BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

IN THE MATTER of Hearing Stream 13 – Queenstown Mapping

BY NOEL ROBERTSON GUTZEWITZ AND JOANNE ROSALIE BOYD

Submitters

CASEBOOK

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NOEL ROBERTSON GUTZEWITZ AND JOANNE ROSALIE BOYD

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RESOURCE MANAGEMENT ACT 1991: FORM 5

SUBMISSIONS ON THE PROPOSED QUEENSTOWN LAKES DISTICT COUNCIL PLAN

Clause 6 of the First Schedule, Resource Management Act 1991 – amended 30th August 2010.

TO: Mr Mathew Paetz

Planning Policy Manager

Queenstown Lakes District Council

Private Bag 50077

QUEENSTOWN

SUBMITTERS:

N Gutzewitz & J Boyd

We cannot gain an advantage in trade competition through this submission. We are, or could be, directly affected by the subject matter of the submission that:

(a) adversely affect the environment; and

(b) do not relate to trade competition or the effects of trade competition.

1.0 Introduction to the submitter(s)

The submitter is the owner of the following;

- Sections 42 & 43, Blk XII Coneburn SD
- Lots 4 & 5, DP 24790

The location of the submitters property is highlighted on the Proposed Planning Map contained in Attachment [A] of this submission.

2.0 OVERALL ISSUES THAT HAVE DETERMINED THE APPROACH IN PREPARING THIS SUBMISSION IN RESPECT TO THE PROPOSED DISTRICT PLAN

2.2 The submitter opposes the Proposed District Plan for the following reasons;

It does not accord with, or assist the territorial authority to carry out its functions to achieve, the purpose of the Resource Management Act 1991 (the Act);

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i. It does not promote the sustainable management of resources;
ii. It does not meet section 32 of the Act;
iii. It does not consistent with Part II of Act;
iv. It does not represent integrated management or sound resource management practice;
v. It does not meet the reasonably foreseeable needs of future generations;
vi. It does not implement the most appropriate standards, rules or methods for achieving the objectives set out in the Proposed District Plan.

3.0 SPECIFIC SUBMISSIONS

Without derogating from the generality of the above, the specific parts of the Proposed District Plan that this submission relates to are:

Submission 1: Rural General Zone

We OPPOSE the Rural General zoning of a land described in section 1.

3.1 In reviewing the Rural General Zone the Council has failed to take into account the changing nature of residential / rural activities along Boyd Road coupled with the change in open pastoral areas to those of established trees. The trees have diminished the level of pastoral character and domesticated the environment to one which would normally be anticipated within the rural lifestyle zone.

3.2 The Council has failed to consult with landowners as to appropriate zoning for their land.

3.3 The Council's exercise in terms of land to be rezoned as part of the District Plan Review is not considered to be comprehensive and has failed to undertake a detailed analysis of zoning requirements and needs.

3.4 The Boyd Road area has been used for rural lifestyle uses for a number of years and very little of it is currently farmed. By not considering the rezoning of land as part of the District Plan review the Council have missed an opportunity to provide additional rural lifestyle zoned land.

3.5 The Council have also failed to assess if the current zoning can meet the objectives of the Rural Zone.

3.6 Given the above, the submitter requests that the Rural General Zoning over the area defined in the map contained in Attachment [B] of this submission is re-zoned to Rural Lifestyle.

Submission 2: Rural Lifestyle Zone

We OPPOSE (in part) the Rural Lifestyle Zone.

3.7 The subject site is considered to be able to absorb a level of development which exceeds that specified in Parts 22.5.12.3 and 27.5.1 of the Proposed District Plan.

3.8 The 2ha average specified in Parts 22.5.12.3 and 27.5.1 of the Proposed District Plan was conceived in 1998 in the decision making towards the creation of the 'Dalefield Zone'. The average was to enable the subdivision of large existing allotments. The rule becomes problematic and an inefficient device to determine appropriate densities when applied to smaller lots.

3.9 In order to focus development Parts 22.5.12.3 and 27.5.1 of the Proposed District Plan are considered to promote a density of residential development which does not align with the properties ability to absorb development. It does not represent integrated management, sound resource management nor does it meet the reasonably foreseeable needs of future generations.

<u>Submission 3: Subdivision</u>

We OPPOSE the Rural Lifestyle Zone minimum lot size standard 27.5.1.

3.10 Rule 27.5.1 of the Proposed District Plan serves no logical Resource Management purpose. For the reasons outlined in paragraphs 3.7 – 3.9 above the minimum lot size applicable for the Rural Lifestyle Zone shall be a 1 hectare average.

Relief Sought

<u>Submission 1: Rural General Zone</u>

The area defined in the map contained in Attachment [B] is re-zoned from Rural General to Rural Lifestyle.

<u>Submission 2: Rural Lifestyle Zone</u>

The Rural Lifestyle Zone is amended to remove the lot averages standard 22.5.12.13.

<u>Submission 3: Chapter 27, Subdivision</u>

The minimum lot size applicable for the Rural Lifestyle Zone (standard 27.5.1) shall be a 1 hectare average.

The submitter wishes to be heard in support of this submission.

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If others make a similar submission, the submitter would be prepare to consider presenting a joint case with them at any hearing,

Signature: ____________________

Date: 22/10/15

Address for service of person making submission:

Clark Fortune McDonald & Associates

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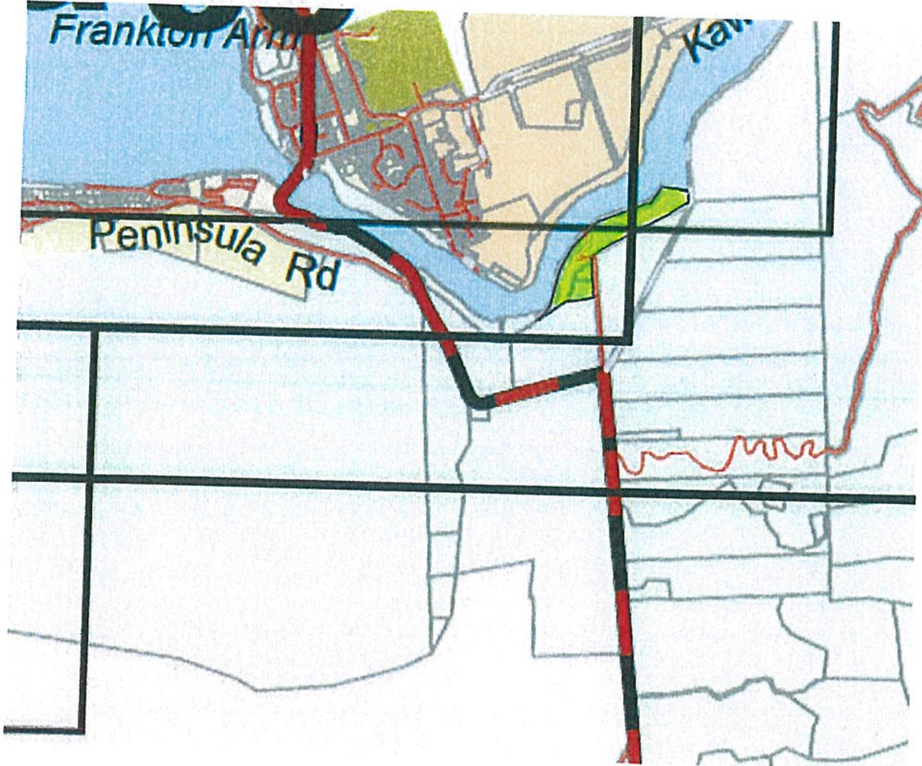
E-mail: ngeddes@cfma.co.nz

ATTACHMENT [A]

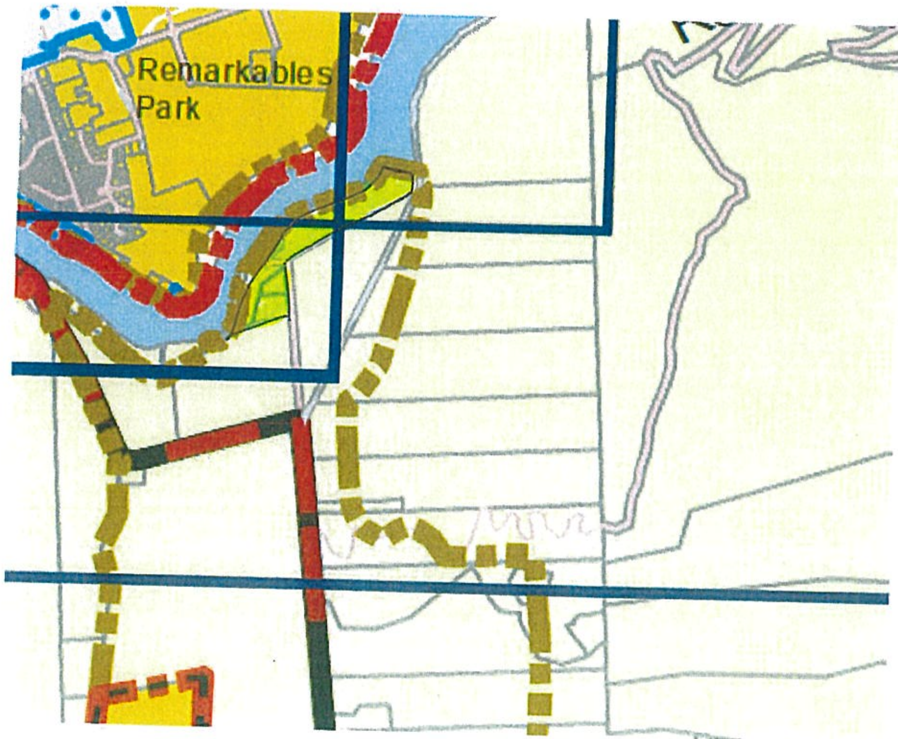
Location of Subject Property:

Operative and Proposed Planning Maps

Operative District Planning Map



Proposed District Planning Map



ATTACHMENT [B]

Proposed Rural Lifestyle Zone

NORTH

KAWARAU RIVER

PROPOSED RURAL LIFESTYLE ZONE
11.0 ha

SECTION 43
BLK XII CONEBURN S.D.
8.52ha

CROWN LAND

BOYD ROAD

SECTION 42
BLK XII CONEBURN S.D.
2.42ha

LOT 4
DP 24790
0.69ha

LOT 5
DP 24790
1.08ha

BOYD ROAD

Clark Fortune McDonald & Associates

Rev	Date	Revision Details	By
A	16.10.15	PLAN OF PROPOSED ZONE	NM

PROPOSED RURAL LIFESTYLE ZONE OVER SECTIONS 42 & 43 BLK XII CONEBURN SD & LOTS 4 & 5 DP 24790

Client	Surveyed	Date	Job No	Drawing No
N R GUTZEWITZ, J R BOYD	NM	16.10.15	12119	01
	Drawn	Date	Scale	
	NM	16.10.15	1:1500 @ A1 1:3000 @ A3	
	Designed	Date	Datum & Level	Rev.
	NM	16.10.15	Mt Nic 2000 & MSL	A

ORIGINAL

Decision No. A129/2004

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of a reference pursuant to Clause 14 of the First Schedule of the Act
BETWEEN	THOMAS MULLEN
	(RMA 521/02)
	Appellant
AND	AUCKLAND CITY COUNCIL
	Respondent

BEFORE THE ENVIRONMENT COURT
Environment Judge J R Jackson (presiding)
Environment Commissioner C E Manning

Hearing at Auckland on 21 September 2004

Appearances
Mr R E Bartlett for Thomas Mullen
Mr D A Kirkpatrick and G C Lanning for the Auckland City Council

INTERIM DECISION

Judgement of Judge Jackson

Introduction

[1] Thomas Mullen applied to the Auckland City Council for a private plan change under the Resource Management Act 1991 ('the Act') to rezone land at 28 to 30 Balfour Road, Parnell, from Residential 7b to Business 4 under the Council's district plan ('the Isthmus Plan'). He also proposed that there be some site specific

modifications applying to the zone site, to reflect the site's topography and the nature of surrounding uses and zonings.

[2] After a hearing the Council declined the plan change so Mr Mullen appealed to this Court. It may also be relevant that at the same time the Council granted resource to Mr Mullen to build a three storey commercial building on the site and use it for defined business purposes, subject to various conditions. The main differences between the resource consent and the plan changes relate to building height, and the activities on the site:

- as for built form the Business 4 zone would permit an extra (fourth) floor since a building in that zone may rise to 15 metres, whereas the height consented to by the Council is 11 metres;
- the Business 4 zone would allow a wider range of activities on the site.

The site

[3] The site contains 2,132 m^2. At present it is occupied by two dwellings. The adjacent or nearby land is occupied and zoned as follows:

- To the north is the Parnell Fire Station also zoned Residential 7b. The Fire Station site may have development potential but we read uncontroverted evidence that it has significant value for its present purpose given its accessibility to the roading network and its height above sea level.
- To the east, across Balfour Road, is an open space occupied by tennis courts, a crèche and a small park; and further south on that side of Balfour Road is a residential 7b zone occupied by dwelling houses.
- Immediately to the south of the site is a large building operated by Industrial Research Limited. It has a spot zoning of Special Purpose 2. The building is occupied by a research agency as well as other commercial tenants.
- To the west are commercial buildings in both the Business 4 and 5 zones; and
- To the north-west of the property in a Business 5 zone is a large and recently developed apartment building called "Gladstone Apartments". This is a

substantial structure and has resource consent for the addition of one further level of apartments.

[4] In my view the requirements of the Resource Management Act 1991 ('the Act' or 'the RMA') for the contents of a district plan were summarised in general (if still incomplete) but accurate terms by the Environment Court in *Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council*[1]:

> A district plan must provide[2] for the management of the use, development and protection of land and associated natural and physical resources. It must identify and then state[3] (inter alia) the significant[4] resource management issues, objectives, policies and proposed implementation methods for the district. In providing for those matters the territorial authority (and on any reference[5] the Environment Court) shall[6] : see *Nugent Consultants Ltd v Auckland City Council*[7] ... prepare its district plan in accordance with:
>
> - its functions under section 31,
> - the provisions of Part II,
> - section 32,
> - any regulations
>
> and must have regard to[8] various statutory instruments.

I apply that summary in this case, but noting that additional issues on a plan change are whether the proposals implement the objectives and policies of the district plan, if the plan change does not introduce its own, for the reasons stated in *Suburban Estates v Christchurch City Council*[9].

[5] I have considered the provisions in the Auckland Regional Policy Statement identified by Mr M F Norwell, the resource management consultant called for the City.

1 [2000] NZRMA 59 at paragraphs [13] and [14].
2 Section 75(1) and Part II of the Second Schedule to the RMA.
3 Section 75(1).
4 Section 75(1).
5 Under clause 14 of the First Schedule to the RMA.
6 Section 74(1): [1996] NZRMA 481.
7 [1996] NZRMA 481.
8 Section 74(2).
9 Decision C217/2001.

With respect, the objectives and strategic policies he identified are too general to be of much assistance in this proceeding.

Section 32 of the RMA

[6] In fact the issues raised in this case may be conveniently fitted into the analysis under section 32 of the Act. In its unamended form[10] that section states (relevantly):

> **32. Duties to consider alternatives, assess benefits and costs, etc –**
>
> (1) In achieving the purpose of this Act, before adopting any objective, policy, rule, or other method in relation to any function described in subsection (2), any person described in that subsection shall –
>
> (a) Have regard to –
>
> (i) The extent (if any) to which any such objective, policy, rule, or other method is necessary in achieving the purpose of this Act; and
>
> (ii) Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and
>
> (iii) The reasons for and against adopting the proposed objective, policy, rule, or other method and the principal alternative means available, or of taking no action where this Act does not require otherwise; and
>
> (b) Carry out an evaluation, which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs; and
>
> (c) Be satisfied that any such objective, policy, rule, or other method (or any combination thereof) –
>
> (i) Is necessary in achieving the purpose of this Act; and
>
> (ii) Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.

Necessity to achieve the objectives and policies[11]

[7] In practical terms the necessity in achieving the purpose of the Act is, when considering a method such as a zoning change, to determine whether the new zoning is

[10] i.e. before its amendment effective from 1 August 2003 for appeals lodged after that date.
[11] Section 32(1)(a)(i).

necessary to achieve the objectives and policies of the plan being changed: *Suburban Estates Limited v Christchurch City Council*[12].

[8] Mr Lovett wrote that the relevant objectives and policies for the Business 4 zone are:

> To provide for medium intensity business activity.
>
> - By recognising through zoning, existing light industrial and service centres on the Isthmus.
> - By permitting a wide range of business activity in the zone, subject to controls imposed to maintain the zone's environment.
>
> To maintain and enhance the quality of environment in the zone.
>
> - By imposing controls which require new activities to enhance the streetscape.
> - By limiting the scale of development to one which can be sustained by the existing infrastructure.
> - By adopting parking and traffic measures which seek to avoid congestion and parking problems.
>
> To ensure that any adverse environmental or amenity impact of business activity on adjacent residential or open space zones is prevented or reduced to an acceptable level.
>
> - By requiring acceptable noise levels at the interface between residential zones and business activity.
> - By adopting controls which seek to protect residential privacy and amenity.
> - By requiring the establishment and maintenance of buffer areas between activities within the zone and any residential or open space zone.
> - By adopting controls which limit activities to those which do not cause traffic conflict or congestion through or within residential roads.

[9] The Council did not argue that there were any higher order objectives and policies in the Isthmus Plan which would be better achieved by another zoning.

[10] Mr D J Lovett, the resource management consultant called for Mr Mullen, described the Business 4 zone as:

[12] Decision C217/2001 at para [40].

> Appl[ying] to existing light industrial and commercial centres in the Isthmus, which are generally located in proximity to residential areas. Some Business 4 zoned areas contain a residue of residential uses and are accessed through residential roads. The purpose of the zone is to facilitate a high quality, medium intensity business environment. Many commercial activities which require resource consent to establish in the Residential 7b zone, are permitted in the Business 4 zone. Other activities which ...dominate the Business 4 zone include offices, industry and warehousing.

[11] I find that the site is generally suited for a Business 4 zoning, although we have some doubts about the effect of some possible activities in the zone on neighbours' amenities. We consider these shortly.

Other means[13]

[12] The Council did not seek to argue that the objectives and policies for residential zones were more applicable to the site than those for the Business 4 zone. Rather Mr Kirkpatrick submitted the fundamental issue was how best to provide for business uses on the land – 'Mr Mullen's proposed plan change or his recently acquired resource consent'. I doubt if that is a valid dichotomy. Mr Mullen is entitled to a zoning for his land, and our choice should be between zonings:

- Business 4;
- Residential 7b (plus a resource consent).

As for how to choose between those, I remind myself that:

> ... necessity is a relative concept in this situation. A plan change only needs to be preferable in resource management terms to the existing plan to be "necessary" and most appropriate for the purpose of the Act ...

– *Marlborough Ridge Limited v Marlborough District Council*[14].

13 Section 32(1)(a)(ii).
14 [1998] NZRMA 73 at para 6.3.

Reasons for and against the alternatives[15]

[13] The reasons given by the Council for refusing the plan change can be summarised as:

- uncertainty of adverse effects from permitted activities in the Business 4 zone;
- a general review of the area would be preferable;
- the proposed zoning is a spot zone.

[14] Mr Mullen's advisors have attempted to deal with the uncertainty issue in several ways: first they have suggested a concept plan[16] which provides extra limitations beyond those contained in the standards for the Business 4 zone. They include:

- a much shorter list of permitted activities (although 'places of assembly' and 'restaurants …' are still proposed to be included);
- extra setbacks especially at the eastern end of the site, closer to the Gladstone (residential) Apartments so that the amenities of residents there will be maintained.

[15] Commissioner Manning raised some concerns about adverse effects which might arise from restaurants and/or places of assembly. Mr Bartlett obtained instructions and in his reply advised the Court that the former could be confined to areas of 100 m^2 maximum as a permitted activity, and the latter can be defined as a discretionary activity.

[16] No other adverse effects were identified. It is not enough for the Council to allege there may be others not yet heard of. Developers do not normally have to allow for dragons or other monsters until there is evidence they exist.

[17] On the need for a general review, I bear in mind that one of the functions of a local authority is[17]:

15 Section 32(1)(a)(iii).
16 Mr D J Lovett's attachment 3.
17 Section 31(a) of the Act.

> The establishment ... [and] implementation of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land ...

As the Court stated in *Kennedy's Bush Development Limited v Christchurch City Council*[18]:

> Integrated management is a difficult concept. Unfortunately, one person's integrated management is often another's irrational interference with individual property rights.

[18] In this case careful cross-examination by Mr Bartlett of the Council's resource management expert, Mr M F Norwell, established that the key properties adjacent to the site are very unlikely within the life of the plan plus another five or ten years to be redeveloped or have radically different activities on them since each site is already highly capitalised and developed.

[19] The Court has no difficulty with spot zonings in appropriate places: *Horrocks v Auckland City Council*[19] and *Kamo Veterinary Holdings Limited and Northland Shelf Company No 9 v Whangarei District Council*[20]. There are occasions when integrated management requires a spot zoning because of a site's unique characteristics.

[20] Mr Norwell conceded this site is unique and Mr Lovett confirmed that[21]:

> ... [the] majority of properties immediately adjacent to the site are either zoned or used for commercial purposes. The commercial setting in combination with the bulk and scale of development on the adjoining property to the west and the topography of the site, which is approximately 3m below Balfour Road level, are not conducive to a high amenity residential living environment. This is particularly evident at ground level where living areas would be dominated / overlooked and shaded by surrounding properties. In this respect, I consider the existing Residential 7b zoning is not inappropriate for this site and location.

On the other hand Mr Norwell conceded that residential activity 'may be unsustainable' in this location.

18 Decision C55/2004 (7 May 2004) at para [62].
19 RMA 476/95 (Decision A140/99).
20 RMA 762/01, 763/01 (Decision A161/03).
21 D J Lovett evidence-in-chief para 37.

[21] I hold that the reasons for the rezoning substantially outweigh the reasons against.

Benefits and costs[22]

[22] No attempt was made to quantify the benefits and costs. However Mr Kirkpatrick fairly conceded that one substantial quantifiable cost to Mr Mullen if the plan change was disallowed was simply that he loses one floor from a potential building. He tried to argue (faintly) that if the plan change was successful then Mr Mullen would have thrown away the costs of obtaining a resource consent. However sunk costs are just that – they are gone. Rationally they should be disregarded.

Appropriateness

[23] I consider the Business 4 zoning is the more appropriate outcome. A site specific zone name should be invented, as Mr Bartlett suggested, in order not to mislead readers of the Isthmus Plan.

Overall evaluation

[24] Weighing all the factors raised by the admirably succinct evidence and submissions I find that the objectives and policies of the Isthmus Plan (and ultimately the purpose of the Act) are better achieved by directing the Council under clause 15(2) of the First Schedule to the Act, to amend the Isthmus Plan to rezone the land as a special Business 4 (or such more appropriate name as the parties agree on) zone.

[25] The Court being unanimous, we direct the parties to finalise the maps and proposed rules in the spirit of this decision and in accordance with Mr Mullen's concept plan as modified under para [15] of this decision.

[26] Leave is reserved to return to the Court to finalise the zoning and rules in the event the parties cannot agree.

[27] Costs are reserved, but applications are not encouraged.

[22] Section 32(1)(b).

Judgement of Commissioner Manning

Introduction

[28] This case concerns the zoning of land owned by Mr Mullen at 28-30 Balfour Road, Parnell. The land is zoned Residential 7b by the Auckland City District Plan (Isthmus Section). The land comprises 2,132 m^2, and is occupied by two houses. Mr Mullen holds a resource consent which permits an 11 metre high building of three storeys and 3,525 m^2 floor area to be used for commercial offices. The consent includes provision for a basement carpark.

[29] Mr Mullen promoted a private plan change to apply a modified form of the Business 4 zoning to the land, although at the hearing before us counsel indicated that what is sought might be better described as a Special Purpose zone. The Council declined the proposed plan change, and maintained its opposition at the hearing.

The site and surrounding area

[30] The site is located on a ridge at the north-west end of Parnell. It is in a dip in the ridge, and is lower than the road and than both the sites which adjoin it on Balfour Road. The site overlooks Tamaki Drive and the port of Auckland container terminal. It is also in close proximity to the Main Trunk Railway Line and the Stanley Street arterial link to State Highways 1 and 16 and the Auckland Central Business District.

[31] In the immediate neighbourhood of the site there is a wide range of uses which bear limited resemblance to the zoning pattern shown in the district plan. Immediately to the north is a fire station located on residentially zoned land. Immediately south is land zoned Special Purpose 2 occupied by substantial premises used for industrial research. On the east of Balfour Road are the Gladstone Road Tennis Club at its intersection with Gladstone Road, and a child care facility. To the rear of the site the land is zoned Business 4 and 5, though the adjacent business 5 land to the north-west is occupied by a six storey apartment complex known as Gladstone Apartments.

The proposed zone

[32] The applicants proposal is based on the provisions of the Business 4 zone, but it restricts building bulk on the site in accordance with a concept plan which requires any

level of building over 12.5 metres in height to be set back at least 3 metres on the northern and western sides of the building platform and at least 4 metres on the eastern side.

[33] The applicant proposed a list of permitted activities as follows:

- accessory buildings and ancillary activities;
- care centres;
- commercial or public car parking areas;
- community welfare facilities;
- educational facilities;
- healthcare services;
- laboratories;
- non-permanent accommodation;
- offices;
- places of assembly;
- premises for cultural activity;
- residential units;
- restaurants, cafes and other eating places;
- tourist complexes.

[34] During the course of the hearing Mr Mullen, through counsel, accepted that places of assembly could generate such a variety of effects that they needed to be assessed as discretionary activities. He also accepted that restaurants and cafes as permitted activities should be limited to 100 m^2 in area and subject to other standards in the district plan for restaurants in proximity to residential zones. Counsel agreed that it may be better to create a special purpose zone for the site.

The issues

[35] The Council accepted that a Residential 7b zoning was not ideal for the site. In fact its witness with planning qualifications, Mr M F Norwell, considered that residential development on the site "may not be a sustainable development"; in

consequence of that the proposal to rezone the site is one that is consistent with section 5 of the RMA.

[36] Equally the Council did not contest the evidence of Mr J D Parlane, a specialist traffic engineer called by Mr Mullen, who told the Court that there are no traffic capacity or safety grounds on which the proposed rezoning could be declined.

[37] The Council's opposition to the plan change is based on two propositions: firstly, that the rules governing the proposed new zone do not adequately safeguard the amenity of the various neighbours, either in terms of the bulk and location of any building on the site, or in the range of uses permitted in them; secondly that until the wider area is considered on a comprehensive basis, it is inappropriate and inefficient to rezone Mr Mullen's land, and better to provide reasonable use for the land by the resource consent process, as indeed the Council has done in consenting to the development described in paragraph [2].

Does the proposed plan change leave neighbours' amenities insecure?

[38] Except in the areas where the concept plan imposes a more stringent restriction, the height limit proposed by the plan change is 15 metres, that is four metres higher than the consented office building and 2.5 metres higher than if the Residential 7b rules applied. Mr D J Lovett, a resource management consultant called for Mr Mullen, accepted that within the building platform development could take many different forms. However, he noted that the height limit of 15 metres on this site would produce a maximum R.L. height of 31.5 metres, compared with R.L. 32.83 metres on the industrial research site to the south, and the R.L. 34-5 metres permitted by resource consent on the Gladstone apartments to the north-west.

[39] When considering the outlook of the eastern-facing apartments in the Gladstone complex, Mr Lovett told us that if the Residential 7b zoning remained, a 12.5 metre residential building could be constructed as of right immediately adjacent to the shared boundary. It was Mr Lovett's evidence, reiterated in rebuttal in respect of the Gladstone Apartments complex, that, in terms of structures, rezoning within the bulk and location controls proposed is likely to have no more than a minor effect on surrounding properties and the wider neighbourhood.

[40] By contrast, Mr Norwell, in cross-examination, conceded that he had undertaken no assessment of the amenity effects of the additional height and/or bulk of building permitted by the proposed zone, but that such an assessment was required. If the Council wished to contest the assessment provided by the applicant, it was necessary for it either to show that assessment untenable in cross-examination, or to produce counter-evidence, particularly in a proceeding more than two years subsequent to the initial hearing.

[41] In terms of the uses of the site proposed by the plan change, Mr Norwell opined that the variety of activities provided for opened the possibility of adverse amenity effects. Examples cited were unrestricted use of the car-parking area, of child-care centres, and of restaurants. I have noted the applicant's response to concerns about restaurants, and suspect that some equivalent limitation could be agreed for child care centres. In general I found a remarkable lack of specificity in this discussion and little to enable a realistic assessment of the probability of adverse effect or the extent of it in the case of any of the particular uses proposed. I do not consider that significant weight can attach to this part of Mr Norwell's evidence.

[42] I find that provided limitations are agreed on the way in which child-care centres and restaurants can operate, and places of assembly are deleted from the list of permitted activities, the proposed plan change provides for the amenity of the neighbourhood as well, and in some respects better, than the provisions of the plan as they exist now.

Must the appellant wait for a more comprehensive plan change?

[43] In *Imrie Family Trust v Whangarei District Council*[23], the Environment Court held that it should decline to change a plan on the basis that the Council itself should undertake a thorough review of its plan provisions, in that case for retail activity, on the basis that this would have a broad scope and examine all the various alternatives.

[44] In *Hall v Rodney District Council*[24], the Court included among a non-exhaustive list of reasons for requiring rezoning to await a wider plan review, the need for a general

[23] [1994] NZRMA 453 at p 470.
[24] [1995] NZRMA 537 at pp. 546-7.

review, and the extent of implications for a wider area. However in that case it did not consider that the benefits of waiting would outweigh the disadvantages, given the long history of Mr Hall's efforts to secure a change in zoning and likely delays of two to four years.

[45] We record in this case that the council has not scheduled a specific review of the district plan provisions for the site or the surrounding area. The Council told us that the entire plan is due for review in 2009. However, experience in the process of reviewing district plans suggests that any new provisions will not become operative until some time after that. I do not consider it reasonable to expect Mr Mullen to wait for that length of time for a decision on the merits of his proposal.

[46] The Council contends that the presence of a resource consent removes the necessity, even in the sense of expediency, for the proposed plan change. I make two points: firstly the resource consent imposes restrictions on the use of the appellant's land that are greater than those of the proposed plan change; unless those restrictions have some resource management purpose, there is no reason for them to exist; secondly the existing zone is designed to provide for an activity acknowledged by the Council's planning witness to be unsustainable (at least potentially); while the plan remains unchanged, unsustainable activities could be developed on the site as of right.

[47] The Council also submits that the current transitional nature of the area makes it more appropriate to await a comprehensive review. Mr Norwell noted the presence of the Gladstone Apartments, and also the rezoning of Business 4 land west of the site to mixed use, including residential use. However in cross-examination, Mr Norwell conceded that the uses on the most significant sites in the vicinity were unlikely to change in the foreseeable future. In the overall circumstances, I find that it is unreasonable to make the applicant wait for a more comprehensive review which may not take place until the plan is due for review in 2009, especially when the surrounding environment and the issues are likely to be very similar.

The legal tests

[48] A territorial authority is required to prepare its plans in accordance with its functions under section 31, the provisions of Part II and its duty under section 32 and any regulations[25].

[49] The evidence in this case is that structures and uses on adjoining sites are unlikely to change in the foreseeable future. Provided the plan provisions do not incorporate incompatible uses or site standards, they are unlikely to compromise the Council's function of achieving integrated management of the use, development and protection of land under section 31(a).

[50] Mr Norwell conceded in his evidence-in-chief that the proposal to rezone the site is consistent with section 5 of the RMA inasmuch as residential development on the site may not be sustainable. However he considered that the uncertainties of the zoning were such that the proposal did not guarantee the avoidance, remedy or mitigation of adverse effects as required by section 5(2)(c) nor the maintenance and enhancement of amenity values and the quality of the environment which I am to have regard to under sections 7(c) and 7(f). I have found on the evidence that adverse effects on the environment can be avoided, and maintenance of amenity values and the quality of the environment accommodated by detailed changes to the terms of some of the activities permitted by the rezoning. In these circumstances the provisions of Part II favour the plan change.

[51] The provisions of section 32(1) of the Act prior to the RMA Amendment Act 2003 are set out in paragraph [6] of the judgement of Judge Jackson. Those are the provisions to be applied for the reason set out there. I remind myself that the Environment Court has an appellate and not a primary planning function. For that reason many of the options set out in section 32(a)(ii) as methods for achieving the purpose of the Act are not available to the Court. In dealing with plan changes, its options are limited to the existing plan provisions, the plan change sought, or some provisions which arise from the plan change sought in a reasonably foreseeable fashion

25 Section 74(1) RMA.

(unless there is a case justifying the use of section 293). For that reason I respectfully adopt the test set out in *Marlborough Ridge Limited v Marlborough District Council*[26]:

> A plan change only needs to be preferable in resource management terms to the existing use to be 'necessary' and most appropriate for the purpose of the Act and thus pass the threshold test.

[52] In this case the alternatives are to leave in place a zoning which is designed to provide for an activity which may be unsustainable, or to change the plan, so that development of the site in accordance with the modified plan change can achieve the purpose of the Act. The latter is clearly preferable.

[53] I have considered earlier in this decision the alternative methods suggested by the Council to achieve this end. To require the appellant to rely on his resource consent is to impose restrictions on the use of the land which are not necessary for any resource management purpose. To await a comprehensive review of the zoning provisions is to leave in place untenable provisions for an uncertain, but probably lengthy, period. These methods do not commend themselves.

[54] Rules and zoning provisions in a district plan must implement the objectives and policies. In the case of a plan change, where there are objectives and policies for the specific zones sought, these only have relevance in helping to determine which of the alternative zones is a better fit with the district-wide objectives and policies of the plan. I found little assistance in the evidence of the planning witnesses. Mr Lovett did not provide, and Mr Norwell acknowledged not having undertaken, a comprehensive assessment of the proposed plan change against the relevant district plan objectives and policies. I find no basis in the evidence to find either the present provisions or the applicant's proposal better implements the objectives and policies of the district plan.

[55] Mr Norwell referred us to section 2.6 of the Auckland Regional Policy Statement, and Policy 2 of this section. Mr Norwell opined that the proposed change was inconsistent with sub-policy (vi) *maintain and enhance amenity values within existing urban areas*. However I have already found that the change provides for the

26 [1998] NZRMA 73 at p. 91.

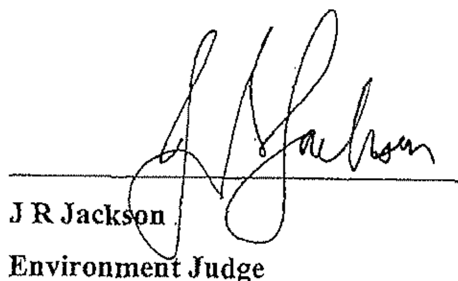
maintenance of the amenity values of the neighbourhood. The plan change is not inconsistent with the Regional Policy Statement.

[56] Overall, I consider that to allow the plan change is an appropriate way for the Council to discharge its duties under section 32.

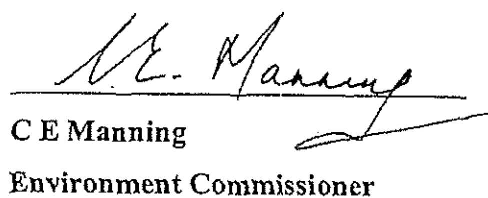
Outcome

[57] I agree with the overall evaluation found in the judgement of Judge Jackson.

DATED at CHRISTCHURCH 28 September 2004.



J R Jackson
Environment Judge



C E Manning
Environment Commissioner

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DOUBLE SIDED

ORIGINAL

Decision No. A 140/99

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of a reference pursuant to clause 14 of the First schedule to the Act
BETWEEN	NICOLA MAY HORROCKS (RMA 476/95) Appellant
AND	AUCKLAND CITY COUNCIL Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge W J M Treadwell (presiding)
Environment Commissioner F Easdale
Environment Commissioner P A Catchpole

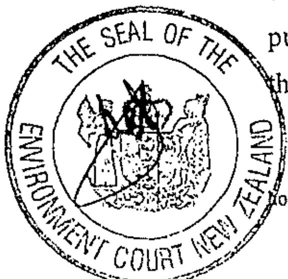
COUNSEL

Mr R B Brabant for appellant
Mr W S Loutit for respondent
Mr M R Christensen for Arney Road Residents Association

DECISION

Preliminary

This is a reference under clause 14 of the First Schedule of the Resource Management Act 1991 (RMA). The reference will in the course of this decision be referred to as an appeal and the referrer as the appellant. The subject matter of the appeal is the residential zoning of part of Arney Road in Remuera. The reference more specifically relates to the Council decision to rezone the lower northern portion of that road from a Residential 2b zoning as publicly notified in the proposed plan to a Residential 2a zoning. The appellant considers that a Residential 2 zoning is an appropriate zoning in general terms for Arney Road but



maintains that the choice of sub-zone within that zone is not correct. We will discuss this in a little more detail later in this decision but in general terms the three sub-zones (a), (b), and (c) are described in the proposed plan as "reflecting shades of difference in the spaciousness of existing character and matching controls."

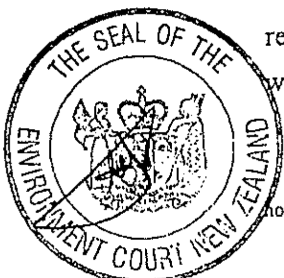
The Residential 2 zone is nevertheless a low density character type zone reflecting the highest levels of residential amenity found in the territory of the respondent Council. Although in terms of the RMA a system of zoning backed by rules is necessary to assist the Council to carry out its function of controlling effects by preserving the amenities which the neighbourhood seek to protect, and thus necessary in achieving the purpose of the Act, yet it is inevitable that there will be some properties which will not fit easily within a general structure and it is necessary to examine, as we will in the course of this decision whether special treatment of such a property will challenge the integrity of the whole zone or will have but a peripheral effect. We therefore accept for the purposes of this decision the dicta set forth in *Hibbit v Auckland City Council* 1996 NZRMA 529.

The appellant whilst seeking a Residential 2b zoning for all of the residential sites accessed from, or with frontage to, Arney Road on the western side of that road north of Wiles Avenue, sought as an alternative relief, the rezoning of the residential sites at Nos. 128 and 134 Arney Road to Residential 2b leaving the balance of the area Residential 2a in accordance with the decision of the Council.

In the course of the hearing it became evident that the residents of Arney Road exhibited a remarkable degree of solidarity as between themselves with a determination to resist any 2b zoning at all in Arney Road whether it be two properties or the larger area originally covered by the appeal. In the face of that community solidarity and in the absence of any evidence clearly indicating that 2b should replace 2a we advised the parties that we would not go against the wishes of this united community in respect of the bulk of the larger area by applying a zoning which neither the community nor the individual property owners wanted.

We take the same view as residents and consider that the 2a zoning for virtually the whole of this high quality street is appropriate although parts of the street, because of existing densities, could well have been considered for 2b zoning. Most parts of the street can qualify as 2a and both the Council and the residents have opted for this lowest density zone.

We agree that in terms of s5 of the Act that a 2a zoning with its density rules enables the resource represented by Arney Road to be managed, developed and protected in a way which will enable the people and communities living in that street to provide for their social,



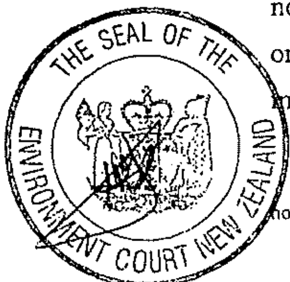
economic and cultural wellbeing whilst sustaining the potential of the physical resource to meet the reasonably foreseeable needs of future generations and to provide for their residential needs in a quality environment.

As a result of our verbal intimation concerning the zoning of Arney Road generally the appellants resorted to the alternative relief in respect of the two properties at Nos. 128 and 134 Arney Road. These two properties are at the northern end of the road on the western side. No. 128 has a small building platform at the lower end of the flat ridge which the road follows and then falls steeply towards Hapua Street. No. 134 is largely located at the level of Hapua Street with a short steep bank to the rear.

General Description

Arney Road slopes in a northerly direction from its intersection with Bassett Road with a more or less constant slope terminating at 128. The road then turns and the land form then slopes steeply down an embankment to Hapua Street. With the exception of two properties on the intersection with Arney Crescent the zoning is Residential 2a. The 2a zoning on the western side of Arney Road more or less skirts the top of an escarpment. Arney Crescent which is on the western slopes of the ridge is zoned Residential 2b. At the base of the escarpment the properties in Hapua Street have higher density zonings of Residential 5 and Residential 6a. On the opposite side of Arney Road near its intersection with Hapua Street but at a lower level from the dwelling-house on 128 Arney Road is a small triangle of land zoned Residential 6a.

The streetscape changes from the Bassett Road intersection as one travels north and downwards. There are of course exceptions to the comments we now make but generally the southern part comprises very large sites with housing of a period type up to 10 metres in height set in many cases well back from the road in spacious grounds. Some of these sites exceed 2000m^2 and would be subdivisible in terms of the 2a zone. As one proceeds down the street the section sizes tend to become smaller on the western side of the road but the streetscape still exhibits an air of cohesion between northern and southern areas this being achieved by building style, trees and high standard section and house maintenance. On the eastern side there are still some fairly large sections. Both sides of the street exhibit a sense of history with many period homes, some of considerable size although these are mainly on the eastern side of the lower parts of the street. At the northern end No. 128 and its neighbours to the south are of a different style. When one approaches Arney Road from the north across the intersection with Hapua Street the escarpment appears heavily vegetated but on closer inspection the value of much of the vegetation is debatable. There are some large mature trees on the road reserve of Arney Road and there are some three trees on the



appellant's property at No. 128 all of which are within the general tree protection rules. Beneath those trees and over most of the escarpment face the vegetation is of little or no value most of it being in the noxious category requiring eradication. The house at 134 is largely hidden from view being behind a Council reserve on which is erected a play centre and well below the level of Arney Street.

Nevertheless when one turns from Hapua Street into Arney Road the impression is of heavy vegetation on both sides of the road with No. 128 being the first house on the western side clearly visible to an on-looker. That property has a lawn to the front. That house and some of its neighbours to the immediate south are clearly visible with little or no vegetation between the house and the road. Immediately to the north of 128 the escarpment commences. Within a short distance of the intersection the road climbs steeply and swings to the left and then to the right as one travels south. Were Arney Road to terminate at or about that point it would in our opinion exhibit no special amenity value. It is not until one clears the escarpment face that the road straightens and proceeds in a gentle curve to the south straightening up at the Woodville Road intersection and continuing to the Bassett Road intersection. It is at this stage that the road opens out and gently climbs along the crest of the ridge. It is this upper level which exhibits the amenity and character which makes Arney Road so special to those who reside in it.

We will discuss the views of landscape architects a little later in this decision but it is our opinion that the built form of the lower part of Arney Road where it meets Hapua Street has been elevated to an aesthetic level which it does not deserve. For our part we consider the escarpment, marred by the steep road through it, is effectively the picture frame enclosing the residential plateau serviced by Arney Road proper. 128 and 134 have little affinity with the upper level of the road.

The Proposed Auckland District Plan (Isthmus Section)

In terms of the Transitional District Plan Arney Road after strong objections in 1989 from local residents was given a Residential 3a zone. This applied to areas which should be retained at or near their existing intensity of use because of their pleasant spaciousness, high standard of development, extensive and mature planting and generally established reputation. The purpose of the zone was to encourage the provision of single dwelling units on large lots and to retain the special character of the area so zoned by applying planning controls. The main relevant rules applying to the zone were:

- Density of one unit per $1000m^2$. This applied to dwelling units and minor dwelling units.
- A 9.2m height limit plus a sloping roof bonus of 1m. A sight volcanic line control effectively reduced this height to 9m.
- Building coverage 25%.

- Subdivision for both front and rear lots of 1000m^2.

In 1993 when the proposed district plan was publicly notified Arney Road was zoned Residential 2b which contains three main differences from the zoning in the transitional district plan namely:

- Density of one unit per 600m^2.
- 8m height limit.
- Building coverage limit of 30%.

In terms of the proposed district plan the height limit is somewhat illusory because buildings constructed on sloping sites could appear to be very much higher when viewed from side or down slope viewing positions.

Submissions of 108 Arney Road property owners, 4 in Woodville Road and 26 in Bassett Road were lodged with the Auckland City Council requesting Residential 2a zoning which was the nearest equivalent zoning in the proposed plan to the transitional plan. A deputation attended on Council and as a result the Council itself lodged a submission to the plan also seeking Residential 2a zoning for Arney Road and parts of Bassett Road. This received strong support from residents.

Mr J B Childs a resource management consultant conducted a survey of Arney Road and found 137 freehold sites with the following characteristics:

(a) 88% contained single family dwellings. 11% contained more than 1 residential unit. 1site contains a hostel.

(b) No non-residential uses were identified other than some home occupations.

(c) The sites averaged 1200m^2 in area. In the block originally subject to appeal the average was 994m^2. In essence most properties ranged close to the minimum subdivision size if averages were taken but averaging could be misleading.

(d) 4.3% have potential for subdivision in terms of the Residential 2a zoning.

(e) 30% were rear lots.

(f) At least 50% were built prior to the 1950s and included villas, bungalows and buildings in the English cottage style.

(g) Most sites contained extensive landscaping and established trees many of which were in front of the dwellings.

(h) Residential buildings were generally set back from the road although front yard garaging was not uncommon.

(i) Most buildings were of timber construction.

(j) Fencing screening materials varied but were mainly hedges wooden or rock structures.

Mr Childs found in addition that most sites had a northerly orientation; were well maintained; and 20 buildings had been identified as having considerable architectural merit. He concluded in his evidence:

> The overall impression emerging from this study, is that Arney Road consists of larger sites mainly containing detached single family dwellings in a spacious treed environment. It has a coherence which is created by this low intensity development, a feature not particularly common in Auckland City. The spaciousness is evident throughout the street.

Mr B W Putt a qualified town planner gave evidence on behalf of the appellants. He contrasted the southern part of Arney Road where houses are set on relatively flat sites which are large elevated and enjoy spectacular views northwards over the harbour, the North Shore and the Hauraki Gulf beyond from the other parts of the road. As the road descends down the natural slope the style of development changes and section sizes gradually become smaller. He noted as exceptions occasional large sites on the eastern side of Arney Road still supporting large or grand houses. He contrasted this with the western side where the frontage sites begin to reduce in size around the intersection of Wiles Avenue and from there remain consistently at $1000m^2$ or less to the bottom of the hill where the appellants' property is situated. He excepted from that observation the rear allotments to the west descending into Hapua Street valley. He said:

> In many ways, Arney Road symbolises the expressions of affluence which characterized Auckland in the first three decades of this century.

He also conducted a survey but restricted that to the area originally covered by the appeal namely the west side of Arney Road north of Wiles Avenue. He found that there were 4 sites presently containing 2 units and 1 containing 4 units. If this area was zoned Residential 2b which permits a density of 1 to $600m^2$ there was a potential for 7 more units of which 2 were theoretical only because the sites were already occupied by substantial houses.

Of significance is a fact that the two properties now comprising the appeal sites already have 2 units upon them. In relation to No. 128 those units are within one building. There is therefore not a great deal of difference on the face of it between what could happen to this street if the submission of the appellants had been accepted namely a split between 2a and 2b zoning. However, were the whole street to be zoned Residential 2b a very different picture might emerge.

Turning now to the provisions of the proposed district plan. Residential 2a and 2b zones are both described as built flora zones. Within the Residential 2 zone the objective is:

> 7.6.2.1 To conserve the landscape qualities of those residential areas which display a special blend of built and natural features, generally involving period housing, coupled with the presence of trees.

That objective is followed by policies which propose to achieve the objective:

- By maintaining the quality of spaciousness which characterises the zone.
- By protecting and conserving larger trees, located on private property, roads and reserves, which give the zone a distinctive character.
- By encouraging renovation and new building construction in a manner which maintains the historic form and pattern of buildings, open space, large trees and distinctive streetscapes in the zone.

Then follows a zone strategy which describes the zone as one characterised by generously sized lots, wide roads and low densities. The strategy comments on house design and street character as being typical of period and villa suburb, the English cottage revival and the gardens suburb movement. Although it refers to some infill the strategy points out that the original period style remains dominant.

The strategy is to apply appropriate controls to maintain the spaciousness and tree filled qualities which distinguish the zone. These include the density limit and a front yard control which is imposed to protect the traditionally deep and spacious front yards found in the zone. There is also a more restrictive building coverage.

Thus all the three sub-zones fall under this umbrella – an umbrella which distinguishes the Residential 2 zones from other forms of residential zoning.

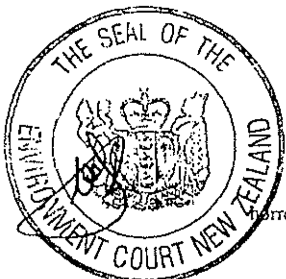
The Residential 2 zone is then split into the three sub-zones which are described as follows:

Residential 2a and 2c	These areas are characterised by lower housing densities, generally combined with period housing and an abundance of planting. Permitted building coverage is lower. A higher height limit is permitted in the Residential 2a zone, where the area is characterised by taller buildings.

Applying those criteria for a moment to 128 and 134 Arney Road neither of those properties contain any elements of period housing as defined in the zone strategy nor is there an "abundance" of planting. There is some planting but the planting which is in abundance is largely in the noxious category. The building coverage is lower than for example Hapua Street. Neither of the structures on those allotments are anywhere near the height limit permitted in the 2a zone nor is the area within the general vicinity of the two appeal sites characterised by taller buildings.

Residential 2b zone is described as:

> These areas have higher housing densities and building coverage than the Residential 2a and 2c zones, generally involving period homes. The zone has also been applied to protect significant bush clad areas in the isthmus. Although part of these areas do not display the period housing characteristics of the Residential 2 zone these areas do exhibit a special landscape quality. Broadly based design criteria are applied to resource consent



> applications for building construction in order to maintain consistency of architectural mass, form, proportion and materials as appropriate in the sub-zones.

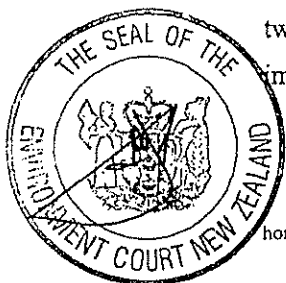
To comment upon that zone concept as applied to the two appeal sites it is first necessary to identify the expression "these areas". No. 134 Arney Road has no affinity whatsoever with that road. It is linked to it by a steep pedestrian walkway but its main access is to Hapua Street. It is hidden behind a Council reserve and a play school but visually has more affinity with Hapua Street than the Arney Road area. Indeed, when viewed from Hapua Street it appears as a residence settled against a steep escarpment which separates it from the Arney Road dwellings. Most of the backdrop further west along Hapua Street consists of houses built on rear sections accessed from Arney Road and most of those backdrop buildings although much grander in scale than Hapua Street have a common boundary with the Hapua Road zonings.

The second and alternative reason for placement of 2b zoning upon properties is to protect significant bush clad areas. By that we assume the plan intends to refer to indigenous forest. Most of the Arney Road area and Hapua Road area contain a mixture of indigenous and exotic plants and the zone would certainly not be applied to the appeal sites if that were the sole criteria.

The areas in question do not display a period housing characteristic because within the main visual catchment are a mix of three zones starting with 2a at the upper level and culminating in 5 and 6a at the Hapua Street level. There is however a special landscape quality derived from the vegetated escarpment which would be physically difficult to develop residentially. This forms a more or less natural swathe visually separating the 2a zone from the zones below. Further development of the two appeal sites is physically limited and would not greatly affect the escarpment. Furthermore the tree ordinances would prevent the indiscriminate destruction of the trees at present upon No. 128 and the trees upon the road reserve.

Turning now to the development rules the main differences between 2a and 2b are firstly density. Residential 2a permits one residential unit per $1000m^2$ of gross site area. Residential 2b one unit per $600m^2$ of gross site area.

In effect this means that one cannot subdivide in a 2a zone unless the site is $2000m^2$ or more whereas the subdivisible minimum in the 2b is $1200m^2$. Both 128 and 134 Arney Road are subdivisible in terms of the 2b zone but not in terms of the 2a zone. Nor would the present two unit development on those two sites be permitted under the 2a zoning therefore the imposition of a 2a zone upon those two properties render the present usage non-conforming



and would prevent redevelopment on a two unit basis. The evidence was that No. 128 is suffering from subsidence and the building is due for replacement.

The next rule relates to maximum height and reads:-

(b) Maximum Height

Residential 2a – 10m
Residential 2b – 8m

In respect of these height limits we are told that volcanic cone sight planes limit the maximum height of buildings in most of Arney Road to 9m. This would not apply to either of the subject sites therefore the 2b zoning effectively deprives these properties of 2m of building height – a restriction the appellant is prepared to accept if she is able to build two separate units. We comment however that the definition of height having regard to the steepness of the slope leading down to Hapua Street is such that a visually substantial building could be constructed under 2a rules which, when viewed from Hapua Street and from positions across the valley in the Seaview Road locality could present a façade with a technical height of 10m but when measured from base to top could be much higher.

The next rule relates to building coverage and is:

(c) Maximum Building Coverage

Residential 2a – 25% of net site area
Residential 2b – 30% of net site area

(d) Minimum Landscaped Permeable Surface

Residential 2a – 50% of net site area
Residential 2b – 45% of net side area

A montage of the potential of No. 128 under 2b zoning was presented to us by the appellant with one unit constructed in place of the present structure upon the site and a second structure somewhat down the slope and to a degree level with or below Arney Road as it winds past the property. This montage assumed importance which was not justified in that the Court is dealing with a zoning issue not with a resource consent. The proposed development would have impinged upon the root system of significant trees upon the site and in the opinion of a arborist called by those opposed to the 2b zoning the trees would not survive such treatment. That is not a matter for us to decide in the course of these proceedings. We have no doubt that the Council in consultation with the owners will fine tune any proposed development to ensure, if possible, the retention of any trees of significance. Zoning should not be used as a method of protecting an individual tree or trees as opposed to perhaps an area of indigenous bush. From our inspection of the site and from

some of the evidence we heard a 2a development, because of the topography, might also have a similar effect upon on-site vegetation. The significant trees unfortunately run more or less along the middle of the property rendering it difficult to develop under any form of zoning.

Our general conclusion in respect of a district plan, setting aside the question of amenities for the moment, is that a 2b zoning of both properties would enable the lower plateau of Hapua Street with its 5 and 6a Residential zones to blend successfully into the 2a zones above. That is not to be taken as a general comment relating to the whole of the escarpment but only to these two sites which have road frontage to the northern part of Arney Road that road itself causing a significant detraction to the amenity value of the escarpment by carving into it.

Landscaping

We heard from a number of landscape architects all with tertiary qualifications in landscape architecture. Mr J L Goodwin a director of Boffa Miskell Limited, Environmental Planners and Landscape Architects; Mr M E Jones a consultant landscaper, architect planner with the Auckland City Council; Ms Melean Absolum a consultant landscape architect and managing director of Melean Absolum Limited; and Mr S K Brown.

Mr Goodwin gave evidence on behalf of the appellants and described the two sites now subject to appeal. In landscape terms he stated that on the appellant's site there are three trees of note, namely a semi-matured pohutokawa, an oak and a cabbage tree all of which are protected under general tree provisions. He described the area generally and then compared his findings with the proposed district plan Residential 2a and 2b zones. Looking at the wording of the 2a zone which relates to large sites characterised by substantial period housing and an abundance of planting as compared with the Residential 2b zone which is generally applied to smaller sites of special landscape quality he considered the whole of the block originally subject to appeal was distinctly different from the period housing at the top end of Arney Road. He agreed with the distinction outlined by Mr Putt in his evidence. Taking into account the escarpment he concluded that half of the Horrock's property (the appellants' property) and all of the Wilson land (No. 134) relate specifically to Hapua Street which is an area of higher density housing. In his conclusions he considered that subdivision of 128 Arney Road would not have any adverse visual effects on the existing landscape if two units were to be built upon it. Residential 2b zoning would still retain the essential landscape character of the Arney Road and Hapua Street areas. In reaching that conclusion he assumed that the protected trees would remain when he stated that vegetation removal would essentially be confined to the undesirable weed species on a small area of

slope within the appeal sites. Visual effects of subdivision and development would be largely perceived within the Hapua Street catchment which is an area of higher density. He considered the change caused by 2b zoning to be minimal and believed it would not have an adverse effect on the vegetative character of the wider area as much of the view is screened by surrounding trees.

In considering his evidence it must be remembered that No. 134 has its main access from Hapua Street and the majority of that property is on the lower level of Hapua Street. There appears no reason whatsoever why that property should retain a 2a zoning and that being so the Court agrees that both 134 and 128 (which exhibits in part somewhat similar topographical features) form the transition into Arney Road proper.

Turning to the evidence of Ms Absolum she did not agree with the conclusions of Mr Goodwin. After briefly tracing the zoning history she considered the various factors present in this local landscape. She did not agree with any differentiation between major areas in Arney Road although conceding that many of the properties were built at different times. She referred to the fact that the western side of the road sloped sharply therefore the visual appearance from the street of all areas was not greatly different in that many of the houses on rear sites in particular could not be seen. When the trees were taken into account she considered that they combined with the houses "to create a mature, comfortable and established neighbourhood with the existing vegetation as a significant natural feature".

We agree with these views of Ms Absolum regarding Arney Road up to the rim of the escarpment. That was that reason that we signalled very early in the course of this hearing that the Court would not go against the wishes of the residents in relation to a rezoning of the western side.

She then moved to a consideration of the two appeal sites which she described as forming a green gateway at the northern entrance to Arney Road. It was her opinion that the presence of trees at the entrance to the road signalled a distinct change in the local character from the busy, noisy, wide carriageway of Shore Road to the quieter, narrower, residential area of Arney Road and specifically signalled a special character residential area.

Although we agree with her conclusions as to the amenity represented by this tree lined road we consider with respect that it only signals a change in local character for those who are already aware of the nature of Arney Road. To those unaware of Arney Road it simply signals a treed street which may or may not have affinity with the plateau or ridge above, that being largely hidden from view. Indeed to those who have come from the Hapua Street area there is no real cause to believe that the ridge would be any different apart from the

vista afforded by houses on rear sections to the west of Arney Road which are of a higher standard but not necessarily totally different to the higher density areas of Hapua Street.

When viewed from further afield namely from Bassett Road and Seaview Road there is the general vista afforded by the properties along the higher levels of Arney Road. The presence of two units on the appeal sites we do not consider will affect that vista – a vista which already encompasses the lower levels of Hapua Street.

We agree with Ms Absolum as to the landform being a local landscape feature with development difficulties. This has resulted in the face remaining tree clad although much of that vegetation is noxious.

If development should take place there will be some loss of spaciousness caused by the 5% increase in site coverage but this in our opinion will be compensated for by the 2m reduction in permitted building height. We have been told that most of the development can take place without losing protected trees and we expect this will be the case although it is not our function in the course of this appeal to consider specific development options. We will comment a little later on the question of "spot zones" but certainly do not consider that a theoretical approach based on that concept should be determinative of the present appeal.

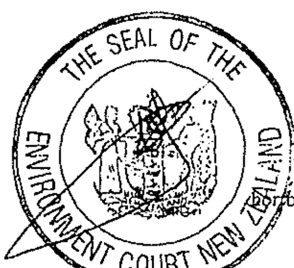
The evidence of Mr M E Jones was general in character. It was his report which emphasised the necessity to protect Arney Road. In his report he supported Residential 2a sought by residents because of loss of spaciousness with the density control of 1:600. He considered 1:1000 would restrict development to only the larger sites and was the most appropriate.

Mr S K Brown went through the provisions of the proposed district plan. He described the existing situation in Arney Road and concluded that the road corridor was marked by a quite obvious transition and

> "might even be regarded as comprising two reasonably distinct halves".

On the northern end of the road on its western flank he stated that the road

> "is notable for the rather austere aesthetic (sic) of a couple of 1950s 60s dwellings amid modified bungalows, including the Horrocks house at 128 ..., while the Burcher house at 126 is a much more modern, plaster and tile, addition to the local architectural mix. Somewhat isolated from this grouping, the house at 134 Arney Road is actually part of a cluster of state houses at the back of the Hapua Reserve – off Hapua Street ... . the bulk of Arney Road north of Wiles Avenue is still dominated by housing from the bungalow period, with the occasional English cottage garden house adding some variety. As a result, even though the housing round the 120 to 128 Arney Road is a somewhat eclectic character, it is still faced by a line of bungalows directly across the road – interspersed with pohutokawas, puriri, titokis and at least one quite prominent phoenix palm."



From our site inspection we consider this an apt description of the northern end of this street.

In respect of the two appeal sites he considered 134 Arney Road had almost no direct visual exposure to Arney Road and as a result the actual houses were more strongly associated with Hapua Street rather than with Arney Road. The undeveloped part however rises up to the edge of Arney Road giving it visibility from both directions. In respect of both 128 and 134 he commented:

> "It would be fair to say that neither dwelling contributes appreciably to the character and amenity value of Arney Road; indeed, the house at 134 is almost totally isolated from the street corridor.'

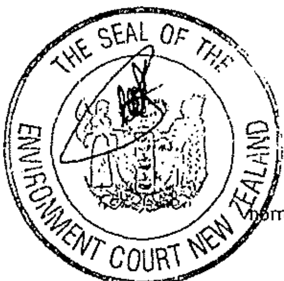
He then comments on the contribution the properties make in mature vegetation to the sense of spaciousness.

He agreed with Ms Absolum as to the importance of these properties in the streetscape of Arney Road and considers that they provide a visual separation between Arney Road and Hapua Street. In respect of views from within Arney Road the effect would not be as great but he was concerned with a further frittering away of the edge of the zone.

The Views of the Residents

The residents apart from the appellant and the owner of No. 134 are implacably opposed to the rezoning of these two properties from 2a to 2b. All consider that there will be an effect upon the amenities of the whole of Arney Road but we were unable to ascertain with any degree of accuracy what it was that particularly concerned them. Generally they seem to fear an insidious creep of infill development within the street and they coupled this with the adverse effects they consider even modest development would have on the entry to the street from the north. They seem to consider resource consent processes preferable.

For our part we consider that to protect this street by way of zoning is far preferable to applications for resource consents for non-conforming activities. If the owners of 128 and 134 were able to obtain consents to two unit developments (and it must be remembered that there are already two units on each property and that the properties are largely topographically separated from the rest of Arney road) then the more inventive amongst the planning and legal professions may be able to see similarities between those two properties and others further south. If however the situation is tackled by way of zoning then the strength of such an argument in the southern part of the street is less.



Insofar as the gateway approach to Arney Road is concerned one must ask whether the amenity effects of allowing two unit development on 128 and 134 is such that the owners of those properties should be required to forego reasonable development rights for the benefit of the Arney Road community as a whole. It must be remembered that both 2a and 2b are sub-zones of a zone intended to protect amenities and environment. The zoning thus recognises that 1:600 is an appropriate protection vehicle but that 1:1000 not only protects but contributes to spaciousness. To recognise 2b for the two properties subject to appeal is therefore not to downgrade the Residential 2 zone but is rather to assess these two properties on an individual basis. For our part we can see no reason why the owners of those two properties should be penalised by preventing them from appropriate low density development on the basis of conjecture as to future resource consent applications within the 2a zone. The result of rezoning will also be that height of structures on the upper level of 128 will be of a lower height than permitted by the 2a zone.

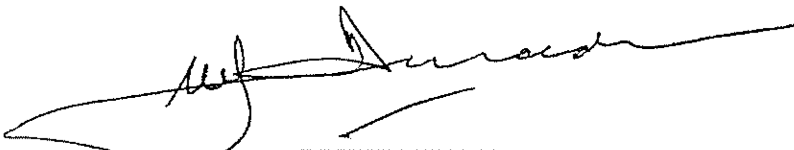
The RMA and Relevant Cases

The principle of sustainable management as set forth in s5 most certainly applies to Arney Road as a whole and, to a lesser degree, to the approaches to that area from Hapua Street. Therefore the Council is perfectly correct in their approach whereby they have decided to accord the whole of Arney Road Residential 2a protection. The living environment which s5 seeks to protect is not however intended to be rigidly controlled by set zone boundary lines as was the case with previous enactments. Effects must be looked at and adjustments made where zones blend one into the other. It is our opinion that Residential 2b is the appropriate vehicle to use in respect of this part of the escarpment separating the upper level of Arney Road from the lower levels of Hapua Street. Its visual appearance is already seriously affected by the presence of the road itself as it wends its way from the lower to upper levels. Residential 2b enables more than adequate space for extensive landscaping and indeed, as suggested by the appellant, probably landscaping of a higher quality than presently exists. Whilst the concept of spot zones is generally undesirable, and authorities were quoted to us in that regard, small transition zones are appropriate in resource management terms enabling as they do protection of amenities on the one hand and reasonable use of properties on the other. Indeed an examination of this general area shows that there are many small pockets of zoning which, depending on their extent, could be described as "spot zoning". They nevertheless have a function in recognising what is there already either physically or topographically. Whilst residents in the area are justifiably jealous of the street in which they live we do not consider recognition of the topographical nature of the two appeal sites will have any impact whatsoever on the bulk of Arney Road.

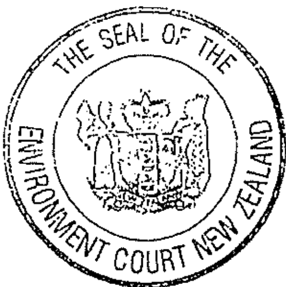
Conclusion

For that reason the appeal is allowed in respect of 128 and 134 Arney Road alone and the zoning of those two properties is changed to Residential 2b.

DATED at **AUCKLAND** this 2nd day of December 1999.



W J M Treadwell
Environment Judge



ORIGINAL

Decision No. A 161 /2003

IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN **KAMO VETERINARY HOLDINGS LIMITED**

(RMA 0762/01) and

NORTHLAND SHELF COMPANY NO 9

(RMA 0763/01)

Appellants

AND **WHANGAREI DISTRICT COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge L J Newhook (presiding)
Environment Commissioner P A Catchpole
Environment Commissioner R M Dunlop

HEARING at **WHANGAREI** on 15 and 16 May 2003

APPEARANCES

R M Bell for referrers
G J Mathias for respondent

INTERIM DECISION

Introduction

[1] These two references result from unsuccessful submissions against the zoning, or "Environment" category, applied by the council to the referrers' separate properties in the Proposed Whangarei District Plan (PDP). The resource management circumstances

of the two sites are notably similar. For this reason it was appropriate to hear the references together and to determine them jointly. The relief sought by each reference is the same, namely that the subject sites be included in the Business 3 Environment rather than Living 1 Environment (the latter being the zone applied in the PDP). There were no s.271A parties or s.274 intervenors in the proceedings.

[2] Both properties are situated in the northern Whangarei suburb of Kamo, on Kamo Road, which is an arterial road and comprises part of State Highway 1.

[3] Northland Shelf Company No 9 owns a 718m^2 cross leased site occupied by Whangarei Physiotherapy Services Limited ("the physiotherapy") at 445 Kamo Road, on the corner of Clark Road. The principal improvements comprise a single storey former dwelling, an office and sealed parking spaces. Vehicle access is from Clark Road. Vehicle movements are in the order of 120 per day. A 1.2m wide x 2.6m high sign on the corner advertises the physiotherapy, which operates 7am – 7pm five days per week. Four full time equivalent employees are currently engaged. Ms A Mortimer, a partner in the physiotherapy gave evidence that she understood that a previous owner had obtained planning consent for the business when it commenced in approximately 1990, but neither Ms Mortimer nor the council were able to produce a copy of any such consent. It is therefore not certain that the activity is lawfully established.

[4] The Kamo Veterinary Holdings Limited site (the "veterinary clinic") is located on a 441m2 property almost opposite the physiotherapy, at 366 Kamo Road, on the corner of Carlton Crescent. The principal improvements are a single storey former residential building and sealed parking spaces. The building has a common (fire) wall with the adjacent residence to the east. The latter is owned by the referrer and used for accessory activities in conjunction with the clinic. The referrer also owns the residential property immediately to the south. Vehicle access to the veterinary clinic is from both Carlton Crescent and Kamo Road, with approximately 130 vehicle movements per day in December 2002. A ground-mounted sign of similar proportions to the physiotherapists' is on the Kamo Road frontage. The clinic operates normal business hours six days per week, with occasional urgent after-hours activity. Nine professional and support persons are employed.

[5] We accept Mr Bell's submission that the respondent's assumption that the veterinary practice has existing use rights, may not be well founded. As the clinic was first established in 1967 it may have been subject to the s.38A Change of Use provisions of the Town and Country Planning Act 1953 (as amended by s.26 of the Town and Country Planning Amendment Act 1957). No evidence was adduced of planning consent having been granted under that Act, or any subsequent instrument and it is not known if such was required at law. It is therefore not certain that the activity is lawfully established.

The sites and their neighbourhoods

[6] It was not really in dispute that surrounding sites constitute part of a homogenous or coherent residential area, and our site inspection confirmed that. The nearest business zoned land is about 240m to the north where there is a service station located at the southern end of the Kamo town centre. Two schools are located nearby on the eastern side of Kamo Road. Mixed use activities are noticeably absent from adjacent sections of Kamo Road, unlike the position on some other sections of the north –south arterial route through the City.

[7] Both Clark Road and Carlton Crescent are listed as local roads in the PDP.

[8] We find from the evidence of Mr GR McPherson (veterinary surgeon) and Ms AM Mortimer (physiotherapist) that the subject sites are suitable locations for conducting the referrers' respective businesses compared to alternative suburban and/or commercial centres. This is primarily on account of the sites' convenient location within their catchments and their ability to provide on-site parking for customers, particularly for patients with restricted mobility.

[9] It was common ground, recorded in the Statement of Agreed Facts filed prior to the hearing, that the activities presently conducted on the subject sites do not generate adverse environmental effects in the neighbourhood. No provisions of the Northland Regional Policy Statement apply and there are no relevant national policy statements or other statutory instruments.

Issues

[10] Put simply, the following issues are central to determining the references:

- Whether the referrers should resolve their non-complying status in the Living 1 Environment, and any undetermined existing use rights, by proceedings other than these references.
- Whether a Living 1 or Business 3 Environment would better secure relevant Plan objectives and policies, safeguard the amenities of surrounding residential areas and align with relevant Part II RMA matters, while also providing for the referrers' wellbeing;
- The respondent's statutory function when adopting a particular zoning for the sites; section 32; and non-statutory growth strategy studies by council;
- Whether an alternative relief, such as scheduling the sites in the Plan with specified permitted activities and development controls, might be preferable to the relief sought.

Lack of certainty as to current status

[11] It was common ground that the physiotherapy and veterinary clinic are not permitted activities under either the transitional plan or the Living 1 Environment provisions of the PDP. In terms of the latter it was common ground that the plan's effects-based approach would enable low scale businesses to establish, but those of the referrers would not fully qualify principally because certain bulk and location controls and traffic movement limitations are exceeded. The referrers understandably seek to take advantage of the current district plan review to overcome the lack of certainty about the existence of resource consent (in one case) and existing use rights (in the other). At its worst, the referrers' counsel Mr Bell submitted that council could not close its eyes to the apparent breaches of the plans because it has a duty under s.84 to enforce their provisions.

[12] Mr RJ Mortimer, a resource management consultant called to give evidence by the referrers, considered that the uncertainty that flowed from the preceding factors was unsatisfactory and could be best redressed by including the sites in the Business 3 Environment. This would place the referrers' existing activities in compliance with Rule 31.4 ("Activities Generally"). We apprehend that the activities would also comply

with relevant Business 3 development controls, although there might be some possible minor non-compliance with some bulk and location controls.

[13] Mr Mortimer emphasised that re-zoning the sites Business 3 Environment would also save on compliance costs, by which he meant the time and cost which might otherwise be expended in clarifying the activities' status by way of resource consent. Mr Bell addressed us on the related matter of what he called efficiency, submitting that it is more efficient to permit the current activities by rules than by exceptions to rules (through existing use rights and/or resource consents). Compliance costs potentially associated with the latter were submitted to be much greater. This point has some validity, subject to being weighed alongside other factors relevant to the purpose of the Act in section 5, a number of which are of rather more importance.

[14] Mr Stewart, the planning consultant called by the respondent, opined that there was a high probability that such applications to the council would succeed. However he conceded in cross-examination that there can be no certainty on this point given that the council's current benign view could change with different elected representatives and advisers.

Suitability of Business 3 Environment as a zoning

[15] Mr Bell emphasised that the PDP is more of an "enabling" than a "managing" document, and that it is concerned largely with securing environmental outcomes consistent with those aspects of sustainable management described in s.5 (a) – (c) RMA. He submitted that there is nothing in the plan about preferred locations for business activities, and no objectives and policies in the plan requiring the segregation of commercial and residential activities. Rather, the few relevant objectives and policies are effects-based, and are primarily concerned with the maintenance and enhancement of amenity values.

[16] In particular Mr Bell drew our attention to Objective 5.3.1, Objective 5.3.5, and the provisions concerned specifically with amenity values in Policies 5.4.1 – 3. He also told us that the purpose of Policy 5.4.3 is to ensure that activities located in residential localities have effects consistent with the amenity of the area and that the accompanying

Explanation makes it clear in the following terms that non-residential activities may be acceptable:

> However, these concerns do not preclude appropriate non-residential activities of a nature and scale consistent with, or serving the needs of the local resident community.

[17] We accept Mr Bell's submission that the PDP's objectives and policies on amenity values allow a mix of activities, provided that amenities are maintained. We also accept his submission that there is no policy directing business activities away from residential activities, except where the former would impact adversely on the amenities of the latter.

[18] The PDP notably does not contain objectives and policies directed expressly to the Living 1 and the Business 3 Environments. However, Mr Bell drew our attention to the following material from the Introduction to the Business 3 Environment (Section 31.1 of the PDP) concerning the interface of the two Environments:

> The rules in the Business 3 Environment take into account and are sympathetic towards the Living Environments, which have issues of greater sensitivity than the Business Environment. This sensitivity towards the Living Environment is shown by the use of higher environmental performance standards within the rules.

[19] Mr Bell also drew our attention to a number of other statements in the plan about generic matters, including amenity values, and subdivision and development, that would guide the council in determining any application for resource consent for a business activity on the subject sites. In this regard he submitted that the Business 3 Environment provisions sought to be applied to the referrers' sites, have been expressly formulated to manage the effects of business activities on the amenities of neighbouring residential areas in a suitable way.

[20] More particularly, Mr Bell submitted that:

> The environment rules in the Business 3 environment are only slightly more permissive than the Living 1 environment rules and where the Business 3 activity is in a residential locality, there are special limits added. These rules achieve environmental compatibility between business activities and a neighbouring Living environment. The rules are the result of balancing. They are less restrictive than rules for the Living 1 environment – to accommodate the operational requirements of businesses. But they are not as permissive as

> the rules in other business environments – out of deference to the higher standard of amenities in residential areas.

[21] Mr Mortimer elaborated on this view with reference to specific Business 3 rules and similarly opined that the Business 3 Environment rules allow only slightly greater effects on the environment than the Living 1 Environment rules. He also emphasized by reference to Section 31.1 of the Plan, that the former have been expressly devised to protect amenity values in Living Environments.

[22] It is evident from the Plan that any activity seeking consent in the Business 3 Environment would be evaluated by the consent authority using the Section 31.3 Business 3 Environment - Activity Rule Table. We will consider in the next section of this decision whether the *"slightly greater effects"* referred to in Mr Bell's submissions and by Mr Mortimer, would be compatible with the amenities required for the adjoining Living 1 Environment. We will also refer to objectives and policies in a little more detail.

Actual or Potential Effects on the Environment

[23] Mr Bell's submissions on this subject took as a starting point s.76(3), which provides:

> In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect; and rules may accordingly provide for permitted activities, controlled activities, discretionary activities, non complying activities and prohibited activities.

[24] Mr Bell submitted that this component of the Court's enquiry should focus on actual and potential effects of activities under a Business 3 zoning. As already noted, it was common ground that the <u>actual</u> effects of the current activities on each site are not detrimental. Indeed, we accept his view that the services provided by the existing businesses may have positive effects, in terms of the enabling of social and economic wellbeing in the community. It can therefore reasonably be argued, as Mr Bell did, that the existing activities on both sites might **reasonably** constitute permitted activities under the Business 3 Environment rules without causing any actual adverse effects.

[25] Where the parties differed, and where we have concerns ourselves, is on the issue of potential effects if a Business 3 Environment were adopted. Mr Bell submitted, (and Mr Mortimer opined in his rebuttal evidence), that it was unlikely the existing activities would cease, because they are long established and offer services for which there is a foreseeable, continuing demand. That in our view is too speculative. However, the evidence for the referrers was that should either or both close, they would most likely be replaced by activities comparable in scale and intensity, for example, medical rooms or offices in the case of the veterinary clinic, and residential use or offices in the case of the physiotherapy. It was submitted that such activities could be established with little cost; they would be likely to come within the permitted activity rules for the Business 3 Environment; and could reasonably be expected to be compatible with the locality. We accept there would be little cause for concern if these scenarios were to come about.

[26] However, the parties then debated before us the consequences of possible demolition of existing buildings and/or the commencement of some commercial activities carrying less benign effects. Mr Bell argued there was a low probability of this occurring, and that given the definition of "effect" in s.3 (f) RMA such an eventuality could only be relevant if it were to have a high potential impact.

[27] We heard evidence from both Mr Stewart and Mr Mortimer on the potential (or lack of same) for adverse effects with a Business 3 zoning in place.

[28] Mr Stewart offered a list of possible permitted activities under a Business 3 zone, and expressed concern that because of the effects-based nature of the Plan, there could be no certainty for neighbours. We are not concerned with this possibility, as it is effects on the environment that ultimately are of importance, rather than the precise identity of the activity generating them.

[29] The activities Mr Stewart suggested as possible future activities were a dairy/corner shop, a takeaway bar, a massage parlour or a funeral home.

[30] Mr Mortimer considered each of those activities and deposed they would be unlikely to be established for a combination of reasons, namely the existing buildings are unsuitable for them; the services in question would be better provided from

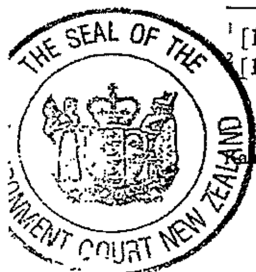
alternative locations (service stations, supermarkets); traffic generation; operating hours constraints on permitted activities; and the site being too small (for a modern funeral home). He opined that use of the sites for professional offices was a more credible alternative and those would be compatible with the amenities of the neighbourhood.

[31] Mr Mortimer also offered reasons as to why the sites were unlikely to be attractive for retail activities, with the possible exception of a shop that could survive economically on low numbers of patrons. He offered the example of a high value art dealer.

[32] Such is the nature of human endeavour that it is not possible to create an exhaustive list. We simply note that potentially a very wide range of activities could establish as permitted activities subject to other plan controls, and that any of them might involve the erection of new buildings.

[33] Difficulties associated with such crystal-ball-gazing are in part what underpin the RMA's legislative emphasis on assessment of effects. We agree with statements by the (then) Planning Tribunal in ***Leith v Auckland City Council***[1] and ***Hibbitt v Auckland City Council***[2] to the effect that there is no onus of justification or burden of proof concerning the correctness or otherwise of proposed plan provisions. Rather, there should be an inquiry: to ascertain the extent to which land use controls are necessary in achieving the sustainable management of natural and physical resources to assist the territorial authority (amongst other things) to carry out its function of control of actual or potential effects on the environment; to ascertain whether the controls are the most appropriate means of exercising that function; and to ensure the purpose of achieving the objectives and policies of the district plan.

[34] We will elaborate further on the issue of the potential effects of replacement activities later in this decision when we consider objectives, polices and rules, and will make our decision based on the principles set out in the above decisions.



[1] [1995] NZRMA 400 at 408-9.
[2] [1996] NZRMA 529 at 533-4.

Transitional plan provisions "rolled over" and s. 32 requirements

[35] Mr Bell submitted that it is only the objectives and policies of the PDP that are relevant (and not the objectives and policies of the transitional plan) when considering the appropriate zoning and environment rules in the PDP. We agree, noting what was said by the Planning Tribunal in ***Hibbit v Auckland City***:[3]

> The provisions of the preceding district scheme under the Town and Country Planning Act 1977 are not significant, as the Resource Management Act 1991 is deliberately a reform measure and a territorial authority is required to start with a clean sheet and focus on the purpose stated in s.5.

[36] In his evidence questioning the appropriateness of the subject sites' Living 1 Environment zoning, Mr Mortimer outlined how the zones in the PDP are basically a "roll over" of existing zones from the transitional plan. The PDP as promulgated in 1998 contained a summary of the processes undertaken in its preparation[4], which recorded:

> In the Draft District Plan, the planning maps were amended only to reflect the re organization of the existing zones into the new structure, and errors and omissions were identified through the consultation process ...

An appendix to that version of the plan[5], illustrates how the transitional plan zones were transposed directly into particular Environments in the new plan. For example, the Commercial Licensed Hotel, Commercial Neighbourhood and Commercial Suburban Centre Zones found in the Transitional Plan (Whangarei City Section) were all "rolled over" to become the Business 3 Environment. Mr Mortimer questioned the merits of this approach in the context of the council's duty under s.32 to consider alternatives and their benefits and costs. He expressed the view that:

> The direct transfer of zone dimensions appears to be fraught with difficulties and a less than robust consideration of alternatives or assessment of benefits and costs. Given these facts I have substantial reservations with the Section 32 analysis undertaken by the councils (sic) staff in establishing the current zoning of this site.

The site referred to in that statement is the veterinary clinic site, but he made an identical statement in his separate evidence concerning the physiotherapy site.

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[3] [1996] NZRMA 529 at 533.
[4] At p.11.
[5] Appendix 1 at p.18.

[37] Mr Mortimer accepted that council's s.32 duties relate primarily to generic Plan provisions and do not extend to individual properties in the District. However, it was his view that where sites have been identified through a consultation process or otherwise, as potentially having special characteristics, and are thought to be inappropriately zoned, the council has an obligation to review the associated provisions for such sites.

[38] It will suffice at this point to record that, in general terms, we share Mr Mortimer's reservations about the council's approach to preparing the relevant provisions of the PDP. We acknowledge Mr Mathias' submission that the referrers did not raise lack of compliance with s.32 in their submissions or references. However, he went rather too far when he submitted: *"As this was never a ground of reference it cannot properly now be raised in argument"*. Mr Bell was right to point to the decision of the Planning Tribunal in ***Nugent v Auckland City Council***[6] where it was held that substantive aspects of s.32 may still apply even if the section has not been pleaded. The Tribunal said:

> Section 32(1) gives direction to be carried out before adopting a rule in a proposed plan. This appeal does not involve a challenge on the basis that the section was not complied with. However section 32(1) contains further indications of what is expected of rules and plans. In particular they are that the rule is necessary in achieving the purpose of the Act, and it is the most appropriate means of exercising the function.

We will consider that the same enquiry is open in these cases.

Objectives, polices and rules of the PDP

[39] Mr Mathias submitted to us that the key issue in these cases is *"whether the zoning achieves the objectives, or implements the policies of the proposed plan"*, having regard to the statements of the Environment Court in ***Wilkinson v Hurunui District Council***[7]. (We note for the avoidance of doubt, that no Plan objectives or policies were under challenge before us). Mr Stewart explained that while the Plan does not contain specific Living 1 Environment or Business 3 Environment objectives and policies there are relevant objectives and policies in other parts of the Plan. He drew our attention to

[6] [1996] NZRMA 481 at 484.
[7] C50/2000 para [14].

particular objectives and policies in the Plan dealing with Amenity Values which we now set out in full, as follows:

> Objective 5.3.1
>
> The characteristic amenity values of each locality are maintained and enhanced
>
> Objective 5.3.5
>
> Subdivision, use and development is appropriately located and designed, to be compatible with existing patterns of development and levels of amenity in the surrounding environment.
>
> Policy 5.4.1
>
> Activities should not produce, beyond the boundaries of the site, adverse effects which detract from the amenity values of the surrounding environment. In particular, the following effects should be of a level, or intensity, appropriate to the surrounding environment [*an edited list follows of effects most relevant to these references]:*
>
> Noise
> Nuisance
> Shading
> Glare
> Light spill
> Odour
> Visual Amenity
>
> Policy 5.4.3
>
> Activities in Living Environments should not have adverse effects that are significantly greater than those associated with residential activities. In addition, activities should not adversely affect community and neighbourhood coherence.
>
> Policy 5.4.12
>
> Activities should not adversely affect the amenity values of a locality, as a result of generating significant increase in vehicle movements and parking demand, particularly in the number of heavy vehicles and associated noise and fumes".

[40] Mr Stewart also drew our attention to the objectives and policies in Section 7 of the PDP, Subdivision and Development which he considered relevant:

> Objective 7.3.1
>
> The quality of the environment is not compromised by the environmental effects of subdivision and development.

Objective 7.3.3

Avoid conflict between incompatible land use activities as a result of subdivision and development.

Policy 7.4.2

Subdivision and development should be designed and located so as to avoid, remedy or mitigate adverse effects on, and where appropriate enhance.

- Amenity values
- Human health and safety

[41] Mr Stewart suggested that the objectives and policies to which he referred were *"designed generally to ensure that the amenity of the Living Environment is not compromised"*. It was agreed by both planning witnesses that there are a number of differences in the applicable rules determining permitted activities as between the Living 1 Environment and the Business 3 Environment. We accept Mr Mathias' submission, that it would be inappropriate to focus solely on the agreed fact that the existing veterinary clinic and physiotherapy practice do not have an adverse effect on the neighbourhood. Rather the Court must consider the effects which could be generated by activities having permitted activity status in the Business 3 Environment, and the effect that these may have upon the surrounding neighbourhood. In this regard, we concur with Mr Mathias' submission, that it is necessary to determine whether:

- The differing standards for an activity which complies with the Business 3 Environment provisions as a permitted activity would potentially have an adverse effect on the surrounding/neighbouring Living 1 Environment.

- The rezoning sought is *"necessary"* or better in the context of s.32(1)(a) and Suburban Estates Limited and Others v Christchurch City Council: C217/01.

We now turn to these matters.

[42] The analyses of Environment Rules undertaken by Mr Stewart (and to a degree Mr Mortimer) indicate a potential for adverse effects to be generated by Business 3 permitted activities on the adjoining Living 1 Environment on account of the following differences in the controls:

i) Increased hours of operation: Subject to compliance with other controls, Business 3 Environment generally permits 6 additional hours of operations per day.

ii) Traffic Movements: Business 3 authorizes approximately a six-fold increase in traffic movements. Both sites front SH 1 (Kamo Road).

iii) Signage: Business 3 authorizes more (up to 3), significantly larger (up to 6.0m2) and higher signage (up to 8.5m) than is permitted in the Living 1 Environment.

iv) Noise: Permitted levels in Business 3 are 5dBA higher on all measures, which is a discernable difference. (The rules are subject to reference).

v) Building Height: In Business 3, the 11m maximum permitted height is significantly greater than the Living 1 8m maximum, but the effect of a new structure may be mitigated to some degree by the requisite compliance with daylight angles.

vi) Building Coverage: At 70 % Business 3 permits double the site coverage. (The rules for both Environments are subject to reference).

vii) Building Setbacks: Subject to compliance with other Plan provisions, including parking, Business 3 authorizes buildings with greater bulk (site coverage, maximum height) on road frontages with the potential for a marked contrast in built form compared to adjoining Living 1 Environment sites.

viii) Parking: The requirement for parking to be provided on-site in Business 3 potentially reduces building sizes, on small sites, to less than the permitted 70 % site coverage. However, the rules also potentially require (depending on the specific business activity concerned) a greater extent of on-site parking than the Living 1 Environment, with attendant amenity considerations. The Business 3 requirement for spaces used at night to be lit, may also affect adjoining residential amenities. (The provisions are subject to reference).

[43] No evidence was given about the relief sought by the other references noted above, in particular as to whether there would be a relaxation or tightening of the controls. Be this as it may, we find on the evidence that there is a potential for adverse effects to occur in conjunction with prospective Business 3 Environment activities and that these effects might not be adequately mitigated by compliance with the performance standards required for permitted activities. In some instances we consider that there is

the potential for impacts to be high and not of low probability[8] (traffic movements, signage, building height and coverage, building setback – and not all of these controls are subject to challenge on appeal). The greatest potential for such effects to occur, in our opinion, results from the possibility that the existing buildings on-site might be demolished and replaced with new buildings. Applying the tests in ***Nugent v Auckland City Council***[9] we find:

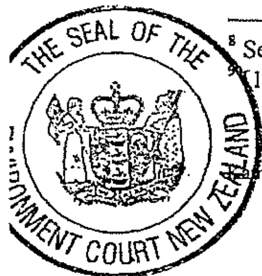
- There is a high probability of the resultant effects being contrary to s.5 in terms of inhibiting adjoining Living 1 Environment residents from providing in a sustainable manner for their wellbeing while the effects of permitted developments on the environment may not be avoided, remedied or mitigated satisfactorily.

- That certain "other matters" in s.7(c) and (f) would not be suitably secured by the re-zonings sought (maintenance and enhancement of amenity values, and of the quality of the environment, respectively).

- The objectives and policies relating to Amenity Values, and Subdivision and Development, would be better met by retaining a Living 1 Environment.

We also find on balance that the re-zonings sought are not necessary in the sense of being "better" (in the circumstances of the subject sites) or in terms of assisting the council to carry out its function of the control of actual or potential effects on the use, development or protection of land in order to achieve the purpose of the Act. Our findings as to the most appropriate means of exercising these functions is addressed further below. In all the preceding matters we are especially mindful of the coherent nature of the Living 1 Environment adjoining the subject sites and absence of other business activities on this section of Kamo Road.

[44] We return now to the common ground that the existing business activities do not cause adverse effects, and record our view that other professional services could reasonably be expected to operate in a similar manner, remembering the examples Mr Mortimer gave in his evidence. We are also sympathetic to the referrers' request for certainty in terms of conducting their businesses under the plan. Efficiency of plan administration is a valid factor for consideration, albeit carrying less weight than other



[8] See s.3(f) RMA.
[9] [1996] NZRMA 481.

matters. In particular, enquiries into the presence or otherwise of existing use rights, can be notoriously complicated and expensive.

Outcomes, directions and costs

[45] We have found that for various reasons the Living 1 zoning is unduly restrictive on the referrers' sites. Equally however, Business 3 would be inappropriate on account of the potential for adverse effects from future possible activities. We consider that the situation may best be dealt with by employing a technique sometimes known as "scheduling".

[46] During the hearing we aired the possibility of utilizing this method (which is found in some other district plans), and invited responses from the parties. The respondent agreed in principle to adoption of the method in association with retention of the Living 1 Environment. Mr Mortimer acknowledged the merits of scheduling but preferred a different approach. His recommendation would see Business 3 substituted for Living 1 Environment, with the rules of the former changed in accordance with a short rule amendment that Mr Bell subsequently filed. That proposal was to expand the list of business activities excluded from permitted activity status in Rule 31.4 by listing panel beating, spray painting, motor vehicle repairs, outdoor storage of motor vehicles and meat processing concerning the subject sites. We do not consider this approach acceptable because it would not address our concerns about effects from the less restrictive building and amenity controls in Business 3. Further, we are not fully comfortable with its prescriptive approach because it is difficult to anticipate adequately, possible future activities that might be undesirable but have not found their way on to the list.

[47] We should mention at this juncture a criticism of the references made on behalf of the council, that "spot zoning" was being advocated, and that that was in some way undesirable. We do not consider that such criticism is warranted, whether in connection with a complete change of zoning, or the use of the scheduling technique.

[48] First, the Act does not employ the terms "spot zoning", "specific zoning", or anything similar. The terminology had currency in decisions made under the former Town and Country Planning Acts, but has little relevance in a regime where enquiries

are *substantially directed to* the sustainable management of natural and physical resources and effects on the environment.

[49] In ***Daylight v Auckland City Council***[10] the Planning Tribunal had this to say concerning the issue in the RMA regime:

> Site specific or spot zoning is occasionally acceptable, for example to control the distinct effects on an activity of a different nature than that of its neighbours.

We consider that a similar approach is called for in these cases. The evidence we have analysed concerning historical, present, and potential future effects on these two sites, justifies individual attention being paid to them.

[50] We were told by Mr Bell and Mr Mortimer that the respondent has applied a number of small business "spot zones" in the PDP, interspersed through the Living Environments. We do not place much weight on that. The present sites must be considered on their own merits. Zoning at such a "micro" level is probably not generally to be encouraged, because of the complexities of considering a multiplicity of inter-acting effects if undertaken a lot. Nevertheless the two subject sites merit individual attention on the basis of a "scheduling" approach for the reasons we have recorded.

[51] The references are accordingly determined in the following manner:

(a) The precise relief sought by the referrers is declined and the subject sites are to remain in the Living 1 Environment.

(b) The referrers and the respondent are to confer on the production of an "identified activities schedule", and consequential amendments for inclusion in the Plan. The schedule is to provide for the referrers' existing business activities as permitted activities on their respective sites in the Living 1 Environment. Other professional services agreed by the parties may be provided for in the same manner. The schedule is to comprise material of the following type:

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[10] Decision A032/96

- A general statement explaining the reasons for adopting the method and its purpose, together with such objective(s) and policies as deemed appropriate;

- Explanatory material describing how the schedule operates;

- A tabulated schedule containing the following or similar information:

Scheduled Site Number	Applicable Planning Map Number	Permitted Activities	Legal Site Description	Conditions

(c) The schedule and consequential plan amendments are to be lodged with the Court 45 working days after the date of this decision together with any related submissions the parties may elect to make. We will then make a final decision, if necessary after any brief further hearing on any unresolved matters of professional opinion.

[52] Costs are generally not appropriate in respect of reference matters, and particularly so in this case where matters have been rather finely balanced between the parties. Costs are reserved but applications are not encouraged.

DATED at **AUCKLAND** this 18th day of September 2003.

For the Court:

L J Newhook
Environment Judge

BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC 88

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal pursuant to s 120 of the Act
BETWEEN	SAVE WANAKA LAKEFRONT RESERVE INCORPORATED
	(ENV-2016-CHC-54)
	Appellant
AND	QUEENSTOWN LAKES DISTRICT COUNCIL
	Respondent
AND	WANAKA WATERSPORTS FACILITY TRUST
	Applicant

Court: Environment Judge J J M Hassan
Environment Commissioner W R Howie
Environment Commissioner K A Edmonds

Hearing: at Wanaka on 21, 22, 23 and 24 March 2017

Appearances: M Baker-Galloway for the appellant
A Balme and J Wilson for the respondent
G Todd and B Gresson for the applicant
J Haworth for the Upper Clutha Environmental Society (Inc)
G Dickson in person

Date of Decision: 20 June 2017

Date of Issue: 20 June 2017

INTERIM DECISION OF THE ENVIRONMENT COURT

A: **Appeal disallowed and consent is granted subject to the finalisation of conditions.**

B: Timetable directions for submissions on conditions.

C: Costs reserved, timetable directions made for applications and response.

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REASONS

Preliminary questions concerning assessment of natural character effects

[151] Before dealing with the expert evidence on this topic, we address two preliminary issues:

(a) what is the 'margin' of Lake Wanaka in the vicinity of the proposal?

(b) what does 'natural character' mean?

[152] Those related issues are important for our consideration of those existing plan objectives and policies that are concerned with the natural character, particularly of the lake and its margin.

What is the 'margin' of Lake Wanaka in the vicinity of the proposal?

[153] The various landscape experts' agreed that the proposal would be within the margin of Lake Wanaka. However, they diverged on how far the margin extended landward.

[154] Dr Read, considered that the margin would extend to the mapped 100 year hazard flood levels including part of the commercial area of the town.[76] Ms Steven observed that such a broad reading of 'margin' would mean the natural character of Lake Wanaka would be diluted.[77] She considered that 'margin' comprised "the area of lake-formed landforms adjacent to the lake, and/or to the crest of an enclosing landform".[78] Mr Espie largely agreed with Ms Steven. He observed that land (including public land) south of Mount Aspiring Road had much less (if any) association with the lake in experiential or perceptual terms and doubted whether it would be part of the lake's margin.

[155] Save Wanaka's closing submissions noted that the existing plan's "Issues" section for 4.1.4 Objective 1 emphasises that margins are intended to act as "a buffer" to the lakes and rivers from land use activities. It submitted that this gives strength to an approach of applying the ordinary meaning of 'margin', namely as a boundary, edge, or rim of something.[79] It put the margin further landward than the mean high water

76 Dr M Read, evidence-in-chief for Save Wanaka, at [22], [35].

77 E A Steven, evidence-in-chief for the Trust, at [6.10].

78 E A Steven, evidence-in-chief for the Trust, at [6.10].

79 Closing submissions for Save Wanaka, at [42]-[43].

mark of the lake, but not as far as the 'high flood alert level' of 279.4m.[80] It submitted that the margin of the lake in the vicinity of the proposal is somewhere between the legal boundary between the reserve and the lake (at 280.88) and the lake's 50 year flood return period. That would effectively put it some distance beyond the top of the bank and the legal boundary.[81]

[156] In *Upper Clutha Environmental Society Inc v Queenstown Lakes District Council*, the court found that the 'margin' of a river or lake in s 6 "is the uppermost limit of wave action".[82] However, in *High Country Rosehip Orchards Ltd v Mackenzie District Council,*[83] the court questioned *Upper Clutha*'s interpretation.[84] It observed that[85] given the protective purpose of s 6(a), 'margins' in that section may have a wider meaning than it has in s 230, RMA (concerning esplanade reserves). It offered the following meaning:

> Margins are likely to be areas beyond the wave action of a lake or extending away from the banks of a river for, depending on topography and other factors, at least 20-50 metres and sometimes more".

[157] We approach our interpretation of 'margin' according to the Interpretation Act 1999 ('IA') and the leading Court of Appeal decision in *Powell v Dunedin City Council.*[86] Specifically, our task is to elicit the intended meaning starting first within the particular provision (s 6(a) or plan provision) in its immediate context, in light of any related definitions and ordinary meanings of relevant words. If need be, we may have recourse to the wider statutory or plan context bearing on the interpretation we must give.[87]

[158] The phrasing in the existing plan's 4.1.4 Objective 1 and Policies 1.13 and 1.16 is broadly similar to s 6(a) RMA. In Policy 1.16, the word 'margins' is used as part of a wider phrase referring to the subject of lakes, rivers, wetlands and their margins. Policy 1.16 is more specifically applicable to the margins themselves, being to encourage and promote the regeneration and reinstatement of indigenous ecosystems on the margins

80 Closing submissions for Save Wanaka, at [44]-[48], referring to the evidence of H Stoker, dated 22 March 2017.
81 Closing submissions for Save Wanaka, at [51]-[52].
82 *Upper Clutha Environmental Society Incorporated v Queenstown Lakes District Council* C12/1998 at p 15.
83 *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387.
84 For completeness, I note that Environment Judge Jackson presided in both cases.
85 *High Country Rosehip Orchards*, at [140].
86 *Powell v Dunedin City Council* (2005) 11 ELRNZ 144; [2004] 3 NZLR 721; [2005] NZRMA 174.
87 *Powell*, at [35].

of lakes, rivers and wetlands. It is apparent from the expression of these existing plan provisions that the intention is that 'margins' is to have the same meaning as it has in s 6(a). In a relative sense, Objective 1 provides a more targeted preservation directive than does s 6(a), RMA. That is, its emphasis is on what is 'remaining' of natural character of lakes, rivers and wetlands. For Save Wanaka, Dr Read observed that the use of the word 'remaining' signals that the existing plan is not solely concerned with the 'pristine'. We agree that is the case. It is a word that signals an acknowledgement that natural character has degraded and to reinforce an intention to preserve what remains of natural character, even when it has degraded.

[159] We also note the open-ended expression of the directives in Objective 1 and the related policies (and s 6(a)). On their plain reading, they are capable of being applied to development even if it would take place beyond the 'margin' of the lake in issue, depending on the evidence. Therefore, a finding that the proposal (or part of it) is on land outside the margin of Lake Wanaka does not itself exclude the application of Objective 1 or Policy 1.13 (or s 6(a)).

[160] We see nothing in the fact that the existing plan's provisions and s 6(a) use the plural 'margins' whereas the singular 'margin' is used in other RMA provisions (e.g. in s 230(3)). The IA provides that words in the singular include the plural and vice versa (s 33). Nothing in the existing plan (or s 6(a) or other RMA provisions) directs that 'margins' is not to be read in this way. Rather, the plural is used simply as part of a plural phrase referring also to 'lakes' and 'rivers'. Hence, 'lakes ... and their margins' includes Lake Wanaka and its margin.

[161] As 'margin' and 'margins' are not defined, we first look to their ordinary meaning. *The New Zealand Oxford Dictionary* refers to 'the edge or border of a surface': *The Shorter Oxford English Dictionary* offers a helpful example of 'the space immediately adjacent a river or piece of water, and edge, a border, a brink'.

[162] On the ordinary meaning of 'margins' therefore, Objective 1 refers to the preservation of the remaining natural character of the immediately adjacent edging spaces of the district's lakes (rivers and wetlands). That is similarly so for Policy 1.13 and s 6(a) RMA. We find that meaning allows for the proper application of the existing plan provisions and s 6(a) RMA.

[163] We respectfully observe that, in *High Country Rosehip Orchards*, counsel and the Court may have wrongly assumed that the directives in s 6(a) only apply where a development is to take place within the lake or margin. As we have noted, the directives in s 6(a) (and those in the existing plan) are plainly open to being applied to development on land that is beyond the 'margin' of the lake in issue. That is particularly the case for effects on perception of natural character. The directives allow for sensible application to such circumstances, depending on the evidence.

[164] We find that determining a lake's margin is primarily an exercise of practical contextual judgment. Namely, it requires identification of the physical edge of the lake through physical markers of that edge. Usually that can be done by simple observation. Ultimately, a lake's margin will be located where most people would observe it to be.

[165] We find Ms Steven's approach of some assistance in that, from our site visit, an enclosing lip to the lake edge was plain to see. It was in the form of a steep gravel embankment, in the relevant vicinity of the proposal. It is approximately 1m or so in height and runs up from the beach graveled edge of the lake. It would appear to have been formed by the regular influence of the lake's lapping waters.

[166] The ordinary meaning of 'margin' allows us to go slightly beyond the lake water's typical influence (i.e. slightly beyond the maximum normal 'operating' level of 278 masl).[88] The intended meaning is of land that lies immediately adjacent the water's edge, being here slightly beyond the 278 masl line. Such a meaning recognises the relationship that land has to the lake waters, both in terms of environmental factors and what people would observe that relationship to be. It is also readily able to be applied practically, with the aid of a surveyor, in the process of vesting esplanade reserves on subdivision. Therefore, we interpret 'margin' in that way, as it best fits the statutory and plan intentions.

[167] On our site visit, it was readily observable that, in the vicinity of the gravel 'rim', there are several pockets of healthy vegetation within about 1m landward of the rim. We noted, for example, seedlings of trees, lupin and other small vegetation growing in this general locality between the rim and the informal gravel walkway and cycleway that meanders between the rim and the shading trees. The significance of this physical marker is that this vegetation would not typically grow in a locality regularly overlapped

88 Supplementary evidence of Harry Stocker for the Trust, at 3.1.

by the lake's waters.

[168] Those physical markers lead us to conclude that the margin of the lake, in the vicinity of the site, is slightly beyond the 278 masl line and in the order of 1–1.5m beyond the gravel embankment.

[169] Therefore, we find the building would be landward of the lake's margin. The proposed boardwalk would intrude into the margin at the pinch point to a small extent. If the decking was to be modified as proposed in the applicant's building move proposal, this small intrusion would be overcome.

[170] As we next address, the significance of those findings on 'margin' inform our findings on biophysical effects as an aspect of natural character effects. As for the 'perception' dimension of natural character effects, our finding that the building is not in the physical margin is of far less significance as we next explain.

What does 'natural character' mean and how would the proposal affect it?

[171] The existing plan does not define 'natural character'. Therefore, we treat it as meaning the same as in s 6(a) RMA. As we have noted, the existing plan's landscape assessment matters make natural character relevant to our consideration of landscape effects also.

[172] The landscape experts agreed (and we accept) that 'natural character' concerns the expression of natural elements, patterns and processes in the landscape and it is a matter of degree. The degree of natural character depends on the extent of modification that has taken place to ecosystems and/or landscapes. Hence, it is usefully treated according to a scale that assesses where the particular natural character sits, in a comparative sense.

[173] There was some disagreement between the experts on how to account for perception, as an aspect of natural character assessment. The difference was not so much as to whether perception was relevant, but as to the extent of influence it should have.

[174] In the final analysis, we see little, if any, significant differences between the experts. All accepted that natural character assessment should account for both

PARLIAMENTARY COUNSEL OFFICE
TE TARI TOHUTOHU PĀREMATA

New Zealand Legislation

Resource Management Act 1991

- Warning: Some amendments have not yet been incorporated

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

(f) the protection of historic heritage from inappropriate subdivision, use, and development:

(g) the protection of protected customary rights:

(h) the management of significant risks from natural hazards.

Section 6(f): inserted, on 1 August 2003, by section 4 of the Resource Management Amendment Act 2003 (2003 No 23).
Section 6(g): replaced, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).
Section 6(h): inserted, on 19 April 2017, by section 6 of the Resource Legislation Amendment Act 2017 (2017 No 15).