

Before the Queenstown Lakes District
Council

In the matter of The Resource Management Act 1991

And

In the matter of Proposed District Plan – Stage 2 – Wakatipu Basin – Hearing
Stream 14

Submission 526 by Michaela Meehan

LEGAL SUBMISSIONS for

Michaela Meehan

Dated 11 July 2018

S526 – Meehan – T14 – Goldsmith W – Legal Submissions

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Introduction

- 1 These Submissions are presented on behalf of Submitter 526 Michaela Meehan who seeks the relocation of a short section of Outstanding Natural Landscape (ONL) boundary at the northern end of the Wakatipu Basin ridge formation known as 'Northridge' which runs along the southern side of, and above, Malaghans Road. Accordingly these Submissions address the basis upon which the reconsideration of an ONL boundary should be approached.

ONL Boundary Reconsideration

- 2 It is accepted that the starting point for many of the ONL boundaries as shown on the publicly notified planning maps are boundaries which have previously been determined by the Environment Court. That starting point must therefore carry considerable weight.
- 3 However I submit that that starting point is not necessarily the finishing point. The Environment Court is not perfect. In many cases there was a lack of fine-grained analysis when the ONL boundaries were determined. Relevant factors may have been overlooked at the time. The passing of time, and in particular ongoing development, may have changed the underlying factual basis. Any or all of those factors might result in a situation where relocation of an ONL boundary is appropriate.
- 4 I submit that the process of reconsidering an ONL boundary should comprise a four step process, as follows:
 - a. Consideration of some of the principles which underpin the determination of an ONL;
 - b. Consideration of the decision which determined the ONL boundary in question, with particular attention to the extent or otherwise of fine-grained analysis of the section of ONL boundary under challenge;
 - c. Consideration of whether there are any factors which might suggest the Court did not get the determination right in the first place, with particular reference to any factors which should have been taken into account and were not taken into account;
 - d. Consideration of any factors which have arisen since the ONL boundary was determined and which might justify reconsideration of the location of the ONL boundary in question, such as additional development.

Principles

5 I do not intend to address this issue in detail, as the principles which underpin the determination of an ONL will be familiar to members of the Panel. However I do consider it to be worthwhile to remind the Panel of some important elements which came out of the Court's seminal decision C180/99¹.

6 At paragraph 82 of C180/99 the Court stated:

“82. The word ‘outstanding’ means:

- “conspicuous, eminent, especially because of excellence”;
- “remarkable in”;

As Mr Marquet pointed out, the Remarkables (mountains) are, by definition, outstanding. The Court observed in Munro v Waitaki District Council that a landscape may be magnificent without being outstanding. New Zealand is full of beautiful or picturesque landscapes which are not necessarily outstanding natural landscapes.”

7 The following excerpts from the following paragraphs addressed the context of the required assessment:

“83. A subsidiary issue is whether an outstanding natural landscape has to be assessed on a district, regional or national basis ...

84. ... Thus if section 6(b) is being considered by a regional council then that authority has to consider section 6(b) on a regional basis. Similarly a district council must consider what is outstanding within its district ...

85. We agree: what is outstanding can in our view only be assessed – in relation to a district plan – on a district-wide basis because some of the district's landscapes are the only immediate comparison that the territorial authority has. In the end of course, this is an ill-defined restriction, since our ‘mental’ view of landscapes is conditioned by our memories of other real and imaginary landscapes in the district and elsewhere, and by pictures and photographs and verbal descriptions of them and other landscapes.

86. The local approach is consistent with an identification of particular places: the unique landscapes of the given district ...”.

¹ *Wakatipu Environmental Society Inc and Ors v Queenstown Lakes District Council* Decision No. C180/99

8 At paragraph 99 the Court stated:

“... ascertaining an area of outstanding natural landscape should not (normally) require experts. Usually an outstanding natural landscape should be so obvious (in general terms) that there is no need for expert analysis ...”.

9 C180/99 also commented on the issue of foregrounds. In paragraph 105 the Court stated:

“... The answer to the question of where the Outstanding Natural Landscapes and features end is not a technical one. It is a robust practical decision based on the importance of foregrounds in (views of) landscape. We do not consider this over-emphasises the pictorial aspects of landscape, merely uses them as a determinative tool.”

10 Against the background of those excerpts of C180/99 I record the advice given to the District Plan Review (DPR) Hearing Panel (differently constituted) to the effect that 96.97% of the total area of the Queenstown Lakes District is classified as ONL or ONF².

11 I invite the Panel to consider the apparent disconnect between the principle that ONL's should be 'outstanding' and 'eminent' within this district and the fact that 96.97% of the district is classified as ONL. Against that factual background I submit that, in any determination of a challenged ONL boundary, the ONL 'bar' should be set relatively high.

12 To put the previous point another way, where there is a case where a section of ONL boundary is genuinely challenged, and where the answer to the challenge is not reasonably obvious, I submit that the default outcome for an area of land subject to the challenge should be non-ONL rather than ONL. I cannot point to any case law which supports that proposition. However I submit that it is a proposition which flows reasonably and naturally from C180/99 and the factual 96.97% ONL classification within the district.

13 I submit that the above proposition can find support in sections 5-7 of the Act. The overall purpose of the Act contains the well-known 'enabling' and 'protection' elements which must be balanced in order to achieve an outcome which will enable people and communities to provide for their social, economic, and cultural wellbeing. The level of protection applied to ONL's is stringent, and if anything is becoming more stringent than in the past. The challenges to achieving consent for virtually any form of land use or development within ONL's are well known. The district must provide for its communities and its people. Having 96.97% of

² Memorandum of Counsel for the QLDC providing Requested Further Information, dated 18 March 2016

the district classified as ONL creates significant constraints on the use of land. I submit that that general situation supports the proposition that, where a section of ONL boundary is being genuinely challenged, the ONL 'bar' should be set relatively high.

- 14 The first case in this district which followed C180/99, in terms of a specific case addressing a challenge to the Court's initial indicative C180/99 ONL boundaries, was C169/2000³. Paragraph 10 of that judgment established the basis for the subsequent series of cases which resolved a series of challenges to the Court's original indicative ONL boundaries. I believe it is worth setting out, and considering, that paragraph in full:

"[10] In our view there are four circumstances that suggest that the topographical lines should give way to a recognition of the realities of situation. The first is that there are (due, it appears, to earlier resource consents granted by the Council) two houses up by the line of poplars as we described earlier. Indeed there is a third house site also on the lower slopes of the land although that has not yet been built on. All three houses (if a third is built) would be within the outstanding natural landscape, as Mr Evatt assesses it. Certainly the presence of houses does not automatically disqualify a landscape from being an outstanding natural landscape, but it is a factor to be considered. Secondly the land's naturalness has also been reduced by the fact that it is sown in exotic (green) grasses, and most of the trees on it – most notably the poplars – are exotic and deciduous. The third aspect for us to consider is that immediately to the east of the site is Mr Broomfield's land. That contains some rural residential subdivision already. Indeed it transpired at the hearing that the Council has approved further subdivision of that land although it had omitted to inform Mr Evatt of that when he prepared his evidence. Fourthly if we take all those matters into account, and the need for a practical boundary between the outstanding natural landscape and the visual amenity landscape – not just across the referrer's land but also across adjacent properties on Ferry Hill – we consider the change of slope at the row of poplars is the place to draw the line. Consequently both the site and some land above 400m asl falls into the visual amenity landscape. We now turn to ascertain the relevant objectives and policies of the amended plan as they apply to the land."

- 15 Since that case the determination of virtually every ONL boundary by the Environment Court, in the series of decisions which followed that case, has been based upon a boundary informed by one or more of the following five factors:

³ *J S Waterston v QLDC* Decision No. 169/2000

- a. A distinctive topographical change;
- b. A distinctive change in vegetation, or a distinctive line of vegetation;
- c. Existence or otherwise of development (existing or consented);
- d. Artificial features in the landscape, such as an obvious line caused by a water race;
- e. A degree of pragmatism, particularly where it is necessary to connect sections of landscape boundary running across areas where there are no such distinct factors present.

16 I now address the other three considerations in relation to the section of ONL boundary under challenge. That section of ONL boundary is clearly identified on the photographs and plans which accompany Mr Baxter's landscape evidence for this hearing, with the existing ONL boundary under challenge identified by a red line and the proposed relocated ONL boundary identified by a yellow line.

Original Environment Court decision

17 The Environment Court decision which determined the ONL boundary being challenged in this hearing is Decision No C3/2002⁴. The decision dealt with ONL boundaries in the northwest corner of the Wakatipu Basin, extending over a reasonably large area of land. The detail of the decision is not particularly easy to follow, particularly if one only has black and white copies of the plans annexed to the decision. A copy of C3/2002 is annexed to these Submissions.

18 The only statements in that decision which appear to be relevant to the section of ONL boundary under challenge can be found in paragraph [38] as follows⁵:

"[38] As to the exceptions, we think Mr Kruger is wrong:

(1) The Littles Stream ONL/VAL boundary should be moved westwards so that it is just to the east of the ridge-line. We have marked the line in red on Plan "3" annexed to this decision. That is because most of Littles Farm is too pastoral to be in an ONL, and it is part of the VAL surrounding the Fitzpatrick "bowl" on Littles Road.

(2) Similarly, while North Ridge is within ONL today, the fact that there are seven approved residential building platforms on which houses can be built as of right is a powerful factor against the

⁴ *Wakatipu Environmental Society Inc and Robert Stewart v QLDC* Decision No C3/2002.

⁵ *Ibid* at paragraph 38(1) and (2).

ONL/VAL boundary being drawn so as to include North Ridge in the ONL.”

- 19 Point (1) above relates to the southern part of the ONL boundary under challenge, being that part south of the ridgeline. Point (1) does not contain any explanation as to why that part of the line is located exactly where it is located, and there is no reference to any of the five factors detailed above.
- 20 Point (2) of the extract quoted above relates to the northern half of the section of ONL boundary under challenge, being that part north of the ridgeline. The ONL boundary was determined to exclude the seven approved residential building platforms so that none would be located within the ONL. However again there is no explanation of exactly why it was located in the position it was located, and there was no reference to any of the other four factors detailed above.
- 21 When one considers the decision as a whole leading up to paragraph 38 quoted above, there is no explanation as to why the ONL boundary was located along the red line shown on the plans attached to Mr Baxter’s evidence rather than the yellow line running along the top edge of the escarpment which would appear to be a relatively obvious demarcation line for a boundary between two landscapes.

Other relevant factors at the time

- 22 I note that the ONL boundary appears to have been incorrectly drawn, if one assumes that it was intended to be based upon subparagraph (2) of paragraph 38 of *C3/2002* quoted above. It appears clear that the Court intended to exclude the seven approved residential building platforms on North Ridge from the ONL. However if reference is made to Attachment A to Mr Baxter’s evidence for this hearing, the two blue dots located just west of the red line on the upper northern side of North Ridge, within the ONL, are two of the seven consented residential building platforms referred to in *C3/2002*. If one assumes that the Council’s ONL boundary faithfully reflects the Court’s ONL boundary then the Court appears to have drawn the boundary in the wrong location.

Subsequent relevant factors

- 23 The primary subsequent relevant factor is that, since *C3/2002*, three additional residential building platforms or houses have been consented within the ONL at the western end of North Ridge. Referring again to Mr Baxter’s Attachment A, those three building platforms are the westernmost blue dot and the two red dots. Given that the only factor identified by the Environment Court in *C3/2002* as being determinative of the ONL boundary was the existence of seven approved residential building platforms which the Court determined should be excluded from the ONL, I submit this factor is highly relevant to this challenge to the location of this section of the ONL boundary.

24 I also submit that the mere fact that three building platforms or houses have been consented, relatively close to each other, on an area of land currently classified as ONL, itself strongly suggests that the current ONL boundary is not correctly located.

Conclusion

25 Taking all of the above into account, and referring to Mr Baxter's Attachments A to C, I submit that:

- a. This is an issue to be determined on the facts.
- b. The facts are obvious and do not require expert landscape analysis.
- c. The factual basis for the determination of the section of ONL boundary by the Environment Court in *C3/2002* is unclear and questionable. Apart from a determination to exclude consented development, there is no obvious 'on the ground' factor which justifies the location of the current ONL boundary.
- d. The upper edge of the escarpment, as shown by the yellow line on Mr Baxter's Attachment A, has always been, and remains, the obvious boundary based on a significant change in the characteristics of the landscapes either side of that line.
- e. In any event the current ONL boundary is incorrectly located if it was intended to be located excluding the then existing seven consented building platforms. Whether that is an error by the Court or by Council is not clear.
- f. The fact that three additional residential building platforms or houses have been consented within the ONL at the western end of North Ridge is a significant relevant factor.
- g. The ONL boundary should be located along the yellow line shown on Mr Baxter's Attachment A.

Warwick Peter Goldsmith
Counsel for Michaela Meehan

Dated 11 July 2018

DOUBLE SIDED

ORIGINAL

Decision No. C **3** /2002

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of three references pursuant to Clause 14 of the First Schedule and three appeals under section 120 of the Act

BETWEEN

WAKATIPU ENVIRONMENTAL SOCIETY INC

(RMA 1043/98; RMA 1165/98; RMA 1394/98; RMA 323/00; RMA 710/00)

ROBERT STEWART

(RMA 325/00)

Referrers/Appellants

AND

QUEENSTOWN LAKES DISTRICT COUNCIL

Respondent

AND

B PATERSON

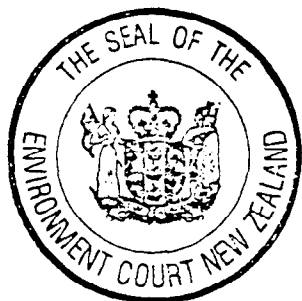
(RMA 323/00 and 325/00)

AND

LITTLES STREAM LTD

(RMA 710/00)

Applicants



BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson (presiding)

Environment Commissioner R Grigg

Environment Commissioner R S Tasker

HEARING at **QUEENSTOWN** on 29, 30, 31 October and 1, 2 and 7, 8, 9 November 2001

APPEARANCES

Ms N J Pearce for Wakatipu Environmental Society Inc

Mr N S Marquet for Queenstown Lakes District Council

Mr G M Todd for G Paterson as applicant in RMA 323/00 and RMA 325/00 and as a section 271A party to the references

Mr W J Goldsmith for R Stewart in RMA 325/00;
for North Ridge (Queenstown) Developments Ltd as a section 271A party; and
for South Pacific Trust as a section 271A party

Mr M Parker for Littles Stream Ltd as applicant in RMA 710/00 and as a section 271A party to the WESI references

EIGHTH DECISION (ARTHUR'S POINT TO DALEFIELD)***Summary of Contents***

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[A] Introduction

[1] This decision is about the landscape (“the Arthur’s Point/Dalefield Area”) between Arthur’s Point and the flat valley underneath Coronet Peak within the Wakatipu Basin of the Queenstown Lakes District. In a decision dated 29 October 1999¹ (“the first Queenstown landscape decision”) the Environment Court tentatively suggested² a line distinguishing the outstanding natural landscapes from the visual amenity landscapes of the Wakatipu Basin.

[2] Outstanding natural landscapes are identified³, but not defined, in the Resource Management Act 1991 (“the Act” or “the RMA”). The meaning of “outstanding natural landscape” (“ONL”) was discussed in the first Queenstown landscape decision. “Visual amenity landscapes” (“VAL”) were also described in a way subsequently introduced into the proposed plan of the Queenstown-Lakes District Council (“the Council”), under the current references to the Court and we shall refer to that explanation later.

[3] We attach (Appendix 1) a map of the area produced by Mr R F W Kruger⁴ which shows for the relevant area the ONL/VAL boundaries as drawn by:

- (1) the Environment Court in the first landscape decision;
- (2) Mr R F W Kruger;
- (3) The Council.

That range was caused by the fact that in the first Queenstown landscape decision the Court reserved leave to any party or interested person to argue that the Court’s boundary between the ONL⁵ and VAL was incorrect. The Council subsequently produced plans showing a different boundary in this area which is now supported by several landscape experts (Ms E J Kidson, Mr B Espie, Mr P J Baxter).

¹ C180/99; [2000] NZRMA 59 followed by (2) C74/00; (3) C186/00; (4) C75/01; (5) C92/01; (6) C100/01; (7) C162/01.

² In Appendix II to that decision.

³ Section 6(b) RMA.

⁴ Attachment C to the evidence of Mr R F W Kruger.

⁵ Strictly speaking, the issues in this case are about the Outstanding Natural Landscape of the Wakatipu Basin, but for brevity we call these the “ONL”.



[4] The Court is hearing the outstanding “boundary” issues under the references of the Wakatipu Environmental Society Incorporated (“WESI”) by area together with any section 120 appeals concerning subdivision and residential development relating to the same area. Thus we heard the references about the Arthur’s Point/Dalefield area together with these appeals:

(1) RMA 323/00 by WESI

RMA 325/00 by Stewart

- which concern an application by Mr G Paterson for land (“the Paterson land”) north east of Big Beach on the Shotover River.

(2) RMA 710/00 by WESI which concerns an application by Littles Stream Ltd in respect of land above (and north of) the Shotover River (“the Littles Farm land”).

(3) RMA 211/00 by Fordyce Farms Ltd which concerns an application by South Pacific Trustees Ltd [now North Ridge (Queenstown) Developments Ltd – “North Ridge”] in respect of land on a plateau above Malaghan’s Road (“the North Ridge land”) between Arthur’s Point and Arrowtown.

We annex as Appendix 2 a copy of a map⁶ showing the location of the relevant pieces of land within the Arthur’s Point /Dalefield area. It will be seen that all three pieces of land are wholly or partly within the ONL suggested by the Court and outside it in the view of the Council’s and the applicants’ experts.

[5] This decision is solely about the location of the landscape lines. Consideration of the substantive merits of the section 120 appeals will be left to separate decisions in the light of this one.



⁶ Attachment “C” to the evidence of Mr P J Baxter (in RMA 323/00 and 325/00).

[B] Application of the Pigeon Bay criteria

[6] In the first Queenstown landscape decision the Court set out⁷ amended *Pigeon Bay* criteria⁸ for assessing landscapes under the RMA. They include:

- (a) *the natural science factors – the geological, topographical, ecological and dynamic components of the landscape;*
- (b) *its aesthetic values including memorability and naturalness;*
- (c) *its expressiveness (legibility): how obviously the landscape demonstrates the formative processes leading to it;*
- (d) *transient values: occasional presence of wildlife; or its values at certain times of the day or of the year;*
- (e) *whether the values are shared and recognised;*
- (f) *its value to tangata whenua;*
- (g) *its historical associations.*

The witnesses in this case did not suggest (with one minor exception) that there were other factors to consider. We first describe the Arthur's Point/Dalefield area in terms of the amended Pigeon Bay criteria.

Natural Science Factors (Geomorphology, Ecology, Topography)

[7] The underlying rock for the whole of the Wakatipu Basin is schist. The most notable characteristics of the area are geomorphological. These constitute dynamic geological factors – the effect of glaciation on the Arthur's Point/Dalefield area.

[8] Mr R F W Kruger, the landscape witness for WESI produced⁹ a report (“the IGNS report”) by Mr D J A Barrell of the Institute of Geological and Nuclear Sciences Ltd. The IGNS report suggests that in the last glaciation (about 20,000 years ago) a steep off-shoot of the main Wakatipu glacier (which filled the valley where Lake

⁷ [2000] NZRMA 59 para (80).

⁸ Referring to *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* [1999] NZRMA 209 at 232.

⁹ Attachment “B1” to the primary evidence of Mr R F W Kruger.



Wakatipu is now) flowed north through Queenstown gorge, but was stopped by the Shotover River which then ran through Malaghan's valley at the foot of the Mt Dewar-Coronet Peak Range. Of the Arthur's Point/Dalefield area, only the very top of the ridge between the Shotover River and Malaghans Road was not covered by the glacier, as evidenced by a straight line of moraine (glacial rubble) on the south side of that ridge. The glacier gouged out the valley floor (underneath what is now Big Beach in the Shotover River), the steep sides of Queenstown gorge and the escarpment east of and above the Paterson land.

[9] When the glacier melted and retreated – starting about 15,000 years ago - the Shotover River cut its present course leaving a large piece of dead ice isolated on the north side of the river (immediately north-east of the Paterson land). Geological features such as moraines and kettle holes are evidence of that pattern of events. Another consequence of the ice's retreat was that very large landslides of schist (previously supported by the ice) fell down the northern valley sides giving them their lumpy shape.

[10] The IGNS report summarises the significance of the landforms as follows¹⁰:

3.3 Significance of Arthur's Point landforms

The moraine, ice-sculpted bedrock, terrace and landslide landforms of the Arthurs Point area provide dramatic evidence of the nature, relationship and timing of the events and complex processes that have formed the general Wakatipu landscape. The ice-evacuated basin, and sequence of outwash terraces complete with remnant moraines and kettle holes, between the Shotover River and the Malaghan-Dalefield Rd intersection, is the best preserved, most easily accessible example of a glacier terminus in the Wakatipu Basin. It has the advantage of having clear features that could be readily explained to and understood by a layperson in their gaining of an understanding of glacial processes. It is rare to have, in an easily accessible location, such a well-preserved ice-evacuated basin. Commonly, lake-water and/or younger sediments fill and obscure the detail of such basins. The Arthurs Point

¹⁰ IGNS report para 3.3 (p.7).



landforms are as good a set of examples of these features as can be found anywhere in New Zealand, although other similar examples exist elsewhere in the South Island.

Of special note is the very large landslide that is traversed by Skippers Road ... This is as good and dramatic an example of a large schist landslide as found anywhere in New Zealand, and is clearly visible from many aspects, and accessible by road. In addition it is rare for a landslide of this size and type to have left such clear evidence of it having overridden and truncated terrace landforms at its toe.

Of particular scientific significance is the evidence, preserved by landforms near Arthurs Point, of how glacial advances have modified the course and behaviour of the Shotover River. Another scientifically significant feature is the moraine ridge on the slope north of Littles Road. This ridge records the maximum height and position of a major ice advance, and provides key data control for glacial reconstruction ...

In summary the landforms in this small area between Arthurs Point and Dalefield contain all the key elements that both specialists and lay-people need to gain an insight into the processes that created the Wakatipu Basin landscape. They include the best and clearest examples of Last Glaciation glacier terminus moraine and outwash landforms in the Wakatipu Basin.

The IGNS report inspired Mr Kruger to suggest that the Pigeon Bay factors could be supplemented by an educative component. While we do not deny there is an educative issue we think that adding it as a factor would put too much didactic stress on it. No-one enjoys being lectured. In a sense, education is what inquiring minds gain from a legible landscape which they do not understand but inquire about.

[11] Ecologically the Arthur's Point/Dalefield area consists mainly of exotic plants: introduced grasses on the flatter areas, briar rose and hawthorn in the gullies, wilding pines and sycamore on steeper slopes, poplars and willows in shelterbelts and along streams; pines and macrocarpa on higher sites (especially in the Littles Stream area) for



shelterbelts. As for native plants: the most obvious are patches of tussock species in and above the cliffs of the escarpment; areas of matagouri along the foot of the escarpment and one small stand of beech¹¹ above the Shotover River on the northern side.

[12] Turning to the topography: from north to south, the Arthur's Point/Dalefield area contains all the land between the slope of the Mt Dewar/Coronet Range to the north and the Shotover River to the south. Longitudinally, Big Beach in the Shotover River is at the western end of a ridge of rock shaped like a long spiny-backed lizard which has its long smooth tail ending at Millbrook just before Arrowtown. The western part of this ridge we shall call "the Knob J" ridge after its highest point (596m ASL). The Knob J has an escarpment along its western and northern sides which, towards the Shotover River is, formed by impressive cliffs. North of the Knob J ridge, and connecting Arthur's Point and Arrowtown is Malaghans Road which runs along the former course of the Shotover River (as it was over 20,000 years ago). In fact that 'valley' now drains two ways, with the western end running down through the Paterson land into a gully on the Paterson land and then into the Shotover River. The eastern end runs east to the Arrow River.

Legibility

[13] With the help of the IGNS report the history of the area can be easily read in the moraines, kettle holes, rocky escarpment walls, terraces, landslides, streams and the Shotover River.

Aesthetic values

[14] It is difficult to see the Arthur's Point/Dalefield area as a whole (except from the air). Visually it tends to be seen as part of four different landscapes.

(1) as part of the Arthur's Point basin (defined at the eastern side by the escarpment on the Knob J ridge);

¹¹ *Nothofagus* spp.



- (2) as part of the edge to the Fitzpatrick basin (defined on its western and northern sides by the crest of the Knob J ridge;
- (3) as part of the Malaghans Road flats;
- (4) on a much larger scale - from Coronet Peak (and its access road) - as one segment of the Wakatipu Basin.

Also, when an observer is looking at any of those views they are conscious of far more than the land contained in the Arthur's Point/Dalefield area as we have defined it. In answer to questions from the Court, the expert landscape witnesses agreed that the area did comprise several different landscapes, and that the Malaghans Road valley was a different landscape to the Arthur's Point basin.

Shared and Recognized Values

[15] There was general agreement by the witnesses that the open grazed parts of the landscape(s) provide a character which is generally enjoyed by visitors and residents; and that an important feature of the landscapes is a lack of built form (except for farm buildings). One of the more complex aspects of this case is that there are a number of resource consents for subdivision and residential development in the Arthur's Point/Dalefield area which we need to take into account.

Transient values

[16] There are no specific transient values that we need take into account. The general drama of the landscape(s) ensures that transient effects – dawns, sunsets, storms – are often sensational.

Value to tangata whenua

[17] We have no evidence of specific value of the area to tangata whenua.



Historical associations

[18] These reflect patterns of burning for ease of travel, hunting and later for conversion to farmland. Other components of the landscapes were caused by goldminers – tailings – and later by gold spenders - accommodation and roads for skiers, jet-boaters and other holiday-makers.

[C] The landscape experts

[19] The only evidence called for WESI was from Mr Kruger, a well-qualified landscape expert who has given evidence to the Court before about the landscapes of the Wakatipu Basin. His evidence relating to the landscape lines in these proceedings was contained in a primary brief (with which he produced the IGNS report) and a brief of rebuttal evidence. In the latter he tabulated¹² the evidence of the 14 witnesses he had read, and then discussed the views of the five opposing landscape experts (Mr P J Baxter, Ms E A Steven, Mr D J Miskell, Ms E J Kidson and Mr B Espie).

[20] Mr Marquet was critical of the length of Mr Kruger's rebuttal evidence; he suggested that rebuttal evidence should not be as long as primary evidence. In general terms we agree but there are two other factors to consider. One is specific to this case, and the other is of more general application. The special aspect is that Mr Kruger had to respond to the opinion of five opposing experts; the general factor is that this division of the Environment Court prefers experts to comment directly on the opinions of others. When all opposing opinions are put through counsel, that has the disadvantages of inaccuracy which tend to be attached to any information communicated through several persons¹³.

[21] Mr Kruger succinctly stated his reasons for stating that the ONL/VAL boundary was roughly where the Court suggested in the first Queenstown landscape decision. He identified three criteria as especially relevant and stated¹⁴:

¹² Para 7 of R F W Kruger's rebuttal evidence 28/10/01.

¹³ A 'Chinese Whispers' problem of understanding rather than, simply, hearing.

¹⁴ R F W Kruger Evidence-in-chief para 25.



In my opinion, all of the following criteria can be applied to the landscapes within the study area that I have classified as ONL:

A. Natural Science Factors

As has been shown in the geological report, large tracts of the subject landscapes and their "... landforms are a well-preserved, accessible, textbook example of features that reflect these types of landscape-shaping processes. Collectively, in this small area, they are the best example of these landforms in the Wakatipu Basin." [IGNS report p.7]

The geological significance alone is justification enough to classify these landscapes as ONL. From the geological factors flows ecological diversity. The variety of underlying types of rock, various soils, gradients and other physical factors create a diverse pattern of living environments, often on a very small scale.

B. Aesthetic Values

The dramatically shaped rock faces of the ice-evacuated basin and the steep banks of the canyon cut by the Shotover River to the South of Littles Road form a sharp contrast to the gentle outwash terraces north of Malaghan Road and the rounded forms of the landscapes contained within the ice-evacuated basin. These contrasts and of course each landform in itself, are of high aesthetic value. A number of public view points present large parts of the study area to the observer. Elevated views of the area are available from the entire length of Coronet Peak Road and a short stretch of Littles Road, "birds-eye views" from higher altitudes of Coronet Peak Road and Coronet Peak itself, whereas on Malaghan[s] Road and Littles Road the observer is "immersed" in the beauty of this landscape.

It is my opinion that there are few easily accessible areas in the Wakatipu Basin with higher aesthetic values. All locals know the breathtaking beauty of the iconic view towards Walter Peak. Tourists taking photographs of this view from Malaghan Road (bottom of Garick



Tremain's driveway ... are a further indication of the aesthetic importance of this area within the district's landscape.

C. *Expressiveness (Legibility)*

In my opinion – which is supported by the geological study – there are few landscapes in the Wakatipu Basin that better show the forces that created them; express the shaping powers of glaciation, alluvial activity and landslides. The legibility of these landscapes is very high due to the absence of major human interference – the “cloak of human activity” is very thin. The structure – or chaos – created by the geological events in the past is clearly visible, even without expert explanation.

This summary was only slightly modified after cross-examination. Mr Kruger conceded in answer to Mr Todd that not all of the Paterson site could be seen from the Coronet Peak Road (although it is not clear that he claimed it could be). We also consider from our own view and from other evidence that much of the Littles Stream land cannot be seen from there either.

[22] For reasons that will shortly be apparent, the only expert landscape opinion in this case with an independent over-view which we feel we can accept (although we do not accept all of it) is that of Mr Kruger. That is because he is the only landscape witness to have considered the relevant matters fully and accurately.

[23] There was some criticism from counsel that Mr Kruger was not objective, and that he was acting as an advocate. There was no express indication of the latter, except for one comment on Ms V Ensor's evidence. Considering the haste with which Mr Kruger prepared his rebuttal evidence (due to the late receipt of other parties' primary evidence) we do not consider Mr Kruger's integrity is undermined by that. As to the former criticism, landscape evaluation is a subjective matter. Completely bloodless but meaningful descriptions of landscapes are difficult, if not impossible, to achieve. Mr Kruger's values to the Court are his independence (he is confident enough to disagree with the Court's first Queenstown landscape decision), his ability to look at the bigger picture and to describe the application of relevant factors.



[24] Part of the problem is in the way the description of ‘Visual Amenity Landscapes’ is being read. The proposed plan now states:¹⁵

The visual amenity landscapes are the landscapes to which particular regard is to be had under Section 7 of the Act. They are landscapes which wear a cloak of human activity much more obviously – pastoral (in the poetic and picturesque sense rather than the functional sense) or Arcadian landscapes with more houses and trees, greener (introduced) grasses and tend to be on the district’s downlands, flats and terraces. The extra quality that these landscapes possess which bring them into the category of “visual amenity landscapes” is their prominence because they are:

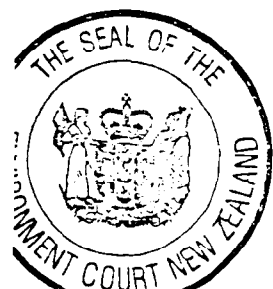
- *adjacent to outstanding natural features or landscapes; or*
- *on ridges or hills; or*
- *adjacent to important scenic roads; or*
- *a combination of the above.*

On the evidence in this case, that explanation seems to be causing confusion. However, that is only because, in our view, it is being read incorrectly. The important aspect of the explanation that is being overlooked is that it refers to “landscapes” not “parts of landscapes” nor “landscape units”.

[25] Mr P J Baxter the landscape witness for Mr Paterson and for Littles Stream Ltd, gave two sets of evidence. His reasons for concluding that the Paterson land was a VAL rather than an ONL were perfunctory¹⁶:

After assessing the site against the matters set out above and against the list from para 93 of C180/99 I consider this are [sic, presumably “area”] to be a visual amenity landscape for the following reasons:

¹⁵ Part 4.2.4 of the proposed plan as amended by the Court in Decision C74/00.
¹⁶ Evidence of P J Baxter (re Paterson) para 16.



- *The landscape that backdrops this site on the whole exhibits a natural, unmodified landscape. This contrasts with the landscape of the subject site.*
- *The landscape of the subject site is farmland and the flanks contain both farming structures and existing residential dwellings. This 'cloak of human activity' is evident on the site and immediate surrounds.*
- *The pastoral character of the site is easily recognisable.*
- *The site is adjacent to Queenstown Hill, Mt Dewar and the Shotover River which, in my submission are Outstanding Natural Landscapes.*

I also note that, since the submission made in Attachment E, I have further inspected the site and have amended the plan to show the Shotover River as being ONL category ...

Remarkably in this assessment he does not refer to the Knob J Ridge escarpment which is such an important (and obvious) component of most views of the site's context from the west (e.g. from Atley's Road or the Gorge Road Lookout).

[26] Similarly, he simply concludes that the Littles Farm land is 'Arcadian' and therefore VAL but gives us no guidance as whether the escarpment at its western end is part of a different landscape. Mr Baxter, like all the landscape witnesses (other than Mr Kruger), is site-obsessed and does not properly examine the landscape settings of each site.

[27] Ms Kidson's description of the Paterson land was¹⁷:

The proposed site is located on the downlands of the Wakatipu Basin and is characterised by relatively flat and terraced land contained within a small valley landscape unit. Malaghan[s] Road (a scenic rural road) is located on the north west corner of the site, with the Shotover River located approximately 160 metres to the [s]outh. The site forms an important foreground to the Shotover River and the Sugar Loaf Hill and Queenstown Hill when viewed from the north along Malaghans Road, and when viewed from Gorge Road and Arthurs Point

¹⁷

Evidence of E J Kidson para 3.37.



Road is seen in conjunction with the rocky escarpment of the ice sculptured rock to the north east. The view from Atley Road has the backdrop of Coronet Peak further to the north. The presence of the small gully running through the site contributes to its natural qualities. The sites location on the floor of the Wakatipu Basin surrounded on three sides by outstanding natural landscapes, and the green pastoral quality of the site all contribute to its amenity.

[28] She then concluded that¹⁸:

Having assessed the landscape in relation to the amended Pigeon Bay Criteria and the character associated with a “visual amenity landscape” as described in Part 4.2.4 of the Proposed District Plan, I consider that the landscape of the site has the attributes of a visual amenity landscape. The character of the landscape is open and rural with green exotic pasture covering the river terraces. The land is grazed by domestic animals and is located on the valley floor of the Wakatipu Basin. This landscape unit continues to the north along the floor of the Wakatipu Basin on either side of Malaghans Road ...

The site and surrounding valley floor has a high level of amenity associated with its Arcadian attributes, however in my mind, this is not a reason to recognise the landscape as outstanding. [our emphasis].

We hold that Ms Kidson is not applying the Pigeon Bay criteria in the right way. It is neither the site nor the site and the valley floor, nor the landscape unit which needs to be considered but something larger than all of them: the landscape in which the site is situated.

[29] Mr B Espie, a landscape architect with several years of experience called by the Council, analysed the *Pigeon Bay* criteria as they apply to the Arthur’s Point/Dalefield area. Before giving his opinion on where the boundary between VAL and ONL lies he also broke the area down into various landscape units¹⁹: “valley floors”, the “mountain slopes” (the Mt Dewar Coronet Peak Range); “high natural glacially sculpted hills”

¹⁸ Evidence of E J Kidson para 3.38.

¹⁹ B Espie evidence in chief App. 1.



(Sugar Loaf and Queenstown Hill), and “semi-domesticated glacially sculpted hills” (the Knob J ridge).

[30] While it is important not to over-emphasize the visual component of landscape, the effects on views are still an important issue as “landscape” is used in the RMA. The Court stated in the first Queenstown landscape decision²⁰, of the amended *Pigeon Bay* criteria:

One aspect that troubles us in particular is that the dictionary senses of landscape as a view of scenery or, perhaps, a collection of views – while included in (b), is given less emphasis than we consider the RMA might suggest.

Further that decision also recognises that a “landscape” in the RMA is in part an “arbitrary cultural lumping”²¹ of natural and physical resources.

[31] We cannot assess the utility of the concept of “landscape units” for general purposes, but we doubt if it has much use when ascertaining whether section 6 of the RMA applies. As the Court stated in the first Queenstown landscape decision²²:

*When considering the issue of outstanding natural landscapes we must bear in mind that some hillsides, faces and foregrounds are not in themselves outstanding natural features or landscapes, but looked at as a whole together with other features that are, they become **part of a whole that is greater than the sum of its parts**. To individual landowners who look at their house, pasture, shelterbelts and sheds and cannot believe that their land is an outstanding natural landscape we point out that the land is part of an outstanding natural landscape and questions of the wider context and of scale need to be considered. The answer to the question where the outstanding natural landscapes and features end is not a technical one. It is a robust practical decision based on the importance of foregrounds in (views of) landscape. We do not consider this*

²⁰ [2000] NZRMA 59 at para (80).

²¹ [2000] NZRMA 59 at para (78).

²² [2000] NZRMA 59 at para (105).



over-emphasises the pictorial aspects of landscape, merely uses them as a determinative tool. [our emphasis].

[32] Another aspect of the evidence in these proceedings that troubles us is that, as referred to extensively (and critically) by Mr Kruger in his evidence, the Council had prepared a document called "Wakatipu Land[s]cape Lines" dated 27 April 2000. That document apparently drew the ONL/VAL boundary along the toe of the Mt Dewar/Coronet Peak Range i.e. to the north of Malaghans Road. Neither of the Council experts referred to that even though (as it happens) their lines appear to correspond with those of the Council. Mr Espie confirmed to the Court that he knew of the Council lines when he prepared his evidence.

[33] In summary: both Mr Baxter and the two Council landscape witnesses Ms Kidson and Mr Espie erred in our view by not looking at the big picture. Just as Ms Kidson looked at the site, Mr Espie analysed the landscape into "units" (which by definition are separate items). One such unit was the "valley floor" being all the flatter, grazing land on either side of Malaghans Road. It is unclear to us how that assists several of the assessments that need to be made, and we consider it could be dangerous when it comes to the aesthetic assessment (which is of course, necessarily subjective). That is because when appreciating or evaluating a landscape one does not look at one part – say the valley floor – in isolation. A valley floor is only a floor because there are walls. Referring to the container metaphors that have been used for the Wakatipu Basin, the smaller Arthur's Point bowl (roughly a circle centred on Big Beach) only has a bottom (the river flats, and the Paterson terraces) because it has the mountains and the escarpment as its sides. As Mr Kruger observed when under cross-examination by Mr Todd his water cup would not be a cup if it did not have a bottom: it would not hold water.

[34] Ms Steven and Mr Miskell gave evidence on North Ridge. Their evidence suffered the same faults as the evidence of the Council witnesses. They discussed their client's site rather than the landscape in which it was set. However, their opinions did have the undoubted advantage that it considered the domesticating effect of 7 houses (which can now be built as of right) on the North Ridge land.



[35] The dangers in cross-examining witnesses who are effectively on the same side was shown when Mr Marquet cross-examined Mr Miskell²³:

Q. Mr Kruger gave evidence that certainly a number of the landscape witnesses in this case had made an assessment without sufficiently researching the geological history of the area, and he pointed to the report that he had obtained which is included in his evidence. Is it your opinion that that report was a necessary pre-condition or likely information a necessary pre-condition to making a judgment about landscape category?

A. In my opinion it was not a necessary pre-condition to form an opinion but it did add to my understanding of this landscape.

Q. Had you made your assessment before seeing that report?

A. I had.

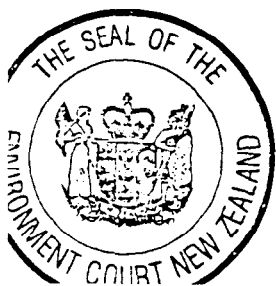
Q. Having seen that report have you any reason to have changed your assessment?

A. No I haven't.

We would have thought the safe answer (although it would not really have helped us much) would have been:

Yes it helped me and gave several good reasons to review my position, but in the end I came to the same conclusion.

But to deny that the IGNS report gives any reason to change his mind suggests the witness has guessed the answer Mr Marquet (who was effectively on the same side) wants. We do not put much weight on this; it is the same scale of error as Mr Kruger's criticism of Ms Ensor and just another reminder of how difficult it is for experts to be completely dispassionate.



²³

North Ridge Notes of Evidence p.13.

Conclusions

[36] All the landscape witnesses except Mr Kruger have got caught up with the Court's definition of "VAL" in the first Queenstown landscape decision but they have failed to step back and consider the landscape of which the site they are concerned with is only part. In our view Mr Kruger's is the most complete and relatively correct analysis of the landscapes in the Arthur's Point/Dalefield area. We find that he is correct in all except three respects as to where he has drawn the line. The exceptions are:

- (1) Littles Stream;
- (2) The plateau on North Ridge; and
- (3) Consequentially the Malaghan's valley east of the Tremain Gap.

We deal with those shortly.

[37] First, however, we find that the Paterson land is not within a VAL for these reasons:

- (1) It is too small to be a VAL or indeed a 'landscape' at all: even if the Coronet Park flats are added to it they do not comprise a landscape;
- (2) The Paterson land is part of a larger landscape – the "Arthur's Point Basin";
- (3) As Ms Kidson states, the Paterson land is surrounded by ONL on three sides;
- (4) The valley floor is only pastoral in a working sense;
- (5) A "landscape unit" almost by definition cannot be "a landscape".

[38] As to the exceptions, where we think Mr Kruger is wrong:

- (1) The Littles Stream ONL/VAL boundary should be moved westwards so that it is just to the east of the ridge-line. We have marked the line in red on Plan "3" annexed to this decision. That is because most of Littles



Farm is too pastoral to be in an ONL, and it is part of the VAL surrounding the Fitzpatrick “bowl” on Littles Road.

- (2) Similarly, while North Ridge is within ONL today, the fact that there are seven approved residential building platforms on which houses can be built as of right is a powerful factor against the ONL/VAL boundary being drawn so as to include North Ridge in the ONL.
- (3) Consequently (and with some regret for the special geological character of land excluded) we consider that the ONL/VAL boundary should cross the Malaghan’s Valley by following the fenceline (the Tremain south-western boundary) as marked on Plan “3” annexed, thence west along Malaghan’s Road to the Ben Lomond homestead, and then turn behind that and run east along the foot of the Coronet Peak Range joining Mr Kruger’s line east of Coronet Peak Station so as to include the bump marked 489 metres.

[39] By memorandum dated 15 November 2001 Mr Goldsmith drew our attention to the fact that some of:

- the possible VAL/ONL boundaries given to the Court appear to include some or all of The Arthur’s Point Low Density Residential zone; and
- the Arthur’s Point Rural Visitor zone.

within the ONL(WB).

[40] We attach as Figure “4” a copy of the relevant part of the relevant planning map²⁴ on which we have, for the avoidance of doubt marked the inside line of the ONL as we find it to be. The point at which the ONL intersects with Littles Road should be 5 metres southeast of the large conifer on the edge of Littles Road.

[41] Neither of the zones referred to by Mr Goldsmith should include ONL(WB) so we have redrawn the boundary to reflect this.



²⁴ Map 39 [Revised Plan – Maps].

[42] There is a degree of arbitrariness in that line but as Lord Loreburn stated in an early House of Lords decision on building line restrictions²⁵:

In my opinion the object of th[e] Act was to secure a general line of building to which all must conform. ... Certainly there is something arbitrary in the provisions of the Act itself. There must necessarily be something arbitrary if the object is to prevent constant litigation and dispute upon matters which might with justice and convenience be entrusted to some competent authority to decide and thereby bind all interests.

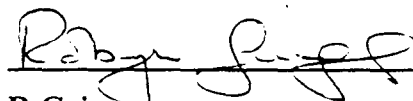
[43] We direct:

- (1) that the ONL (Wakatipu Basin)/VAL line be drawn as shown on Maps "3" and "4" appended;
- (2) that leave is reserved for any party to apply to the Court to make any ancillary or consequential directions;
- (3) the decisions on the section 120 appeals are further reserved.

[44] Costs are reserved.

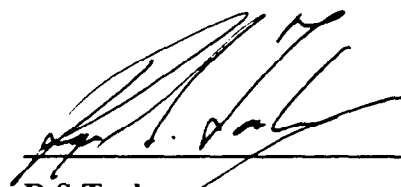
DATED at CHRISTCHURCH this 22nd day of January 2002.

For the Court:



 R Grigg

Environment Commissioner



 R S Tasker

Environment Commissioner



Appendices:

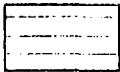
- (1) Map showing potential ONL(WP/VAL) boundaries
- (2) Map showing location of applicants' pieces of land
- (3) Map determining ONL(WB)/VAL line in the Arthur's Point/Dalefield Area
- (4) Map determining ONL(WB) line close to the eastern end of Arthur's Point.

Issued: 22 JAN 2002



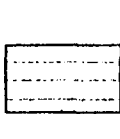
ONL


Environment Court
Decision C 180/99

 QLDC
18/01/01 and 27-04-2001

 Ralf Krüger

 Environment Court
+
Ralf Krüger

 Environment Court
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QLDC
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Ralf Krüger

 Subdivision

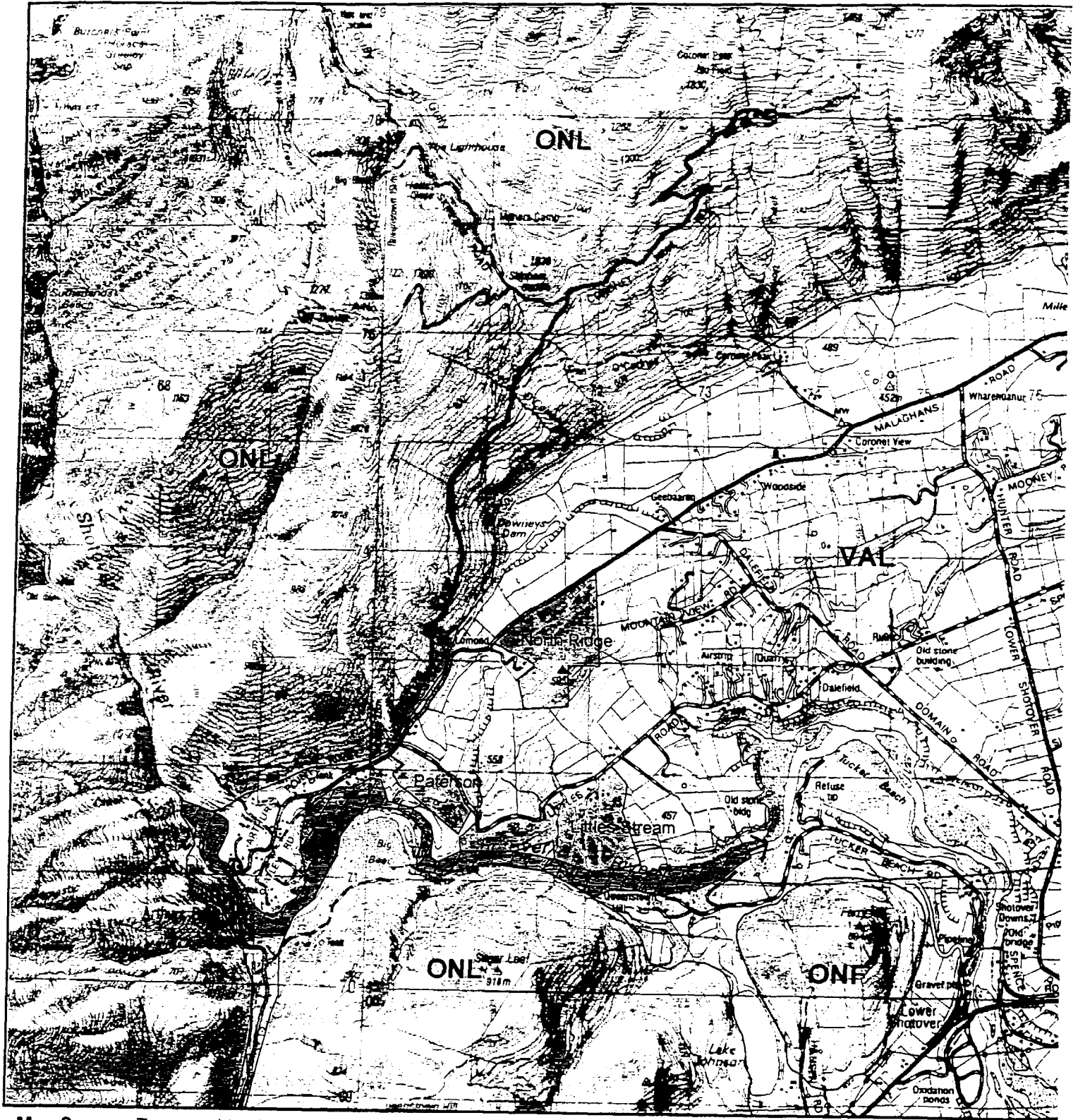


No further considerations of lines
east of here in this evidence

No further considerations of lines
east of here in this evidence



Attachment C
Landscape Boundaries
and Subdivisions



Map Source: Topographic Maps (260-E41 QUEENSTOWN - left) and (260-F41 ARROWTOWN - right)

LEGEND



Subdivisions



Amendment: 4-10-01



Areas of ONL or ONF

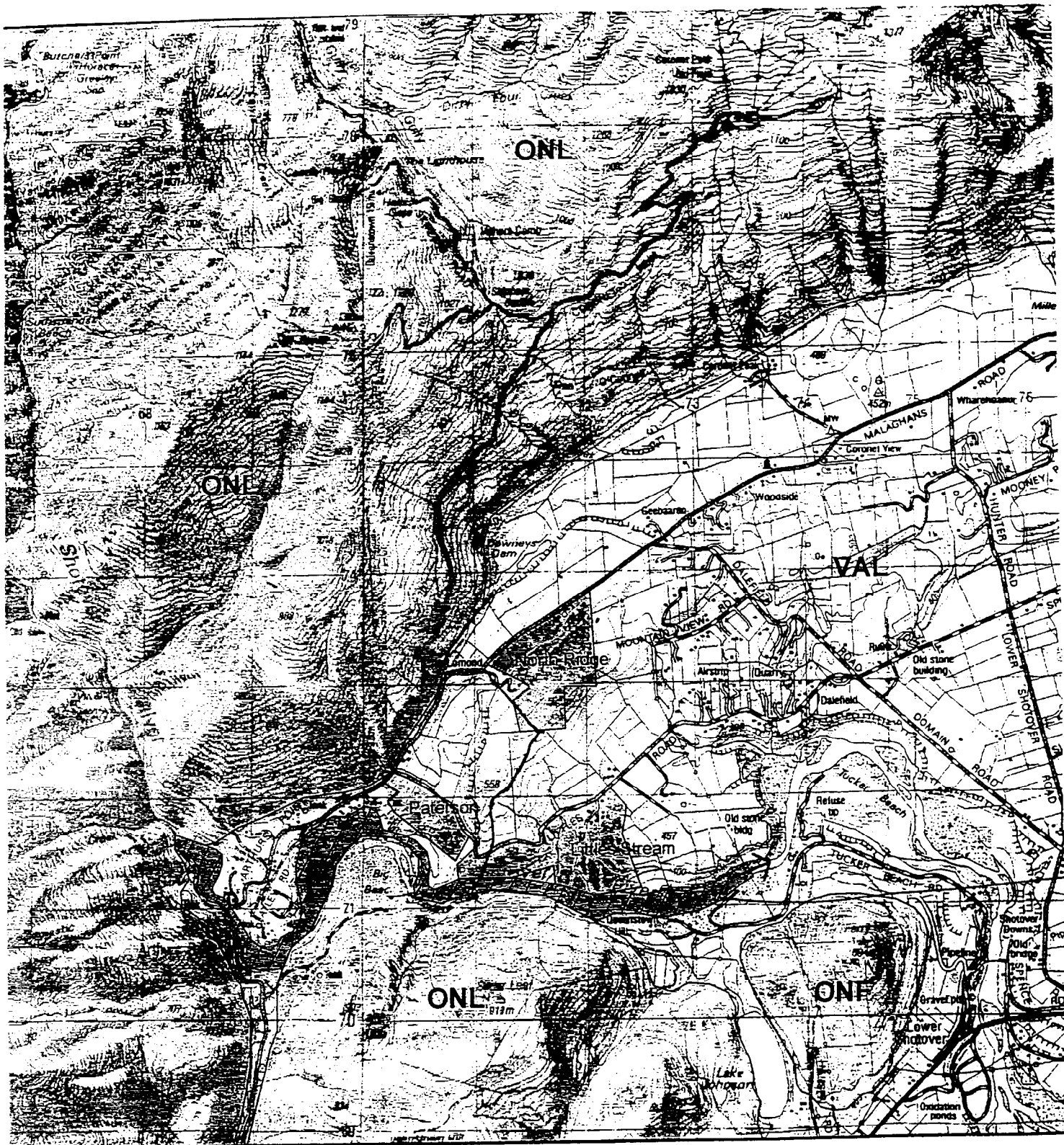
Showing additional area of
ONL – Shotover river



2

SUBDIVISION and LANDSCAPE CATEGORY LINES

September 2001



Map Source: Topographic Maps (260-E41 QUEENSTOWN - left) and (260-F41 ARROWTOWN - right)

LEGEND



Subdivisions



Amendment: 4-10-01



Areas of ONL or ONF

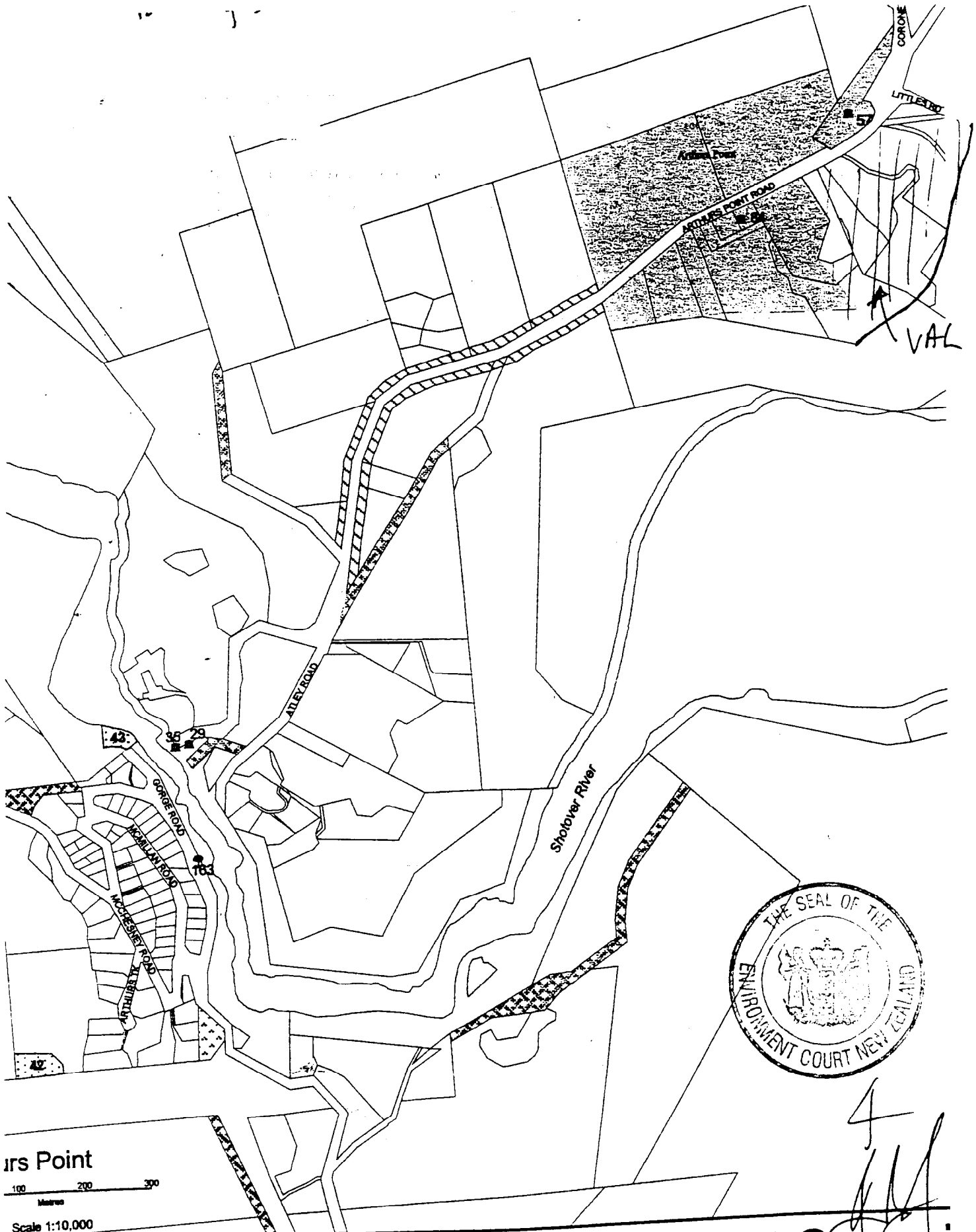
Showing additional area of
ONL – Shotover river



3

SUBDIVISION and LANDSCAPE CATEGORY LINES

September 2001.



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Queenstown Lakes District Council
PROPOSED DISTRICT PLAN MAPS

Irs Point
 100 200 300
 Metres
 Scale 1:10,000