar opinion[185]. In relation to other recreationalists, Mr Tod added[186]:

> 4.100 I consider that users of the various walking and biking trails provided within and adjacent to the Jacks Point Resort Zone will also potentially be subject to increased numbers of noise events which will have an adverse effect on the users amenity.
>
> 4.101 In addition to the activities mentioned above, Jacks Point plays host to a range of recreational community activities and events that utilise the public spaces within the Jacks Point Zone ...
>
> 4.102 In my opinion, the persistent and more frequent aircraft activity that will be required to realise the applicants proposed increased daily flight numbers will detract from the experience of participants in these activities (particularly the more passive events) as well as those who are spectators to these activities.
>
> 4.103 In my opinion, one of the attractions of residential living and short term accommodation within the Jacks Point Resort Zone is the recreational activities/facilities and opportunities available on "the doorstep". Any increase in the adverse effects on the amenity of these recreational resources will have a significant adverse effect on the amenity of the Jacks Point Resort zone as a whole.

182 P M Tataurangi, evidence-in-chief para 27 [Environment Court document 15].
183 S J Dent, evidence-in-chief paras 4.97 [Environment Court document 20].
184 Transcript p 567.
185 Transcript p 468 (lines 9-14).
186 S J Dent, evidence-in-chief paras 4.100 to 4.103 [Environment Court document 20].

[141] Dr Trevathan introduced his evidence on this issue by stating[187]:

> Effects on the golf course of an increase in [Skydive] activity are difficult to quantify using traditional acoustic measures. Unlike a residential situation those exposed to the noise are only in the area for a limited period of time (so parameters such as the L_{dn} level are not particularly relevant); however they are in the area for the purpose of undertaking a specific outdoor activity which involves periods of concentration, and they may have chosen to undertake this activity in this area due to a perception that the location embodies a certain set of values, and aircraft noise in that context is surprising and disruptive. This differs from a residential situation where a variety of activities are undertaken both indoors and out, and the nature of the surrounding environment is known and understood.

[142] He continued[188]:

> What is clear is that the situation on the golf course would change with the advent of more [Skydive] flights, as follows:
>
> - Currently if there were 35 flight in a day the average gap between aircraft over flights is 8 minutes.
> - If 75 flights took place, the gaps between over flying aircraft would be reduced to 4 minutes.
>
> Based on the time taken to play holes 2 and 5 of the golf course, this change considerably increases the likelihood that a player will experience multiple aircraft flyovers during their round.

[143] He then produced[189] an "approximation of noise levels of hole 2 Jacks Point Golf Course for 75 flight peak day", and contrasted that with his measurements and noise levels of hole 2 on 28 September 2012. His evidence shows that over the golf course, disturbance events on days with flights at the (theoretical) maxima would increase from one each 10.3 minutes for 35 flights/day to one every 7.2 minutes for 50 flights/day and one every 4.9 minutes for 75 flights/day assuming a 12 hour day. For the three golf holes primarily affected, assuming each takes 15 minutes to play, on a peak day golfers would be disturbed nine times (three times on each of the three most affected holes) roughly two to three times the current most intense experience.

[144] We accept that a doubling of the number of Supervan Flights would not double the noise. Rather it increases the noise bucket by at most 3 dBA[190]. Similarly the 7-day averaging proposed by Mr Day and Dr Chiles would only lead to a 2 to 3 dB increase in the total noise which is barely perceptible (at 3 dB)[191].

[145] However, the effect on recreationalists is not so much about the calculated noise bucket, but about the numbers of flights and the overall physical experience, especially because few recreationalists would experience the noise of the aircraft for the full day (unlike some residents). It also needs to be borne in mind that the aircraft are passing

187 J W Trevathan, evidence-in-chief para 5.38 [Environment Course document 11].
188 J W Trevathan, evidence-in-chief para 5.39 [Environment Course document 11].
189 J W Trevathan, Attachment 3 [Environment Course document 11].
190 Transcript p 162.
191 C W Day, rebuttal evidence para 3.11 [Environment Court document 9A].

overhead relatively close to the ground (i.e. below 150 metres agl) sometimes only a single figure multiple of the aircraft's wingspan (nearly 15 metres).

[146] Dr Chiles, for the council, simply accepted[192] Dr Trevathan's figures about existing high sound levels at holes 2 and 5, then continued:

> ... I consider that increasing the number of flights from 35 to 50 or even to 75 on occasion would not fundamentally alter the amenity. The amenity on the golf course is already compromised by the existing consented skydiving operation, meaning that this is not a remote location free from such anthropogenic sounds. On 29 January 2013 there were regular flights throughout the day and, while increasing the frequency of flights would have increased the number of times players were disturbed, in my opinion it would not have significantly altered the overall amenity.

[147] Dr Trevathan's response was[193]:

> I ... note that Dr Chiles description of the proposed change incorrectly understates the significance of the change. [Thirty-five] flights is the current 'peak day' limit. The current average is in the order of 15 to 20 flights. So the change being considered in from an average of 15 to 20 to an average of 50, and from a peak day of 35 to a peak day of 75 (that is, typically more than a doubling of flight numbers).
>
> With regard to the effects of this increase in activity, it seems to me that the expert evidence of Mr Tataurangi[194] is relevant, as is the material outlined in the evidence in reply of Mr Dent including the references in the District Plan to consideration of the "frequency and type of aircraft activity" in the vicinity of airports, and the "preservation and enhancement" of recreational facilities.

[148] At this point it is convenient to refer to Mr Bartlett's submission[195] that "[t]here was no evidence before the Court as to the response of golf club members to the existing airport activity" [our underlining]. He did not explain the significance that any such evidence would have had. He then asked[196] ... the Court to reconsider its comments in relation to cross-examination the lack of survey evidence from Jacks Point. The court's statements complained of were[197]:

> ... its relevance I suspect is very marginal indeed, as to whether he's interviewed golf club members ...
>
> [and]
>
> ... I must say you'll have to make a submission on that later — because if he had, if he had done what experts lovingly call a qualitative analysis of views, you'd be getting into him for the subjectivity of that.

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192 S Chiles, evidence-in-chief para 30 [Environment Court document 10].
193 J W Trevathan, evidence-in-reply paras 3.7 and 3.8 [Environment Court document 11A].
194 Not considered by Dr Chiles: S Chiles, evidence-in-chief para 6 [Environment Court document 10].
195 Skydive's Final submissions para 56 [Environment Court document 25].
196 Skydive's Final submissions para 57 [Environment Court document 25].
197 Transcript p 284, line 3.

In fact those comments (by the Judge) were made in the opposite order, and about the cross-examination of Dr Trevathan on the effects on golfers, rather than on the evidence for Jacks Point generally.

[149] In any event the court was not being critical of Mr Bartlett at that time. If the witness had "surveyed" the golf club members, the court would have encouraged cross-examination on the techniques and on any subjectivity involved[198]. In any event the situation was more complex than Mr Bartlett's cross-examination suggested in that the witness claimed no expertise in surveying the public or a sector of it

[150] We do not see how Dr Trevathan's omission to speak to golf club members affects the credibility or objectivity of his evidence. Rather it might have affected his credibility adversely if he had.

[151] In his rebuttal evidence, Mr Day drew our attention to the fact[199] there are golf courses close to airports in a number of locations around New Zealand:

> Nelson Airport and Whakatane Airport have a golf course at the end of the runway and Invercargill has golf courses at both ends of the runway. Queenstown Airport has a golf course immediately [beside] the runway and Wellington Airport has a golf course 400m side on to the runway. Christchurch Airport has three golf courses in close proximity.

He then produced a figure showing Harewood Golf Course 300 metres to the northwest of the NW-SE runway and Russley Golf Course 1,500 metres southeast of, and Clearwater Golf Course 4 kms northeast of the main runway.

[152] The Clearwater Golf Course has been the venue for the New Zealand Open for the last two years[200]. Mr Day wrote that[201]:

> Aircraft on arrival to Christchurch are overhead Clearwater holes 3, 4 and 5 at an altitude of approximately 200 metres. Noise levels experienced on these holes from individual events would be in the order of 100 dB L_{AE} from a Boeing 747 and approximately 92 dB L_{AE} from a Boeing 737-300. The B737 noise level is the same as the noise level of the Supervan measured by Dr Trevathan on the 2nd hole at Jacks Point – 92 dB L_{AE}.
>
> Clearly the administrators and professional golfers in New Zealand do not think these noise levels are a significant adverse effect by choosing this golf course over many other high quality golf courses available in New Zealand for the New Zealand Open.

[153] Mr Day then referred to the Sydney Airport which has a number of golf courses east of runway 25/07 (the east/west runway). He wrote that[202]:

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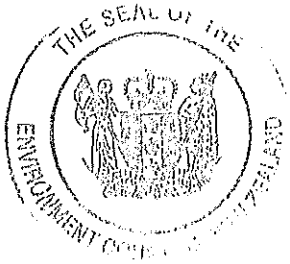
198 On the basis of *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 at (137) *et ff.*

199 C W Day, rebuttal evidence para 2.7 [Environment Court document 9A].

200 C W Day, rebuttal evidence para 2.8 [Environment Court document 9A].

201 C W Day, rebuttal evidence para 2.9 [Environment Court document 9A].

202 C W Day, rebuttal evidence para 2.12 [Environment Court document 9A].



> ... the Lakes Golf Club, one of Australia's premier golf courses, is located approximately 1500 metres from the east end of runway 25/07. Over most of this golf course, golfers would experience noise levels in the order of 110 dB L_{AE} from a Boeing 747 and 100 dB L_{AE} from a Boeing 737-300 on approach. These noise levels are 10 to 20 dB higher than that experienced at Jack's Point.

[154] We accept that the noise experienced by golfers at Jacks Point would be similar to those situations. However the experience is different: the aircraft are likely to be lower at Jacks Point, there may be fewer movements and of course the setting is very different.

[155] Turning to the evidence of the Jacks Point Interests about adverse affects on outdoor recreation[203] Mr Day responded to Dr Trevathan's conclusion[204] that "a peak day limit of 50 flights may be appropriate":

> In my opinion the difference between 75 flights and 50 flights per day would not be a noticeable effect on golfers. At worst, each golfer might experience four departures for their round rather than three while playing holes 2, 3 and 5. As discussed previously, it does not appear that this type of event significantly affects professional and amateur golfers using high quality golf courses such as The Lakes and Clearwater.

Mr Day may be correct about that. However he did not refer to the fact that Dr Trevathan's conclusion was expressly based on the premise[205] that the court might consider it appropriate to (further) compromise the amenities on the Jacks Point land. It is not clear to us at this stage that we should do so.

[156] Mr Day continued[206]:

> Overall, it is my opinion that the proposed activity (50/75 Supervan flights) will have a significantly lower impact on the golf course [than] 35 flights of the Cessna piston aircraft for the following reasons:
>
> - Firstly, the noise level of the Supervan aircraft in flight is significantly lower than the Cessna piston (more than 10 dB). Dr Trevathan measured the Supervan at 92 dB L_{AE} on the 2nd hole and I previously measured the Cessna piston at 104 dB L_{AE} beside the 2nd tee.
> - Secondly, the Supervan has a much higher climb rate than the piston aircraft and gets away from the golf course more quickly resulting in shorter duration events over the golf course (1500ft per min vs 600ft per min).
> - Thirdly, due to the lower climb rate of the Cessna piston, these aircraft when fully laden, could not climb directly over Jack's Hill and had to fly north over Jack's Point [land] as shown in Figure 3 below. This track over flies holes 1, 17 and 18 and then back along the ridge over holes 13, 14, 15, 16, 4 and 5.
> - The proposed activity thus affects three golf holes for a total duration of 30 seconds and the previous Cessna piston activity affected nine holes for a total duration of 130 seconds.

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203 C W Day, rebuttal evidence paras 3.2 to 3.4 [Environment Court document 9A].
204 J W Trevathan, evidence-in-reply para 3.11 [Environment Court document 11A].
205 As Mr Day conceded in cross-examination: Transcript p 160.
206 C W Day, rebuttal evidence paras 3.3 and 3.4 [Environment Court document 9A].

> In summary, the proposed activity creates noise over the golf course that is quieter and shorter duration than the previous piston aircraft — less golfers will be affected. Higher levels of aircraft noise are experienced at the Australian Open Lakes Golf Course and these are regarded as reasonable by professional golfers and the club members.

We accept those points, but all of Mr Day's evidence proceeds on the assumption that the volume of noise and the total sound bucket are the key factors in relation to adverse effects of airport noise. We prefer the more considered evidence of Dr Trevathan that for this unique "airport" it is more likely that it is the number of plane movements which is the crucial factor. In addition, the question of what is perceived as reasonable is very context driven. The environment in this Wakatipu Basin proceeding is very different from Sydney or Christchurch. In the larger cities other factors may come into play as to the choice of championship venues: for example demographics and advertising coverage.

Financial effects on the golf club

[157] Mr Darby, Mr Tataurangi and Mr Tod referred particularly to the effects on the players on the Jacks Point Golf Course. In particular they were concerned about the potential reduction in international golf tourists and subsequent financial consequences if the enjoyment of playing the course is reduced by low flying aircraft.

[158] Mr Bartlett cross-examined Mr Tataurangi on the loss of income (using loss of patronage as a proxy) that might be caused to the golf club. The exchange went[207]:

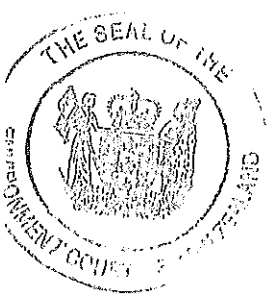
> Q. ... will the granting of this consent or something like it on conditions by the Court likely result in the reduction or a loss, a loss of patronage, loss of future patronage if that's clearer to you, for Jacks Point Golf Club?
>
> A. It's my belief that the experience at Jacks Point will be tremendously compromised by the number of flights of which the applicant is seeking and in compromising that golf experience and in the environment of which the golf course sits, that I do have the view that patronage over the long haul would be affected, yes.
>
> Q. By what degree?
>
> A. I have no cause to give you a figure of whether that would be one percent, 10 percent, 50 percent.

We cannot quantify the predicted effect on the basis of the evidence given to us, but we accept the evidence for the Jacks Point Interests that such an adverse effect is likely.

4.5 Lot 14 The Preserve and the Lodge site

[159] Neither Lot 14 nor the Lodge site has yet been built on.

[160] Lot 14 is directly underneath the principal flight path over the tableland. Dr Trevathan described it as the "closest residential site to the aircraft flight path by some



207 Transcript p 449.

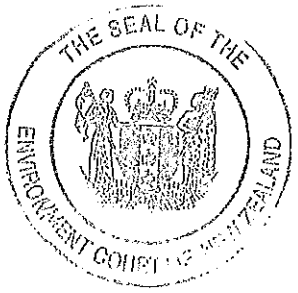
margin"[208]. The amenities are, of course, reduced by potentially up to 26 flights per day over the property. The proposed consent would increase the average number of daily flights from a possible 26 to 50 on the 265 days of the average year on which parachute drops are possible, and the daily maximum from 35 to 75. While the effects of the noise on residents of any future house on Lot 14 might be acceptably managed with a 55 dBA L_{dn} total noise limit, we consider the issue is more complex than that. Lot 14 is a residential allotment on the crest of the tableland, with views west over the lakes, north up the lake, past Queenstown, and east to the Remarkables. It is exposed to the weather but on fine calm days its outdoors' amenities would be very fine. To nearly double the average maximum number of flights from 26 to 50 would have a major adverse effect on the outdoor amenities of Lot 14.

[161] Mr Darby was also concerned with the impact of the increase in flights (and noise) on the proposed lodge site (see Attachment 1 to this decision). A resource consent has been granted for the construction and use of this lodge. Mr Darby described the concept as follows[209]:

> There is an area adjacent to the golf course which is zoned for a lodge development ... . It has always been anticipated that the lodge site would be developed for a luxury 5-star facility, catering for the high end international and domestic market.
>
> The site for the lodge was specifically chosen, adjacent to the golf course, away from the commercial and residential areas of the zone. The location provides a sense of exclusivity while enabling guests to appreciating the spectacular scenery of Lake Wakatipu, the Remarkables and the adjacent championship golf course. The construction of the 5-star facility, in conjunction with the championship golf course, has always been a key component of the vision for the zone.
>
> The success of a 5-star lodge is reliant on the golf course and the quality of the golfing experience. An increase in plane noise and flight activities, from take-off and landing, will significantly impact on the amenity in this area. It is anticipated that the increase in the number of flights to the maximum of 75 in any one day would likely occur on a calm day. This increase of 40 flights (over the 35 flights per day allowed under the existing consent) would result in a higher level of noise and annoyance to those enjoying the lodge facilities as well as those playing on the golf course.
>
> The proposed increase in flights will alter the vision for the area to a point that the establishment of a 5-star lodge in this location would be severely prejudiced.

[162] He acknowledged that the resource consent for the lodge (which he contributed to the design of) expressly recognises the 1997 consent held by Skydive. From the cross-examination by Mr Bartlett it was unclear whether a lodge would proceed given the existing flights by Skydive over the lodge site.

[163] Similar (but lesser) extra adverse effects are likely to be imposed on the Lodge site, in addition to those already experienced.



208 J W Trevathan, evidence-in-chief para 4.14 [Environment Court document 11].
209 J G Darby, evidence-in-chief paras 7.4 to 7.7 [Environment Court document 12].

5. Evaluation

5.1 Having regard to the relevant matters under s 104(1)

[164] We have held that, overall, the application by Skydive should be treated as a discretionary activity[210]. The court may grant or refuse the application[211]. We turn to the two compulsory matters we must have regard to under section 104 of the Act:

(a) the actual and potential effects of allowing the activity on the environment;
(b) the relevant statutory instruments.

There are no 'other matters' under section 104(1)(c) of the Act which are reasonably necessary to be had regard to.

[165] It is important to understand the setting — the environment — of this case. Mr Bartlett, counsel for Skydive, in his cross-examination of some of the witnesses[212] portrayed the Jacks Point Golf Course as a standard golf course beside suburbs with a general aviation airport's landing and take-off flight paths over it. We have major difficulties with that picture. We accept Mr Bartlett's submission that the Jacks Point Golf Course is not remote and pristine in the way that the Kauri Cliffs and Cape Kidnappers courses in the North Island may be. However, on the balance of probabilities (to the extent these are factual issues) we find that he is wrong on a number of matters.

[166] First, the "suburbs" Mr Bartlett refers to are quite well separated from the airstrip and golf course (see Attachment 1). At present the only part of the urban area abutting the golf course is Jacks Point village which comes close to the large pond between the low density urban activities and the golf course. It may be, in future, that part of Henley Downs residential development (for whom Mr Holm acted) may share the boundary with the golf course. We accept also that there are houses on the rise (the Preserve) which are surrounded by the golf course. However, they barely constitute a suburb, more a small residential enclave.

[167] Second, while we find that the Skydive operation is quite different to the operation of a normal farm airstrip, it is also very different to a commercial airport or a general aviation aerodrome supporting local and club flying. It is an intensive flying operation of, currently, 70 take-off and landing events maximum per day undertaken alongside residential and accommodation land uses and immediately over the rising ground of a distinguished golf course and other outdoor recreation facilities. It is also unusual in that both the take-off flight path and one landing flight path pass over the same ground. That causes more than the disturbance of a more conventional airport operation for the same number of takeoffs and landings. We accept that effect is

210 See part 1.4 of this decision.
211 Section 104B(a) RMA.
212 See, e.g. Transcript pp 468-470: cross-examination of Mr Tod quoted above.

lessened to the extent that the alternative landing flight path from the south is used. However there was no undertaking given as to the frequency of use of that southerly approach landing flight path. Nor could there be: the evidence was that under the Civil Aviation Act 1990 and its regulations, the choice of flight paths on final approach to landing is under the sole control of the pilot[213].

[168] The application seeks to authorise up to 150 events maximum per day — an increase from 70 (35 flights). From a current or possible average number of events per day of 20–52 the application seeks to increase that average to 100. Roughly that is a doubling of the present activity.

[169] Third, while we accept the evidence of Mr Garland and Mr Day for Skydive that golf courses are quite frequently to be found adjacent to airports, whether a proposal to increase the use of an airport achieves the purpose of the RMA is a question of context to which the principles of the RMA and the objectives and policies of the district plan have to be applied. We find that the Jacks Point Golf Course is not an average golf course. It has been designed[214] to be and we find, based on the evidence of Mr Tod and Mr Tataurangi, is of a very high standard even by international standards. The existing operations of Skydive, or the future possible operations under the 1997 consent do diminish that quality but not seriously.

[170] Fourth, Mr Bartlett's submissions ignored the other recreational use of the Jacks Point land: the walking and cycling tracks under the flight path and (to a lesser extent) users of the playground and their minders.

5.2 <u>The actual and potential effects on the environment</u>

[171] In what follows we consider all the potential (adverse) effects as subject to the conditions proposed by Skydive for remedying or mitigating those effects.

Positive effects

[172] We accept the evidence of Mr Greenaway[215], the expert on recreation, that Skydive plays an important part in the adventure tourism industry's contribution to the local economy. Further, increased flights and jumps would increase the "free destinational marketing through skydive freefall photography ... thus making [Skydive] one of New Zealand's most significant distributors of Queenstown imagery ..."[216].

[173] In addition to the positive effects for the economy of providing for more skydivers, there are additional (smaller, but accumulatively significant) positive effects. They are:

213 Subject to any provisions in the NZAIP.
214 J G Darby, evidence-in-chief paras 6.1 and 6.7 [Environment Court document 12].
215 R Greenaway, evidence-in-chief [Environment Court document 7].
216 L Williams, evidence-in-chief para 12 [Environment Court document 8].

- that the site is close[217] to the drop zone on the airstrip;
- the closest residential land in vicinity is undeveloped so that new owners can take account of and design around airstrip[218];
- in terms of New Zealand it is very small airport[219];
- there would be no night flying[220];
- there would be a single operator[221] (except possibly for occasional topdressing flights);
- the airport is on the southern side of Hackett Road so sound insulation on the southern side of dwellings would interfere little with outdoor living[222];
- the proposal makes efficient use[223] of the existing airstrip;
- the proposal would increase safety at Queenstown Airport.

Effects on residential activities

[174] To put this case in context, the noise which would be imposed on residents, recreationalists and other visitors to the Jacks Point Zone is greater than they would normally have to be subjected to in Rural Areas of the district. The district plan provisions give some guidance about the reasonable noise with its rules about outdoor activities[224] other than for airports. The relevant rule limits daytime noise to 50 dB $L_{eq\ 15min}$. Even with the current operation, of the three sensitive sites, only the Village site receives noise less than the district plan limit at 48 dB $L_{eq15min}$. At the Lodge the received noise is 56 dB $L_{eq15min}$ and at Hackett Road it is 62 dB $L_{eq15min}$. At the Hackett road site idling mitigation reduces the noise level by 3-5 dB. So received noise from the current operation at the Lodge and Hackett Road sites is in the mid 50s dB $L_{eq15min}$, a level noticeably higher than the level for Rural Areas generally.

[175] If the number of flights per day was increased to 50, the noise received at those sites would be:

- 51 dB $L_{eq15min}$ at the Village;
- 59 dB $L_{eq15min}$ at the Lodge; and
- 59 dB $L_{eq15min}$ at Hackett Road.

These levels would all be significantly higher than both the current operation and the District plan levels. On a peak day with 75 flights the levels would be higher again.

[176] However, in the District plan under the Rural Area rules the usual noise limits are not to apply to airport noise. Instead the Zone Standard requires that airport noise be

217 Transcript p 536 (Cross-examination of Mr Dent).
218 Transcript p 536 (Cross-examination of Mr Dent).
219 Transcript p 538 (Cross-examination of Mr Dent).
220 Transcript p 538 (Cross-examination of Mr Dent).
221 Transcript p 538 (Cross-examination of Mr Dent).
222 Transcript p 544 (Cross-examination of Mr Dent).
223 Excluding externality issues.
224 Rule 5.3.5.2 v [QLDP p 5-20].

assessed in accordance (and comply) with NZS 6805:1992[225]. However, as recorded earlier, the local authority has not established air noise boundaries for this airstrip so there are no applicable aircraft noise planning standards. The acoustic experts have extracted the 55 dB L_{dn} noise level from the Standard and adopted that as the criterion for an acceptable aircraft noise level for residential and accommodation activities. There are no guidelines given in the Standard or by the experts for acceptable aircraft noise levels for outdoor activities.

[177] The acoustic experts agree that a maximum noise level from aircraft at residential and accommodation sites should be 55 dB L_{dn}. We consider that, given the nature of the operation, that is generous to Skydive especially since the experts were not unanimous about the appropriate averaging period for noise.

[178] Further we consider on the balance of probabilities that with the number of flights currently carried out (16-20 average — not counting non-flying days and 26 potential average on the same basis) the limiting factor in respect of annoyance is not the overall sound exposure but the number of flights.

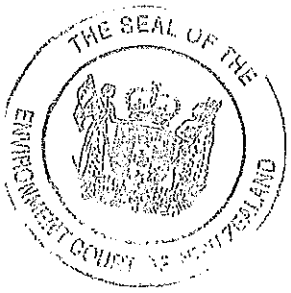
[179] While we accept that the 55 dBA L_{dn} level is a reasonable measure of noise for most of the neighbourhoods (suburbs) at Jacks Point we do not accept that is so for Lot 14 The Preserve or for the Lodge (see Attachment 1). The outdoor amenities of those properties would be best enjoyed on calm clear days which are also the best days for skydiving. We find that an increase in the average number of flights per day from (say) 26 to 50, and in the maximum from 35 to 75 is likely to impose unreasonable adverse effects on the occupiers of those properties.

Effects of noise on amenity and enjoyment of open space

[180] We have considered the evidence of the witnesses for the Jacks Point Interests and the responses from Skydive's witnesses about the adverse effects of the proposal on the amenities and enjoyment of the Jacks Point Zone specifically:

- the golf course, especially holes 2, 3 and 5;
- Lot 14, The Preserve outside amenities;
- the proposed Lodge;
- the walking and cycling (mountain-bike) tracks;
- the playing fields and playground.

[181] In relation to the golf course Mr Tataurangi concluded[226] that "any increase of flight activity by Skydive ... will, no doubt, impact the genuine world class golf experience that is currently enjoyed there". Mr Day responded:



225 Rule 5.3.5.2 (v) (d).

226 P M Tataurangi, evidence-in-chief para 27 [Environment Court document 15].

> Clearly this broad statement is not correct — for example, an increase of one flight per day of an aircraft that is 10 dB quieter than previous aircraft would reduce the impact on the golf course.

In fact the position is more complex than that, because it is not on the evidence simply a matter of brief noise — the operation of the aircraft causes anticipation, discomfort[227] and accumulative effects.

[182] In relation to amenity the planners' joint statement records[228]:

> New Zealand standard NZ6805 and amenity
>
> Mr Dent does not consider that the standard adequately safeguards amenity in respect of noise. Mr Garland and Ms Baker consider that the standard was drafted to protect residential amenity in relation to noise. They do not consider the residential locations surrounding the activity have any unique characteristics which anticipate a higher level of amenity than the standard anticipates.

[183] Despite that, the planners' joint statement concluded on the number of flights[229]:

> We all agree that a limit is appropriate. Mr Garland is not particularly concerned with the number of flights as long as the appropriate acoustic limits are met. Mr Garland does consider a limit should be set on flights. Ms Baker is equally of this view but understands the average maximum of 50 flights and daily maximum of 75 flights have been volunteered by the applicant. Any additional flights have not been assessed by her and she considers the consent should limit the flights to these numbers. Mr Dent remains concerned that any number of flights beyond the daily maximum of 35 flights allowed by resource consent RM960447 under which the applicant currently operates will result in unacceptable adverse effects.

[184] We found the evidence of Mr Garland and Ms Baker on the potential adverse effects on recreationists in the Jacks Point Zone to be skeletal and non-existent respectively. We prefer and accept the better-informed evidence of Mr Dent on the adverse effects of the Skydive proposal.

[185] Overall we find that the proposal is likely to lead to a serious reduction in the recreational amenities of Skydive's immediate neighbours compared with operations under the 1997 consent.

5.3 <u>The objectives, policies and rules of the district plan</u>

[186] There is one district-wide policy as to recreation which supports Skydive's application. It is[230] to encourage and support increased use of private recreational facilities to meet the recreational needs of residents and visitors. However, this policy is equally supportive of the recreational facilities at Jacks Point which rather cancels out any weight to be given to it for the proposal. That neutral position is vacated in favour of the Jacks Point Interests when the qualification to the policy is applied. That makes policy (4.4.3)3.3 "... subject to meeting policies relating to the environmental effects of recreational activities".

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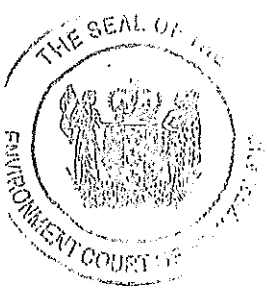
227 P M Tataurangi, evidence-in-chief para 16 [Environment Court document 15].
228 Joint Statement of Planning Experts para 18 [Environment Court document 13B].
229 Joint Statement of Planning Experts para 16 [Environment Court document 13B].
230 Policy (4.4.3) 3.3 [QLDP p 4-26].



[187] The latter policies[231] require the consent authority to avoid, remedy and mitigate the adverse effects of (commercial) recreational activities on the natural character, peace and tranquillity of the district, and to avoid, remedy or mitigate conflicts between recreational activities.

[188] There is a clear conflict between several sets of recreational activities here. The ultimate question for us under the district plan is how to appropriately avoid, remedy or mitigate that conflict[232].

[189] As for the application of the Zone Standard: in this case the minimum standard of 55 dBA L_{dn} set in the NZ Standard is inadequate for two reasons. First, the context requires a lower noise bucket (sound exposure level) to maintain the quality of the surrounding environment. Secondly, and more importantly, there are so few flights at present that it is not the sound exposure level but the number of flights per day (frequency) which is the important factor when considering their annoyance value.

[190] The most experienced planner /resource manager to give evidence, Mr Garland, stated[233] that golf courses go with airports. The relatively junior planner, Mr S Dent, called by the Jacks Point Interests took a more nuanced view. In his (expert) opinion the co-existence of a golf course with an airport depends on the context[234]. We prefer his evidence that in the Jacks Point context the adverse effects of the proposal outweigh the benefits, particularly since the airstrip is subject to the Rural General Rules. The district plan has no specific objectives and policies, that we were referred to, identifying the "airport" as being of public importance.

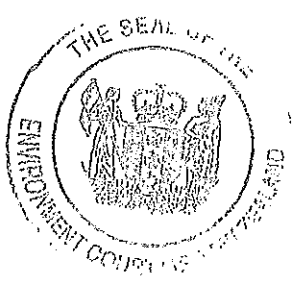
5.4 Part 2 of the Resource Management Act 1991

[191] Because the proposed airport activity would be likely to have both positive and negative effects on the environment[235], we need to have recourse to Part 2 of the Act to assess the weights to be given to the various factors.

[192] The ultimate question is whether the resource consent sought would manage the resources of the airstrip and the surrounding area so as to enable people and the Queenstown community to provide for their well-being, health and safety while meeting the (moveable) bottom lines in section 5(2)(a) to (c). In answering that question there was no evidence that any section 6 matters of national importance are relevant.

[193] We turn to section 7 of the RMA. There are three relevant matters which that section requires us to have particular regard to:

231 Policy (4.4.3) 2.1 and policy (4.4.3) 3.1[QLDP pp4-25 and 4-26].
232 Policy (4.4.3)3.1 [QLDP p 4-26].
233 M J G Garland, rebuttal evidence para 11 [Environment Court document 13A].
234 Transcript p 544.
235 Section 104(1)(a) RMA.



(b) the efficient use and development of natural and physical resources;

(ba) ...

(c) the maintenance and enhancement of amenity values;

...

(e) maintenance and enhancement of the quality of the environment;

...

We consider paragraphs (c) and (e) together, since in the context of this case there seems to be no difference in their meanings.

[194] Section 8 of the RMA is not relevant in this case.

Efficient use of resources (section 7(b))

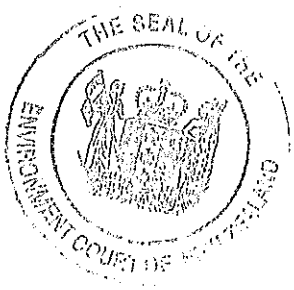
[195] We accept that the increased use of the airstrip would be efficient in a fundamental and important sense in that it removes the aircraft from the commercial and general aviation traffic at Queenstown Airport. The use of the approved drop zone is also clearly desirable for any increase in the number of tandem skydivers. We also find that an increased use of the airstrip for flights and for parachutists' landings is an efficient (unquantified) contribution to the local tourism economy.

[196] Just as Mr R G Greenaway, the recreational expert for Skydive, emphasised the importance of that operation for the local economy, Mr Tod, the golf tourism expert for the Jacks Point Interests, did the same for the Jacks Point Golf Course. Similarly, the evidence of Mr Tod, Mr Darby and Mr Tataurangi suggested that increased flights might impact on the financial performance of the Jacks Point Golf Club. Mr Bartlett was critical of that evidence pointing out that it was not quantified in any way. He is correct about that, but then neither was the potential profit to Skydive nor, more relevantly, the potential net benefit or loss to the public. So we are unable to weigh those costs and benefits in any objective way.

[197] Of course there is no obligation on an applicant to carry out a cost benefit analysis of a rigorous kind — *Meridian Energy Ltd v Central Otago District Council*[236] — but if it wishes to establish that a certain use of natural and physical resources is more efficient than another, then it bears the burden of that (and a cost benefit analysis can be helpful in that regard).

The maintenance and enhancement of amenity values (Section 7(c) and (e))

[198] We have found that the amenities of recreationalists — golfers, walkers, and cyclists at Jacks Point would be diminished by granting the resource consent sought.



[236] *Meridian Energy Ltd v Central Otago District Council* [2010] NZRMA 477 at [116], [123] (FC).

The proposed increase in the maximum number of daily flights from a theoretical 35 (under the 1997 consent) to 75 would cause a substantial adverse effect on the amenities of an area which the district plan has recognised as special. So would increasing the daily maximum average from 28 to 50.

Conclusion

[199] Enabling Skydive to expand so more of its customers enjoy the environment of the Wakatipu Basin and the lake can only be achieved by imposing substantial extra adverse effects on the Jacks Point Zone. The principle in section 5(2)(c) of the RMA that externalities should at least be remedied or mitigated is inadequately applied by Skydive's proposed mitigation.

It should not really be necessary to say so, but in view of Mr Bartlett's submissions, we emphasise that we are not creating a new standard for airports in respect of noise. This case is decided on its own unique facts.

5.5 Result

Weighing the competing factors

[200] Mr Bartlett submitted[237]:

> In terms of the Court's exercise of judgment, the major issue involving balancing of competing interests is the opportunity for the applicant to be able to increase or to maximize utilization of its two aircraft, and the enjoyment of the Skydive patrons as opposed to the risk of interfering with the recreational experience of visitors to the golf course during the time they are on the 2nd, 3rd, 4th and 5th holes.

On the evidence we find that experiences on golfers on the Jacks Point course are likely to be significantly worse than that imposed by current operations.

[201] Further, Mr Bartlett's submission overlooks two other sets of adverse effects. First there are the likely effects of the proposed consent on other recreationalists in particular walkers and cyclists and also to a much lesser extent, children and their minders at the playground. Secondly, there are the likely effects of an increased number of flights on persons outdoors on Lot 14 of The Preserve and at the Lodge site. We accept that the increased number of flights will not unreasonably affect residents or guests when in the house or Lodge, but when they are outside on fine days, the procession of up to 80 extra movements[238] overhead will have a major adverse effect on their enjoyment of the respective properties.

[202] Probably the most useful comparison is between the potential maximum average number of flights (approximately 26) and the average of 50 under the proposal, assuming in both cases that landings would use the alternative flight path over Homestead Bay. Despite that mitigation, we have found that the proposal would cause

237 Applicant's summary of issues para 3 [Environment Court document 21].

238 75 – 35 = 40 (comparing theoretical maxima) flights x 2 = 80 (extra) movements.

serious extra adverse effects on Lot 14 The Preserve, the Lodge, on golfers, on walkers and cyclists, and on users of the playground.

[203] We have also considered Mr Bartlett's point that the Jacks Point Interests came to the noise, i.e. that Skydive was operating in the area first. We accept that the Jacks Point Interests came to the area with knowledge of the existing noise environment and other adverse effects. However, we consider it is not unreasonable of them to expect those effects to be maintained at the level allowed under the 1997 consent (subject to section 16 of the Act).

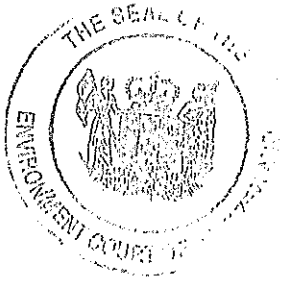
[204] We have considered whether we should grant an amended resource consent for substantially lesser average and maximum flights per day to incentivise Skydive to move from its 1997 consent. For the reasons stated earlier, we are insufficiently clear as to what the 1997 consent, with reasonable application of the section 16 duty, might allow so we have an inadequate grasp of what it is we were asked to replace. Further because we find that the witnesses for Skydive assessed the effects on the neighbours so inadequately, and in such an all-or-nothing way that means that compromise options have not been adequately assessed. It may be that if the Skydive application had gone to a council hearing, some of the issues now raised could have been explored more thoroughly. The applicant chose to forego that possibility, and we have inadequate evidence to satisfy us as to alternative operating conditions.

[205] We conclude that the objectives and policies of the district plan, especially the second district wide objective, would not be achieved because the proposal would have substantial extra adverse effects on the recreational opportunities in the Jacks Point Zone and on the amenities of Lot 14, The Preserve which are not outweighed by the potential benefits (producer and consumer surpluses) which granting consent would likely lead to. Nor would the proposal adequately mitigate conflicts between the skydiving activity and those other recreational and living opportunities. Weighing all the competing factors, we judge that the purpose of the RMA is better achieved by refusing rather than granting consent and will make orders accordingly.

Other matters

[206] During the hearing we raised an issue with the parties as to whether an effect of the High Court decision in *Dome Valley District Residents Society Inc v Rodney District Council*[239] is that a resource consent is needed for the manoeuvre of taking off and landing when under 500 feet and over the Jacks Point land. In the result we have not needed to determine that question.

[207] Towards the end of the hearing the section 274 parties suggested that a realignment and relocation of the grass airstrip might make it possible for an increased



239 *Dome Valley District Residents Society Inc v Rodney District Council* [2008] 3 NZLR 821; [2008] NZRMA 534.

Skydive operation to become acceptable. That involved aligning the airstrip to the southwest and extending it east closer to the highway. We were given few details about this possibility and so cannot make any comment on it other than to record the suggestion.

[208] Costs should be reserved.

For the Court:

J R Jackson
Environment Judge

Attachments:

Attachment 1: Site Plan (From Dr J W Trevathan).
Attachment 2: Glossary of acoustic terminology.

JacksojJud_Rule\d\Skydive decision-DR.doc

DATA:
VOTYCES
NON VERIFIED DATA

Contractors to verify all dimensions on site prior to commencing work. Figured dimensions to be taken in preference to scaled dimensions. The copyright of this drawing remains with Darby Partners Limited.

SCALE: 1:10,00 (A3)

PLAN STATUS:
DRAFT

NOTES/CONSULTANTS:

REVISION			
NO	DESCRIPTION	DATE	
-	First Issue	21.08.12	ZC

DATE: 21.08.12
DESIGNED/DRAWN: ZC
APPROVED: DT
FILE: [illegible]

DRAWING NO:
RC-100

JACKS POINT
NOISE MEASURE LOCATIONS

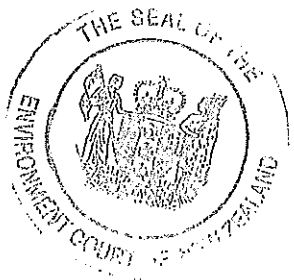
Level 1, Steamer Wharf, Lower Beach Street
PO Box 1164, Queenstown 9348
Tel +64 3 450 2200 Fax +64 3 441 1451
info@darbypartners.co.nz
www.darbypartners.co.nz

DARBY PARTNERS LIMITED

Attachment 2: Glossary of Acoustic Terminology

The experts used the following terminology[240]:

dBA	A measurement of sound level which has its frequency characteristics modified by a filter ("A-weighted") hence the "A" after "dB" so as to more closely approximate the frequency bias of the human ear.
L_{AE}	Sound exposure level (for single event noise)
L_{eq}	The time averaged sound level (on a logarithmic/energy basis) over the measurement period (normally A-weighted).
L_{dn}	The day-night sound level which is calculated from the 24 hour L_{eq} with a 10 dBA penalty applied to the night-time (2200-0700 hours) L_{eq} (normally A-weighted).
L_{95}	The sound level which is equalled or exceeded for 95% of the measurement period. L_{95} is an indicator of the mean minimum noise level and is used in New Zealand as the descriptor for background noise (normally A-weighted).
L_{10}	The sound level which is equalled or exceeded for 10% of the measurement period. L_{10} is an indicator of the mean maximum noise level and is used in New Zealand as the descriptor for intrusive noise (normally A-weighted).
L_{max}	The maximum sound level recorded during the measurement period (normally A-weighted — in which it is written as "L_{Amax}").
L_{peak}	The peak instantaneous pressure level recorded during the measurement period (normally not A-weighted).
Noise	A sound that is unwanted by, or distracting to, the receiver.



240 Derived from C W Day, Appendix A to evidence-in-chief and his para 5.1 [Environment Court document 9].

BEFORE THE ENVIRONMENT COURT

Decision No. [2014] NZEnvC 72

IN THE MATTER	of the Resource Management Act 1991
AND	of an application to cancel interim enforcement orders under section 320 of the Act and an application for enforcement orders under sections 314 and 316 of the Act
BETWEEN	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NZ INCORPORATED (ENV-2014-CHC-8 and ENV-2014-CHC-7) Applicant
AND	DOUGAL INNES Respondent

Court:	Environment Judge J J M Hassan Environment Commissioner J R Mills Environment Commissioner I Buchanan
Hearing:	in Queenstown on 24 March 2014 (Final submissions received 27 March 2014)
Appearances:	S Gepp/P Anderson for the Applicant J Caunter for the Respondent J Campbell/N Whittington for the Council, a section 274 party G Todd for Cooper, a section 274 party R Gardner, for Federated Farmers of New Zealand, a section 274 party
Date of Decision:	31 March 2014
Date of Issue:	31 March 2014

DECISION OF THE ENVIRONMENT COURT

A: Under sections 320(5) and 321 of the Resource Management Act 1991 (**RMA**), this Court cancels the interim order made by its decision in *Royal Forest and Bird Protection Society of New Zealand Incorporated v Innes* [2014] NZEnvC 40 (**First Decision/interim order**).

B. The Court directs that parties communicate with the Registrar concerning availability for a pre-hearing conference to prepare for an urgent hearing of the amended enforcement order application lodged by Royal Forest and Bird Protection Society of New Zealand Incorporated, dated 6 March 2014.

C. Costs are reserved.

REASONS

Introduction

[1] Mr Innes has applied for cancellation of the interim order made by the Court in its First Decision.

[2] In view of Mr Innes' request for the Court to issue a decision on his cancellation application with urgency, this decision will issue in two parts. This first part gives effect to the Court's decision to cancel the interim order. It also provides a summary of the Court's reasons for such cancellation. The Court's reasons will be set out more fully in the second part of the Court's decision to be issued as soon as practicable. That second part of the decision will also address some matters raised by parties in submissions that were not the subject of this part of the decision.

[3] This first part of the decision was delivered orally on 28 March 2014 (with the exception of the "Background" section and some minor edits).

Background

[4] This matter concerns some land adjacent to the Clutha River, near Luggate, in the Queenstown Lakes District. It is in an area known as South Hawea Flat (being part of Lot 4 DP 20242 Blk VII Lower Hawea SD, CT OT11D/497 (**subject land/land**). It has an area of approximately 190.83 hectares, and is owned by Big River Paradise Limited. Mr Innes has entered a sale and purchase agreement (and paid a deposit) for it and another adjacent block (of some 60 hectares) owned by another person (part of land in CT 50321 Otago Registry). There are two terraces across the blocks of land, a lower one near the Clutha River, and an upper one near what is called Kane Road.

[5] The subject land is zoned Rural General under the Queenstown Lakes District Plan (**Plan**). Also, the subject land is classified as "Lindis-RAP A 12 (South Hawea Flat)" under a Department of Conservation "Recommended Area for Protection" classification system (commonly called **RAP**).

[6] The Rural General zone includes a Rule 5.3.3.3.xi in terms of which activities that do not comply with one or more listed Site Standards are classified as restricted discretionary activities. One such Site Standard 5.3.5.1.x applies to clearance of what the Plan defines as "indigenous vegetation". The proper meaning and application of that Site Standard is at the heart of this matter.

[7] Recently, a substantial proportion of the subject land was disced. Royal Forest and Bird Protection Society Inc (**Royal Forest & Bird**) understand this discing to have required restricted activity resource consent under Rule 5.3.3.3.xi by reason that it contravenes Site Standard 5.3.5.1.x. Mr Innes has not obtained consent.

[8] On that understanding, on 28 February 2014, Royal Forest & Bird applied *ex parte* and without notice for an interim enforcement order under section 320 of the Resource Management Act 1991 (**RMA**). It made an associated application under section 316 RMA for final enforcement orders.

[9] On 3 March 2014, this Court issued a decision[1] (**the First Decision**) making an interim order to prohibit the respondent (**Mr Innes/respondent**) (and his servants and agents) from carrying out:

(a) any clearance of indigenous vegetation (as defined by the Plan) or any activity that could result in such clearance;

(b) any watering, irrigation, over-sowing or top-dressing of any part of the subject land.

[10] On 6 March 2014, Royal Forest & Bird lodged an amended application for final orders, modifying and expanding the orders sought and the land to which the orders would apply.

[11] On 12 March 2014, Mr Innes applied for the interim order to be cancelled, under section 320(5) and 321 RMA.[2] Royal Forest & Bird opposed cancellation.[3]

[12] Mr Innes sought, and was granted, an urgent hearing of his application. His stated grounds for urgency referred to serious financial implications that could ensue in the event that he continued to be restricted by the interim order from sowing or irrigating his land. He noted, in particular, that this financial risk could arise if he could not undertake sowing by approximately 30 March 2014.[4]

[13] Prior to the hearing, Queenstown Lakes District Council (**QLDC/the Council**) and James Wilson Cooper (a land owner) and Federated Farmers of New Zealand each gave notices to join the proceedings under section 274 RMA. In the Council's case, that was to assist the Court in view of the Council's interest in the proper administration of the Plan and the sustainable management of the district's resources. Mr Cooper is a joint owner of land classified as a RAP. The Court accepted that this fact, and the potential for him to be affected by the relevant Plan rules, qualified him under section 274(1)(d) (a person who has an interest in the proceedings that is greater than the

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1 [2014] NZEnvC 40.

2 On 19 March 2014, Mr Innes filed an amended application, but the only substantive change was to explicitly seek costs.

3 Notice of opposition to application to cancel interim enforcement order dated 17 March 2014.

4 Memorandum of counsel for respondent regarding application to cancel an interim order dated 12 March 2014.

interest the general public has).[5] Similarly, in view of the representative role Federated Farmers of New Zealand has for farmers in the Queenstown Lakes District, the Court accepted it had status under section 274.

The respective positions of Mr Innes and Royal Forest & Bird on cancellation

(a) Mr Innes' grounds for cancellation

[14] In his application, Mr Innes states nine grounds for cancellation. In summary, these are:

a. he undertook due diligence prior to purchasing and undertaking the work on the subject land. No public information indicated the presence of significant indigenous vegetation on the subject land that would otherwise [sic] be listed in Appendix 5 of the … Plan or the presence of threatened plants listed in Appendix 9 of the … Plan [which he further particularises];
b. the subject land has a history of farming related activity and land disturbance, which has been confirmed as a permitted activity;
c. he relies on existing use rights;
d. part of the Big River land is zoned Rural Residential, in which case Site Standard 5.3.3.1.x does not apply;
e. there is no evidence before the Court to establish that any threatened plants listed in Appendix 9 of the … Plan were present on the subject land prior to that land being cultivated;
f. there is no evidence before the Court to establish that Site Standard 5.3.5.1.x of the … Plan was breached and that resource consent was required;
g. no resource consent is required for the activity in question as all parts of Site Standard 5.3.5.1.x are complied with;
h. it is necessary to sow the land urgently to enable ongoing farming operations and financial return from the subject land in 2014;
i. [he] is significantly prejudiced by the orders remaining in place.

(b) Royal Forest & Bird's grounds of opposition to cancellation

[15] In its notice of opposition, Royal Forest & Bird challenge Mr Innes' stated grounds as follows:

[5] Record of Telephone Conference, 14 March 2014.

(a) undertaking due diligence does not override the requirement to comply with District Plan rules;

(b) Mr Innes had the opportunity to apply for a certificate of compliance … [and] … did not…;

(c) the fact that Land Information Memoranda … did not refer to the site being significant indigenous vegetation, or refer to the presence of Appendix 9 threatened plants, is not relevant to whether Mr Innes is required to comply with site standard 5.3.5.1.x;

(d) that the site is not listed in Appendix 5 of the District Plan as a site containing significant indigenous vegetation is not relevant to whether Mr Innes is required to comply with site standard 5.3.5.1.x;

(e) ... [the] Council is not obliged to determine for a landowner whether their land contains indigenous vegetation. If Mr Innes relied on information or advice provided by [the] … Council … that does not authorise an activity that would otherwise breach the Plan;

(f) there are no existing use rights on the site that would presently allow the clearance of indigenous vegetation that was undertaken and that is proposed. Even if there were … the activity breaches the duty in section 17 … in such a manner that justifies an enforcement order;

(g) there is sufficient evidence … that site standards [sic] 5.3.5.1.x … was breached, including by the clearance of Appendix 9 threatened plants. Resource consent is required;

(h) the site is currently in a condition that appropriate steps can be undertaken to remedy or mitigate the effects of clearance of indigenous vegetation. Mr Innes intends to undertake activities on the site that will result in the permanent loss of the terrestrial ecological values, which cannot then be remedied or mitigated;

(i) Mr Innes' ongoing farming operations should be conducted only in accordance with a lawfully issued resource consent, and to require this does not amount to prejudice.

[16] Royal Forest & Bird preface that response by stating three primary grounds for why the interim order should remain in force until the substantive enforcement order application is decided. In summary, these are:

(a) The first interim order is necessary to address the existing and proposed contravention of a rule in the Plan [for reasons which Royal Forest & Bird particularise in paragraph 1].

(b) On the part of the [subject land] zoned Rural Residential where the activity does not contravene a rule in a plan, the clearance of indigenous vegetation undertaken and proposed … breaches section 17 … in such a manner as justifies the issuing of an … order [in that] … indigenous vegetation cleared included significant indigenous vegetation and its protection is a matter of national importance under section 6(c) … clearance resulted in substantial adverse effects on … significant indigenous vegetation … [and those] adverse effects were not expressly recognized by the person who approved the plan change that re-zoned part of the subject site Rural Residential.

(c) The second interim order is necessary to avoid, remedy or mitigate adverse effects on the environment caused by the respondent.

Statutory provisions and relevant legal principles

[17] The Court's jurisdiction as to cancellation is found in section 320(5), supplemented by section 321. Section 320(5) confers a broad discretion to consider appropriate and relevant matters in the particular case. However, at least as a matter of discretion, we agree with Ms Caunter that the Court can and should consider the matters that informed its interim order decision.

[18] That encompasses, amongst other things, consideration of the matters in section 320(3), namely:

(a) what the effect of not making the order would be on the environment; and
(b) whether the applicant has given an appropriate undertaking as to damages; and
(c) whether the Judge should hear the applicant or any person against whom the interim order is sought; and
(d) such other matters as the Judge thinks fit.

[19] However, the Court should do so afresh in light of its findings on the evidence (and in view of associated submissions).

[20] In addition, we consider that there is sufficient similarity between the nature of the discretions to make and to cancel an enforcement order that we can be guided by principles that the Courts have applied in decisions on the making of enforcement orders. In particular, we accept that Royal Forest & Bird is correct to observe the importance of upholding public confidence in the integrity of plans in the Court's exercise of discretion on an interim order cancellation application. The Court has a responsibility to uphold the law, including plan rules. That must be a strong factor in favour of maintaining an interim order where the Court finds that breach of a plan rule would otherwise occur or be likely. However, we also acknowledge Ms Caunter's submission that this principle must be considered in the particular context of the rule in issue. The principle of upholding plan integrity and the law is paramount. In considering its available options, the Court should consider the relative environmental harm associated with those options. Subject to the Court's primary responsibility to

uphold compliance with the RMA, it is relevant for the Court to consider financial hardship to a person the subject of an order in the exercise of its discretion as to whether to grant (wholly or partly) or decline an application for interim order cancellation. The lack of an undertaking as to damages is a matter we can weigh in the exercise of our discretion.

[21] The Court has a primary responsibility to uphold compliance with the RMA (including plan rules). However, that does not necessarily dictate that an interim order as to rule contravention must be maintained regardless of circumstances. Especially when considering whether an interim order ought to be cancelled, we agree with Ms Caunter that it is relevant for the Court to consider the coherence or otherwise of the rule in issue. In this case, we are dealing with a rule no-one could reasonably claim to be easy to understand. Mr Innes diligently sought Council advice on whether it applied or not, and was disarmed by what Council officers told him. Those officers could not be said to have obviously got it wrong either. That is because the rule owes its origins to compromise and poor regulatory process. Consequently, it is unacceptably fraught with complexity and uncertainty. In this context, we stop short of declaring it ultra vires. Firstly, that is because we have only had opportunity to apply the lens of Mr Innes' unfortunate circumstances to it. Secondly, in that context and with the help of Court-directed expert witness conferencing amongst the three ecology and botany experts, we have elicited a meaning as we later address. We have no jurisdiction to declare it void for unreasonableness. The Council most certainly has capacity to re-consider it on that basis, and we encourage it to do so with urgency.

Jurisdictional limits set by interim order and cancellation application

[22] The Court can do no more than grant cancellation (in whole or in part) or refuse it. Royal Forest & Bird sought orders in terms of sections 314(1)(a) and (b)(ii). The foundation of the application was an assertion that activities occurring on the subject land were or were likely to contravene "the Plan's vegetation clearance rules". The application referred specifically to Rural General Rule 5.3.3.3.xi and Site Standard 5.3.5.1.x of the Plan. That foundation was the basis of the application seeking an interim order in terms of section 314(1)(a).

[23] The application sought associated restrictions, in terms of section 314(1)(b)(ii) (avoid, remedy, or mitigate any actual or likely effects on the environment caused by or on behalf of that person) on watering, irrigation, oversowing or top-dressing. With some adjustment, the First Decision made the interim order in those terms.

[24] Mr White (for Mr Innes) has since brought to light that 27 hectares of the subject land is in the Rural Residential zone and so Rule 5.3.3.3.xi and Site Standard 5.3.5.1.x do not apply to that portion. In closing submissions, Royal Forest & Bird accepted this made it inappropriate to maintain the interim order over that land. We agree.

The proper interpretation of Rule 5.3.3.3.xi and Site Standard 5.3.5.1.x in their context

[25] The central question as to the cancellation application concerns the proper interpretation of Rules 5.3.3.3.xi and Site Standard 5.3.5.1.x to that portion of the subject land zoned Rural General.

[26] A rule's plain meaning (in light of its purpose) should be ascertained with regard to the rule's immediate context, rather than in a vacuum; it is permissible to refer to objectives, policies and other provisions of the Plan, if a rule's obscurity or ambiguity make it necessary to do so: *Powell v Dunedin City Council* [2005] NZRMA 174 (CA).

[27] Relevant to *Powell*'s reference to "vacuum", plan rules have an intended statutory relationship to plan policies, namely to implement them (see section 75).

[28] An activity will not qualify as a permitted activity under Rule 5.3.3.1 if Site Standard 5.3.5.1.x is contravened. In that regard, we must also consider whether Site Standard 5.3.5.1.x reserves undue subjective discretion to the Council to approve activities case-by-case. If it does, it is ultra vires: see *Bryant Holdings Ltd v Marlborough District* Council[6] and the long list of authorities cited in *Brookers Resource Management.* If it is ultra vires, it cannot support maintenance of the interim order.

6 *Bryant Holdings Ltd v Marlborough District Council* [2008] NZRMA 485 (HC).

[29] However, the fact that a rule calls for judgment does not necessarily make it ultra vires. The question is whether undue subjective discretion is conferred.

[30] One way of thinking about that is in terms of whether or not the rule in issue sets appropriate boundaries such that the exercise of discretion must be by reference to specified factors allowing for informed judgment. For example, *Bryant* held acceptable a condition allowing scope to determine whether an activity would "adversely affect any land owned or occupied by another person".

[31] The broad effect of Site Standard 5.3.5.1.x is plain to understand. It disqualifies clearance of indigenous vegetation from being treated as a permitted activity, unless one of four exceptions ((a)-(d)) to that disqualification applies. Unless one of those exceptions applies, indigenous vegetation clearance is a restricted discretionary activity under rule 5.3.3.3.x.

[32] Of the four exceptions, the relevant one for the present proceedings is (a), as follows:

> There shall be no clearance of indigenous vegetation except for:
>
> (a) The clearance of indigenous vegetation that is:
>
> i. totally surrounded by pasture and other exotic species; and
>
> ii. less than 0.5 hectares in area; and
>
> iii. more than 200 metres from any other indigenous vegetation which is greater than 0.5 hectares in area; and
>
> iv. less than 1070 metres above sea level; and
>
> v. more than 20 metres from a water body; and
>
> vi. not listed as a threatened species in Appendix 9.

[33] Associated with the Standard are these definitions:

> **Indigenous vegetation**
>
> Means a plant community in which species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity.

Vegetation clearance

Means the felling, clearing of [sic] modification of trees or any vegetation by cutting, crushing, cultivation, spraying or burning. Clearance of vegetation shall have the same meaning.

[34] There are associated Plan "Issues" statements and Objectives and Policies. These generally indicate that the Council has recognised that the "downland lake basins" have undergone extensive modification, but that there are "significant remaining pockets of indigenous vegetation ..." and that the Council has protection responsibilities (see District Wide Issues). They express a range of broad protection and enhancement intentions in regard to indigenous vegetation. One policy (1.20) makes explicit reference to the Site Standard in issue:

> That following the completion of a schedule of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and its formal inclusion within the Plan, there will be a review of site standards (a) (i), (ii) and (iii) of Rule 5.3.5.1(x) to determine whether or not these standards within the Rule are required in all the circumstances.

[35] We disagree with the Council and Royal Forest & Bird by saying we find the Site Standard 5.3.5.1.x is a very difficult rule to understand. We find the Council's unqualified submission on this surprising in light of the various interpretations and angles that came to light through submissions and in evidence. Indeed, part of the context in which the Court directed that Dr Walker, Mr Davis and Dr Espie conference on certain key questions relevant to the Site Standard's meaning and application were observations, including by Ms Campbell for the Council, as to the rule's interpretation challenges.

[36] Aided by the large degree of consensus in the answers those witnesses gave to the Court's questions in their joint statement (dated 24 March 2014), and by weighing their different opinions on some core aspects of the Standard, we elicit a meaning in the context of this matter. We address that shortly. Before we do so, we explain our understanding of how the rule is intended to work.

[37] The rule requires different stages of testing in order to determine whether or not it is contravened:

(a) stage 1 is to determine whether the activity in issue includes "clearance" of vegetation. That is relatively straightforward, by reference to the Plan's definition of "vegetation clearance";

(b) where an intended activity includes "clearance" of vegetation, the next stage is to determine whether the "vegetation" is "indigenous vegetation" according to the Plan's definition (...a plant community in which species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity...);

(c) as to what constitutes a "plant community", the ecology/botany witness conference statement advised that there must be "two or more plants" not all of which had to be indigenous. It further advised that no exotic plants, including pasture, should be excluded, and that it was not necessary that all members also qualify as "important". As to the question of proportionality of indigenous to exotic members, the joint statement did not provide a clear answer. Differences between experts were evident from questioning also. Dr Espie considered predominance of indigenous was required. Dr Walker disagreed. The question of "proportionality" is one respect in which the definition of "indigenous vegetation" and, therefore, the rule is unclear;

(d) further, there is a requirement to determine that the plant community includes species "indigenous to that part of New Zealand". That is relatively straightforward and was not a matter contested in the evidence. We are satisfied, in this case, it would include species indigenous to the South Hawea Flat area in which the subject land is located (as well as in the wider district);

(e) further, a central requirement in the definition is to judge whether there are, amongst the indigenous species of the plant community's indigenous members, those that are "important in terms of coverage, structure and/or species diversity". That is an area where there is room for significant variance in opinion and, therefore, significant potential uncertainty. It was an area of significant disagreement between the ecology/botany experts. Mr Withington, for the Council, discounted Dr Espie's view that "and/or" had to be used in a way that "coverage", "structure", "species diversity" had to be treated conjunctively on the basis that this was answered simply as an interpretation exercise (i.e. "and/or" meant conjunctive or

disjunctive). We agree that the phrase does not dictate a conjunctive approach. However, the uncertainty arises in the fact that it allows for both approaches in the context of ultimately reaching a judgment as to "important".

[38] If it is adjudged that there is a plant community constituting "indigenous vegetation" that would be the subject of clearance by the activity in issue, the next stage is to determine whether the clearance is, in any case, exempt from the site standard. To be exempt, six cumulative requirements must be satisfied. Our understanding of each of these (in some cases, aided by the joint witness statement) is as follows:

(a) "totally surrounded by pasture and other exotic species" means surrounded on all sides by exotic pasture or other exotic species;

(b) "less than 0.5 hectares in area", while it refers to the area of disturbance, in effect means the area of the indigenous plant community in question. That requires an estimate to be taken. It also relies on the judgment inherent in determining what constitutes "indigenous vegetation" noted earlier;

(c) "more than 200 metres from any other indigenous vegetation which is greater than 0.5 hectares in area" is relatively straightforward. A 200 metre distance is calculated from the outer edge of the subject indigenous plant community. That becomes the radius to calculate a circle of 200 metres in radius. If there are no indigenous vegetation communities in excess of 0.5 hectares within that circumference, this requirement is met;

(d) "less than 1070 metres above sea level" is self-explanatory and not in issue in the matter before us;

(e) "more than 20 metres from a water body" is also self-explanatory and not in issue in the matter before us;

(f) "indigenous vegetation" ... "not listed as a threatened species in Appendix 9" is somewhat unclear in that "indigenous vegetation" is, by definition, a plant community not individual species. We read it as intending to mean that, if "indigenous vegetation" (as defined) is found to exist in the area intended to be cleared and any member species of that community is a "threatened species in Appendix 9", this requirement for the exemption will not be satisfied, hence the exemption will not apply.

Findings as to the application of Rule 5.3.3.3.x and Site Standard 5.3.5.1.x

[39] We find that discing, ploughing and associated cultivation activities intended to be carried out on the subject land would constitute "clearance" of vegetation.

[40] As to whether any of those activities would constitute "clearance of *indigenous* vegetation" such as to trigger Site Standard 5.3.5.1.x, our findings are different for those areas of the subject land that were left undisturbed by the discing and related activities that occurred prior to the First Decision (*undisturbed areas*) and those that were so disturbed (*disturbed areas*).

[41] For the *undisturbed areas* of the subject land, we find Site Standard 5.3.5.1.x is likely to be breached in the event that disturbance of indigenous vegetation occurs (e.g. by "cutting, crushing, cultivation"). That finding is made on the weight of evidence, in terms of which we prefer the evidence of Dr Walker and Mr Davis over that of Dr Espie. It also draws from observations on our site visit, which helped confirm the reliability of that evidence. We make that finding because the evidence demonstrates to us that:

(a) a proportion of those undisturbed areas contains "indigenous vegetation", as defined; and

(b) some of those "indigenous vegetation" communities are more likely than not to exceed 0.5 hectares (accepting we did not receive precise measurement evidence). Distances between "indigenous vegetation" communities are likely to be less than 200 metres (again accepting we did not receive precise measurement evidence). At least two species identified as present on the undisturbed areas of the subject land are listed as a threatened species in Appendix 9. Therefore, the exception to the Site Standard is not available.

[42] Specifically we find that any clearance of indigenous vegetation (as defined by the Plan) is a restricted discretionary activity under Rule 5.3.3.3.xi on any part of Lot 4 DP 20242 BlK VII Lower Hawea SD other than those portions shown on the "Paterson Pitts Group" plan labelled "Extent of Disced Areas" and marked "C" and annexed to this decision cross-hatched green as "Approx extent of Disced Area".

[43] For the *disturbed areas* of the subject land, we find that Site Standard 5.3.5.1.x is not likely to be breached in the event that further disturbance of that land occurs (e.g. by "cultivation"). That finding is made on the weight of evidence, in terms of which we prefer the evidence of Dr Espie over that of Dr Walker and Mr Davis. It also draws from observations on our site visit, which helped confirm the reliability of that evidence. We make that finding because the evidence demonstrates to us that the current state of the part of the subject land that has been disced is such that it is unlikely that any "indigenous vegetation" meeting the Plan's definition remains.

[44] Notwithstanding any potential for indigenous plants in this area to recover, there is no longer any "indigenous vegetation" in terms of the Plan's definition. As to the differing views of Dr Walker and Dr Espie on the likely dominance of adventive species, in terms of competition between species, we prefer Dr Espie's view based on his significant experience. We agree with Dr Espie and Mr Davis as to the high potential for spread of *mouse ear hawkweed hieracium.* We note we observed the prevalence of that virulent exotic weed on our site visit, especially in the QEII covenant area.

[45] In any case, the views of Dr Walker, Mr Davis and Dr Espie were largely consistent in demonstrating that "unassisted recovery" would result in different indigenous vegetation communities at best. Further, we prefer the unequivocal views of Dr Espie and Mr Davis that exotic species would initially dominate and the duration of such domination was uncertain. Dr Walker expressed similar, albeit more equivocal, views.

[46] On the weight of evidence, therefore, we find that what might recover would not likely meet the Plan's definition.

[47] Also, on the weight of evidence, we do not see the need to impose a buffer strip as suggested by Mr Davis. In particular, we are persuaded, in light of Dr Walker's evidence, that such a strip would not serve a sufficient resource management purpose.

[48] Given those findings on the evidence, we find that the interim enforcement order should not be sustained over any part of the disturbed areas of the subject land.

[49] We consider this is the case for all activities to which the interim order applies. In regard to any "clearance" of vegetation, the interim order was sought and made primarily in terms of section 314(1)(a), on the footing that Site Standard 5.3.5.1.x would be contravened. Whether or not it has already been contravened is not what section 314(1)(a) relevantly concerns, i.e. "contravenes or is likely to contravene ... a rule in a plan". On the basis of our findings as to the state of the disturbed land, we find there is no jurisdictional basis for continuance of the interim order in respect of that land. However, even if there were, we find (by reference to our findings on the ecology expert evidence) that continuance of the interim order would serve no valid resource management purpose.

[50] The position for the second limb of the interim order is the same, although for slightly different reasons. We accept Royal Forest & Bird's submission that this second limb is founded by reference to section 314(1)(b)(ii) (as to "effects"). However, the restrictions it imposed were on the basis of the evidence that then indicated that watering, irrigation, oversowing and topdressing of the disturbed land ought to stop to allow for recovery of the indigenous vegetation there. On the weight of evidence noted earlier, we find that there is no such justification for the second limb to apply to the disturbed areas.

[51] We now turn to the undisturbed areas.

[52] We find that discing, ploughing and other cultivation activities would likely mean that Site Standard 5.3.5.1.x would be breached. We reject the argument offered in Mr White's evidence that existing use rights under section 10 of the RMA would allow such activities. We reject Mr Innes' submission and accept the essence of the submission for Royal Forest & Bird on this point. The evidence showed that, until the recent discing, the subject land was relatively undisturbed. The most recent activity, therefore, disqualifies any ability to rely on existing use rights given the effects associated with it.

[53] However, in all of the circumstances, we find that a sufficient and more appropriate step is for the Court to make a determination of the rules' meaning in the terms earlier described. Continuance of the interim order over the undisturbed areas is unwarranted in terms of ensuring compliance with the Plan.

[54] That is in view of an undertaking which the Court sought and Mr Innes provided through Ms Caunter. That undertaking is (from Judge's notes[7]):

> Mr Innes and his servants, contractors and agents undertake not to cultivate currently uncultivated portions of the balance of Lot 4[8] as identified in the second affidavit of Mr White Exhibit C.

[55] The Court treats the undertaking as only necessary ponding legalisation of the activity in issue.

[56] Mr Innes' evidence demonstrated the efforts he went to, to endeavour to comply with the Plan before he undertook cultivation on the subject land. He was in essence disarmed by what he was told by Council officers. We accept Royal Forest & Bird's submission that he could have taken the further step of seeking a certificate of compliance. However, he was not obliged to do so. In a context of the interpretation issues which the Site Standard presents, we are satisfied he demonstrates at least good intent to comply with the RMA. That intent to abide the law is also evident in the fact he has left part of the subject land undisturbed (an historic coach route) pending the securing of an archaeological authority. It is also evident in his patience in abiding delivery of this decision.

[57] In view of all these matters, the Court considers it is sufficient simply to state how it interprets the rule and its continued application to the undisturbed portion of the subject land.

7 The transcript was not available as at the date of writing this part of the decision.

8 By which Ms Caunter indicated he meant DP 20242 Block VII Lower Hawea SD but which is more precisely shown cross-hatched and labelled "Lot 4 DP 20242" on the copy of an aerial photograph annexed to the First Decision.

Findings as to Part 2 RMA

[58] As to Part 2, the Court does not accept Royal Forest & Bird's submission, on the basis of Dr Walker's opinion, that the indigenous vegetation on the subject land is of "national importance" for the purposes of section 6(c). The Court heard from Mr Davis that the Council's project to identify areas of significant indigenous vegetation has "stalled". While Mr Davis (the Council's consultant for this project) has undertaken a confidential report on the subject land, his report does not constitute Council policy. We heard also from other Council witnesses that several processes would be followed before (1) the Council made appropriate decisions in order to (2) decide to notify a plan change necessary to schedule any such identified areas. In that context, we are not prepared to rely on Dr Walker's assertions that section 6(c) applies. We are not satisfied, on the basis of the evidence as a whole, that any vegetation on the subject land constitutes "significant indigenous vegetation and significant habitats of indigenous fauna" for the purposes of section 6(c).

[59] As to section 5(2)(c), we refer to our earlier findings on the effects of cancelling the interim order over the disturbed areas of the subject land. Those disturbed areas constitute a significant proportion of the total subject land. For the balance, we are satisfied that our determination on the meaning and application of the Site Standard is sufficient, in the circumstances of Mr Innes' undertaking.

[60] We find that cancelling the interim order would not be contrary to Part 2 of the RMA.

Other matters relevant to exercise of discretion

[61] In addition, we consider it would be unjust to maintain the interim order in all of the circumstances. Those circumstances are primarily:

(a) the undue financial hardship that the interim order would impose on Mr Innes, in relation to the disturbed areas of the subject land. His evidence on the financial risks he faces if he cannot sow and irrigate (as permitted activities) the disturbed areas of the subject land was not shaken in cross-examination. Royal Forest & Bird did not offer any undertaking as to damages. While that was not a matter that constrained the making of the

interim order, it is relevant to the consideration of the financial hardship the order imposes; and

(b) the fact that Mr Innes acted responsibly and with due diligence before he undertook vegetation disturbance on his land. It is most unfortunate that, due to a Council systems' error, the present owners of the subject land did not receive the confidential report (which the Court has not seen) from Mr Davis, bearing in mind Mr Davis' evidence that it was Council practice that the reports be provided to land owners. Had that slip up not happened, Mr Innes would have had the opportunity to appraise himself of Mr Davis' opinion concerning indigenous vegetation on the subject land at a much earlier stage. It is also unfortunate that neither of the Council officers who discussed the Site Standard with Mr Innes in February had any knowledge of the report's content. That is especially in view of Mr Bretherton's answer to Court questioning that it would have been helpful to have known.

[62] We accept that it would have been more prudent for Mr Innes not to have relied on conversations with Council officers to inform his understanding of Plan compliance. Informal views expressed by Council officers cannot be expected to discharge the responsibility a person has to ensure their activities are lawful. However, Mr Innes' actions here were encouraged by the Council's own publication on the Site Standard. Alongside that, the inherent complexity and uncertainty of the Site Standard are important. The extent of difference in opinion between Dr Walker, Mr Davis and Dr Espie in this case as to the fundamental meaning of the Site Standard illustrates that. Even if Mr Innes were to have sought the advice of Dr Espie, along with Mr White and a legal adviser, the informed view he may then have taken may still not have seen him safely home.

[63] However, we record that the case for cancellation is clearly made out even without such circumstances.

Other observations

[64] We reject Mr Todd's submission (for Mr Cooper) that there was no sound basis for the making of the interim order. The evidence we have heard in regard to Mr Innes' cancellation application reinforces that the Site Standard applies to uncultivated areas of the subject land. It also demonstrates that it is likely it did apply to the now cultivated areas before that cultivation occurred. The First Decision was informed by Dr Walker's opinion that there was capacity for recovery of indigenous vegetation on disturbed areas. Our site visit helped us put that evidence in context. On balance, we find that the contrary opinions of Dr Espie ought to be preferred as more reliable for the reasons we set out earlier in this decision.

[65] We were informed of the genesis of Site Standard 5.3.5.1.x and the associated definition of "indigenous vegetation". That included changes that were made in response to a particular submitter, and further changes by consent orders. While this is not uncommon, in process terms, in this case it appears to have resulted in a provision which is woefully difficult to understand and apply.

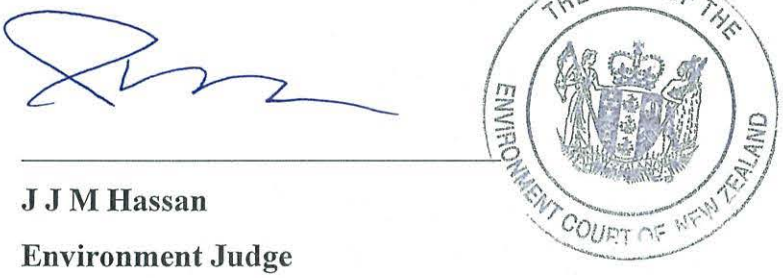
[66] We considered whether or not the Site Standard is ultra vires. We determined it was not in the confined context of this case. It would not be appropriate, in any case, for the Court to make any determination of this kind in such confined circumstances, given the Site Standard's general application.

[67] We urge the Council to consider the Rule further, in accordance with its functions.

[68] A further matter we record here is that, on 27 March 2014, the Court received a section 274 notice and waiver application from Big River Paradise Limited (which we understand to be the registered proprietor of the subject land at this time). The applicant did not put in an appearance during the hearing. However, in view of the timeframe set by the Court's first Minute on proceedings (giving parties until 28 March 2014 to join) and the nature of the applicant's land interest, the Court allows the applicant status as a section 274 party.

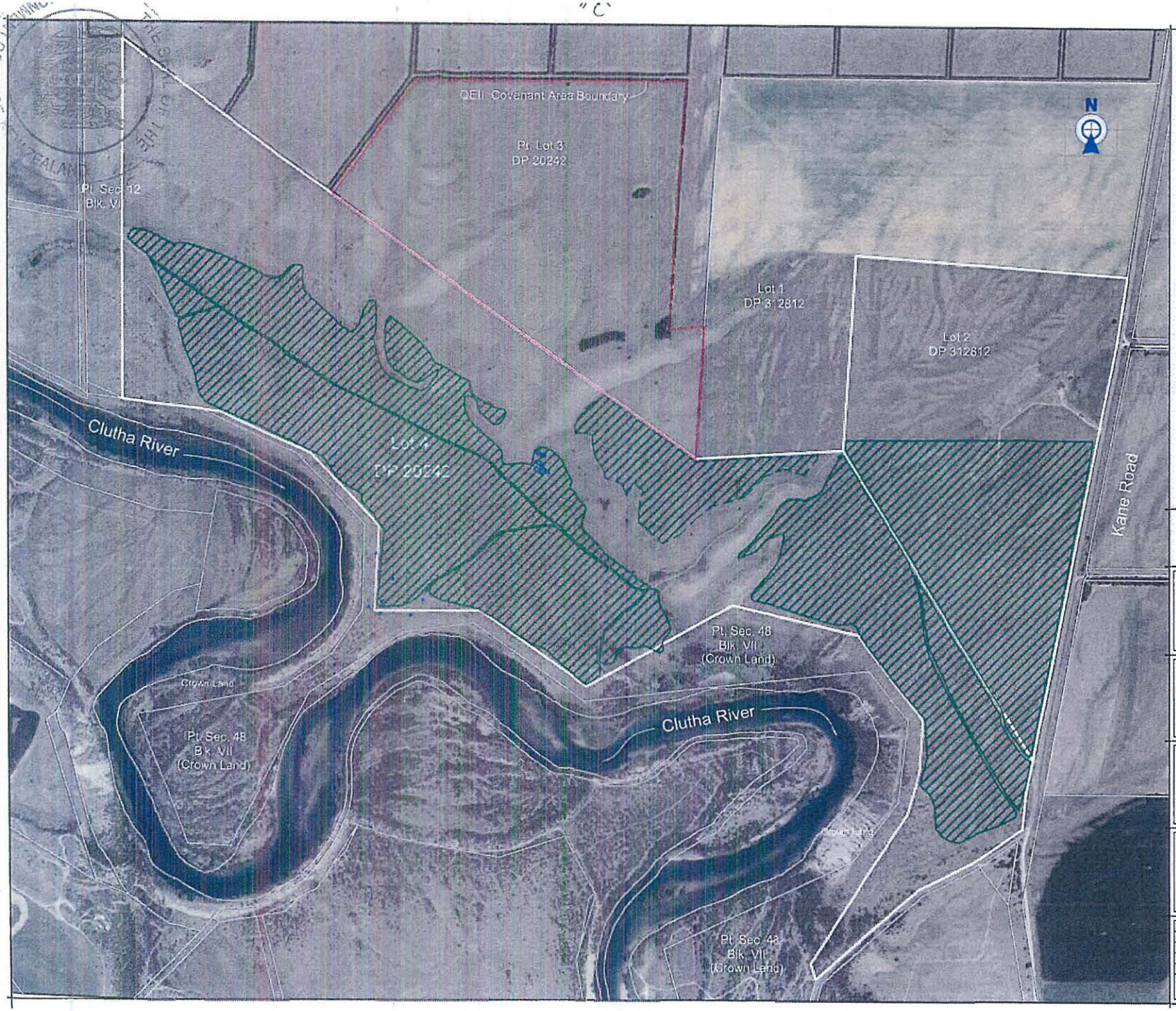
[69] Finally, we record the statement which Mr Whittington gave to us on behalf of the Council concerning the Council's abatement notice. We understand from that, that the Council will withdraw its abatement notice to achieve appropriate alignment with this decision.

For the Court:



J J M Hassan
Environment Judge

Attachment: Paterson Pitts GroupPlan: "Extent of Disced Areas" marked "C".



Approx. extent of Disced Area

(Note : there are some small non - worked areas within these areas that have not been surveyed)

Area not surveyed

Trial plot areas

0m 100m 200m

NOTES:

Coordinates are in terms of Lindis Peak 2000

PATERSONPITTSGROUP

Your Land Professionals
www.ppgroup.co.nz
0800 PPGROUP

WANAKA
19 Reece Crescent
or P.O. Box 283
Wanaka 9343
T 03 443 0110
E wanaka@ppgroup.co.nz

Client & Location:

Dougal Innes
Kane Road
South Hawea Flat

Purpose & Drawing Title:

Extent of Disced Areas

Surveyed by:	TK	Original Size: A3	Scale: 1:10 000 @ A3
Designed by:			DO NOT SCALE
Drawn by:	TK		
Checked by:	DW		
Approved by:			
Job No: W4378		Sheet No: 100	Revision No: A
			Date Created: 19/03/2014

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BEFORE THE ENVIRONMENT COURT

Decision No: [2015] NZEnvC 219

ENV-2014-WLG-000056

IN THE MATTER	of applications under section 311 and 316 of the Resource Management Act 1991 (RMA)
BETWEEN	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED Applicant
AND	NEW PLYMOUTH DISTRICT COUNCIL Respondent

Court: Environment Judge B P Dwyer
Commissioner K Edmonds
Commissioner R Howie

Appearances: S Ongley and P Anderson for the Royal Forest and Bird Protection Society of New Zealand
S Hughes QC for the New Plymouth District Council
R Gardner for Federated Farmers of New Zealand
R Gibbs and H White for Nga Hapu o Poutama
M Hill for the Property Owners Action Group
F Collins and S Gunawardana for the Queen Elizabeth II National Trust
J Coleman, M Evans, R Goodwin, C Jensen, J King, M Redshaw, A Ryan and N Sulzberger (Section 274 parties) for themselves

Heard: In New Plymouth on 3-6 August 2015
Final submissions received on 21 August 2015

DECISION ON APPLICATION
FOR DECLARATIONS AND ENFORCEMENT ORDERS

Decision issued: 17 DEC 2015

A: Declaration made

B: Costs reserved

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Introduction

[1] The Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest and Bird) has applied for declarations and enforcement orders pursuant to the provisions of ss311 and 316 of the Resource Management Act 1991 (RMA). The Respondent in the proceedings is New Plymouth District Council (the Council).

[2] The applications considered by the Court (amended as an outcome of agreements reached at mediation between the parties) are in the following terms:

> *1. I, the Royal Forest and Bird Protection Society of New Zealand Incorporated ("RFBPS") apply for the following declaration under sections 310(bb)(i) and (c) of the Act:*
>
> *A declaration that the New Plymouth District Plan contravenes the Act in that it:*
>
> > *(a) fails to adequately recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna contrary to section 6(c); and*
> >
> > *(b) has not been prepared in accordance with the New Plymouth District Council's function under section 31(1)(b)(iii) for controlling the actual or potential effects of the use, development, or protection of land for the purpose of "[t]he maintenance of indigenous biological diversity", nor does it give effect to the provisions of the New Zealand Coastal Policy Statement or the Taranaki Regional Policy Statement, as required by section 75.*
>
> *2. I, RFBPS, also apply for the following enforcement orders under section 314(1)(b) of the Act:*
>
> > *(a) An order that the New Plymouth District Council notify a change to the New Plymouth District Plan and in due course notify its review of the District Plan so as to identify as significant natural areas for the purposes of section 6(c) of the Act all the 363 sites that are likely to meet the New Plymouth District Plan significance criteria based on the desktop assessments described in Wildland Consultants Limited Reports 1623 (March 2007), 2407 (October 2009), 2611 (March 2011) and*

2611a (March 2012), in addition to the significant natural areas contained in Appendix 2l of the District Plan;

(b) An order that the review of the New Plymouth District Plan include rules for the protection of significant natural areas;

(c) [withdrawn];

(d) An order that for all natural areas of the District that have been excluded from the section 6(c) identification work undertaken by or on behalf of the New Plymouth District Council because:

i. they are habitats that are difficult to adequately identify through desk-top analysis; or

ii. they are considered to be protected through other means such as through legal covenant or under the Taranaki Regional Council's Key Native Ecosystems Programme;

iii. the New Plymouth District Council undertake further work to identify these areas and to include them as significant natural areas if they are likely to meet the criteria for significance as set out in the New Plymouth District Plan; and

(e) Such further orders as the Court considers necessary in order to ensure compliance with the Act.

[3] It will be seen that the proceedings are directed at recognition of and provision for areas of significant indigenous vegetation and significant habitats of indigenous fauna in the New Plymouth District Plan (the District Plan). In these proceedings such areas are jointly referred to as Significant Natural Areas (SNAs). Forest and Bird seeks declarations that the District Plan fails to recognise and provide for the protection of SNAs in accordance with its statutory obligations and seeks enforcement orders requiring the Council to (inter alia) notify a change to the District Plan to remedy that purported failure.

[4] The application (as initially filed) was accompanied by two supporting documents:

- An affidavit dated 2 September 2014 from Ms F J F Maseyk, an ecologist;[1]
- An affidavit dated 6 October 2014 from Mr G J Carlyon, a planning consultant.

[5] The documents filed by Forest and Bird identified up to 363 SNAs[2] which it contended ought be recognised in and given protection under the District Plan. As the proceedings were potentially of interest to a large number of property owners across the New Plymouth District whose properties contained SNAs which had been identified, Forest and Bird filed with its application a request for waiver of and directions as to service.

[6] Following a telephone conference with counsel for Forest and Bird and the Council the Court made (13 November 2014) and then amended (28 November 2014) directions providing for service of the proceedings to be effected by notice in various publications circulating in and beyond the New Plymouth District.

[7] Forty interested party notices[3] were received from persons and bodies who wished to participate in the proceedings. Subsequently a number of these parties combined their interests under the banner of Federated Farmers of New Zealand (Federated Farmers) or a group terming itself Property Owners Action Group (POAG) for the purpose of presentation of their cases to the Court. Twenty nine statements of evidence were lodged with the Court for consideration at our hearing. All of the various statements of evidence were pre-read by the Court but not all of those who had filed statements were required to confirm their evidence or be available for cross-examination (although many were).

[8] In addition to the statements of evidence which were received and considered by the Court, joint statements were received from:

[1] Supplemented by Supplementary Affidavit dated 17 March 2015.
[2] That figure was amended to 361 and recorded in a joint statement dated 2 August 2015.
[3] Some parties gave more than one notice.

- Witnesses G J Carlyon (for Forest and Bird), S A Hartley (for Federated Farmers), J A Johnson (for the Council) and F C Versteeg (for the Council) as to planning issues;
- Witnesses M M Dravitzki (for the Council) and F J F Maseyk (for Forest and Bird) as to the number of SNAs (refer footnote 2).

[9] Prior to commencement of the hearing Forest and Bird filed an interlocutory application seeking to strike out parts of the cases of various other parties. The Court declined to determine the strike out application prior to the hearing. The issues raised in the application were ultimately dealt with as part of the merits of the proceedings overall.

Background

[10] These applications have their origin in processes arising out of the Proposed New Plymouth District Plan (the Proposed Plan) which was notified in November 1998, more particularly the provisions of the Proposed Plan relating to the identification and protection of SNAs.[4] During the course of preparation of the Proposed Plan the Council had identified 164 areas in the District which were regarded as SNAs. Many of these SNAs were situated on land which was in public ownership (such as the DoC estate or Council Reserves) where it was considered that no further protection under the District Plan was necessary.

[11] The Proposed Plan as notified contained two appendices identifying SNAs which were situated on land in private ownership and accordingly were not subject to the same protection as land in public ownership:

- Appendix 20.2 (now Appendix 21.2-District Plan) identified 32 SNAs which were not subject to any form of legal protection;
- Appendix 20.3 (now Appendix 21.3-District Plan) identified 38 SNAs which were legally protected through covenants.[5]

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[4] The Proposed Plan became operative and is now the District Plan.

[5] G J Carlyon Affidavit, para 13 - also Issue 16 (Operative) District Plan - see definition of **Conservation Covenant** in District Plan.

[12] Notwithstanding identification of *unprotected* SNAs in Appendix 20.2, no rule was included in the Proposed Plan providing for their protection (for example by requiring resource consent for any modification of the SNAs). Instead the Proposed Plan provided for a series of non-regulatory methods for protecting SNAs combined with a monitoring programme. Forest and Bird and the Director General of Conservation appealed these provisions of the Proposed Plan seeking (inter alia) the inclusion of rules in the Proposed Plan to control the disturbance (felling, destruction or damage) of indigenous vegetation in SNAs which were not otherwise protected in some way.

[13] After the appeals were filed in 2002 there was a process of engagement between Forest and Bird, the Director General, the Council and various other parties with an interest in the SNA topic. This process led to resolution of the appeals in 2005. There were two outcomes:

- Agreement between the parties as to the form of a consent order which eventually issued from the Environment Court on 13 July 2005 (the Consent Order);
- Execution of a Memorandum of Understanding between the parties, dated 16 May 2005 (the MOU) putting in place a process to underpin the Consent Order and revise and update provisions of the District Plan relating to SNAs.

[14] For the sake of efficiency we simply adopt and repeat in this decision the descriptions contained in the affidavit of Mr Carlyon as to the matters addressed in the Consent Order and MOU:

> ***II. Environment Court Consent Order 2005***
>
> *18. The key matters addressed by the Consent Order included:*
>
> - *amended 'significance' criteria (to be contained within Appendix 20 of Volume 2 of the Proposed NPDP);*
> - *modified methods of implementation including, importantly, a rule controlling the disturbance of indigenous vegetation within areas identified as significant (rule OL47(aa) in the Consent*

Order, which subsequently became numbered rule OL 60 in the NPDP);

- *retention of a list of SNA's in Appendix 20.2 (subsequently numbered Appendix 21.2);*
- *retention of a separate appendix for those SNA's on private land that were legally protected through covenanting (Appendix 20.3 subsequently Appendix 21.3);*
- *a method to transfer legally protected SNA's from Appendix 20.2 into Appendix 20.3 without further formality;*
- *amendment to the definition of an SNA clarifying that the scope of the term excludes vegetation regenerated post plan notification;*
- *amendment to the definition of indigenous vegetation disturbance to exclude certain activities, namely disturbance for protection of human life, tree trimming necessary for current operation and maintenance of infrastructure and the collection of materials for scientific or cultural purposes.*

III. Memorandum of Understanding of 16 May 2005 (MOU)

19. *The MOU contained a framework for the review of sites against the revised SNA criteria in the NPDP. As part of the method for achieving this, an SNA liaison group was formed (the "SNALG"). The MOU required Council to retain, delete or add SNA's in line with the agreed significance criteria (page 5 of the MOU). It also provided for an investigation of provisions whereby affected landowners could 'offset' the restrictions that would occur as a consequence of SNA provisions being applied to their land. The following numbering of each commitment was used for reference purposes by the NPDC and will also be used in my evidence.*

- *'MOU 1': A review of the list of SNA's within the Proposed NPDP, allowing for the removal of sites no longer meeting (revised) criteria. This review was to be undertaken within 18 months from the date of ratification of the MOU.*

- *'MOU 2': A review of the list of SNA's with a view to adding further sites found to meet the revised significance criteria (within 24 months).*
- *'MOU 3': An assessment to consider 'mitigation' opportunities for landowners accruing economic cost as a consequence of owning SNA's (also within 24 months). This was to include consideration of transferrable development rights, tradeable development/subdivision rights, and bonus opportunities on undertaking development or subdivision. It also required consideration of waivers or reductions in financial and/or development contributions and the possibility of Council confirming a policy that it would levy financial or development contributions for the purposes of protecting significant natural areas.*
- *'MOU 4': A review of the Heritage Protection Fund. The focus of this was on increasing the amount of the fund and focussing resources on SNA's.*
- *'MOU 5': A review of Council's fees and charges policy in relation to consents involving SNA's (within 6 months).*
- *'MOU 6': A review of Council's rates policy applying to SNA's (within 6 months).*

20. *Importantly, the MOU provided that, within 24 months, a plan change would be notified providing for the SNA matters MOU 1, 2 and also MOU 3 if required (i.e. if the parties identified opportunities to address the economic matters covered by MOU 3 above).*
21. *It was agreed that variation to the timeframes, summarised above, could only occur by agreement between all parties to the MOU.*

The process described above is important in the context of these proceedings for at least two reasons.

[15] Firstly, because the changes to the Proposed Plan embodied in the Consent Order moved the approach to the protection of SNAs identified in Appendix 20.2

from a non-regulatory basis to a joint non-regulatory and regulatory basis. The Consent Order incorporated into the District Plan a Rule[6] regulating the extent to which there could be disturbance of indigenous vegetation in SNAs identified in Appendix 20.2 by requiring a restricted discretionary consent application for such disturbance. In short, it was determined that there should be rules controlling the disturbance of indigenous vegetation in SNAs identified in Appendix 20.2 of the Proposed Plan (now Appendix 21.2 of the District Plan).

[16] Secondly, under the MOU the Council agreed to undertake a process whereby it would be determined:

- Firstly whether the 32 SNAs identified in Appendix 20.2 (and which would become subject to the Rule) of the Proposed Plan should be retained or deleted;
- Secondly whether or not new SNAs would be added to the Appendix and hence become subject to the Rule.

This process was to be undertaken within 24 months of execution of the MOU (i.e. by 16 May 2007).

[17] The process which we have described is now recorded in Issue 16 of the District Plan which relevantly provides:

> *As a result of a District Plan appeal amended 'significance' criteria were applied to those areas listed in schedule 21.2 in appendix 21. A review was undertaken (2009-2012) to apply the amended criteria to these existing SNA to amend the extent of these areas in relation to new criteria. The review process confirmed that all of the sites identified in Appendix 21.2 meet the section 21.2 criteria for determining SIGNIFICANT NATURAL AREAS. The review process confirmed and adjusted where necessary the spatial extent of those SIGNIFICANT NATURAL AREAS. Ecological regions continue to be important in the identification of SIGNIFICANT NATURAL AREAS.*

---

[6] Now Rule OL60. (There are also other relevant rules in the District Plan but the debate in this instance largely related to Rule OL60).

In summary Issue 16 records that the Council undertook a review of the 32 areas identified in Appendix 21.2 (previously 20.2), confirmed that they all met the SNA criteria and retained them in the District Plan subject to some spatial adjustments.

[18] Issue 16 then relevantly goes on to provide:

> *It is recognised that ecological values are not static and will continue to change over time as areas of indigenous vegetation respond to different environmental pressures/threats. Regular monitoring of INDIGENOUS VEGETATION in the New Plymouth District and application of 'significance' criteria will ensure that Appendix 21 is complete. INDIGENOUS VEGETATION will continue to be monitored throughout the District to determine if areas meet 'significance' criteria.*

This part of Issue 16 reflects the commitment made by the Council in the MOU to add further SNAs to the District Plan if other areas of indigenous vegetation are shown to meet the significance criteria. It acknowledges that SNAs are under environmental pressures/threats and that the identification of SNAs in Appendix 21 is not complete. Issue 16 does not refer to the 24 month deadline provided for in the MOU.

[19] The MOU provided for the establishment of a Significant Natural Area Liaison Group (SNALG) which would *participate in the achievement of the objectives* set out in the MOU.[7] The SNALG was to comprise representatives of the Council (which was to chair the group and provide administrative and logistical support), affected landowners, the Department of Conservation, Forest and Bird and Federated Farmers. The SNALG was established and duly commenced the functions envisaged in the MOU.

[20] The Council also commenced the processes envisaged in the MOU. For the purpose of our consideration the most important process was that contained in what Mr Carlyon referred to as MOU 2 namely a review of the list of SNAs within 24

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[7] MOU, page 2.

months with a view to adding further sites which meet the new significance criteria contained in the District Plan and which were to become subject to the rules regime. Notwithstanding that the review undertaken by the Council identified a number of further sites which might be added to Appendix 21.2, the Council has failed to complete the processes envisaged in the MOU (and recorded in Issue 16 of the District Plan) to add the further identified sites to the Appendix. It is that failure which has led to Forest and Bird seeking the declarations and enforcement orders in these proceedings.

[21] That background statement brings us to consideration of the determinative issues for this decision. We consider that those issues fall under the following heads:

- What constitutes a Significant Natural Area;
- The extent of SNAs in the New Plymouth District;
- The extent of indigenous habitat loss in the New Plymouth District from historic and current perspectives;
- What methods does the Council provide for the protection of SNAs in its District and do these methods provide the level of protection required by RMA;
- Consideration of the declarations requested by Forest and Bird in light of findings on the above issues;
- Consideration of the enforcement order applications made by Forest and Bird in light of the determination on the above issues.

What constitutes a Significant Natural Area?

[22] Forest and Bird contends that the duty to make provision for SNAs in the District Plan which it seeks to enforce through these proceedings arises out of the provisions of s6(c) RMA which relevantly provides:

> ***6 Matters of National Importance***
>
> *In achieving the purpose of this 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 the following matters of national importance:*

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

[23] It is our understanding that the … *areas of significant indigenous vegetation and significant habitats of indigenous fauna* … which s6(c) seeks to protect as a matter of national importance include areas and habitats of regional and district significance, in this case the SNAs subject to these proceedings.

[24] Also relevant to our considerations in this regard are the provisions of s31 RMA which relevantly provides:

> ***31 Functions of territorial authorities under this Act***
>
> *(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*
>
> *(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of –*
>
> *(iii) the maintenance of indigenous biological diversity:*

It is the combination of ss6 and 31(1)(b)(iii) which Forest and Bird contends gives rise to the duties which it seeks to identify and impose in this case.

[25] For the sake of completeness we record our understanding that reference to the maintenance of indigenous biological diversity in s31(1)(b)(iii) relates to the significant areas and habitats referred to in s6(c). That is confirmed by reference to the Regional Policy Statement for Taranaki (RPS)[8] which contains the following description of indigenous biodiversity (which we understand to mean the same as indigenous biological diversity):

> *Indigenous biodiversity here refers to biodiversity that is native to New Zealand, and much of which is found nowhere in the world. Native forest and shrub land cover extensive areas of Taranaki (approximately 40 %). These areas, along with Taranaki's rivers and streams, wetlands and*

[8] We note that the RPS postdates the District Plan but we do not think that is of any moment in these proceedings.

coastal marine area provide significant habitats for indigenous flora and fauna species, including threatened species.

[26] Notwithstanding the reference in s6(c) to areas of significant indigenous vegetation and significant habitats of indigenous fauna there is no definition in RMA as to what constitutes such significant areas and habitats. We note that Policies 1 and 2 of the Proposed National Policy Statement on Indigenous Biodiversity do include some description of and criteria for identifying such areas and habitats but also envisage that regional policy statements will include their own criteria which will be reflected in regional and district plans.

[27] The lack of such wider guidance is not an issue in this particular case as the District Plan itself contains the following description of SNAs in its Definitions Section:

> ***SIGNIFICANT NATURAL AREA*** *means an area of INDIGENOUS VEGETATION or a habitat of indigenous fauna that meets the criteria in Schedule 21.1 and is identified in Schedule 21.2 or Table 21.3 of Appendix 21. Except that, no vegetation that has regenerated since this plan was notified shall be regarded as a SIGNIFICANT NATURAL AREA.*

[28] The criteria referred to in the definition above are the criteria inserted into the District Plan pursuant to the Consent Order. The criteria are:

> ***21.1 Criteria for determining SIGNIFICANT NATURAL AREAS***
>
> *In determining whether a natural area is a SIGNIFICANT NATURAL AREA, the COUNCIL will consider the following criteria:*
>
> 1. *Occurrence of an endemic species that is:*
>   - *Endangered;*
>   - *Vulnerable;*
>   - *Rare;*
>   - *Regionally threatened; or*
>   - *Of limited abundance throughout the country.*
> 2. *Areas of important habitat for:*
>   - *Nationally vulnerable or rare species; or*

- *An internationally uncommon species (breeding and/or migratory).*

3. *Ecosystems or examples of an original habitat type, sequence or mosaic which are:*
   - *Nationally rare or uncommon;*
   - *Rare within the ecological region;*
   - *Uncommon elsewhere in that ecological district or region but contain all or almost all species typical of that habitat type (for that region or district); or*
   - *Not well represented in protected areas.*
4. *An area where any particular species is exceptional in terms of abundance or habitat.*
5. *Buffering and connectivity is provided to, or by the area.*
6. *Extent of management input required to ensure sustainability.*

We make the following observations regarding the criteria.

[29] Firstly, that the criteria are consistent with ***BIO Policy 4*** of the RPS which relevantly provides that:

> *When identifying ecosystems, habitats and areas with significant indigenous biodiversity values, matters to be considered will include:*
>
> *(a) the presence of rare or distinctive indigenous flora and fauna species; or*
>
> *(b) the representativeness of an area; or*
>
> *(c) the ecological context of an area.*

We consider that the criteria in Schedule 21.1 give effect to **BIO Policy 4** notwithstanding that the District Plan predates that Policy.

[30] Secondly that the criteria are consistent with Policy 11 of the New Zealand Coastal Policy Statement (NZCPS) [9] which provides:

Policy 11 ***Indigenous biological diversity (biodiversity)***

[9] As with the RPS, NZCPS postdates the District Plan but again we consider that is of no moment for the purposes of our considerations.

To protect indigenous biological diversity in the coastal environment:

(a) avoid adverse effects of activities on:

(i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;

(ii) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;

(iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;

(iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;

(v) areas containing nationally significant examples of indigenous community types; and

(vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:

(i) areas of predominantly indigenous vegetation in the coastal environment;

(ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;

(iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;

(iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;

(v) habitats, including areas and routes, important to migratory species; and

(vi) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

We consider that the criteria in Schedule 21.1 give effect to the provisions of Policy 11 (which applies to those parts of the District which are within the coastal environment) notwithstanding that the District Plan predates NZCPS.

[31] Thirdly, that the criteria are not conjunctive. Only one of the criteria has to be met for an area to be considered as an SNA.

[32] Fourthly, we have reservations about the appropriateness of Criterion 6, the *extent of management input required to ensure sustainability.* We are uncertain as to precisely what this criterion means but it appears to suggest that an area will not be identified as an SNA if a high degree of management input is required to ensure its sustainability. It is difficult to see how the willingness, ability or capacity of a property owner to provide the necessary management input should be determinative of whether or not an area is an SNA. In any event, because of the disjunctive nature of the criteria, Criterion 6 largely appears an irrelevance. If any of the other criteria are met that is sufficient for an area to be considered to be an SNA irrespective of whether or not Criterion 6 is met.

[33] It will be apparent from consideration of the matters set out above that the District Plan contains specific criteria defining what constitutes SNAs. As we observed in para [18] (above), Issue 16 of the District Plan contemplates that areas of indigenous vegetation in the District will be regularly monitored and the significance criteria will be applied to them so that Appendix 21 can be updated by inclusion of areas which are found to meet the criteria.

[34] Accordingly, for the purposes of this decision we determine that:

- SNAs are areas identified as such through application of the criteria in Appendix 21.1 of the District Plan;
- The identified SNAs are significant areas of indigenous vegetation and/or significant habitats for the purposes of s6(c).

The extent of SNAs in the New Plymouth District

[35] Following execution of the MOU in May 2005 the Council took steps to implement the various agreements reached. These steps included a review of the list of SNAs with a view to adding further areas which met the significance criteria in Appendix 21.1. The Council employed ecological consultancy firm Wildland Consultants Limited (Wildlands) for this purpose.

[36] Amongst the functions which Wildlands undertook was the preparation of a series of reports (initially) identifying unprotected natural areas which had the potential to be SNAs through application of the Appendix 21.1 criteria and subsequently refining that assessment.

[37] Wildlands undertook that process using *desk-top* analysis. Potential sites were not assessed in the field but were identified using a process described in these terms:[10]

- *Recent digital, orthocorrected aerial photographs of the District were obtained.*
- *Protected natural areas (e.g. land administered by the Department of Conservation, QEII covenants, Council Reserves and Nga Whenua Rahui covenants) were superimposed onto the aerial photographs.*
- *The existing GIS layer of SNAs was also shown on the aerial photographs.*
- *Unprotected natural areas were identified using LCDB2*[11] *and shown on the photographs.*
- *Colour coding was used to show natural areas in threatened land environments as per the LENZ*[12] *- LCDB2 analysis (refer to Appendix 2).*
- *Topographical features such as rivers, ecologically-significant streams, wetlands, and key native ecosystems in Taranaki Region (Taranaki Regional Council) were named on the aerial photographs.*

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[10] Wildlands Report 2407 (October 2009) Draft for Discussion.
[11] Land Cover Database Version 2 – a digital map of New Zealand showing land cover grouped into 9 major land cover classes.
[12] Land Environments of New Zealand – an environmental classification of New Zealand produced by Landcare Research.

- *The resulting maps (based on digital aerial photographs) were assessed visually.*
  - *Areas identified by LCDB2 which were extremely small or fragmented or which comprised predominantly exotic vegetation were removed.*
  - *Additional sites were identified.*
  - *Boundaries were adjusted where there were large inaccuracies.*
- *Published and unpublished information was assembled and ecologists who are familiar with the study area were consulted.*

[38] The natural areas identified by Wildlands were assessed against the criteria in the District Plan (except for Criterion 6) and allocated to one of four categories described in these terms in Report 2407:

> *(1A) Natural areas of potential significance – Level 1A:*
> *Natural areas which probably meet one or more of the criteria in the District Plan and more than half the site is in 'acutely threatened' or 'chronically threatened' land environments.*
> *(1B) Natural areas of potential significance – Level 1B:*
> *Natural areas which probably meet one or more of the criteria in the District Plan and are situated in land environments that are not 'acutely threatened' or 'chronically threatened'.*
> *(2) Natural areas of potential significance – Level 2:*
> *Natural areas which probably meet a criterion but are not included in Level 1 because, for example, they are very small, or modified, or may be an existing Council Reserve.*
> *(3) Other natural areas:*
> *Natural areas which are not currently known to meet any of the criteria, based on this desk-top analysis.*

Wildlands Report 2407 identified some 500 sites occupying 32,444ha in Levels 1A – 3.

[39] The SNALG sought further analysis of Levels 1A and 1B sites using updated aerial photography from 2010. The final Wildlands Report[13] identified that there are 308 SNAs occupying 18,728ha in Levels 1A and 1B.[14] Wildlands explained the reason for the large number of sites which had been identified in its Reports in these terms:[15]

- *every patch of indigenous vegetation being treated as a separate site (i.e. even patches that are very close together were not 'amalgamated' to create a single site).*
- *indigenous vegetation frequently extending beyond the boundaries of protected areas, such as DoC-administered land. Each of these single 'protrusions' was treated as a separate site.*
- *the entire coastal strip being identified as a natural area, except for those parts that are already protected. However, the coastal strip comprises numerous sites, some of them very small, situated between various protected areas.*

[40] The Wildlands process and Reports were the subject of review by the Department of Conservation (DoC) at the request of the Council due to concerns on the Council's part as to the high number of SNAs which had been identified. The DoC review[16] took no issue with the underlying methodology used in preparation of the Wildlands Reports. It suggested some refinements and identified a number of other sources of data and information which might be used to refine application of the criteria identified in the District Plan. Nothing in the DoC review suggests any fundamental flaws in the Wildlands Reports or challenges the extent of SNAs identified in them.

[41] The Wildlands Reports were the subject of consideration by Ms Maseyk who was the only ecologist who gave evidence to the Court. She undertook a detailed critique of the Reports, the methodology used to complete them, the application of

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[13] Wildlands Report 2611a.
[14] Maseyk First Affidavit, Table 5.
[15] Wildlands Report 2407, para 6.1.
[16] Maseyk First Affidavit, Annexure E.

the significance criteria contained in the District Plan, the categorisation (Levels 1A etc) used by Wildlands and the conclusions reached as to identification of SNAs.

[42] Ms Maseyk broke down the conclusions of the Wildlands Reports in Table 7 of her First Affidavit.[17] That table identified that there were 363 (now reduced to 361) sites which potentially met the SNA criteria contained in the District Plan. That figure was further refined by the identification of 326 sites which could be listed as SNAs *with confidence*.[18] She considered that the remaining 37 sites should be regarded as potential SNAs but would require a site visit to confirm whether or not they met the SNA criteria. A key conclusion reached by Ms Maseyk was that desk-top methodologies can be relied on to identify natural areas and assess them for significance. She acknowledged that such methodologies will not be free of errors but considered that they were likely to be an improvement on methodologies that relied on field surveys.[19]

[43] The conclusions reached by Ms Maseyk were not challenged by the evidence of any other appropriately qualified ecologist. Nothing in her lengthy cross-examination led her to resile from the conclusions which she had reached or led the Court to the view that those conclusions were wrong.

[44] A degree of confirmation as to the accuracy of identification of SNAs in the Wildlands Reports (and confirmed by Ms Maseyk) is found in the evidence of Mr N K Phillips who appeared as a witness for the Council under witness summons. Mr Phillips is the Regional Representative for Taranaki of the Queen Elizabeth the Second National Trust (the QEII Trust).

[45] In addition to the work which he undertakes for the QEII Trust, Mr Phillips undertakes work on contract for the Council as landowner liaison looking at likely SNAs. The Council witnesses referred to these as LSNAs. The LSNAs in question are the SNAs identified in the Wildlands Reports.[20] Between January and July 2014

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[17] Para 178.
[18] Maseyk First Affidavit, para 179.
[19] Maseyk First Affidavit, para 188.
[20] NOE, pages 233-234.

Mr Phillips and an associate undertook site visits to a number of LSNAs located on what is known as the *ring plain* area of the New Plymouth District. Ninety two LSNAs were visited during that period. These were situated on 143 properties (the LSNAs often overlap property boundaries). Mr Phillips advised that the majority of the properties which he visited contained LSNAs which warranted protection of some sort whether by covenant or otherwise.[21]

[46] It is not clear from Mr Phillips' evidence if his liaison visits involved direct application of the SNA criteria in Appendix 21.1. However his evidence establishes that the LSNAs visited (and not included in Appendix 21.2) are areas which warrant protection in his view.

[47] Finally we note that the Council did not dispute that there are SNAs within its District which are not covered by the rules in the District Plan as they are not identified in Appendix 21.2. Ms Hughes QC acknowledged that in her opening submissions for the Council.[22] Further to that acknowledgment, Ms Johnson (one of the Council's planning witnesses) acknowledged that there were a... *whole number of sites that have been identified that meet the significant natural area criteria.*[23] She accepted Ms Maseyk's evidence as to the adequacy of the Wildlands Reports to identify SNAs in the District.[24]

[48] Having regard to all of the above evidence we conclude that, applying the criteria contained in Appendix 21.1, there are probably somewhere between 326 – 361 SNAs in the Council's District which are not identified in Appendix 21.2 of the District Plan and accordingly are not subject to the rules which protect those SNAs from inappropriate development. Extrapolating the areas contained in Ms Maseyk's Table 5 we understand that these SNAs occupy an area of approximately 21,900ha.

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[21] NOE, page 159.
[22] Council Opening Submissions, para 13.
[23] NOE, page 223.
[24] NOE, page 224.

The extent of indigenous habitat loss in the New Plymouth District from historic and current perspectives

[49] Evidence on this topic primarily revolved around the extent of historic loss of indigenous habitat in the New Plymouth District and the rate of ongoing loss. The two relevant witnesses on this topic were Ms Maseyk for Forest and Bird and Ms Dravitzki for the Council. Although there were some differences between them, these were comparatively minor in nature and did not go to the determinative issues we must resolve in these proceedings.

[50] According to Ms Maseyk the New Plymouth District comprises somewhere in the order of 220,592ha which falls into two Ecological Districts, Egmont and North Taranaki. Ms Dravitski estimated the area as being 220,550.23ha.

[51] There has been a pattern of modification of indigenous vegetation in Taranaki since the time of human occupation. This process was accelerated with the arrival of European settlers in 1840 which gave rise to extensive clearance of the lowland and coastal areas on the ring plain in particular. Ms Maseyk testified that indigenous vegetation cover within the District has been reduced to 44% of its original cover and comprises a total of 97,110ha. Although Ms Dravitzki did not identify a figure in hectares, she similarly identified that the extent of remaining cover of indigenous vegetation is 44% of the original cover.[25]

[52] Ms Maseyk advised that the remaining vegetation is not uniformly distributed across the Egmont and North Taranaki Ecological Districts. Seventeen percent of original vegetation remains in the Egmont Ecological District[26] while 64% of original cover remains in the North Taranaki Ecological District. The reason for the difference is that the *...areas that were most conducive for agricultural production and settlement were cleared first, fastest, and most extensively.*[27] In this instance that development primarily took place on the ring plain and surrounding areas in the Egmont Ecological District.

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[25] EIC, page 7, Table 2 (43.81%).
[26] Including areas outside the New Plymouth District.
[27] Maseyk First Affidavit, para 27.

[53] Ms Maseyk described this historical process in these terms:[28]

The large-scale loss of indigenous biodiversity from the New Plymouth District has resulted in a dramatic change in the landscape. This is particularly so in the lowland areas of the District which has shifted from a landscape previously dominated by indigenous biodiversity to one characterised by a matrix of mixed landcover dominated by exotic pastoral species and human settlement infrastructure. Indigenous vegetation has been largely reduced to small, discrete, isolated patches in the lowland areas, with larger more contiguous cover in the uplands.

[54] Ms Dravitzki undertook an analysis of the extent to which the remaining indigenous vegetation in the New Plymouth District was legally protected. The legal mechanisms for protection which she identified included QEII covenants, conservation covenants, Nga Whenua Rahui,[29] private protected land, private scenic reserve, DoC land, Council Reserve land and Appendix 21.3 land. She calculated that 53% of the remaining indigenous vegetation is legally protected by one of these mechanisms. Far and away the most significant proportion of that protected land is land in the DoC estate which makes up over 80% of the protected land on the basis of Ms Dravitzki's figures.[30]

[55] Ms Dravitzki estimated that if all the SNAs which have been identified by Wildlands and Ms Maseyk were given protection by being identified in Appendix 21.2, more than 80% of the remaining indigenous vegetation in the District would then be subject to some form of legal protection.[31] We were told by Ms Maseyk that the vast majority of the DoC estate falls within the North Taranaki hill country or Egmont National Park. Only a small proportion of remaining areas of indigenous vegetation in the lowland areas have some form of legal protection.[32]

[56] Ms Dravitzki undertook an analysis of changes in indigenous vegetation cover which had occurred in the New Plymouth District over three periods,

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[28] Maseyk First Affidavit, para 36.
[29] A fund for the protection of Maori land.
[30] Dravitski, 42,749.22ha – Maseyk, 50,025ha.
[31] Dravitzki EIC, para 15.
[32] Maseyk First Affidavit, para 17.

1996 – 2001, 2001 – 2008 and 2008 – 2012. Her analysis showed that during the period 1996 – 2012, 1,273.9ha had changed from an indigenous vegetation classification to an exotic based classification, a loss of 1.3%. It appeared that a substantial portion of that change arose out of reclassification of manuka and/or kanuka land which had undergone a change to grassland or gorse and/or broom. If that was excluded then the extent of the change was 0.1% which had led Ms Dravitzki to the view that indigenous vegetation coverage within the District was essentially stable.

[57] In cross-examination of Ms Dravitski, attention was drawn to Table 4 of her evidence. Table 4 was an identification of the extent of loss of indigenous vegetation within acutely threatened environments of the District.[33] It showed losses of 19.05ha for the 1996 – 2001 period, 29.91ha for the 2001 – 2008 period and 16.8ha for the 2008 – 2012 period. More detailed analysis was provided for the 2008 – 2012 period which indicates that most of the loss (9.47ha) arose out of reclassification of manuka/kanuka and none of the loss was within the areas identified as SNAs.

[58] Ms Maseyk commented on Ms Dravitzki's analysis in these terms:[34]

> *Ms Dravitzki's analysis does however confirm that some loss is occurring, and has continued to occur at each of the three time-steps presented (1996 – 2001; 2001 – 2008; 2008 – 2012), and most critically, loss has continued in the areas of the District that have historically lost the most and where indigenous vegetation has already been drastically reduced (e.g. threatened land environments such as occur on the ring plain and coastal areas).*

(The analyses undertaken by Ms Dravitzki and Ms Maseyk were based on identification of loss of areas of indigenous vegetation. We understand that the loss of indigenous vegetation is a surrogate for the wider loss of indigenous biodiversity).

[59] In her first affidavit, Ms Maseyk had commented on the effects of habitat loss in these terms:

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[33] Environments with less than 10% of original indigenous vegetation cover remaining.
[34] Maseyk Rebuttal Evidence, para 21.

53 *Even if the likelihood of deliberate clearance is low, the consequence of continued loss of indigenous biodiversity within NPD is high. This is all the more so in lowland areas of the District. In situations where habitat has been extensively reduced to the point there is very little left, any further losses have a disproportionate (and often permanent) impact. This is the case even when losses are small such as encroaching on the edges of patches of habitat.*

54 *Any further loss of habitat from private land on the ringplain is of particular consequence as lowland habitat is not well represented within Public Conservation Land. That is, there is no 'bank' of protected equivalent habitat elsewhere. For habitat types that are already very much reduced in extent, failure to protect what is left risks ultimate extinction of habitat.*

[60] In a supplementary affidavit[35] Ms Maseyk considered the loss of wetland habitat over the corresponding periods used in the analysis of loss of indigenous vegetation. Ms Maseyk's evidence was not contradicted and nothing in her cross-examination led us to the view that it was wrong. She identified that over the total period there had been a 5.5% loss in the total number of wetlands and a 4.7% loss in the total extent of wetland habitat. We did not understand that the wetlands which had been lost were necessarily SNAs which had been identified in the Wildlands report. It was our understanding that this evidence was advanced to support the proposition that there is a trend of ongoing loss of natural habitat in the New Plymouth District.

[61] The conclusion which we have reached from the evidence summarised above is that over recent years there has been only a small loss of indigenous vegetation in the areas which were analysed by Ms Dravitzki and Ms Maseyk. We are unable to be precise from the evidence given to us as to the extent of loss of areas which have now been identified as SNAs. However it appears from Ms Maseyk's evidence that the loss of indigenous vegetation has been in the areas that are most vulnerable to

[35] Maseyk Supplementary Affidavit, 17 March 2015.

such loss because ... *further clearance can equate to permanent loss of indigenous cover and the local extinction of species.*[36]

What methods does the Council provide for the protection of SNAs in its District and do these methods provide the level of protection required by RMA?

[62] This question lies at the heart of these proceedings. It was put in these terms by Ms Hughes QC in her opening submissions for the Council:

> *The Council accepts that there are SNAs within its district which are not currently covered by rules. That with respect is not the test, the test is does the palette of measures put in place by the Council meet its obligations under s6(c) and 31(1)(b)(iii)?*

We concur with that statement. In short, the Council says that it meets its obligations under ss6(c) and 31(1)(b)(iii)[37] through the palette of measures identified in the submissions of Ms Hughes QC and in the evidence of its planning witness Ms Johnson.

[63] It will be seen that s6(c) identifies the *protection* of significant indigenous vegetation and significant habitats of indigenous fauna as a matter of national importance. The word protection is not defined in RMA. We use it in the sense identified in decisions such as *Environmental Defence Society v Mangonui County Council*[38] and *Port Otago Ltd v Dunedin City Council*[39] as meaning to keep safe from harm, injury or damage. The only gloss which we would put on to that meaning is that it is implicit in the concept of protection that *adequate* protection is required.

[64] It is clear in our view that s6(c) imposes a duty on the Council to protect SNAs (*shall* (our emphasis) *recognise and provide for ... the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna*). That interpretation is consistent with the interpretation of sections 6(a) and (b) RMA applied by the Supreme Court in *Environmental Defence Society Inc v New Zealand*

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[36] Maseyk First Affidavit, para 47.
[37] See paras [22] and [24] (above).
[38] [1989] 3 NZLR 257 (CA) at 262.
[39] Decision No: C 4/2002.

King Salmon Company Limited[40] and in particular, the observation that ... *Sections 6(a) and (b) are intended to make it clear that those implementing the RMA must* (our emphasis) *take steps to implement that protective element of sustainable management.*[41] We appreciate that in the *King Salmon* case, the Supreme Court was dealing with natural character and outstanding natural features and landscapes in the coastal environment but we do not think that makes any difference to our interpretation of s6(c) in this instance.

[65] Notwithstanding the directive and obligatory nature of s6(c), we do not consider that a territorial authority is necessarily obliged to achieve the protection sought by incorporating rules in its district plan. The nature of the protection required to meet a territorial authority's duty in any given instance is one to be determined by that authority when preparing or reviewing its district plan.

[66] When preparing a district plan a territorial authority is obliged to prepare an evaluation report in accordance with s32 RMA and to have particular regard to that report when deciding whether or not to proceed with that district plan.[42] Section 32 states the relevant requirements for such evaluation reports in these terms:

> *(1) An evaluation report required under this Act must-*
>
> *(a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
>
> *(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by-*
>
> *(i) identifying other reasonably practicable options for achieving the objectives; and*
>
> *(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
>
> *(iii) summarising the reasons for deciding on the provisions.*
>
> ...

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[40] [2014] 1 NZLR 593, [2014] NZRMA 195, (2014) 17 ELRNZ 442 (SC).
[41] Para 148.
[42] Clause 5(1)(a), Schedule 1 RMA.

(2) An assessment under subsection (1)(b)(ii) must—

(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—

(i) economic growth that are anticipated to be provided or reduced; and

(ii) employment that are anticipated to be provided or reduced; and

(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and

(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

In turn, the expression *provisions* is defined as meaning:[43]

(a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:

[67] It is clear from consideration of the above provisions of RMA that there may be methods of achieving the purpose of the Act as it relates to the sustainable management of SNAs other than the insertion of policies and rules in a district plan. As we have noted previously[44] the Council's case is that there is a palette of other measures (methods) in place adequately protecting those SNAs which are not presently identified in Appendix 21.2.

[68] We accept that the Council might conceivably meet its duty under ss6(c) and 31(1)(b)(iii) by means of such other methods and we will turn to consider their effectiveness in due course. Before doing so however we address what seems to be a mischaracterisation by the Council of the case presented by Forest and Bird in these proceedings. In her opening submissions Ms Hughes QC described the Council's position in these terms:

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[43] s32(6) RMA.
[44] Para [62] (above).

> 1. *The Council's position is and has consistently been, there is no merit in either of the Applications before this Court. They are with respect misconceived and simply cannot achieve the objective Forest and Bird have – that is to force the Council to impose a rules based regime to protect SNAs. It is as simple as this: if a matter is not measurable then it cannot be enforceable. Time has moved on in the last 10 years, attitudes have changed, the view of Forest and Bird regarding landowners and their engagement is historic and not current, the Act does not require a council to meet its obligations by imposing rules and furthermore a plan change is a complex process and this Court is quite simply not in the position to make orders compelling that plan change at this time.*[45] (our emphases)

[69] It is not correct for the Council to contend that Forest and Bird seeks to force it to impose a rules based regime to protect SNAs. As we observed in para [15] (above) a partially rules based regime was put in place by the Consent Order in 2005. The regime is not entirely rules based as other methods of protecting SNAs are also recognised in the District Plan however rules are part of the palette of methods for managing SNAs contained in the District Plan. In particular the disturbance of SNAs identified in Appendix 21.2 is controlled by restricted discretionary activity Rule OL60.

[70] As we then noted in para [18] (above) the District Plan contemplates that further SNAs (in addition to those presently identified in Appendix 21.2) are to be identified and made subject to rules. That interpretation of Issue 16 was acknowledged by Mr Versteeg (one of the Council's planning witnesses) in the following discussion with the Court:[46]

> *Q. But I think we've got to the point and I think you acknowledged that earlier on that the Plan is clear that SNAs that have been identified using the criteria which had been inserted in the Plan, should be added to the Plan?*

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[45] Council Opening Submissions, para 1.
[46] NOE, page 271.

A. That's correct.

Q. That was the clear intention wasn't it, there is no issue of that?

A. I agree with it.

[71] We have referred on a number of occasions to the expression used by Ms Hughes QC on the Council's behalf of there being a palette of measures in place to meet the Council's duty under ss6(c) and 31(1)(b)(iii). There can be no doubt that part of that palette is rules to protect SNAs which have been identified through application of the criteria contained in Appendix 21.1. Methods of Implementation 16.2(v) of the District Plan specifically says so. We note that this is consistent with and gives effect to ***BIO METH 19*** of the RPS which provides that:

> *Territorial Authorities will consider the following methods:*
>
> *Include in **district plans**, objectives, policies and methods, including rules, relating to the control of the use of land to maintain indigenous biodiversity in areas of significant indigenous or other vegetation and habitats of indigenous fauna.*[47]
>
> ...
>
> ***Significant Natural Areas***
>
> ...
>
> *Rules apply protecting these areas from inappropriate subdivision, use and development. ...*

[72] In light of that finding we consider the methods other than rules to protect SNAs provided for in the District Plan and whether the other methods would provide adequate protection should a significant number of SNAs contained in the District not be covered by the rules due to their not having been identified in Appendix 21.2.

[73] Issue 16 of the District Plan is **Degradation and loss of INDIGENOUS VEGETATION and habitats of indigenous fauna.** It contains the following Objective and Policy:

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[47] We also note that on page 88 the RPS records that ... *the South Taranaki and New Plymouth district councils have identified areas with locally important indigenous biodiversity values, which are referred to as 'Significant Natural Areas'.*

Objective 16

To sustainably manage, and enhance where practical, INDIGENOUS VEGETATION and habitats

Policy 16.1

Land use, development and subdivision should not result in adverse effects on the sustainable management of, and should enhance where practical, SIGNIFICANT NATURAL AREAS.

[74] Following Policy 16.1, Issue 16 sets out the methods of it implementation of that Policy. Thirty four methods are identified. We agree with Ms Hughes QC's submission that these constitute a wide ranging palette of measures. That palette is described under various group headings contained in the ***Methods*** section of the District Plan:

- Identification of significant natural areas (Methods 16.1, a – h)
  These provisions describe the process of identification of SNAs using the criteria in Appendix 21.1 and the inclusion of those SNAs in Schedule 21.2 (if they are unprotected) so that they become subject to the rules controlling disturbance of significant indigenous vegetation;
- Incentives (Methods 16.1, i – n)
  These provisions provide incentives for the protection and enhancement of SNAs by providing for benefits to landowners on subdivision if SNAs are protected, financial assistance and rating relief for the covenanting of SNAs, community awards and work schemes to encourage enhancement of SNAs and the like;
- Council action or works (Methods 16.1, o – t)
  These methods consider use of heritage orders and acquisition of land by the Council to protect SNAs, facilitation of agreements between the Council and landowners, the use of work schemes, investigating community based awards, rating relief and assisting landowners with pest control in SNAs;
- Control of activities on and in proximity to SNAs (Methods 16.1, u – x)
  Of particular significance under this head is Method (v) which identifies that ...*rules controlling the modification of INDIGENOUS VEGETATION*

identified as a SIGNIFICANT NATURAL AREA in Schedule 21.2 ... are to be one of the methods for controlling the modification of SNAs identified in Schedule 21.2. These provisions also address the legal protection of SNAs at the time subdivision occurs;

- Information, education and consultation (Methods 16.1, y – ee)
  These methods provide for public education about the protection of SNAs, advocating to other agencies to protect SNAs and generally encouraging community participation in such protection;
- Monitoring (Methods 16.1, ff – hh)
  These methods involve a monitoring plan in respect of SNAs.

[75] It became apparent after hearing the submissions of Ms Hughes QC on behalf of the Council and from Ms Johnson that the Council has put in place only a number of the other methods identified in Methods 16.1. In some cases these involve an amalgamation of a number of the identified methods. We briefly identify those methods which we understand to be in place.

[76] There are three relevant Rules included in the District Plan:

- Rule OL11 (relating to clearance of vegetation in the Coastal Hazard Areas);
- Rule OL17 (relating to clearance of vegetation in the Coastal Policy Area);
- Rule OL60 (relating to the clearance of vegetation in SNAs identified in Schedule 21.2).

[77] The primary covenanting method applied by the Council is support for the QEII covenant programme. The Council pointed to the fact that there is a very active QEII programme in the New Plymouth District. Support for and involvement in such a process is one of the methods contemplated by the District Plan. Combined with that is the landowner liaison programme which was referred to in the evidence of Mr Phillips.

[78] Ms Johnson advised that the Council gives 100% rates relief for sites which have a QEII covenant[48] (presumably pro rata with the property area) and provides assistance for the fencing of QEII covenanted areas through its nature heritage fund.[49] We understand that rating relief and assistance with fencing also apply to other forms of covenant but the QEII covenanted areas are the most common recipient. Obviously all of these are highly commendable initiatives of a positive nature. However it was apparent that the QEII covenanting process goes only so far in meeting the obligation of protection contained in s6(c).

[79] Mr Phillips advised that there are now 360 QEII covenants registered or in the process of registration in the New Plymouth District.[50] That was up from approximately 80 at the time he commenced work for QEII 16 years ago. It transpires that of the SNAs identified in the Wildlands report but not included in Appendix 21.2, only about 5% are subject to QEII covenants or are undergoing that process notwithstanding that the Taranaki area has the highest proportion of QEII covenant funds allocated to it of any area in New Zealand. Mr Phillips advised that his funding allocation for the current year enabled covenanting over 15 properties in the whole Taranaki Land District (not just the New Plymouth District) and that 13 properties had been approved already. That means that it would take 10 years at the current rate to approve funding for all of the 143 properties containing LSNAs which Mr Phillips had visited earlier this year (assuming that all of the property owners wish to participate in the covenanting process). The reality is that the QEII process cannot protect all of the SNAs identified in the Wildlands reports. Mr Phillips acknowledged that.[51]

[80] A further means of protection identified in the Council evidence was the keeping of an SNA database. This is also one of the methods contemplated in Methods 16.1.[52] Ironically the database contains all of the SNAs identified in the Wildlands reports listing them under the LSNA label. That identification of itself provides no protection for the SNAs in the absence of their identification in

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[48] NOE, page 235.
[49] NOE, page 234.
[50] EIC, para 10.
[51] NOE, page 159.
[52] Method 16.1 (f).

Appendix 21.2. Mr Carlyon testified[53] that ... *Of the approximate 18,728 ha of LSNAs, as at 21 August 2014 only 2.8 % or approximately 530 ha were subject to protection (this figure being based on those sites protected through a QEII Covenant).*

[81] Those methods identified above are in reality the palette of other measures which the Council has put into place and which it contends meets its obligations under ss6(c) and 31(1)(b)(iii). Underlying that contention was the Council's view that rules protecting SNAs are unnecessary because there is no longer any *appetite* in the District for clearance of SNAs.[54] Ms Hughes QC put that proposition in these terms:[55]

4. *More than anything, the Council wishes this Court to understand that in its experience there has been a significant sea-change in the attitude of landowners. Whereas historically, landowners sought to exploit the economic possibilities of their land and resisted any effort to consider the environment, now farmers are amongst the most ardent of environmentalists. The 274 parties you heard from yesterday demonstrate precisely the point: they voluntarily plant trees – lots of them, the voluntarily fence their waterways and they voluntarily fence their SNAs. From the Council's perspective they have found farmers increasingly of the view that they must leave their land better than they found it and the Council wishes to work collaboratively with the farmers to ensure the protection of SNAs. The Council's view is that is best achieved by demonstrating trust in the landowners and monitoring their activities.*
5. *It is certainly true that there will always be the odd renegade, who seeks to act in a manner contrary to the interests of the environment but such persons are rare and if a truly unique environment was identified on any property as opposed to remnants of bush in a generic sense, then the Council would move to protect the truly unique or threatened.*

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[53] Affidavit, para 69.
[54] Council Opening Submissions, para 8.5.
[55] Council Opening Submissions, paras 4-5.

[82] The Council submission drew support from a number of the parties and witnesses that appeared before us. It is apparent from the evidence which we considered that many landowners in the District actively seek to protect areas of their properties containing indigenous vegetation and habitat. Some landowners do so through formal covenanting processes with bodies such as QEII and the Council and some simply do so *off their own bat* to protect these features for future generations. We ask ourselves whether or not those facts mean that there should not be rules contained in the District Plan protecting SNAs (not just *truly unique or threatened* areas as suggested by the Council) from modification or more directly in this case whether or not the Council should be free to ignore the clear intention of the District Plan that areas of significant indigenous vegetation and significant habitats which met the SNA criteria should be identified and made subject to the rules contained within it.

[83] The first answer to that question is that it has already been determined that there should be such rules. They were incorporated into the District Plan by the Consent Order. Method 16 specifies that further SNAs will be identified and made subject to the rules.

[84] A point made by a number of parties in opposition to the Forest and Bird applications was that the primary threat to SNAs is not unauthorised disturbance of vegetation within them (which is controlled by Rule OL60) but rather the effects of stock intrusion.[56] It was contended that the only way to prevent stock intrusion is by fencing and that rules do not (and cannot) require compulsory fencing whereas the provision of funds from QEII Trust and the Council for fencing is part of the QEII covenanting process.

[85] We are inclined to concur with the submission made by QEII Trust that the QEII covenant process which involves collaboration with land owners and the fencing of SNAs has the potential to be a better form of protection than the imposition of rules which do not achieve the fencing of SNAs. However, that acknowledgement must be considered in the context that the QEII process can only

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[56] Eg NOE (Mr Phillips) page 151.

cover a limited amount of the District's SNAs and that there are those who are not interested in participating in it in any event.

[86] In our view the fact that the QEII covenant process may provide a better form of protection than rules does not mean that there should not be rules in place to protect vegetation in SNAs from damage or destruction by those who do wish to undertake works within them. We refer to the point made on behalf of the Council that there should be a palette of measures in place. Any single measure on its own might be insufficient to provide the appropriate level of protection. It is the combination of such measures which is important.

[87] Next, we observe that we have some difficulty with propositions advanced based on the perceived attitude of landowners. The Council's claim that attitudes have changed[57] appears to us to be a somewhat flimsy basis to advance the case which it did at this hearing. Even if it could be proven to be correct, we have substantial reservations as to whether or not leaving the protection of SNAs up to the attitude of the landowners of the District provides the level of protection of significant indigenous vegetation and habitats required by s6(c). Ms Hughes QC acknowledged that there might always be the odd renegade who will act contrary to the general attitude.

[88] The possibility that there might be those who act contrary to the general attitude must also be considered in the context that at least in some parts of the District small losses of habitat can have a disproportionate effect and that failure to protect what is left risks ultimate extinction of some habitats. We do not go so far as Mr Carlyon who contended that voluntary protection will not ever achieve the requirement of s6(c).[58] We consider that is something which must be assessed in any given instance. Factors such as the nature and extent of the voluntary protection and the extent and vulnerability of particular areas of significant indigenous vegetation and significant habitats will all be factors to be taken into account in determining whether or not rules are required.

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[57] Para [81] (above).
[58] Affidavit, para 84.

[89] In any event the contention as to landowner attitude was not supported by the only piece of *hard* evidence which we saw in this regard. Paragraphs 32-35 of Ms Dravitzki's evidence made a summary of Mr Phillips' visits to landowners on the ring plain whose properties contained SNAs. As we noted previously, 143 properties were involved. Ms Dravitzki's analysis of the interviews which Mr Phillips had undertaken with the landowners established that out of 168 or 169 landowners interviewed, 61.3 percent were either actively managing and/or keen to covenant land contained in the SNAs. Alternatively, the survey indicated that 52 landowners (30 percent) were neither keen to actively manage nor to covenant the SNAs on their land. That seems to us to be a significant proportion of landowners whose attitude is somewhat different to that which underpinned the Council's position in these proceedings.

[90] What ultimately emerged as the heart of the issue in this regard was the contention advanced by the planning witness for Federated Farmers (Mr Hartley) that if 361 SNAs became subject to the rules in the District Plan there might be a landowner backlash and that people who might otherwise voluntarily protect the SNAs would not fence those areas and might even remove fences. Mr Versteeg contended that making the identified SNAs subject to rules might ... *potentially lead to removal and/or degradation of indigenous vegetation which would not otherwise occur.*[59]

[91] A number of the witnesses called by the various parties or who gave evidence on their own account spoke of the detrimental effects on property owner goodwill and willingness to voluntarily protect SNAs which would come about if their properties became subject to control by rules. We accept that the witnesses genuinely and strongly hold such views. One witness gave evidence of converting an SNA area of ten hectares into pine and redwood plantation because of the possibility that it could become subject to rules.[60] Notwithstanding that evidence, we have a number of observations/reservations about this proposition.

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[59] Versteeg EIC, para 36.
[60] R McGregor, EIC.

[92] Firstly, the proposition is directly contrary to the Council's contention that the residents of the District have a commitment to the protection of SNAs. If that is the case, it is difficult to see how they could logically object to being subject to a rule or rules seeking to do precisely the same thing and then destroy native vegetation out of spite.

[93] Secondly, it appears to us that there is at least a possibility that such an attitude is fostered by a misunderstanding as to the nature of the controls imposed by the rules in question. By way of example, we refer to the evidence of witnesses:

- A Barrett - that SNAs are *untouchable*;[61]
- W F Petersen - that identification of land as SNAs is *taking control of our freehold title land;*[62]
- R C Goodwin - that farmers wish to have *control over our own farm and native bush*;[63]
- R McGregor - that identification of SNAs is *property theft;*[64]
- M J Evans - that rules would prevent formation and maintenance of access tracks;[65]
- M W Redshaw that identification of SNAs is a *huge invasion of ownership rights.*[66]

[94] We accept that the views expressed to us are genuinely held, but in our view they misrepresent or overstate the effect of rules. They need to be considered in the context that the primary rule under consideration in this case (Rule OL60) does not prohibit undertaking works, removal of vegetation or disturbance of land within the SNAs. It makes such activities a restricted discretionary activity for which consent may be granted subject to consideration of the assessment criteria contained in the Rule.

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[61] EIC, para 5.
[62] EIC, para 11.
[63] EIC, page 1.
[64] EIC, page 1.
[65] NOE, page 364.
[66] NOE, page 382.

[95] We accept that some indigenous vegetation disturbance activities which land owners might previously have undertaken as of right within SNAs would become subject to control by the rules in the District Plan if the SNAs identified by Wildlands and Ms Maseyk are included in Appendix 21.2. However that outcome must be assessed in the context that:

- The outcome of identification of SNAs is not as draconian as some parties to these proceedings apparently consider;
- The identification and protection of significant areas of indigenous vegetation and significant habitats of indigenous fauna is a matter of national importance;
- The identification of SNAs and subsequent imposition of controls by way of restricted discretionary activity rules have no practical effect on persons who wish to retain and enhance such areas on their own land as many of the witnesses wish to do;
- It appeared to us that to at least some extent, the opposition to the identification of SNAs and their being subject to rules was a philosophical opposition to landowners being subject to any control over the activities which they might undertake on their land. That opposition has to be measured in the context of s6(c) RMA and the duty imposed on local authorities to identify and protect areas of significant indigenous vegetation and significant natural habitats. The sustainable management of New Zealand's natural and physical resources requires that on occasions the exercise of private property rights will be subject to controls.

[96] Having regard to all of those considerations, we make the following findings on the issue of the methods which the Council provides for the protection of SNAs in its district and whether or not those methods provide adequate protection as required by s6(c) RMA:

- The Council provides a wide-ranging palette of methods in its District Plan to protect SNAs;
- Viewed in their entirety the palette of methods provides the protection of SNAs required by s6(c);

- The methods include rules which control the disturbance of indigenous vegetation in SNAs identified in Appendix 21.2 by requiring that restricted discretionary activity consent is obtained for such activities;
- Reliance primarily on QEII Covenants and associated methods to protect SNAs does not provide the protection required by s6(c) RMA because of the limited extent of SNAs subject to the QEII covenanting process and the limited capacity of that process to cover all (or even a substantial proportion) of the SNAs which have been identified in the New Plymouth District;
- Reliance primarily on community attitude (uncritically accepting the proposition that its existence has been proven) to protect SNAs does not provide the protection required by s6(c) because it does not take account of those who might have a different attitude and the high vulnerability of at least some SNAs identified in the evidence of Ms Maseyk;
- The protection of SNAs which the District Council is obliged to recognise and provide for requires the application of the full palette of methods identified in the District Plan, including the identification of SNAs in Appendix 21.2 and the application of rules to them.

[97] In light of those various findings, we now consider the remaining issues as to the making of declarations and the issue of enforcement orders.

Declaration

[98] The declarations sought by Forest and Bird are set out in para [2] (above). In summary, Forest and Bird seeks a declaration that the District Plan contravenes RMA because:

- It fails to adequately recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna in the New Plymouth District contrary to s6(c) by failing to include in Appendix 21.2 of the District Plan SNAs which have been identified applying the criteria contained in Appendix 21.1;

- It has not been prepared in accordance with the Council's function under s31(1)(b)(iii) of controlling the actual or potential effects of the use, development or protection of land for the purpose of maintenance of indigenous biological diversity;
- It does not give effect to the provisions of NZCPS or the RPS.

[99] In her submission for POAG Ms Hill contended that there are jurisdictional barriers to the Court making at least some of the declarations sought by Forest and Bird. In particular, she contended that:

- There is no jurisdiction for a general declaration that a district plan breaches the Act or has not been prepared in accordance with a council's functions under the Act;
- There was no jurisdiction to declare whether a provision of the District Plan contravened the Act.

POAG was the only party to raise the above jurisdictional issues and did not dispute that there was jurisdiction to make declarations relating to the NZCPS and the RPS.

[100] In addressing those propositions we have considered the following provisions of s310 RMA:

Scope and effect of declaration

A declaration may declare—

(a) The existence or extent of any function, power, right, or duty under this Act, including (but, except as expressly provided, without limitation)—

(i) any duty under this Act to prepare and have particular regard to an evaluation report or to undertake and have particular regard to a further evaluation or imposed by section 32 or 32AA (other than any duty in relation to a plan or proposed plan or any provision of a plan or proposed plan); and

(ii) any duty imposed by section 55; or

(bb) whether a provision or proposed provision of a district plan,—

(i) contrary to section 75(3), does not, or is not likely to, give effect to a provision or proposed provision of a national policy statement, New

Zealand coastal policy statement, or regional policy statement; or

(ii) contrary to section 75(4), is, or is likely to be, inconsistent with a water conservation order or a regional plan for any matter specified in section 30(1); or

(c) whether or not an act or omission, or a proposed act or omission, contravenes or is likely to contravene this Act, regulations made under this Act, or a rule in a plan or proposed plan, a requirement for a designation or for a heritage order, or a resource consent; or

(h) any other issue or matter relating to the interpretation, administration, and enforcement of this Act, except for an issue as to whether any of sections 95 to 95G have been, or will be contravened.

[101] Dealing with the last matter (s310(h)) first, we observe that this provision gives the Court a wide power to make declarations on issues or matters other than those specifically identified in s310(a)-(g).

[102] Section 310(a) enables the Court to make a declaration as to the existence of any duty under the Act. We have previously identified that the Council has a duty to adequately recognise and provide for the protection of SNAs in its District. No party to these proceedings suggested that was not the case.

[103] Section 310(bb)(i) authorises the Court to declare whether or not provisions or proposed provisions of a district plan give effect to provisions or proposed provisions of NZCPS or an RPS. There was no dispute that these provisions enable us to make declarations regarding these matters.

[104] Section 310(c) authorises the Court to declare whether or not an act or omission or a proposed act or omission contravenes or is likely to contravene RMA. Read at the broadest level, it arguably authorises us to declare whether the Council's omission to include the identified SNAs in Appendix 21.2 is a breach of its duty under s6(c).

[105] Viewed in the round, we have no hesitation in finding that the issue of the appropriate degree of protection required for areas of significant indigenous vegetation and significant habitats of indigenous fauna is an issue relating to the interpretation, administration and enforcement of RMA which the Court is empowered to consider pursuant to s310(h).

[106] In addition to the submissions which it made as to jurisdiction, POAG also contended that even if the Court had jurisdiction to do so, it was not appropriate for it to grant the relief sought by Forest and Bird. It advanced a number of reasons for that.

[107] The first and second reasons are related and are essentially a contention that the Court should not interfere with a territorial authority's decision-making process in undertaking a review of its district plan. We will consider that matter further in this decision as part of our determination whether or not to make enforcement orders.

[108] The third issue raised by POAG was that the Court is not empowered to make declarations which might affect the rights of persons who are not parties to proceedings. Firstly, we observe in that regard that there was wide public notification of and publicity given to these proceedings as a result of directions made by the Court. Irrespective of that however, the ultimate outcome of the applications made by Forest and Bird (should they all be granted) would be the initiation of a plan change which would be notified and where affected parties would have rights of submission and hearing. No effect on the rights of persons arises directly out of these proceedings of themselves.

[109] The next ground of opposition was the contention that the Court cannot make a declaration when factual matters are in dispute. The *Trolove* case[67] is cited as authority for that proposition. *Trolove* does not support the proposition that the Court cannot resolve contested facts during the course of declaration proceedings if it has to. Judge Skelton noted in *Trolove* that there will be circumstances where the Court has to do exactly that. Nothing in the provisions of s310-311 RMA precludes

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[67] *Trolove (re an application)* Decision No: C 52/94.

the Court from making findings of disputed fact in declaration proceedings. We agree that it is preferable that declaration proceedings come before the Court on the basis of agreed facts, however that might not be possible in any given instance for any number of reasons. If the Court declined to deal with declarations on the basis that there were disputed facts, any party to declaration proceedings could easily *derail* them by raising factual disputes.

[110] In any event, we do not consider that there are significant factual disputes as to matters which lie at the heart of these proceedings. One of the matters which surprised the Court in hearing this case was the lack of dispute in certain fundamental respects. By way of example, in her submission for POAG Ms Hill raised the issue of *ground truthing* to validate the identified SNAs. In fact there was no substantive evidence contradicting that of Ms Maseyk that the desktop exercise undertaken by Wildlands was sufficient to accurately identify SNAs in the New Plymouth District. Nor was there any suggestion in the evidence that we heard that the criteria contained in the District Plan and applied by Wildlands and Ms Maseyk to identify SNAs are not valid criteria. POAG suggested that a *more nuanced approach* to their application might be appropriate[68] but no evidence was advanced in that regard. The issue in dispute in these proceedings is not whether or not there are a substantial number of SNAs in the New Plymouth District which are not protected by rules in the District Plan. Rather the issue is whether or not SNAs should be protected by rules (as the District Plan contemplates) or whether the Council was entitled to rely on *other methods.* That is a question of opinion and law rather than fact.

[111] POAG contended that there was *no utility*[69] in the Court making declarations as to whether or not the District Plan gives effect to NZCPS and the RPS as these documents postdate the District Plan. The District Plan is obliged to give effect to the provisions of both of these documents notwithstanding that they postdate the District Plan.[70] We consider that any ruling we may make as to whether or not the

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[68] POAG submission para 25.

[69] POAG submission para 16.8(e).

[70] Sections g75(3)(b) and (c) RMA.

District Plan gives effect to NZCPS and the RPS is a matter which the Council might properly take into account in undertaking a review of its District Plan. There are a number of provisions of both of those documents which are directly relevant to our considerations in this case, namely:

- Policy 11 NZCPS which seeks to protect indigenous biological diversity in the coastal environment by avoiding adverse effects on indigenous vegetation types that are threatened or naturally rare[71]and on habitats of indigenous species that are threatened or naturally rare[72] and by avoiding significant adverse effects on areas of predominantly indigenous vegetation[73] (inter alia);
- Bio Policies 1-4 of the RPS, with particular reference to Bio Policy 3 which provides that...*Priority will be given to the protection, enhancement or restoration of terrestrial, freshwater and marine ecosystems, habitats and areas that have significant indigenous biodiversity values.* The commentary to Bio Policy 3 notes that...*controls or measures to be adopted to protect, enhance or restore indigenous biodiversity values will be focused on particular ecosystems, habitats and areas deemed to be 'significant'.*

The District Plan gives effect to these Policies through the process of identification of SNAs and their inclusion in Appendix 21.2 which we have described but the Council has omitted to undertake that process.

[112] POAG pointed to the fact that ten years had elapsed since the MOU was signed and contended that delay in bringing the proceedings over that period was such that granting the relief sought by Forest and Bird was no longer appropriate, particularly as the Council is now engaged in its ten year plan review. To some extent, this contention appeared to us to be an attempt to lay the blame for any delay at the door of Forest and Bird rather than the Council which had undertaken to carry out the process of application of the SNA factors. We will return to the matter of the Council review process when we consider the enforcement order application.

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[71] Policy 11(a)(iii).

[72] Policy 11(a)(iv).

[73] Policy 11(b)(i)

[113] Those various findings above bring us to determine the question of whether or not we ought make a declaration as sought by Forest and Bird or some other appropriate declaration (as we are entitled to do[74]). In considering that matter, we refer to the following findings which we have made:

- The SNAs identified by application of the criteria contained in Appendix 21.1 of the District Plan are areas of significant indigenous vegetation and significant habitats of indigenous fauna for the purposes of s6(c) RMA - para [34] (above);
- Applying the criteria contained in Appendix 21.1 there are probably somewhere between 326 – 361 SNAs in the New Plymouth District – para [48] (above);
- A number (we are unable to be precise as to the exact number) of the SNAs are situated in parts of the District which are most sensitive to the loss of indigenous vegetation because of the reduced extent of that vegetation and its vulnerability to local extinction of species – paras [59] and [61] (above);
- Persons exercising functions under the Resource Management Act (including the Council) have a duty to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna pursuant to s6(c) RMA – para [64] (above);
- Method 16.1(v) of the District Plan contemplates that the identified SNAs will be made subject to rules controlling their modification – para [71] (above);
- The Council's duty to protect SNAs requires application of the full palette of methods provided in the District Plan, including the identification of SNAs in Appendix 21.2 and the consequent application of rules to them because the other methods of protection primarily relied on by the Council (covenanting under QEII process and voluntary protection) do not provide an adequate level of protection – para [96] (above).

[74] Section 313(a) and (b).

[114] Having regard to the above findings we hereby make declarations that:

(1) New Plymouth District Council has a duty to recognise and provide for the protection of SNAs within its District which have been identified using the process contained in Appendix 21.1 of its District Plan - (s310)(a);

(2) The Methods of Implementation 16.1 (including the application of rules pursuant to Method 16(v)) contained in the District Plan if implemented in their entirety give effect to the relevant provisions of the New Zealand Coastal Policy Statement and Regional Policy Statement for Taranaki which seek to protect indigenous biodiversity – s310(bb)(i) and s310(h);

(3) The omission of the New Plymouth District Council to include in Appendix 21.2 of its District Plan SNAs which have been identified applying the criteria in Appendix 21.1 –

- Contravenes its duty to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna pursuant to s6(c) RMA – s310(a), (c) and (h);
- Fails to give effect to relevant provisions of the New Zealand Coastal Policy Statement and Taranaki Regional Policy Statement – s310(bb)(i) and (h).

Enforcement Order

[115] The making of the above declarations leads us to consider what (if any) enforcement orders might now be made. The enforcement orders sought by Forest and Bird are set out in para [2] (above). In summary, Forest and Bird seeks orders that:

- The Council notifies a plan change and notifies the review of its District Plan which is currently pending to include in Appendix 21.2 all 361 SNAs which have been identified;
- When the Council undertakes a review of its District Plan, it includes rules relating to the protection of SNAs;

- That further work be undertaken to identify and include as SNAs other natural areas of the District which are difficult to identify through desktop analysis or are considered to be protected by other methods.

[116] The scope of enforcement orders which may be made by the Court is set out in s314 RMA. The particular provision of s314 which Forest and Bird contends provides the basis for the orders which it seeks is s314(1)(b)(i) which relevantly provides:

> ***314 Scope of enforcement order***
>
> *(1) An enforcement order is an order made under section s319 by the Environment Court that may do any 1 or more of the following:*
>
> *(b) require a person to do something that, in the opinion of the court, is necessary in order to –*
>
> *(i) ensure compliance by or on behalf of that person with this Act*
>
> ...

[117] We have previously found[74] that the Council is in contravention of its duty to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. On the face of it, that finding enables us to make an order requiring the Council to do something which is necessary for it to ensure compliance with the Act. Accepting that as being the case, the two questions for determination are:

- Can we make the orders sought by Forest and Bird?
- Should we make the orders sought by Forest and Bird?

[118] The first relief which Forest and Bird seeks is an order that the Council notifies a change to the District Plan to include the identified SNAs within it by incorporation into Appendix 21. Forest and Bird contends that any plan change which might emerge from these proceedings would be a relatively limited and discrete exercise. While that might be the case we have concerns about the extent to which we might direct the Council regarding that matter.

[74] Para [114] above.

[119] Schedule 1 RMA prescribes the way in which a plan change must proceed. In this instance, it would be necessary for the Council to prepare the proposed plan change and consult with various identified persons and bodies. During this process it is required to prepare and consider an evaluation report on the proposed change in accordance with s32 RMA before determining whether or not to proceed with the change.[75] It is only after it has completed that process that the Council may notify any plan change.[76]

[120] Although it is reasonable to expect that in undertaking its evaluation the Council would have regard to any findings which we might make in these proceedings, we do not consider that it is possible for us to fetter the Council's considerations in doing so. The evaluation to be made under s32 and the form of any plan change which emerges from that evaluation is a matter which is within the functions of the Council and not one which is open to the Court to direct or usurp. Ultimately the Court's functions in the plan change process arise under the appeal processes available under RMA and the provisions of s293 rather than at the *front end* of the process.

[121] The second enforcement order sought by Forest and Bird relates to a review process under s79 RMA. Section 79(1) RMA requires local authorities to review provisions of regional and district plans if they have not been the subject of a proposed plan review or change by that local authority during the previous ten years. The District Plan which has been subject of consideration in these proceedings became operative on 15 August 2005 and the Council has commenced a review of it pursuant to s79.

[122] The provisions of RMA relating to plan reviews are notably brief and deficient of requirements for process and time limits. It is apparent from consideration of s79 that the review process is a precursor to the plan change process contained in s73 and Schedule 1. We consider that our enforcement powers under s314(1)(b)(i) would extend to ordering a Council to undertake a review pursuant to

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[75] Clause 5(1)(a), Schedule 1.
[76] Relevant provisions of s32 are set out in para [66] (above).

s79 if it had failed to do so, but we do not consider that it is open to us to prescribe the form of that review. Again we consider that the Court's power to address issues arising out of a review arise under the appeal processes in Schedule 1 in respect of any changes to the District Plan which the Council decides to make or not to make.

[123] Even if we were wrong in our assessment as to whether or not we can be as directive as Forest and Bird wish as to the plan change or review processes, we do not consider that we should make enforcement orders as sought. A number of the parties to the proceedings before us contended that the District Plan review process is the appropriate vehicle for consideration of the issues which Forest and Bird has put before the Court and we consider that there is merit to that proposition.

[124] The review process is mandatory on the Council and is currently underway. We have reservations about imposing on the Council the significant costs and complications inherent in requiring undertaking of a plan change process concurrent with the review process. The primary opposition of Forest and Bird to the review process appeared to be one of timing. We observe that in undertaking its review the Council is obliged to comply with s21 RMA and avoid unreasonable delay.

[125] The fact that the plan review process is underway also leads us to question whether or not it is *necessary* to order the Council to commence a coincidental plan change to address these issues which might properly be subject to review. Even if the Court was to direct the Council to undertake the change process and it was to do so as promptly as is reasonable, the requirements as to consultation and evaluation mean that such change will inevitably overlap and coincide with the review process.

[126] Having regard to these factors our view is that we should not exercise such jurisdiction as we might have to direct the processes sought by Forest and Bird by way of enforcement order and we decline to make the enforcement orders sought.

Costs

[127] Notwithstanding that it was unsuccessful in obtaining enforcement orders, Forest and Bird has obtained declarations addressing the issues which it put before the Court. We consider that it is appropriate for us to consider an award of costs against the Council arising out of that process and we reserve costs accordingly. Any costs application from Forest and Bird is to be made and responded to in accordance with the Environment Court Practice Note 2014.

DATED at WELLINGTON this 17th day of December 2015.

For the Court:

B P Dwyer
Environment Judge

Tab 5

BEFORE THE ENVIRONMENT COURT

Decision No. [2010] NZEnvC 183

IN THE MATTER of appeals pursuant to Clause 14 of the First Schedule to the Resource Management Act 1991 (**the Act**)

ORIGINAL

BETWEEN GREEN AND MCCAHILL HOLDINGS LTD
(ENV-2007-AKL-000221)
(ENV-2006-AKL-001131)
(ENV-2006-AKL-001133)
(ENV-2006-AKL-001114)

Appellant

AND RODNEY DISTRICT COUNCIL

Respondent

Hearing: At Auckland, 19th and 22nd April 2010

Court: Environment Judge J A Smith
Commissioner P A Catchpole
Commissioner H A McConachy

Appearances: Mr R B Brabant for Green and McCahill Holdings Limited (**Green and McCahill**)
Ms B S Carruthers for Rodney District Council (**the District Council**)
Mr J A Burns for the Auckland Regional Council - Section 274 party (**the Regional Council**)
Mr D J Sadlier for Williams Land Limited – Section 274 party (**Williams Land**)
Mrs G M Houghton for the Director-General of Conservation – Section 274 party (**DOC**)
Mr J M Deer for the Environmental Defence Society – Section 274 party (**EDS**)
Mr P R Gardner for Federated Farmers of New Zealand

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Date of Decision: 22nd April 2010

DETERMINATION OF THE ENVIRONMENT COURT

A. The Rodney District Council is directed to amend its Proposed District Plan by the addition of provisions annexed hereto and marked "A" in replacement of the relevant provisions of the Rodney District Plan.

B. There is no order for costs.

REASONS

Introduction

[1] The Weiti area in the southern part of Rodney District Council occupies some 830 hectares south of Stillwater. The development potential of that land has long been an issue between the District Council and the various owners of the property.

[2] Appeals to the Proposed Plan sought to address the activities which could be conducted on the land, which is currently zoned as Special Area 8 Limited Residential area in part. Another part of the land has Rural zoning, and the land is adjacent to the coast and has an important walkway between Haighs Access Road and Stillwater.

[3] Appeals filed by Green and McCahill have been continued by Williams Land which has an option to purchase the property, but both Green and McCahill and Williams Land maintained an interest in this matter through to conclusion.

[4] The matter was set down for hearing to commence on 19th April 2010. At the commencement date the Court was advised that the parties had reached agreement and a consent memorandum and accompanying provisions for the Plan were produced. Following detailed discussion with counsel the Court stood the matter down until Thursday 22nd April 2010 to consider the plan provisions intended to be inserted.

The Nature of the Proposal

[5] The Court is advised that there is an existing resource consent for a development known as Karepiro for 150 residential units. The owners sought further

development potential for the land. After extensive discussions the parties now propose that there be a total of 550 residential units (an additional 400) provided in policy areas 1 and 2 of Weiti zones with significant provisions relating to the balance of the land. In broad terms what is proposed is a comprehensive development plan which involves securing, both in terms of the plan zoning and in terms of restrictive covenants on development, a greenbelt or conservation zone around three policy areas - Weiti Policy Area 1, Weiti Policy Area 2 and the Karepiro Policy Area.

[6] These three policy areas are situated relatively centrally to the site although slightly closer to the coast than they are to the landward boundary. The Karepiro Policy Area, which is the closest to the coast, is nevertheless still separated from it both by DOC reserve and also by other land to be provided to the District Council and/or DOC. Policy Area 2 and 3 are to the landward side of Karepiro and are separated by a narrow area of vegetation enhancement surrounding an ephemeral stream.

[7] The area as a whole is intended to be accessed from East Coast Bays Road, although we understand there is potential for a linkage to the Penlink designation if and when this is eventually constructed. The Penlink designation follows along the northern boundary of part of the property and we understand that some of the designation covers the property itself. Access both from the motorway (including Penlink if constructed) and from East Coast Bays gives ready access to the site. A new road will be constructed into the area itself.

[8] In addition to the policy areas, which would provide for the 550 residential units, there is intended to be an area for open recreation, shown on the outline development plan as a racquets and golf clubs area. There is also intended to be a public car park to the north of Policy Area 1 and from that a series of tracks going both to the coast, exiting around D'Acre Cottage on the coast, and also going inland to two new areas to be created as part of the eventual development of this area.

[9] The first is a conservation institute and gardens which will provide, in part, the plants for revegetation and rehabilitation of this area but will also be available to the public. The other area is a mountain biking area. A walkway which reaches this area from the public car park carries on around the boundary of the property until it reaches the Haighs Access Road and public car park. That area is intended to be enhanced by an additional new area made available to the public and vested in the council.

[10] From that area the public can continue around the coastal walkway, currently existing, across DOC reserve. At Karepiro Bay there is currently significant erosion of the DOC walkway and it is intended that land be vested to ensure that the walkway can be constructed and continue public access through this area.

[11] The D'Acre Cottage area is intended to be expanded slightly by the addition of some extension land and just inland on the new walkway from the public car park, there is intended to be an extension which will supplement the DOC land in this position. The walkway will then continue up the coast with a further enhancement to overcome erosion problems at the northern end of Karepiro Bay and then another substantive area vested for public use at Stillwater Reserve.

[12] As well as creating a track accessible from either Stillwater or the Haighs Access Road public car park it will also create the potential for loop roads either from the public car park near Policy Area 2 or, as an alternative, to the coastal walk from Stillwater to or from Haighs Access Road.

[13] The next most significant part of the development is the greenbelt. Although this is intended to largely be held in private ownership it is nevertheless intended that there be significant enhancement planting around Policy Areas 1 and 2, in particular, to reinforce the existing significant natural areas identified in the Plan. In addition the area is intended to be zoned as Conservation and/or Greenbelt and only a very limited range of activities are permitted within this area. For example, residential development is a prohibited activity as are other activities involving the construction of major buildings.

[14] In broad terms the development is at a significantly higher intensity than would be allowed in rural areas where with enhancement planting one might achieve, on a full discretionary activity development, one house lot (of around 1ha) to 6ha. On this occasion there is something less than 2ha provided for each house lot. In broad terms this can be explained in two major ways. The first is that the site has for some time been identified as available for some type of limited residential development. This has included the Karepiro area already consented. The second is that the area has attributes which make it particularly suitable for public access, particularly coastal, and enhancement of significant natural areas. For this reason the District Council has been prepared to agree to a proposal which would allow residential development in this area, notwithstanding that it was not shown in their planning maps as an area for such development.

The Auckland Regional Policy Statement (ARPS)

[15] The first and most significant concern to this Court is that there is a prohibition against urban development outside the Metropolitan Urban Limit (MUL) unless it is within coastal or rural settlements. Although this area is not shown in the plan as a coastal settlement there is no doubt the consent for Karepiro has been existing for some time and that development opportunities have been identified in this area over several plans. The Special Area 8 in the Proposed Plan, therefore, is not exceptional in that way.

[16] Mr Burns accepts that for current purposes the Karepiro area can be regarded as a coastal settlement, and the issue, therefore, arising is whether Policy Areas 1 and 2 are an expansion of the coastal settlement. The Court refers to *2.6.2 Methods* of the ARPS, particularly *7* and *8*. These provide a mechanism by which the District Council may add to coastal settlements and requires them to set out.

> 7. Each TA shall set out within its District Plan issues, objectives, policies and methods for enabling the management and development of rural and coastal settlements.
>
> This shall:
>
> i) be an integrated consideration of the relevant issues;
>
> ii) be integrated with the urban and rural components of the District Plan;
>
> iii) not be inconsistent with the RPS.
>
> Where this method has been complied with, expansion of rural and coastal settlements in district plans beyond the limits applying at the date of notification of the RPS shall be deemed to have been provided for the purposes of strategic objective 2.5.2.3(iv) and policy 2.6.1.2 of the RPS.
>
> 8. Significant new areas proposed for urban development, existing urban areas proposed for significant re-development, or significant new areas proposed for countryside living purposes are to be provided for through the Structure Planning Process (or other similar mechanism).

[17] We have concluded that this proposal complies with *Method 2.6.2 (7)* in that it is an expansion of a coastal settlement. We also conclude that it does contain, within the provisions that have been supplied to the Court, an integrated consideration of the relevant issues. It is integrated with the urban and rural components of the District Plan and is not inconsistent with the ARPS. Importantly none of the parties, including the Regional Council, argued to the contrary before the Court.

[18] For the sake of completeness it does appear to us that the approach taken through these appeals would also meet the criteria of *Method 2.6.2 (8)* in that it adopts a mechanism that, although not identical to a structure planning mechanism, nevertheless is a similar mechanism, being one appropriate through the change and appeal process of the RMA. Again, importantly, Mr Burns for the Regional Council did not dispute this.

The Merits

[19] It is clear that in this case the parties have considered that there are significant public benefits to be achieved by providing for a greater level of residential development in this area. Mr Sadlier pressed upon the Court the importance, in practical terms, of a greenbelt secured both in planning terms through this zoning and in the longer term by the restrictive covenants. We recognize that the use of the prohibited status for key activities, including residential and retail development, represents a significant bar to further development in those areas. This is an acceptance by the developer that the areas and extent of development is limited.

[20] We have considered carefully whether the prohibited status is justified in this case but agree with the parties that the purpose of the prohibition is to justify the level of development provided. Without such a prohibition it is unlikely that this Court would have approved such provisions which could have enabled stepwise development of the areas otherwise reserved. Nevertheless, the Court still considers that it is important that there be wider public benefits and has been particularly concerned at access issues.

[21] In this regard we accept the evidence advanced by several parties, including the DOC, the Regional Council, and Mr Sadlier for Williams Land, that the securing of a complete legal coastal walkway between Stillwater and Haighs Access Road is of significant importance. In several places the walkway has currently been eroded to such an extent that it crosses private land. Although those landowners have allowed access the legal security of that could not be ensured in the medium to long-term.

[22] We agree that the permanent securing of that access is a matter that goes directly to Section 6(d) of the Act, roading and public access. We also accept Mr Brabant's proposition that the accessways around the site to the west and through the site, from the mountain bike area through to the area at D'Acre Cottage, represent a significant public benefit. Not only do they in themselves represent accesses of value

but they also provide levels of interconnectivity with the coastal track from Stillwater to Haighs Access Road which is likely to significantly improve their attraction to members of the public.

[23] Furthermore, we agree that provision of the public car park adjacent to Policy Area 1 will enhance public access by providing an intermediate access point (particularly for those who may just wish to visit the coast or take a shorter walk) but also in terms of giving access to the walking tracks within the Weiti area itself. In other words, we envisage that some people will simply wish to take a forest walk through the Weiti area, particularly as the enhanced natural vegetation reaches maturity.

[24] To this extent we accept the proposition of Mr Brabant that the potential to reinforce the existing natural areas and provide a continuous natural corridor from north to south and east to west are likely to have significant benefits in future years. Those benefits will, of course, be significantly increased by the enhancement planting proposed which, together with natural revegetation as the areas are removed from plantation forestry, are likely to lead to an increase in bird life and general fauna.

[25] We also note that the plan provisions themselves provide for reinforcement of that in several important ways. The first is the requirement for staged enhancement revegetation. The second is the ongoing obligations for pest and weed management control into the future. The third is other associated provisions, largely to be addressed at individual consent stage, relating to pets and clearly an emphasis in this area upon the ecosystem around the policy areas.

[26] When we consider that in connection with the DOC holdings in the area we can see significant synergies. There is a relatively sizeable area of DOC reserve near Haighs Access Track and the enhancement planting and existing significant natural areas will be reinforced to provide protection for and, of course, interconnection with the DOC reserves.

[27] Mr Brabant also reminded us that in addition to the benefits we have already discussed, there are some public facilities to be provided including a lookout, public toilets, the conservation gardens and the mountain bike track area. These facilities are all ones which will involve capital expenditure and provide a long-term benefit not only to the community to be established but also to the wider public. We understand

the walkways are to be secured by easements in gross to the council and this will ensure that public access is secured over the Weiti land into the future.

Part 2

[28] We acknowledge that this area has been identified, both in this Proposed Plan and in previous plans, as suitable for some level of residential development. We also recognize the sensitivity of this area to such development and the existence of a number of moderate level significant natural areas within it. Furthermore, we agree with the parties that the coastal area between Stillwater and Haighs Access Road and the continuation of public access along the DOC walkway is a matter of particular importance.

[29] Although this proposal leads to a level of development which is relatively intense, particularly in Policy Areas 1 and 2, that is to be balanced by the significant areas of conservation and greenbelt around it and the public benefits to the wider public that we have discussed in some detail. The end result is that there is enablement not only of the landowner and the eventual owners of the properties but also of the wider public. Furthermore, we acknowledge the wider benefits to the region, recognized by Mr Burns for the Regional Council and Mrs Houghton for the DOC.

[30] Significant natural areas that can be built into a cohesive unit, such as in this case, will be of increasing importance in the decades to come. The ongoing management of those areas by the people living in that area is also going to become increasingly important. To that extent the relationship of the Policy Areas 1 and 2 and the Karepiro to the surrounding land cannot be underestimated.

[31] Overall, we see this as achieving the purposes of Part 2 of the Act not only by enabling both the developer of the community, but by providing for the matters under Section 5(2)(b) and 5(2)(c) in particular, the matters under Section 6(a) of the Act, the preservation of the natural character of the coastal environment and their margins, protection of areas of significant indigenous vegetation under Section 6(c) and habitat, and the maintenance and enhancement of public areas to and along the coastal marine area under Section 6(d) of the Act.

[32] The Court needs to keep in mind the various constraints of Section 32 of the Act and conclude in the end the most appropriate outcome. Given that the parties

have not advanced detailed evidence the Court is faced with the alternatives of the existing provisions and those suggested by the parties. We agree with the parties that the benefits of this proposal are significantly better for the following reasons:

[a] the preservation and enhancement of large tracts of natural areas and the creation of a conservation/greenbelt;

[b] public access to and along the coast;

[c] public access through the land including the forestry;

[d] the provision of public facilities including the mountain bike track and the institute.

[33] When we look at benefits and costs the developer has clearly been prepared to bear the costs of the prohibition over the greenbelt and conservation areas in recognition of the benefits to be achieved within the development area. In that regard we can see that there are benefits to be achieved for the residents in Policy Areas 1 and 2 and Karepiro from the surrounding greenbelt. So to that extent there is some benefit even to the residents but a wider benefit to the general public and the district as a whole.

[34] We did express some concerns about the amount of open space in Policy Areas 1 and 2, Williams Land acknowledged this, and with the approval of the other parties suggest that an additional 20ha in and around Policy Areas 1 and 2 would be provided as accessible space for residents within that area. The plans and provisions attached will reflect that amendment.

[35] In addition, the Court discussed with the parties clarification both of the Karepiro area by the use of a master plan, which is now to be included, and the improvement in wording in several provisions to make it clearer as to the intent. All of these matters are agreed and the proposed provisions as amended are annexed hereto and marked **A**.

[36] The Court must look at these matters under Section 32 and Part 2 of the Act in broad terms, and we are particularly militated by the following factors:

[a] The residential pressures on the coastal resource are significant in Rodney. Preservation of areas of coast and their margins in a natural condition is of significant importance, especially on the East Coast;

[b] Access to and along the coast is increasingly important in both a national and regional sense. Provisions which enable access to the coast and along the coast are of particular importance;

[c] The provision of reserve areas close to the coast in areas which reinforce access have particular value;

[d] The provision of areas relating to conservation, vegetation and relating to recreation, in this case mountain biking, are again resources which are under pressure and the reservation of these areas can be seen as having district if not regional implications.

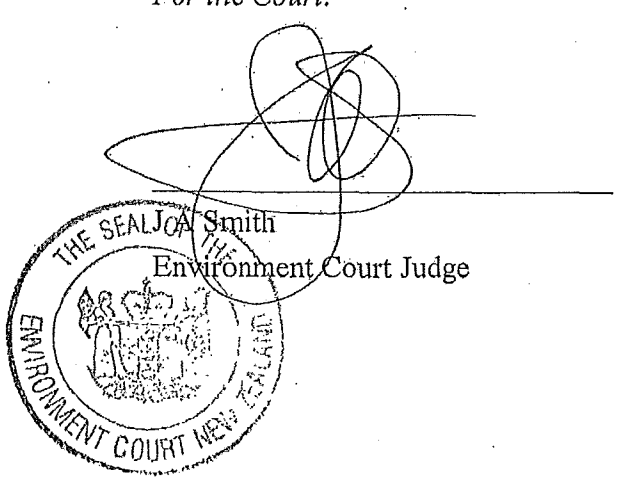
Conclusion

[37] For the reasons we have set out we concur with the parties that the approach adopted in this case meets the purpose of the Act and is better, as that term would be used in an assessment under Section 32. With the amendments we have suggested we are confident they represent a better or more appropriate outcome in respect of this area than the current provisions. We commend the parties on the resolution reached and look forward to the implementation of these provisions in the future with the inevitable environmental benefits that would follow from their application.

[38] No party has sought costs and we make no order as to costs.

DATED at AUCKLAND this 26th day of May 2010

For the Court:



JA Smith
Environment Court Judge

A

WEITI – AMENDMENTS TO PROVISIONS ATTACHED TO DRAFT CONSENT ORDER

Page	Provision	Amendment
44	12.8.8.22.7	New 10: ~~Walkways shall be provided through an area of not less than 20 hectares around and between Weiti Village Policy Areas 1 and 2 for use by residents.~~ An additional minimum of 20 hectares open space recreation areas shall be provided for residents in easy walking distance of the Weiti Village Policy Areas 1 and 2. This will include a limited number of walkways through the enhancement planting area between Weiti Policy Areas 1 and 2 to provide access to open space areas outside the enhancement planting areas. Renumber existing 10 to 11, and replace reference in renumbered 11 to "12.8.8.22.7.9" with a reference to "12.8.8.22.7.10".
47	12.8.8.22.9.1.1(d)	~~In this area no less than 60% of the area shall be planted in native vegetation~~ Native vegetation shall be planted over no less than 60% of this area.
49	12.8.8.24.3	All residential sites shall be located within the development footprints identified in the Outline Development Plan in Appendix 14 of the Planning Maps and shown on Appendix 12C4.
54	12.8.8.26.3(k)	Access (k) whether adequate road access is provided, and no significant adverse effects on the safety and efficiency of the public roading network result. (ka) Whether adequate walkways are provided between the Weiti Policy Areas 1 and 2 and Karepiro Policy Area that are designed and located to enhance connectivity for residents, while minimising the impacts on any enhancement planting.
Appendix 12C		Add new Appendix 12C4 – Master Plan for Karepiro Policy Area
Planning Maps		Add notation to Special Zone 8: See Appendix 14 to Planning Maps and Appendix 12C.

12.8.8 SPECIAL 8 (WEITI FOREST PARK) ZONE

12.8.8.1 Area Description

This Zone applies to the land area located between the Weiti (Wade) River to the north, Okura River to the south and East Coast Road to the west. The land also bounds a portion of the Penlink designation in the north-west, and encompasses approximately 860 hectares.

The Special 8 Zone is an important landscape element in achieving the maintenance of a greenbelt between North Shore City and the urban extent of the Hibiscus Coast.

Two generations of District Plan have made provision for a combination of residential and rural land uses within the Zone, within the context of the landscape values attributed to the land.

A key principle is to protect the greenbelt and open space character of the area and foster ecologically responsive urban design, including identifying key natural features and ensuring their protection to create variety and uniqueness. Activities that are provided for within the greenbelt and are consistent withthe open space character include conservation activities and outdoor recreation activities,

The Zone incorporates three broad Policy Areas each with planning controls, to ensure that it is developed in the manner that achieves the objectives and policies of the Zone. They also ensure that once development is established, the landscape and open space qualities of the Zone are not progressively eroded or compromised by cumulative and ad-hoc subdivision, use and development. The Special 8 Zone Outline Development Plan in Appendix 14 to the Planning Maps identifies the main Policy Areas.

The Policy Areas are intended to achieve a uniquely "Weiti" environment, and to maintain in perpetuity, the elements which constitute the greenbelt between the Okura River and urban Hibiscus Coast. The Policy Area controls also protect the landscape, skyline and coast from development when viewed from the Long Bay Regional Park, East Coast Road and the Whangaparaoa Peninsula. The Zone contains areas of significant native vegetation (SNAs) that are to be enhanced by additional planting.

The rules governing subdivision enable development in only two limited areas with the permanent protection of the balance of the land through a restrictive covenant. The protection in the rules make most subdivision outside the identified Weiti Village Policy Areas 1 and 2 and the Karepiro Policy Area, a Prohibited Activity, thereby avoiding the potential for cumulative and incremental development outside these specific Policy Areas over time. There are limited exemptions included where subdivision is required to contain infrastructure and limited conservation, heritage or education facilities within a separate site.

The majority of the roads and other infrastructure, including water, waste water and storm water services are not yet constructed in the area. The provision of this infrastructure is expected to require staging of the development and will determine the sequence of development.

12.8.8.1.1 Approach to Development

The Special 8 Zone includes the following Policy Areas -

- Greenbelt and Conservation Policy Area
- Weiti Village Policy Area (Area 1 and Area 2)
- Karepiro Policy Area.

The Zone includes rules to control development and where appropriate, cross references to other chapters of the Plan.

In the Zone all development is required to be consistent with the Outline Development Plan in Appendix 14 to the Planning Maps, and the specific controls within the relevant Policy Area. Development within the Weiti Village Policy Areas 1 and 2 is further governed by a Master Plan set out in Appendix 12C1 .

Development of buildings within the Weiti Village Policy Areas 1 and 2 is further managed through the preparation of an Architectural Code which is to address principles set out in Appendix 12C2, and against which applications for resource consent will be assessed.

As part of the process of resolving appeals relating to this Special Zone, a separate settlement agreement was entered into by the parties to the appeal. The agreement sits outside of the District Plan.

12.8.8.2 Issues

12.8.8.2.1 Whole Zone Issues

The following issues apply to all Policy Areas within the Special 8 Zone.

Issue 12.8.8.2.1.1

The close proximity of urban Auckland generates growth pressures on rural land.

This issue, one of the key issues for rural land, relates primarily to the proximity of the District to metropolitan Auckland. The southern and south western rural parts of Rodney District abut North Shore City and Waitakere City. The growth pressures from these urban based Councils spill into surrounding rural land of Rodney District.

Retention of the greenbelt between the Okura River and the Urban Hibiscus Coast is a key component in the Rodney District Council's District Development Strategy for preventing urban sprawl from North Shore City to the Hibiscus Coast. Providing for a level of appropriate development without eroding the predominantly rural character of the area is a significant issue for the District.

Issue 12.8.8.2.1.2

The existing greenbelt between North Shore City and the urban area of the Hibiscus Coast can be adversely affected by inappropriate subdivision and land use activities.

Many factors come together to create a greenbelt and distinguish rural areas from urban areas. Particular levels and locations of subdivision and inappropriate land uses can cause the loss of the essential elements creating a greenbelt. The retention of large areas of open space, and the clustering and careful siting of landuse activities, including residential activities, is one means of maintaining the elements of which form a greenbelt.

Issue 12.8.8.2.1.3

The Special 8 Zone represents a unique and challenging environment for development. If not guided appropriately, development may undermine the contribution that the unique natural features and distinctive natural character makes to enhancing open space amenity, beauty and enjoyment of the Zone.

The Special 8 Zone comprises a strategically important area of land within the Hibiscus Coast area.

The area has identified areas of ecological significance as well as performing the role of the separation between the North Shore and Hibiscus Coast urban areas. It is bounded to the east by the coast making its connection to the water very important, given the ecological value of the estuary.

There are some areas within the Special 8 Zone with soils that have limitations for development and a number of archaeological and heritage sites have also been identified.

Issue 12.8.8.2.1.4

Coherence and cohesion of neighbourhood communities can be encouraged by physically defining neighbourhoods and providing ready access to open space and community facilities.

It is important that within the overall greenbelt and open space structure of the Special 8 Zone there are easily identifiable neighbourhoods each with their own natural boundaries and distinct character, and which are well connected to an accessible open space network.

12.8.8.2.2 Greenbelt and Conservation Policy Area Issues

The following issues apply specifically to the Greenbelt and Conservation Policy Area.

Issue 12.8.8.2.2.1

The greenbelt, open space and conservation values and functions within the Greenbelt and Conservation Policy Area must be retained in perpetuity.

The greenbelt values and function that the lands within the Special 8 Zone have are identified as being important. They function both as a natural buffer to further expansion of the existing urban area of the North Shore, as well as exhibiting from a catchment perspective, a special landscape character.

Issue 12.8.8.2.2.2

Providing public and private recreational opportunities within the Zone and to the Coastal Marine Area is necessary, but must be balanced against the protection of ecological and conservation areas and the provision of private space and recreational facilities for residents.

The provision of parks, and other recreational walkways and trails, is an integral component of the Special 8 Zone, and will enhance the ability of the public to access the coast and other areas of the Zone for a mix of active and passive recreation. There are some park areas which will remain in private ownership or use, including some areas of the Karepiro Policy Area.

Issue 12.8.8.2.2.3

The progressive and cumulative fragmentation of the Greenbelt and Conservation Policy Area through subdivision, use and development could undermine its greenbelt and conservation values.

The area forms a key landscape feature between urban areas in the North Shore and Rodney Districts. Over time, pressure for subdivision within it could undermine this function if steps are not taken to prevent this occurring. Many factors come together to create a greenbelt and distinguish rural areas from urban areas. Particular levels and locations of subdivision and inappropriate land uses can cause the loss of the essential elements creating a greenbelt. The retention of large areas of open space, and the clustering and careful siting of land use activities, including residential activities, is one means of ensuring that the area is not progressively fragmented and the greenbelt function undermined.

12.8.8.2.3 Weiti Village Policy Areas 1 and 2 Issues

The following issues apply specifically to the Weiti Village Policy Areas 1 and 2.

Issue 12.8.8.2.3.1

To retain the greenbelt and open space character of the Zone it is necessary to ensure that development occurs in a compact way.

Within the Special 8 Zone, a compact settlement pattern is essential. The development standards within the Village Policy Areas 1 and 2 will ensure that integrated development of residential housing, relative to lot size, minimises the effects observed in some other residential environments; and that the planting of vegetation and a strongly vegetated streetscape is integrated within a high amenity residential and village environment.

Issue 12.8.8.2.3.2

Development that addresses the street and creates a safe, pleasant environment for pedestrians and cyclists can encourage alternative mobility choices such as walking and cycling.

The use of streets by pedestrians and cyclists is often affected by the perceived safety of the street. Through development addressing the street (i.e. buildings facing onto the street) the safety of the street can be improved by providing surveillance of the street by people in houses and businesses.

Improved street safety will offer additional opportunities for more people to use the street and support walking and cycling by residents and visitors to Weiti.

Issue 12.8.8.2.3.3

Roading corridors (including the road carriageway, reserve area and footpaths), that are not appropriate to their immediate environment, are not attractive or are unsafe and can adversely effect the amenity values of neighbourhoods and use of streets by pedestrians and cyclists.

The amenity of neighbourhoods is contributed to, not only by development on sites within the neighbourhood, but by the character of the street. The character of the street is determined by various aspects such as its width, the material used on the carriageway and footpaths and landscaping.

It is therefore desirable for the District Plan provisions to pay attention to the physical environment of the street as well as the environment of sites to ensure high levels of amenity within neighbourhoods. The inclusion of roading standards as a matter for assessment via a Comprehensive Development Plan application will assist in integrating roading, transportation and residential development in a cohesive manner.

Issue 12.8.8.2.3.4

Access to and the convenience of public transport can be affected by the layout of neighbourhood and streets.

The layout of streets and other parts of the pedestrian movement network can make it difficult or easy for pedestrians to reach a passenger transport route. The time taken for pedestrians to get to passenger transport routes is a key component in improving the efficiency and effectiveness of passenger transport.

In a similar way, having direct passenger transport routes within an urban area contributes to the effectiveness of passenger transport operations.

Issue 12.8.8.2.3.5

Residential areas that are not adequately served by shops and other facilities, and do not contain a range of small scale business activities often lack vitality and convenience.

In newly developed residential areas there is often a lack of shops and other facilities as these sometimes take time to become viable and be established by the private sector. Where such facilities are established in close proximity to or part of residential neighbourhoods, they act as neighbourhood centres and can contribute to the quality of living in new neighbourhoods.

12.8.8.2.3.6

Issues from the following chapters are also relevant:

Chapter 5 – Natural Hazards
Chapter 10 – Open Space and Recreation
Chapter 17 – Cultural Heritage
Chapter 18 – Urban Land Modification and Vegetation Removal
Chapter 19 – Utilities
Chapter 20 – Hazardous Substances and Contaminated Sites
Chapter 21 – Transportation and Access
Chapter 22 – Financial Contributions
Chapter 23 – Subdivision and Servicing

12.8.8.3 Special 8 (Weiti Forest Park) Zone Objectives

The following Objectives apply to all areas within the Special 8 Zone.

Objective 12.8.8.3.1

To maintain the greenbelt character and exotic or native forest in the area between the Okura River and the urban Hibiscus Coast.

This Objective relates to Issues 12.8.8.2.1.1, 12.8.8.2.1.2, 12.8.8.2.2.1, 12.8.8.2.3.3.

Objective 12.8.8.3.2

To enable comprehensive residential development within a limited area only of the Zone namely the Weiti Village Policy Area 1 and 2 and Karepiro Policy Area.

This Objective relates to Issues 12.8.8.2.1.2, 12.8.8.2.1.3, 12.8.8.2.2.3, 12.8.8.2.3.1.

Objective 12.8.8.3.3

To protect the landscape, skyline and coast from development when viewed from Long Bay Regional Park, East Coast Road and the Whangaparaoa Peninsula.

This Objective relates to Issues 12.8.8.2.1.2 and 12.8.8.2.1.3, 12.8.8.2.2.3.

Objective 12.8.8.3.4

To enable the establishment of a limited range of outdoor recreation activities.

This Objective relates to Issue 12.8.8.2.1.2, 12.8.8.2.2.2, 12.8.8.2.2.3.

Objective 12.8.8.3.5

To protect the key natural and heritage features and distinctive character of the area from inappropriate subdivision and development. The key natural features and distinctive character of the area include:

- **Undeveloped coastline**
- **Rolling topography**
- **Streams and gullies**
- **Estuarine environment around the coastal margins**
- **Coastal bird habitats**
- **Identified SNAs**
- **Identified archaeological sites and sites of significance to Tangata Whenua.**

This Objective relates to Issue 12.8.8.2.1.3, 12.8.8.2.2.1, 12.8.8.2.2.3.

Objective 12.8.8.3.6

To require the phased and progressive enhancement and expansion of existing SNAs and to ensure their long term preservation and management.

This Objective relates to Issue 12.8.8.2.1.3, and 12.8.8.2.2.1.

Objective 12.8.8.3.7

To prohibit the subdivision and creation of additional sites within the Greenbelt and Conservation Policy Area unless directly required for the purposes of establishing separate sites for essential infrastructure and a limited range of activities.

This Objective relates to Issue 12.8.8.2.1.2, 12.8.8.2.2.1, 12.8.8.2.2.3.

Objective 12.8.8.3.8

To enable a pattern of ownership and a management regime which preserves the integrity and character of the Greenbelt and Conservation Policy Area in perpetuity.

This Objective relates to Issues 12.8.8.2.1.2, 12.8.8.2.2.1, 12.8.8.2.2.3.

Objective 12.8.8.3.9

To create definable, identifiable communities and neighbourhoods in identified locations through unique developments based on the key natural features of each area of the Weiti Special 8 Zone and that accord with accepted urban design principles including:

- **Clearly defined public and private space**
- **Creating attractive and safe streets which encourage walking and cycling**
- **Buildings fronting public open space**
- **Innovative and effective stormwater management techniques**
- **Mixed use (mixing living and business where appropriate)**
- **Active street frontages**
- **Private Open Space**
- **Neighbourhood definition**
- **High quality landscape planting.**

This Objective relates to Issue 12.8.8.2.1.3, 12.8.8.2.1.4, 12.8.8.2.2.3, 12.8.8.2.3.1, 12.8.8.2.3.2 12.8.8.2.3.3, 12.8.8.2.3.4, 12.8.8.2.3.5.

Objective 12.8.8.3.10

To enable and manage the provision of public access within the Zone and to and along the Coastal Marine Area, rivers and adjoining public reserves.

This Objective relates to Issue 12.8.8.2.1.4, 12.8.8.2.2.2.

Objective 12.8.8.3.11

To provide adequate and appropriate land for public open space and ensure that these areas are treated as integrated features in any Weiti Village Policy Area development.

This Objective relates to Issue 12.8.8.2.1.4, 12.8.8.2.2.2.

Objective 12.8.8.3.12

To enable a limited scale of retail and business activities appropriate to support the needs of residents of the Weiti Special 8 Zone in the locations identified and that are complementary to the range of activities available in the Hibiscus Coast area generally.

This Objective relates to Issue 12.8.8.2.1.4.

Objective 12.8.8.3.13

To avoid, remedy or mitigate the adverse effects of land modification, development and land use activities on the natural environment, including landform, water courses, significant vegetation and the Coastal Marine Area.

This Objective relates to Issue 12.8.8.2.1.2, 12.8.8.2.1.3.

Objective 12.8.8.3.14

To avoid the adverse effects of stormwater runoff during and after development.

This Objective relates to Issue 12.8.8.2.1.2, 12.8.8.2.1.3.

Objective 12.8.8.3.15

To ensure appropriate wastewater and water infrastructure is provided to development.

This Objective relates to Issue 12.8.8.2.1.2, 12.8.8.2.1.3.

Objective 12.8.8.3.16

To ensure that adverse effects are not created on the surrounding roading network.

This Objective relates to Issue 12.8.8.2.1.2.

Objectives from the following chapters are also relevant:

Chapter 5 - Natural Hazards
Chapter 17 - Cultural Heritage
Chapter 19 - Utilities
Chapter 20 - Hazardous Substances and Containment Sites
Chapter 21 - Transportation and Access
Chapter 22 - Financial Contributions and Works
Chapter 23 - Subdivision and Servicing

12.8.8.4 Special 8 (Weiti Forest Park) Zone Policies

12.8.8.4.1 Whole Zone Policies

These policies apply to all areas within the Special 8 Zone.

Policy 12.8.8.4.1.1

By maintaining a greenbelt between the Okura River and the urban Hibiscus Coast by preserving most of the site as a Greenbelt and Conservation Policy Area and creating a well vegetated framework for development.

This Policy seeks to achieve Objectives 12.8.8.3.1, 12.8.8.3.3, 12.8.8.3.4, 12.8.8.3.5, 12.8.8.3.6, 12.8.8.3.7.

Policy 12.8.8.4.1.2

The total number of household units in the zone shall be limited to 550.

This Policy seeks to achieve Objectives 12.8.8.3.1, 12.8.8.3.2, 12.8.8.3.5, 12.8.8.3.7, 12.8.8.3.8.

Policy 12.8.8.4.1.3

Managing residential development in the Zone by creating three Policy Areas as follows:

- Greenbelt and Conservation Policy Area
- Weiti Village Policy Area (Area 1 and Area 2)
- Karepiro Policy Area

This Policy seeks to achieve Objectives 12.8.8.3.2, 12.8.8.3.5, 12.8.8.3.8, 12.8.8.3.9.

Policy 12.8.8.4.1.4

Activities should be of a nature, scale, intensity and location which enable the greenbelt to be retained.

This Policy seeks to achieve Objectives 12.8.8.3.2, 12.8.8.3.4, 12.8.8.3.7, 12.8.8.3.9.

Policy 12.8.8.4.1.5

Subdivision and land use activities should be carried out in a manner which avoids the adverse effects of stormwater runoff on receiving environments. In addition to those areas of discharge controlled by the Auckland Regional Council, this can be achieved through practices such as:

(a) The incorporation of a high level of permeable surfaces on sites;
(b) The use of roof materials other than uncoated galvanised uncoated zinc based products;
(c) The use of natural contours for stormwater discharge;
(d) The use of other external devices to slow the runoff and beautify the area;
(e) The use of swales, filter strips, wetlands for stormwater treatment and attenuation.

This Policy seeks to achieve Objectives 12.8.8.3.5, 12.8.8.3.13, 12.8.8.3.14.

Policy 12.8.8.4.1.6

Subdivision and activities shall be connected to a public reticulated wastewater system.

This Policy seeks to achieve Objectives 12.8.8.3.5, 12.8.8.3.15.

Policy 12.8.8.4.1.7

Subdivision and activities should be connected to a public reticulated water system.

This Policy seeks to achieve Objective 12.8.8.1.3.15.

Policy 12.8.8.4.1.8

Subdivision and activities should not have adverse effects on the surrounding roading network.

This Policy seeks to achieve Objective 12.8.8.1.3.16.

Policy 12.8.8.4.1.9	Activities should be carried out in a manner that avoids adverse effects on the native flora and fauna of the Zone and the adjoining coastal environment, including the effects of pests and domestic animals. *This Policy seeks to achieve Objective 12.8.8.1.3.1 and 12.8.8.3.5.* ***Explanation*** *These policies ensure that the greenbelt function of the area is maintained. Subdivision and residential development are limited to only two areas, with the permanent protection of the balance of the land through a restrictive covenant and District Plan rules. The policies also ensure that any development can be serviced to avoid adverse effects on the environment.*
12.8.8.4.2	**Greenbelt and Conservation Policy Area Policies**
Policy 12.8.8.4.2.1	The greenbelt shall be permanently protected from subdivision and development by a restrictive covenant except for a limited range of activities provided in the rules. *This Policy seeks to achieve Objective 12.8.8.3.1, 12.8.8.3.7, 12.8.8.3.8.*
Policy 12.8.8.4.2.2	Maintain the function of the Policy Area as a greenbelt, with provision only for activities associated with recreation, forestry, farming, conservation, heritage or education. *This Policy seeks to achieve Objective 12.8.8.3.1, 12.8.8.3.14, 12.8.8.3.7.*
Policy 12.8.8.4.2.3	Additional reserve land shall be added to the existing reserve network at the time of the first subdivision for the Weti Village Policy Area including: • Stillwater Reserve Land; • Karepiro Bay Walkway Buffer Land. • D'Acre Cottage Reserve Extension Land; • Karepiro Bay Walkway Extension Land; • Haigh's Access Road Public Park. *This Policy seeks to achieve Objective 12.8.8.3.1, 12.8.8.3.10, 12.8.8.3.11.*
Policy 12.8.8.4.2.4	A network of walkways shall be provided that are accessible to the public and connect with the existing coastal walkway network. *This Policy seeks to achieve Objective 12.8.8.3.10.*
Policy 12.8.8.4.2.5	Buildings within the Policy Area should be sited and designed to avoid adverse effects on the landscape, particularly having regard to: (a) significant ridgelines; (b) views from the Coastal Marine Area; and (c) view from a public road or other public place outside the Zone. *This Policy seeks to achieve Objective 12.8.8.3.3 and 12.8.8.3.5.*
Policy 12.8.8.4.2.6	Enable the establishment of the following recreational landuses as identified on the Outline Development Plan in Appendix 14 to the Planning Maps: (a) Conservation Institute and Gardens in the location denoted on the Outline Development Map in Appendix 14, with a total area of approximately 18 hectares. (b) Boat storage sheds, stables and a racquets and sports club in the locations identified on the Outline Development Plan in Appendix 14 to the Planning Maps. (c) Public toilets in the locations identified on the Outline Development Plan in Appendix 14 to the Planning Maps. (d) Mountain Bike Club Facility.

This Policy seeks to achieve Objective 12.8.8.3.4 and 12.8.8.3.10.

Policy 12.8.8.4.2.7

Enable outdoor recreation, conservation activities and related educational and heritage activities, rural and forestry activities within the Greenbelt and Conservation Policy Area.

This Policy seeks to achieve Objective 12.8.8.3.1, 12.8.8.3.4 and 12.8.8.3.10.

Policy 12.8.8.4.2.8

Require the staged and progressive enhancement of SNAs identified on the Outline Development Plan in Appendix 14 to the Planning Maps at the time of the first subdivision for the Weiti Village Policy Area.

This Policy seeks to achieve Objective 12.8.8.3.5, 12.8.8.3.6.

Policy 12.8.8.4.2.9

Enable the establishment of a golf course and associated ancillary facilities, including a clubhouse in the Greenbelt and Conservation Policy Area.

This Policy seeks to achieve Objective 12.8.8.3.4.

Explanation
These policies seek to ensure the permanent protection of the land through a restrictive covenant and District Plan rules. The rules make most subdivision a Prohibited Activity, as a means to avoid the potential for cumulative and incremental growth within the Zone over time. Specific exceptions are included in development controls in this Chapter, where subdivision is required to contain infrastructure within a separate site. The policies also seek to limit the range of activities that can occur in the Policy Area to those of a rural and outdoor recreational nature The policies also ensure that the existing areas of SNA are protected and enhanced by additional planting to connect and enlarge them. The policies also seek to add to public opportunities to enjoy the area by providing for additional reserve land to be added to the existing reserve network. They also provide walkways and other facilities within the zone that will be accessible to the public.

12.8.8.4.3 Karepiro Policy Area Policies

Policy 12.8.8.4.3.1

To enable the development of the Karepiro Policy Area for clustered residential development with a maximum of 150 residential units, while having regard to:

(a) The visual impact of dwellings when viewed from outside the site, particularly from outside the Zone including the coastline;
(b) The phasing of the removal of existing pine trees and establishing alternative native vegetative planting as an integral component of the development of this residential policy area;
(c) Managing the potential effects of development on the surrounding natural values of the Okura DOC Reserve, Okura Estuary and Marine Reserve, Karepiro Bay and Weiti River.

This Policy seeks to achieve Objective and 12.8.8.3.2, 12.8.8.3.3, 12.8.8.3.8, 12.8.8.3.9.

Policy 12.8.8.4.3.2

Encourage additional planting outside the SNAs having regard to the mixed uses provided for in the Policy Area.

This Policy seeks to achieve Objective 12.8.8.3.5

Policy 12.8.8.4.3.3

Buildings within the Policy Area should be sited and designed to avoid, remedy or mitigate adverse effects on the landscape, particularly having regard to:

(a) significant ridgelines;
(b) views from the Coastal Marine Area; and
(c) views from a public road or other public place outside the Zone.

This Policy seeks to achieve Objective 12.8.8.3.3 and 12.8.8.3.5.

Policy 12.8.8.4.3.4	To require the development of new dwellings within the Policy Area to be designed in accordance with an Architectural Code. *This Policy seeks to achieve Objective 12.8.8.3.9*
Policy 12.8.8.4.3.5	Public access should be provided and maintained to Karepiro Bay as well as public toilet facilities as denoted on the Outline Development Plan in Appendix 14 of the District Plan *This Policy seeks to achieve Objective 12.8.8.3.10.*
Policy 12.8.8.4.3.6	To require the integration of sites and landscape values through the provision of a landscape management plan for this Policy Area. *This Policy seeks to achieve Objective 12.8.8.3.3, 12.8.8.3.5.*
Policy 12.8.8.4.3.7	Infrastructure should be suitable to the location's key natural features and to the built form surrounding the development to avoid adverse effects on amenity values. *This Policy seeks to achieve Objective 12.8.8.3.5 and 12.8.8.3.13.*
12.8.8.4.4	**Weiti Village Policy Areas 1 and 2 Policies.**
Policy 12.8.8.4.4.1	The total number of household units in the Weiti Village Policy Area shall be limited to 400. *This Policy seeks to achieve Objectives 12.8.8.3.1, 12.8.8.3.2, 12.8.8.3.5, 12.8.8.3.7, 12.8.8.3.8.*
Policy 12.8.8.4.4.2	Within the Weiti Village Policy Areas 1 and 2, higher intensity development should be enabled to occur around activity centres (eg shops and parks), adjacent to potential passenger transport routes and places of high amenity value. It is also intended that high intensity development be designed and located in such a way that it helps define the street edge and provides opportunities for informal surveillance, particularly to areas of open space. Higher intensity development should be comprehensively designed. *This Policy seeks to achieve 12.8.8.3.9, 12.8.8.3.12.*
Policy 12.8.8.4.4.3	Small scale business activities that assist in providing for the daily needs of residents within the Weiti Special 8 Zone should be encouraged to locate in identified locations in the Weiti Village Policy Areas 1 and 2. *This Policy seeks to achieve Objective 12.8.8.3.12.*
Policy 12.8.8.4.4.4	A variety of section sizes and building types should be provided for in each identified Weiti Village Policy Area in order to create interest, diversity, and choice. *This Policy seeks to achieve Objective 12.8.8.3.9.*
Policy 12.8.8.4.4.5	Roads, including footpaths and berms, within the Weiti Village Policy Areas 1 and 2 should be designed in an integrated manner taking account of: (a) a range of transport modes (such as vehicles, cycles, pedestrians and public transport); (b) the creation of a street environment that is pleasant and safe for pedestrians to walk along; (c) enhancing connectivity and permeability (urban design principles). *This Policy seeks to achieve Objective 12.8.8.3.9.*
Policy 12.8.8.4.4.6	To require that all buildings are designed and assessed against an architectural code having regard to scale, bulk, form, proportions, structure, materials and colour. *This Policy seeks to achieve Objective 12.8.8.3.9 and 12.8.8.3.11.*

Policy 12.8.8.4.4.7	The design of the parks and civic areas within the Weiti Village Policy Areas 1 and 2 should enhance accessibility, including plaza areas, pedestrian areas and seating. *This Policy seeks to achieve Objective 12.8.8.3.11, 12.8.8.3.12.*
Policy 12.8.8.4.4.8	To prevent large floor plate retailers establishing within the Weiti Village Policy Areas 1 and 2 and that they be limited by means of the delineation of the extent of commercial land use and buildable area. *This Policy seeks to achieve Objective 12.8.8.3.12.*
Policy 12.8.8.4.4.9	Provide for earthworks necessary for the formation of roads and formation of building platforms within the Weiti Village Policy Areas 1 and 2 but ensuring that appropriate integration of buildings into the wider context will be achieved. *This Policy seeks to achieve Objectives 12.8.8.3.5 and 12.8.8.1.3.13.*
Policy 12.8.8.4.4.10	To enable a dense village environment to be created, having regard to the need to manage stormwater flows and water quality on downstream catchments. *This Policy seeks to achieve Objectives 12.8.8.3.13, 12.8.8.3.14.*
Policy 12.8.8.4.4.11	To provide for roading within the Policy Area to be constructed in accordance with the Weiti Village Master Plan set out in Appendix 12C1 and in recognition of its role in creating a legible and cohesive streetscape. *This Policy seeks to achieve Objectives 12.8.8.3.9.*
Policy 12.8.8.4.4.12	To require buildings to be constructed within minimum and maximum heights and particularly to discourage single storey buildings within Areas T4 and T5. *This Policy seeks to achieve Objectives 12.8.8.3.9.*
Policy 12.8.8.4.4.13	To prohibit the establishment of minor household units and to limit development within the Weiti Village Policy Area to a total of 400 household units. *This Policy seeks to achieve Objectives 12.8.8.3.*
	Policies from the following chapters are also relevant:: *Chapter 5 – Natural Hazards* *Chapter 10 – Open Space and Recreation* *Chapter 17 – Cultural Heritage* *Chapter 18 – Urban Land Modification and Vegetation Removal* *Chapter 19 – Utilities* *Chapter 20 – Hazardous Substances and Contaminated Sites* *Chapter 21 – Transportation and Access* *Chapter 22 – Financial Contributions* *Chapter 23 – Subdivision and Servicing*

12.8.8.5 Policy Area Description

The Policy Areas provided for in the Special 8 (Weiti Forest Park) Zone are as follows:

1. Greenbelt and Conservation Policy Area.
2. Weiti Village Policy Areas (Area 1 and 2).
3. Karepiro Policy Area.

12.8.8.5.1 Greenbelt and Conservation Policy Area

The purpose of this Policy Area, covering approximately 732ha, is to maintain an open space greenbelt between Okura and the urban Hibiscus Coast, whilst allowing up to 400 household units to be established within the Weiti Village Policy Areas 1 and 2, and up to 150 household units within the identified Karepiro Policy Area. The Greenbelt and Conservation Policy Area wraps around the western, northern and eastern edges of the Zone surrounding the 2 Weiti Village Policy Areas, and the Karepiro Policy Area.

The Greenbelt and Conservation Policy Area shall be maintained in exotic and/or native forest, farmland, gardens and/or recreational open space. The provisions outlined in the Policy Area are to ensure that the integrity of the greenbelt function is maintained in perpetuity while appropriately providing for activities consistent with that greenbelt function, including conservation and outdoor recreation activities.

The Greenbelt and Conservation Policy Area is effectively the balance area to be held as open space. The location of the sites for residential activity is therefore restricted to identified parts of the Special 8 Zone to ensure that the greenbelt role of the land is retained.

The rules require that planting of native vegetation shall be undertaken in the SNA Enhancement Planting Areas identified in the Outline Development Plan in Appendix 14 to the Planning Maps. This shows the Stage 1 Enhancement Planting connecting and expanding the existing SNA areas. The Stage 2 Enhancement Planting is at the Conservation Institute and the Stage 3 Enhancement Planting connects the existing SNAs to the Conservation Institute. The Stage 4 Planting fills in the area between the Conservation Institute, the Stage 3 Enhancement Planting and the existing SNAs. The Enhancement Planting is triggered by the first subdivision application for development in the Weiti Village Policy Area. The Enhancement Planting is to occur as follows:

(a) Stage 1 areas (47ha) – planting shall be completed within 5 years of granting consent.
(b) Stage 2 area (Conservation Institute and Gardens) (17.5ha) – planting shall be completed within 10 years of granting consent.
(c) Stage 3 areas (62ha) – planting shall commence within 10 years of granting consent and be completed within 20 years of granting consent.
(d) Stage 4 - planting shall commence within 10 years of granting consent and shall be completed within 20 years of granting consent. No less than 60% of the area shall be planted in native vegetation.

This is a total of approximately 126ha of enhancement planting. The planting is to comply with standards set out in the Zone rules which are based on the Enhancement Planting Standards used in the other rural zones of the District.

The areas within the Special 8 Zone which have been identified as public open space are to be vested in the Council or Department of Conservation as the case may be in accordance with rule 12.8.8.22.6. The areas amount to approximately 42.4ha and are:

- Stillwater Reserve Land (approx 6.7ha);
- Karepiro Bay Walkway Extension Land (approx 3.3ha);
- D'Acre Cottage Reserve Extension Land (approx 6ha);
- Karepiro Bay Walkway Buffer Land (approx 1.4ha); and

- Haigh's Access Road Public Park (approx 25ha).

The reserves will be zoned Open Space following their vesting.

The requirement for public access to the esplanade reserve at Karepiro Bay is necessary to ensure that public access to and along the coastal marine area is maintained and enhanced. A comprehensive network of walkways is also to be provided and maintained and these are shown on the Outline Development Plan in Appendix 14 of the Planning Maps. They are as follows:

- Weiti Walkway from Haigh's Access Road to the Conservation Institute – approximately 5.8km;
- Weiti Walkway from Conservation Institute to the Public Carpark – approximately 2.3km;
- Weiti Walkway from the Public Carpark to Conservation Institute via road – approximately 2.1km;
- Weiti Walkways from the Public Carpark to D'Acre Cottage – approximately 1.0km; and
- a further track, the exact route to be agreed between the Council and the consent holder at a later date, with termini in the following locations:
    - at Stillwater, or alternatively at some point along the DOC Walkway identified on the Outline Development Plan in Appendix 14 to the Planning Maps between Stillwater and Karepiro Bay; and
    - at the Public Carpark or at some point along the Weiti Walkway identified in the second bullet above.

The walkways and reserve land are to be provided for as part of the first subdivision application of the Weiti Village Policy Area.
Specific areas are identified on the Outline Development Plan in Appendix 14 to the Planning Maps for a Conservation Institute and Gardens, boat storage sheds, public toilet facilities, two stable complexes, racquets and sports club and other sports and recreational facilities.

A Conservation Institute and Gardens is also to be provided as:

- a base for the carrying out of the enhancement planting, including the Weiti forest conversion programmes, the Weiti enhancement planting programmes and the Weiti predator and pest eradication programmes;
- a building where public sector science research related to Weiti or the surrounding area can be furthered by making available office, meeting or seminar space from time to time; and
- a place for educational programmes.

Following the issue of the section 224(c) certificate the facilities will be available for those activities on reasonable conditions.

The gardens will also be available to the public subject to certain conditions which may include an entry fee.

The consent holder will also create an incorporated society to own and operate the Mountain Bike Club Facility on the land of approximately 20ha.

The subdivision of land within the Policy Area, other than that which may be required to accommodate the specified Weiti Conservation activities or in connection with the establishment of infrastructure to serve activities in the zone, is a Prohibited Activity.

12.8.8.5.2 Weiti Village Policy Areas 1 and 2

The location of the Weiti Village Policy Areas 1 and 2 are identified on the Outline Development Plan enclosed in Appendix 14 to the Planning Maps. The layout and form of

these areas is also denoted on the Weiti Village Master Plan in Appendix 12C1.

The Weiti Village Policy Areas 1 and 2 combined will contain up to 400 household units, with a mix of local retail and recreational activities as per the Master Plan. The Weiti Village Master Plan in Appendix 12C1 shall be used to guide the density, scale and form of development. A range of activities are included in the District Plan rules reflecting the Master Plan and an activity status assigned to each of these.

Issue of a certificate pursuant to Section 224(c) of the Resource Management Act for the first subdivision application of the Weiti Village Policy Area is the trigger for a number of the public benefits outlined under the Greenbelt and Conservation Area description above.

The Weiti Village Master Plan is based upon areas of different density developed using the Transect approach which proposes a gradient of activities and building types from a higher density centre to less intense development at the edge of settlements. These areas and the relevant Development Controls are set out in Rule 12.8.8.8 below. The key transects applicable to the Weiti Village Policy Area are as follows:

T5-Urban Centre

The Urban Centre is the equivalent of a Main Street and includes building types that can accommodate retail, office, live-work and household units. It is characterised by a tight network of streets with wide pedestrian pavements, buildings set at, or very close to, street frontage, formal open spaces and a legible pattern of street tree planting.

T4 – General Urban

The General Urban area has a primarily residential fabric. Mixed use is confined to certain corner locations. A wider range of building typologies and building yards are provided for. Street tree planting patterns may be more varied.

T3 – Sub-Urban

The Sub-Urban area is the most purely residential area of the community. Development density is lower than the T4 and T5 Areas, and buildings are detached and feature the greatest amount of yard area of the Village. Development blocks are typically slightly larger, and roads feature a less regular pattern to accommodate natural landform conditions. Landscape treatments are more informal and organic in form. This area also serves to transition into the rural and greenbelt character of the surrounding Policy Area.

The design approach to the Weiti Village Policy Area is based upon creating a "Village" character that will ensure development is integrated into the landscape setting. In order to achieve such an outcome an assessment of urban design, land development, engineering and landscape integration will be required for each resource consent application. An Architectural Code is required to be prepared addressing the principles set out in Appendix 12C2. There is the opportunity for Comprehensive Residential Development of larger sites and it is likely that the whole of the villages will be designed in a comprehensive way.

The Weiti Village Policy Area, whilst emphasising residential activities, does make provision for shops, limited business activity and live-work opportunities which will support the local population. The range of such activities is set out in the Activity Table (Rule 12.8.8.7.2).

12.8.8.5.3 Karepiro Policy Area

Within this specific Policy Area 150 household units are identified. The provisions governing the use and development of this area are controlled by the rules in the section. However, existing Resource Consent Ref RMA52447 also guides development while that consent is live.

The Development Controls and associated Assessment Criteria for the Greenbelt and Conservation Policy Area; include controls of subdivision, land use and future development scenarios to ensure that development of the Karepiro Policy Area is not considered in isolation from its landscape context.

12.8.8.6 Development within Weiti Village Policy Areas 1 and 2

To achieve development of the Weiti Village Policy Areas 1 and 2, activities and development should be in accordance with the Weiti Village Master Plan in Appendix 12C1 and demonstrate compliance with the relevant development controls and performance standards. Any activities which do not meet one or more standards within this area will be assessed in terms of the effects that such non compliances will generate on the Weiti Village Master Plan in Appendix 12C1.

Any application for an activity within the Weiti Village Policy Areas 1 and 2 that is not specifically encompassed by the activities listed in Rule 12.8.8.7.2, will be considered as a Non-complying Activity, except where otherwise identified as a Prohibited Activity.

12.8.8.7 Activity Rules

Rule 12.8.8.7.1
Activities in All Policy Areas

Activities in All Policy Areas

Activities in the Policy Areas shall comply with the following:

(a) All Permitted Activities in the Activity Table in Rule 12.8.8.7.2 shall comply with Rule 12.8.8.8 - 12.8.8.10 Development Controls, and any other relevant Rule in the District Plan;

(b) All Controlled Activities in the Activity Table in Rule 12.8.8.7.2 and comprehensively designed developments shall comply with Rule 12.8.8.8 – 12.8.8.10 Development Controls (unless specifically excluded), and any other relevant Rule in the District Plan. All Controlled Activities shall be assessed against the criteria in Rule 12.8.8.11;

(c) All Restricted Discretionary Activities in the Activity Table in Rule 12.8.8.7.2 shall be assessed against those matters over which discretion is retained as set out in Rules 12.8.8.12 to 12.8.8.19;

(d) All Non-complying Activities in the Activity Table in Rule 12.8.7.2 shall be assessed in terms of Section 104 of the Act;

(e) Except as provided for by sections 95A(2)(b), 95A(2)(c) and 95A(4) of the Act, all Controlled Activities, and Restricted Discretionary Activities marked # will be considered without public notification or the need to obtain the written approval of or serve notice on affected persons.

Rule 12.8.8.7.2
Activity Table

Activity Table

In the following table:

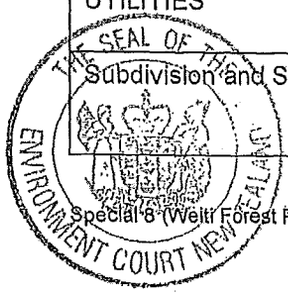
P = Permitted Activity
C = Controlled Activity
RD = Restricted Discretionary Activity
D = Discretionary Activity
NC = Non-complying Activity
PRO = Prohibited Activity
N/A = Not Applicable in this Policy Area

Note: Words in capitals are defined in Chapter 3 - Definitions.
Note: Additional definitions unique to the Weiti Special 8 Zone are set out in Rule 12.8.8.7.2.2 below.

ACTIVITY		Greenbelt and Conservation Policy Area	Weiti Village Policy Areas 1 and 2	Karepiro Policy Area
Any building or activity not otherwise specifically listed in the Activity Table.		PRO	NC	NC
Any Permitted, Controlled or Restricted Discretionary Activity not complying with the Rules 12.8.8.8.3 to 12.8.8.8.12, 12.8.8.9.2 to 12.8.8.9.8, 12.8.8.10.1 to 12.8.8.10.4 and 12.8.8.10.6 Development Controls .		RD	RD	RD
ACCESSORY BUILDINGS for permitted activities.		C#	P	C#
ACCESSORY BUILDINGS for controlled activities.		C#	C#	C#
BUILDINGS within the Weiti Village Policy Areas 1 and 2 (Area T3) complying with the Development Controls listed in Rule 12.8.8.8 below		N/A	C#	N/A
BUILDINGS for HOUSEHOLD UNITS within the Karepiro Policy Area complying with the Development Controls listed in Rule 12.8.8.9 below.		N/A	N/A	C#
BUILDINGS within the Weiti Village Policy Areas 1 and 2 (Areas T4 and T5) complying with the Development Controls listed in Rule 12.8.8.8 below		N/A	RD#	N/A
BUILDNGS The erection, addition to or external alteration to and/or relocation of BUILDINGS associated with a COMPREHENSIVELY DESIGNED DEVELOPMENT on sites within the Weiti Village Policy Areas 1 and 2 (Areas T4 and T5) complying with the applicable Development Control Rules in Rule 12.8.8.8 and provided that the total number of household units in the Weiti Village Policy Area does not exceed 400.		N/A	RD#	N/A
BUILDINGS The use of existing BUILDINGS for residential purposes, where the BUILDING complies with the activity and density Rules 12.8.8.7.1, 12.8.8.7.2, 12.8.8.7.2.1, 12.8.8.7.2.3, and 12.8.8.7.2.4 in the Weiti Village Policy Areas 1 and 2 and the Karepiro Policy Area.		N/A	P	P
BUILDINGS The demolition of BUILDINGS, except where listed in Appendix 16A of 16B.		P	P	P
BUILDINGS, structures and infrastructure including car parks for WEITI CONSERVATION ACTIVITIES.		RD#	P	RD#
BUILDINGS, structures and infrastructure identified in the Outline Development Plan in Appendix 14 to the Planning Maps, including car parks for WEITI OUTDOOR RECREATION.		RD#	P	RD#
CONSERVATION INSTITUTE (This is a building and activity rule).		RD#	N/A	N/A
Density Rules – Residential Activities.	SINGLE HOUSEHOLD UNIT per SITE not exceeding 1 unit per Site in Weiti Village Policy Areas 1 and 2 provided that the total number of household units in the Weiti Village Policy Area complies with Rules 12.8.8.7.2.3 and 12.8.8.7.2.4 (Note this is a density rule.)	N/A	P	N/A

ACTIVITY		Greenbelt and Conservation Policy Area	Weiti Village Policy Areas 1 and 2	Karepiro Policy Area
	SINGLE HOUSEHOLD UNIT per SITE not exceeding 1 unit per Site in the Karepiro Policy Area provided that the total number of households units in the Karepiro Policy Area does not exceed 150 and complies with Rule 12.8.8.7.2.3. (Note this is a density rule.)	N/A	N/A	C#
	COMPREHENSIVELY DESIGNED DEVELOPMENT in Weiti Village Policy Areas 1 and 2 (Areas T4 and T5), provided that the total number of household units in the Weiti Village Policy Area complies with Rules 12.8.8.7.2.3 and 12.8.8.7.2.4 (Note this is a density rule.)	N/A	RD#	N/A
	HOUSEHOLD UNITS in the Greenbelt and Conservation Policy Area.	PRO	NA	NA
Golf Course The construction, establishment and use of golf course, clubhouses and ancillary facilities and infrastructure.		RD#	RD#	RD#
HOME OCCUPATIONS		N/A	P	P
MINOR HOUSEHOLD UNITS		PRO	PRO	PRO
OFFICES where specifically provided for on a Comprehensively Designed Development, that has been granted consent.		PRO	P	NC
PLACES OF ASSEMBLY accommodating not more than 200 people where specifically provided for on the Outline Development Plan in Appendix 14 to the Planning Maps (Note this is an activity rule only and does not cover building associated with this activity).		PRO	RD#	P
RESTAURANTS (excluding DRIVE-THROUGH ACTIVITIES) where specifically provided for on a Comprehensively Designed Development that has been granted consent.		PRO	P	NC
SHOPS (**except** SHOPS for the sale of Builders, Tradesmen's, Engineers', Farmers' and Handymen's supplies, or Motor Vehicle and Machinery Parts and Tools) with a gross leaseable area of individual ground floor or unit area of a maximum of 400m^2 and where specifically provided for on a Comprehensively Designed Development, that has been granted consent.		PRO	P	NC
SHOW HOME SITES		PRO	P	P
VISITOR ACCOMMODATION in the Weiti Village Policy Area, Areas T4 and T5 only, and as part of a COMPREHENSIVELY DESIGNED DEVELOPMENT and subject to Rule 12.8.8.7.2.3		PRO	P	PRO

ACTIVITY	Greenbelt and Conservation Policy Area	Weiti Village Policy Areas 1 and 2	Karepiro Policy Area
WEITI CONSERVATION ACTIVITIES (refer to definition below) (Note: This is an activity rule only and does not cover buildings associated with this activity).	P	P	P
WEITI FORESTRY ACTIVITIES (refer to definition below) (Note: This is an activity rule only and does not cover buildings associated with this activity).	P	P	P
WEITI OUTDOOR RECREATION (Note: This is an activity rule only and does not cover buildings associated with this activity).	P	P	P
WEITI RURAL ACTIVITIES (refer to definition below)	P	NC	P
District Wide Activities	Refer Chapter 16 General Rules. Apply the rules as if this Policy Area was a Rural Zone	Refer Chapter 16 General Rules .Apply the rules as if Area T5 was a Retail Service Zone and Areas T4 and T3 were Residential zones	Refer Chapter 16 General Rules. Apply the rules if this Policy area was a Residential Zone
Earthworks and Vegetation and Wetland Modification Activities	Refer Chapter 7 Rural Apply Rule 7.4.9 as if the land was within the East Coast Rural Zone	Refer Chapter 18 Urban Land Modification and Vegetation Removal Apply the rules as if the land was within an urban zone.	Refer Chapter 7 Rural. Apply Rule 7.4.9 as if the land was within the East Coast Rural Zone
Transport Activities	Refer Chapter 21 Transportation and Access	Refer Chapter 21 Transportation and Access (except where modified by a Rule in this section)	Refer Chapter 21 Transportation and Access
Use and Storage of HAZARDOUS SUBSTANCES	Refer Chapter 20 Hazardous Substance and Contaminated Sites. Apply the rules as if this Policy Area is a Rural Zone	Refer Chapter 20 Hazardous Substance and Contaminated Sites. Apply the rules as if this Policy Area is a Residential Zone	Refer Chapter 20 Hazardous Substance and Contaminated Sites. Apply the rules as if this Policy Area is a Residential Zone
UTILITIES	Refer Chapter 19 Utilities	Refer Chapter 19 Utilities	Refer Chapter 19 Utilities
Subdivision and Servicing	Refer Chapter 23 Subdivision and Servicing	Refer Chapter 23 Subdivision and Servicing	Refer Chapter 23 Subdivision and Servicing



Rule 12.8.8.7.2.1
Rules in other chapters.

The rules in other Chapters referred to above apply except where standards are modified by the Development Controls in this Chapter.

Rule 12.8.8.7.2.2
Definitions

Particular Weiti Special Zone Definitions

Definitions applying specifically to the Special 8 (Weiti Forest Park) Zone. (Note: All other definitions are set out in *Chapter 3 – Definitions* of the Plan).

FIRST SUBDIVISION APPLICATION means the first consent application for the first stage of subdivision of the land within the Weiti Village Policy Areas 1 or 2 into a significant number of separate lots or for a comprehensively designed development, that proceeds to the issue of certificates pursuant to section 224(c) of the Act.

WEITI CONSERVATION ACTIVITIES means the management of habitat, ecosystems and heritage within the Special 8 (Weiti Forest Park) Zone, including uses ancillary to such activities.

WEITI OUTDOOR RECREATION ACTIVITIES means the use of land (whether commercial or private) for leisure, sporting, and/or recreational activities and excludes motorsport.

WEITI RURAL ACTIVITIES means farming activities of any kind including grazing, breeding, stocking of animals, gardening, the growing of plants, trees or crops, horticulture, or uses ancillary to such activities but excludes Intensive Farming as defined in the District Plan.

WEITI FORESTRY ACTIVITIES means the activities associated with the planting, tending and harvesting of trees for commercial gain, including the location and operation of mobile sawmill facilities on a site for no longer than three months in any 12 month period, but excludes any other sawmilling or timber processing.

COMPREHENSIVELY DESIGNED DEVELOPMENT means development where more than one household unit is proposed on an area which is identified for such developments within the Weiti Village Master Plan in Appendix 12C1 (Areas T4 and T5 Weiti Village Master Plan in Appendix 12C1). Within a Comprehensively Designed Development, the design of buildings, activities, their layout, access and relationship to one another and their neighbours is to be planned as a cohesive whole.

CONSERVATION INSTITUTE means a building of not less than 400m^2 located as shown on the Outline Development Plan in Appendix 14 to the Planning Maps and used as follows:

(a) A base for carrying out the enhancement planting including the Weiti forest conversion programmes and the Weiti enhancement planting programmes; and the Weiti predator, pest and weed eradication programmes; and
(b) A building where public sector science research related to Weiti or the surrounding area can be furthered by making available office, meeting or seminar space; and
(c) Educational programmes.

Rule 12.8.8.7.2.3
Maximum Number of Households in Policy Areas

Maximum Number of Households in Policy Areas

(a) The Maximum number of household units within the Karepiro Policy Area shall be 150.

(b) The maximum total number of household units within the Weiti Village Policy Areas 1 and 2 shall not exceed 400.

(c) The total number of household units within the entire Weiti Special 8 Zone shall not exceed 550.

(d) The number of Visitor Accommodation units in the Weiti Village Policy Areas T4 and T5 shall not exceed 100.

(e) The Visitor Accommodation units shall be treated as Household Units for the purpose of calculating the limits in (b) and (c) above, provided that each Visitor Accommodation unit shall equate to 0.6 of a household unit.

(e) Non-compliance with this rule shall be a Prohibited Activity.

Explanation and Reasons
Visitor accommodation units come within the household unit capacity to ensure that the scale of the villages and the 400 household unit cap is not significantly expanded. However they are counted at a ratio of 0.6 of a household unit. This means, for example, that if all 100 visitor accommodation units are developed, then the number of household units in the Villages is reduced by 60 to keep within the Village household unit limit of 400.

Rule 12.8.8.7.2.4
Density

Density

The maximum density in the Weiti Village Policy Areas 1 and 2 shall be as set out in the table below.

Area	Density
Area T5	125m^2 per household unit.
Area T4	250m^2 per household unit
Area T3	1 Unit per Site

Rule 12.8.8.8 Development Controls and Performance Standards Weiti Village Policy Areas 1 and 2

Rule 12.8.8.8.1
Location of Sites

Location of Sites

All household units shall be located within the extent of the Weiti Village Policy Areas 1 and 2 as identified on the Outline Development Plan in Appendix 14 to the Planning Maps and in the Weiti Village Master Plan in Appendix 12C1.

Rule 12.8.8.8.2
Location of Residential Activity

Location of Residential Activity

Within Area T5, no residential activity at ground floor level shall occur in the areas identified on the Weiti Village Master Plan in Appendix 12C1 as dedicated "Commercial Ground Floor" activities.

Explanation and Reasons
Development within the Weiti Village Policy Areas 1 and 2 is governed by the Transect method, with a scale of development density and building typologies being identified; ranging from lower density residential living, through to a dense village environment, which requires a range of performance standards that are different from those found in other parts of the District Plan. The development controls set out minimum and/or maximum development standards for each transect area.

Rule 12.8.8.8.3
Maximum Building Height

Maximum Building Height

Rule 12.8.8.8.3.1
Buildings

Buildings

The maximum height shall be determined using the rolling height method as defined in *Chapter 3 - Definitions.*

The maximum building height of any building or structure within the Weiti Village Policy Areas 1 and 2 shall be as follows:

(a) Within Area T5 the maximum height shall be 15 metres and containing not more than 4 storeys above ground level, providing that no buildings shall be less than 9 metres in height;

(b) Within Area T4 the maximum height shall be 11 metres and containing not less than 2 storeys above ground level; provided that no building shall be less than 9 metres in height.

(c) Within Area T3, the maximum height shall be 9 metres and containing not more than 2 storeys above ground level.

Rule 12.8.8.8.3.2 **Accessory Buildings**

Accessory Buildings

The maximum height shall be determined using the rolling height method as defined in *Chapter 3 - Definitions.*

The Maximum building height of any accessory building within the Weiti Village Policy Areas 1 and 2 shall be as follows:

a) Within Area T5 the maximum height shall be 8 metres.

b) Within Areas T4 and T3, the maximum height shall be 6 metres.

Explanation and Reason
The height controls are configured to ensure that a cohesive streetscape and building frontage can be created. The maximum height is included to regulate the overall mass of buildings within the Policy Area, whereas the control on the number of storeys is to allow the construction of a range of ceiling heights; providing flexibility for use of spaces at ground floor level for activities including retail. The minimum height is included to define the streetscape to achieve the required ratio of building relative to street width. The controls will allow greater ceiling heights to be created on every floor of a building if appropriate for the intended end use of the building.

Rule 12.8.8.8.4 **Building Frontage Relative to Site Frontage**

Building Frontage Relative to Site Frontage

(Note: This Rule does not apply to Comprehensively Designed Developments within Areas T4 and T5)

(a) Within Area T5, the front façade of the building shall occupy not less than 90% of the length of the site frontage.

(b) Within Area T4, the front façade of the building shall occupy not less than 50% of the length of the site frontage.

(c) Within Area T3, the front façade of the building shall occupy not less than 40% of the length of the site frontage.

Explanation and Reasons
The width of buildings relative to the street frontage is an important element in achieving a cohesive and legible streetscape for the Weiti Village Policy Areas. The rule is intended to ensure that this outcome is achieved. It is expected that applications for Comprehensively Designed Developments will include apartment buildings, and multiple household units (within the 400 total permitted) and may extend over more than 1 site in the Policy Area. Those developments can be assessed individually as to their building frontage in relation to the frontage width via the resource consent process and the Assessment Criteria set out in this Chapter of the Plan.

Rule 12.8.8.8.5 **Height in Relation**

Height in Relation to Boundary

to Boundary

Within Areas T3 –T5, no part of any building shall exceed a height equal to 3 metres plus the shortest horizontal distance between that part of the building and any site boundary adjoining the Greenbelt and Conservation Policy Area.

This Rule shall not apply to:

(a) Chimneys, radio and television aerials, and domestic satellite dishes less than 1 metre in diameter;

(b) The apex of any roof or gable end not exceeding 1m² in area;

(c) Dormers not exceeding 2 metres in width (not more than 2 per building facing the same boundary);

(d) Those parts of a building that share a common wall on a site boundary or on a boundary between units.

Explanation and Reasons
High buildings close to the boundaries of other Policy Areas can have significant adverse effects on neighbouring sites, including being overbearing and restricting the admission of daylight. This Rule requires higher buildings to be located further from the boundary.

Rule 12.8.8.8.6
Maximum Site Coverage

Maximum Site Coverage

(Note: This Rule applies to all sites within Areas T3-T5)

The maximum building coverage of a site shall be:

(a) 100% net site area within Area T5.

(b) 100% net site area within Area T4.

(c) 80% net site area within Area T3.

Explanation and Reasons
Open space plays an important part in providing space for the planting of trees, stormwater drainage, and ensuring a high level of amenity values on residential sites. These rules are intended to ensure that these characteristics are retained in the T3 area. The Council recognises that the provision of traditional open space is not an issue in the T5 and T4 Areas where a more built up environment is proposed and hence a lesser requirement in these areas.

Rule 12.8.8.8.7
Minimum – Maximum Yards

Minimum – Maximum Yards

The front yard rule shall not apply to Comprehensively Designed Developments. A minimum and maximum yard for front yards is specified on the basis that the yard distances of buildings within Areas T3-T5 play an important role in creating a legible and cohesive village amenity.

Rule 12.8.8.8.8
Front Yards

Front Yards

(a) Within Area T5 the maximum front yard shall be 1 metre.

(b) Within Area T4, the maximum front yard shall be 3.5 metres and the minimum front yard shall be not less than 1 metre.

(c) Within Area T3, the maximum front yard shall be 6 metres and the minimum front yard shall be not less than 3.5 metres.

Rule 12.8.8.8.9

Other Yards

Other Yards

In respect of Comprehensively Designed Developments, the minimum side yard and rear yard rules shall not apply except where a Comprehensive Development adjoins a site within a T3 Area in which case the side yard shall be 1.8m. The minimum yards (other than front yards) on any site within Areas T3-T5 shall be as follows:

Rule 12.8.8.8.9.1
Side Yards

Side Yards

(a) Within Area T5 there is no minimum side yard requirement except where a T5 site adjoins a T3 site, in which case the side yard shall be 1.8m.

(b) Within Area T4 there is no minimum side yard except where a T4 site adjoins a T3 site, in which case the side yard shall be 1.8m and the maximum side yard shall be 1.8 metres.

(c) Within Area T3, the minimum side yard shall be 1.8 metres.

Rule 12.8.8.8.9.2
Rear Yards

Rear Yards

(a) Within Area T5, the minimum rear yard shall be 7 metres.

(b) Within Area T4 the minimum rear yard shall be 5 metres.

(c) Within Area T3 the minimum rear yard shall be 4 metres.

Rule 12.8.8.8.9.3
Other Yards: Accessory Buildings

Other Yards: Accessory Buildings

Within Area T5, the minimum yard standards for an accessory building are:

(a) 0.3 metres minimum for the rear and side yard.

Within Area T4 the minimum yards for an accessory building are:

(b) 1 metre minimum side yard.
(c) 0.6 metres minimum rear yard.

Within Area T3 the minimum yards for an accessory building are:

(d) 2 metres minimum side yard.
(e) 2 metres minimum rear yard.

Rule 12.8.8.8.9.4
Yards to Remain Unobstructed by Buildings

Yards to Remain Unobstructed by Buildings

With the exception of Rule 12.8.8.9.3 (Accessory Buildings), all yards shall remain unobstructed by buildings except as provided for as follows.

Rule 12.8.8.8.9.4.1

The following can be built in front yards:

(a) Within Area T5, the construction of awnings or similar pedestrian shelter areas at ground floor level, of up to 2.3 metres in depth and extend up to 100% of the building frontage.

(b) Within Areas T4 and T3, the construction of verandahs, decks with a maximum height of 0.6 metres above ground, balconies and bay windows and front steps/porches may encroach into the front yard by not more than 3 metres in depth.

Rule 12.8.8.8.9.4.2

The following can be built in side yards:

(a) Within Area T5, the construction of awnings or similar pedestrian shelter areas at ground floor level of up to 0.6 metres in depth and extend up to 100% of the building frontage.

(b) Within Areas T4 and T3, the construction of verandahs, balconies and bay windows and steps/porches may encroach into the front yard by not more than 1.5 metres in depth.

(c) Fascia, gutters, down pipes and eaves, masonry chimney backs, flues, pipes, domestic fuel tanks, cooling or heating appliances or other services; light fittings, electricity or gas meters, aerials or antennae, pergolas or sunscreens/awnings providing that they do not encroach into the yard by more than 0.3 metres.

Rule 12.8.8.8.9.5 **Use of Yards for Vehicular Access**

Use of Yards for Vehicular Access

The use of yards for vehicular access and parking shall comply with the following:

Front yards

(a) Within Areas T5 and T4, no vehicular access or car parking shall be provided in the front yard.

(b) Within Area T3, vehicular access may be provided via the front yard, but no accessory buildings with garage doors parallel to the street frontage or uncovered car parks shall project forward of the main building on each site.

Explanation and Reasons
Yards or building set backs allow for open space between buildings for site access, building maintenance, privacy, noise reduction and the like.

Unlike more conventional residential environments, the creation of driveways and accessways along street frontages has the potential to fragment the streetscape and pedestrian network. The rule provides direction on the positioning of access to sites so that the potential adverse effects of vehicular crossings and car parking in the Weiti Village Policy Areas 1 and 2 are avoided.

Rule 12.8.8.8.10 **Roof Types**

Roof Types

All roofs shall be made of materials other than uncoated galvanized material

Explanation and Reasons
The runoff from uncoated galvanised roofs has the potential to cause harm to eco-systems within streams and other receiving waters.

Rule 12.8.8.8.11 **Maximum Impervious Surfaces**

Maximum Impervious Surfaces Weiti Village Policy Areas 1 and 2

(Note: This Rule applies to all sites within Areas T3-T5)

The maximum impervious surfaces of any site shall be:

(a) 100% net site area within Area T5.

(b) 100% net site area within Area T4.

(c) 80% net site area within Area T3.

(Note: This rule does not include roads or reserves).

Explanation and Reasons
The density of development within the Weiti Village Policy Areas 1 and 2 is more intensive than in many other areas of the District. While the development form within this Policy Area is intense, the balance of the Special 8 Zone surrounding the Policy Area has no development potential except where expressly provided for. This rule reflects this unique situation, and allows for a greater percentage of impervious coverage on the basis that carefully managed stormwater infrastructure will not result in downstream

effects on existing properties, or place pressure on existing public stormwater infrastructure.

Rule 12.8.8.8.12 **Integration and screening of Infrastructure**

Integration and screening of Infrastructure

All water storage tanks and associated infrastructure shall be placed below ground with planting or other screening devices such that they are not visible from any public place.

Explanation and Reasons
To mitigate the effects of water storage tanks, it is appropriate that they be screened or placed underground.

Rule 12.8.8.9 Development Controls Karepiro Policy Area

Rule 12.8.8.9.1 **Location of Sites**

Location of Sites

All sites created for Household Units by subdivision shall be located within the extent of the Karepiro Policy Area as identified on the Outline Development Plan in Appendix 14 to the Planning Maps.

Rule 12.8.8.9.2 **Maximum Building Height and Height in relation to boundary**

Maximum Building Height and Height in relation to Boundary.

(a) No part of any building shall exceed a height equal to 3 metres plus the shortest horizontal distance between that part of the building and any site boundary.

(b) The maximum height of any building shall be 9 metres, except Lots 115, 118, 119, 122, 123, 124 and 138-150 (excluding Lot 147) consented in RM52447 which shall be a maximum height of 6 metres above ground level.

Rule (b) shall not apply to:

(i) Chimneys, radio and television aerials, and domestic satellite dishes less than 1 metre in diameter;

(ii) The apex of any roof or gable end not exceeding 1m² in area.

Explanation and Reasons
The maximum height is included to regulate the overall mass of buildings and the adverse effects of buildings on the landscape.

Rule 12.8.8.9.3 **Yards**

Yards

The following minimum yards shall apply:

(a) General Standards

Shoreline Yard	50m
Front Yard	10m
Other Yards	1.2m

(b) Buildings (in excess of 25m² floor area) for housing animals other than horses

All Yards	100m to nearest house site.

Rule 12.8.8.9.3.1 Use of yards

Use of Yards

(a) Subject to (b) below, yards are to be unoccupied and unobstructed by any buildings, parts of buildings, decks, terraces or steps.

(b) The following can be built in any yard other than a Shoreline Yard:

(i) Decks, unroofed terraces, landings, steps or ramps with a maximum height of 0.3 of a metre, provided that they do not prevent vehicular access to a required parking space.

(ii) Fascia, gutters, downpipes, and eaves; masonry chimney backs, flues, pipes, domestic fuel tanks, cooling or heating appliances or other services; light fittings, electricity or gas meters, aerials or antennae, pergolas or sunblinds, provided that they do not encroach into the yard by more than 0.3 of a metre.

Rule 12.8.8.9.4 **Accessory Buildings – Maximum Area**

Accessory Buildings – Maximum Area

Maximum gross floor area per site 150m^2.

Rule 12.8.8.9.5 **Integration and Screening of Infrastructure**

Integration and Screening of Infrastructure

All water storage tanks and associated infrastructure shall be placed below ground with planting or other screening devices such that they are not visible from any public place beyond the boundary of the Special 8 (Welti Forest Park) Zone.

Explanation and Reasons
To mitigate the effects of water storage tanks, it is appropriate that they be screened or placed underground.

Rule 12.8.8.9.6 **Planting of Steeper Lots**

Planting of Steeper Lots

All slopes steeper than 1:2.5 within individual lots that have not been built on shall be permanently vegetated with local native plant species.

Explanation and Reasons
To mitigate the effects of land modification, and to visually integrate development into steeper areas of the Special 8 Zone; the planting of areas not built upon within each lot with native vegetation is considered an appropriate requirement.

Rule 12.8.8.9.7 **Lighting**

Lighting

Exterior lighting shall be designed and operated in accordance with Rule 16.5 of the District Plan for luminance (lux). Rule 16.5 shall be read as if this Policy Area was a Residential Zone.

Explanation and Reasons
Rule 16.5 manages the effects resulting from the operation of exterior lighting, but excluding street lighting.

Rule 12.8.8.9.8 **Roof Types**

Roof Types

All roofs shall be made of materials other than uncoated galvanized material

Explanation and Reasons
The runoff from uncoated galvanised roofs has the potential to cause harm to eco-systems within streams and other receiving waters.

Rule 12.8.8.10 Development Controls Greenbelt and Conservation Policy Area

Rule 12.8.8.10.1 **Height and Height in Relation to Boundary**

Height and Height in Relation to Boundary

(a) The maximum height of any building shall not exceed 9 metres.

(b) No part of any building shall exceed a height equal to 3 metres plus the shortest horizontal distance between that part of the building and any site boundary.

(b) No part of any building or any tree shall exceed the height limits specified on Planning Maps 26 and 27 and Map 1 in Appendix 1 (Height Restrictions North Shore Airfield).

Rule 12.8.8.10.2
Yards

Yards

The following minimum yards shall apply:

(a) General Standards

Shoreline Yard	50m
Front Yard	10m
Other Yards	1.2m

Rule 12.8.8.10.3
Use of yards

Use of Yards

(a) Subject to (b) below, yards are to be unoccupied and unobstructed by any buildings, parts of buildings, decks, terraces or steps.

(b) The following can be built in any yard other than a Shoreline Yard:

(i) Decks, unroofed terraces, landings, steps or ramps with a maximum height of 0.3 of a metre, provided that they do not prevent vehicular access to a required parking space.

(ii) Fascia, gutters, downpipes, and eaves; masonry chimney backs, flues, pipes, domestic fuel tanks, cooling or heating appliances or other services; light fittings, electricity or gas meters, aerials or antennae, pergolas or sunblinds, provided that they do not encroach into the yard by more than 0.3 of a metre.

Rule 12.8.8.10.4
Integration and screening of infrastructure

Integration and screening of infrastructure

Any private water reservoir shall be incorporated within the structure so that it forms part of that structure, or shall be placed underground provided that this restriction does not apply to wood stave tanks.

Rule 12.8.8.10.5
Native Replanting

Native Replanting

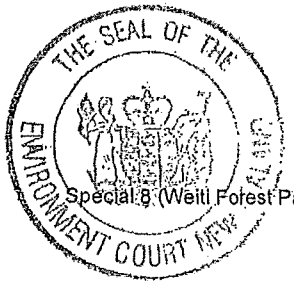
Any native planting within the Greenbelt and Conservation Policy Area (but outside the Enhancement Planting Areas (Stages 1, 2, 3 and 4)) identified on the Outline Development Plan in Appendix 14 to the Planning Maps shall meet the standards in Rule 12.8.8.22.9.2 Enhancement Planting Standard.

Rule 12.8.8.10.6
Roof Types

Roof Types

All roofs shall be made of materials other than uncoated galvanized material.

Explanation and Reasons
The runoff from uncoated galvanised roofs has the potential to cause harm to eco-systems within streams and other receiving waters.



Rule 12.8.8.11	Controlled Activities (Greenbelt and Conservation Policy Area, Weiti Village Policy Areas 1 and 2, Karepiro Policy Area): Matters For Control And Assessment Criteria
Rule 12.8.8.11.1	In accordance with sections 77B(2) of the Act, the Council will restrict its control to the matters listed against each specified activity when considering resource consent applications for Controlled Activities in all Policy Areas. Applications for activities under this rule need not be notified and the written approvals of persons will not be required.
Rule 12.8.8.11.2 **Matters for Control**	**Matters for Control** The Council will limit its control to the following matters: (a) Density of development. (b) Building design and bulk, building siting. (c) Landscape design including revegetation measures. (d) Landform modification/disturbance to landform and rehabilitation measures. (e) Provision of infrastructure and avoidance of natural hazards. (f) Lighting. (g) Any Architectural Code prepared in accordance with the Architectural Principles in Appendix 12C2. in each case having regard to the location, (density and bulk) of development set out in the Outline Development Plan in Appendix 14 to the Planning Maps. When considering an application the Council will have regard to the following criteria:
12.8.8.11.3 **Assessment Criteria**	**Assessment Criteria**
Density of Development	(a) Whether the density of development achieves compliance with the density rules set out in Rule 12.8.8.7.2.3
Building design and external appearance	(b) Whether the design of the proposed building incorporates techniques to avoid adversely impacting upon sensitive landscapes, or upon the natural character of the Coast. (c) Whether the design of any building in the Karepiro Policy Area and Weiti Village Policy Areas 1 and 2 is in accordance with the relevant Architectural Code for the relevant policy area.
Landscape design and Revegetation	(d) Whether the planting proposed for any building is appropriate for the location, and the extent to which such planting is necessary for mitigation of landscape and visual effects.
Disturbance to landform	(e) Whether buildings and structures are sited so that they will integrate into the landform as far as is practicable (in the case of the Weiti Village Policy Areas 1 and 2 and the Karepiro Policy Area, within the confines of the density proposed for that location), in order to minimise adverse effects on landscape values and minimise or control sediment runoff. (f) Whether associated earthworks incorporate techniques to minimise potential adverse effects on the land or any stream, river, or the coastal marine area. (g) Whether buildings and structures will adversely impact upon any existing native trees and bush which make a significant contribution to the visual and environmental qualities in the vicinity of the site.

Provision of Infrastructure	(h) Whether the provision of access and required infrastructure is configured to minimise earthworks and landform modification as far as is practicable (in the case of the Weiti Village Policy Areas 1 and 2 and the Karepiro Policy Area, within the confines of the density proposed for that location).
Natural Hazards	(i) Whether buildings and structures within identified development areas are sited and designed to minimise the potential impacts on people and property from any possible forest fire or adequate provision is to be made to manage such risks.
	(j) Whether the erection of the building will adversely affect overland flow paths or other stormwater runoff patterns and any measures proposed to mitigate this effect.
Lighting	(k) Whether, in the case of the Karepiro Policy Area, exterior lighting is provided in such a way as to not be prominent, particularly against a dark background, when viewed from a public place including the coast.

Explanation and Reasons

The matters for control and assessment criteria are intended to ensure that development of the respective Policy Areas do not have an adverse effect on the high landscape values of the area or such effects are adequately managed, and that within the confines of the plans for each Policy Area, development is in harmony with and complements the existing landscape and landform. The criteria ensure that the effects of development on the landscape, landform and the coast are appropriately considered.

Rule 12.8.8.12	**Restricted Discretionary Activities (Greenbelt and Conservation Policy Area, Weiti Village Policy Areas 1 and 2, Karepiro Policy Area), (Except Comprehensively Designed Developments and activities not complying with Development Rules): Matters for Discretion and Assessment Criteria**
Rule 12.8.8.12.1	In accordance with sections 77B and 104C of the Act the Council will restrict its discretion to the matters listed when considering resource consent applications for Restricted Discretionary Activities in all Policy Areas of the Weiti Special 8 Zone. These applications will be considered without public notification or the need to obtain the written approval of or serve notice on affected persons.
Rule 12.8.8.12.2 **Matters for Discretion**	**Matters for Discretion** The Council will limit its discretion to the following matters: (a) Consistency with Outline Development Plan in Appendix 14 to the Planning Maps. (b) Siting, scale and design and external appearance of buildings. (c) Land modification and earthworks. (d) Roading, access and parking. (e) Landscape and planting. (f) Integrity of the greenbelt. (g) Lighting. (h) Any Architectural Code prepared in accordance with the Architectural Principles in Appendix 12C2.
12.8.8.12.3 **Assessment Criteria**	**Assessment Criteria** When considering an application for this activity the Council will have regard to the following assessment criteria:
Consistency with Outline Development Plan and Master Plan	(a) Whether the activity is consistent with the Objectives and Policies of the Special 8 (Weiti Forest Park) Zone. (b) Whether the activity is identified on the Outline Development Plan in Appendix 14 to the Planning Maps and is generally consistent with the locations for buildings and activities identified on those Maps.
Siting, scale and external appearance	(c) Whether the scale, design, layout, external appearance and landscaping of buildings and sites will maintain or enhance the character and amenity values within the relevant Policy Area. (d) Whether the proposed activity will adversely impact upon sensitive landscapes, or the natural character of the Coast and any measures in building design proposed to mitigate such effects. (e) Whether the extent of signage will maintain the amenity values within the Weiti Special 8 Zone. (f) Whether the design of any building in the Karepiro Policy Area and Weiti Village Policy Areas 1 and 2 is in accordance with the relevant Architectural Code for the relevant policy area.
Land Modification and Earthworks	(g) Whether the amount of earthworks required to implement the development can be minimised, taking into account the existing topographical constraints and landform. (h) Whether cut batters will be effectively rehabilitated through planting or other methods.

(j) Whether development avoids the degradation of natural permanent watercourses and does not destroy or reduce their ability to support in-stream flora and fauna.

(j) Whether techniques to reduce sediment discharge that exceed ARC Technical Publication 90 controls, monitoring of sediment ponds, overall management of earthworks and any future controls required for future subdivision and / or small site earthworks in the precinct are included.

Roading, Access and Parking

(k) Whether adequate provision is made for car parking.

(l) Whether adequate road access is provided, and no significant adverse effects on the safety and efficiency of the public roading network will result.

Landscape and Planting

(m) Whether the layout of the activity, including servicing and roads, is complementary to the existing topography and whether the earthworks, placement of roading and planting is such that the impact on the landscape is avoided, its scale is in keeping with that of the physical setting and that the land's role as a greenbelt is maintained.

(n) Whether the building is on a prominent ridge, knoll or skyline where the erection of buildings may dominate the landscape or detract from the identified visual amenity values in the area.

Role of the Special 8 Zone

(o) Whether the particular building and associated infrastructure including car parking can be implemented without compromising the land's wider role as greenbelt anticipated within the Zone.

Lighting

(p) Whether, in the case of the Karepiro Policy Area, exterior lighting, is provided in such a way as to not be prominent, particularly against a dark background, when viewed from a public place including the coast.

Natural and cultural environment

(q) Whether any effects on sites of natural, archaeological or cultural significance are avoided, remedied or mitigated.

(r) Whether restrictions are placed on the keeping of domestic pets (primarily cats and dogs) in order to protect the native fauna of the Weiti Zone and the adjoining coastal environment. Consideration must also be given in an integrated manner to the Pest and Weed Control Plan required under Rules 12.8.8.22.9.3.

Rule 12.8.8.13 Restricted Discretionary Activities; Matters for Discretion and Assessment Criteria; Activities not achieving compliance with Maximum Height and Maximum height in relation to boundary rules (Rules 12.8.8.8.3, 12.8.8.8.5, 12.8.8.9.2 and 12.8.8.10.1)

Rule 12.8.8.13.1 **Matters for Discretion**

Matters for Discretion

The Council will restrict its discretion to the following matters:

(a) Scale, siting and design of buildings.
(b) Privacy of adjoining residential units.

12.8.8.13.2 **Assessment Criteria**

Assessment Criteria

(a) Whether the building complies with the relevant Architectural Code.

(b) Whether views from significant public places, including the coast, will be adversely affected.

(c) Whether the building will have adverse effects on neighbouring sites or buildings in terms of overshadowing, being overbearing and whether the scale of the building will generally remain in character with adjacent buildings.

(d) Whether the character of the streetscape will be adversely affected.

(e) Whether the building will have adverse effects on privacy.

(f) Whether the infringement is due to the steepness of the development site precluding compliance with the standard.

Rule 12.8.8.14 Restricted Discretionary Activities; Matters for Discretion and Assessment Criteria; Activities not achieving compliance with the yard Rules (Rules 12.8.8.8.7, 12.8.8.8.8, 12.8.8.8.9, 12.8.8.9.3 and 12.8.8.10.2).

Rule 12.8.8.14.1 **Matters for Discretion**

Matters for Discretion

The Council will restrict its discretion to the following matters:

(a) Siting, scale and design of buildings.
(b) Landscaping.

12.8.8.14.2 **Assessment Criteria**

Assessment Criteria

(a) The extent to which the building complies with the relevant Architectural Code.

(b) Whether the reduced building yard will have adverse effects on neighbouring sites or buildings in terms of overshadowing, being overbearing and whether the scale of the building will generally remain in character with adjacent buildings.

(c) Whether the character of the streetscape will be adversely affected.

(d) Whether, as a result of any reduced yard, there is likely to be a loss of, or reduction in visual and aural privacy that is substantially different from a complying development.

(e) Whether landscape treatments and planting mitigate the effects of the reduction in yard area.

(f) Whether any encroachment into the yard will adversely affect the safe and efficient operation including maintenance, of any utility or network utility and whether access to such utilities can be maintained at no additional expense than would normally be the case.

Rule 12.8.8.15 Restricted Discretionary Activities; Matters for Discretion and Assessment Criteria; Activities within the Weiti Village Policy Areas 1 and 2 not achieving compliance with the Building Frontage relative to Site Frontage Rule (Rule 12.8.8.8.4)

Rule 12.8.8.15.1 **Matters for Discretion**

Matters for Discretion

The Council will restrict its discretion to the following matters:

(a) Siting, scale and design of buildings.
(b) Landscaping.
(c) Streetscape.

12.8.8.15.2

Assessment Criteria

Assessment Criteria

(a) The extent to which the building complies with the relevant Architectural Code.

(b) Whether the reduced frontage is required for reasons of access to rear yards, topographical constraints or the use of yards for the matters set out in Rule 12.8.8.8.9.4.

(c) Whether the reduction in frontage will generally remain in character with adjacent buildings.

(d) Whether the character of the streetscape will be adversely affected.

(e) Whether landscape treatments and planting mitigate the effects of the reduction in building frontage.

Rule 12.8.8.16 Restricted Discretionary Activities; Matters for Discretion and Assessment Criteria; Activities not achieving compliance with the Coverage and Impervious Surfaces Rules (Rules 12.8.8.8.6 and 12.8.8.8.11).

Rule 12.8.8.16.1 **Matters for Discretion**

Matters for Discretion

The Council will restrict its discretion to the following matters:

(a) Scale, siting and design of buildings and structures.
(b) Landscaping.
(c) The nature and extent of stormwater generated from a site.
(d) The nature of any mitigating measures.

12.8.8.16.2 **Assessment Criteria**

Assessment Criteria

When assessing an application for this activity the Council will have regard to the following assessment criteria:

(a) The extent to which the building complies with the relevant Architectural Code.

(b) Whether the additional coverage will adversely affect overall amenity of the site and surrounding area.

(c) Whether the additional coverage will adversely affect the provision of open space, vegetation and privacy.

(d) Whether the additional coverage or impervious surface will adversely affect the stormwater drainage system, flooding, overland flow paths and stormwater quality.

(e) Whether, where there is any additional stormwater generated over a complying situation, the effects are mitigated so as to be equivalent to a complying situation.

Rule 12.8.8.17 Restricted Discretionary Activities; Matters for Discretion and Assessment Criteria; Activities not achieving compliance with Roof Type rules (Rules 12.8.8.8.10, 12.8.8.9.8 and 12.8.8.10.6).

Rule 12.8.8.17.1 **Matters for Discretion**

Matters for Discretion

The Council will restrict its discretion to the following matters:

(a) The nature of any roofing material.

12.8.8.17.2 **Assessment Criteria**

Assessment Criteria

When assessing an application for this activity the Council will have regard to the

following assessment criteria:

(a) The extent to which the building complies with the relevant Architectural Code.

(b) Whether treatment of stormwater is provided on site to remove adverse effects on receiving waters.

Rule 12.8.8.18. Restricted Discretionary Activities; Matters for Discretion and Assessment Criteria; Activities not achieving compliance with Integration and Screening of Infrastructure, Planting of Steeper slopes and Lighting Rules (Rules 12.8.8.8.12, 12.8.8.9.5, 12.8.8.9.6, 12.8.8.9.7 and 12.8.8.10.4).

Rule 12.8.8.18.1 **Matters for Discretion**

Matters for Discretion

The Council will restrict its discretion to the following matters:

(a) Scale, siting and design of buildings and structures.
(b) Landscaping.
(c) Lighting.

12.8.8.18.2 **Assessment Criteria**

Assessment Criteria

When assessing an application for this activity the Council will have regard to the following assessment criteria:

(a) The extent to which the building complies with the relevant Architectural Code.

(b) Whether there will be adverse effects on neighbouring properties or sites and on the wider neighbourhood.

(c) Whether sites remain well landscaped.

(d) Whether the proposal will lead to increased erosion.

(e) Whether the proposed building or structure incorporates techniques to avoid impacting adversely upon sensitive landscapes, natural character and the coast.

(f) Whether exterior lighting, including street lighting, is provided in such a way as to not be prominent, particularly against a dark background, when viewed from a public place including the coast.

Rule 12.8.8.19 Restricted Discretionary Activities: Matters for Discretion and Assessment Criteria; Comprehensively Designed Development in the Weiti Village Policy Areas 1 and 2 and all development within T4-T5 Areas

Rule 12.8.8.19.1

The Council will restrict its discretion to the matters listed, when considering resource consent applications for Comprehensively Designed Development as a Restricted Discretionary Activity.

Where a proposal complies with the development control rules such applications will be considered without public notification or the need to obtain the written approval of or serve notice on affected persons.

Rule 12.8.8.19.2 **Matters for Discretion**

Matters for Discretion

In addition to those matters specified for any non-compliance of development control rules where applicable, the Council will restrict its discretion to the following matters:

(a) Compliance with the Outline Development Plan in Appendix 14 to the Planning Maps.
(b) Development density.
(c) Building location, siting, scale, form and design including any signage.
(d) Landscape, planting and screening.
(e) Methods and design of water supply, sewage disposal and drainage.
(f) Land modification and earthworks.
(g) Location and design of roading, access, vehicle parking and circulation.
(h) Privacy and Open Space.
(i) Any Architectural Code prepared in accordance with the Architectural Principles in Appendix 12C2.

An application for a Comprehensively Designed Development shall include the following:

Rule 12.8.8.19.3 **Site Development Information** – showing topographic land contours, building platforms and footprints, building subdivision including individual shop and business tenancy sizes where practicable, pedestrian walkways, car parking areas and vehicular circulation, vehicular access points between the site and public roads, landscaped areas, service areas with appropriate screening, and the position of adjacent properties in terms of contributing to an overall urban design and streetscape character, including treatment of building frontages appropriate to the Objectives and Policies.

Rule 12.8.8.19.4 **Development Controls** – Demonstration of compliance or otherwise with the Weiti Village Master Plan in Appendix 12C1 and relevant Development Controls set out in this Chapter. The density of the Comprehensively Designed Development and its relationship to the total number of household units provided for within Village Policy Areas 1 and 2 shall also be identified.

Rule 12.8.8.19.5 **Car park Layout and Accessways** – showing the number of car parks to be provided, the layout and vehicular circulation within the site, dimensions of car parks, carriageways and accessways, the provision of landscape treatment and stormwater swales within the car park, and any artificial lighting within these areas.

Rule 12.8.8.19.6 **Landscape Elements** – showing the type of landscape treatment to be provided in yards, car park areas, streets and other landscape areas and any artificial lighting to be used in these areas. A landscape management plan shall be included providing the identification of plant and tree species to be used, the number of plants to be planted and plant spacings, appropriate garden preparation techniques and the on-going management of the planting that is proposed.

Rule 12.8.8.19.7 **Pedestrian Areas** – showing the position of walkways, linkages to adjacent sites, widths, angles of slope and paving materials proposed.

Rule 12.8.8.19.8 **Typical Elevations/Building Typologies** – showing building exterior design features including roofs, facades, verandahs, exterior building materials, colours and finishes, and how the proposal integrates with adjacent properties in terms of contributing to an overall urban design and streetscape character. The information shall include an Architectural Code addressing the principles set out in Appendix 12C2.

Rule 12.8.8.19.9 **Signage** showing the typology of external signs proposed on buildings intended for non residential activities; and their placement and sizing controls.

12.8.8.19.10 **Assessment Criteria**

Assessment Criteria

When considering an application, in addition to those matters specified for any non-compliance of development control rules where applicable, the Council will have regard to the following criteria:

12.8.8.19.10.1
Appendix 12C2 and development density

(a) The extent to which the building complies with the relevant Architectural Code.

(b) Whether the Comprehensively Designed Development is generally consistent with the Weiti Village Master Plan in Appendix 12C1.

(c) Whether any indicated subdivision associated with the Comprehensively Designed Development Concept (so far as it can be known at this stage) complies with Rule 12.8.8.21 (subdivision standards).

(d) Whether the Comprehensively Designed Development is consistent with the Objectives and Policies of the Special 8 (Weiti Forest Park) Zone.

12.8.8.19.10.2
Building Scale form and Design

(a) Whether the building area is on a prominent ridge, knoll or skyline where the erection of buildings may dominate the landscape or detract from the identified visual amenity values in the area.

(b) Whether there is variety in the street front elevations including building articulation, and the use of varying materials and an avoidance of blank or unrelieved walls.

(c) Whether street frontages of houses provide potential for surveillance of the street.

(d) Whether garage(s) dominate the street frontage.

(e) Whether the scale and physical extent of the proposal is generally consistent with the scale of development expected by the development controls and Objectives and Policies of the Plan.

(f) Whether the building design and bulk have any adverse effects on the public enjoyment of public open space including the street.

(g) Whether building design and bulk have any adverse effects on the provision of landscaping on the site, on neighbouring sites or on the street.

(h) Whether buildings to be used for retail activities have a minimum of 40% glass at the street level frontage. Whether in the case of non-residential activities, the character of the activity and its effects including the positioning and extent of signage, are compatible with the Weiti Village residential character and amenity values expected in Weiti Village Policy Areas and contribute to a range of services that will support the local community.

(i) Whether the building and any associated car parking areas adjacent to streams or common pedestrian areas are designed to provide for pedestrian access along the banks of the streams.

12.8.8.19.10.3
Landscaping and Screening

(a) Whether screening or any other structures are well integrated into the overall design of the development.

(b) Whether the landscape works form part of a comprehensive design concept which integrates building design and private, communal and public land.

(c) Whether the landscape concept is appropriate to the urban and natural context and to the creation of neighbourhood identity.

(d) Whether planting is used to:

(i) establish and maintain a well vegetated environment that is compatible with the neighbourhood and the specific planting character of the street.
(ii) visually reduce the bulk of new development and integrate new buildings.
(iii) help provide summer shade, wind breaks and access to winter sun.
(iv) help provide and maintain visual privacy.
(v) create an attractive environment without prejudicing personal safety.

(e) Whether existing mature trees, especially those located near property boundaries, are practically able to be retained and incorporated into the development.

12.8.8.19.10.4 *Methods of water Supply, sewage and stormwater management*

(a) Whether adequate engineering and infrastructure services, including the provision of stormwater treatment and drainage infrastructure is provided for the stormwater treatment and drainage needs of the development.

(b) Whether services can be provided in accordance with the Standards for Engineering Design and Construction.

(c) Whether the management of stormwater flows is consistent with any relevant Catchment Management Plan and ARC Technical Publication 10.

(d) Whether proposed stormwater outlet configurations have been designed to avoid high velocity discharges or other impacts on sensitive receiving environments, or whether low impact design stormwater management principles have been incorporated.

(e) Whether techniques are included to reduce sediment discharge that exceed ARC Technical Publication 90 controls, monitoring of sediment ponds, overall management of earthworks and any future controls required for future subdivision and / or small site earthworks in the precinct.

(f) Whether the development will adversely affect water quality.

(g) Whether the location of buildings will adversely affect the safe and efficient operation including maintenance, of any utility or network utility and whether access to such utilities can be maintained at no significant additional expense.

(h) Whether road embankments across streams are minimised and fish passage provided.

12.8.8.19.10.5 *Land Modification and Earthworks*

(a) Whether the amount of earthworks required to implement the development can be minimised taking into account the existing topographical constraints and landform.

(b) Whether cut batters will be effectively rehabilitated through walls, planting or other methods.

(c) Whether development avoids the degradation of natural permanent watercourses and does not destroy or reduce their ability to support in-stream flora and fauna.

(d) Whether techniques to reduce sediment discharge that exceed ARC Technical Publication 90 controls, monitoring of sediment ponds, overall management of earthworks and any future controls required for future subdivision and / or small site earthworks in the precinct are included.

12.8.8.19.10.6 *Roading, access and vehicle parking*

(a) Whether a legible public street pattern has been created. As a guideline, street blocks shall have a maximum plan dimension in any direction of 250m and a maximum block perimeter of 800m. Where public parks and reserves are provided, they should be bounded by public streets for 75% of their entire perimeter, taking into account topographical, watercourse, vegetation and economic constraints.

(b) Whether the layout of buildings and garages discourage cars from parking across the footpath or verge.

(c) Whether the street network is well connected taking into account topographical, watercourse and vegetation constraints and achieves the intent of the street network as shown on the Outline Development Plan in Appendix 14 to the

	Planning Maps.
	(d) Whether adequate provision is made for visitor car parking.
	(e) Whether garage(s) dominate the street frontage and whether parking is able to be concentrated at the rear of the development via rear access.
	(f) Whether adequate road access is provided, and no significant adverse effects on the safety and efficiency of the public roading network result.
12.8.8.19.10.7 *Open Space*	(a) Whether an adequate area of open space on the site suitable for use and outlook by the occupants of each dwelling is provided.
	(b) Where open space on site cannot be provided, whether the development has convenient access to communal open space or a public reserve for the recreational benefit of future residents.
	(c) Whether the arrangement of buildings and spaces on the site is such that suitable spaces for the likely day to day outdoor activities of residents are provided.
	(d) Whether adequate levels of privacy are maintained within areas of open space, between adjoining areas of open space and between open space and other disassociated dwellings.
	(e) Whether the open space receives adequate levels of sunlight.
	(f) Whether the open space is appropriate to the type of housing provided.
	(g) Whether the open space is directly accessible to and part of the associated household unit.
12.8.8.19.10.8 *Visual Privacy*	(a) Whether good levels of privacy are maintained within household units.
12.8.8.19.10.9 *Natural and cultural environment*	(a) Whether any effects on sites of natural, archaeological or cultural significance are avoided, remedied or mitigated.

Rule 12.8.8.20 Subdivision

Rule 12.8.8.20.1
Activities

Activities

Subdivision shall comply with the following:

(a) All Controlled Activities in the Subdivision Table shall be assessed against the criteria in Rule 12.8.8.25.

(b) All Restricted Discretionary Activities in the Subdivision Table shall be assessed against the criteria in Rule 12.8.8 26.

(c) Subdivision within the Special 8 Zone shall comply with the Weiti Forest Park Outline Development Plan in Appendix 14 to the Planning Maps and the Weiti Village Master Plan in Appendix 12C1.

(d) Except as provided for by section 95A(2)(b), 95A(2)(c) and 95A(4) of the Act, the following Controlled and Restricted Discretionary Activities will be considered without public notification or the need to obtain the written approval of, or serve notice on, affected persons.

Rule 12.8.8.20.2
Subdivision Table

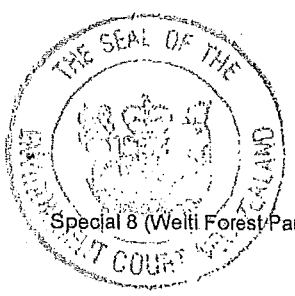
Subdivision Table

In the following table:

C = Controlled Activity
RD = Restricted Discretionary Activity
D = Discretionary Activity
NC = Non-complying Activity
PRO = Prohibited Activity
N/A = Not Applicable in this Policy Area

ACTIVITY	Greenbelt and Conservation Policy Area	Village Policy Areas 1 and 2	Karepiro Policy Area
Subdivision of land within the Karepiro Policy Area to create up to 150 residential lots.	N/A	N/A	RD#
Subdivision of land containing: (i) Consented conservation, heritage and education facilities. (ii) Consented CONSERVATION INSTITUTE.	RD	RD#	RD#
Subdivision of land to create sites within the Weiti Village Policy Areas 1 and 2 that are part of a Comprehensively Designed Development that has been granted consent provided that the total number of household units in the Weiti Village Policy Areas 1 and 2 shall not exceed 400. (Note- this does not include the creation of a site on which a comprehensive designed development is proposed).	N/A	C#	N/A

Subdivision of land within the Weiti Village Policy Areas 1 and 2 to create sites not part of a Comprehensively Designed Development provided the total number of household units in the Weiti Village Policy Areas 1 and 2 shall not exceed 400.	N/A	RD#	N/A
Subdivision of land required to create a separate title to accommodate a network utility or infrastructure to serve activities in the zone.	RD#	RD#	RD#
Subdivision of land to be vested as public reserve.	RD#	RD#	RD#
Boundary adjustments where no additional lots are created or development potential created that would have the effect of providing more than 400 Household Units in the Weiti Village Policy Areas 1 and 2 or 150 households units within the Karepiro Policy Area.	RD#	RD#	RD#
Subdivision not complying with the Enhancement Planting Standards in Rule 12.8.8.22.9.2.	N/A	RD	N/A
Subdivision of VISITOR ACCOMMODATION units in the Weiti Village Policy Area, Areas T4 and T5	N/A	PRO	N/A
Subdivision application for sites that do not comply with Rule 12.8.8.21.3 Wastewater Servicing.	D	PRO	PRO
Subdivision application for sites that do not comply with Rule 12.8.8.21.4 Water Servicing.	D	D	D
Any other subdivision not otherwise provided for.	PRO	PRO	PRO



Rule 12.8.8.21 Subdivision Standards

In the rules that follow the term "first subdivision application" is defined in Rule 12.8.8.7.2.2 Particular Weiti Special Zone Definitions.

Rule 12.8.8.21.1
General

General

For any subdivision the following rules shall apply:

(a) The layout of ground floor level units or cross lease flats and their associated exclusive use areas shall comply with the subdivision rules for fee simple subdivisions.

(b) An application for subdivision consent may be made for all or part of the land contained within the Weiti Village Policy Areas 1 or 2 as set out in the Weiti Village Master Plan in Appendix 12C1. Where an application is made for only a portion of the Weiti Village Policy Areas 1 and 2, sufficient concept information shall be provided to show how the maximum number of 400 household units will be achieved.

(c) In granting consent to any subdivision the Council may impose as a condition of consent, a consent notice stipulating that the site must not be subdivided further.

(d) Within the Weiti Village Policy Areas 1 and 2 and the Karepiro Policy Area subdivision consents may provide for staged development.

(e) The rules in Chapter 23 – Subdivision and Servicing shall apply.

Rule 12.8.8.21.2
Cross Lease, Unit Titles and Company Leases

Cross Lease, Unit Titles and Company Leases

The standards for cross lease, unit titles and company leases shall be:

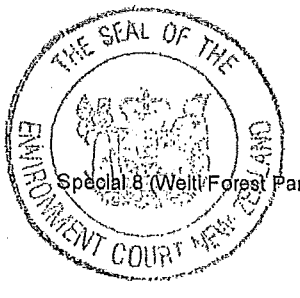
(a) The subdivision shall be for a development that complies with this Plan; or a resource consent which has been granted for the development which is the subject of proposed subdivision.

(b) The subdivision shall be for development that complies with section 46(4) of the Building Act 1991.

(c) Where the land proposed to be subdivided is occupied by one or more existing buildings that has obtained a resource consent or is a Permitted Activity, any proposed restrictive covenant, unit or accessory unit boundary shall be consistent with all relevant development controls of the policy area in the case of a permitted activity or the conditions of any resource consent granted.

(d) Where any building included in the application for subdivision consent has not been constructed at the time of granting consent, the Council will not approve the survey plan under section 223 of the Act, until the building is completely framed up to and including the roof level, and the Council is satisfied that it has been built in accordance with the Plan or any resource consent granted. The Council may require the height of the building and its position in relation to boundaries of the site to be confirmed by a certificate from a registered surveyor.

(e) A staged unit title or cross lease subdivision shall have sufficient area for further complying development which shall be free from inundation and slippage and capable of adequate servicing. The Council may require any application to show details of compliance with this Rule.



Rule 12.8.8.21.3
Wastewater Servicing

Wastewater Servicing

All sites shall be connected to a public reticulated sewerage scheme, except:

a) sites fully comprising one or more entire village; or
b) sites for open space or reserve purposes where the open space or reserve status is guaranteed in perpetuity; or
c) sites to be used exclusively for utility services (e.g. – stormwater ponds and pump stations) where no occupation will occur; or
d) roads and access lots.

Explanation and Reasons
A public wastewater system is required to serve the whole of the Weiti Forest Park Zone. It is important to ensure efficient use and viability of that system and the avoidance of adverse effects that could arise from inferior systems, including effects on water quality.

Rule 12.8.8.21.4
Water Servicing

Water Servicing

All sites shall be connected to a public reticulated water supply network except:

a) sites fully comprising one or more entire village; or
b) sites for open space or reserve purposes where the open space or reserve status is guaranteed in perpetuity; or
c) sites to be used exclusively for utility services (e.g. – stormwater ponds and pump stations) where no occupation will occur; or
d) roads and access lots.

Explanation and Reasons
A public water system is required to serve the whole of the Weiti Forest Park Zone. It is important to ensure efficient use and viability of that system

Rule 12.8.8.21.5
Roading Access

Roading Access

All sites in the Weiti Village Policy Area and the Karepiro Policy Area shall be served by roads with a formed and paved (dust free) surface.

Rule 12.8.8.22 Weiti Village Policy Areas (Subdivision)

Rule 12.8.8.22.1
Minimum Site Sizes

Minimum Site Sizes

The following site sizes shall be as follows (all site areas are specified as net site areas).

Area T5
(a) Minimum area of 150m^2.
(b) There is no minimum site size where the subdivision is part of a Comprehensively Designed Development that has been granted consent.

Area T4
(a) Minimum area of 400m^2 capable of containing a square for building of 9 metres x 9 metres.
(b) There is no minimum site size where the subdivision is part of a Comprehensively Designed Development that has been granted consent.

Area T3
(a) Minimum area of 500m^2.

Rule 12.8.8.22.2
Access/Frontage

Access/Frontage

All sites shall have a minimum frontage as follows:

Area T5 - Minimum frontage of 5.5 metres.

Area T4 - Minimum frontage of 7 metres provided that the maximum frontage shall be not greater than 20 metres.

Area T3 - Minimum frontage of 18 metres, provided that the maximum frontage shall be not greater than 30 metres.

Rule 12.8.8.22.3 **Roading and Access Standards**

Roading and Access Standards: Weiti Village Policy Areas 1 and 2

Roading shall be provided in accordance with the Weiti Village Master Plan in Appendix 12C1.

Rear lanes shall be provided in accordance the Weiti Village Master Plan in Appendix 12C1. These shall not be public roads and shall provide legal vehicular access to all adjoining properties.

Rule 12.8.8.22.4 **Architectural Code**

Architectural Code

The first subdivision application within the Weiti Village Policy Areas 1 and 2 shall include an Architectural Code that implements the principles contained in Appendix 12C2.

Rule 12.8.8.22.5 **Greenbelt Restrictive Covenant**

Greenbelt Restrictive Covenant

(a) The first subdivision application of any portion of the Weiti Village Policy Areas 1 and 2 shall contain confirmation that the Restrictive Covenant shall be registered, to take effect on issue of a certificate under section 224(c) of the Resource Management Act as referred to in (d) below, against the land in the Greenbelt Conservation Policy Area (except the land to be vested as reserve under Rule 12.8.8.22.6) to prohibit in perpetuity any further subdivision within the Policy Area, other than the limited exceptions set out in that Restrictive Covenant (the Greenbelt Restrictive Covenant).

(b) The Greenbelt Restrictive Covenant shall not prevent, subject to any resource consents required, Weiti Rural activities, Weiti Forestry activities, and identified Weiti Outdoor Recreation activities, Weiti Conservation activities, Conservation Institute and Gardens and associated ancillary buildings or structures to service such activities (including any golf course clubhouse), and any necessary earthworks, services, required car parking, and similar.

(c) The Greenbelt Restrictive Covenant shall be in the form set out in Appendix 12C3 and shall be addressed to the Rodney District Council. The Greenbelt Restrictive Covenant shall be signed prior to the approval of the survey plan for subdivision of the relevant portion of the Weiti Village Policy Areas 1 and 2 under Section 223 of the Resource Management Act.

(d) The Restrictive Covenant shall be registered on the title of the Weiti land in the Greenbelt and Conservation Policy Area on the date upon which a certificate pursuant to Section 224(c) of the Resource Management Act is issued in respect of the first subdivision application of the Weiti Village Policy Areas 1 and 2.

Rule 12.8.8.22.6 **Provision of Reserve Land**

Provision of Reserve Land

Rule 12.8.8.22.6.1

The first subdivision application of any portion of the Weiti Village Policy Areas 1 and 2, shall identify the following land as set out in the Outline Development Plan in Appendix 14 to the Planning Maps to be vested in the Council:

- Stillwater Reserve Land;
- Karepiro Bay Walkway Extension Land;

- D'Acre Cottage Reserve Extension Land;
- Haigh's Access Road Public Park:

and shall identify the following land to be vested in the Department of Conservation:

- Karepiro Bay Walkway Buffer Land.

Rule 12.8.8.22.6.2 The above land shall be identified on the survey plan submitted to the Council pursuant to section 223 of the Act for the subdivision referred to in Rule 12.8.8.22.6.1.

Rule 12.8.8.22.6.3 The above land shall vest in the Council or the Department of Conservation on the issue of a certificate pursuant to section 224(c) of the Act for the subdivision referred to in Rule 12.8.8.22.6.1.

Rule 12.8.8.22.6.4 On the issue of a certificate pursuant to section 224 (c) of the Act in respect of the first subdivision application of any portion of the Weiti Village Policy Areas 1 and 2, the Council shall offer the Department of Conservation an easement over part of the Haigh's Access Road Public Park to establish a carpark and other facilities.

Rule 12.8.8.22.7 **Provision of Public Access and Public Facilities**

Provision of Public Access and Public Facilities

Public access to Karepiro Bay shall be provided via a combination of public road and public walkway as set out in the Outline Development Plan in Appendix 14 to the Planning Maps. Other public walkways shall be provided in accordance with routes identified on the Outline Development Plan in Appendix 14 to the Planning Maps.

The first subdivision application of any portion of the Weiti Village Policy Areas 1 and 2 shall include (to the extent the public walkways and facilities have not already been constructed) an offer to provide the public walkways and construct and complete the facilities identified on the Outline Development Plan in Appendix 14 to the Planning Maps and as set out in Rules 12.8.8.22.7.1 to 12.8.8.22.7.9:

Rule 12.8.8.22.7.1

(a) A walkway from Haigh's Access Road to the Conservation Institute – approximately 5.8km as shown on the Outline Development Plan Appendix 14 of the Planning Maps.

(b) A walkway from the Conservation Institute to the Weiti Village Public Car park approximately 2.3km as shown on the Outline Development Plan Appendix 14 of the Planning Maps.

(c) A walkway from the Public Car park to the Conservation Institute via road – approximately 2.1km as shown on the Outline Development Plan Appendix 14 of the Planning Maps.

(d) A walkway from the Weiti Village Public Car park to D'Acre Cottage – approximately 1.0km as shown on the Outline Development Plan Appendix 14 of the Planning Maps.

(e) A further track, the exact route to be agreed between the Council and the consent holder, at a later date but prior to the issue of the section 224(c) certificate with termini in the following locations:

(i) At Stillwater, or alternatively at some point along the Walkway identified on the Outline Development Plan Appendix 14 of the Planning Maps between Stillwater and Karepiro Bay; and

(ii) At the Weiti Village Public Car park or at some point along the Weiti Walkway identified in (b) above.

Rule 12.8.8.22.7.2 Such walkways shall be constructed in accordance with SNZ HB8630:2004 for Walking Tracks (1 January 2004) and shall be completed on or before the issue of a certificate pursuant to section 224(c) of the Act.

Rule 12.8.8.22.7.3

On approval of the certificate under section 223 of the Act, for the first subdivision application of the Weiti Village Policy Areas 1 and 2, the consent holder shall sign easements in gross over the walkways in favour of the Council. The terms of the easements shall include the following:

(a) The consent holder shall maintain the walkways generally to the standards to which they had been constructed in the first instance;

(b) The walkways and the Public Car park shown on the Outline Development Plan in Appendix 14 to the Planning Maps shall be open to public access at the following times:

(i) during New Zealand daylight time – 7:00am to 8:00pm; and
(ii) during New Zealand standard time – 7:00am to 6:00pm

provided that the consent holder may close all or part of the walkways to public access in circumstances where the consent holder considers (acting reasonably) that closure is appropriate due to emergency, the requirements of forestry activities or the Enhancement Planting Plan, for health and safety purposes, maintenance purposes, fire risk or security matters;

(c) Users of the walkways shall be required to comply with conditions of access, which conditions shall be developed by the consent holder, in consultation with the Council;

(d) Such other terms as the consent holder considers appropriate (acting reasonably).

Rule 12.8.8.22.7.4

The easements for the walkways shall be registered on the date of the issue of the certificate under section 224(c).

Rule 12.8.8.22.7.5

Prior to the issue of the section 224(c) certificate for the first subdivision application of the Weiti Village Policy Areas 1 and 2, the consent holder shall construct and complete the following public facilities, to a design and specification developed by the consent holder in the approximate location as shown on the Outline Development Plan in Appendix 14 to the Planning Maps:

(a) the Conservation Institute and Gardens;
(b) the Lookout;
(c) three (3) sets of public toilets (in each case containing two male and two female toilets);
(d) four (4) open rest areas; and
(e) the Mountain Biking Club Facility.

The consent holder shall maintain public access free of charge to the toilets and rest areas and shall maintain them in good clean condition and good working order.

Rule 12.8.8.22.7.6

The consent holder shall own and be responsible for the operation, management and governance of the Conservation Institute and Gardens which shall function as:

(a) A base for the carrying out of the Weiti forest conversion programmes, the Weiti enhancement planting programmes and the Weiti predator and pest eradication programmes;

(b) A building where public sector science research related to Weiti or the surrounding area can be furthered by making available office, meeting or seminar space from time to time; and

(c) Educational programmes.

Within 6 months of issue of the section 224(c) certificate the consent holder shall make the Conservation Institute available for those activities on reasonable conditions (which may include the payment of a fee).

Rule 12.8.8.22.7.7	Within 6 months of issue of the section 224(c) certificate the consent holder shall make the Lookout available for public entry free of charge, subject to such controls on hours of use, safety, operation, use and access as the consent holder considers appropriate (acting reasonably).
Rule 12.8.8.22.7.8	Within 6 months of issue of the section 224(c) certificate the Conservation Institute Gardens the consent holder shall make the Conservation Institute Gardens available for public entry, subject to such controls on hours of use, safety, operation, use and access as the consent holder considers appropriate (acting reasonably) which may include the payment of an entry fee.
Rule 12.8.8.22.7.9	The consent holder shall create an incorporated society or charitable trust to own and operate the Mountain Biking Club Facility of approximately 20ha, including provision for such an incorporated society to make access to the Mountain Biking Club Facility available to other mountain bike club members or the public through annual and temporary permits (at times and on such terms as shall be determined by the incorporated society or charitable trust).
Rule 12.8.8.22.7.10	An additional minimum of 20 hectares open space recreation areas shall be provided for residents in easy walking distance of the Weiti Village Policy Areas 1 and 2. This will include a limited number of walkways through the enhancement planting area between Weiti Policy Areas 1 and 2 to provide access to open space areas outside the enhancement planting areas.
Rule 12.8.8.22.7.11	Conditions requiring a consent notice under section 221 of the Act to ensure Rules 12.8.8.22.5 to 12.8.8.22.7.10 are implemented in perpetuity shall be included on the consent for the first subdivision application of the Weiti Village Policy Areas 1 and 2.
Rule 12.8.8.22.8 **Funding of Weiti Walkways and Public Facilities**	**Funding of Weiti Walkways and Public Facilities** The first subdivision application of the Weiti Village Policy Areas 1 and 2 shall demonstrate to the Council that the consent holder will have access to sufficient funds to maintain the walkways and public facilities by one or more of the following measures: (a) an incorporated society, body corporate, association or other entity or organisation (whether incorporated or not) representing the Weiti residents and the registered proprietor of the commercial lots, will maintain the Weiti walkways and public facilities and has registered an encumbrance against such of the residential and other allotments then created or has undertaken or made arrangements to do so on the first sale of each such allotment to a third party; and/or (b) the consent holder has secured such obligations against the land in the Greenbelt and Conservation Policy Area.
Rule 12.8.8.22.9 **Enhancement Planting**	**Enhancement Planting**
Rule 12.8.8.22.9.1 **Stage 1, 2, 3 and 4 Enhancement Planting**	**Stage 1, 2, 3 and 4 Enhancement Planting**
Rule 12.8.8.22.9.1.1	The first subdivision application of any portion of the Weiti Village Policy Areas 1 and 2 shall include a programme for the planting of native vegetation in the Enhancement Planting Areas identified in the Weiti Outline Development Plan in Appendix 14 to the Planning Maps in accordance with the programme set out as follows: (a) Stage 1 areas - planting shall be completed within 5 years of granting consent.

(b) Stage 2 area - planting shall be completed within 10 years of granting consent.

(c) Stage 3 areas – planting shall commence within 10 years of granting consent and shall be completed within 20 years of granting consent.

(d) Stage 4 areas – planting shall commence within 10 years of granting consent and shall be completed within 20 years of granting consent. Native vegetation shall be planted over no less than 60% of this area.

Rule 12.8.8.22.9.1.2 The planting shall be carried out and maintained to the standards set out in Rule 12.8.8.22.9.2.

Rule 12.8.8.22.9.1.3 The resource consent referred to in Rule 12.8.8.22.9.1.1 shall include conditions setting out the requirement for and timing of the planting and such conditions may be included on a consent notice under section 221 of the Act.

Rule 12.8.8.22.9.2 **Enhancement Planting Standard**

Enhancement Planting Standard

Rule 12.8.8.22.9.2.1 The planting of native vegetation shall meet the following standards:

(a) a survival rate such that planting will be established to minimum 90% of the original density specified before the project is signed off as complete;

(b) a density of 5,100 stems per hectare at approximately 1.4m centres in former forest areas, reducing to 1m centres (10,000 stems per hectare) in kikuyu and wetland environments, and riparian margins;

(c) all stock shall be fenced within grazing areas using a stockproof fence to avoid potential access into existing native vegetation or new native planting;

(d) all plants shall be sourced from the ecological district and to be appropriate for the soil, aspect, exposure and topography;

(e) at planting each plant shall be fertilised in accordance with the recommendations of the revegetation report submitted as part of the planting plan assessment; and

(f) planting undertaken shall reflect the composition of former natural vegetation likely to have occupied the site and have regard to natural processes of succession.

Rule 12.8.8.22.9.2.2 The maintenance of native plantings shall meet the following standards:

(a) maintenance shall occur for a minimum of five years or until canopy closure has been achieved within 5 years;

(b) maintenance shall include the ongoing replacement of plants that do not survive;

(c) all invasive weeds shall be eradicated from the planting site both at the time of planting and on an ongoing basis and plants released from kikuyu as necessary to ensure adequate growth;

(d) animal pest control shall occur.

Rule 12.8.8.22.9.2.3 Applicants shall clearly and accurately provide information on the following:

(a) Pre-planting Site Assessment

(i) The ecological district of the site.
(ii) The characteristics of the soil (i.e. clay, silt, loam etc.).
(iii) Soil drainage.

(iv) Topography of the area to be planted.
(v) Aspect of the area to be planted.
(vi) Exposure of site to wind, frost, sunlight and salt spray.
(vii) Presence of animal pests and weeds.
(viii) Presence of native flora and fauna and wildlife habitats on the site.
(viii) Extent of existing bush or native vegetation on the site and its species composition.
(ix) Distance from established bush and the state of the established bush.
(x) Any restrictions on planting, such as safety issues, maintenance of views, etc.

(b) Planting Plan Assessment

This shall contain the following information:

(i) Purpose of the planting, including streambank erosion control, habitat restoration, ecological corridor creation, buffer planting to protect edges of existing bush, water quality enhancement, amenity/landscape planting, riparian margin and wetland restoration and coastal margin restoration.

(ii) Location and extent of planting on a plan.

(iii) Site preparation for planting, including if farm stock are to be kept on the property, stock-proof fencing of planting areas, weed and animal pest control.

(iv) Site planting, including species to be planted, size of plants, and where they are to be planted, density of planting, and sourcing of plants and fertilising.

(v) Maintenance of planting, including releasing plants, fertiliser, animal pest and weed control and mulching and replacement of plants which do not survive.

(c) Monitoring Programme

To be undertaken for a minimum of five years (6 monthly for the first 18 months then annually) at which point Council will review the planting. The monitoring report (to be undertaken by a person with appropriate experience and qualifications) shall include information on the following:

(i) Success rates, including growth rates and number of plants lost (including an analysis of the distribution of losses).

(ii) Canopy closure, beginnings of natural ecological processes - natural regeneration in understory, use by native birds, etc.

(iii) A running record of fertilisation, animal and weed pest control and replacement of dead plants.

(iv) Recommendations for replacement of dead plants and implementation of these recommendations. Any remediation action shall specify a start date and be the subject of a progress report 6 months from that date. (If remedial action is beyond the first 18 months the report shall be independent of the annual report).

(v) Whether stock has been kept out of the bush areas and if not, a plan to replant and remedy any damage.

(vi) State of any fencing keeping stock out of the bush areas and recommendations for maintenance to be undertaken.

Rule 12.8.8.22.9.2.4

The vegetation shall be established for the purposes set out in the Planting Plan Assessment and shall not be clear felled or removed.

Remedial action shall be required where monitoring indicates the specified standards are not being met.

Rule 12.8.8.22.9.3 **Pest and Weed Control**

Pest and Weed Control

The first subdivision application of the Weiti Village Policy Areas 1 and 2 shall include a pest and weed control management plan for all of the land within the Zone which details the methods, timeline, monitoring and maintenance of an ongoing weed and pest control programme, to protect the sensitive ecological and wildlife values of the Zone and adjoining coastal environment in perpetuity. This shall incorporate an integrated pest management approach and include possum, rodent and mustelid control and the control of plant pests.

Rule 12.8.8.23 Greenbelt And Conservation Policy Area (Subdivision)

Rule 12.8.8.23.1 **Location of Sites**

Location of Sites

All sites created shall be suitable for the purpose of accommodating:

(a) a network utility or infrastructure to service the development of the Weiti Village Policy Areas 1 and 2, the Karepiro Policy Area or activities in the Greenbelt and Conservation Policy Area;

(b) A Conservation Institute and Gardens, conservation, heritage or educational facility approved by the Council.

Rule 12.8.8.23.2 **Site Configuration**

Site Configuration

Sites shall be capable of containing all buildings, infrastructure servicing that building or activity, including vehicle access and parking wholly within the boundary of the allotment in compliance with the relevant development controls for the Zone.

Rule 12.8.8.24 Karepiro Policy Area (Subdivision)

Rule 12.8.8.24.1 **Maximum Number of sites**

Maximum Number of sites

The maximum number of residential sites within the Policy Area shall be 150.

Rule 12.8.8.24.2 **Size of Residential Sites**

Size of Residential Sites

The maximum size of any residential site shall be 2,000m² and the minimum size shall be 900m².

Rule 12.8.8.24.3 **Location of Residential Sites**

Location of Residential Sites

All residential sites shall be located within the development footprints identified in the Outline Development Plan in Appendix 14 of the Planning Maps and shown on Appendix 12C4.

Rule 12.8.8.24.4 **Provision for Public Access**

Provision for Public Access

Rule 12.8.8.24.4.1	Provision for public access to Karepiro Bay shall be provided via a combination of public road and public walkways as set out in the Outline Development Plan in Appendix 14 to the Planning Maps and such access shall be denoted on subdivision plans submitted to the Council for resource consent. The first subdivision application of any portion of the Karepiro Policy Area shall include (to the extent they have not been provided, prior to that date) a mechanism to provide easements for the public walkways and conditions of consent shall require the provision of such easements.
Rule 12.8.8.24.4.2	Such walkways shall be constructed in accordance with SNZ HB8630:2004 for Walking Tracks (1 January 2004) and shall be completed prior to the issue of a certificate pursuant to section 224(c) of the Act. On approval of the section 223 certificate for the first subdivision of the Karepiro Policy Area, the consent holder shall sign easements in gross over the walkways in favour of the Council. The terms of the easements shall include the following: (a) The consent holder shall maintain the walkways generally to the standards to which they had been constructed in the first instance; (b) Users of the walkways shall be required to comply with conditions of access, which conditions shall be developed by the consent holder, in consultation with the Council. The easements for the walkways shall be registered on the issue of the section 224(c) certificate.
Rule 12.8.8.24.5 **Landscape Plan**	**Landscape Plan** As part of a resource consent application a detailed landscape plan shall be prepared by relevant experts in landscape architecture, native revegetation and ecology, arboriculture and forestry management and lighting and prepared in accordance with best practice in each such discipline The purpose of the plan is to achieve visual integration of the buildings and associated infrastructure such as street lighting, into the landscape so as to ensure they do not dominate the landscape or detract from the visual amenity of the area. The plan shall include native screen planting within Area 1A as depicted on the Outline Development Plan in Appendix 14 to the Planning Maps to provide a high degree of screening of houses from the south and east and from the Department of Conservation walkway.

Rule 12.8.8.25 Controlled Activities (Subdivision): Matters for Control and Assessment Criteria

Rule 12.8.8.25.1

In accordance with sections 77B(2) of the Act the Council will restrict its control to the matters listed when considering resource consent applications for Controlled Activity subdivision within the Weiti Special 8 Zone.

Applications for activities under this rule need not be notified and the written approvals of persons will not be required.

Rule 12.8.8.25.2 **Matters for Discretion**

Matters for Control

Council will limit its control to the following matters:

(a) Site size, shape and layout.
(b) Site contour.
(c) Site access and frontage.
(d) Reserve provision.
(e) Financial contributions and contributions of works or services including public accessways.
(f) Utility provision including stormwater.
(g) Roading and transportation accessibility and connectivity.
(h) The architectural code (Weiti Village Policy Areas 1 and 2).
(i) Planting.
(j) The provision of required facilities including walkways.
(k) The provision of required restrictive covenants.

12.8.8.25.3 **Assessment Criteria**

Assessment Criteria

(a) Whether the subdivision is in accordance with the Outline Development Plan in Appendix 14 of the Planning Maps and in the case of subdivision in the Weiti Village Policy Areas 1 and 2, the subdivision is in accordance with the Weiti Village Master Plan in Appendix 12C1.

Site size, shape and layout

(b) Whether the site size, shape, contour and access are suitable for the intended purpose of the Zone.

Site Contour

(c) Whether the sites are located so that they do not require substantial earthworks or land modification to obtain access or a suitable building platform.

Site Access and frontage

(d) Whether the frontages for lots are in general accordance with the relevant development controls for the Policy Area relative to building frontage.

(e) Whether the sites are located so that household units can be erected (complying with the rules in the Plan) without significantly detracting from any features on the site required to be protected, or form the visual amenity values present in the vicinity of the sites.

Reserve Provision

(f) Whether the proposed reserves, including any walking tracks and associated car parks are sufficient to ensure that access to recreational areas is maintained or enhanced.

(g) Whether the shape and slope of reserves land is suitable for the intended intensity of use.

Financial Contributions

(h) Whether there are sufficient financial contributions or contributions of works or services and reserves to offset adverse effects generated by the subdivision.

Utility Provision	(i) Whether the subdivision makes provision for the placement and configuration of utility services in an efficient manner.
Roading and Access	(j) Whether the roading and access proposed complies with the roading and access layout set out in Appendix 12C1 and will result in an efficient, safe and attractive roading network.
	(k) Whether the subdivision makes provision for on street parking in a manner that does not undermine the amenity values expected for the respective policy area.
Access	(l) Whether adequate road access is provided, and no significant adverse effects on the safety and efficiency of the public roading network result.
Stormwater	(m) Whether the management of stormwater flows is consistent with the relevant Catchment Management Plan.
	(n) Whether the proposed stormwater outlet configuration has been designed to avoid high velocity discharges or other impacts on sensitive receiving environments.
	(o) Whether a Precinct Sediment Management Plan (PSMP) has been submitted. The PSMP should address the management of earthworks, and may include techniques to reduce sediment discharge that exceed ARC Technical Publication 90 controls, monitoring of sediment ponds, overall management of earthworks and any future controls required for future subdivision and / or small site earthworks in the development.
	(p) Whether road embankments across streams are minimised and fish passage provided.
Natural and cultural heritage	(q) Whether any effects on sites of natural, archaeological or cultural significance are avoided, remedied or mitigated.
Pets	(r) Whether restrictions are placed on the keeping of domestic pets (primarily cats and dogs) in order to protect the native fauna of the Weiti Zone and the adjoining coastal environment. Consideration must also be given in an integrated manner to the Pest and Weed Control Plan required under Rules 12.8.8.22.9.3.
Staging	(s) Whether any staging of subdivision is consistent with the maximum lot/ household unit allocation within each policy area and provides for logical connections and infrastructure provision between stages.
Architectural Code	(t) Whether the Architectural Code (Weiti Village Policy Areas 1 and 2) required by Rule 12.8.8.22.4 is consistent with the objectives and policies and the Weiti Village Master Plan in Appendix 12C1 and will achieve the principles contained in Appendix 12C2 and good urban design outcomes.
	(u) Whether conditions are required to ensure compliance with enhancement planting rules.
	(v) Whether conditions are required to ensure compliance with the provision of the Greenbelt Restrictive Covenant, public access or public facilities.

Rule 12.8.8.26 Restricted Discretionary Activities (Subdivision): Matters For Discretion And Assessment Criteria

Rule 12.8.8.26.1

Restricted Discretionary Activities: Matters for Discretion and Assessment Criteria; Subdivision

The Council will restrict its discretion to the matters listed, in addition to the matters set out in *Chapter 23 - Subdivision and Servicing*, when considering resource consent applications for Restricted Discretionary Activities.

Rule 12.8.8.26.2 **Matters for Discretion**

Matters for Discretion

The Council will limit its discretion to the following matters:

(a) Site size, shape and layout.
(b) Site contour.
(c) Site access and frontage.
(d) Earthworks and land modification.
(e) Native tree and bush removal/protection.
(f) Natural hazard avoidance/mitigation.
(g) Reserve provision.
(h) Financial contributions and contributions of works or services including public accessways.
(i) Utility provision including stormwater.
(j) Roading and transportation accessibility and connectivity.
(k) The Architectural Code (Weiti Village Policy Areas 1 and 2).
(l) Planting.
(m) The provision of required facilities including walkways.
(n) The provision of require restrictive covenants.
(o) Lighting.

12.8.8.26.3 **Assessment Criteria**

Assessment Criteria

When considering an application for a restricted discretionary activity the Council will have regard to the following criteria:

Outline Development Plan

(a) Whether the subdivision is in accordance with the Outline Development Plan in Appendix 14 of the Planning Maps and in the case of subdivision in the Weiti Village Policy Areas 1 and 2, the subdivision is in accordance with the Weiti Village Master Plan in Appendix 12C1.

Greenbelt

(b) Whether the particular subdivision can occur without compromising the land's role as greenbelt anticipated within the Zone.

Site, size, shape

(c) Whether the site size, shape, contour and access are suitable for the intended purpose of the Zone.

Earthworks

(d) Whether the sites are located so that they do not require substantial earthworks or land modification to obtain access or a suitable building platform.

Visual amenity values

(e) Whether the sites are located so that household units can be erected (complying with the rules in the Plan) without significantly detracting from any features on the site required to be protected, or form the visual amenity values present in the vicinity of the sites.

Landscape

(f) Whether the building area is on a prominent ridge, knoll or skyline where the erection of buildings may dominate the landscape or detract from the identified visual amenity values in the area.

Natural Hazards	(g)	Whether the subdivision will exacerbate natural hazards, through earthworks or access provision, or result in building areas which are subject to natural hazards.
Services	(h)	Whether adequate services, including utilities, are provided for the sites created.
Access to the coast	(i)	Whether the proposed reserves, including walking tracks and associated car parks are sufficient to ensure that public access to the coastal marine area is maintained or enhanced.
Financial contributions and works	(j)	Whether there are sufficient financial contributions or contributions of works or services and reserves to offset adverse effects generated by the subdivision.
Access	(k)	Whether adequate road access is provided, and no significant adverse effects on the safety and efficiency of the public roading network result.
	(ka)	Whether adequate walkways are provided between the Weiti Policy Areas 1 and 2 and Karepiro Policy Area that are designed and located to enhance connectivity for residents, while minimising the impacts on any enhancement planting.
Layout	(l)	Whether the layout of residential sites including servicing and roads is complimentary to the existing topography and whether the earthworks, placement of roading and planting is such that the impact on the landscape is minimised, its scale is in keeping with that of the physical setting and that the land's role as a greenbelt is maintained.
Streets	(m)	Whether a legible public street pattern has been created. As a guideline, street blocks shall have a maximum plan dimension in any direction of 250m and a maximum block perimeter of 800m. Where public parks and reserves are provided, they should be bounded by public streets for 75% of their entire perimeter, taking into account topographical, watercourse, vegetation and economic constraints.
	(n)	Whether the street network is well connected taking into account topographical, watercourse and vegetation constraints and achieves the intent of the street network as shown on the Outline Development Plan in Appendix 14 to the Planning Maps.
	(o)	Whether adequate provision is made for visitor car parking.
Stormwater	(p)	Whether the management of stormwater flows is consistent with the relevant Catchment Management Plan
	(q)	Whether the proposed stormwater outlet configuration has been designed to avoid high velocity discharges or other impacts on sensitive receiving environments.
	(r)	Whether road embankments across streams are minimised and fish passage provided.
Sediment	(s)	Whether a Precinct Sediment Management Plan (PSMP) has been submitted. The PSMP should address the management of earthworks, and may include techniques to reduce sediment discharge that exceed ARC Technical Publication 90 controls, monitoring of sediment ponds, overall management of earthworks and any future controls required for future subdivision and / or small site earthworks in the development.

Natural and cultural heritage	(t)	Whether any effects on sites of natural, archaeological or cultural significance are avoided, remedied or mitigated.
Pests	(u)	Whether restrictions are placed on the keeping of domestic pets (primarily cats and dogs) in order to protect the native fauna of the Weiti Zone and the adjoining coastal environment. Consideration must also be given in an integrated manner to the Pest and Weed Control Plan required under Rules 12.8.8.22.9.3.
Staging	(v)	Whether any staging of subdivision is consistent with the maximum lot/ household unit allocation within each policy area and provides for logical connections and infrastructure provision between stages.
Architectural Code	(w)	Whether the Architectural Code (Weiti Village Policy Areas 1 and 2) required by Rule 12.8.8.22.4 is consistent with the objectives and policies, the Weiti Village Master Plan in Appendix 12C1 and will achieve the principles contained in Appendix 12C2 and good urban design outcomes.
	(x)	Whether conditions are required to ensure compliance with enhancement planting rules.
Lighting	(y)	Whether, in the case of the Karepiro Policy Area, exterior lighting, including street lighting, is provided in such a way as to not be prominent, particularly against a dark background, when viewed from a public place including the coast. In the case of street lighting, consideration should be given to alternative forms of street lighting such as short bollard lighting, while ensuring that traffic, pedestrian and cyclist safety is not compromised.
	(z)	Whether conditions are required to ensure compliance with the provision of the Greenbelt Restrictive Covenant, public access or public facilities.

Rule 12.8.8.27 Greenbelt Conservation Policy Area (Subdivision): Restricted Discretionary Activity: Additional Matters for Discretion and Assessment Criteria

Rule 12.8.8.27.1

Restricted Discretionary Activities: Matters for Discretion and Assessment Criteria; Subdivision

In addition to the Matters in Rule 12.8.8.26, the Council will restrict its discretion to the additional matters listed, when considering resource consent applications for Restricted Discretionary Activities in the Greenbelt Conservation Policy Area.

Rule 12.8.8.27.2 **Matters for Discretion**

Matters for Discretion

The Council will limit its discretion to the following matters:

(a) Site size.

Rule 12.8.8.27.3 **Assessment Criteria**

Assessment Criteria

(a) Whether the site is suitable for and is of a size to only accommodate the activity granted resource consent.

Rule 12.8.8.28 Restricted Discretionary Activities; Matters For Discretion And Assessment Criteria; Non- Compliance With The Enhancement Planting Standards In Rule 12.8.22.9.2

To assist the Council in the exercise of its discretion a Pre-Planting Assessment and a Planting Plan Assessment shall be prepared addressing the matters set out in Rule12.8.8.22.9.2.3.

Rule 12.8.8.28.1 **Matters for Discretion**

Matters for Discretion

The Council will restrict its discretion to the following matters:

(a) Type of planting.
(b) Density of planting.
(c) Maintenance.

12.8.8.28.2 **Assessment Criteria**

Assessment Criteria

(a) Whether any alternative planting regime will better achieve the objectives and policies of the Zone.

(b) Whether an adequate planting density is used to achieve canopy closure in a time frame similar to that if the standards had been complied with.

(c) Whether the planting achieves appropriate connectivity with the existing SNA's.

(d) Whether an appropriate plant survival rate will be achieved.

(e) Whether the planting reflects the species composition of the adjoining SNA vegetation.

(f) Whether the species composition is appropriate for the particular site conditions such as soil, aspect and topography.

(g) Whether protection from stock is provided

(h) Whether the fertilising regime is appropriate to ensure the growth of the plants.

(i) Whether adequate pest and weed control is proposed.

12.8.8.29 Discretionary Activity Assessment Criteria (Subdivision)

12.8.8.29.1

Non-compliance with Development Control Rule 12.8.8.21.4– Water Servicing.

The following additional assessment criteria shall apply to activities not complying with Rule 12.8.8.21.4:

(a) Whether the alternative method of water supply will undermine the viability of public water reticulation for the Special 8 Zone.

(b) Whether the alternative provision of water supply is adequate to provide a reliable supply of potable water for the proposed activity.

APPENDIX 12C1 WEITI VILLAGE POLICY AREA MASTER PLAN

T1
T3
T4
T5
T5 Commercial Ground Floor Only
Community Open Space
Community Building
THE SEAL OF THE
ENVIRONMENT COURT OF NEW ZEALAND

APPENDIX 12C2 ARCHITECTURAL CODE PRINCIPLES

APPENDIX 12C2

SPECIAL 8 (WEITI FOREST PARK) ZONE - PRINCIPLES FOR AN ARCHITECTURAL CODE

1 These principles are to guide the preparation of an Architectural Code to be applied over all building development within the Weiti Village Policy Areas 1 and 2, as denoted on the Outline Development Plan in Appendix 14 to the Planning Maps.

2 Applications for resource consent that require an Architectural Code shall demonstrate that the principles set out below have been utilised in the concepts for which consent will be sought.

1 General Principles

The Weiti Village Policy Areas 1 and 2 represent a unique form of development within the wider Weiti Special 8 Zone. The wider forested landscape context within which the Village is situated allows the creation of a dense community environment, with the corresponding need to consider each building in relation to another, rather than a more traditional site-specific approach to development. On that basis, specific regard shall be had to the following general principles, listed in order of importance, when preparing development concepts for the Weiti Village:

a) Architectural Designs must support and reinforce the dense built form of the Weiti Village Policy Areas 1 and 2.

b) Architectural Designs must establish a vernacular (or architectural language) through the resolution of architectural form and detail that recognises the high degree of interrelationship of buildings one to another and the need for design of the village and buildings to reflect:

(i) order
(ii) elegance
(iii) coherence

c) Building materials should provide high degrees of durability and longevity.

d) In addition to the primary need to support and reinforce the public realm, building designs shall take care to address the management of water, light and air movement external and internal to the structure.

2 THE TRANSECT: PRINCIPLES

a) That the Village should provide meaningful choices in living arrangements as manifested by distinct physical environments.

b) The intent of these Principles with regard to the general character of each of the Village environments, is to integrate, not buffer and segregate differing building types and uses.

c) Changes between T-Zones should occur along i) rear site lines, ii) rear lanes and iii) across open spaces, i.e.: plazas, parks or squares, when such changes occur along a frontage road. No buffers and/or setbacks beyond those already assigned to the individual T-Zone should be required for such conditions.

3 THE VILLAGE: PRINCIPLES

a) That Villages should be compact, pedestrian-oriented and provide for a truly mixed use environment.

b) That interconnected networks of roads should be designed to disperse traffic and reduce the length of, and need for, car vehicle trips.

c) That within Villages, a range of housing types and price levels should be provided to accommodate diverse ages and incomes.

d) That commercial activity should be embedded within the Village, not isolated in a remote single-use complex.

e) That a range of Open Space (i.e.: Parks, Squares, and playgrounds) should be distributed within and/or directly adjacent to the Village to maximize their use and be accessible to residents and visitors alike.

4 THE BLOCK AND THE BUILDING: PRINCIPLES

a) That buildings and landscaping should contribute to the physical definition of roads as Civic places.

b) That development should adequately accommodate vehicles, including service vehicles, but not take design precedence over the pedestrian, cyclist, transit and the spatial form of public areas.

c) That the design of roads and buildings create safe environments, but not at the expense of accessibility and the placemaking.

d) That buildings should provide their inhabitants with a clear sense of geography and climate through energy efficient methods.

e) That Civic Buildings and public gathering places should be provided at locations that reinforce community identity and encourage community interaction.

f) That Civic Buildings should be distinctive and appropriate to a role more important than the other buildings that constitute the fabric of the village.

5 ROADS: PRINCIPLES

a) Roads are intended for use by vehicular, pedestrian traffic, cyclists, to provide access to and around the village environment.

b) Roads should generally consist of vehicular lanes and public frontages.

c) Roads should be designed in context with the urban form and desired design speed of the Transect Zones through which they pass. The Public Frontages of Roads that pass from one Transect Zone to another should be adjusted accordingly or, alternatively, the Transect Zone may follow the alignment of the Road to the depth of one Site, retaining a single Public Frontage throughout its trajectory.

d) Within the T3 through T5 zones pedestrian comfort should be a primary consideration of the Road design. Design conflict between vehicular and pedestrian movement generally shall be decided in favour of the pedestrian.

e) All Roads should terminate with other roads, forming a network. Cul-de-sacs shall be used only to accommodate topographic and property boundary conditions.

f) Sites should front a vehicular road, lane, or footpath passage

APPENDIX 12C3 FORM OF GREENBELT RESTRICTIVE COVENANT

COVENANT

Easement instrument to grant easement or *profit à prendre*, or create land covenant
(Sections 90A and 90F Land Transfer Act 1952)

Grantor

[Registered proprietor] in respect of computer register [the Greenbelt and Conservation Policy Area as defined in the Zone Rules]

Grantee (together)

Auckland Council in respect of computer register [Public Land transferred to Auckland Council] and **Her Majesty the Queen acting by and through her Minister for Conservation** in respect of computer register [Public Land transferred to DoC]

Grant of Easement or *Profit à prendre* or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Purpose (Nature and extent) of easement; *profit* or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Land covenant	[TBC]	[TBC]	[TBC]

Covenant provisions

The provisions applying to the specified covenants are those set out in the Annexure Schedule.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

1. INTRODUCTION

1.1 The Grantor has obtained the Consent a requirement of which is that the Grantor enter into this covenant with the Grantee

2. DEFINITIONS

In this covenant, unless the context otherwise indicates:

2.1 "the Consent" means resource consent [reference];

2.2 "the Dominant Land" means the dominant tenement described in Schedule A;

2.3 "The Grantee" means [Auckland Council and DoC] together with their respective successors in title to the Dominant Land;

2.4 "The Grantor" means [the Consent Holder] together with its successors in title to the Servient Land;

2.5 "Infrastructure" means roading, any electricity, telecommunications, water, storm water or wastewater lines, ducts, tanks, storage, generation or collection facilities, pipelines or other services and associated conduits and structures which are intended to service [the Karepiro Development, the Weiti Village Development or the Greenbelt and Conservation Policy Area]; and

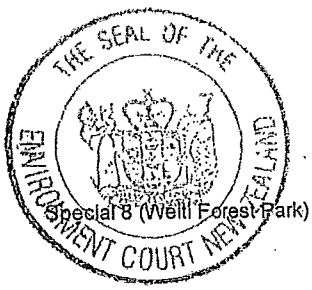
2.6 "the Servient Land" means the servient tenement described in Schedule A.

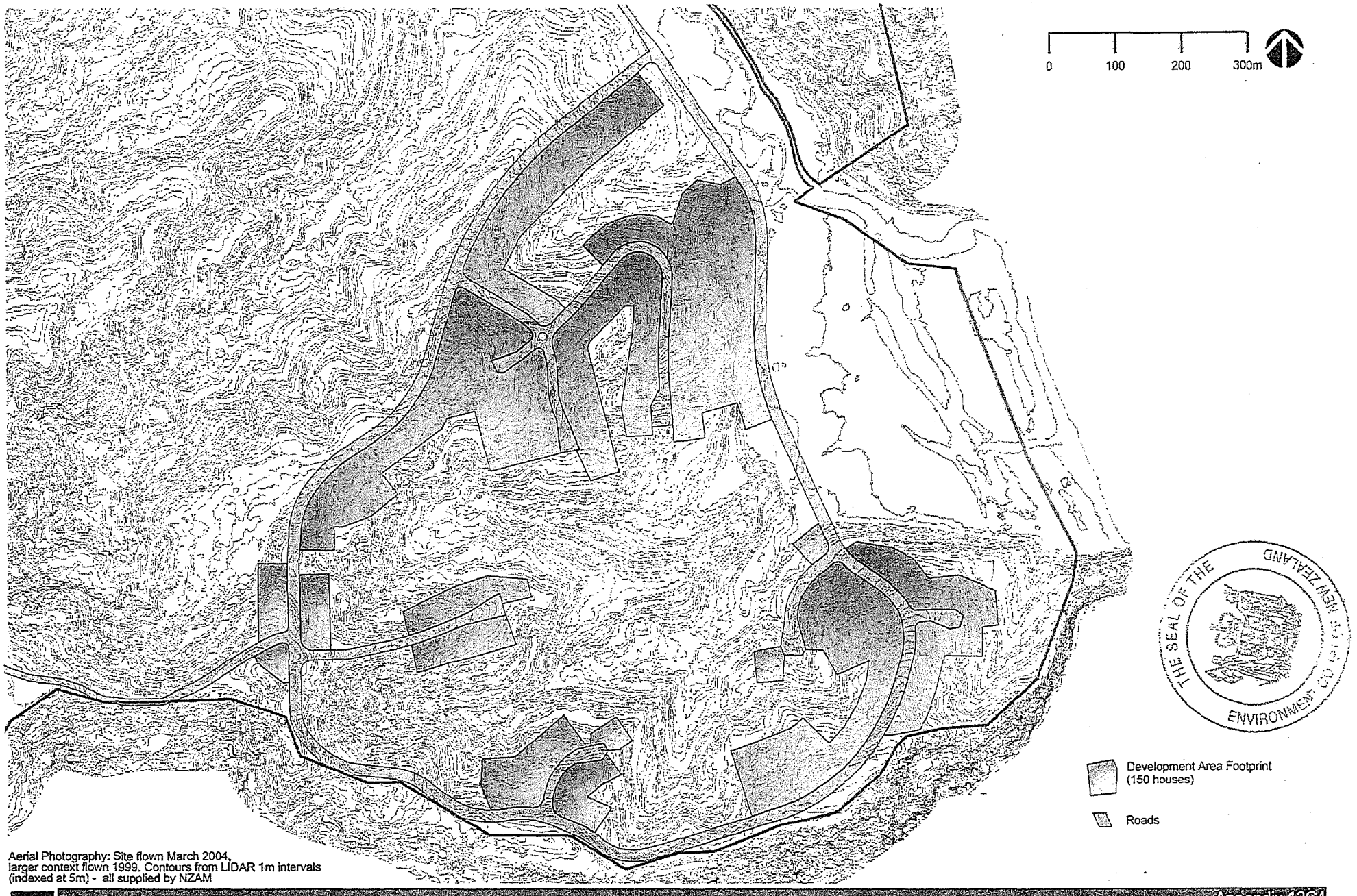
3. COVENANTS

3.1 The Grantor for itself while registered proprietor and its successors in title, to the Servient Land or any part of or interest in the Servient Land covenants, acknowledges and agrees with the Grantee and their respective successors in title to the Dominant Land that the Grantor will at all times observe and perform all the stipulations and restrictions contained in the First Schedule to the end and intent that each of the stipulations and restrictions shall, in the manner and to the extent prescribed, forever enure for the benefit of, and be appurtenant to, the whole of the Dominant Land

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

APPENDIX 12C4 MASTER PLAN FOR KAREPIRO POLICY AREA





Aerial Photography: Site flown March 2004, larger context flown 1999. Contours from LIDAR 1m intervals (indexed at 5m) - all supplied by NZAM

WEITI

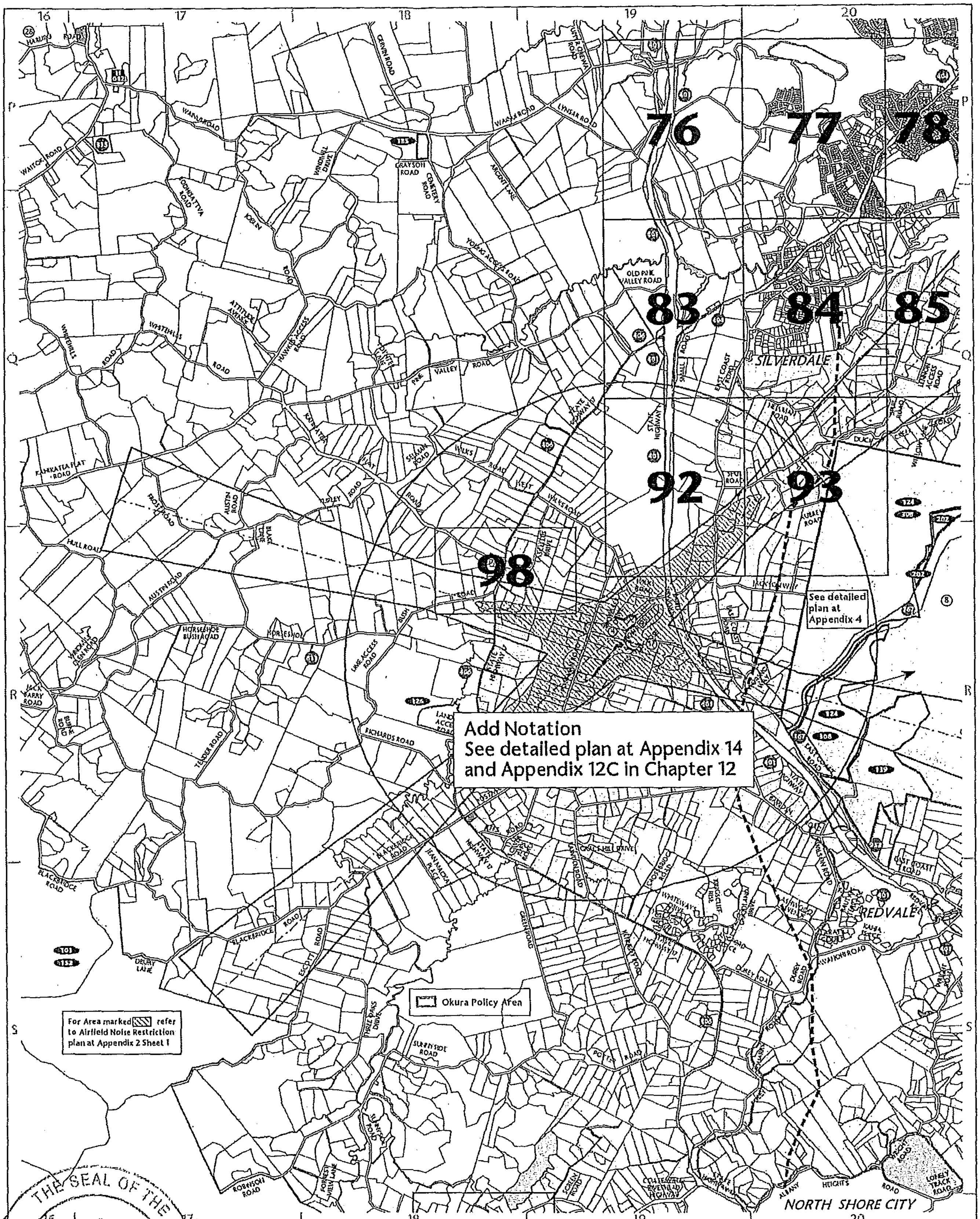
Karepiro Master Plan

Figure prepared by Beca Nicholl Limited for Williams Land Limited

Appendix 12C4

Revision: - Date: 23/04/2010

Scale: 1:2,500 (A1) 1:5,000 (A3)



Zones/Policy Areas

- General Rural
- Landscape Protection Rural
- Dome Lakes
- Countryside Living Rural
- Countryside Living Town
- East Coast Rural
- Residential H (High Intensity)
- Residential M (Medium Intensity)
- Residential M (Township Policy Area)
- Residential EP (Eastern Peninsula)
- Residential PL (Physical Limitations)
- Residential L (Low Intensity)
- Residential LP (Landscape Protection)
- Retail Service
- Mixed Business
- Industrial
- Open Space 1
- Open Space 2
- Open Space 3
- Open Space 4
- Open Space 5
- Special Zones (3)
- Future Urban
- Islands General
- Inland Water (General)
- Inland Water (Protection)

Notations

Contact Council Regarding Known Land Hazards

- Designation (see Appendix 15A)
- Scheduled or Restricted Activity (see Rules 14.8.2 and 14.8.3)
- Protected Item (see Appendix 17A-17D, 18A to Rules)
- Future Esplanade Reserve or Strip (see Appendix 23A to Rules)
- Indicative Roads and Accessways (see Rules 16.11 and 23.8.13)
- Indicative Reserves (see Rules 16.11 and 23.8.13)
- Road to be Widened or Stopped (see plans at back of Maps)
- Boundary between Special Zones
- Boundary of Wharf/Mooring Area
- Airfield Height Boundary (see Appendix 1 to Maps)
- Structure Plan Areas (see Appendix 6 to Maps)
- HP Gas Pipelines (see note in front of Maps)
- HV Transmission Lines (see Rule 23.8.17 and note in front of Maps)

N

Rodney DISTRICT COUNCIL

Proposed District Plan 2000

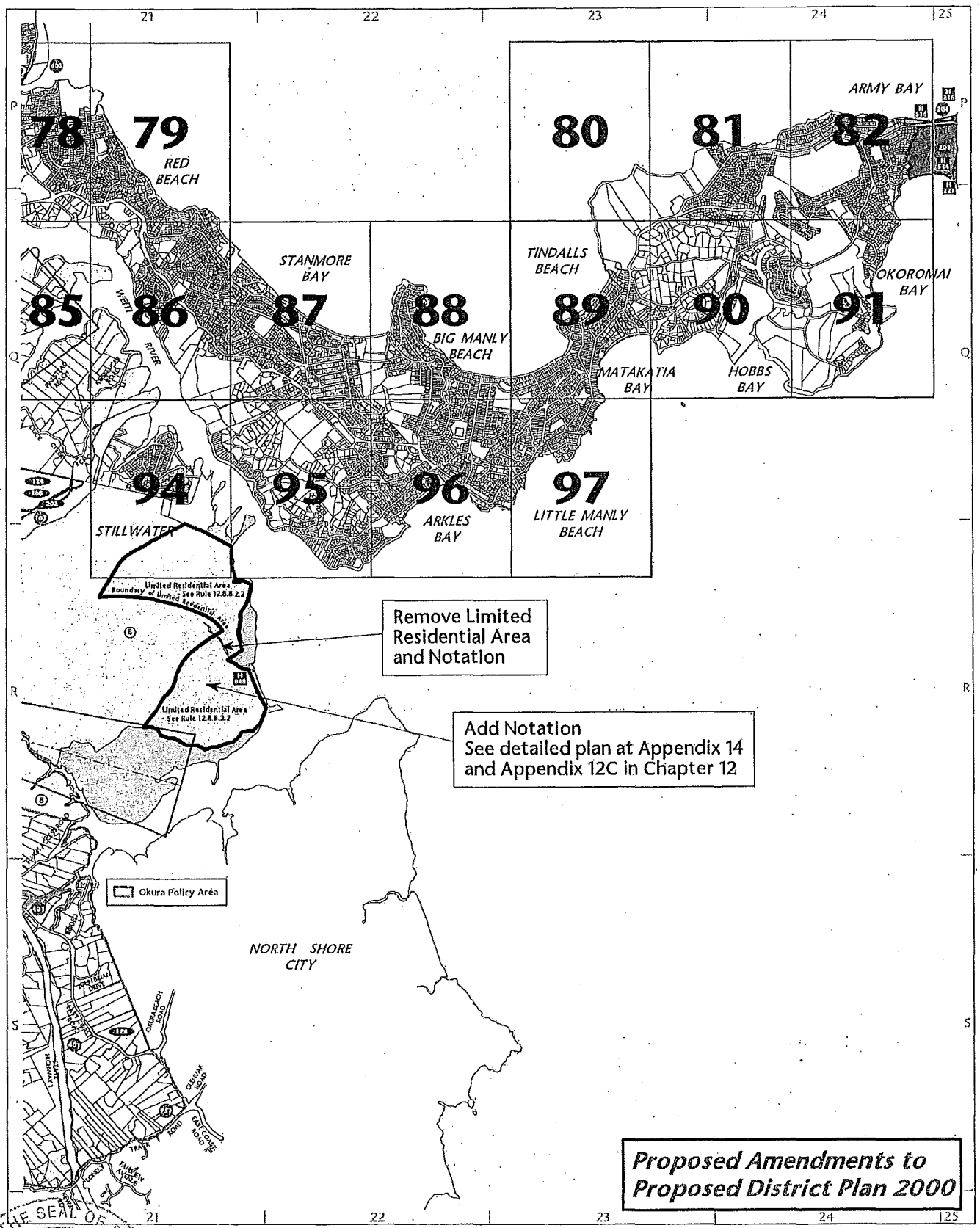
20	21	22
25	26	27
30	31	

Operative in part (30 January 2009)

MAP 26

Scale 1: 40 000

0 400 800 1200 1600 Metres



Proposed Amendments to Proposed District Plan 2000

THE SEAL OF THE ENVIRONMENT

Zones/Policy Areas

- Coastal Rural
- Landscape Protection Rural
- Dune Lakes
- Countryside Living Rural
- Countryside Living Town
- East Coast Rural
- Residential H (High Intensity)
- Residential M (Medium Intensity)
- Residential M (Township Policy Area)
- Residential EP (Eastern Peninsula)
- Residential PL (Physical Limitations)
- Residential L (Low Intensity)
- Residential LP (Landscape Protection)
- Retail Service
- Mixed Business
- Industrial
- Open Space 1
- Open Space 2
- Open Space 3
- Open Space 4
- Open Space 5
- Special Zones (3)
- Future Urban
- Islands General
- Inland Water (General)
- Inland Water (Protection)

Notations

Contact Council Regarding Known Land Hazards

- Designation (see Appendix 15A)
- Scheduled or Restricted Activity (see Rules 14.8.2 and 14.8.3)
- Protected Item (see Appendix 17A-17D, 18A to Rules)
- Future Esplanade Reserve or Strip (see Appendix 23A to Rules)
- Indicative Roads and Accessways (see Rules 16.11 and 23.8.13)
- Indicative Reserves (see Rules 16.11 and 23.8.13)
- Road to be Widened or Stopped (see plans at back of Maps)
- Boundary between Special Zones
- Boundary of Wharf/Mooring Area
- Airfield Height Boundary (see Appendix 1 to Maps)
- Structure Plan Areas (see Appendix 6 to Maps)
- HP Gas Pipelines (see note in front of Maps)
- HV Transmission Lines (see Rule 23.8.17 and note in front of Maps)

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Rodney DISTRICT COUNCIL

Proposed District Plan 2000

21	22	
26	27	28
31		

Operative in part (30 January 2009)

MAP 27

Scale 1: 40 000

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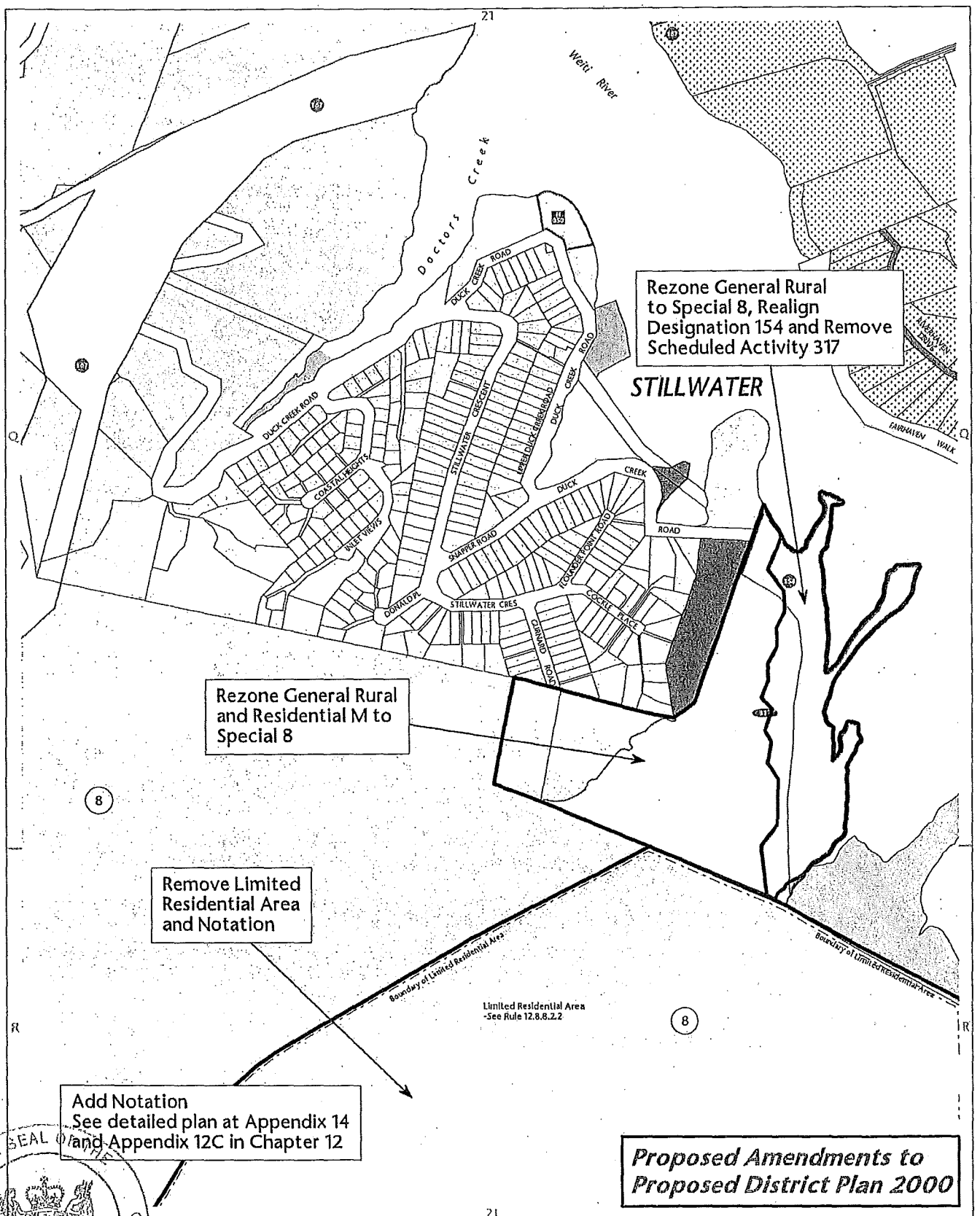
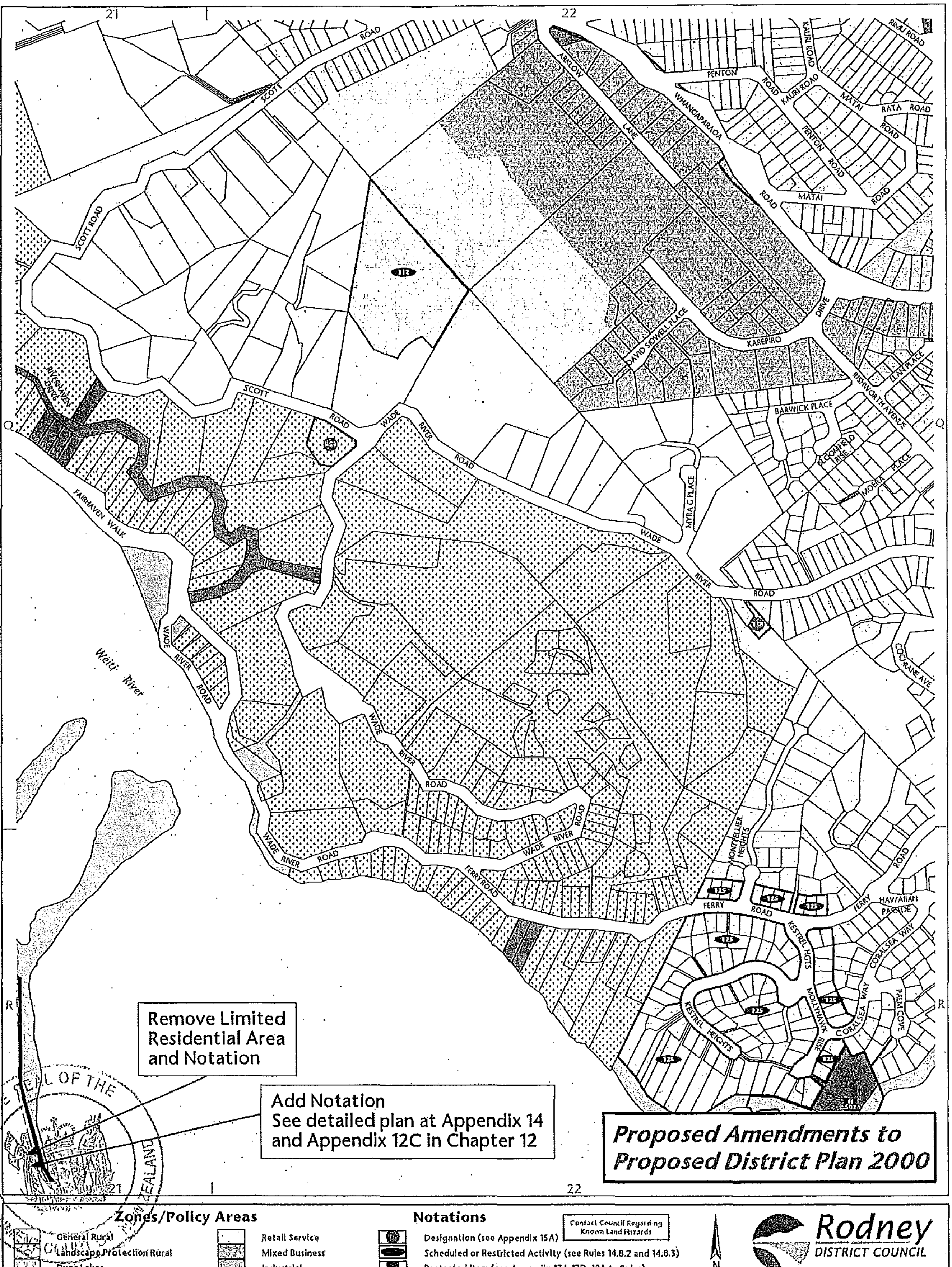

Rezone General Rural to Special 8, Realign Designation 154 and Remove Scheduled Activity 317
Rezone General Rural and Residential M to Special 8
Remove Limited Residential Area and Notation
Add Notation
See detailed plan at Appendix 14 and Appendix 12C in Chapter 12
STILLWATER
Waiti River
Doctors Creek
DUCK CREEK ROAD
STILLWATER CRESCENT
LOWER DUCK CREEK ROAD
COASTAL HEIGHTS
INLET VIEWS
SNAPPER ROAD
FLOUNDER POINT ROAD
DONALDA
STILLWATER CRES
GARNARD ROAD
COCKLE PLACE
FAIRWATER WALK
Boundary of Limited Residential Area
Limited Residential Area -See Rule 12.8.8.2.2
Proposed Amendments to Proposed District Plan 2000
Zones/Policy Areas
General Rural
Landscape Protection Rural
Dune Lakes
Countryside Living Rural
Countryside Living Town
East Coast Rural
Residential H (High Intensity)
Residential M (Medium Intensity)
Residential M (Township Policy Area)
Residential EP (Eastern Peninsula)
Residential PL (Physical Limitations)
Residential L (Low Intensity)
Residential LP (Landscape Protection)
Retail Service
Mixed Business
Industrial
Open Space 1
Open Space 2
Open Space 3
Open Space 4
Open Space 5
Special Zones (3)
Future Urban
Islands General
Inland Water (General)
Inland Water (Protection)
Notations
Designation (see Appendix 15A)
Contact Council Regarding Known Land Hazards
Scheduled or Restricted Activity (see Rules 14.8.2 and 14.8.3)
Protected Item (see Appendix 17A-17D, 18A to Rules)
Future Esplanade Reserve or Strip (see Appendix 23A to Rules)
Indicative Roads and Accessways (see Rules 16.11 and 23.8.13)
Indicative Reserves (see Rules 16.11 and 23.8.13)
Road to be Widened or Stopped (see plans at back of Maps)
Boundary between Special Zones
Boundary of Wharf/Mooring Area
Airfield Height Boundary (see Appendix 1 to Maps)
Structure Plan Areas (see Appendix 6 to Maps)
HP Gas Pipelines (see note in front of Maps)
HV Transmission Lines (see Rule 23.8.17 and note in front of Maps)
N
Rodney DISTRICT COUNCIL
Proposed District Plan 2000
85 86 87
27 94 95
27 27 27
Operative in part (30 January 2009)
MAP 94
Scale 1 : 6 000
0 50 100 150 200 Metres



Zones/Policy Areas

General Rural	Retail Service
Landscape Protection Rural	Mixed Business
Dune Lakes	Industrial
Countryside Living Rural	Open Space 1
Countryside Living Town	Open Space 2
East Coast Rural	Open Space 3
Residential H (High Intensity)	Open Space 4
Residential M (Medium Intensity)	Open Space 5
Residential M (Township Policy Area)	Special Zones (3)
Residential EP (Eastern Peninsula)	Future Urban
Residential PL (Physical Limitations)	Islands General
Residential L (Low Intensity)	Inland Water (General)
Residential LP (Landscape Protection)	Inland Water (Protection)

Notations

Contact Council Regarding Known Land Hazards

- Designation (see Appendix 15A)
- Scheduled or Restricted Activity (see Rules 14.8.2 and 14.8.3)
- Protected Item (see Appendix 17A-17D, 18A to Rules)
- Future Esplanade Reserve or Strip (see Appendix 23A to Rules)
- Indicative Roads and Accessways (see Rules 16.11 and 23.8.13)
- Indicative Reserves (see Rules 16.11 and 23.8.13)
- Road to be Widened or Stopped (see plans at back of Maps)
- Boundary between Special Zones
- Boundary of Wharf/Mooring Area
- Airfield Height Boundary (see Appendix 1 to Maps)
- Structure Plan Areas (see Appendix 6 to Maps)
- HP Gas Pipelines (see note in front of Maps)
- HV Transmission Lines (see Rule 23.8.17 and note in front of Maps)

N

Rodney
DISTRICT COUNCIL

Proposed District Plan 2000

86	87	88
94	95	96
27	27	27

Operative in part
(30 January 2009)

MAP 95

Scale 1 : 6 000

0 50 100 150 200
Metres