

DOUBLE SIDED

Decision No. C **75** /2001

IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN

LAKES DISTRICT RURAL
LANDOWNERS SOCIETY
INCORPORATED

(RMA: 1402/98)

AND

WAKATIPU ENVIRONMENTAL
SOCIETY INC

(RMA 1043/98; 1394/98; 1165/98)

AND

ANNE PINCKNEY

(RMA: 1329/98)

AND

CLARK FORTUNE McDONALD

(RMA: 1405/98)

Referrers

AND

QUEENSTOWN LAKES DISTRICT
COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

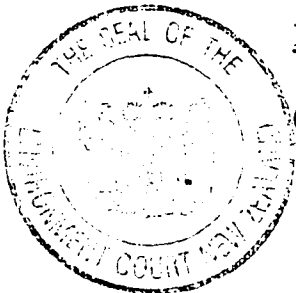
Environment Judge J R Jackson

Environment Commissioner R Grigg

Environment Commissioner R S Tasker

FURTHER HEARING at QUEENSTOWN on 14, 15 and 16 November 2000

(Final written submissions received on 15 February 2001)



APPEARANCES

G M Todd for Lakes District Rural Landowners Society Inc
 B Lawrence for Wakatipu Environmental Society Inc
 M E Parker for A Pinckney
 N T McDonald for Clark Fortune McDonald
 N S Marquet for Queenstown Lakes District Council
 J R Haworth for Upper Clutha Environment Society Inc under section 274 of the Act
 G M Todd for various section 271A and 274 parties
 W P Goldsmith for various section 271A parties
 M E Parker for various section 274 parties
 E A Oxnevad for various section 271A parties
 J Veint for himself
 J Reid for Gibbston Valley Estates Ltd
 S A B Dossor for Cardrona Ski Resort Ltd under section 271A

DECISION (AS TO PARTS 5 AND 15 OF THE QUEENSTOWN-LAKES DISTRICT PLAN)

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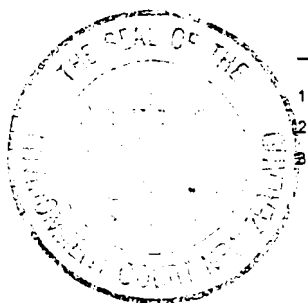
[A] *Introduction*

[1] This decision is principally about the rules controlling the scope for residential development in a rural zone which contains some of the outstanding natural landscapes of the Queenstown-Lakes District. These proceedings under the Resource Management Act 1991 ("the RMA" or "the Act") relate to the objectives, policies and proposed rules in the revised proposed plan ("the revised plan") of the Queenstown Lakes District Council ("the QLDC" or "the Council") as they affect the Rural General zone. Only two parts of the revised plan were in issue at these hearings: Part 5 relating to Rural Areas; and Part 15 relating to Subdivision. Following hearings earlier in 2000 the Court issued an interim decision on Parts 5 and 15 of the revised plan on 6 November 2000¹ ("the interim decision"). Most of the relevant issues here arose out of the Court's decisions in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*² ("the Queenstown landscape decisions") on the district-wide issues, objectives and policies contained in Part 4 of the revised plan.

[2] In the interim decision the Court stated³:

There was general agreement on the following matters (except perhaps from the Lakes District Rural Landowners Inc): that the economy of the district depends to a large extent on its landscape; that there is a real possibility that the landscapes of the Wakatipu basin and of certain rural areas close to Wanaka may be over-domesticated (if they are not already); that the potential for cumulative adverse effects of subdivision and residential development needs to be controlled; that the character of the district is threatened by a wave of subdivision and development applications in the rural general zone; and that the rules for that zone in the revised plan are inadequate.

At and following the resumed hearing in November 2000, some of the parties argued faintly that some of those matters were not agreed. We have two comments on those submissions: first, we accepted in the interim decision that the Lakes District Rural Landowners Inc did not necessarily agree. Secondly, we consider we have enough evidence before us to find those matters as facts.

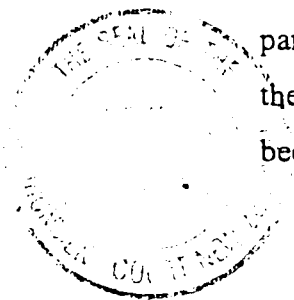


Decision C186/2000.
Decisions C180/99 and C74/00. The first is reported at [2000] NZRMA 59.
Decision C186/2000 para [5].

[3] In the interim decision the Court dealt with two principal issues – first whether residential subdivision and development should be discretionary activities throughout the Rural General zone; and secondly, if so, what proposed rules should govern such discretionary activities. The main technique proposed by witnesses and counsel to guide the Council as consent authority as to when to grant or refuse consent for subdivision and residential land use consents was assessment criteria to be inserted into Parts 5 and 15 of the revised plan. Those assessment matters are the main concern of this decision. It needs to be understood in what follows that the revised plan does not control residential living as such and so that is allowed under section 9 of the Act. Instead Part 5 of the revised plan controls the building of houses in the Rural General zone.

[4] At the hearing leading to the interim decision it became apparent that certain section 271A and 274 parties – mainly residents of the Wakatipu Basin represented by Mr Parker or Mr Oxnevad - were not simply raising general landscape issues, but specific issues regarding their rural amenities. Their cases were put in more detail at the resumed hearing and in the subsequent written submissions. The question to be decided was what objectives and policies the proposed rules in Parts 5 and 15 of the revised plan were to implement. For their (different) landowner clients Mr Goldsmith and Mr Todd argued that the rules in Part 5 are, in respect of all aspects of landscape and visual amenities, governed by the district-wide rules in Part 4 of the revised plan. To the contrary, Mr Parker and Mr Oxnevad argued that the rules in Part 5 should implement the landscape, visual amenity, and rural character objectives and policies in both Part 4 and Part 5. So in this decision we have to look at all rules proposed for Parts 5 and 15 in the context of the revised plan as a whole, and particularly in the light of the objectives and policies in Parts 4 and 5 of the revised plan.

[5] The resumed hearing took three days but since then, under leave reserved, we have received further substantial written submissions from the parties. The Council filed its submissions first and these contain a comprehensive set of redrafted rules for (inter alia) Parts 5 and 15 of the revised plan. These build on those suggested by the Court in its interim decision but reflecting the matters discussed by the Court and the parties at the resumed hearing. We recognise that they may contain a bias towards what the Council or its advisers consider is an appropriate outcome. Further they have not been produced by a witness and therefore not tested by cross-examination. However,



since to compare every aspect of all versions of the proposed rules produced in earlier evidence or submissions would lead to an impossibly complex decision, we will concentrate on the Council's amended rules⁴ for Parts 4 and 5 as filed by Mr Marquet in his written reply after the hearing. Most of the subsequent submissions were directed to those in any event. We have also altered the intitulement to this decision from that used in the interim decision partly to reflect the major protagonists at the resumed hearing, but more to avoid confusion when identifying this decision.

[6] The Queenstown landscape decisions⁵ divided the landscapes of the greater Lake Wakatipu area into initially three⁶ and then four categories by the addition of the "Wakatipu Basin"⁷. The categories are:

- outstanding natural landscapes and features ("ONL")
- outstanding natural landscapes and features in the Wakatipu Basin ("ONL (WB)")
- visual amenity landscapes ("VAL")
- other landscapes – called by the parties "other rural landscapes" ("ORL")⁸.

The rules for all four categories as they apply to the Rural General zone and to subdivision (throughout all zones) are the subject of this decision. In each case in the future, with two exceptions, it will be for the Council to decide what category a site falls into when applying the plan. The two exceptions are the outstanding natural landscapes of the Wakatipu Basin and of the inner Upper Clutha. We decided in the interim decision that those areas should be defined to assist by giving greater certainty⁹ as to whether any specific piece of land falls within or outside an ONL.

[7] As for the other rural landscapes of the district, earlier decisions of this Court – whether general such as the Queenstown landscape decisions themselves or on specific

⁴ Mr Marquet's schedules G and H (An amended version of his Schedule G is attached as Schedule "A").

⁵ See para [1] above.

⁶ [2000] NZRMA 59 at para (92).

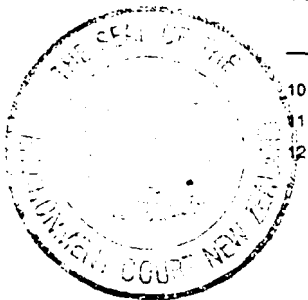
⁷ [2000] NZRMA 59 at paras (107) and (108).

⁸ The example discussed at the hearings of an area most likely to be an "ORL" is the Hawea Flats – an area outside the Greater Lake Wakatipu.
⁹ C186/2000 para [43].



references such as *Waterston v Queenstown Lakes District Council*¹⁰ - give some guidance to the practical categorisation of specific landscapes. The results will be included in a new Appendix 8 to the revised plan (see Schedule C to this decision). We hope they are given some weight in the Council's decisions since we have given considerable thought to these issues. We are concerned that applicants for resource consent may endeavour to isolate pockets of land in the district as being of inferior landscape quality, surrounded by what are admitted to be superior landscapes. That trend will have to be closely watched because it would arise out of an incorrect understanding of the comprehensive nature of the amended *Pigeon Bay* criteria¹¹, and could lead to anomalous and inappropriate development and subdivision. Indeed there is a possibility that the Council itself might be lead to endorse such an approach. Mr Veint, a farmer and owner of the station "Arcadia" at Paradise, produced¹² a copy of a plan of the Glenorchy area on which the Council's agents had identified the river flats of the Dart and Rees Rivers and an area along the eastern shore of Lake Wakatipu as VAL. In Mr Veint's view the latter were inappropriate. We agree; and we also consider there are other parts of the river flats which may be too small to be VAL. It is more probable those flats are outstanding natural landscapes like the beeched valleysides around them.

[8] There are four broad questions still to be decided in relation to Parts 5 and 15 of the revised plan, as well as a number of smaller but important issues as to precise wording of rules. First, there is the question of whether all landscape issues are district-wide issues governed solely by the objectives and policies of Part 4. This issue is the subject of Part [B] of this decision - "Does Part 4 provide the only landscape objectives and policies?" If the answer to the first question is "no" then the second question is whether there are separate issues, objectives and policies in Part 5 of the revised plan that also relate to protection of views and other landscape amenities for the benefit of residents of the Rural General zone: Part [C] "Landscape objectives and policies in Part 5". Whichever position is correct, the methods of implementation (usually rules) will have to reflect that. The third general question is what is meant by a "discretionary activity" in the context of the revised plan. This issue arises because the revised plan contains a definition that is narrower than that in the Act itself. We resolve this in Part



¹⁰ Decision C169/2000.
¹¹ Discussed in [2000] NZRMA 59 at paragraphs (72) to (80).
¹² L J Veint Exhibit 10.1.

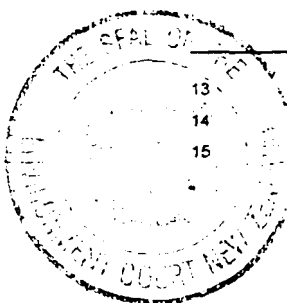
[D] - “The nature of discretionary activities”. The fourth question - how to manage the density of residential development, and avoid over-domestication of the land - is answered (as best we can) in part [E]. We turn to the details in Part [F]: “Other issues”, where we consider the use and status of assessment criteria; the use of “clustering” residences within development areas to increase density of buildings while not over-domesticating the landscape; and the unclear status of several subzones. Part [G] considers “Subdivision” - Part 15 of the revised plan. Finally various other drafting issues are dealt with in Schedules A to C which contain our annotated versions of:

- an amended Part 5 of the revised plan;
- amended Ski Area Subzone rules; and
- an amended Appendix 8 (referred to earlier)

- for the revised plan. We have used annotated schedules so that changes can be identified and, we hope, understood more readily in context. Part [H] contains our orders and directions.

[B] Does Part 4 provide the only landscape objectives and policies?

[9] Adopting the approach that rules are methods of implementation¹³ to achieve¹⁴ objectives and policies of a plan it is clear that the most important objectives and policies directing the rules in Parts 5 and 15 of the revised plan are the district wide objectives and policies in Part 4 of the revised plan¹⁵. However there are objectives and policies in Part 5 (not challenged by reference) which also guide that part’s methods of implementation. The relationship between those two sets of objectives and policies is the subject of this part of this decision.



¹³ Section 75(1)(d) and 76(1)(b) of the RMA.

¹⁴ Section 76(1)(b) of the RMA.

¹⁵ These objectives and policies are the subject of decisions C180/99 [2000] NZRMA 59 at para (116); and C74/00.

[10] The issue arose principally but not exclusively in the context of an area of land (“the Domain Road triangle”) identified in the first Queenstown landscape decision. The Court stated¹⁶:

Looking at the Wakatipu Basin as a whole, we consider that there is a second ring of visual amenity landscapes inside the first ring of outstanding natural landscapes. Inside the inner (second) ring of visual amenity landscapes there is a core around four roads in which we consider there are lesser landscape values (but not insignificant ones) which may not be visual amenity landscapes. It is the area around:

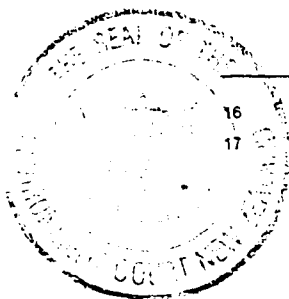
- Lower Shotover Road – Hunter Road
- Speargrass Flat Road
- Slope Hill Roads (west and east)
- Arrowtown – Lake Hayes Road

*The area is rather larger than that description suggests, because it is roughly the land below the 400m above sea level contour (on Appendix II). We **do not make findings** on these matters because neither the category of ‘visual amenity’ landscapes nor the third category was described by any witness in detail ... [Our emphasis].*

We will quote the rest of the paragraph shortly.

[11] The proposed assessment criteria for VAL and ORL refer (see Schedule “A”) to the effect of the development “as viewed from public places” or similar. For various rural residents near the Domain Road triangle Mr Parker submitted (and was supported by Mr Oxnevad) that the addition of those words gave insufficient attention to the protection of the views and other visual amenity of existing rural dwellers in or overlooking the Domain Road triangle and therefore the qualifying words should be deleted. Mr Goldsmith called that approach “the Private View Amendment” and submitted¹⁷:

The significance of the Private View Amendment is that it changes the basis of assessment of landscape issues in ORL areas from a public or community viewpoint (being viewpoints from public places) to a private viewpoint (being viewpoints from individual, privately owned properties).



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[2000] NZRMA 59 at para (116).
Mr Goldsmith’s final submissions para 6(b).

[12] We note at the outset that that is not accurate. Mr Parker was trying to add to the basis for assessing landscapes, not to delete public protection. Mr Parker advised us that¹⁸:

This is not a plea to halt all subdivision and development ...

We accept that is his clients' position. Their understanding and acceptance of the discretionary regime imposed by the interim decision and their concerns are summarised as follows:¹⁹

In the absence of any party having asked for there to be any radical change to the Rural General Zone in relation to its rural amenity aspects, there should be no weakening, through soft assessment matters, of those characteristics which give the Rural General Zone its identity. It is one thing to impose a discretionary regime giving greater flexibility to avoid undesirable, unimaginative development (for instance, a grid-like approach, or widespread screening), but it is another to allow radical change by stealth, ie through weak assessment matters which encourage a "poppy seed" appearance in the landscape.

Accordingly, the assessment matters which are to be settled in the [revised plan] should send a strong signal to both the Consent Authority, developers, and the public alike that the Rural General Zone, in the absence of a zoning such as Rural Residential, Rural Lifestyle, or Special Resort zone or similar, will be managed to ensure retention of its rural characteristics and protection of its amenity. These assessment matters will include, but not be confined to, considerations relating to the landscape because it is acknowledged that this is an important element of the amenity of this zone.

There is an important point here: as a result of the interim decision there has been a change in the rules in Parts 5 and 15 so that subdivision and residential development are no longer non-complying but discretionary activities in the Rural General zone. It does not follow that the rules for discretionary activities should be so weak that the environment cannot be protected where its sustainable management requires that.

[13] Mr Parker also sought to introduce – in the ORL assessment matters – a table requiring certain percentages of land to be retained as open space even though the land was, on the hypothesis, found to be ORL. Mr Goldsmith again opposed what he



Mr M E Parker written submissions for hearing on 14/11/00 para 6.
Mr M E Parker written submissions for hearing on 14/11/00 paras 8 and 9.

- c. *Subparagraph (b) of Policy 9 dealing with structures applies to ORL areas by limiting the size of signs and providing for setbacks from scenic rural roads.*
- d. *None of the remaining significant Part 4 Landscape Policies 2-9 (inclusive) apply to ORL areas.*

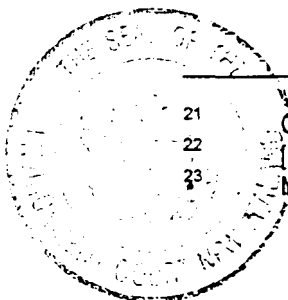
He said that flowed from the Court's findings applying section 32 of the Act in the first Queenstown landscape decision where we stated²¹

"As for section 32(1)(c) we consider:

- (a) There is no need for the district plan to state policies for all the landscapes of the district;*
- (b) The corollary to (a) is that some landscapes (as landscapes) can be cared for by their owners, especially having regard to the presumption in section 9 of the RMA – see Marlborough Ridge Ltd v Marlborough District Council²²;*
- (c) Only outstanding natural landscapes and visual amenity landscapes require some kind of policies and methods of implementation in respect of, and on, landscape grounds alone. These are situations where WESI's evidence persuades us that some landscape policies are efficient and effective because market transactions fail to protect these landscapes sufficiently.*

[16] Mr Parker submitted:²³

These parties are very concerned with any view, prevalent in the mind of developers, that the paragraph 116 or similar areas [e.g. the Domain Road triangle] are of no, or no significant, landscape value and therefore no longer warrant management of resources and environmental effects to the extent currently required by the Proposed Plan They, like the Court, take the view that where they live and work (whether it be VAL or third tier), while perhaps not being an outstanding natural landscape in itself (when viewed in isolation), may well (they believe it does) possess landscape values which are not insignificant, form part of the coherent landscape of the Wakatipu Basin, and should be sustainably managed.



²¹ G180/99; [2000] NZRMA 59 at para (190).

²² [1998] NZRMA 73 at 90.

²³ Mr Parker's written submissions for hearing on 14/11/00 para 3.

Mr Goldsmith's position was that all Mr Parker's submissions contradicted or ignored the Court's earlier section 32 finding quoted above.

[17] Mr Parker referred to the Court's description of "ORL" in the first Queenstown landscape decision²⁴:

... The third category is all other landscapes. Of course such landscapes may have other qualities that make their protection a matter to which regard is to be had or even a matter of national importance.

Mr Goldsmith accepted that passage does provide²⁵:

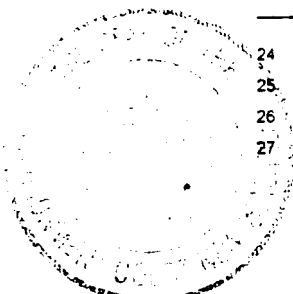
a basis for moving to consideration of Part 5 objectives and policies relating to "character of the rural area" and "rural amenity".

[18] Mr Goldsmith's arguments really reduce to reliance on this Court's section 32 consideration of the part 4 objectives and policies in the first Queenstown landscape decision²⁶. The critical sentence reads:

Only outstanding natural landscapes and visual amenity landscapes require some kind of policies and methods of implementation ... on landscape grounds alone.

[19] We accept that our statement is rather bold if read out of context. In fact it is important not to put too much emphasis on that sentence if only because the "ORL" have not yet been identified. Further, in our view Mr Goldsmith has overstated the extent to which this division of the Environment Court in the first Queenstown landscape decision can be said to have dealt with total comprehensiveness to all landscape and visual amenity issues. The short answer is that at paragraph [116] of the first landscape decision we stated²⁷:

... We will need to hear further evidence and submissions before deciding ... what is sustainable management of the third category of landscapes.



²⁴ [2000] NZRMA 59 at para (93).

²⁵ Mr Goldsmith submissions in reply para 15.

²⁶ [2000] NZRMA 59 at para (190) quoted above.

²⁷ [2000] NZRMA 59 at para (116).

In our view the ORL are a provisional finding of fact by the Court with no status beyond that, and the policy approach suggested is very tentative.

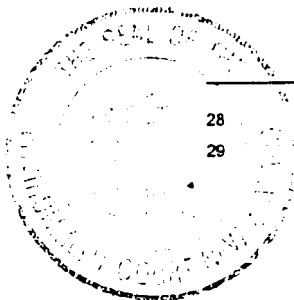
[20] If we are asked “do landscape objectives and policies of Part 4 over-ride any inconsistent objectives policies and methods of implementation in other parts of the plan?” we answer “yes”.” But if we are asked whether the objectives and policies of Part 4 are comprehensive and replace other, generally consistent, but more specific objectives and policies for the Rural General zone we have to say “no, not necessarily”.

[21] For other specific reasons for that answer we refer to the following important paragraphs of the first Queenstown landscape decision which have not been referred to by Mr Goldsmith. The introductory paragraph to “Chapter 9: Objectives and Policies of the Plan (Landscapes)” of the first landscape decision states²⁸:

This is the appropriate point to remember that we are to achieve the integrated management of the effects of the use, development, protection of land in the district. That is particularly important in respect of such an uncertain and complex concept as landscape. Our conclusions below are a suite of interlinked policies which are connected to each other and to the existing district-wide policies in the revised plan that are unchallenged by references. The policies are stated in (roughly) greater degree of specificity, so specific policies over-ride general ones if they conflict: NZ Rail Ltd v Marlborough District Council.²⁹ For example in this case the later specific policy on ‘utilities’ over-rides an earlier one on ‘structures’. [our emphasis].

There are two important points to be taken from that paragraph:

- the suite of interlocked policies as to landscape in Part 4 relate to each other and the existing district-wide policies in Part 4 but not yet to other objectives and policies of the revised plan; and



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[2000] NZRMA 59 at para (126).
[1993] 2 NZRMA 449 at 460.

- the policies are expressly recorded as being written with the approach that specific later policies over-ride earlier general ones.

[22] Another relevant passage in the first landscape decision states³⁰:

*... While it is correct that large parts of the district are relatively open in that they are not covered by forest or towns it is important to recognize that situation is: (a) not completely natural – there has been considerable human influence first by Maori burning, and latterly and with more impact, by pastoral and other European practices;
(b) dynamic and changing.*

The evidence was that there are many more trees and much more conscious landscaping now than there were in the Wakatipu Basin 100 years ago. We conclude that open character is a quality that needs only be protected if it relates to important matters, otherwise it should be left to individual landowners (subject to not creating 'nuisances' or other unacceptable adverse effects to neighbours) to decide whether their land should be open or not. Of course in relation to s. 6(b) landscapes which are outstanding simply because they are open, there is little difficulty in establishing need for protection. Similarly s. 7(b) landscapes which are important because they give foregrounds to views of outstanding landscapes may also need protection.

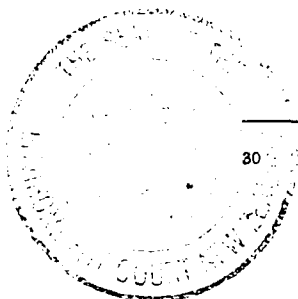
While the open character of outstanding natural landscapes can be justifiably maintained, we do not see that it is appropriate to maintain the open character of all other landscapes. They may after all be improved:

- *in an aesthetic sense by the addition of trees and vegetation; and/or*
- *in an ecological sense by the planting of native trees, shrubs, or grasses recreating an endemic habitat.*

We consider that the protection of open character of landscapes should be limited to areas of outstanding natural landscape and features (and rural scenic roads).

[23] The relevant points from that passage are:

- (1) That it is mainly concerned with the question as to whether the district's landscapes should be kept open, i.e. treeless.
- (2) The Court's conclusion was that except where there are important considerations to be taken into account, the decision should be left to individual landowners. However, that conclusion was subject to their not



[2000] NZRMA 59 at paragraphs (153) and (154).

creating “nuisances or other unacceptable adverse effects to neighbours” – with the implication that if there were to be unacceptable effects then objectives and policies to remedy that might be appropriate.

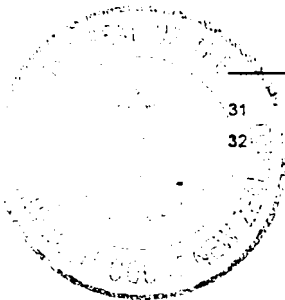
- (3) The conclusion about protection of the ‘open character’ of landscapes – that it should be limited to outstanding natural landscapes and features (and rural scenic roads) – does not preclude later specific conclusions about protecting certain other characteristics of landscape.
- (4) The passage suggests that if we had been asked to examine the objectives and policies of Part 5 of the revised plan under section 32 we may have come to different answers, since we appear to have more faith than the revised plan in market forces as a useful environmental control in many circumstances. However, the objectives and policies of Part 5 exist; they are not challenged by reference; in our view they are not inconsistent with the objectives and policies of Part 4 and nor are they subsumed by those objectives and policies. The rules in Part 5 have to achieve them.

[24] Then specifically in relation to ORL we continued³¹:

We are also concerned that having density limits for subdivision in the third category of rural area, at least in the centre of the Wakatipu basin, sends the wrong signals. This is because a minimum lot size is inherently wasteful and needs to be justified, and secondly such a policy removes choices for landowners for no apparent environmental gain. Further, the character of this kind of landscape can be largely protected by private property rights e.g. by not subdividing, or by imposing restrictive covenants in respect of landscaping, or against further subdivision. Covenants can internalise ‘nimby’³² reactions at the time of subdivision. In such cases there may be no need for policies (let alone rules) specifying how to manage land on landscape grounds. There may, of course, be other issues as to services or ecological factors justifying restraints on subdivision.

At the same time we are mindful of the amenities of neighbours who might consider the qualities of naturalness and peace which they enjoy are ruined by what is in effect urban development next door. That is our reason for earlier suggesting 50m buffer strips between these subdivisions and rural neighbours ...

[25] The conclusions about the third category of landscapes (ORL) are tentative:



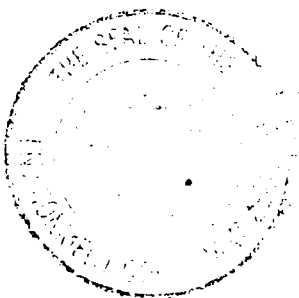
[2000] NZRMA 59 at para (158) to (159).
nimby = not in my back yard.

- it is clear that there might be no need for policies about landscape;
- we only considered Part 4 (district-wide) objectives and policies; and
- we recognised that there may be other restraints on subdivision on the grounds of effects on the amenities of neighbours.

For those specific reasons we consider that the district-wide objectives and policies in Part 4 of the revised plan are not conclusive as to landscape issues in the Rural General zone. There are some more general reasons as well. First, the objectives and policies of Part 5 are not subject to any reference. Secondly, we have to be careful to bear in mind that, in practice, the hearing conducted by the Environment Court (closer to a common law adversarial hearing than to an inquiry) tends to lead to a disjointed approach to proposed plans rather than an holistic one. For example in these references we approached Part 4 of the revised plan with no comprehensive analysis – by either the parties or the Court – as to how that part related to subsequent parts of the revised plan. Unlike the experts who draft proposed plans for local authorities as a whole, or, at least (sometimes) with a view to the relationship between parts of proposed plans, the Environment Court tends to have only separate parts in issue in any one set of proceedings. Drafting subordinate legislation by cross-examination and submission is a complex exercise because while not neglecting the important details raised by each contributor (witness and counsel) we need to attempt to make the resulting revised plan a coherent and approximately consistent document.

[26] For those reasons we hold that the objectives and policies of Part 5 of the plan are not limited by those in Part 4. They provide separate but related assistance like two guides to an explorer.

[27] Perhaps the most important practical point we can make about other rural landscapes (“ORL”) in this district is that an area has to be of sufficient size to include the qualities that enable it to be described as a “landscape”. The obvious area most likely to qualify as an ORL is part of the extensive Hawea Flats. If there is a sufficiently large area in that location which can not be readily seen into from a distance, especially if trees are planted in sufficiently thick strips along the boundaries, then it might be appropriate to allow considerable residential development – perhaps even urbanisation – within such an area. That was the reason for our suggestion of a new urbanisation



policy requiring 50 metre buffer strips along such areas in the first Queenstown landscape decision.³³ Returning to the Wakatipu Basin: the Domain Road triangle may or may not qualify as ORL – we have yet to determine that issue in a specific case. However any area that is smaller than that triangle would have difficulty in qualifying as an ORL or any type of landscape because it would be too small. As we have already stated it demonstrates an inadequate grasp of the amended *Pigeon Bay* criteria³⁴ to find small pieces of ORL included in a VAL or ONL.

[C] Landscape objectives and policies in Part 5 of the revised plan

[28] As we have stated there are no challenges (by references) to the objectives and policies of Part 5 of the revised plan. It follows that for practical purposes they must be observed³⁵. The only references relate to the rules in respect of residential development in the Rural General zone. We first turn to the objectives and policies of the zone which guide the rules. These include (relevantly)³⁶:

Objective 1 Character and Landscape Value

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

The relevant policies are to:

- ...1.3 *Ensure activities not based on the rural resources of the area occur only where the character of the rural area will not be adversely impacted.*
- ...1.6 *Avoid or mitigate adverse effects of development on the landscape values of the District.*

[29] Another important objective is³⁷:

Objective 3 – Rural Amenity

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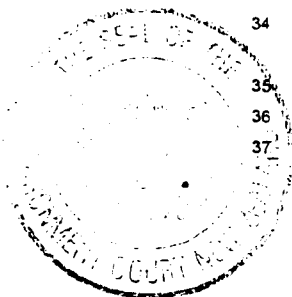
[2000] NZRMA 59 at para (156)(3).

Discussed in the first Queenstown landscape decision: [2000] NZRMA 59 at paras (72) to (80).

Section 84(1) of the RMA: although strictly this only applies to operative plans.

Revised plan page 5/3.

Revised plan p.5/4.



Avoiding remedying or mitigating adverse effects of activities on rural amenity:

The most relevant policies are to:³⁸

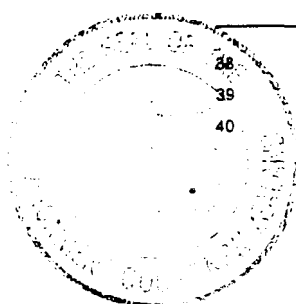
- ...3.2 *Ensure a wide range of rural land uses and land management practices can be undertaken in the rural areas without increased potential for the loss of rural amenity values.*
- ...3.3 *... avoid, remedy or mitigate adverse effects of activities located in rural areas.*

[30] The next question is whether those objectives and policies of Part 5 of the revised plan can justify some of the amendments sought by Mr Parker. Mr Goldsmith attacked the justification for those amendments in two ways. First, he submitted that all protection of landscape and visual amenity values is to be found in the objectives and policies of Part 4 of the revised plan and only there. We consider that approach is wrong for the reasons we have stated in Part [B] of this decision. Secondly, he submitted that the objectives and policies of Part 5 do not justify:³⁹

... the clear intention of [Mr Parker's] amendments to virtually preclude further rural residential living activities in the Rural General Zone ...

In our view that is a significant overstatement of Mr Parker's submission. Our understanding is that Mr Parker's clients wish to protect the rural character they enjoy.

[31] Mr Goldsmith's first argument is essentially that Mr Parker's and Mr Oxnevad's clients are already established on residential lots in the Rural General zone, so it is unfair for them to say that other landowners should not be allowed to subdivide and sell rural residential lots in the zone also. He may be right, but that is how the RMA often works⁴⁰. Indeed at other points in their argument during these hearings both Mr Goldsmith and Mr Todd argued that "first come, first served" was the correct approach. While that is the default position authorised by the RMA: *Fleetwing Farms Ltd v*



Revised plan p. 5/5.
W Goldsmith final submissions para 36.
Unless section 85 of the Act applies.

*Marlborough District Council*⁴¹ there is no reason in principle why that should always be the case, if a plan states otherwise for good reason.

[32] Further, at another point Mr Goldsmith seems to acknowledge that the earlier landowners have amenities to protect⁴²:

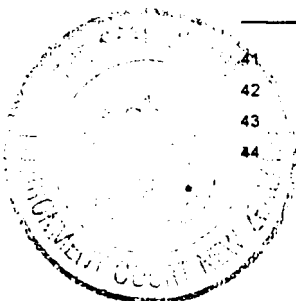
There can be little doubt that rural residential living occurs because of "the rural resources of the area", with particular reference to the availability of land or lots of a sufficient size to provide residents with the amenities which differentiate rural residential living from urban living.

We consider that retaining the rural amenities is one of the issues the assessment criteria need to deal with. That is a complex issue because it is not only the "availability of land or lots of a sufficient size" but also the lots' location, and how buildings and plantings relate to other land which needs to be controlled if the policies of Part 5 are to be implemented.

[33] Next Mr Goldsmith referred to Objective 1⁴³. He considered it is important that "character" and "landscape value" are separately identified. In order to do so Mr Goldsmith referred to the subsequent policies designed to achieve that objective. We do not think either of these two terms is used precisely, but instead that between them they contain (inter alia) rural amenity values. The terms "amenity" or "rural amenity" are not defined either. However the statement of issues in Part 5 gives some assistance. One issue is identified as "Protecting the Rural Amenity Values and states⁴⁴:

All Rural Zones have particular amenity and environmental values, which are important to rural people. These include privacy, rural outlook, spaciousness, ease of access, clean air and, at times, quietness...

Mr Parker relied on all those provisions to support his argument that even in ORL, residents are entitled to have their views and other visual amenities conserved.



[1997] NZRMA 385 at 393 [1997] 3 NZLR 257 at 267 (CA).

W Goldsmith final submissions para 35.

5.2 Objectives and Policies Obj 1 [Revised plan p.5/3] (quoted in para [28] above).

Paragraph 5.1(iii) [Revised plan p.5/1].

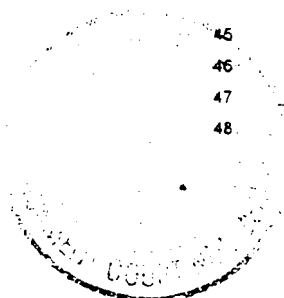
[34] Objective 3 is to avoid, remedy or mitigate adverse effects on rural amenity⁴⁵ and there is a similar policy⁴⁶. Mr Goldsmith fairly complained that this is of little help because it fails to identify the adverse effects it is aimed at. However he also submitted that it must link back to Part 4 of the revised plan. Again we see no need for such a restricted tie back. The correct approach was, with respect, stated by the Court of Appeal in *J Rattray & Son Ltd v Christchurch City Council*:⁴⁷

The ordinances applicable to a particular zone are simply one segment of what must be regarded as a living and coherent social document. It is certainly true that the particular ordinances will have been designed to meet particular planning objectives for the very zone, but in a practical sense their successful operation will depend upon their interaction with the intended scope and application of kindred ordinances designed to meet the purposes and objectives associated with other zones.

As the second sentence in that passage anticipates, the rules in Part 5 will have been designed in part to meet the particular resource management objectives for the rural general zone.

[35] The third general attack by Mr Goldsmith on the “private view” and “open space” amendments to the criteria suggested by Mr Parker was based on the scheme of the Act: he submitted that even if we concluded, against his submissions on Parts 4 and 5 of the revised plan, that the amendments could be included, then we should next consider whether they should be, and decide against that. Mr Goldsmith accepted, for the purpose of this argument, that:

*... private views are a legitimate aspect of amenity values, to be evaluated along with other factors such as sunlight, privacy, and wind effects when setting ... controls in a district plan: **Foot and Others v Wellington City Council**⁴⁸.*



⁴⁵ 5.2 Objectives and policies Objective 3 [Revised plan p.5/4].

⁴⁶ 5.2 Objectives and policies Policy 3.3 [Revised plan p.5/5].

⁴⁷ 10 NZTPA 59 at 61.

⁴⁸ W73/98 at para 125. To similar effect he referred to *Chen v Christchurch City Council* C102/97; *Duncan v Wanganui City Council* (1993) 2 NZRMA 101.

Next he referred to *Shell Oil NZ Ltd v Wellington City Council*⁴⁹. That case involved the proposed construction of a modern service station in a residential neighbourhood which would have been overlooked by some 20 or 30 residents. The Planning Tribunal considered that the visual impact of the service station as an out of zone activity in a residential neighbourhood – taking into account the range of effects associated with a service station, particularly including the brightly lit, all night “advertising” nature of a modern service station – would be a relevant factor when considering adverse effects on residential amenities. One of the factors which counted against consent being granted in that case was the major potential impact of that out of zone activity on the residential amenities of the neighbourhood.

[36] Mr Goldsmith then submitted:⁵⁰

... that the following conclusions can be taken from the above cases:

- a. There are circumstances where the issue of private views is relevant to consideration of amenity values.*
- b. This is certainly the case when a breach of height limits causes obstruction or interference with private views and in circumstances such as the service station situation in Shell Oil where an anomalous, out of zone activity with concomitant significant visual impacts has the potential to cause a “blot on the landscape” type effect on a neighbourhood.*
- c. The situations such as those described above can properly and adequately be dealt with in the course of the section 104(1)(a) consideration of “Any actual and potential effects on the environment of allowing the activity” which is in part of the consideration of any discretionary or non-complying consent application.*
- d. It is not necessary to draft special assessment matters to enable such issues to be considered when situations arise which are analogous to the factual situations in those cases.*

[37] He appeared to think that the references were not concerned with “blots on the landscape”. We will consider that aspect shortly. However we first need to state that

we do not accept (c) and (d) in the previous paragraph. The fact-finding under section 104(1)(a) is simply that: no conclusions can be drawn from a consent authority's analysis of effects under section 104(1)(a) as to whether resource consent will be granted. So that analysis takes place (nearly) regardless of what matters are contained in any statutory instrument that are considered under section 104(c) of the Act. We qualify that by noting that if a particular class of effects is identified in any statutory instrument or is an effect on a matter identified in Part II of the Act, then it may receive special analysis as being obviously (without further proof but subject to contrary evidence) relevant when it comes to making a decision.⁵¹ Further the esoteric doctrine known as 'the permitted baseline test'⁵² also requires consideration of statutory instruments.⁵³

[38] We have pointed out that there are a number of places in Mr Goldsmith's submissions where, with respect to his careful analysis, we consider he is over-reacting somewhat to Mr Parker's submissions. There is a good example in this argument. Mr Goldsmith submits that we should:⁵⁴

... consider the practical consequences of the implementation of these three Major Proposed Amendments by considering the basic proposition of an application for consent to subdivide or develop land in an ORL area which attracts opposition from individual submitters concerned about the effect of that subdivision or development upon views from their private properties – that adverse effect being variously described as an adverse visual effect and/or an adverse effect on visual amenity and/or an adverse effect on character of the rural area. For the purposes of this exercise it should be assumed that the concerns expressed are not adjoining neighbour concerns (such as interference or obstruction of a view) but "view from a distance" concerns about changes to the character of a landscape.

Our concern is as to why it should be assumed that the concerns expressed are not those of adjoining neighbours, or even middle distance neighbours. These are precisely the sorts of concerns we consider do need to be addressed. We have always understood Mr Parker's clients to be concerned with (inter alia) their views down onto the flats of the Domain Road triangle. Similarly, Mr Oxnevad's Dalefield clients are concerned (inter

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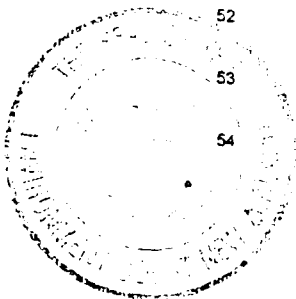
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Under s.105(1) of the RMA.

Described as such in **Barrett v Wellington City Council and Others** [2000] NZRMA 481 (HC) and discussed in many other cases.

See the discussion by Mr John Milligan in Butterworths Resource Management Bulletin Vol 4 (March 2001) p.13.

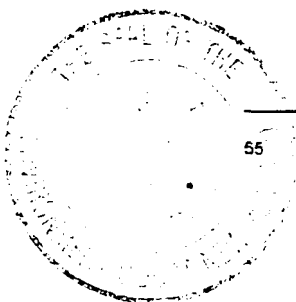
W Goldsmith final submissions para 51.



alia) with what they see as over-domestication of the flats along Littles Road. Neither is necessarily a distant view.

[39] There is one important final matter on Part 5's objectives and policies. Mr Goldsmith has concentrated on opposing the addition of criteria assessment for development sited in the ORL. He appears to overlook that Mr Parker's and Mr Oxnevad's clients have similar concerns with the VAL. We consider similar relief for VAL is justified by the Part 5 objectives and policies. In fact Mr Goldsmith raised⁵⁵ the potential inconsistency between the VAL and ORL assessment criteria if we accepted Mr Parker's amendments for ORL, the inconsistency being that there might then be tougher assessment matters in the ORL than in the VAL. We realise we are resolving the distinction in the opposite way to that sought by Mr Goldsmith's clients, but in our view that is the only approach consistent with the objectives and policies of Part 5. Further it is consistent with the thrust of Mr Parker's submissions at the resumed hearing, which, on this issue we accept. Given the objectives and policies in Part 5 there has been (relatively) undue emphasis on views from areas "frequented by the public" and insufficient on private views.

[40] In our view the assessment criteria for both VAL and ORL should be redrafted so as to allow the Council to consider the effects on immediate or middle distance neighbours of proposals for development. In coming to that conclusion we are not accepting "the open space amendment" in its entirety. Residents in the Rural General zone are not entitled to have open space (which their own houses may detract from) all around them. In a VAL or ORL, a resident should not be able to insist on a neighbouring landowner retaining the whole of his pasture in a sward. However residents are, according to the policies of both parts 4 and 5 entitled to have rural amenities which include naturalness (if not open-ness) and exclude over-domestication and urbanisation. Questions about what is an inappropriate density are always relevant. Planting of trees, and siting of buildings are also therefore relevant factors for the Council, as consent authority, to consider. We should note that there are outstanding issues raised in these references, relating to tree planting and shelterbelts, which we have



yet to decide. Subject to what we determine then, in appropriate cases a developer may even need to keep view shafts open in VAL and/or ORL.

[D] The nature of discretionary activities

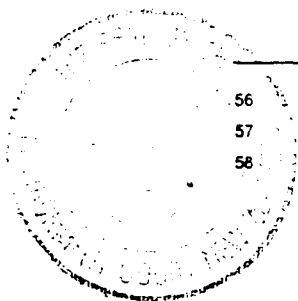
[41] The nature of discretionary activities was discussed in the interim decision. It is an important issue because only if we can be sure that the revised plan properly applies the term can we grant the relief sought by the Lakes District Rural Landowners Society Inc, rather than retain all subdivision and residential use as non-complying activities (below certain areal limits). The term “discretionary activity” is defined in section 2 of the RMA as meaning an activity:

- (a) Which is provided for, as a discretionary activity, by a rule in a plan or proposed plan; and
- (b) Which is allowed only if a resource consent is obtained in respect of that activity; and
- (c) Which may have standards and terms specified in a plan or proposed plan; and
- (d) In respect of which the consent authority may restrict the exercise of its discretion to those matters specified in a plan or proposed plan for that activity;

It is important to observe that the definition is formal not substantive: it contains no prescription as to when or why an activity might be defined as discretionary in a plan or how often it is anticipated that discretionary activities may be granted resource consent.

[42] In the section of Part I of the revised plan which describes the legal framework⁵⁶, the plan first explains that activities are classified according to their status under the Act as permitted, controlled, discretionary, non-complying or prohibited⁵⁷. It then describes the rationale for classifying activities as “discretionary” as being that⁵⁸:

Activities have been afforded such status where there is a potential that they may not be suitable in all locations in a zone; or where the effects of the activity on the environment are so variable that it is not possible to prescribe appropriate standards to cover all circumstances in advance of an application. Alternatively, activities may be listed as permitted activities but cannot meet all the site



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Part I, section 1.5 [p.1/2].

Part I, section 1.5.3 Status of activities [p.1/3].

Part I, section 1.5.3(iii) [p.1/3].

standards for that zone, in which case they shall be discretionary activities only in respect of those matters of non-compliance.

[43] It appears that there are three reasons for classifying activities as discretionary. The first contains the idea that an activity may be appropriately discretionary where it is not suitable in all locations in a zone. That is an appropriate reason to classify an activity as discretionary. The concept appears to derive from the “conditional use” of the Town and Country Planning Act 1997 which was held by the High Court in *Fletcher Forest Ltd v Taumarunui County Council*⁵⁹ to be a use appropriate in principle in the particular zone but also requiring consideration of the particular site. The second category of “discretionary activity” in the revised plan is where the effects of the activity are so variable that it is not possible to prescribe standards to control them in advance. The third category is where an activity defaults to discretionary because it cannot meet all the site standards for a permitted activity. Again those appear to be unexceptionable and common reasons for classifying activities as discretionary.

[44] However we consider that the three reasons are not exhaustive. We raised this issue in the interim decision⁶⁰ where we suggested that it might be useful to define a “special discretionary activity”. Some parties liked that suggestion; others did not. However on further reflection we consider the definition of “discretionary activity” can and should be left as it is in the RMA. All that is necessary is for the reasons for classifying activities to be categorised as discretionary to be complemented by the addition⁶¹ of other reasons for the status – being where activities are not suitable in most locations in a zone or part of a zone but may be suitable in a few locations. That covers the situation, for example, where someone seeks to build and use a house in an outstanding natural landscape. Mr Marquet suggested that the definition be changed to read:

DISCRETIONARY

Means a discretionary activity within the definition of section 2 of the RMA but further amplified to recognise that within the Rural General zone:

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11 NZTPA 233 (HC) at p.238.

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Decision C186/2000 at para [23].

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To section 1.5.3(iii) [revised plan p.1/3].

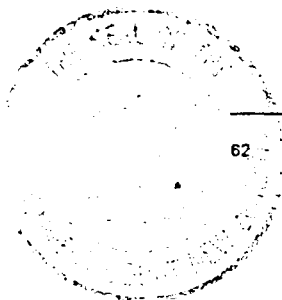
- (a) *in outstanding natural landscapes and features the relevant activities are inappropriate in many locations in the zone, particularly the Wakatipu Basin; and*
- (b) *in visual amenity landscapes the Council has full discretionary power to grant or refuse any application.*

For the reasons we have just given it is neither necessary nor appropriate to define “discretionary activity” in a different way to the definition in the RMA.

[45] We do not consider that Mr Marquet’s subsequent explanations for conferring discretionary status are appropriate either because they unnecessarily weaken the effect of the objectives and policies of Part 4 and Part 5 of the revised plan. In our view the appropriate change is to add to the second sentence of clause 1.5.3(iii)⁶² of the revised plan, the words:

.... or because in or on outstanding natural landscapes and features the relevant activities are inappropriate in almost all locations within the zone, particularly within the Wakatipu basin or in the inner Upper Clutha area; or because in visual amenity landscapes the relevant activities are inappropriate in many locations; or because in other rural landscapes the relevant activities may be inappropriate because the amenities of neighbours will be significantly affected.

[46] There is no reference seeking such a change, but since all residential activity in the Rural General zone could not be discretionary without the change we consider that we have jurisdiction to make the change using the Council’s powers under Clause 10 of the First Schedule to the Act, or possibly our own under section 293(1) of the RMA. If the change cannot be made then residential activity (and subdivisions) in the Rural General zone could not be discretionary because the other reasons for classifying “discretionary activity” in the revised plan are inappropriate.



[E] *The density of development*

[47] One of the most difficult issues to determine is how to prevent residential development in the VAL and/or ORL becoming gradually so dense that the Wakatipu Basin loses its rural character. The Court suggested some tests for this at paragraph [40] of its interim decision⁶³. They have been received with less than enthusiasm by all parties except WESI. Certainly we can see that considerable extra work is imposed on the Council and/or the applicant to determine that there are no more suitable sites within the locality, but there may be ways to reduce that problem. The complexity of the issue is reinforced by the fact that perceptions of density depend, at least in part, on the scale of the particular landscape being considered. We accept Mr Lawrence's submissions and his proposed amendment to Part 5 which adds an assessment criterion⁶⁴ about that.

[48] In answer to the important question of 'how much residential development?'⁶⁵ various parties proposed a density criterion as follows:

- (v) *the extent to which the development (including existing development) maintains as a minimum a proportion of natural and arcadian pastoral landscape that is consistent with the proportions in the following table:*

<i>Size of site within VAL (as at 1 October 2000)</i>	<i>Minimum percentage of land to be retained as natural/arcadian pastoral</i>
<i>0 – 4 hectares</i>	<i>80 percent</i>
<i>4 – 20 hectares</i>	<i>85 percent 80% for a 4 hectare site rising progressively and proportionately to 85% 90% for a 20 hectare site</i>
<i>above 20 hectares</i>	<i>90-85 90 percent</i>

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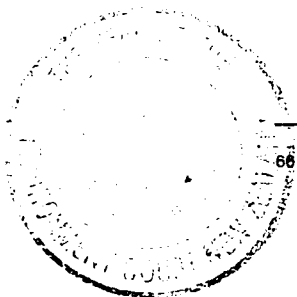
Decision C186/2000.
Schedule A page 30.
Discussed in section [D] of the interim decision.

Various parties tinkered with the percentages for initial land holdings of over 4 hectares. In our view the whole schedule is the wrong approach. To put it in perspective a house of 120m² on a 600m² section leaves 20% of the section built on. By analogy, building coverage to 20% in the Rural General zone is not a credible rural landscape. In our view the percentages in the proposed schedule are out by (at least) an order of magnitude. The figures in the schedule are (taken alone) a major distortion of what the Court was trying to achieve in its interim decision as the proper way of implementing the relevant objectives and policies. Admittedly, the other criteria would have to be applied and they would presumably have some mitigating influence, but we find the schedule would not be useful.

[49] Further we heard considerable evidence and comprehensive submissions as to the dangers of minimum figures in the context of the “minimum lot size” debate discussed in section [B] of the interim decision as reasons for eschewing non-complying activities as a method of achieving sustainable management of the Rural General landscape. It is therefore, in our view, inappropriate to reintroduce the technique as a criterion for discretionary activities.

[50] In the interim decision we suggested criteria that read⁶⁶:

- (1) *A proposed subdivision and development shall include a development area comprising a circle of 100m radius within which 1 to 10 buildings may be erected.*
- (2) *If a proposed subdivision and development is not clustered inside existing development, then on any application for resource consent, the suitability of all possible sites (in respect of all the assessment criteria) within a 1.1 km [450 metres] radius should be taken into account, whether or not:*
 - (a) *subdivision and/or development is contemplated on those sites;*
 - (b) *the relevant land is within the applicant's ownership.*



⁶⁶ Interim decision (C186/2000) para [40]).

[51] The radius within which other possible sites were to be considered was 1,100 metres for “outer” VAL and 450m for the “inner” VAL as identified in that decision. The rationale behind those tests was to ensure that the Council could always consider cumulative effects. Sometimes the Council might consider that “first in, first served” was the best method. If a development was allowed, and a neighbour subsequently applied for residential subdivision and use, then the later development might be precluded by the earlier. But, in other cases there might be other sites for which there was no current proposal, but which might be so much better in terms of retaining the natural character of the landscape that the initial development should not proceed.

[52] We consider that the practical problems can be sufficiently met by combining and altering the proposed criteria in the interim decision (and deleting references to “development areas” and substituting “residential building platforms”⁶⁷) so that the assessment matter for VAL would read:

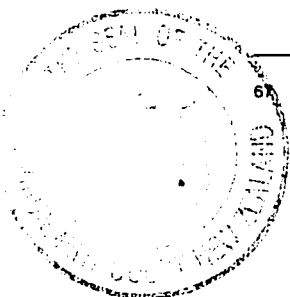
If a proposed residential building platform is not located inside existing development (being two or more houses each not more than 50 metres from the nearest point of the residential building platform) then on any application for resource consent and subject to all the other criteria, the suitability of all possible sites:

(a) within a 500 metre radius of the centre of the building platform, whether or not:

(i) subdivision and/or development is contemplated on those sites;

(ii) the relevant land is within the applicant’s ownership; and

(b) within a 1,100 metre radius of the centre of the building platform if any owner or occupier of land within that area wishes possible



This term is used in Rule 15.2.6.2 of the revised plan [pp15/17 to 15/18] to describe an area: “approved at the time of subdivision of not less than 70m² in area and not greater than 1000m² in area”. It should be defined in the Definitions section.

future development on that alternative site(s) to be taken into account as a significant improvement on the proposal being considered by the Council

- *must be taken into account.*

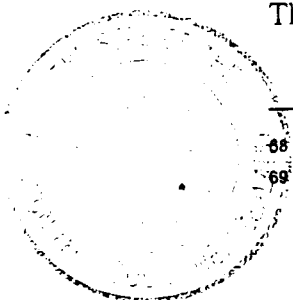
[53] We have considered whether such an assessment matter should apply for a proposed development in other rural landscapes. On balance we think not, because one of the defining characteristics of ORL is “sameness” – most often found on flat land – where one site cannot be distinguished from another in any significant way from a landscape perspective. However, we are aware that while we have considered why rural amenities should be protected in ORL in considerable detail in sections [B] and [C] of this decision, we have not given so much thought as to how they can be protected. Various changes are made to the assessment criteria – see Schedule A Rule 5.4.2.2(4).

[F] Other issues

The use of assessment criteria

[54] In the interim decision⁶⁸ the Court discussed but did not finally determine whether the assessment matters should be guidelines or tests (standards). Some parties (the Council and Mr Todd’s clients) suggested the former; WESI suggested the latter, and referred to the interim decision⁶⁹ where we quoted at some length from the evidence of Mr J A Brown. However, Mr Goldsmith was quite correct in his oral submissions that Mr Brown’s discussion of assessment criteria as a test relates to ONL (WB) not to ONL generally, nor to VAL.

[55] We consider that neither the “test” nor the “guidelines” approach is automatically correct as a matter of law - although criteria as guidelines seem to be more common in practice. Assessment criteria may be tests (involving a subjective decision by the consent authority as to whether the standard is met) or they may be guidelines. The difference appears to be how damaging failure is to an application: failure to meet



⁶⁸ C186/2000.
⁶⁹ C186/2000 at paragraphs [28] and [29].

an assessment criterion which is a test/standard may make an application non-complying whereas not meeting a guideline is simply one factor among many to be considered by the consent authority in making a decision.

[56] In our view both approaches are useful in this case. We accept Mr Brown's evidence and identify most of the criteria for the ONL (WB) as tests. We retain the others as guidelines. Those criteria intended as tests use an introductory formula like "the Council must be satisfied that ..."; whereas the criteria intended as guidelines tend to be worded "The Council shall take into account whether, and if so, the extent ..."

[57] For the other categories of landscape (ONL generally, VAL and ORL) the assessment criteria will be guidelines only, for the following reasons. Mr Goldsmith submitted that⁷⁰:

- a. *In three places in the VAL Assessment Matters ... [Mr] Parker['s] submissions propose replacing the word "whether" with the words "and be satisfied that" combined with replacing the words "will be avoided, remedied and mitigated" with the words "will not be adverse and will be minor". This major proposed amendment is referred to below as the "Non-complying Amendment".*
- b. *The significance of the Non-complying Amendment is that it effectively elevates the "threshold" established by the VAL Assessment Matters as a whole from a broadly discretionary threshold up to a threshold which is equivalent to the (virtually) non-complying threshold found in the ONL-WB Assessment Matters.*

We agree in part with Mr Goldsmith. To make every assessment matter a test about which the Council has to be satisfied overstates the way the criteria are generally intended to apply. We accept that we have to bear some responsibility for that because we raised the issue of assessment criteria as tests in the interim decision. However, there may be applications for resource consent where due to the unique circumstances of a site, one or two adverse effects, when assessed against the relative criteria, are more

than minor. Despite that they may be outweighed, when the Council exercises its discretion⁷¹, by positive assessments in respect of all the other assessment criteria.

[58] Against that point, we can understand Mr Parker's and Mr Lawrence's concern that some sort of compliance with perhaps only 50% of the assessment criteria will be regarded as sufficient on which to grant discretionary consent. We consider that the safeguards against that approach are to be found elsewhere, including:

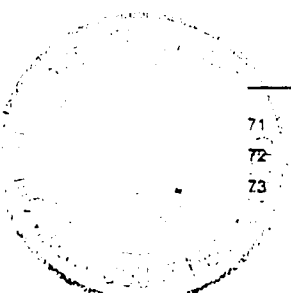
- (a) in the amended statement of the reasons for making residential subdivision and development discretionary; and
- (b) in the criterion as to cumulative development in the VAL.

[59] At this point we should record that we agree with Mr Todd that our proposed method in the interim decision⁷² of applying an assessment criterion that adverse effects had to be non-existent or minimal was wrong as a matter of law. However, this concession should not be regarded as justifying significant adverse effects (singly or cumulatively) on the district's landscapes. "Minor" is, after all, a relative word.

Clustering

[60] The interim decision proposed the concept of clustering within development areas⁷³. The idea behind this – discussed at the hearing but omitted from the interim decision – is as follows.

- If
- (a) there is limited scope for development within the VAL (and possibly within the ORL) and
 - (b) there are some suitable locations for "rural" residential development (which meet all or almost all of) the relevant assessment criteria –
- then (c) while accepting that the current market seems to be for larger residential allotments (more than 1,000m² and up to several hectares)



⁷¹ Under section 105(1)(b) of the RMA.
⁷² Decision C186/2000: Schedule at p.8/24.
⁷³ Decision C186/2000 at para [40].

- (d) it would be prudent to enable developers to place more than one residence in any suitable footprint within a development area, provided:
- (e) maximum use of the residential footprint in the rural landscape could be achieved (if the developer or subsequent landowner so wished).

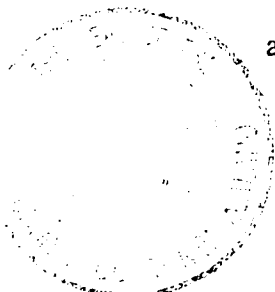
[61] The concept of clustering was not sought in any reference. However it is not opposed in principle by any party. As usual the difficulty is in the details especially whether:

- (a) there should be a density limit for adjacent clusters;
- (b) there should be a limit on the maximum number of residences within a development area;
- (c) the maximum size and shape of any development area.

Further Mr Parker has objected to the addition of policies concerning clustering as being *ultra vires*.

[62] We have contemplated whether it would be appropriate to use section 293 of the RMA of our own motion in respect of clustering techniques. We do not do so at this stage, since we regard it as more important to finalise this decision and the resulting rules for what has been sought by the parties. However we do not preclude such an application by any party under section 293 because the grounds appear to be made out to include clustering as a technique to increase residential density within a "development area". Alternatively the Council might consider this a topic on which a plan change might be desirable after the revised plan becomes operative.

[63] In the meantime we have deleted all references to clustering in the rules for Parts 5 and 15 of the revised plan. We emphasize that is not because we are losing confidence in the idea. In the long term such a technique might be the only way to increase residential density in the Wakatipu Basin without completely destroying the openness and naturalness for which its landscapes are valued.



Special Zones

[64] Issues have been raised concerning three special zones:

- the Bendemeer Special Zone;
- the Ski Area Sub-zones; and
- the Gibbston Character Zone.

As far as the first is concerned the only reference on that zone has been resolved by the record of determination in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*⁷⁴. Mr Todd raised the issue as to whether the landscape assessment criteria for the Rural General zone should apply to the Bendemeer Special Zone, and submitted they should not. In his reply dated 14 February 2001 Mr Marquet did not refer to the issue. Consequently we consider that, at first sight, nothing in that zone's objectives, policies or methods of implementation should be affected by the landscape criteria. Subject to the leave reserved below we hold that all reference to the Bendemeer Special Zone in the landscape criteria should be omitted in Parts 5 and 15 of the revised plan.

[65] As for the Ski Area Sub-zones, various amendments have been agreed to by the relevant parties. We agree with Mr Todd's unopposed submissions⁷⁵ as to the appropriate changes. They are listed in Schedule B to this decision.

[66] Finally it appears to be contemplated by Mr Marquet's Schedule G (the basis of our Schedule A) that the objectives and policies and rules that apply to the Rural General zone (and the Ski Area Sub-zone) are not to apply to the Gibbston Character Zone. If that is the case, then the separate provisions in Part 5 will need to be isolated and melded with any changed objectives, policies and rules that result from the references relating to the Gibbston Valley (including references on Part 4 of the revised plan which have not been resolved for that area).

[G] Part 15: Subdivision

[67] We turn now to consider the revised plan's provisions as to subdivision in the Rural General and other zones. Since Part 15 needs to work in harmony with Part 5 (and vice versa⁷⁶) its assessment criteria should broadly mirror those in Part 5 since we have worked primarily on those. We have not made the necessary changes ourselves since we consider the Council can do that following the model in the revised Part 5 as amended by this decision⁷⁷.

[68] There are several specific subdivision issues:

- whether the identification of special types of activity as “controlled subdivision activity”, “discretionary subdivision activity” is appropriate;
- whether heritage rules should be included;
- whether subdivision should be treated separately (at least partly) for the Bendemeer Special and Gibbston Character Zones;
- a raft of questions about “building platforms” being approved on subdivision.

[69] First it seems to us that it is unnecessary and potentially confusing to describe any activity which requires a subdivision consent as a “controlled subdivision activity”, “discretionary subdivision activity” etc as the case may be. We consider it is desirable that the word “subdivision” should be omitted from all categorisations of activities as controlled, discretionary, or non-complying so that the definitions in section 2 of the RMA are directly applicable.

[70] Secondly, in his further proposed changes to Mr Marquet's Schedule H (changes to Part 15) Mr Goldsmith deleted a number of references to heritage items as repetitive. We agree with Mr Marquet that Mr Goldsmith has overlooked that these assessment matters relate to other zones than just the Rural General zone. Accordingly the Council is correct that the heritage rules must be included.

⁷⁶
⁷⁷

See Part [C] of the interim decision: C186/2000.
See Schedule A.

[71] Thirdly, the settled position of subdivision in the Bendemeer and Gibbston Character zones should be maintained.

Building Platforms

[72] The list of proposed discretionary activities in the Rural General and Gibbston character zones states⁷⁸ that:

- (a) *Any subdivision which complies with all the Zone Subdivision Standards shall be a **Discretionary Subdivision Activity**;*
- (b) *The identification of any building platform (at the time of subdivision) shall be a **Discretionary Subdivision Activity**.*
- (c) *Any subdivision which would not create any lot (including balance title) smaller than 40 hectares and which is a discretionary activity under rule 15.2.6.3.iii(b) (no building platform specified and application states that there is no expectation of building) shall be deemed to be a limited discretionary activity for the purposes of rule 15.2.2.6 (non-notification of applications).*

[73] The categorisation of subdivision as a discretionary activity in (a) is straightforward. However we have three problems with (b) – the concept of building platforms being approved on an application for subdivision consent. By contrast, the proposed rule in the revised plan, from which this appears to derive, imposed a Zone Subdivision Standard (and failure to meet the standard entailed that the application was non-complying) as follows:⁷⁹

(iii) *Building Platforms – Rural-General, rural Lifestyle, Gibbston Character and Bendemeer ... Zones*

78

Mr Marquet's Schedule H rule 15.2.3.3(iv): this melds the revised plan's rule 15.2.3.3[p.15/8] and 15.2.6.3(iii) [p.15/17].

79

Rule 15.2.6.3(iii) [Revised plan p.15/17].

Every allotment created shall have one Residential Building Platform approved at the time of subdivision of not less than 70m² in area and not greater than ... area, excluding lots ... in the Rural General Zone.

[74] Category (b) of discretionary activity is curious, but we think justifiable (if not a precedent to be followed) because section 220(1) provides that a consent authority may, as a condition of subdivision consent impose:

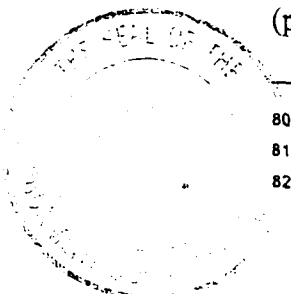
A condition that any allotment be subject to a requirement as to the ... location ... of any structure on the allotments:

To show the link between that statutory authority and the category of subdivision consent we consider that the word “identification” in Rule 15.2.3.3(b) should be changed to “location”.

[75] Secondly, without any justification by submission or reference that we can find, the need for a residential building platform to be identified as a standard, has become a separate subdivision activity without any reference to “residential”. We consider that change is ultra vires and the wording should revert to “residential building platform”.

[76] Thirdly, and this is more substantive, there is an anomaly in the residential building platform (RBP) concept. If someone applies under the rules in Part 15 to have one or more RBPs in any rural area then that is considered without reference to matters of house appearance or design. That is because those are irrelevant matters for subdivision consents: *Brookes v Queenstown Lakes District Council*⁸⁰; *Darrington v Waitakerere City Council*⁸¹. The consent authority’s jurisdiction is confined to such matters as location of the building platform and the height of any structure on it.⁸²

[77] When the owner of land containing an approved residential building platform (presumably shown on a subdivision plan) applies to the Council for a land use consent



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81
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C81/94.
W68/96.
Section 220(1)(c) of the RMA.

under Part 5 of the revised plan to construct a dwelling on the RBP then that is treated as a **controlled** activity with the consent authority's discretion limited to⁸³:

- (a) ...
- (b) *The construction of any new building contained within a residential building platform approved by resource consent; in respect of:*
 - (i) *external appearance;*
 - (ii) *associated earthworks, access and landscaping;*
 - (iii) *provision of water supply, sewage treatment and disposal, electricity and telecommunication services.*

[78] However, if a person applies for land use consent to erect a dwelling on land which does not contain a RBP then the question of external appearance is a broad discretionary issue to which the assessment matters apply⁸⁴ and on which other persons may make submissions. It seems to us that that scrutiny can be avoided if the RBP route is followed because then no public notification is required.

[79] In our view the issue should be addressed by making building on a RBP a discretionary activity but it appears we have no jurisdiction to do so under any submission and reference. However, since at first sight a case is made out for change we consider this is a case where we might consider amending the problem under section 293 of the RMA. We will give directions on that issue.

Large lot subdivision

[80] Mr Goldsmith submitted that the purpose of the proposed addition of discretionary activity (c) – quoted in paragraph [72] above - is to address the issue of large lot farming subdivision where no building platform is proposed. This situation particularly arises upon tenure review where a subdivision application is necessary to create a new freehold title. Mr Marquet argued large lot subdivision was ultra vires

⁸³

Rule 5.3.3.2.

⁸⁴

Rule 5.3.6 as amended by this decision – see Schedule A.

because it fettered the Council's discretion in respect of notification of applications. We do not agree: the exception in section 94(5) contemplates that a plan may expressly provide for applications not to be notified. We accept therefore that proposed rule is within the Council's powers and falls within the boundaries of the first appellants' reference.

[81] However the 'large-lot' subdivision down to 40 hectares – in reality not so large – is in our view a short-term solution. While applications for subdivision will need to state that no building is proposed, that information will disappear from most consciousness after the subdivision is approved and new certificates of title are issued. Nothing on that title (whether a piece of paper or a computer screen) will show that no buildings were once contemplated, so that a purchaser will take without notice of that fact. Further, no conditions may be imposed on a subdivision consent limiting the use of land: *Robinson v Ashburton District Council*⁸⁵. We can imagine the pressure that the consent authority may later be put under to approve applications under Part 4 for buildings – residential or otherwise. Since no further pressure for residential development is desirable we consider this addition is inappropriate and should not be made.

[H] Outcome and Directions

[82] One unresolved issue is as to whether the rules we are concerned with in Parts 5 and 15 of the revised plan should apply across the district. It may appear odd that that issue even arises, but the difficulty arose in this way. In its first Queenstown landscape decision⁸⁶ the Environment Court made no findings as to the quality of the landscape of those parts of the district which are north of the catchment of Lake Wakatipu. The Court held it had insufficient evidence to decide whether the district-wide objectives and policies it was considering (in Part 4 of the revised plan) should apply outside of the Lake Wakatipu catchment. The question whether there should be different objectives and policies has subsequently been resolved. When the Court held a pre-hearing conference in Wanaka earlier in 2001 in relation to Part 4 – in particular the district-

⁸⁵

W92/94.

⁸⁶

[2000] NZRMA 59.

wide objectives and policies the subject of the Queenstown landscape decisions - it directed⁸⁷ that any party or interested person who wished to argue for different objectives and policies should file and serve a memorandum to that effect by 2 March 2001. No memoranda were filed, and no issue was raised at a subsequent judicial conference on Monday 19 March 2001. Consequently it is now settled that the landscape objectives and policies of Part 4 apply through the district, but the position is not so clear in respect of implementing methods.

[83] There are some outstanding general issues in relation to Part 4 of the revised plan on which the Court is about to issue a memorandum prior to a further judicial conference. The questions include:

- (a) Whether there is a category of landscape – loosely centred on Wanaka township and called “the Inner Upper Clutha Area” – which should be identified by the Environment Court and treated the same way as the Outstanding Natural Landscapes of the Wakatipu Basin;
- (b) Whether there is any point in the Court identifying the other rural landscapes (ORL) in the Lakes Wanaka and Hawea catchments; and
- (c) Whether the rules of Parts 5 and 15 should apply to those catchments.

[84] The issues in (a) and (b) (possibly) are to be the subject of further hearings by this Court. The issue in (c) is not yet formally resolved. However in our view there are considerable difficulties in the way of any party or interested person who wishes to argue that there should be different rules in Parts 5 and 15 of the revised plan relating to the Lakes Hawea and Wanaka catchments. First the two persons who might have wished to argue about the rules are in fact parties to, or interested persons in, this proceeding – the Lakes District Rural Landowners Society Inc and the Upper Clutha Environmental Society Inc. Further, since the objectives and policies of Part 4 are now of general application across the district, it would be anomalous to have different rules implementing the same objectives and policies. So the rules we are settling in the orders below are likely to apply in the Rural General zone across the whole district, although we reserve leave for anyone to file and serve a memorandum on this point (and setting

out reasons why the matters above should not prevail) within 15 working days of issue of this decision.

[85] Under section 290 of the Act and under clause 15 of the First Schedule to the Act we direct the Council to modify its revised plan to the extent set out below. Consequential amendments are made under clause 10 of the First Schedule. We make the following orders (subject to paragraphs [86] to [88]):

Part 1 of the revised plan

Pursuant to clauses 10 and/or 15 of the First Schedule to the Act we direct the Council to amend Part I of the revised plan as follows:

- (1) The description in paragraph 1.4 of the revised plan as to the techniques used by the Council shall be amended as follows:

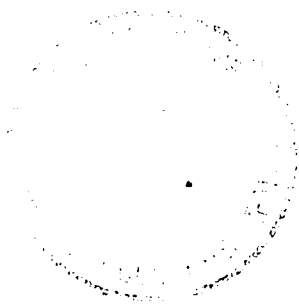
1.4 Zoning, ~~and~~ Standards and Guidelines

The Council has adopted through its District Plan a zoning technique based on standards and guidelines to avoid, remedy or mitigate ~~and reduce the potential~~ adverse ~~impacts~~ effects of activities and to achieve the Plan's objectives and policies.

The District Plan adopts a two-tier system of standards in each zone.

Site Standards are specified in relation to matters which tend to impact on the use of the particular site or adjacent areas. While these standards are important, they are not considered fundamental to the integrity of an area as a whole and so are specified in a way that if development does not comply with these standards the Council will consider the matter of non-compliance by way of a resource consent for a discretionary activity. This enables the Council to consider the implications of non-compliance on the use and enjoyment of the site involved and on neighbouring sites.

Zone Standards are standards which are fundamental to environmental standards or character which are to be attained for a zone or area. Because of their importance all activities which fail to meet these standards are non-complying activities which face a more rigorous assessment if they are to obtain a resource consent (as compared with a discretionary activity).



The District Plan also contains tests and guidelines for the determination of landscape category within the Rural General Zone. The application of these tests and guidelines can be found in Parts 5.4 and 15.2.3.

Appendix 8 of this District Plan contains maps:

- (a) defining the extent of outstanding natural landscapes in the Wakatipu Basin and in the Inner Upper Clutha Area; and
- (b) indicating in some cases where the Environment Court has provisionally found the boundaries of the other categories of landscape.

- (2) In our view the appropriate change is to add to the second sentence of clause 1.5.3(iii) of the revised plan [p.1/3] the words:

Or because in or on outstanding natural landscapes and features the relevant activities are inappropriate in almost all locations within the zone, particularly within the Wakatipu basin or in the inner Upper Clutha area; or because in visual amenity landscapes the relevant activities are inappropriate in many locations; or because in other rural landscapes the relevant activities may be inappropriate because the amenities of neighbours will be significantly affected.

- (3) We approve the deletion of references to schedules listing permitted activities since those schedules were deleted by Decision 20.1.1.4 by the Council. The references to the schedules in paragraph 1.5.3 of the revised plan should be deleted as shown in Mr Marquet's Schedule D (suggested changes to Part 1 of the revised plan).
- (4) That paragraph 1.5.4 of Part of the Revised Plan be amended as in Mr Marquet's Schedule D.
- (5) There may need to be consequential changes of the sort suggested in Mr Marquet's Schedule D, but reflecting the use of both tests (standards) and guidelines in the assessment criteria for landscape.



Part 4 of the revised plan

- (1) Pursuant to clause 10 of the First Schedule to the Act we direct that the amendments consequential to the Queenstown landscape decisions be made as in Mr Marquet's Schedule F (relating to Part 4 of the revised plan). These relate to:
- the statement of issues so that it includes fuller reference to landscape;
 - deletion of the policy requiring a minimum lot size in outstanding natural landscapes and visual amenity landscapes;
 - amendment to the methods of implementation;
 - amendments to the statement of environmental results anticipated.
- (2) It should also be noted that there are other possible changes to Part 4 of the revised plan, since there are parts of the first two referrers' references not yet resolved.

Part 5 of the revised plan

Part 5 of the plan is deleted and Part 5 as in the attached Schedule A (minus the annotations⁸⁸) is substituted.

Part 15 of the revised plan

We have made few alterations to Part 15 at this stage. Nor is this part yet completely consistent with Part 5. We direct that the Council:

- (1) Draft all the changes needed to make Part 15 consistent with:
- (a) Part 5 as amended by this decision (see Schedule [A]); and
 - (b) Part [G] of this decision.
- (2) Draft a programme and wording for section 293 and circulate them to the parties and the Registrar for notification under paragraph [79] of this decision.

Appendix 8

- (1) Appendix 8 is to be amended as in our Schedule C to this decision. However the maps to be annexed as part of Appendix 8 will have to be drawn up by the Council as the Court hears and gives its decisions on the Wakatipu Basin and the Inner Upper Clutha Area.
- (2) Leave is reserved for any party to submit (if necessary) on the indicative lines on the guiding maps to be annexed to Appendix 8. We are open to the argument that indicative maps should not be part of the revised plan at all for the reason that only the outstanding natural landscape lines have clear jurisdictional bases:
 - (a) the ALI ("Areas of Landscape Importance") of the 1995 notified plan; and
 - (b) section 6 of the RMA.

[86] (1) While this decision is final as to the matters in parts [A] to [G] – except where it is expressly stated not to be, or where section 293 issues arise - and we reserve leave for any party to make written submissions on the wording of Parts 1, 5 (included in Schedule A) and 15 so as:

- (a) to correct any typographical errors and to remove repetitive wording; and
- (b) to achieve the spirit and intent of this decision particularly with respect to:
 - (i) paragraph [52] of this decision)
 - (ii) the protection of rural amenities in ORL;
- (c) to address the issue of building on a residential building platform as a controlled or discretionary activity.

- (2) Any submissions pursuant to leave reserved under (1) above are to be filed and served within 30 working days of issue of this decision and any reply within a further 15 working days.



[87] The other issues on which we heard evidence and submissions or identified in paragraph [46] of the interim decision will be the subject of separate consideration, after any necessary further hearing on Part 4 of the plan in respect of those issues.

[88] Nothing in this decision is intended to affect the existing Ski Area Sub-zones, the Bendemeer sub-zone, or the Gibbston Character Zone. If any amendment to Parts 5 or 15 is necessary then those changes should be made as suggested by Mr Todd (attached as Schedule B) or by Ms Dossor in her written submissions or by the Court. Leave is reserved to any other party to advise within 15 working days of issue of this decision whether it has any difficulty with Mr Todd or Ms Dossor's proposals (in respect of the Bendemeer and/or Ski Area Sub-zones). We are also concerned that the Bendemeer Sub-Zone and the Gibbston Character zone are not proposed to be dealt with in Parts 5 and 15 general provisions. If not, then:

- (a) Parts 5 and 15 need tidying up to delete references to those zones; and
- (b) Amended provisions need to be put in place.

We direct that:

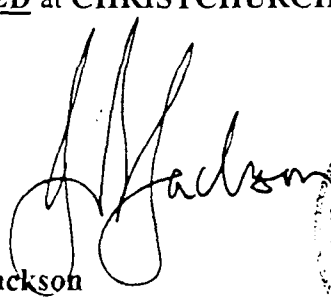
- (1) The Council is to file and serve its proposals on these issues within 45 working days of issue of this decision with any reply by any other party within a further 20 working days and a final reply by the Council within a further 10 working days.
- (2) Order (1) is subject to any application by the Council as to the Gibbston Character Zone that the finalisation of the rules (and prior objectives and policies) for this zone should be settled together with the other outstanding references for this zone.

[89] It may be that in addition to leaving some issues to a later decision we have overlooked others. Leave is reserved to any party or interested person to file and serve a statement identifying the forgotten issue within 15 working days of this decision.



[90] Costs are reserved, although we cannot (at present) see any basis for an order in relation to the hearing of the references on Parts 5 and 15 of the revised plan.

DATED at **CHRISTCHURCH** this 21st day of May 2001.


J R Jackson

Environment Judge



Attachments as part of this decision:

Schedule A

Schedule B

Schedule C

SCHEDULE A

ANNOTATED CHANGES TO PART 5 – RURAL AREAS

Amendments (shown as *italics* for text of rules, underline for addition, ~~striketrough~~ for deletion [except for spelling mistakes or typographical errors] and shaded where accepted or made by the Court) to Part 5 Rural Areas as follows:

5.2 Rural General and Ski Area Sub-Zone - Objectives and Policies

Additional relevant objectives and policies relating to the following matters are found in the corresponding Parts of the District Plan:

<i>Natural Environment</i>	<i>- Part 4.1</i>
<i>Landscape and Visual Amenity</i>	<i>- Part 4.2</i>
<i>Open Space and Recreation</i>	<i>- Part 4.4</i>
<i>Surface of Lakes and Rivers</i>	<i>- Part 4.6</i>
<i>Waste Management</i>	<i>- Part 4.7</i>
<i>Natural Hazards</i>	<i>- Part 4.8</i>
<i>Heritage</i>	<i>- Part 13</i>
<i>Hazardous Substances</i>	<i>- Part 16</i>

Objective 1 – Character and Landscape Value

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

Policies:

- ~~4.5~~ **1.1** ~~To take full Consideration of fully the~~ district wide landscape objectives and policies when considering subdivision, use and development in the Rural General Zone.
- ~~4.1~~ **1.2** Allow for the establishment of a range of activities, which utilise the soil resource of the rural area in a sustainable manner.
- ~~4.2~~ **1.3** Ensure land with potential value for rural productive activities is not compromised by the inappropriate location of other developments and buildings.
- ~~4.3~~ **1.4** Ensure activities not based on the rural resources of the area occur only where the character of the rural area will not be adversely impacted.
- ~~4.4~~ **1.5** Provide for a range of buildings allied to rural productive activity and worker accommodation
- ~~4.6~~ ~~To encourage the clustering of development in the rural areas within the visual amenity landscapes of the rural general zone⁴ where there are demonstrated benefits with respect to:~~
- ~~(i) avoiding, remedying or mitigating adverse effects of subdivision and development, and associated activities, on the landscape values of the district;~~
- ~~(ii) enhancing the naturalness of the rural environment reducing the visual or cumulative effect of sporadic subdivision and associated~~

5.3.3.3 Activities, especially adjacent to outstanding natural landscapes and features;

(iii) ~~long term landscape protection and management of land that may not listed as a Prohibited or Non-Complying activity and they support~~

~~1.7 To encourage, where appropriate absorption capacity exists, the clustering of development centred on existing development in the rural area within the visual amenity landscapes of the rural general zone.¹~~

1.6 Avoid or mitigate adverse effects of development on the landscape values of the District. The addition, alteration or construction of

1.7 Preserve the visual coherence of the landscape by ensuring all structures are to be located in areas with the potential to absorb change.

1.8 Avoid the location of structures and water tanks on skylines, ridges, hills and prominent slopes. such as roading, landscaping and horticulture

1.9 Ensure adverse effects of new commercial Ski Area activities on the landscape and amenity values are avoided or mitigated.

Mr Goldsmith's submissions:

¹ These two amendments are suggested because:

- a. Clustering has generally been talked about or referred to by the Court as appropriate in the VAL. In the ONL it is not necessarily appropriate because it may encourage more development than is appropriate, and in the ORL it is not necessarily appropriate because it may unnecessarily restrict development.
- b. The amendment links directly with the following subclause (i) (avoiding, remedying or mitigating... landscape values) which in turn derives directly from landscape policy 4(a) which is the primary VAL policy.
- c. To apply this policy across all three landscape categories would not follow from the Court's Part 4 findings and policies.

Consideration:

- (1) Mr Parker opposed the new policies 1.1, 1.6 and 1.7 as unauthorised by reference. We agree in respect of policies 1.6 and 1.7 on clustering. The Court's encouragement for the concept as being worth consideration should however be noted (see Decision Part [F]).
- (2) In respect of policy 1.1 (formerly Mr Goldsmith's 1.5) we consider this is justified under clause 10 of the First Schedule – it merely makes explicit what is implicit, except that this policy should be renumbered as 1.1 so it goes before the specific qualifying policies.
- (3) Policies 1.6 to 1.9 of the revised plan have been reinstated since they are compatible with Part 4 and no person sought their removal.

Implementation Methods

The objective and associated policies will be implemented through a number of methods including:

(i) **District Plan**

(a) The identification of Rural General, Rural Lifestyle, Rural Residential, Ski Area Sub-Zones and Gibbston Character

	Zones , objectives, policies and methods in the District Plan.
(b)	The provision of rules relating to subdivision, activities and the erection of buildings in the Rural General Zone.
(c)	To encourage the Regional Council in the preparation of Regional Plans and guidelines.
(d)	Provision of rules to control subdivision and the provision of controls and performance standards to protect the amenity and environmental quality of rural areas.
(e)	Advise and give information to local community groups, landholders and organisations.
(ii)	Other Methods
	To encourage appropriate organisations and people to:
(a)	Monitor intensive farming and factory farming operations and disseminate information and guidelines regarding acceptable management practice.
(b)	Do further research into identifying trends between the state of the environment and changes in land use patterns or practices.

Explanation and Principal Reasons for Adoption

There is a need to promote the integrated management of the diversity of resources in the rural area, including existing and potential land use activities. A wide range of activities are anticipated and allowed for in the rural areas. Standards are included and may be monitored, to ensure the management regimes undertaken are sustainable.

New commercial Ski Area activities have the potential to adversely affect amenity and landscape values of the District and can represent an inefficient use of infrastructure.

...

5.2.1 Environmental Results Anticipated

The following environmental results are anticipated in the Rural General zones:

- (i) The protection of outstanding natural landscapes and features from inappropriate subdivision, use and development.
- (ii) Maintenance and enhancement of openness and naturalness of outstanding natural landscapes and features.
- (iii) Strong management of the visual effects of subdivision and development within the visual amenity landscapes of the district.
- (iv) Enhancement of natural character of the visual amenity landscapes.
- (v) A variety in the form of settlement pattern within visual amenity landscapes based upon on the absorption capacity of the environment.
- (vi) Retention and enhancement of the life-supporting capacity of the soil and vegetation.
- (vii) The continued development and use of land in the rural area.

- (viii) *Avoid potential land uses and land management practices, 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 recreation opportunities.*
- (xii) *Utilisation of mineral resources within the District, providing that the scale of each operation and its effects, both short and long-term, are appropriate to its environment.*

...

5.3 Rural General and Ski Area Sub-Zone - Rules

5.3.1 Zone Purposes

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. The zone includes the majority of rural lands including alpine areas and national parks.

5.3.1.2 Ski Area Sub-Zones

Ski Area Sub-Zones are located within the Rural General Zone. The purpose of these Sub-Zones is to enable the continued development of skifield activities within the identified boundaries, where the effects of those activities are anticipated to be cumulatively minor.

Being only a sub-zone, all rules applicable to the Rural General Zone in the District Plan are applicable to the Ski Area Sub-Zones except where stated to the contrary.

5.3.2 District Rules

Attention is drawn to the following District Wide Rules, which may apply in addition to any relevant Zone Rules. If the provisions of the District Wide Rules are not met then consent will be required in respect of that matter:

- | | | | |
|-------|---|---|---------------|
| (i) | Heritage Protection | - | Refer Part 13 |
| (ii) | Transport | - | Refer Part 14 |
| (iii) | Subdivision, Development and
Financial Contributions | - | Refer Part 15 |
| (iv) | Hazardous Substances | - | Refer Part 16 |
| (v) | Utilities | - | Refer Part 17 |
| (vi) | Signs | - | Refer Part 18 |
| (vii) | Relocated Buildings and
Temporary Activities | - | Refer Part 19 |

Attention is also drawn to the need to obtain relevant consents from the Otago Regional Council relating to matters such as water use, discharge of contaminants to water, land or air, use of the beds of rivers and lakes, damming or diverting lakes and rivers, earthworks and vegetation clearance.

5.3.3 Activities

5.3.3.1 Permitted Activities

Any activity, which is not listed as a Prohibited, Non-Complying, Discretionary or Controlled Activity and which complies with all the relevant **Site and Zone Standards**, shall be a **Permitted Activity**.

5.3.3.2 Controlled Activities

The following shall be **Controlled Activities**, provided that they are not listed as a Prohibited, Non-Complying or Discretionary Activity and they comply with all of the relevant **Site and Zone Standards**.

The matters in respect of which the Council has reserved control are listed with each Controlled Activity.

i Buildings

(a) The addition to or alteration of an existing building **provided**:

- (i) the addition or alteration does not increase the coverage of the building (calculated at the operative date of this District Plan) by more than 50 percent; and
- (ii) the addition or alteration is contained within a residential building platform approved by resource consent

in respect of:

- (a) external appearance;
- (b) associated earthworks, access and landscaping;
- (c) provision of water supply, sewage treatment and disposal, electricity and telecommunication services.

(b) The construction of any new building contained within a residential building platform approved by resource consent; in respect of:

- (i) external appearance;

- (ii) associated earthworks, access and landscaping;
- (iii) provision of water supply, sewage treatment and disposal, electricity and telecommunication services.

Comment by the Court: ~~It is noted that the Outer Control Boundary is not shown on the District Plan Maps. Any new residential activities, visible on the District Plan Maps, are not subject to the Outer Control Boundary. This should be a discretionary activity in our view – see paragraph [79] of the decision.~~

~~(c) The construction of any farm building (excluding residential units) on an approved building platform to a maximum of 150 m² - 200m² ^{1A} in gross floor area in respect of:~~

- ~~(i) location, external appearance and size;~~
- ~~(ii) associated earthworks, access and landscaping;~~
- ~~(iii) provision of water supply, sewage treatment and disposal, electricity and communication services (where necessary).~~

Submission by Mr Goldsmith: ^{1A} A standard modern five bay shearing shed, which is probably the largest non-residential farm building likely to be erected, is approximately 200m² in floor area.

Consideration:

Messrs Todd and Marquet proposed other amendments in the same spirit. However, we are not prepared to consider any of them at this stage since we do not have any jurisdiction to change this rule. We refer to the discussion in Part [F] of the decision on (Residential) Building Platforms.

~~(c) (d) The construction of any new buildings associated with Ski Area Activities within Ski Area Sub-Zones in respect of:~~

- ~~(i) location, external appearance and size;~~
- ~~(ii) associated earthworks, access and landscaping;~~
- ~~(iii) provision of water supply, sewage treatment and disposal, electricity and communication services (where necessary).~~

ii Commercial Activities, limited to Retail Sales

All retail sales including:

- (a) farm and garden produce, reared or produced on-site;
- (b) handicrafts produced on the site; and
- (c) commercial activities associated with ski area activities within Ski Area Sub-Zones.

in respect of:

- (a) the layout of the site and location of buildings;
- (b) vehicle access; and
- (c) car parking.

iii Commercial Recreation Activities

- (a) *Ski tows and lifts within the Ski Area Sub-Zones as shown on the District Plan Maps, in respect of their location, external appearance, alignment and methods of construction; and*
- (b) *Night lighting in Ski Area Sub-Zones in respect of times, duration and intensity.*

iv Mining

Limited to mineral exploration, which does not involve more than 20m³ in volume in any one hectare, in respect of:

- (a) *Terrain disturbance including vegetation clearance and volumes of material to be removed;*
- (b) *Rehabilitation of a site;*
- (c) *Siting of roads or any buildings; and*
- (d) *Dust and noise.*

v Jetboat Race Events

Jetboat Race Events on the Clutha River, between the Lake Outlet boat ramp and the Albert Town road bridge, in respect of the date, time and duration of the event, public notification of the holding of the event, and any measures to avoid adverse effects on residential and recreational activities in the vicinity of the river.

Note: Any more than six jetboat race days per year are Prohibited Activities in terms of Rule 5.3.3.5.

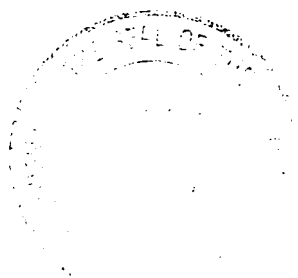
vi Additions and Alterations to Buildings within the Outer Control Boundary – Queenstown Airport

Any alterations or addition to a building or part of a building to be used for residential activities, visitor accommodation or community activities on any site located within the Outer Control Boundary as indicated on the District Plan Maps, in respect of the design, construction, orientation and location of the building to achieve adequate indoor sound insulation from aircraft noise.

vii Buildings within the Outer Control Boundary – Wanaka Airport

Buildings or part of a building to be used for residential activities, visitor accommodation or community activities on any land within the Outer Control Boundary as indicated on the District Plan Maps, in respect of the design, construction, orientation and location of the building to achieve adequate indoor sound insulation from aircraft noise.

viii Residential Flat



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:

i **Buildings or Building Platforms**

(a) The addition, alteration or construction of:

- (i) any building; and
- (ii) any physical activity associated with any building such as roading, landscaping and earthworks:

Except any buildings authorised pursuant to Rule 5.3.3.2(i).

(b) The identification of a building platforms of not less than 70m² in area and not greater than 1000m² in area. ^{2A}

~~**Note:** This rule enables the identification of a building platform on a previously subdivided lot where a building platform was not identified at the subdivision stage. Building platforms identified at subdivision stage take effect permanently once the subdivision consent has been given effect to. To avoid building platforms identified under this rule lapsing after the normal two year consent period, a resource consent granted under this rule will normally be granted for a ten year period to allow a reasonable time for a house to be built.~~ ^{2B}

Submissions by Messrs Goldsmith and Todd

^{2A} The area limitations should be inserted to maintain consistency with the Part 15 subdivision rule 15.2.6.3.iii.

^{2B} The rationale for this proposed amendment is as stated in the suggested Note above.

Consideration: There is no jurisdiction for this change. Further, there are problems with buildings on Residential Building Platforms – see Decision: Part [G].

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.

iii **Visitor Accommodation**

iv **Surface of Lakes and Rivers**

- (a) Any structure or mooring which passes across or through the surface of any lake and river or is attached to the bank of any

lake and river, other than where fences cross lakes and rivers, **except** in those locations where such structures or moorings are shown on the District Plan Maps as being non-complying.

- (b) Commercial boating activities

v Airports

Airports **other than** the use of land and water for:

- (a) emergency landings, rescues and fire fighting;
- (b) activities ancillary to farming activities.

vi Forestry Activities

vii Factory Farming

- (a) Factory farming of pigs where:
 - (i) the number of housed pigs exceeds 50 sows or 500 pigs of mixed ages; and/or
 - (ii) any housed pigs are closer than 500m to a property boundary; and/or
 - (iii) the number of outdoor pigs exceeds 100 pigs and their progeny up to weaner stage; and/or
 - (iv) outdoor sows are not ringed at all times; and/or
 - (v) the stocking rate of outdoor pigs exceeds 15 pigs per hectare, excluding progeny up to weaner stage.
- (b) Factory farming of poultry where:
 - (i) the number of birds exceeds 10,000 birds; and/or
 - (ii) birds are housed closer than 100m to a site boundary.
- (c) Any factory farming activity other than factory farming of pigs or poultry.

viii Mining Activities

Mining **except for**:

- (a) Mineral prospecting;
- (b) Mineral exploration which does not involve bulk sampling exceeding 20m³ in volume in any one hectare;
- (c) Mining by means of hand-held, non-motorised equipment and suction dredging, where the total motive power of any dredge does not exceed 10 horsepower (7.5 kilowatt); and
- (d) The mining of aggregate for farming activities provided the total volume does not exceed 1000 m³ in any one year.

ix Ski Area Activities not located within a Ski Area Sub-Zone.

x Industrial Activities, Limited to wineries and underground cellars within a vineyard.

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 **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.

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.

ii Surface of Lakes and Rivers

- (a) Boating craft on the surface of the lakes and rivers if used for accommodation, **unless:**
 - (i) the craft is only used for overnight recreational accommodation; and
 - (ii) the craft is not used as part of any commercial activity; and
 - (iii) all effluent is contained on board the craft.
- (b) Structures or moorings passing across or through the surface of any lake or river or attached to the bank or any lake or river in those locations on the District Plan Maps where such structures or moorings are shown as being non-complying.

iii Factory Farming (excluding the boarding of animals)

Factory farming within 2 kilometres of a Residential, Rural Residential, Rural Lifestyle, Township, Rural Visitor, Town Centre, Corner Shopping Centre or Resort Zone.

iv Power Generation Facilities

Power generation facilities outside the areas scheduled under Rule 20.2, other than small hydro (1.5 to 2 k) inverter based systems for residential and non-residential activities.

- (b) Any activity, which is not listed as a Prohibited Activity and which does not comply with one or more of the relevant Zone Standards, shall be a **Non-Complying Activity**.

5.3.3.5 Prohibited Activities

The following shall be *Prohibited Activities*:

i Surface of Lakes and Rivers

The use of the following lakes and rivers for the following specified activities shall be *Prohibited Activities*, except where the activities are for emergency search and rescues, hydrological survey, public scientific research, resource management monitoring and water weed control, and for access to adjoining land for farming activities

- (a) **Hawea River** - Motorised craft, except on the one lawfully established jet-sprint course, as shown on the District Plan Maps.
- (b) **Lake Wanaka** - Jetski's (and other similar brands) within Roys Bay, between the lakeshore and a line running between the boat launching site at Eely Point, the southern point of Ruby Island and the groyne at Waterfall Creek (as shown on the District Plan Maps).
- (c) **Lakes Hayes** - Commercial boating activities.
- (d) **Dart and Rees Rivers** - Motorised craft on any tributary of the rivers or upstream of the Rees River road bridge; and
- Motorised craft on the Rees River during the months of May to October inclusive.
- (e) **Makarora, Young and Wilkin Rivers** - Motorised craft on the Young River or any tributary of the Young or Wilkin Rivers and any other tributaries of the Makarora River.
- (f) **Dingle Burn, Timaru Creek and the tributaries of the Hunter River** - Motorised craft on the Dingle Burn, Timaru Creek or any tributary of the Hunter River; and
- Motorised craft on the Hunter River during the months of May to October inclusive.
- (g) **Motatapu and Matukituki Rivers** - Motorised craft on the Motatapu River or any tributary of the Matukituki River.
- (h) **Clutha River** - More than six jet boat race days per year.

Court:

This rule is not part of the current case, but: is (b) correct as a matter of fact? It appears to suggest that jetskis are prohibited in Roys Bay but allowed elsewhere on the Lake.

Also (d) makes little sense with its two references to the Rees River, one should be to the Dart?

ii Activities within the Air Noise Boundary – Wanaka Airport

On any site located within the Air Noise Boundary, as indicated on the District Plan Maps, any new residential activities, visitor accommodation or community activities shall be *Prohibited Activities*.

iii Activities within the Outer Control Boundary – Queenstown Airport

On any site located within the Outer Control Boundary, as indicated on the District Plan Maps, any new residential activities, visitor accommodation or community activities shall be Prohibited Activities.

5.3.4 Non-Notification of Applications

Any application for a resource consent for the following matters may be considered without the need to obtain a written approval of affected persons and need not be notified in accordance with Section 93 of the Act, unless the Council considers special circumstances exist in relation to any such application:

- (i) All applications for **Controlled Activities**.*
- (ii) Application for the exercise of the Council's discretion in respect of the following Site Standards:*
 - (a) Access;*
 - (b) Retail Sales;*
 - (c) Tree Plantings; and*
 - (d) Natural Hazards.*

5.3.5 Standards

5.3.5.1 Site Standards

i Setback from Neighbours of Buildings Housing Animals

Minimum setback from internal boundaries for buildings housing animals shall be 30m.

ii Access

Each residential unit shall have legal access to a formed road.

iii Scale and Nature of Activities

*The following limitations apply to all activities; **other than** farming, factory farming, forestry and residential activities, activities ancillary to ski area activities within Ski Area Sub-Zones, or those visitor accommodation activities which are Discretionary Activities:*

- (a) The maximum gross floor area of all buildings on the site, which may be used for the activities shall be 100m²;*
- (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.*

iv Retail Sales

Buildings in excess of 25m² gross floor area to be used for retail sales shall be setback from road boundaries by a minimum distance of 30m.

v Significant Indigenous Vegetation

In the areas identified on the District Plan Maps as being of significant indigenous vegetation, and included in Appendix 5 (other than within Ski Area Sub-Zones):

- (a) *no earthworks shall:*
 - (i) *exceed 1000m³ (volume) and/or 50m² (area) in any one hectare in any continuous period of 5 years; or*
 - (ii) *be located on slopes with an angle of greater than 20° (measured as an average slope angle over any 100m length of the slope on which the earthworks are to be carried out).*
- (b) *no clearance of indigenous vegetation shall exceed 100m² in area in any one hectare in any continuous period of 5 years.*
- (c) *there shall be no exotic tree or shrub planting.*
- (d) *no buildings shall be erected.*

The Council shall restrict the exercise of its discretion in relation to these matters to their effect on nature conservation values and the natural character of the rural environment.

Any area or part of an area, which is protected by way of a permanent protection mechanism registered on the title to the land, in terms of the Conservation Act, Reserves Act, Land Act, Queen Elizabeth II National Trust Act, Resource Management Act or other similar mechanism, shall be exempt from this rule.

vi Minimum Setback from Internal Boundaries

The minimum setback from internal boundaries for buildings shall be 15m.

vii Forestry and Shelterbelt Planting [Note: this may be affected by a Part 4 reference yet to be resolved]

- (a) *No forestry activity shall be undertaken within 20m of the boundary of a neighbouring property.*
- (b) *No forestry activity or shelterbelt planting shall be undertaken in an alpine area with an altitude greater than 1070m.*

viii Earthworks

- (a) *No cut or batter (other than routine repair and maintenance of operational tracks and flood protection works) shall exceed 2m in vertical height, **except that** such cut or batter shall not exceed 3m in vertical height for more than 10% of its length.*
- (b) *All cuts and batters shall be laid back such that their angle from the horizontal is no more than 65 degrees.*

- (c) All impervious surfaces are to be vegetated.
- (d) No earthworks (other than the formation of tracks and earthworks within Ski Area Sub-Zones) shall exceed 1000 m³ in total volume or 2500 m² in total area.

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.

Provided that this does not apply to commercial recreational activities which are within Ski Area Sub-Zones as shown on the District Plan Maps.

5.3.5.2 Zone Standards

i Building Height

- (a) No part of any building, other than non-residential buildings ancillary to viticultural or farming activities, shall protrude through a surface drawn parallel to and 8 m vertically above ground level.
- (b) No part of any non-residential building ancillary to viticultural or farming activities shall protrude through a surface drawn parallel to and 10 m vertically above ground level.

ii Setback from Roads

- (a) The minimum setback from road boundaries for buildings shall be 20m, except **that the minimum setback from State Highway 6 for buildings between Lake Hayes and Frankton shall be 50 m**

~~(i) The minimum setback from State Highway 6 for buildings between Lake Hayes and Frankton shall be 50 m.~~

Consideration:

All issues as to setbacks – including from Scenic Rural Roads should be dealt with after further submissions focused specifically on that issue (although further evidence may not be allowed).

iii Retail Sales

There shall be no retail sales from sites by way of access to any State Highway, **except** for:

- (a) farm, wine and garden produce grown, reared or produced on the site; or
- (b) handicrafts produced on the site.

iv Surface of Lakes and Rivers

- (a) Motorised craft on the surface of lakes and rivers shall be operated and conducted such that a maximum noise level (L_{max}) of 77dBA is not exceeded, when measured and assessed in accordance with Appendix 2.
- (b) **Kawarau River, Lower Shotover River downstream of Tucker Beach and Lake Wakatipu within Frankton Arm** - No commercial motorised craft shall operate outside the hours of 0800 to 2000.
- (c) **Lake Wanaka, Lake Hawea and Lake Wakatipu** - No commercial jetski operations shall be undertaken outside the hours of 0800 to 2100 on Lakes Wanaka and Hawea and 0800 and 2000 on Lake Wakatipu.
- (d) **Dart and Rees Rivers** - No commercial motorised craft shall operate outside the hours of 0800 to 1800, **except** that above the confluence with the Beansburn on the Dart River no commercial motorised craft shall operate outside the hours of 1000 to 1700.

v Noise

Non-residential activities shall be conducted such that the following noise levels are not exceeded, neither at, nor within, the notional boundary of any residential unit, other than residential units on the same site as the activity:

- (a) during daytime (0800 to 2000 hrs) L_{10} 50dBA
- (b) during night time (2000 to 0800 hrs) L_{10} 40dBA and L_{max} 70dBA

except:

- (i) When associated with farming and forestry activities, this standard shall only apply to noise from stationary motors and stationary equipment.
- (ii) Noise from aircraft operations at Queenstown Airport is exempt from the above standards.

Construction noise shall comply with and be measured and assessed in accordance with the relevant New Zealand Standard.

vi Lighting

All fixed exterior lighting shall be directed away from adjacent sites and roads.

vii Airport Noise – Alteration or Addition to Existing Buildings within the Outer Control Boundary – Queenstown Airport

On any site located within the Outer Control Boundary as indicated on the District Plan Maps, any alteration or addition to a building or part of a building to be used for residential activities, visitor accommodation or community activities shall be insulated from aircraft noise so as to meet an indoor design sound level of 40 dBA Ldn, except for non-critical listening environments where no special sound insulation is required.

viii Wanaka Airport Building Line

No building shall be erected, constructed or relocated within the area defined by a line 150m on the western side of the centre line of the Wanaka Airport main runway, the Airport Purposes Designation boundary at either end of the main runway, and a line 200m on the eastern side of the centre line of the Wanaka Airport main runway.

ix Screening

Storage areas for waste materials, outdoor display areas and parking associated with commercial activities, wineries and other productive activities shall generally be positioned and managed to minimise any adverse visual effect.

x Airport Noise – Building within the Outer Control Boundary – Wanaka Airport

On any site within the Outer Control Boundary as indicated on the District Plan Maps, any buildings or part of a building to be used for residential activities, visitor accommodation or community activities shall be insulated from aircraft noise so as to meet an indoor design sound level of 40 dBA Ldn, except for non-critical listening environments where no special insulation is required.

5.3.6 Resource Consents – Assessment Matters

The assessment matters, which apply to the consideration of resource consents in the Rural Zones, are specified in 5.4.

5.4 Resource Consents - Assessment Matters - Rural Zones

5.4.1 General

- (i) *The following Assessment Matters are methods or matters included in the District Plan, in order to enable the Council to implement the Plan's policies and fulfil its functions and duties under the Act.*

- (ii) In considering resource consents for land use activities, in addition to the applicable provisions of the Act, the Council shall apply the relevant Assessment Matters set out in Clause 5.4.2 below.
- (iii) In the case of Controlled and Discretionary Activities, where the exercise of the Council's discretion is restricted to the matter(s) specified in a particular standard(s) only, the assessment matters taken into account shall only be those relevant to that/these standard(s).
- (iv) In the case of Controlled Activities, the assessment matters shall only apply in respect to conditions that may be imposed on a consent.
- (v) Where an activity is a Discretionary Activity because it does not comply with one or more relevant Site Standards, but is also specified as a Controlled Activity in respect of other matter(s), the Council shall also apply the relevant assessment matters for the Controlled Activity when considering the imposition of conditions on any consent to the discretionary activity.

5.4.2 Assessment Matters

Discussion by the Court:

- (1) The numbering system within para 5.4.2 has been altered by the Court in an effort to make it less complex.
- (2) An introductory sentence has been added.
- (3) We agree with Mr Goldsmith's submission below that there need only be 3 steps in the application of the assessment matters.

In considering whether or not to grant consent or impose conditions, the Council shall have regard to, but not be limited to, the following:

~~i General Landscape~~

5.4.2.1 (4) Landscape Assessment Criteria - Process

5.4.2.1.1 There are three steps in applying these assessment criteria. First, the analysis of the site and surrounding landscape; secondly determination of the appropriate landscape category; thirdly the application of the assessment matters. For the purpose of these assessment criteria, the term "proposed development" includes any subdivision, identification of building platforms, any building and associated activities such as roading, earthworks, landscaping, planting and boundaries.

~~Step 1 Consideration of Landscape Guideline Appendix 8~~

~~Appendix 8 of this District Plan contains a guideline to the landscape types of the district the outstanding natural landscapes and features and the visual amenity landscapes (It does not map other rural landscapes). The weight to be given to the landscape category identified in Appendix 8 will be determined by the Council, on a finding of fact, in considering a resource consent application (if the Environment Court has not already done so). To do this, the Council must be satisfied that there has been a full analysis of the site and surrounding landscape in accordance with Step 2.³~~

Comment – Submissions by Mr Goldsmith:

³It is submitted that Step 1 above and Step 3 below are essentially the same step, that Step 1 above is both incorrect and superfluous and should be deleted, and that Step 3 below should be reworded as set out below – particularly in light of the fact that Appendix 8 is only going to contain the Landscape Line separating ONL and a VAL in the Wakatipu Basin, (plus possibly a similar Landscape Line in an inner Wanaka area.)

Consideration:

We agree. There only need to be three steps altogether.

Step 2 Step 1– Analysis of the Site and Surrounding Landscape

*An analysis of the site and surrounding landscape is necessary for two reasons. Firstly it will provide the necessary ~~platform~~ **information** for determining a sites ability to absorb development including the basis for determining the compatibility of the proposed development with both the site and the surrounding landscape. Secondly it is an important step in the determination of a landscape category – i.e. whether the proposed site falls within a outstanding natural, visual amenity or other rural landscape.*

*An analysis of the site **must** ~~may~~ include a description of those existing qualities and characteristics (both negative and positive), such as vegetation, topography, aspect, visibility, natural features, relevant ecological systems and land use.*

*An analysis of the surrounding landscape **must** ~~may~~ include natural science factors (the geological, topographical, ecological and dynamic components ~~in~~ of the landscape), aesthetic values (including memorability and naturalness), expressiveness and legibility (how obviously the landscape demonstrates the formative processes leading to it), transient values (such as the occasional presence of wildlife; or its values at certain times of the day or of the year), value of the landscape to Tangata Whenua and ~~their~~ **its** historical associations.*

Consideration

The analysis must contain the details specified. We accept Mr Lawrence's submission that "may" is inappropriate. The Council may waive certain information in exceptional cases, but the initial obligation must be on any applicant to supply all the information.

Step 3 2 – Determination of Landscape Category

This step is important as it determines which district wide objectives, policies, definitions and assessment matters are given weight in making a decision on a resource consent application. ~~The Council must be satisfied that all of the relevant matters referred to in Step 2, and any other relevant matter, warrant a change in landscape category (to what is indicated in Appendix 8) for the purpose of considering and applying outstanding natural, visual amenity or other rural landscape objectives, policies, definitions and assessment matters.~~

The Council shall consider the matters referred to in Step 1 above, and any other relevant matter, in the context of the broad description of the three landscape categories in Part 4.2.4 of this Plan, and shall determine what category of landscape applies to the site subject to the application.⁴

In making this determination the Council, shall consider:

(a) to the extent appropriate under the circumstances, both the land subject to the consent application and the wider landscape within which that land is situated⁵; and

(b) ~~the landscape maps in Appendix 8.~~

~~The landscape map in Appendix 8 is a map which determines the lower boundary of the outstanding natural landscapes of the Wakatipu Basin in the Rural General Zone.⁴~~

~~In making this determination the Council is guided by the fact that it is the surrounding environment that determines the landscape category, not just the subject site.⁵~~

Mr Goldsmith's submissions:

- a The suggested rewording of Step 3 above [as, now, step 2] reflects what is understood to be the Court's decision that the Wakatipu Basin Landscape Line between ONL and VAL is going to be fixed by the Court.

Step 3 – Application of Assessment Matters

Once the Council has determined which landscape category the proposed development falls within, each resource consent application will then be considered:

First, with respect to the prescribed assessment criteria summarised below and set out matters in Rule 5.4.2.2 part [B] of this section;

Secondly, taking into account the reasons for making the activity discretionary (see para 1.5.3(iii) of the plan [p1/3]) and a the general assessment of the frequency with which appropriate sites for development will be found in the locality.

Consideration:

Mr Parker submitted there should be an express link between the reasons for making development into a discretionary activity and the application of the assessment criteria. Especially since we have decided against his further submission that the criteria should be tests rather than guidelines, we consider his suggestion is appropriate. Further, we think the rule can be strengthened by ensuring that the Council considers the frequency with which appropriate sites will be found.

~~where development has occurred, whether further development is~~
The Council's redrafted¹ Part 5 contained a longer reference at this point to the reasons for making development a discretionary activity. However, in our view the approach can be standardised and simplified as above. ~~One's ability to absorb further change~~

5.4.2.1.2 ~~The~~ ~~These~~ assessment matters shall **apply** ~~be applied~~ as follows:

~~(a)~~ **(1) Outstanding Natural Landscapes and Features – District-Wide**

In assessing a proposed development against the objectives and policies for the outstanding natural landscapes and features – District-Wide the following Assessment Matters shall be taken account:

- ~~1)~~ • Potential of the landscape to absorb development
- ~~2)~~ • Effects on openness of the landscape
- ~~3)~~ • Cumulative effects on landscape values
- ~~4)~~ • Positive Effects

~~(b)~~ *In making a decision, the Council shall consider:*

- ~~(i)~~ *the reasons for defining activities as definition of "discretionary" Activity" contained in the plan; and*
- ~~(ii)~~ *any significant positive effects identified in Assessment Matter 4) with respect to any adverse effects identified in Assessment Matters 1) to 3) in terms of environmental trade offs that may justify granting consent.*

Consideration:

(b) is deleted because first there is no reason to single out positive effects. Secondly, (b)(i) is subsumed in the introductory words to step 3.

~~(b)~~ **(2) Outstanding Natural Landscapes and Features – Wakatipu Basin and Inner Upper Clutha Area**

In assessing a proposed development against the objectives and policies for the outstanding natural landscapes and features – Wakatipu Basin the following Assessment Matters shall be taken account:

- ~~1)~~ • Effects on openness of the landscape
- ~~2)~~ • Visibility of Development
- ~~3)~~ • Visual Coherence and Integrity of the landscape
- ~~4)~~ • Cumulative effects of development on landscape values
- ~~5)~~ • Nature Conservation Values
- ~~6)~~ • Positive Effects associated with remedying or mitigating inappropriate past subdivision and/or development

¹ Mr Marquet's Schedule G.

~~(b) In making a decision on an application for subdivision and/or development in the outstanding natural landscape Wakatipu Basin the Council shall:~~

~~(a) (i) consider the definition of reasons for "discretionary activity" in the Plan; and~~

~~(b) (ii) apply the Assessment Matters 1) to 6) in (a) above with the presumption that any potential adverse effect shall warrant refusal of the consent unless first (i) the adverse effects identified through Assessment Matters 1) to 6) are no more than minor, and secondly~~

~~(i) there are significant positive landscape effects associated with the proposal with respect to the relevant assessment matter.~~

Consideration:

As for ONL above.

Applicants are advised that the application of the above assessment matters is a stringent test and the Council anticipates that any application that meets this test will be an exception.

(c) (3) Visual Amenity Landscapes

In assessing a proposed development against the objectives and policies for the visual amenity landscapes the following ~~a~~Assessment ~~m~~Matters shall be taken account:

- 1) • Effects on natural and pastoral character
- 2) • Visibility of Development
- 3) • Form and Density of Development
- 4) • Cumulative effects of development on the landscape
- 5) • Rural Amenities

- as elaborated on in 5.4.2.2 (3) below.

(4) ~~(d)~~ Other Rural Landscapes

In assessing a proposed development in other rural landscapes the Council shall take account of the matters listed in Assessment Matter ~~(d)~~ 5.4.2.2 (4) including the maintenance of rural amenities..

5.4.2.2 (2) Assessment Matters

~~(a)~~(1) Outstanding Natural Features and Landscapes (District-wide)

(a) ~~(4)~~ Potential of the landscape to absorb development

In considering the potential of the landscape to absorb development both visually and ecologically, the following matters shall be taken into account consistent with retaining ~~naturalness~~, openness and natural character:

- (i) whether, and to what extent, the proposed development is visible from public places;
- (ii) whether the proposed development is likely to be visually prominent ~~to the extent such~~ that it dominates or detracts from views otherwise characterised by natural landscapes;
- (iii) whether any mitigation or earthworks and/or planting associated with the proposed development will detract from existing natural patterns and processes within the site and surrounding landscape or otherwise adversely effect the natural landscape character;
- (iv) whether, with respect to subdivision, any new boundaries are likely to give rise to planting, fencing or other land use patterns which appear unrelated to the natural line and form of the landscape; wherever possible with **allowance for due respect** to practical considerations, boundaries should reflect underlying natural patterns such as topographical boundaries;
- (v) whether the site includes any indigenous ecosystems, wildlife habitats, wetlands, significant geological or geomorphologic features or is otherwise an integral part of the same;
- (vi) whether and to what extent the proposed activity will have an adverse effect ~~that is more than minor~~⁸ on any of the ecosystems or features identified in (v);
- (vii) whether the proposed activity introduces exotic species with the potential to spread and naturalise.

Mr Goldsmith's submission Comment:

⁸ The wording "... that is more than minor" is inappropriate for a discretionary activity where the relevant policy does not use those words.

Consideration: We agree

(b) (2) Effects on openness of landscape.

In considering the adverse effects of the proposed development on the openness of the landscape, the following matters shall be taken into account:

- (i) *whether and the extent to which the proposed development will be within a broadly visible expanse of open landscape when viewed from any scenic rural road or public place;*
- (ii) *whether, and the extent to which, the proposed development is likely to adversely affect open space values with respect to the site and surrounding landscape;*
- (iii) *whether the proposed development is defined by natural elements such as topography and/or vegetation which may contain any adverse effects associated with the development.*

(c) (3) Cumulative effects on landscape values

In considering whether there are likely to be any adverse cumulative effects as a result of the proposed development, the following matters shall be taken into account:

- (i) *whether, and to what extent, the proposed development will result in the introduction of elements which are inconsistent with the natural character of the site and surrounding landscape;*
- (ii) *whether the elements identified in (i) above will further compromise the existing natural character of the landscape either visually or ecologically by exacerbating existing and potential adverse effects ;*
- (iii) *whether existing development and/or land use represents a threshold with respect to the site's ability to absorb further change;*
- (iv) *where development has occurred or there is potential for development to occur (ie. existing resource consent or zoning), whether further development is likely to lead to further degradation of natural values or **inappropriate**⁹ domestication of the landscape or feature.*

Mr Goldsmith's submission:

⁹ *The original wording suggests that any domestication is inappropriate. That is not necessarily the case. It is submitted that either the word "inappropriate" should be inserted or there should be reference to "over domestication".*

Consideration: We agree

(d) (4) Positive effects

In considering whether there are any ~~significant~~ positive effects associated with the proposed development the following matters shall be taken into account:

- (i) *whether the proposed activity will protect, maintain or enhance any of the ecosystems or features identified in (a)(1)(v) above;*
- (ii) *whether the proposed activity provides for the retention and/or re-establishment of native vegetation and their appropriate management;*
- (iii) *whether the proposed development provides an opportunity to protect open space from further development which is inconsistent with preserving a natural open landscape;*
- (iv) *whether the proposed development provides an opportunity to remedy or mitigate existing and potential (ie. structures or development anticipated by existing resource consents) ~~adverse~~ effects by modifying, including mitigation, or removing existing structures or developments; and/or surrendering any existing resource consents;*
- (v) *the ability to take esplanade reserves to protect the natural character and nature conservation values around the margins of any lake, river, wetland or stream within the subject site;*
- (vi) *the use of restrictive covenants, easements, consent notices or other legal instruments otherwise necessary to realise those positive effects referred to in (i)- (v) above and/or to ~~insure~~ **ensure***

that the potential for future effects, particularly cumulative effects, are avoided.

(2) (b) Outstanding Natural Features and Landscapes (Wakatipu Basin and Inner Upper Clutha area)

(a) 4) Effects on openness of landscape

In considering whether the proposed development will maintain the openness of those outstanding natural landscapes and features which have an open character at present [when viewed from scenic rural roads and other public places], the following matters shall be taken into account:

- (i) whether the subject land is within a broadly visible expanse of open landscape when viewed from any scenic rural road or public place;
- (ii) whether, and the extent to which, the proposed development is likely to adversely effect open space values with respect to the site and surrounding landscape;
- (iii) whether the site is defined by natural elements such as topography and/or vegetation which may ~~reduce the potential for adverse effects associated with the development onto the wider landscape, such as to contain development~~ **contain and mitigate any adverse effects associated with the development.**¹¹

Comment Mr Goldsmith's submission

¹¹ It is submitted that the original wording is awkward, and that the proposed amended wording is both an improvement and is consistent with the wording of the equivalent assessment matter for ONL-DW (refer assessment matter (2)(iii) above)

Consideration: We agree, since no-one opposed this, although we consider the addition of the words "and mitigate" makes the meaning clearer.

(b) 2) Visibility of development

In considering the potential visibility of the proposed development ~~[when viewed from scenic rural roads and other public places]~~ and whether the adverse visual effects are minor, the **Council shall be satisfied that:** ~~following matters shall be taken into account;~~

- (i) ~~whether~~ the proposed development will not be visible or will be reasonably difficult to see when viewed from scenic rural roads and other public places; and
- (ii) ~~whether~~ the proposed development ~~will not~~ **is likely to** be visually prominent such that it dominates or detracts from **private** views otherwise characterised by natural landscapes; and
- (iii) ~~whether~~ the proposal can be appropriately screened or hidden from view by any proposed form of artificial screening, being limited to earthworks and/or new planting which is appropriate in the landscape **(and in particular does not reduce neighbours' amenities)**
- (iv) ~~whether~~ any artificial screening or other mitigation will detract from those existing natural patterns and processes within the site and surrounding landscape or otherwise adversely affect the natural landscape character; and

- (v) ~~whether~~ the proposed development is **not** likely to adversely affect the appreciation of landscape values of the wider landscape (not just the immediate landscape).

Comment:

The deletion of the introductory words is to reflect the concerns of Mr Parker's clients and the Wakatipu Environmental Society which, for the reasons we have discussed in the first part of the decision, are appropriate and need to be implemented.

(c) 3) Visual coherence and integrity of landscape

*In considering whether the proposed development will adversely effect affect ⁴² the visual coherence and integrity of the landscape and whether these effects are minor, the **Council must be satisfied that following matters shall be taken into account;***

- (i) ~~whether~~ structures will not be located where they will break the line and form of any ridges, hills and any prominent slopes;
- (ii) ~~whether~~ any proposed roads, earthworks and landscaping will **not** affect the naturalness of the landscape;
- (iii) ~~whether and the extent to which,~~ any proposed new boundaries will **not** give rise to artificial or unnatural lines or otherwise adversely affect the natural form of the landscape, such as planting and fence lines.

(d) 5) Nature Conservation Values

*In considering whether the proposed development will adversely affect nature conservation values and whether these effects are minor with respect to any ecological systems and other nature conservation values, **the Council must be satisfied that: the following matters shall be taken into account:***

- (i) ~~whether~~ the area affected by the development proposed in the application **does not** contains any indigenous ecosystems including indigenous vegetation, wildlife habitats and wetlands or geological or geomorphological feature of significant value;
- (ii) ~~whether~~ the development proposed will **not** have any adverse effects that are more than minor on these indigenous ecosystems and/or geological or geomorphological feature of significant value;
- (iii) ~~whether~~ the development proposed will avoid the establishment of introduced vegetation that have a high potential to spread and naturalise (such as wilding pines or other noxious species);

(e) 4) Cumulative effects of development on the landscape

In considering the potential adverse cumulative effects of the proposed development on the natural landscape with particular regard to any adverse effects on the wider values of the outstanding natural landscape or feature will be no more than minor, having regard to the following:

- (i) *whether and to what extent existing and potential development (ie. existing resource consent or zoning) may already have compromised the visual coherence and naturalness of the landscape;*

- (ii) where development has occurred, whether further development is likely to lead to further degradation of natural values or domestication of the landscape or feature such that the existing development and/or land use represents a threshold with respect to the site's ability to absorb further change;
- (iii) whether, and to what extent the proposed development will result in the introduction of elements which are inconsistent with the natural character of the site and surrounding landscape;
- (iv) whether these elements in (iii) above will further compromise the existing natural character of the landscape either visually or ecologically by exacerbating existing and potential adverse effects ;
- (v) where development has occurred or there is potential for development to occur (ie. existing resource consent or zoning), whether further development is likely to lead to further degradation of natural values or domestication of the landscape or feature.

(f) ~~6~~ Positive effects

In considering whether there are any ~~significant~~¹³ **positive** effects in relation to remedying or mitigating the continuing adverse effects of past inappropriate subdivision and/or development, the following matters shall be taken into account:

Comment Mr Goldsmith's submission

¹³ Why does a positive effect need to be "significant"?

Consideration: We agree

- (i) whether the proposed activity will protect, maintain or enhance any of the ecosystems¹ or features identified in (f) above which has been compromised by past subdivision and/or development;
- (ii) whether the proposed activity provides for the retention and/or re-establishment of native vegetation and their appropriate management, particularly where native revegetation has been cleared or otherwise compromised as a result of past subdivision and/or development;
- (iii) whether the proposed development provides an opportunity to protect open space from further development which is inconsistent with preserving a natural open landscape, particularly where open space has been compromised by past subdivision and/or development;
- (iv) whether the proposed development provides an opportunity to remedy or mitigate existing and potential adverse effects (ie. structures or development anticipated by existing resource consents) by modifying, including mitigation, or removing existing structures or developments; and/or surrendering any existing resource consents;

(g) Other matters

In addition to consideration of the positive effects (i)-(iv) in (f) ~~(iii)~~ above, the following matters shall be taken into account, but considered with respect to those matters listed in (a) to (e) ~~4) to 5)~~ above:

- (v) the ability to take esplanade reserves to protect the natural character and nature conservation values around the margins of any lake, river, wetland or stream within the subject site;
- (vi) the use of restrictive covenants, easements, consent notices or other legal instruments otherwise necessary to realise those positive effects referred to in 6)(i)-(v) above and/or to ~~insure~~ ensure that the potential for future effects, particularly cumulative effects, are avoided.

(3) ~~e~~ Visual Amenity Landscapes

(a) ~~4~~ 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:

- (i) where the site is adjacent to an Outstanding Natural Landscape or Feature, whether **and the extent to which** the visual effects of the development proposed will compromise any open character of the adjacent Outstanding Natural Landscape or Feature;
- (ii) whether **and the extent to which** the scale and nature of the development will compromise the natural or arcadian pastoral character of the surrounding Visual Amenity Landscape;
- (iii) whether the development will degrade any natural or arcadian pastoral character of the landscape by causing over-domestication of the landscape;
- (iv) whether any adverse effects identified in (i) – (iii) above are or can be avoided or mitigated by appropriate subdivision design and landscaping, and/or appropriate conditions of consent (including covenants, consent notices and other restrictive instruments) having regard to the matters contained in ~~2) to 5)~~ **(b) to (e)** below;

(b) ~~2~~ Visibility of development

~~In considering whether the development will result in a loss of the natural or arcadian pastoral character of the landscape when viewed from scenic rural roads or other public places frequented by the public, having regard to whether and the extent to which:~~

- (i) the proposed development is highly visible when viewed from any public roads and other public places ~~which are frequented by the public~~, or is visible from a scenic rural road;
- (ii) the proposed development is likely to be visually prominent such that it ~~dominates or~~ detracts from **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 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.

Comment

The reason for deleting "when viewed from rural scenic roads ... frequented by the public" is that there are more specific assessment matters (including that criterion) in the list that follows.

(c) 3} Form and Density of Development

In considering the appropriateness of the form and density of development the following matters shall be taken 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) ~~there is the opportunity for the aggregation~~ **opportunity has been taken to aggregate** built development to utilise common access ways including pedestrian linkages, services and ~~commonly held~~ open space (ie. open space held in one title whether jointly or otherwise);
- (iii) ~~there is the opportunity to concentrate~~ **development is concentrated** in areas with a higher potential to absorb development while retaining areas which are more sensitive in their natural or arcadian pastoral state;
- (iv) the proposed development, **if it is visible**, does not introduce densities which reflect those characteristic of urban areas ~~where they are visible from public places. scenic rural roads or highly visible from public places¹⁵ and taking into consideration the site and the development as a whole¹⁶~~

Submission by Mr Goldsmith

¹⁵ The suggested amended wording flows properly from Landscape Policy 4 (a).

¹⁶ It is submitted that the additional words are necessary to avoid this assessment matter being a disincentive to clustering because otherwise the density within the cluster itself may not accord with the assessment matter.

Consideration: With respect to Mr Goldsmith's first point – we agree, but Part 5's objectives and policies also need to be implemented. Hence we have amended the wording.

As for his second proposed change these words are unnecessary at this stage, and further, do not consider the amenities of neighbours.

of (v) If a proposed residential building platform is not located inside existing development (being two or more houses and premises each not more than 50 metres from the nearest point of the residential building platform) then on any application for resource consent and subject to all the other criteria, the suitability of all possible sites:
(b) Whether the natural landscape of which the top or hill or building will form

(a) within a 500 metre radius of the centre of the building platform, whether or not:

(i) subdivision and/or development is contemplated on those sites;

(ii) the relevant land is within the applicant's ownership; and

(b) within a 1,100 metre radius of the centre of the building platform if any owner or occupier of land within that area wishes possible future development on that alternative site(s) to be taken into account as a significant improvement on the proposal being considered by the Council

- must be taken into account.

Court: This density control is the subject of Part [E] of this decision.

(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.

(d) 4) 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 adverse effects on the natural or arcadian pastoral character of the landscape with particular regard to the inappropriate over domestication of the landscape, the following matters shall be taken into account:

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:

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

APPENDIX 3

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.

Consideration:

This explanation was requested by WESI if the Court did not persist with the proposed density control clauses in paragraph [40] of the interim decision. While, in the result, we have persisted with the density control clause (or something similar) in that decision we consider the explanation may still be useful.

- (i) the assessment matters detailed in (a) 4) to (d) 4) 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** site'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 ~~in~~ increased population and traffic volumes ~~such as to assist in establishing a threshold to appropriate levels of development.~~
- (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).

(e) 5) Rural Amenities

In considering the potential effect of the proposed development on rural amenities, the following matters shall be taken 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 scenic rural roads and other public places;¹⁸ **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;¹⁹*
- (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 Rural Scenic Road frontages;*
- (iv) *landscaping, including fencing and entrance ways, are consistent with a traditional rural elements, particularly where they front scenic rural 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.*

Mr Goldsmith's submissions:

- ¹⁸ a This assessment matter refers to the retention of "open space" in VAL which is directly contrary to paragraphs 154 and 156 of C180/99 ...
- b This issue has already been dealt with previously under "(2) Visibility of Development".
- c More importantly this assessment matter does not flow from any rural amenity policy. There is nothing in the Part 5 Objective 3 Rural Amenity policies which would lead to an assessment matter of this nature in relation to rural amenity(as opposed to "landscape").
- ¹⁹ d It is submitted that this assessment matter relates to "rural productivity" which is a different issue from "rural amenity".

Consideration: We disagree for the reasons in the decision.

Mr Goldsmith's submission:

- b Again this assessment matter does not flow from any of the Part 5 Objective 3 Rural Amenity policies.

Consideration: We disagree because Mr Goldsmith is relying on a rigid distinction between landscape and visual amenity values which we think is misconceived for the reasons stated in the decision.

(4) d) Other Rural Landscapes

Where it has been determined that the proposed development is not within a ONL or VAL but otherwise within the Rural General zone consideration of the potential effects of the development shall include whether and the extent to which:

- (i) the proposed development will be complementary or sympathetic to the character of adjoining or surrounding visual amenity landscape ~~as viewed from public places;~~
- (ii) the proposed development will be visible from scenic rural roads ~~or from neighbour's properties;~~
- (iii) the proposed development utilises existing topography or vegetation to integrate the development into the landscape and reduce ~~its the~~ visibility ~~from public places;~~
- (iv) the proposed development will adversely effect the naturalness²⁰ and rural quality of the landscape through inappropriate landscaping including earthworks and planting as a result of any proposed mitigation or increased domestication ~~particularly where visible from public places;~~²⁰
- (v) landscaping as a result of development maintains and/or enhances historic or cultural patterns, ~~particularly where visible from public places;~~²⁴
- (vi) the proposed development is complementary or sympathetic to, or can be co-ordinated with, existing or proposed development on adjoining or adjacent properties in terms of landscaping, roof design, roof materials and/or colours, and other external materials and/or colours;
- (vii) the proposed development is designed and/or intended to be carried out in a comprehensive manner taking into account the topography of the site, the size and configuration of the property being developed, the extent and nature of existing or proposed development on adjoining or adjacent properties, and the opportunities for shared access and/or shared amenities;
- (viii) the nature and extent of building setbacks and/or earthworks and/or landscaping can create buffers to avoid or mitigate the potential effects of development on adjoining properties, public roads or public places ~~with respect to those matters in (iii) - (v) above. As a guideline a 50 metre building set back is considered generally appropriate but could be greater or lesser depending on factors such as actual location of nearby buildings, topography, etc.~~

Consideration:

All issues concerning the extent of setbacks (if any) as standards have still to be resolved by the Court.

- (ix) the proposed subdivision is part of a co-ordinated development plan incorporating any balance land (outside the proposed subdivision) in the same ownership;
- (x) there is an opportunity to provide a communal passive or active recreational area which ~~is may be~~ accessible to residents outside the subdivision as well as within the subdivision.
- (xi) the proposed development does not introduce densities which reflect those characteristic of urban areas. ~~with respect to consideration of the site and the development as a whole as viewed from public places.~~
- (xii) the proposed development maintains the rural amenities of the neighbourhood.

Mr Goldsmith's submissions

²⁰ Inclusion of an assessment matter relating to "... the naturalness of the landscape..." suggests that "naturalness" is a characteristic to be protected in other rural landscapes. This is contrary to the findings in paragraphs 154 and 156 of C180/99.

Consideration:

- (1) We disagree for the reasons in the decision.
- (2) We have deleted most references to "public places" or "visible from public places" because the need to protect rural amenities for neighbours or others with a significant view of developments should be considered.
- (3) The maintenance of "rural amenities" argued for by Messrs Parker and Oxnevad are specifically identified as an assessment matter.

SCHEDULE B:

Amendments required for Ski Area Sub-zones

- (a) Insert by way of addition to paragraph 5.3.1.2 of the following:

"for the avoidance of doubt Ski Area Sub-zones are excluded from the landscape classifications used in the Plan (i.e. Outstanding Natural Landscapes (Wakatipu Basin) Outstanding Natural Landscapes (District Wide) or Visual Amenity Landscapes)."

- (b) Amendment to Rule 5.3.3.2i(d)

"Addition or alteration to an existing building or the construction of any new buildings, associated with Ski Activity Areas within Ski Area Sub-zones in respect of"

- (c) Addition to Rule 5.4.1(ii) by adding to the same:

"Except that the assessment matters in 5.4.2(i) – (iv) do not apply to activities requiring resource consent in Ski Area Sub-zones"

- (d) Proposed amendment to assessment matter 5.4.2(iii) – Controlled Activity – All Buildings:

Renumber rule 5.4.2(iv) and retitle

"Controlled and Discretionary Activity – All Buildings (except in Ski Area Sub-Zones)"

- Insert new assessment matter 5.4.2(vi) to read as follows:



"Controlled Activity – Commercial Recreation Activities and buildings in Ski Area Sub-zones".

- (a) Whether the ski tow or lift or building breaks the line and form of the landscape with special regard to sky lines, ridges, hills and prominent slopes/*
- (b) Whether the materials and colour to be used are consistent with the rural landscape of which the tow or lift or building will form a part".*

SCHEDULE C

APPENDIX 8

Insert new Appendix 8 as follows:

"Appendix 8 – Landscape Guidelines

- (1) *This appendix contains indicative (but not determinative) maps showing the landscape categorisation of the rural areas of the district, namely Outstanding Natural Landscapes and Features (District Wide), Visual Amenity Landscapes and Other Rural Landscapes with respect to the relevant descriptions contained in Part 4 – District Wide Issues, 4.2.4 (2) and (3). The maps provide an important base for determining whether a site is in an Outstanding Natural Landscape or Visual Amenity Area but are subject to the specific physical circumstances of each site and the surrounding landscape, and the landscape descriptions as provided in the District Wide Issues – 4.2.4 (2) and (3).*

The weight to be given to the landscape category identified in Appendix 8 will be determined by the Council, on a finding of fact, in considering a resource consent application. To do this, the Council must apply the tests in Part 5.

- (2) *The appendix also contains maps determining the position of the boundary in both the Wakatipu Basin and the Inner Upper Clutha (around Wanaka)) between the Outstanding Natural Landscapes and the Visual Amenity Landscapes contained within the Outstanding Natural Landscape"*

A handwritten signature in black ink, consisting of stylized, overlapping loops and lines, located in the bottom right corner of the page.