

complying activities. Remote farm buildings (those which need to locate outside of building nodes) were controlled activities.

[168] Subdivision outside nodes was to be a discretionary activity subject to the minimum lot size standard of 200 hectares. All other subdivisions would be non-complying activities.

[169] The main changes to PC13 provisions as a result of the Commissioners' decision were:

- removal of the activity of approved building nodes;
- renaming identified building nodes as farm base areas and providing for all buildings within these as permitted activities and subdivisions as controlled activities;
- removal of any minimum lot size;
- allowing subdivision for retirement houses;
- rules allowing residential subdivision and houses anywhere within the zone as a discretionary activity.

We consider that to achieve objective 3B, the most appropriate policy is that residential or rural residential subdivision and housing should not occur within the Basin subzone except in farm base areas or special subzones. Mount Gerald originally sought that this policy be amended to provide for development "in other areas where it is appropriate". Rhoborough also requested an amendment to the policy to recognise something similar in form to approved building nodes. Each withdrew those aspects of their appeal at the hearing.

[170] We hold that the appropriate version of this policy³¹⁴ is:

Policy 3B4 – Limits on subdivision and housing

- (1) Subject to (2) below, to enable residential or rural residential subdivision and housing development in the Mackenzie Basin Rural subzone only within identified farm base areas;
- (2) To encourage new residential or rural residential subzones in areas of low or medium vulnerability provided:
 - (a) objectives 1, 2, 4, 7, 8 and 11 of the Rural chapter are achieved; and
 - (b) the new subzones satisfy policy 3B6 below;
- (3) To strongly discourage residential units elsewhere in the Mackenzie Basin.

Other specific issues arising out of the Commissioners' Decision will be considered below.



⁴ Originally PC13(N)'s policy 3E.

Farm bases

[171] As we have said, PC13(N) contemplated that the existing homestead clusters and some other clusters of farm buildings should be approved as “Identified Building Node(s)”. We have described how the Commissioners’ Decision generally approved of that idea but renamed nodes as “Farm Base Areas”, and in many cases increased them substantially in size.

[172] The general scheme of PC13 is to cluster buildings – both residential units and farm buildings – within farm bases, which are to be identified in Appendix 5 of the district plan. Several issues about farm bases are raised by the appeals or the evidence:

- (1) should all existing homesteads or clusters of farm buildings be approved as farm bases?
- (2) what, if any, controls on buildings are appropriate within farm bases – e.g. should there be rules as to density, number, size, and appearance of buildings, lot size and so on?
- (3) what is the best method for identifying new farm bases in the future?

[173] The idea of the farm base area has changed considerably since PC13 was notified. It was originally envisaged (when a “farm node”) as a small cluster of perhaps five to ten houses. As a result of PC13(C) a farm base area may be up to 40 hectares or more and residential subdivision is controlled while all buildings are permitted subject to compliance with some minimal standards as to height/setback etc³¹⁵.

[174] There is one quite large inconsistency of these proceedings which we consider expert witnesses have not identified or worked through. As we shall see in part 7 of this decision – on rural-residential subdivision – the Council has been quite guarded in its response to rural residential zoning in the Mackenzie Basin – and quite properly too, given that it is managing an outstanding natural landscape. Yet a lot of the farm bases cover areas of up to 40 hectares – in part because the owners/occupiers want space and privacy for future owners of subdivided lots. In effect, the farm base areas are rural residential sub-zonings with minimal controls, regardless of their location.

[175] We consider that the farm base policy neither takes into account the different contexts of existing farm bases nor does it achieve the (amended) objective 3B. We discuss those homesteads which we have found to be in hazard areas in a later policy. Our current concern is with the fact that while some farm bases are in areas of medium or low vulnerability to development, others are in areas of high vulnerability. We consider that development around existing bases in the latter should be allowed but more tightly managed in order to achieve objective 3B.



[176] Given the similarity between potential subdivision and development within the extended farm bases proposed by PC13(C) and within conventional rural-residential subdivisions we consider that an amended version of policy 3X suggested by Ms Harte should be used as a policy for any development of more than ten lots within farm base areas. Amended to resolve the problems (discussed earlier) with her version, the policy would read:

Policy 3B5 Development in farm base areas

- (1) Subdivision and development of farm base areas which are in areas of high vulnerability to development shall maintain or enhance the significant and outstanding natural landscape and other natural values of the Mackenzie Basin by:
 - (a) confining development to areas where it is screened by topography or vegetation or otherwise visually inconspicuous, particularly from public viewpoints and from views of Lakes Tekapo, Pukaki and Benmore provided that there may be exceptions for development of existing farm bases at Braemar, Tasman Downs and for farm bases at the stations along Haldon Road
 - (b) integrating built form and earthworks so that it nestles within the landform and vegetation
 - (c) planting of local native species and/or non-wilding exotic species and management of wilding tree spread
 - (d) maintaining a sense of isolation from other development
 - (e) built development, earthworks and access having a low key rural character in terms of location, layout and development, with particular regard to construction style, materials and detailing
 - (f) mitigating, the adverse effects of light spill on the night sky
 - (g) avoiding adverse effects on the natural character and environmental values of waterbodies, groundwater and sites of natural significance
 - (h) installing sustainable systems for water supply, sewage treatment and disposal, stormwater services and access;
- (2) Subdivision and development in farm base areas which are in areas of low or medium vulnerability to development shall:
 - (a) restrict planting to local native species and/or non-wilding exotic species
 - (b) manage exotic wilding tree spread
 - (c) maintain a sense of isolation from other development
 - (d) mitigate, the adverse effects of light spill on the night sky
 - (e) avoid adverse effects on the natural character and environmental values of waterbodies, groundwater and sites of natural significance
 - (f) install sustainable systems for water supply, sewage treatment and disposal, stormwater services and access;

The exception to subpolicy (1)(a) is for two reasons. First we consider that the two farm bases on the eastern side of Lake Pukaki are exceptional because of their isolation and the distances from which they are viewed. Secondly, we consider that development along Haldon Road would be – given the length of the road, the small number of farm bases and the area’s distance from tourist routes – unexceptionable in terms of effects upon the landscape.



[177] Given that we are contemplating directions under section 293 of the Act, we consider that this policy should apply to “approved farm bases” since there would be an

opportunity for persons not before the court to seek such approval, bearing in mind the evidence we have from Mr Densem of areas throughout the basin where further (or replacement) farm bases might be appropriate. Once the district plan is settled new farm bases could only be sought by plan change.

Rural residential subdivision

[178] One purpose of PC13 was to regularise a large-scale subdivision (Manuka Terrace) that got away on the Council. The subdividers had used the complete lack of subdivision controls in the Rural zone to create some rather haphazard rural-residential development to the west of Twizel township. This was sought to be remedied by a policy as follows³¹⁶:

Manuka Terrace Rural-Residential Zone

To manage the adverse effects of existing and further subdivision and development on Manuka Terrace, Lake Ohau through the Rural Residential – Manuka Terrace Zone.

The notified policy is symptomatic of a reactive approach to resource management within the Mackenzie Basin. A proactive approach – which is probably what the landscape requires given our finding that it is an outstanding natural landscape – would be not only to remedy the problems of past confusions (the Manuka Terrace subdivisions) but also to manage potential future problems and opportunities.

[179] At least two landowners/occupiers had lodged submissions with the Council and/or appeals to the Environment Court seeking rezoning of their land to rural residential:

- Mackenzie Properties Limited (“MPL”) in respect of land at the outlet to Lake Ohau;
- Pukaki Downs in relation to land on the terraces of the upper Twizel River.

The Hearing Commissioners attempted to deal with two issues at once by amending the notified policy slightly. Then immediately before the hearing the parties agreed to widen this policy substantially by amending it to read:

To mitigate the effects of past subdivision on landscape and visual amenity values in the Mackenzie Basin by identifying, where appropriate, alternative specialist zoning options such as Rural-Residential where there are demonstrable advantages for the environment.

[180] There are two sets of jurisdictional issues here : first is whether the rural residential relief sought by MPL and Pukaki Downs respectively is “on” PC13. We hold that in both cases it is, quite comfortably, for these reasons. First PC13 is about building and development in the entire Mackenzie Basin subzone; second PC13 contained an exception to its general proscription of residential or rural residential

³¹⁶ Policy 3M in PC13(N).



development outside farm base areas (formerly nodes) : that exception was for rural residential on the Manuka Terrace; third Manuka Terrace is in Mr Densem’s Twizel Character Area, as is MPL’s Ohau River Block; and fourth the Pukaki Downs site is in the Rhoborough Character Area, immediately to the north of Twizel. Those locations are relevant because a reasonable areal extension of a proposed zone is permissible (although it may need ratification under section 293 of the Act). We hold that in both cases the relief sought is on Plan Change 33.

[181] The second, more complex jurisdictional issue is whether Pukaki Downs could seek some kind of “visitor accommodation”³¹⁷ subzone on its land. At first sight that goes too far since nothing in PC13 was aimed at rule 8 (Visitor Accommodation) in Chapter 7 of the operative district plan. Certainly, Mr Hardie, for the Council, submitted that aspect of the Pukaki Downs’ relief is not “on” PC13, and that we have no jurisdiction to add it.

[182] However, Mr Prebble in his submissions for Pukaki Downs advanced quite a powerful argument to the contrary. He submitted that the status quo (the operative district plan) is very permissive in respect of visitor accommodation³¹⁸ in that in the Rural zone such accommodation for up to 20 persons is a permitted activity³¹⁹ subject to certain standards. Since, under the operative district plan, subdivision down to any size is a permitted activity his argument was that visitor accommodation for more than 20 guests could be built as of right simply by subdividing off the requisite number of lots (e.g. 100 guests would require five lots with a residential unit on each). We consider that argument is generally correct although we note that each of the residential units would have to be 40 metres from any other to comply with a setback rule³²⁰, and there would be problems (not insuperable) about legal access³²¹ to a formed road. Counsel then submitted that since the status quo permitted building development and use of the kind now sought by Pukaki Downs and PC13 removes that right, then “... a challenge to the removal of the building rights” can fairly and reasonably be said to be “on” PC13. He submitted that Mr Hardie’s emphasis on the proposed method – a further subzoning – was wrong, and that we should concentrate on the substance – which is the nature and extent of the changes to the status quo. Seen that way, he submitted, the relief sought by Pukaki Downs is not as “out of left field” as Mr Hardie suggested (using the wording of William Young J in *Clearwater* cited earlier).

³¹⁷ Designed in part 4 of this interim decision.

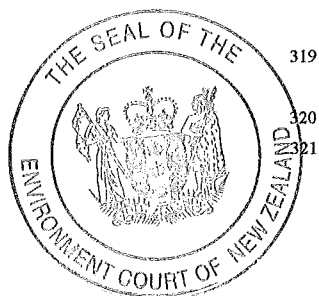
³¹⁸ This term is defined in Chapter 2 of the district plan as meaning (relevantly):

... the use of land and buildings for short-term, commercial, living accommodation where the length of stay for only one visitor is not greater than 3 months at any one time. Visitor accommodation may include some centralised services or facilities, such as food preparation, dining and sanitary facilities ...

³¹⁹ Rule (7)8.1.2 [Mackenzie District Plan p. 7-55] applying rule (7)3.1.1.c(i) [Mackenzie District Plan p. 7-40].

³²⁰ Rule (7)3.1.1.c [Mackenzie District Plan p. 7-40].

³²¹ Rule (7)3.1.1.d [Mackenzie District Plan p. 7-41].



[183] We accept that access onto State Highway 80 might require a discretionary resource consent under Transportation Rule (14)2.O(iii)³²² but that seems to be a limited discretionary matter³²³ so it is likely to be a matter that would usually be capable of being dealt with by conditions, and does not fundamentally affect Mr Prebble's argument.

[184] On reflection we agree that the tourist accommodation provisions sought are both "on" PC13(N) and fairly and reasonably within the boundaries set by the operative district plan on the one hand and PC13(N) on the other. Thus the relief sought is within jurisdiction. We are reinforced in that by a further consideration. Pukaki Downs was originally identified by Mr Densem as being suitable for up to eight new farm bases (when they were called nodes). Because the subzone sites are, as far as we can tell, within areas of medium (or low) vulnerability to development, they might be suitable as farm bases. If that is so, then Pukaki Downs could under PC13(C) at least build the kind of buildings it seeks for its tourism subzone. This confirms for us that the Council's jurisdictional argument is more one of form than substance. Here as elsewhere there is a concern that the Council is being curiously hard on imaginative developers (and rather easy on farmers) in respect of buildings.

[185] Returning to the proposed policy : a policy creating or authorising further sub-subzone(s) is an unorthodox technique but not illegal. We have (minor) difficulties with the wording of the agreed policy quoted above. The first is that since the policy refers to other (future) residential subzones we consider the heading for the policy (at present "Effects of past large scale subdivision") should be amended. A positive component to the policy should be added. Of course, the policy should also be explicit that any such subzones should be located in areas marked as having low or medium vulnerability to development on Map 3 of this decision. So amended the policy would read:

3B6 Potential residential and visitor accommodation activity subzones

- (1) To mitigate the effects of past subdivision on landscape and visual amenity values in the Mackenzie Basin by identifying, where appropriate, alternative specialist zoning options such as Rural-Residential where there are demonstrable advantages for the environment.
- (2) To encourage appropriate rural residential activities in the Mackenzie Basin by identifying, where appropriate, alternative specialist zoning options (such as Rural-Residential) in areas of low or medium vulnerability to development where there is wilding pine control (in terms of later policies) and other appropriate enhancement of landscape and ecological values;
- (3) where such subzones are located wholly or partly in areas of medium vulnerability then any development within shall maintain or enhance the significant and outstanding natural landscape and other natural values of the Mackenzie Basin by:
 - (a) confining development to areas where it is visually inconspicuous, particularly from public viewpoints and from views up Lakes Tekapo and Pukaki provided that



³²² Mackenzie District Plan p. 14-10.
³²³ Rule (14)(1) [Mackenzie District Plan p. 14-1].

- there may be exceptions for development of existing farm bases at Braemar, Tasman Downs and for farm bases at the stations along Haldon Arm Road
- (b) integrating built form and earthworks so that it nestles within the landform and vegetation
 - (c) planting of local native species and/or non-wilding exotic species and management of wilding tree spread
 - (d) maintaining a sense of isolation from other development
 - (e) built development, earthworks and access having a low key rural character in terms of location, layout and development, with particular regard to construction style, materials and detailing
 - (f) mitigating, the adverse effects of light spill on the night sky
 - (g) avoiding adverse effects on the natural character and environmental values of waterbodies, groundwater and sites of natural significance
 - (h) installing sustainable systems for water supply, sewage treatment and disposal, stormwater services and access.

Whether the particular land separately contended for by MPL and Pukaki Downs is appropriate for such a zoning are issues we will consider later. Other landowners seeking to take advantage of this policy will need to make applications for private plan changes.

4.5 Protecting the lakeside environment

[186] To allow for the Waitaki Power Scheme's works³²⁴ we have added subpolicy (c) to the improved version of the operative district plan's policy 3A³²⁵ with one slight modification³²⁶ from PC13(V):

Policy 3B7 – Lakeside protection areas

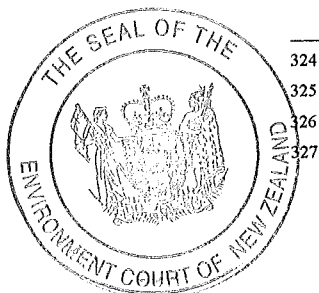
- (a) To recognise the special importance of the Mackenzie Basin's lakes, their margins, and their settings in achieving Objective 3B.
- (b) Subject to (c), to avoid adverse impacts of buildings, structures and uses on the landscape values and character of the Mackenzie Basin lakes and their margins.
- (c) To avoid, remedy or mitigate the adverse impacts of further buildings and structures required for the Waitaki Power Scheme on the landscape values and character of the Basin's lakes and their margins.

(Note : Policy (c) has different objectives to achieve dependent on whether Rural Objective (7)3B or Utilities objective (Section 15)3 is being implemented.)

4.6 Tourism and recreation values

State Highway 8 corridor

[187] It will be recalled that there is a district-wide policy (now 3A2) in respect of scenic viewing areas. In fact, most of the scenic viewing areas listed in Appendix J and identified on the planning maps are in the Mackenzie Basin. They cover, at first sight, a surprisingly small area. That is explained in the district plan by the three factors which went into choosing the scenic viewing areas³²⁷:



³²⁴

See Transcript p. 312.

³²⁵

As modified in PC13(C)'s policy 3G (Lakeside areas).

³²⁶

We have added the words "their margins" in (a).

³²⁷

Explanation to Rural Policy 3C [MDP p. 7-23].

- the “landscapes contained in these areas”;
- the views obtained from the areas; and
- the high number of visits.

The third reason is entirely appropriate; the second is also, if rather limited in that it raises the question “what of the views obtained of the areas?” and the first reason shows a fragmenting approach to landscape(s) which may be valid in itself but is not relevant to the outstanding natural landscapes of the basin as a whole. However, we see no need to reduce policy 3A2 but to add to it.

[188] Some protection to some views from roads (over other than scenic viewing areas) was given in PC13(C). The Commissioners’ Decision proposed³²⁸ a policy in respect of views from roads which required buildings to be set back from roads, particularly state highways, and encouraged the sensitive location of structures such as large irrigators to avoid or limit screening of views.

[189] After our site inspections it concerned us that along the tourist roads – most importantly State Highway 8 and State Highway 80 (the road to the Hermitage) but also the Lilybank Road and Godley Peaks Road and others – there are, in addition to the scenic viewing areas, other relatively small areas such as tussock-covered³²⁹ flats or hillsides which may not be the foreground to a distant view, but which are, in themselves, important aspects of the overall outstanding natural landscape. After the hearing we requested that Mr Densem (the landscape architect called by the Council) lodge a further statement on this issue. Obviously we worded our request poorly in referring to vistas because in his subsequent statement³³⁰ Mr Densem responded on precisely that point (as he should have). However, on reflection it was not further vistas that concerned us so much – indeed we are reluctant to let that issue be relitigated when the “scenic viewing areas” have already been settled in the planning maps. What does concern us more is the absence of recognition of immediate views where there is little or no vista in the background. In such places the foreground becomes more important because it is the focus of the view. Some of these areas are adjacent to the road (e.g. the land on either side of State Highway 8, south of the Balmoral rise) and they often comprise most of the view on one or both sides of the road. We consider all buildings and other structures and further fences and trees should be avoided in these tussock grasslands. These areas should be identified as “scenic grasslands” (or similar term). Good examples are the areas on either side of State Highway 8 in Mr Densem’s photograph 23³³¹. Usually the defined area should end on the contour which is three metres vertically down on the reverse of any slope seen from the road. Scenic



³²⁸ Policy 30 in PC13(N).

³²⁹ Using “tussock-covered” to include some browntop and of course weeds.

³³⁰ G H Densem, first statement September 2010 [Environment Court document 32].

³³¹ G H Densem, rebuttal evidence photo 23 “Central Basin, view south on SH 8 ...” [Environment Court document 3].

grasslands would not include Meridian land or other infrastructure under the existing Waitaki Power Scheme although we hope that all earthworks would be planted and maintained in appropriate (usually native) vegetation.

[190] Given the importance of the landscape to users of the State Highways and the tourist roads, we provisionally consider the policy should cover three issues:

- avoidance of buildings, structures, exotic trees and fences in scenic viewing areas and in (new) scenic grasslands;
- setback of buildings from roads and structures as in the Commissioners' Decision;
- management of conversions to and of irrigated pastures adjacent to roads to avoid the greening of the immediate views.

The appropriate policy is therefore:

Policy 3B8 Views from State Highways and Tourist Roads

- (a) To avoid all buildings, other structures exotic trees and fences in the scenic grasslands listed in Appendix X and in the scenic viewing areas shown on the planning maps;
- (b) To require buildings to be set back from roads, particularly state highways, and to manage the sensitive location of structures such as large irrigators to avoid or limit screening of views of the outstanding natural landscape of the Mackenzie Basin;
- (c) To avoid clearance, cultivation or oversowing of all tussock grasslands adjacent to and within the foreground of views from State Highways and the tourist roads;
- (d) To minimise the adverse effects of irrigation of pasture adjacent to the state highways or the tourism roads.

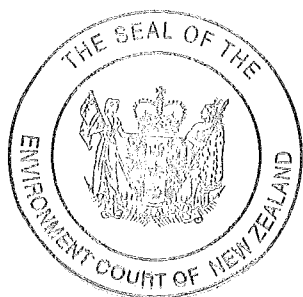
(We refer to Appendix X because we are not sure where this new information – a schedule or map of scenic grasslands – should be placed.)

4.7 Storage, generation and transmission of energy

Renewable energy

[191] This policy relates to more than just the storage of renewable energy, but also its generation and transmission. The idea³³² is to recognise and provide for the Waitaki Power Scheme while as far as practicable avoiding, remedying or mitigating the adverse effects on the landscape of the basin. However, the agreed wording of the policy³³³ does not achieve the objective 3B(2) set out above.

[192] Meridian sought a reference in the explanation to this policy to Lakes Pukaki, Tekapo and Ruataniwha as being part of the key infrastructure associated with development of renewable energy in the Basin. We do not consider that is necessary since there are references in the objective itself to these lakes.



³³² K G Gimblett, evidence-in-chief para 57 [Environment Court document 14].
³³³ Agreed Version Policy 3J.

[193] To achieve objective 3B it will be necessary to add the words "... within the footprint of current operations or on land owned by infrastructure operators as at 31 October 2011 ...". That will ensure that if Meridian and/or Transpower want to extend their operations in the Mackenzie Basin they will need to meet the same standards as all other landowners and occupiers. We do not consider that should be too onerous a commitment for Meridian – as we understand it the water from the upper Waitaki catchment is over-committed anyway : see *Aoraki Water Trust v Meridian Energy Limited*³³⁴. As for Transpower, it too will want to keep within its existing footprint as far as possible for the reasons stated in *Fernwood Dairies Limited v Transpower New Zealand Limited*³³⁵. Beyond that we consider any new structure for the Waitaki Power Scheme should be subject to the same constraints as other landowners in the Mackenzie Basin. Amended the policy would read:

Policy 3B9 – Renewable Energy

To recognise and provide for the use and development of renewable energy generation and transmission infrastructure and operations:

- (1) within the footprint of current operations or on land owned by infrastructure operators as at 31 October 2011 while, as far as practicable, avoiding, remedying or mitigating adverse³³⁶ effects on the outstanding natural landscape³³⁷ and features of the Mackenzie Basin; and
- (2) elsewhere within the Basin while achieving Rural objectives (5) and 1, 2 and 3B.

4.8 Reverse sensitivity and hazards

[194] Meridian proposed a new policy on the compatibility of activities, which seeks that reverse sensitivity effects from hydro electric power and transmission lines be considered when assessing new subdivision and residential development. Ms Harte, for the MDC, suggested a new policy³³⁸ in order to minimise reverse sensitivity effects on all non-residential activities. We consider that is appropriate with the substitution of some of the words as requested by Mr Gimblett for Meridian³³⁹, so the policy would read:

Policy 3B10 – Reverse sensitivity

To avoid, remedy or mitigate adverse reverse sensitivity effects of non-farm development on rural activities and activities such as power generation, transmission infrastructure, state highways and the Tekapo Military Training Area.

³³⁴ *Aoraki Water Trust v Meridian Energy Limited* [2005] 2 NZLR 268; [2005] NZRMA 251 at para [15] (HC).

³³⁵ *Fernwood Dairies Limited v Transpower New Zealand Limited* Decision C17/2006.

³³⁶ Meridian sought insertion of the word "significant" in front of "adverse effects" but that is not consistent with Utilities objective (15)1.

³³⁷ We have deleted the plural since we have found the (upper) Mackenzie Basin to be one outstanding natural landscape.

³³⁸ P Harte, evidence-in-chief, para 106 [Environment Court document 3].

³³⁹ K G Gimblett, evidence-in-chief para 91 [Environment Court document 14].



[195] The next issue for Meridian was how to deal with the serious potential effects (loss of life) from canal or dam failure. While they are potential effects of low probability they have very high potential impact. Under section 5(2) of the RMA providing for the health and the safety of individuals is a fundamental part of the purpose of the Act. However, as we have stated, safety cannot readily be given a crude once-and-for-all assessment of, for example, “no importance” or “of national importance” because each risk needs to be assessed (as to probability and impacts) in its own context. Everyone lives with some risk of natural hazards every day. Some are potentially lethal but very, very unlikely, e.g. meteorites or giant hailstones.

[196] For Meridian Mr Gimblett’s mechanism for a policy about hazards was to include it in the reverse sensitivity policy. His proposed policy³⁴⁰ refers to “... hazards of non-farm development on ... activities such as power generation”. We are grateful for his effort but, with respect, we do not consider that is good drafting. The reverse sensitivity aspect of introducing, say, residential uses to a flood hazard is already covered in policy 3B10 above. But his new wording reverses the hazard in our view: the hazard is the potentially disastrous effect of a canal rupture on lower-lying housing. The answer is simply to deal with hazards in a separate policy as follows:

Policy 3B11 Hazards

To avoid hazards caused by activities such as power generation; and water transport by canal and aqueduct on non-farm development and activities.

However, before we can insert such a policy in the district plan we must be sure we have jurisdiction to do so. (We have not checked but there may be an issue as to whether hazards are already sufficiently covered in Chapter 17 of the plan.)

[197] For the Council its senior counsel, Mr Hardie, submitted that the changes to the policy (and rules) sought by Meridian in respect of hazard were *ultra vires* for two reasons:

- first the submission seeking a policy change was not “on” PC13 under the *Clearwater*³⁴¹ tests discussed earlier; and
- secondly the submission did not seek a change to the rules. (We will consider this later, if we need to.)

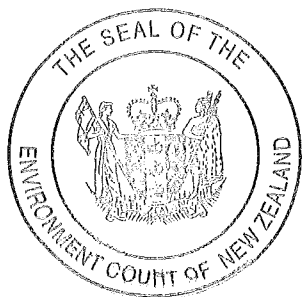
[198] In this case the purpose of PC13 is to recognise and protect the landscape of the Mackenzie Basin. A key set of policies to implement that purpose is to manage buildings in the basin, and in particular to confine residential buildings to places where they have reduced impacts on the landscape. One set of locations for residential units was proposed by PC13 to be farm bases (nodes), i.e. existing homesteads. We think it

³⁴⁰

K G Gimblett, evidence-in-chief Appendix 1 “Policy Y” [Environment Court document 14].

³⁴¹

Clearwater Resort Limited v Christchurch City Council HC Christchurch AP34/02, William Young J, 14 March 2003.



was within the general scope of that policy for Meridian to say in its submission : “please pause – Meridian is concerned that the Council is focussing residential development in specific areas but some of those areas are precisely those which should not be built on or, at least, not further built on because of the risk to human health and safety through the possibility of catastrophic failure of canals in the Waitaki Power Scheme”. Such a submission would, in our view, be fairly and reasonably within the purpose of PC13, especially since that should be read in the context of Chapter 7 of the operative district plan as a whole, including Rural objective (7)7 which is to achieve minimal loss of life from natural hazards. We hold that is the implicit effect of Meridian’s submission.

[199] Because PC13 proposes to place restrictions on where buildings may be placed, whereas the status quo is that there are no (or very few) such restrictions, a submission by Meridian seeking to add a further restriction (for reasons of natural hazards) is “on” the subject of PC13, so the first test in *Clearwater* is satisfied.

[200] As to the second test in *Clearwater*, we accept that some submitters (e.g. Mr Murray) have not had a chance to fully participate in the issue of location of farm bases. But it is at this point that a troubling aspect of the High Court decisions emerges – they do not appear to have considered fully the powers of the Environment Court in section 293 of the RMA. Further, that section is now different from the wording in force when the High Court decisions were issued. So it is possible, and we consider the merits of this later, that the lack of participation afforded to Mr Murray and others may be able to be remedied under section 293 of the Act.

4.9 Farming

Enabling pastoral farming

[201] Traditional dry-lands farming on brown grasslands (including browntop) should continue to be enabled. As we have held, the golden-brown landscape enjoyed by tourists and other visitors to, and residents of, the Mackenzie Basin are in considerable part maintained by the every-day farming operations on the stations scattered around the basin. A new policy should be added:

Policy 3B12

Traditional pastoral farming is encouraged so as to maintain tussock grasslands, subject to achievement of the other Rural objectives and to policy 3B8.

Farm buildings

[202] The notified plan provided for remote farm buildings³⁴² outside building nodes subject to controls in respect of location, design and external appearance (but not size). The Commissioners’ Decision changed that by simply “... providing for farming buildings ... to facilitate farming while limiting their potential adverse effects on



³⁴² Policy 3J [PC13(N) p. 9].

important landscape values³⁴³. We see two problems with those policies. First they do not recognise the outstanding natural landscape of the Basin. Second much of that landscape is sensitive to adverse effects of buildings, even farm buildings. We accept Mr Densem and Ms Harte's evidence and judge there should be controls on all farm buildings, some exceptions being appropriate in areas of low visual vulnerability.

[203] It will come as a surprise (and disappointment) to some farmers to learn that we propose controls over farm buildings. While we can understand a view that a small shed has no or minimal adverse effect on such a vast landscape as that of the Mackenzie Basin, we do not accept it because the accumulative effect of many (even if small) farm buildings may, in the end, be quite harmful to the naturalness of any landscape. Further, there is potential for future landowners to manipulate the unmanaged location and number of farm buildings so as to create a permitted baseline which has more adverse effects than a desired house, for which resource consent is then sought.

[204] We consider this should be at least a two-tier policy : first it should expressly exclude buildings from:

- Lakeside Areas;
- Scenic Viewing Areas;
- Scenic Grasslands;

– and secondly there should be controls as suggested by Mr Densem and Ms Harte. Accordingly, the policy for farm buildings should read:

Policy 3B13 Farm Buildings

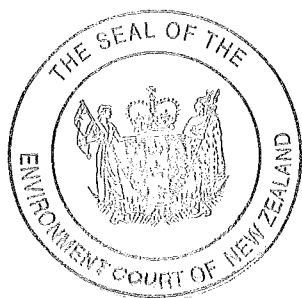
- (1) Farm buildings should be avoided in lakeside areas, scenic viewing areas and scenic grasslands.
- (2) Elsewhere in the Mackenzie Basin subzone farm buildings should be managed in respect of location, density of buildings, design, external appearance and size except in areas of low visual vulnerability where only density and size are relevant.

4.10 Intensive farming activities

[205] This is a complex issue, made more so by the lack of ecological evidence. Subject to that important qualification two broad themes emerge from our findings of fact and, tentatively, predictions. The first is that further conversion of brown grasslands to green introduced grasses (whether irrigated or not) is generally inappropriate in the Mackenzie Basin. The second is that because there are extensive – usually lower altitude – areas which are highly (and possibly irreversibly) modified, these may be very suitable for higher intensity irrigated farming.

[206] As Mr Densem pointed out to us, the type of changes to the Mackenzie Basin that might occur as a result of irrigation can be seen immediately south of Lake

³⁴³ Policy 3K [PC13(C) p. 13].



Ruataniwha in the upper Waitaki District. On the long straights on State Highway 8 down to Omarama the adjacent fields are sown in exotic grasses, and very long pivot irrigators line the road or arc away from it. New housing and/or farm buildings are dotted across the flats.

[207] Some similar conversions have already taken place in the Mackenzie Basin proper. The pressing issue is how much more can occur without adversely affecting the outstanding natural landscape of the basin irretrievably. These matters were barely addressed in evidence, although we were shown areas under irrigation and at least one pivot irrigator during our site inspections.

[208] Having said that we must bear in mind that the flats of the lower Mackenzie Basin – much of the Eastern Plain, the Pukaki River Plain as well as the lower Twizel River Plain and part of Benmore – are at present covered in highly modified semi-desert vegetation dominated by green – or in autumn and winter near black – *Hieracium* species. On those areas we judge that change to higher density irrigated farming is not detrimental to perceptions of naturalness. Its colours will change to brighter greens. The scale of modern farming with its very long travelling irrigators ensures that the openness of the landscape will generally be maintained. Of course, if there are areas which should be protected under the other rural objectives then other considerations will come into play.

[209] We consider the policy should be:

Policy 3B14 Pastoral intensification

- (1) To ensure areas in the Mackenzie Basin which are proposed for pastoral intensification meet all the other relevant objectives and policies for the Mackenzie Basin subzone (including Rural Objectives 1, 2 and 4 and implementing policies);
- (2) To link management of new areas of pastoral intensification with management of wilding exotic trees and other weeds;
- (3) To avoid pastoral intensification in sites of natural significance, scenic viewing areas and scenic grasslands.

4.11 Plantations and wilding trees

[210] There are some difficult issues here. One of the areas where it might be desirable for soil-retention purposes to grow trees is on the Tekapo and Pukaki flats where, at present, the dominant ground cover is the introduced hawkweed (mainly *H. pilosella*). However, even introduced conifers appear to struggle to get started and grow in these stony, dry soils. In contrast, on the deeper soils on the higher terraces to the north introduced conifers find it easier to grow (whether planted or as windblown wildings).

[211] The operative district plan includes these definitions in relation to trees:



- **Tree Planting** : includes forestry, amenity tree planting and shelter belts.
- **Forestry Activity** : means the use of land primarily for the purpose of planting, tending, managing and harvesting of trees for timber production. Forestry does not include shelter belts (refer definition), amenity tree planting (refer definition), or erosion control planting (refer definition).
- **Shelter belt** : means trees or vegetation planted predominantly to provide shelter limited to a maximum width of 15 metres from stem to stem.
- **Amenity Tree Planting** : means tree planting for aesthetic, decorative or amenity purposes, or in the immediate vicinity of buildings.
- **Erosion Control Planting** : means tree planting for river bank and slope stability or protection.

An important conclusion from those definitions is that the spread of wildings does not appear to be included in the definition of “forestry activity” for two reasons : first the trees are not planted – which involves direct human agency – they are self-sown; secondly, the ongoing management of those trees (by benign neglect) under an ETS is expressly not for the purpose of harvesting the trees.

[212] It will be recalled that the operative (but renumbered) district wide Rural Policy 3A3 is³⁴⁴ related to tree planting and is “To control the adverse effects of siting, design and potential wilding tree spread of tree planting throughout the District, to enable forestry to be integrated within rural landscapes and to avoid screening of distant landscapes”. To implement that policy the district plan contains a full set of rules³⁴⁵ about “tree planting” in the district. Certain tree planting is a permitted activity provided it complies with some general standards (described below) and with any specific standards for that permitted activity. Amenity tree planting³⁴⁶ and erosion control planting³⁴⁷ are permitted anywhere. Within the Mackenzie Basin³⁴⁸ shelter belts are permitted provided that they are either set back 300 metres from (formed) roads³⁴⁹ or planted at 90° to such roads and at least 1,000 metres apart³⁵⁰. Forestry is permitted within the Mackenzie Basin provided it is set back at least 300 metres from any formed road³⁵¹, within 900 metres of a homestead and/or a cluster of farming buildings³⁵², and for new building clusters after 1 April 2001 the maximum area of planting is two hectares³⁵³ (for older buildings the maximum is 50 hectares).

[213] The general standards³⁵⁴ for tree planting are:

³⁴⁴ Policy 3D in the operative district plan, now renumbered as policy 3A3.

³⁴⁵ Mackenzie District Plan pp 7-48 to 7-53.

³⁴⁶ Rule (7)6.1.1 [Mackenzie District Plan p. 7-48].

³⁴⁷ Rule (7)6.1.2 [Mackenzie District Plan p. 7-48].

³⁴⁸ Defined in the map Appendix E to the district plan.

³⁴⁹ Rule (7)6.1.4(a) [Mackenzie District Plan p. 7-48].

³⁵⁰ Rule (7)6.1.4(b) [Mackenzie District Plan p. 7-48].

³⁵¹ Rule (7)6.1.6d [Mackenzie District Plan p. 7-98].

³⁵² Rule (7)6.1.6a [Mackenzie District Plan p. 7-48].

³⁵³ Rule (7)6.1.6c [Mackenzie District Plan p. 7-48].

³⁵⁴ Standards 6.1.8.a, 6.1.8.b, 6.1.8.c., 6.1.8.d, 6.1.8.e, 6.1.8.f, 6.1.8.g and 6.1.8.h [Mackenzie District Plan p. 7-49].



- **Setback from Neighbours**
No tree planting shall be located on, or within 15 metres of the boundary of any site under separate Certificate of Title without prior written permission from the landowner of that site. Where written permission is not obtained, the planting of trees within this zone shall be a discretionary activity.
- **Shading of Roads**
Trees shall not be planted or allowed to grow in such a position that at any time they would shade the roadway between the hours of 1000 and 1400 on the shortest day of the year.
- **Scenic Viewing Areas**
No trees shall be planted in Scenic Viewing areas identified on the Planning Maps and scheduled in Appendix J.
- **Sites of Natural Significance**
No trees other than restoration of native plantings shall be planted within a Site of Natural Significance identified on the Planning Maps and scheduled in Appendix I.
- **Wilding Tree Management**
There shall be no planting of *Pinus contorta*, *Pinus sylvestris* (Scots Pine), *Pinus uncinata* (Dwarf Mountain Pine) or *Pinus mugo* (Mountain Pine).
It shall be the responsibility of forest owners, occupiers, lessees and licensees or other persons responsible for the forestry to eliminate tree spread and growth of wilding trees emanating from that forest on all land within 500 metres of the planted forest edge.
- **High Altitude Areas**
No trees shall be planted above 900m above sea level.
- **Riparian Areas**
No forest... shall be planted:
 - within 100m of a lake
 - within 20m of a bank of a river
 - within 50m of a wetland
- **Wetlands**
No forest... shall be planted in a wetland.

Most of those standards apply to planting in specific situations (e.g. rear boundaries, roads or in sites of natural significance). However, there are two general standards under the heading “Wilding Tree Management”. Neither standard is without difficulties. The first standard has the effect that four pine species may not be planted as a permitted activity. (Any such planting appears to be a restricted discretionary activity³⁵⁵.) That is generally appropriate except that, as we shall see shortly, another list of “tree weeds” in the district plan refers to different exotic conifers.

[214] The second standard – which purports to make forest owners and/or occupiers responsible for elimination of wilding trees – is even more obscure. First, does the standard only apply to the named pine species? What about other problematic species such as Douglas-Fir, larch species, or Ponderosa pine? Secondly, there are already many wilding exotics in the basin which are throwing seed, and yet the rule appears not to apply to them because owners etc only have to eliminate wildings within 500 metres of a planted forest edge. Thirdly, we read evidence from Dr Lloyd that in the right



³⁵⁵ Rule 6.3.4 [Mackenzie District Plan p. 7-53].

conditions seeds can be blown much more than 500 metres. In such a case there appears to be no obligation to eliminate wildings.

[215] Tree planting above 900 metres above sea level³⁵⁶ and tree planting in Scenic Viewing Areas³⁵⁷ are discretionary activities. Tree planting, other than restoration of native plantings, in Sites of Natural Significance³⁵⁸ and “Forestry” in wetlands³⁵⁹ are non-complying activities. It appears that planting of the weed trees³⁶⁰ mentioned in the standards for permitted activities is also a restricted discretionary activity³⁶¹.

[216] Forestry within the Mackenzie Basin other than that provided for as a permitted activity, discretionary activity or non-complying activity is a restricted discretionary activity³⁶² as is forestry³⁶³:

- Within 100m of a lake
- Within 20m of a bank of a river
- Within 50m of a wetland

[217] There is a list³⁶⁴ of matters over which Council will restrict its discretion:

1. Effects of plantings on landscape values and the means to avoid or reduce those impacts.
2. The spread and growth of wilding trees emanating from the proposed forest.
3. Effects of forestry activities on ecological, habitat, filtering, landscape, land stability, and access functions and natural character of riparian areas and the adjoining water bodies.
4. Effects of plantings on the availability and maintenance of groundwater and/or surface water in the locality having regard to existing uses of land and water.
5. Impact of plantings, management and harvesting on the functioning of infrastructure.
6. Impact of plantings management and harvesting on production and on enjoyment of neighbouring properties.
7. The effects of forestry activities on natural character, indigenous land ecosystems, and water ecosystems.

Clearly management of wilding pines is one of the district plan’s main concerns, and yet despite the provisions we have set out wildings are spreading out over the basin at a troubling rate. There are exceptions where owners, lessees or occupiers are making major successful efforts. The Ministry of Defence which administers land on the high downs between Lakes Tekapo and Pukaki (and downwind of the nor’wester from Mt Cook Station) appears to be keeping its land largely conifer-free and is to be congratulated on that. A number of other pastoral lessees appear to be on top of any

³⁵⁶ Rule 6.4.1 [Mackenzie District Plan p. 7-53].

³⁵⁷ Rule 6.4.2 [Mackenzie District Plan p. 7-53].

³⁵⁸ Rule 6.5.1 [Mackenzie District Plan p. 7-53].

³⁵⁹ Rule 6.5.2 [Mackenzie District Plan p. 7-53].

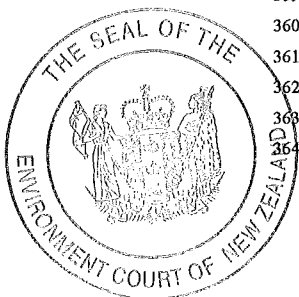
³⁶⁰ *Pinus contorta*, *P. sylvestris*, *P. uncinata* and *P. mugo*.

³⁶¹ Rule 6.3.1 and/or 6.3.4 [Mackenzie District Plan pp 7-52 and 7-53].

³⁶² Rule 6.3.1 [Mackenzie District Plan p. 7-52].

³⁶³ Rule 6.3.2 [Mackenzie District Plan p. 7-52].

³⁶⁴ Rule 6.3.1 [Mackenzie District Plan p. 7-52].



problem. As we have stated, of concern are the locations around Lake Pukaki where wildings look to be out of control. They include:

- Southern end of Ferintosh;
- Pukaki Downs and western side of Lake Pukaki;
- Rhoborough Downs;
- Down the Pukaki River;
- the eastern margins of Lake Pukaki.

In most other parts of the Mackenzie Basin small wilding exotics can be found scattered across the landscape.

[218] That is of concern because there is no rule which cuts expansion of wilding conifers from existing wildings. The only things holding back such wildings are in fact the cutters wielded by conscientious land owners and pastoral lessees, and various spraying and cutting programmes run by DOC (and LINZ). While the main enforceable legal protection against further wilding spread is in the terms of pastoral leases, in fact the obligation to remove weed species such as wilding conifers appears not to have been complied with on some farms. There are, as we have just described, some areas where wildings are spreading rampantly. We can imagine there might be a number of reasons – the most obvious is that the rate of growth and the expense of getting rid of the conifers are overwhelming landowners. Of course, canny landowners may also be anticipating the results of tenure review and hoping for a quick start into an ETS. The difficulty for the landscape of the Mackenzie Basin is that even carbon capture forests are unlikely to be appropriate in some of the places where wildings are spreading. Despite the obvious, and long-standing problems the Hearing Commissioners considered that neither PC13 nor the district plan “... is the appropriate vehicle for preventing further wilding spread ...”³⁶⁵. They gave no reason for that conclusion.

[219] Even our relatively superficial inspection from roads shows that not all landowners are in fact removing all the wildings from their land (for example, Rhoborough Downs). That may be because the rules are unenforceable. As a result of these proceedings we hope that the rules will be enforceable. If so, the Council has an obligation to enforce its rules³⁶⁶. We also point out that any member of the public³⁶⁷ may take enforcement action to enforce compliance with rules in a district plan³⁶⁸.

[220] Obviously tenure review of pastoral leases under Part 2 of the Crown Pastoral Land Act 1998 and when and how it is carried out is of no direct relevance to the district plan. However, the potential outcomes of any review are. In our view the district plan

³⁶⁵ Commissioners’ Decision para 206.

³⁶⁶ It is interesting that the Regional Pest Management Strategy appears to be (deliberately?) unenforceable.

³⁶⁷ Section 316 of the RMA.

³⁶⁸ Section 314(1)(b) of the RMA.



should assume that full tenure reviews are carried out and give objectives, policies and rules for sustainable management of the land under the RMA as if all the Crown Pastoral Land had been freeholded. For Federated Farmers Mr Murray wrote that it is likely that under tenure review an "... additional 20,000 Ha [will be] protected"³⁶⁹. We do not know of course whether that prediction is likely to be correct, or where the "protected" land might be, so we cannot rely on that.

[221] Having said that, it might be useful for the Commissioner of Crown Lands to know that the district council's powers in respect of wilding conifers need reinforcing. We respectfully observe that it would be a useful management technique if the Commissioner reserved covenants under section 97 of the Crown Pastoral Land Act 1998 obliging owners in the Mackenzie Basin to control wilding conifers on their freeholded land. Such covenants would need to ensure that the covenantee (preferably the Council by assignment) could enforce them by giving powers to the covenantee to enter the land and to carry out the work itself (if necessary), and to recover the costs as a charge against the land.

[222] In identifying appropriate areas for such covenanting we hope the outcomes from this decision might be useful. However, we caution that they are bottom-line minima in respect of landscape values – other important, possibly more important under the RMA, values such as ecological values and water yields will also no doubt need to be taken into account by the Commissioner. We have received very little evidence on those matters and therefore cannot give any guidance on them.

[223] If tenure review of a pastoral lease was finalised soon and large areas either side of State Highway 8 were freeholded, a landowner could simply set up an ETS and watch the wildings grow, while accepting payments under the scheme. This is not a wild conjecture on our part : it is exactly what has happened on Pukaki Downs. The fortunate result for the public interest in this case is that the current owners of Pukaki Downs have agreed to set up a scheme which minimises escape of wildings. However, there is no assurance that we can see that such a scheme will be developed in every case.

The Canterbury Regional Pest Management Strategy

[224] We have considered whether the problem of wilding pines can simply be left to the Canterbury Regional Council. As stated earlier, we must have regard to³⁷⁰ its Canterbury Regional Pest Management Strategy ("the Canterbury Pest Strategy"), a new version of which has come into force since the hearings. In that strategy Douglas-fir and other conifers are declared to be "organisms to be controlled" whereas Lodgepole pine (*Pinus contorta*) is a "pest". The Strategy's objective in respect of wilding conifers is³⁷¹:

³⁶⁹ J B Murray, evidence-in-chief para 15 [Environment Court document 16].

³⁷⁰ Section 74(2)(b)(i) of the RMA.

³⁷¹ Objective 8.13.4 [Canterbury Regional Pest Management Strategy 2011-2015 p. 81].



Over the duration of the strategy, protect biodiversity values in targeted areas of the Canterbury region by eradicating all self-seeded wilding conifers, prior to seed dispersal, in targeted high value environmental areas.

In fact, the “target high value environmental areas” have not yet been identified – that is to occur “progressively ... in consultation with land occupiers and community groups”³⁷². That relaxed approach can be explained in part by the Regional Strategy’s discussion of wilding conifers. It recognises that the effect of wildings in landscape values is not straight-forward³⁷³:

... the question is not a simple trees/no trees preference. Indeed in some situations and for some individuals wildings will enhance the landscape values, while in others they will be viewed detrimentally. Therefore, it is not possible to conclude that all wilding spread adversely affects landscape values.

We respectfully agree with that, especially since these are not merely landscape issues, but carbon and water management issues as well.

[225] The Canterbury Pest Management Strategy also states³⁷⁴ “... there is a greater risk of wildings impacting negatively on biodiversity values than there is with planned tree planting ...”. That is reflected in the Regional Strategy’s “strategy rule”³⁷⁵ about wildings³⁷⁶:

8.13.6 Strategy rule for self-seeded wilding conifers

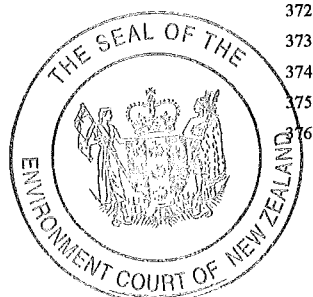
Land occupiers shall take all steps, in relation to self-seeded wilding conifers on their land, as are reasonably necessary to prevent the communication, release or other spread of those self-seeded wilding conifers.

For the purposes of this rule, communication means passing on, transmitting or transporting in any way.

Land occupiers may apply for an exemption from the above rule in accordance with the procedures set out in Chapter 12. Applicants shall provide evidence to Environment Canterbury in support of an exemption application. Such evidence should at least provide a risk assessment of the spread from any retained area of wilding conifers, the risk of wilding establishment in the surrounding areas and neighbouring properties and a proposed control programme including methods and timelines.

Explanation

The purpose of this rule is to ensure that land occupiers fully consider the implications of utilising “post 1989” self-seeded wilding conifers as a permanent forest land use option, particularly under the ETC. Specifically, adjoining or downwind land occupiers should not have to bear the consequences of wind-borne seed spilling out from such deliberately established



³⁷² Principal means 8.13.5(a) [Canterbury Regional Pest Management Strategy 2011-2015 p. 81].
³⁷³ 8.13.3 Adverse effects [Canterbury Regional Pest Management Strategy 2011-2015 p. 81].
³⁷⁴ 8.13.3 Adverse effects [Canterbury Regional Pest Management Strategy 2011-2015 p. 81].
³⁷⁵ Under section 80B of the Biodiversity Act 1993.
³⁷⁶ 8.13.16 Strategy rule for self-seeded wilding conifers [Canterbury Regional Pest Management Strategy 2011-2015 p. 82].

forest land. However, exemption provisions are available where wilding conifer tree spread can be successfully managed within a property, or it is not a problem to neighbouring land occupiers.

A “strategy rule” under the Biodiversity Act 1993 may specify that its breach creates an offence under section 154r of that statute. However, the Canterbury Pest Strategy rule appears not to do so. The rule looks difficult to enforce in any other way because of its:

- uncertainties (what are “those self-seeded ... conifers” – can they always be distinguished from planted trees?);
- qualifications (“all steps ... as are reasonably necessary”); and
- the possible exemptions from it (all neighbours could agree wilding spread is not a problem).

We are particularly concerned that the rule appears to be inapplicable to wildings from plantations and shelterbelts. It appears to us that a large proportion of the wildings in the Mackenzie Basin derive ultimately from planned tree planting. Further, in any particular case how can any person determine whether new wildings come from other wildings or from planted trees?

Conclusions on wildings

[226] In summary, it appears to us that there is a big gap in the district plan’s management of wilding pines. Further, if that gap is not mended soon the whole issue of wilding trees in the Mackenzie landscape is going to become much larger especially now that landowners have a strong incentive to encourage wildings to grow under an ETS. Obviously we have no jurisdiction to fix the problem immediately but we consider that the evidence requires a solution should be aimed for. We will consider later whether we should exercise our powers to place it in the district plan.

[227] The positive externality which is the other side to the worrying spread of wilding exotics is the potential for carbon farming. A policy should encourage this in appropriate places – and those places should be identified. Obvious candidates (subject always to ecological constraints – some of which may be nationally important) include around Rhoborough Downs and along the Haldon Arm Road. There are windbreaks along the latter which are already propagating wildings. Along this road there may be a case for more extensive afforestation. However, that raises inter-district issues, since the Waimate District Council may or may not appreciate a seed source directly upwind of its western boundary. Less obvious places include Mt Cook and Balmoral Stations with their history of forestry. These will need to be subject to very careful controls in respect of wildings.

[228] We consider (provisionally) that an appropriate wilding policy is:



3B15 Wilding trees

To manage wilding tree spread by:

- (a) confining it to areas of low or medium vulnerability as shown on Map [-];
- (b) requiring landowners to remove wildings of identified tree species from their land (outside of areas identified in (a) before they seed.

We consider that wilding trees should have different land status in areas of medium visual vulnerability, so that adverse effects can be properly managed.

[229] Further, our preliminary view is that there should be an incentive to plant native tree species for carbon farming rather than to rely on wildings. To create such an incentive we consider that, except in the Rhoborough and Pukaki Downs area where the wildings have bolted and possibly to the southeast of Haldon Road, there should be a maximum area for an emissions trading scheme forest of weed tree species as defined in the district plan. That area should be perhaps five or ten hectares per 500 hectares in a title, but we would need evidence on any figure before settling it.

[230] On the other larger areas of sustainable tree species – especially native woody species (or tussock grasses if the emissions trading scheme is extended to them) – should be allowed although even here some thought will be needed as to the role of trees in the landscape having regard to both landscape and water conservation considerations.

4.12 Subdivision

Effects of subdivision on landscapes

[231] Subdivision in rural zones can cause adverse effects on landscapes, such as fencelines to show boundaries, different vegetation patterns, and new roading patterns. In order to minimise such adverse effects on the landscape and identity of the Mackenzie Basin, we consider that there should be a separate subdivision policy. To see why we recall that PC13(N) contained a 200 hectare minimum lot size. The Commissioners' Decision did away with that and relied on a distinction between farming and non-farming subdivision. We have found that distinction to be if not spurious, at least unworkable. We consider that a separate subdivision policy needs to be put in place containing the following elements:

- minimum lot size (outside farm bases);
- precluding subdivision at lakeside protection areas, scenic viewing areas and scenic grasslands;
- linking all lots in a subdivision with covenants or conditions as to wilding exotics management
- recognition of topographical and ecological constraints.

Most of those points have been discussed above in various contexts. One outstanding issue remains.



Should there be ongoing obligations to manage wildings?

[232] Should there be a link between subdivision (for any purpose) and weed management? The issue is whether a land owner can subdivide off good areas and leave a rump of unprofitable land. We recall that in other nationally important areas such as coastal environments it has become commonplace for subdivision and building rights to be linked by consent notice or by covenants) with management of the rest of the farm being subdivided. The series of decisions before and after the Court of Appeal's decision in *Arrigato Investments Limited v Auckland Regional Council*³⁷⁷ is perhaps the most well-known case. Perhaps a more relevant analogy is in the Queenstown Lakes District where a subdivision right in another outstanding natural landscape was directly linked to wilding management : *J F Investments Limited v Queenstown Lakes District Council*³⁷⁸.

[233] We consider that it is proper sustainable management for the future management of what is currently pastoral lease land to be established before much of it is freeholded. That is fairer to existing pastoral lessees in that it does not unduly raise their expectations, and may assist them in their tenure review negotiations. The owners of the Mackenzie Basin – including the Crown and some of its agencies – need to realise that ownership of this outstanding natural landscape comes with obligations to maintain it. Some landowners who gave evidence to the court, such as Mr Tibby, obviously accept that and have grasped the opportunities of an ETS, some farm base development and potentially other tourism and residential development and the challenges it brings. We consider that all residential development rights should be tied to management of some weeds and retention of tussock grasslands where they exist now.

Landscape aspects of subdivision

[234] Accordingly, a new policy should read along these lines:

3B16 Landscape aspects of subdivision

- (1) In order to minimise its adverse effects, subdivision in the Mackenzie Basin Rural Subzone will not be encouraged except:
 - in farm base areas;
 - in areas of low visual and/or ecological vulnerability;
- (2) there should be a minimum lot size of 200 hectares (except in farm bases);
- (3) further subdivision of lakeside protection areas (except for existing farm bases), scenic viewing areas and scenic grasslands will not be allowed;
- (4) all lots in a subdivision shall be linked by mutually enforceable covenants and conditions (also enforceable by the Council) to remove exotic wildings from each other lot unless the trees are in an approved forest area;
- (5) All subdivision should have regard to topographical and ecological restraints.



³⁷⁷ *Arrigato Investments Limited v Auckland Regional Council* [2002] 1 NZLR 323; [2001] NZRMA 481; (2001) 7 ELRNZ 193 (CA).

³⁷⁸ *J F Investments Limited v Queenstown Lakes District Council* DecisionC48/2006.

4.13 Section 32 analysis

[235] Since the Environment Court has the same power, duty and discretion³⁷⁹ in respect of a decision appealed against as the local authority that made the decision, the court must carry out an analysis under section 32 of the RMA.

[236] We have already analysed the extent³⁸⁰ to which each of the objectives put forward or reworded by us achieve the purpose of the RMA so we need to consider the objectives no further at this stage. We now have to examine whether³⁸¹ having regard to their efficiency and effectiveness, the policies, rules or other methods before us are the most appropriate. We must take into account³⁸²:

- (a) the benefits and costs of policies, rules or other methods;
- (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

Benefits and costs

[237] The benefits and costs which need to be taken into account under section 32 include those given by or imposed on the following activities and/or people:

- the provision of housing (outside Tekapo and Twizel townships);
- the Waitaki Power Scheme;
- farming;
- potential carbon forestry under emissions trading schemes and conventional production forestry;
- tourists and the tourism industry;
- residents of the basin;

– to the extent that the benefits and costs relate to the objectives and, ultimately, the purpose of the Act. Any benefits arising from the policies that do not further the objectives should be disregarded. Any potential costs imposed by activities that do not achieve the objectives should be avoided as reducing the efficiency and effectiveness of the policies.

[238] We did not receive any quantified evidence on the benefits and costs of the various proposed policies. While such an analysis was desirable the court's obligation in its absence is to consider all the evidence we have received and make our decision on that evidence : see *Takamore Trustees v Kapiti Coast District Council*³⁸³, cited with approval and expanded on in *Contact Energy Limited v Waikato Regional Council*³⁸⁴.

³⁷⁹ Section 290 of the RMA.

³⁸⁰ Section 32(3)(a) of the RMA.

³⁸¹ Section 32(3)(b) of the RMA.

³⁸² Section 32(4) of the RMA.

³⁸³ *Takamore Trustees v Kapiti Coast District Council* [2003] 3 NZLR 496 at 513-514.

³⁸⁴ *Contact Energy Limited v Waikato Regional Council* 2007) 14 ELRNZ 128 at [91]-[92].



[239] We take into account the following matters. First, subdivision for housing away from the urban areas would have some benefits to the district compared with subdivision within or adjacent to the existing urban areas. (It is the marginal benefit of these housing options over the alternatives that is relevant.)

[240] In fact, the only benefits we can think of are from the increased population that might be attracted by the different type of housing available – bach-type accommodation in farm base areas, or mountainous rural-residential lots with some space and privacy. Such subdivision would also create some costs, given that the presence of buildings, particularly residential units and associated domestication, is one of the major reducers of naturalness in a landscape. However, it is obvious that the benefits of more housing outside the existing urban areas can be largely retained while the costs are minimised by confining residential units to places where there are likely to be few adverse effects.

[241] It is easier to see that in a few special places – such as Pukaki Downs – where visitor accommodation with a distant view of Aoraki/Mt Cook could be obtained there would be benefits to visitors and landowners, and – on those locations – minimal costs to landscape values.

[242] The importance of the Waitaki Power Scheme to New Zealand as a whole suggests that within its existing footprint (including Lakes Tekapo and Pukaki) the operators should be left to manage their operations with as much flexibility as possible as stated in objective 3B. The policies are worded so as to achieve that. Further, in relation to the hazards issue, if there was not to be a policy preventing residential units or farm bases in the flood hazard areas the evidence³⁸⁵ for Meridian is that it would increase the Potential Impact Classification (“PIC”)³⁸⁶ of the relevant upstream sections of canal. That might necessitate upgrade of the existing infrastructure in order to reduce the PIC. Even evaluations of how to reduce the PIC can cost hundreds of thousands of dollars³⁸⁷. Actually carrying out strengthening could require “... land purchase and construction of earthfill buttressing of [the existing] canal embankment”³⁸⁸ and, by implication, far larger costs.

[243] We can see that PC13(N) and all the subsequent versions so far would enable freehold farmers to make some one-off profits by selling off relatively small pieces for residential units. If those profits are re-invested in farming operations it may increase the productivity of farming in the district. While there might be short-term benefits to landowners and lessees, we are concerned that the long-term adverse effects to values of

³⁸⁵ N A Connell, evidence-in-chief para 38 [Environment Court document 12].

³⁸⁶ There is a Potential Impact Classification Index developed under the New Zealand Society on Large Dams Dam Safety Guidelines 2000 : N A Connell, evidence-in-chief para 14 and footnote 1 [Environment Court document 12].

³⁸⁷ N A Connell, evidence-in-chief para 38 [Environment Court document 12].

³⁸⁸ N A Connell, evidence-in-chief para 38 [Environment Court document 12].



national importance under section 6(b) will be greater. There are, of course, other section 6 values, the effects on which we cannot assess at this stage.

[244] As for the benefits and costs of higher-intensity (irrigated) farming, we received no evidence about this. We are aware of a Ministry for the Environment report on the issue which, in 2005, recorded³⁸⁹ that an analysis of the economic impacts of using 14.7 m³/s of water for irrigation in the Upper Waitaki rather than for power generation had the following results³⁹⁰:

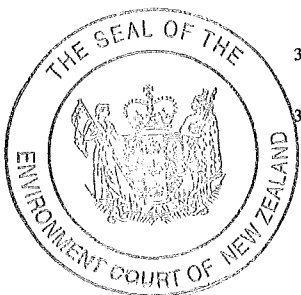
- the options for irrigation using the quantity of water specified in the former Order in Council produce considerable surplus in terms of net benefit from agricultural production
- however when the opportunity costs of hydro-generation are taken into account, the results are negative overall in all scenarios using base case assumptions
- the negative outcome is worsened by the inclusion of additional hydro-generation in the lower Waitaki which effectively increases the opportunity cost of water extracted for irrigation.

We can put no weight on that report but mention it for two reasons. First, we are concerned about some potential natural justice issues for the Canterbury Regional Council. The process by which this water has been re-allocated from Meridian, which, according to the High Court in *Aoraki Water Trust v Meridian Energy Limited*³⁹¹, has all the water in the Upper Waitaki (and more) allocated to it, to local aspiring irrigators is completely obscure to us. That is not our business in these proceedings, but we are aware from other appeals lodged with the Registrar of aspiring irrigators in the lower Waitaki who should have been made aware (if they are not) that irrigation in the Upper Waitaki is likely to mean less water for them. Secondly, assuming the cost-benefit analysis is in favour of using the water for the Waitaki Power Scheme, then the rational course would be for Meridian and/or the Government to find a mechanism to compensate the upper Mackenzie Basin farmers who have the imputed water permits so that the water stays within the Waitaki Power Scheme at the times it is needed for generation or to refill lakes but taken for downstream irrigation when in surplus. At present the free water to the Mackenzie farmers appears to be creating a perverse incentive to damage some landscape values. (We accept there is also a benefit, at least potentially, by making productive some desertified near wasteland.)

³⁸⁹ MFE February 2005 Ref ME583 “Environmental, Economic and Social Impacts of Irrigation in the Mackenzie Basin”.

³⁹⁰ MFE February 2005 Ref ME583 “Environmental, Economic and Social Impacts of Irrigation in the Mackenzie Basin” at para 3.1.2.

³⁹¹ *Aoraki Water Trust v Meridian Energy Limited* [2005] 2 NZLR 268; [2005] NZRMA 251 at para [15] (HC).



[245] We recognise that the spreading of wilding exotics produces a positive as well as negative externalities. The positive is the absorption of CO₂. The negatives include the adverse effects of wilding exotics on the landscape and ecological values of the basin³⁹². Freeholding of land and registration of an emissions trading scheme³⁹³ by the owner (as on Pukaki Downs) will eliminate the positive externality because the landowner would receive payment for the measured carbon capture under the particular ETS for his or her land. At present the size of the positive externality is limited because many pastoral lessees and other landowners are removing the wildings on their land. Pastoral lessees have an obligation to do so. Those actions also limit the size of the negative externalities –there are the adverse effects of wilding exotics on landscape and on ecosystems³⁹⁴. After entry into the emissions trading scheme the positive externality will be eliminated but the marginal public benefit of carbon capture (net of payments for carbon credits to landowners) may increase because the possibility of payments under an ETS is likely to encourage an increase in the spread of wildings. Thus the negative externalities may also increase, unless the areas where wildings may spread are chosen carefully, and enforceable controls are put in place to ensure wildings do not spread where they should not. One difficulty with all this is that while the public benefits of carbon capture by wilding trees under an ETS are (at least in theory) easy to measure (value of carbon captured less carbon credits paid out), the costs in terms of effects on the value of the landscape are notoriously difficult to measure. No attempt to do so was made in these proceedings.

[246] At present the costs of managing wildings ultimately come back to the landowner³⁹⁵ and for much of the Mackenzie Basin that is ultimately the Crown through LINZ. The benefits are available for all to enjoy, as well as accruing to the landholder in increased production. Since the lessee has an obligation under each pastoral lease to manage wilding exotics (as weeds) that cost is (or should be) reflected in the rent that a reasonable lessee is willing to pay. So the cost is ultimately borne by the Crown – even if the sweat is the farmer’s – so that responsibility and cost needs to continue with whoever acquires the freehold. Similarly, we consider the costs of wilding control should be borne in value proportions by all subsequent landowners of the subdivided land. If pastoral lessees and freeholders know that under the district plan they will have to bear the full costs of wilding control then that should affect what land they seek to keep in their possession and the amounts to be paid by the Crown to pastoral lessees in the exercise or for freehold land on subsequent sale.



³⁹² We are principally concerned with the first of those externalities (effects on the landscape) here because we have very little evidence about the latter (effects on ecosystems).

³⁹³ Assuming the pre-conditions referred to earlier are met.

³⁹⁴ We are principally concerned with the first of those externalities (effects on the landscape) here because we have very little evidence about the latter (effects on ecosystems).

³⁹⁵ The direct costs are borne by the pastoral lessee but we assume they are reflected in lease benefits.

[247] The costs and benefits of the policies to the tourism industry have not been quantified either. However, given the importance of tourism to the district economy we consider changes to the landscape of the Mackenzie Basin should be managed carefully.

[248] In summary, we consider the policies we have provisionally settled on are closer to those “justified” by the Council’s section 32 report (dated 13 December 2007) than those agreed on or proposed by the parties, and are the most appropriate policies for achieving objective 3B and the other objectives in Chapter 7 of the district plan.

Explanations

[249] Many of the explanations in PC13(C) could be carried over with minor changes. Some of course will require greater amendment.

Risks

[250] As for the risk of acting or not acting, we agree with the Council’s section 32 report³⁹⁶ that “There is a real risk that if action is not taken soon that some very important landscape [...] could be degraded by inappropriate development and subdivision”. Further, the operative district plan and PC13(N) raise the probability of degradation to the landscape (and also potentially ecosystems) from further areas of intensified farming activities. We consider PC13 barely did enough to reduce the risk of buildings having adverse effects on the landscape; and it did little or nothing about the risks of wildings and intensified farming activities. We tentatively consider that PC13(C) and/or the relief suggested by the parties moves considerably too far back towards the near *laissez-faire* approach of the operative district plan. We consider the risks of not acting are much greater than the risks of proposing amended policies and hearing the parties (and potentially others as new section 274 parties) on them. That is particularly so in respect of wilding exotics : given the high probability of further rapid growth of wilding exotics in much of the basin on our current state of knowledge, we consider the risk of not acting to manage conifers is higher than the risk of leaving wildings free to spread.

[251] In summary, if we take no action in respect of the issues raised there is a strong chance that the Mackenzie Basin’s landscape values will be strongly adversely affected. If we take some judicious action then those values will be affected but, we judge, in a way that largely retains the landscape’s character. In terms of risk the important point is that if we are wrong, little harm has been done. The district plan can be unwound and further development allowed at a later stage if the evidence warrants it. The opportunity costs of not acting are very high, those of acting are relatively low.



³⁹⁶

Mackenzie District Council Section 32 Report p. 19 (13 December 2007).

5. The options for the rules in the Mackenzie Basin subzone

5.1 Introducing the district plan's rural rules

[252] The district plan's rural rules in Chapter 7 of the plan use the terminology of activities rather than uses, although we consider nothing turns on that. Eleven types of activity are covered. After two introductory paragraphs they are³⁹⁷ (with important types for these proceedings emphasised):

3. **Buildings**
4. **Earthworks and Tracking**
5. **Factory Farming**
6. **Forestry**
7. Recreational activities
8. **Visitor Accommodation**
9. Retail sales
10. Mining ...
11. Home occupations³⁹⁸
12. **Vegetation clearance**
13. **Scheduled Activities [primarily the Waitaki Power Scheme]**
14. Aviation
16. **Other Activities (including farming)**

Buildings in the Mackenzie Basin under the operative district plan

[253] Starting with buildings : under the operative district plan the status of buildings – and no distinction is made between farm and residential buildings – in the Rural zone³⁹⁹ is that most buildings are permitted⁴⁰⁰ provided they comply with certain standards⁴⁰¹ as to height and setbacks. Other standards provide for:

- No buildings within Sites of Natural Significance⁴⁰², Scenic Viewing Areas, or above 900 m² (except for mustering huts);
- No buildings within 20 metres of a riverbank, 50 metres of a wetland or 100 metres of a lake (other than Lake Ruataniwha)⁴⁰³;

³⁹⁷ MDP p. 7-39.

³⁹⁸ This rule has been deleted : see MDP p. 7-57.

³⁹⁹ This is, of course, wider than the Mackenzie Basin subzone.

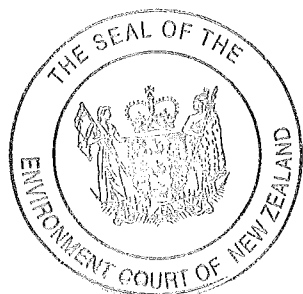
⁴⁰⁰ Rural rule 3.1.1[MDP p. 7-40].

⁴⁰¹

- Height – 9 metres for buildings other than farm accessory or emergency services which can be up to 15 metres (Rural rule 3.1.1.a [MDP p. 7-40]);
- Road setback (Rural rule 3.1.1.b [MDP p. 7-40]):
50 metres from State Highways;
20 metres for all other buildings (except emergency services buildings);
30 metres from all other roads for retail buildings and 20 metres for others;
- Boundary setbacks (Rural rule 3.1.1.c [MDP p. 7-40]): 20 metres for a residential unit (except it is reduced to 2 metres if the allotment size is <2025 m² in area : Rural rule 3.1.1.c(i) [MDP p. 7-40] and there are various other minor exceptions : rules 3.1.1.c(ii)-(v)).

⁴⁰² Rural rule 3.1.1.e [MDP p. 7-41].

⁴⁰³ Rural rule 3.1.1.f [MDP p. 7-41].



- No buildings within the lakeside protection areas⁴⁰⁴.

A building that breaches any of those standards is a restricted discretionary activity (with the Council's discretion restricted to the matter of non-compliance)⁴⁰⁵. PC13(C) does not suggest these standards should be changed.

[254] The number of buildings in an area is managed, if at all, only indirectly by lot size. While subdivision is a controlled activity in the Rural zone⁴⁰⁶ in the operative district plan, there is no minimum allotment size specified in the zone⁴⁰⁷. Ms Harte described⁴⁰⁸ the effect of this as being that prior to notification of PC13:

... Council [could not] refuse applications for subdivision, and can [only] exercise control over allotment size in relation to the ability and practicalities of on-site sewage disposal. This rule and assessment matter therefore means that as long as on-site sewage disposal can be achieved without adverse effects, there [was] no practical limit on how small an allotment can be created in the Rural zone, and therefore how dense residential or built development [could] potentially become other than in the areas identified as High Altitude, Sites of Natural Significance, or Lakeside Protection Areas.

In the light of our finding that almost all of the Mackenzie Basin is an outstanding natural landscape, and in order to implement the objectives and policies we have held are most appropriate, the operative rules obviously need to be changed in order to restrict the location and density of buildings. That was the opinion of Ms Harte and Mr Densem for the Council although they made an exception for farm buildings. We find that, because a relative lack of buildings is one of the key indicia of naturalness in a landscape, it is important for the Mackenzie Basin that there be controls on the number and location of buildings within the Mackenzie subzone.

Buildings under PC13(N)

[255] The notified PC13 proposed a large set of changes to the district plan. PC13 as notified proposed to alter that quite radically with a comprehensive scheme⁴⁰⁹ which distinguishes between farm buildings and other buildings, especially residential units. We have also described how it created an artificial-sounding concept called a "building node" around existing homesteads and farm buildings.

[256] First, PC13(N) proposed to add a new set of definitions to section 3 of the plan:

⁴⁰⁴ Rural rule 3.1.1.i [MDP p. 7-42].

⁴⁰⁵ Rural rule 3.3.4 [MDP p. 7-44].

⁴⁰⁶ Subdivision rule 3 [MDP p. 12-12].

⁴⁰⁷ See subdivision rule 7.1 [MDP p. 12-16].

⁴⁰⁸ P Harte, evidence-in-chief Annexure A [Environment Court document 6].

⁴⁰⁹ In all the new rules proposed under PC13 there are standard conditions applying to 'Riparian Areas' – with a reference to MDP rule 3.1.1f and 'Flight Protection Areas' – with a reference to MDP rule 3.1.1n. We will not repeat the references in the new rules.



Farm building or farm accessory building means a building the use of which is incidental to the use of the site for a farming activity (refer definition).

Remote farm accessory building means a farm accessory building, which because of its function requires a location remote from the principal homestead and farm buildings.

Homestead means a residential unit providing the principal permanent residential accommodation for an owner and/or manager of a property.

Identified Building Node means an Identified Building Node contained in Appendix S of this District Plan and any extension to the node approved by resource consent under Rural Zone rule 15.1.2.

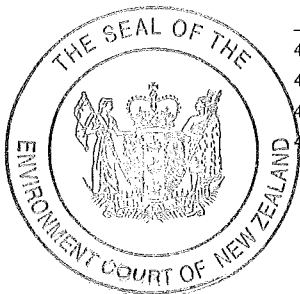
Approved Building Node means a building node approved by resource consent under Rural Zone rule 15.1.1.

Then the effect of the proposed rules in PC13(N) was that:

- farm buildings (around homesteads) in existing or approved nodes would be permitted;
- remote farm buildings would be a controlled activity, as would relocation of buildings;
- non-farm buildings within ‘homestead’ nodes would be limited discretionary;
- new nodes would be discretionary⁴¹⁰;
- all other buildings would be non-complying⁴¹¹.

[257] Any building which did not comply with the standards would be a restricted discretionary activity⁴¹². The Council’s decision would be limited to the building’s external appearance and its location. No limit on the floor area of such a building was proposed. Thus very large farm buildings could be built almost anywhere in the Mackenzie Basin provided they are not more than 15 metres high and not within 50 metres of SH8 (or SH80). Given our findings as to the national importance of the basin’s landscape we are troubled by that since first they seem inappropriate so close to State Highway 80 and the other tourist roads, and secondly too many could lead to a marked decrease in the quality of the landscape.

[258] Another change proposed⁴¹³ by PC13(N) would be to make any non-farm (i.e. residential) buildings a restricted discretionary activity if located within a ‘Building Node’. The new rule was proposed to read:



⁴¹⁰ Proposed new rule 15 [PC13(N) p. 20].
⁴¹¹ Proposed new rules 3.5.5 and 3.5.6 [PC13(N) p. 19].
⁴¹² PC13(N) rule 3.3.2.
⁴¹³ PC13(N) para 4.8.

- 3.3.1 Non-farm buildings within Identified Building Nodes or Approved Building Nodes within the Mackenzie Basin Subzone which comply with the following standards:
- 3.3.1.a **Height of Buildings**
Maximum height shall be 8m
- 3.3.1.b **Setback**
- i Minimum setback of buildings from the inner boundary of perimeter planting of building nodes shall be 20m
 - ii Minimum setback of buildings from state highways shall be 50m
 - iii Minimum setback of buildings from other roads shall be 20m
- 3.3.1.c **Reflectivity**
The maximum reflectivity index of the exterior of any buildings shall be 40%
- 3.3.1.d **Building Separation**
- i Non-farm buildings shall be a minimum of 100m from any farm buildings other than homesteads.
 - ii Non-farm buildings shall be a minimum of 20m from any other non-farm building
- 3.3.1.e **Number of non-farm buildings**
The maximum number of non-farm buildings (excluding accessory buildings) within any building node shall be 10
- 3.3.1.f **Building Size**
The maximum footprint (ground floor area) of any single non-farm building and associated accessory buildings shall be 400m². This limitation does not apply to homesteads.

...

Status of buildings in Mackenzie Basin Subzone under PC13(C)

[259] The Commissioners' Decision simplified matters to some extent. They renamed "Building Nodes" as the more utilitarian "Farm Bases" and freed buildings of any type within any farm bases from some of the restrictions in the notified version of the plan changes. Generally buildings in the Mackenzie Basin Subzone under PC13(C) would be:

- | | |
|-------------------------------------|---|
| • Within Farm Bases: | All buildings – permitted activities |
| • Outside Farm Bases: | Farm buildings – controlled activities
Non-farm buildings – discretionary activities |
| • Within lakeside protection areas: | All buildings non-complying activities unless within a farm base area |
| • Scenic Viewing Areas | Non-complying. |

[260] The Rhoborough group of appellants referred in their appeal to the non-complying status of all buildings and extensions within the lakeside protection areas but did not specify a preferred status. In any event it called no evidence on the issue, so we consider it no further.



5.2 Buildings within farm bases

Should all existing homesteads be approved?

[261] We have recorded Meridian's concern about the approval of some of the existing homesteads as farm bases because of the Class 1 hazard caused by a potential canal failure. Specifically, Meridian sought in its appeal that only one additional residential building can be built within the identified farm base areas of listed farms. At the hearing it sought there be no development at all on the following stations because of the flood risk. They are:

- the Wolds;
- Bendrose;
- Black Forest;
- Braemar;
- Ferintosh;
- Richmond;
- Rhoborough;
- Omahau Downs;
- Maryburn; and
- Irishman Creek.

The basis for this request is the proximity of these areas to infrastructure (e.g. lakes, rivers, canals and transmission lines) associated with the Waitaki Power Scheme. Meridian also proposed rules that any further residential building would become a restricted discretionary activity with the matters subject to Council's discretion proposed to be:

- external appearance and location within the landscape;
- effects on water quantity and reliability for existing users arising from domestic supply;
- effects on existing hydro-electricity generation and transmission infrastructure and operations.

[262] Ms Harte wrote⁴¹⁴:

These rules were not requested by Meridian in their submissions to PC13, rather they asked, as a matter of policy, that some landscape sub-areas (pink areas) contained in Appendix R be modified and that nodes only be provided for within these modified landscape sub-areas. The approach now sought by appeal is quite different, being rule based rather than policy based, and raises a jurisdictional issue to be dealt with by counsel for Mackenzie District Council.

We accept there are questions of fairness both to parties and to persons not before the court, and we consider later whether they can be remedied.



⁴¹⁴ P Harte, evidence-in-chief para 118 [Environment Court document 3].

[263] Mr Murray from The Wolds was the only party to challenge the Meridian appeal requesting development controls inside these farm base areas. The essence of Mr Murray's concern was the proposed restriction on development within the farm base areas⁴¹⁵ compared to other landowners who have their farm base areas outside of the identified hazard zone. Mr Murray felt that he has "quite a severe restriction"⁴¹⁶ on his ability to build. Mr Murray's evidence was that as part of the plan change process the landowners accepted that non-farm buildings would become a discretionary activity and that building in a lakeside protection area would be changed from a discretionary activity to a non-complying activity. In return the landowners wanted the status quo (controlled activity) to remain inside the farm base areas. Mr Murray argued that had he been aware of such restrictions as proposed by Meridian, he would have requested a new farm base area somewhere safe.

[264] We have no evidence discounting the location or accuracy of the hazard overlay as drawn by Meridian. We consider it would be irresponsible resource management to encourage building where inundation is a possibility. Controlled activity status within farm base areas would be such encouragement. At the least discretionary activity status appears more appropriate. However, we see this as raising issues of natural justice for those affected landowners. It also creates some inequality of opportunity between those affected by the hazard overlay and those that are not. It is our opinion that MDC should consult with the affected landowners to attempt to reach agreement by negotiating the extension, reshaping or in some other way changing the shape and/or location of the affected farm base areas to bring those landowners an opportunity that other stations have.

[265] We consider the appropriate solution is (provisionally) to grant the relief sought in Meridian's evidence, but to send the issue of different locations for farm base back to the Council to consult with the other parties and the public about. Any new farm bases for these specific status should be located in land which is shown on Map 3⁴¹⁷ as having a medium or (preferably) low vulnerability to development.

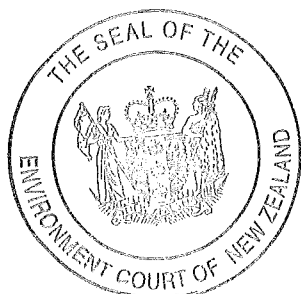
What, if any, controls on buildings are appropriate within farm bases?

[266] In its appeal Meridian requested limits on the number of residential buildings within farm base areas of listed stations and the number outside farm base areas on all stations. However, it did not pursue that at the hearing. Instead it sought that there be no farm base areas within the hazard areas and we have dealt with that.

⁴¹⁵ NOE p. 348

⁴¹⁶ Ibid p. 348.

⁴¹⁷ G H Densem, evidence-in-chief Map 7 "Capacity to absorb development" (4 December 2007) [Environment Court document 3].



[267] We have identified as a policy matter concerns about the large size and location of some of the proposed farm base areas which are located in areas of high visual vulnerability to development. We will discuss this issue when discussing specific stations. In the meantime some rules are needed for those properties which will have approved farm base areas.

[268] The rules should provide for:

- farm buildings in all farm base areas⁴¹⁸ as a permitted activity (subject to compliance with the subzone and zone standards);
- non-farm buildings in farm base areas which are in areas of high vulnerability to development are restricted discretionary activities with the Council's discretion limited to the matters in policy 3B5(1);
- non-farm buildings in farm base areas which are in areas of low-medium vulnerability to development are restricted discretionary activities with the Council's discretion limited to the matters in policy 3B5(2);
- non-farm buildings in farm base areas which are in areas of low-medium vulnerability to development are controlled activities with the Council's discretion limited to the matters in policy 3B5(2).

[269] All other relevant standards in Chapter 7's rules shall continue to apply.

Building standards and conditions

[270] The Wolds and Federated Farmers have challenged the inclusion of the reflectivity rule specified for buildings in farm base areas (which are the only permitted activity buildings in the Mackenzie Basin Subzone). The rule requires that the maximum reflectivity index of the exterior of any buildings be 40% (except that extensions up to 50% in area may be clad with the same finish as the existing building).

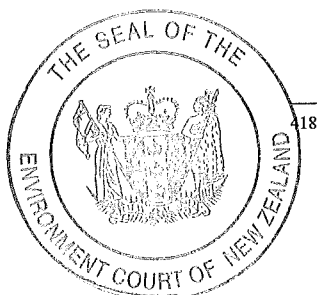
[271] We accept the evidence of Mr Densem that the Commissioners' Decision is appropriate, and thus no change is necessary.

5.3 Buildings outside farm bases

Location of farm buildings

[272] Haldon requested that farm buildings be permitted "outside nodes" but called no general evidence on the issue. We consider that to implement the policy, farm buildings should be:

- controlled activities within identified areas of low visual vulnerability;



⁴¹⁸ "Farm Base Area" will need to be defined in Section 2 of the district plan as an approved farm base area as shown on a new map "Y" to be attached to the plan.

- limited discretionary activities in areas of medium visual vulnerability with the Council's discretion limited to the proposed building's effect on the landscape values identified in objective 3B
- fully discretionary elsewhere in the Mackenzie Basin subzone.

[273] One of the standards for permitted activities is that no building should be erected on (amongst other areas) Scenic Viewing Areas. Further, since building is defined⁴¹⁹ to exclude fences we consider that the same standard should apply for other structures including fences (except for replacement fences) in these areas. The wording for lakeside protection areas (see below) could gainfully be used here. To implement proposed policies 3B3 and 3B13 a new subrule 3.1.1.e(b) should be added as follows⁴²⁰:

3.1.1.e Sites of National Significance, Scenic Viewing Areas, ... High Altitude Areas, and Scenic Grasslands in the Mackenzie Basin subzone

- (a) ...
- (b) No buildings or extensions to buildings and/or structures (other than replacement fencing) shall be erected on ... any Scenic Grasslands identified on the Planning Map X.

[274] Rule 3.2.2.vi as added by the Commissioners' Decision⁴²¹ needs consequential amendment.

[275] We consider there should also be density and footprint standards for farm buildings within the Mackenzie Basin subzone to ensure that small buildings do not proliferate. A new rule should be added along the following lines:

- 3.2.2.x No building should be within one kilometre of any existing building (other than a building in an approved farm base).
- xi No building should have a footprint of more than 30 metres x 20 metres.

Houses outside farm bases

[276] Outside farm base areas buildings other than farm buildings are discretionary⁴²² under the Commissioners' Decision. We consider that should be non-complying. We see no policy justification for excepting retirement houses.

[277] Any building in the lakeside protection area (other than buildings within a farm base area) is non-complying⁴²³.

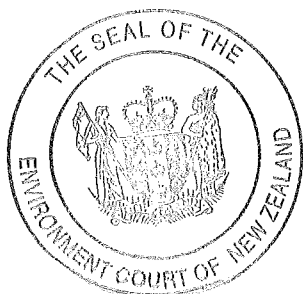
⁴¹⁹ Section 3 (Definitions) Mackenzie District Plan p. 3-2.

⁴²⁰ The existing rule will now need to be listed as (a) in R.3.1.1.e.

⁴²¹ Commissioners' Decision pp 14-15.

⁴²² Rule 3.3.3 [as amended by the Commissioners' Decision p. 15].

⁴²³ Rule 3.4.5 [as amended by the Commissioners' Decision p. 16].



Pivot irrigators

[278] There is some concern in the evidence over the effects of pivot irrigators. Modern pivot irrigators are very impressive large pieces of equipment (especially if they are maintained in working order). However, they have an undoubted effect on landscapes. Their industrial appearance and length undoubtedly reduce the naturalness of any area in which they are located, as inspection of State Highway 80 between Twizel and Omarama reveals.

[279] Structure is defined in the RMA⁴²⁴ as meaning “... any building, equipment, device, or other facility made by people and which is fixed to land; ...”.

[280] A “building” is defined in the district plan⁴²⁵ as meaning (relevantly) “... any structure ... whether temporary or permanent, movable or immovable, ...”. So a pivot irrigator is a “building” for the purposes of the policies and rules in the district plan. It will therefore be caught by rule 3.1.1.e in respect of sites of natural significance, scenic viewing areas and (now) scenic grasslands.

5.4 Earthworks and tracking⁴²⁶

[281] The operative district plan provides that⁴²⁷ any earthworks which complied with four standards was a permitted activity⁴²⁸. The standards related to:

- earthworks in “sites of natural significance”⁴²⁹;
- slope – no earthworks or tracking on slopes greater than 25°⁴³⁰ – this is a controlled activity⁴³¹ except in specifically identified areas, e.g. areas above 900 metres in altitude or within 10 metres of a river;
- riparian areas⁴³² - where earthworks were limited to very small quantities (with some exceptions in reserves);
- geopreservation sites and high altitude areas⁴³³.

There are exceptions to the standards for track maintenance⁴³⁴. Any earthworks or tracking which is not permitted or controlled is discretionary.

[282] Change PC13(N) proposed to confine the permitted activity status to smaller earthworks by imposing quantitative limits : only earthworks or tracking involving

⁴²⁴ Section 2 of the RMA.

⁴²⁵ Mackenzie District Plan p. 3-2.

⁴²⁶ Rule (7)4 [MDP p. 7-45 *et ff*].

⁴²⁷ Rule 4 Earthworks and tracking [MDC pp. 7-45].

⁴²⁸ Rule 4.1.1 Earthworks and tracking [MDC pp. 7-45 to 7-46].

⁴²⁹ Rule 4.1.1a Earthworks and tracking [MDC pp. 7-45].

⁴³⁰ Rule 4.1.1b Earthworks and tracking [MDC pp. 7-45].

⁴³¹ Rule 4.2.1 Earthworks and tracking [MDC pp. 7-47].

⁴³² Rule 4.1.1c Earthworks and tracking [MDC pp. 7-46].

⁴³³ Rule 4.1.1d Earthworks and tracking [MDC pp. 7-47].

⁴³⁴ Rule 4.1.1a, 4.1.1b, 4.1.1c, 4.1.1d and 4.2.1.



excavation and fill of 300 m³ or less, or above exposed soil of 1,000 m² or less and which complied with the four standards (or was for track maintenance) was permitted.

[283] PC13(N) proposed⁴³⁵ to add a *controlled* activity new rule in relation to flatter land. The Commissioners' Decision approved that, with some additions and deletions (struck-through) as follows⁴³⁶:

...
4.2.2. *Other than in the areas listed below, any earthworks (both excavation and fill) greater than 300m³ and less than 1000m³ per site or bare soil exposed greater than 1000m² and less than 2500m² per site, will be a controlled activity:*

- *areas containing Geopreservation Sites identified on the Planning Maps and listed in Appendix I;*
- *Sites of Natural Significance identified on the Planning Maps and listed in Appendix I;*
- *areas above 900m in altitude;*
- *areas within 10m of a river;*
- *areas within 50m of a wetland or lake;*
- *areas within 20m of a river listed in Schedule B to the Rural Zone.*

This rule shall not apply to earthworks:

- *Approved as part as part of a subdivision or building node (farm base area) ~~where that subdivision has a resource consent~~*
- *For routine repair and maintenance of operational tracks, roads and drains*
- *Levelling of fence lines to a maximum depth of 200mm*
- *For utility services*
- *Approved as part of a resource consent for a building*
- *Approved as part of resource consent for a farming building except where the earthworks are for access*
- *For the installation of pipes and regrading of land for irrigation purposes.*

We have three difficulties with this. First, it appears to us that the second exception, beginning “This rule shall not apply to earthworks ...” is ambiguous. Applying normal principles of interpretation this exception would apply to the primary rule, not to the first exception. That appears to make the list of earthworking activities identified in the second exception default to discretionary activities under rule 4.3.1 and we are not sure whether that was the intention. We are rather baffled by the intention of this rule and would need help redrafting it.

[284] Secondly, we consider there was no jurisdiction to add the final exception relating to earthworks for irrigation, regrading or piping. The Commissioners' Decision was clear⁴³⁷ that issues relating to “intensive farming activities” were not ones that could



⁴³⁵ PC13(N) para 4.12.

⁴³⁶ PC13(C) pp. 38-39.

⁴³⁷ Commissioners Decision p. 44.

be addressed through PC13. If that is so consistency required that exceptions about this should not be slipped in. Further, without qualification it is not consistent with the objectives and policies as provisionally settled by this decision. Accordingly, the last underlined sentence in the rule in the previous paragraph should be deleted unless we decide to give directions about it (and other matters) under section 293.

[285] Finally, it seems that proposed rule 4.2.2's relationship with rule 4.2.1 should be made straight-forward by demonstrating that the second controlled activity only applies to flatter land⁴³⁸.

5.5 Forestry (Tree Planting)⁴³⁹ and Wildings

[286] There is a detailed set of rules about tree planting in the district plan. None were proposed to be changed by PC13. In respect of wildings there is an operative rule which states⁴⁴⁰:

Wilding Tree Management

There shall be no planting of *Pinus contorta*, *Pinus sylvestris* (Scots Pine), *Pinus uncinata* (Dwarf Mountain Pine) or *Pinus mugo* (Mountain Pine).

It shall be the responsibility of forest owners, occupiers, lessees and licensees or other persons responsible for the forestry to eliminate tree spread and growth of wilding trees emanating from that forest on all land within 500 m of the planted forest edge.

It appears that if this standard is not met the planting of these trees is a restricted discretionary activity⁴⁴¹. While there is clear policy justification in the (operative) district plan for the rule in the second sentence we consider it is, as it is currently worded, probably unenforceable. First, in relation to the obligation to remove all wildings on all land (within 500 metres) it is probably illegal to impose an obligation on a landowner or occupier to remove trees from a neighbour's land : see *Coote v Marlborough District Council*⁴⁴². Secondly, how can it be established where wildings emanate from, especially to a standard of beyond reasonable doubt as required for a prosecution?

Trees in farm base areas

[287] PC13(N) did not change the rules as to tree planting – neither as amenity plantings for residential buildings nor more widely in the Mackenzie Basin subzone, despite the objective (now 3B) and policies recognising the basin's outstanding natural landscape and protecting it from inappropriate subdivision and use.



⁴³⁸ This is simply achieved by starting rule 4.2.2 "Subject to rule 4.2.1 ...".
⁴³⁹ Rule (7)6.
⁴⁴⁰ Rule (7)6.1.8.e.
⁴⁴¹ Rule (7)6.3.1 [MDP p. 7-52].
⁴⁴² *Coote (Rush) v Marlborough District Council* Decision W96/1994.

[288] Recognising the gap in PC13 the Commissioners' Decision filled it in part by adding⁴⁴³ a list of prohibited amenity plants⁴⁴⁴ in a new rule (7)3.5.1 which states:

It is a Prohibited Activity for which no resource consent will be granted to plant the following species within a farm base area:

- *Pinus contorta* (Lodgepole pine)
- *Pinus nigra* (Corsican pine)
- *Pinus muricata* (Bishops pine)
- *Pinus sylvestris* (Scots pine)
- [*Pseudotsuga*]⁴⁴⁵ *menziesii* (Douglas-fir).

[289] However, they also wrote⁴⁴⁶:

[A submitter] Dean Smith request[ed] rules to prevent further wilding tree spread. We have recommended additions to the list of prohibited species for planting however we do not consider the Plan Change or the District Plan is the appropriate vehicle for preventing further wilding spread and we therefore recommend this submission be rejected.

We struggle to understand that conclusion: for a start the submission must have been accepted in part because the Commissioners introduced the rule we have quoted; secondly, no reasons have been given for why the plan change cannot be used to help remedy the adverse effects given the problems we have predicted in respect of wildings; and thirdly it seems perverse to restrict the control to within farm bases when the larger problem is outside them.

[290] In our view PC13(C) does not go far enough especially in confining the proposed rule to farm bases. The new rule is inconsistent with the existing rural zone-wide rule as to "wilding tree management"⁴⁴⁷ which does not refer to Bishops pine, Corsican pine or Douglas-fir. We consider this issue of wildings below in relation to rule (7)6 "Forestry Tree Planting".

[291] Mr Murray of The Wolds and Federated Farmers requested that Corsican pine (*Pinus nigra*) and Douglas-fir (*Pseudotsuga menziesii*) be removed from the new prohibited Amenity Trees Planting (listed in Rural Zone rule (7)6.5.1) added by the Commissioners' Decision⁴⁴⁸. We accept Mr Murray's point that Douglas-fir in particular is unlikely to spread naturally in the lower basin because the rainfall is too

⁴⁴³ Commissioners' Decision para 4.11 [p. 38].

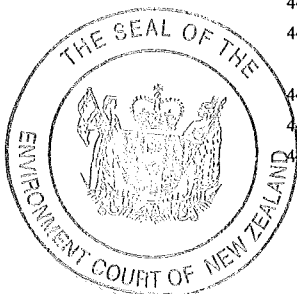
⁴⁴⁴ Some of the usual suspects : Lodgepole, Corsican, Bishops and Scots pines, and Douglas-fir.

⁴⁴⁵ The text in the Commissioners' Decision [p. 24] states "*Pinus*" but Douglas-fir is neither a pine nor a true fir but in a genus of its own.

⁴⁴⁶ Commissioners' Decision para [206].

⁴⁴⁷ Rule 6.1.8.e [MDP p. 7-49].

⁴⁴⁸ Commissioners' Decision p. 24.



low. Drafting a rule relying on that would require further precise evidence on a number of issues and we do not have that. The Council produced, without opposition, the evidence of Dr Lloyd⁴⁴⁹ on this issue. In his opinion Corsican Pine and Douglas-fir are both species with a high probability of spreading and thus control of planting is justified in general terms. No party sought to cross-examine Dr Lloyd.

Wildings

[292] In relation to use of land the general principle in the RMA is that any use is allowed unless it contravenes⁴⁵⁰ a rule in a district plan. If it would contravene a rule then the activity may be expressly allowed by a resource consent⁴⁵¹ or allowed as an existing use⁴⁵².

[293] Is the growth of weeds a use of land? We heard no argument about this, but we have thought about the issue a little to be comfortable that we have jurisdiction. “Use” of land is defined in section 9(4) as meaning (relevantly):

- ...
- (c) Any destruction of, damage to, or disturbance of, the habitats of plants or animals ...; or
- ...
- (e) Any other use of land ...

We are inclined to think that letting weeds grow is “any other use of land” just as growing grass or breeding stock is a use of land. We also consider that allowing weeds to propagate and spread is a use of land in the sense that it causes damage to and/or disturbance of the habitats of other plants or animals. Consequently it is within a local authority’s power to impose not only rules as to what tree species may be planted, but also managing the spread of wilding trees.

[294] Given the importance of wilding control outside approved forestry areas (to be established) we consider there should be a new rule (7)6.6 about Exotic Wildings in the Mackenzie subzone as follows:



⁴⁴⁹ K M Lloyd, statement of evidence dated 13 May 2010 [Environment Court document 13] and reply 30 July 2010 [Environment Court document 13A].

⁴⁵⁰ Section 9(1) of the RMA.

⁴⁵¹ Section 9(1)(a) of the RMA.

⁴⁵² Section 9(1)(b) and section 10 of the RMA.

6.6 Prohibited Activities – Exotic Wildings

6.6.1 No wilding trees of the following species

- *Pinus contorta* (Lodgepole pine)
- *Pinus nigra* (Corsican pine)
- *Pinus muricata* (Bishops pine)
- *Pinus sylvestris* (Scots pine)
- [*Pseudotsuga*]⁴⁵³ *menziesii* (Douglas-fir)
- *Larix* (Larch) species

shall be allowed:

- (a) to grow more than 1 metre in height;
- (b) to fruit/cone

in the Mackenzie Basin Subzone except in approved Exotic Carbon Forestry Areas.

5.6 Visitor accommodation

[295] No change was sought to the rules at the hearing. We discuss the application of the rules later in this decision.

5.7 Farming

[296] Farming is included in the rural rules under the heading “15 Other Activities (including Farming Activities ...)” and is a permitted activity⁴⁵⁴ provided it complies with various standards. Most of those are not relevant here. However, it is worth recording that “pastoral intensification” – defined⁴⁵⁵ as “subdivisional fencing and/or topdressing and oversowing” – is only restricted⁴⁵⁶ on “Sites of Natural Significance” shown on the planning maps. The same restriction should apply on Scenic Viewing Areas and Scenic Grasslands. Further, the wider definition of “pastoral intensification” discussed earlier⁴⁵⁷ should be used. Without those changes what this means is that other much larger areas of tussock in the Mackenzie Basin will continue to owe their survival partly to the goodwill of the farmers and partly to the terms of pastoral leases (and no doubt economic forces play a very significant part too), but not to rules in the district plan. That is of concern because, on Mr Murray’s evidence, tenure review is continuing, so one leg of the support for indigenous grasses is being whittled away (despite Rural Objective 1 – Indigenous Ecosystems, Vegetation and Habitat).

[297] Nor does the district plan appear to do much for tussock grasslands. One aspect of land “improvement” has traditionally been land clearance by ploughing or discing tussock grasslands. The operative district plan contains some rules about clearance of, for example, riparian areas⁴⁵⁸, tall tussock⁴⁵⁹, and short tussock grasslands⁴⁶⁰. Interestingly, the last rule is accompanied by a note which states that the (short tussock)

⁴⁵³ The text in the Commissioners’ Decision states “*Pinus*” but Douglas-fir is neither a true fir nor a pine but in a genus of its own.

⁴⁵⁴ Rule (7)15.1.1 [MDP p. 7-65].

⁴⁵⁵ Definitions (Chapter 5) [MDP p. 3-7].

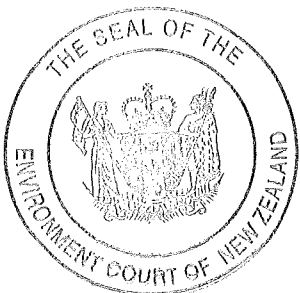
⁴⁵⁶ Rule (7)15.1.1.a [MDP p. 7-65].

⁴⁵⁷ Part 3.6 of this decision.

⁴⁵⁸ Rule (7)12.1.1.a [Mackenzie District Plan p. 7-57].

⁴⁵⁹ Rule (7)12.1.1.c [Mackenzie District Plan p. 7-59].

⁴⁶⁰ Rule (7)12.1.1.g [Mackenzie District Plan p. 7-61].



rule would be reviewed after three years of operation of the plan. As far as we know that has not happened. In fact, the land clearance rules may not have had much application because, on our understanding, direct drilling and oversowing are currently two of the preferred techniques for land conversion. The latter activities are permitted except on Sites of Natural Significance⁴⁶¹ as shown on the planning maps. We conclude that the greening of the lower parts of the Mackenzie Basin by conversion to exotic pasture can proceed mostly as permitted activities under the operative district plan. PC13(N) did not propose to change that.

[298] Factory farming⁴⁶² is discretionary. While the activity is outside the scope of PC13, we have already held that there should be maximum size and density provisions for all large buildings.

5.8 Wind turbines

[299] “Power Generation Facilities” with a maximum output of 25 kilowatts are a permitted activity⁴⁶³. In our view the Council should look at the possibility of wind turbines being erected under this rule and consider the consequences for the Mackenzie Basin.

5.9 The subdivision rules

Basic scheme for subdivision

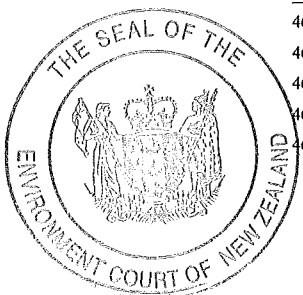
[300] The Hearing Commissioners’ decision to introduce a distinction between subdivision for rural purposes and for other purposes, and to add a rule providing for retirement houses is not in our view consistent with the purpose of either PC13 or the RMA itself. A rule in PC13(C) states that⁴⁶⁴:

Any subdivision within the Mackenzie Basin subzone (excluding ... Farm Base Areas) for the purpose of facilitating farming activity ... shall be a Restricted Discretionary Activity”, whereas any other general subdivision is generally discretionary⁴⁶⁵.

We consider that is too uncertain to be workable for the reasons given earlier.

[301] Mount Gerald Station sought a number of changes to the subdivision rules:

- that there is no minimum lot size, or at least that subdivisions be based on topography;
- that there should be no land use requirement if subdivision is granted;
- that the most restrictive category for subdivision should be discretionary; and



⁴⁶¹ Rule (7)15.1.1.a [Mackenzie District Plan p. 7-65].

⁴⁶² Rule (7)5 [MDP p. 7-47 *et ff*].

⁴⁶³ Rule (7)15.1.1.j [Mackenzie District Plan p. 7-67].

⁴⁶⁴ Proposed rule 4A.a [PC13(C) p. 29].

⁴⁶⁵ Proposed rule 4d [PC13(C) p. 30].

- that there should be provision for subdivision that protects and sustains outstanding natural landscapes.

In fact, Mt Gerald Station withdrew this part of its appeal but those changes were generally supported by Rhoborough and Meridian as section 274 parties. Federated Farmers sought “clarification” regarding controlled activity subdivision for farm building following subdivisions greater than four hectares.

[302] Within approved farm base areas (maximum area 40 hectares) we consider that:

- clusters of not more than ten residential units (each in their own lot) in farm base areas should be a controlled activity provided that the area of each lot is not more than one hectare;
- rural residential in farm base area – controlled for four hectare minimum lot size and subject to all rural residential provisions.

To complement that we judge that rural residential subdivision (with identified building platforms outside farm base areas) in approved low visual vulnerability areas should be a discretionary activity. Any rural residential subdivision in approved medium visual vulnerability areas would require a plan change.

[303] We consider all other subdivision – for whatever purpose – within the Mackenzie Basin subzone (i.e. excluding subdivision within farm base areas and approved rural residential or tourist subzones) should be a restricted discretionary activity with the Council’s discretion limited to the following matters:

- natural and other hazards (as in rule 3a);
- earthworks (as in 3a);
- the effect on the landscape of any lot and associated boundaries;
- the effect on the landscape of any building on any identified building platforms

provided the following standards are met:

- (1) a minimum lot size of 200 hectares (restoring the PC13(N) provision);
- (2) one building platform for a residential unit is identified on each lot if it does not already contain one;
- (3) (a) building platforms must not be on, and
(b) lot boundaries shall not cross:
 - any lakeside protection area, scenic viewing area or grassland scenic area;
- (4) no building platform shall be within one kilometre of any state highway, or the following roads:



- Lilybank Road from State Highway 8 to the Roundhill turnoff;
 - Godley Peaks Road from State Highway 8 to one kilometre past the Cass River bridge;
 - Haldon Road from State Highway 8 to one kilometre south of the Mackenzie Pass road turnoff;
- (5) every lot on a subdivision plan shall have the benefit of and be subject to:
- (a) a covenant in favour of the other lots and the Council to eliminate all exotic wilding tree species before they reach one metre in height or fruit (cone), whichever is the earlier; and
 - (b) an easement or other right to the owner or their agents to enter onto the other lots on foot to carry out exotic wilding tree weed removal upon giving two months' written notice of intention to do so with a right to recover their full reasonable costs for organising cutting and culling the wildings.

For the avoidance of doubt we record that we do not see a policy justification for special rules for retirement house subdivisions within the Mackenzie Basin : that would lead to sporadic development and undesirable accumulative effects over time. In any event, there is ample room in the large farm base areas approved for a retirement house to be erected with space and privacy around it. An exception could be made for the few stations which do not have an approved farm base (or the opportunity to seek one under leave reserved) under this decision.

Access to multiple lots

[304] Standard 2.q.iii in the Transportation Section of the District Plan (Section 14) was inserted by PC13. It specifies that access to more than six lots of residential units is to be by way of public road and not by private way or access lot. This rule applies throughout the district. Haldon Station requested that the rule be deleted. Federated Farmers also seeks that the rule be amended but does not say how. In the absence of any detailed evidence we consider this is a policy matter which should be left to the Council.

5.10 Matters for discretion and assessment matters

[305] Meridian requested that an additional matter⁴⁶⁶ of control be included for controlled activity buildings in the Mackenzie Basin Subzone and Manuka Terrace Rural Residential Zone and controlled activity subdivisions, as well as including them as assessment matters for farm buildings and farm subdivisions. The additional matter is the effects of development on hydro-electricity generation and transmission infrastructure operations. We accept that at least the changes in Appendix 1 to Ms



⁴⁶⁶

Originally Meridian also raised the question of effects on water resources, including quantity and reliability of supply for existing users arising from domestic supply but it withdrew this issue on the ground it is more an issue for the Canterbury Regional Council.

Harte's rebuttal evidence should be made. Further changes are likely to be needed to reflect the amended status of activities as a result of this decision.

[306] Federated Farmers sought to include an assessment matter for farm buildings that reflects the functional requirements relating to the location of these buildings. Ms Harte considered that to be appropriate and suggested the following wording⁴⁶⁷:

The degree to which the proposed location of the building is required to achieve efficient and effective farming operations on the property.

We accept that is appropriate.

5.11 Definitions

[307] Some new or amended definitions are likely to be required in section 3 of the district plan. One is the definition of "farm base" area:

Farm base area means an area shown on Map Y as an approved farm base area.

Another is the definition of "pastoral intensification" discussed earlier.



P Harte, evidence-in-chief para [125] [Environment Court document 3].

6. The Stations

[308] In order to check whether the proposed farm bases are appropriate and to make an initial assessment of whether it is realistic to allow exotic carbon forests (as compensation for strengthened and ongoing obligations to control wilding exotics everywhere else on their land) we will now identify and consider in turn each of the stations in the Mackenzie Basin. We have only been privileged to inspect a few of these (with the owner's permission). We have not entered any other property. Our tentative findings are based primarily on the evidence including the many maps produced at the hearing, but also on our inspection from roads (to a very limited extent) and our general knowledge of the area. For information on the status and location of Crown Pastoral Land we have also referred to the Land Information New Zealand website⁴⁶⁸. Naturally we will give all parties opportunity to respond on the question of the proper boundaries and status of their land if it is relevant, and more importantly on the location of farm base areas and (if it becomes relevant) of exotic carbon forests.

[309] In addition to any specific issues raised by the parties, the general issues for each station are:

- (1) whether it holds one or more appropriate farm base area;
- (2) whether it contains a low or medium visual vulnerability area;
- (3) whether it includes a potential grassland scenic area;
- (4) whether parts of it are suitable for irrigated (intensive) pastoral farming;
- (5) whether it holds a suitable carbon forest area.

In assessing the areas of low or medium vulnerability we are relying on Map 3 in this decision (a copy of Map 7 produced by Mr Densem⁴⁶⁹). We realise that map is challenged in some respects, particularly in relation to the land of Pukaki Downs, and we treat it with caution. However, elsewhere our site inspections suggest it is generally reliable, at least for the purpose of setting out provisional findings as below.

[310] For all stations we will suggest where a possible carbon exotic forest (of wildings) might be sited so as to enable an emissions trading scheme. Our suggestions must always be subject to change if the idea of creating an incentive for limited carbon forests⁴⁷⁰ at the request of any landowner (if supported by evidence) or even to cancellation if there are ecological grounds for that course brought forward by any existing party or (possibly) any further section 274 party and to any applicable rules (also yet to be finally determined).

[311] In respect of the potential scenic grasslands, the evidence has been even less tested. After the close of the hearing we requested through counsel that Mr Densem prepare some further evidence on a number of aspects of the landscape of the basin.



⁴⁶⁸ www.linz.govt.nz/crown-property/pastoral-land-tenure-review/status-of-pastoral-land.
⁴⁶⁹ G H Densem, evidence-in-chief Appendix B Map 7 [Environment Court document 3].
⁴⁷⁰ In return for proper management of wildings on the rest of the relevant property.

Unfortunately, and obviously through no fault of Mr Densem, his preparation and lodgement of that evidence⁴⁷¹ were interfered with by the first Canterbury earthquake in September 2010. His further statement does contain some expert opinion⁴⁷² on the “most important vistas” and we have already referred to that in suggesting the concept of “scenic grasslands”. We now rely on that for our provisional findings in respect of the stations below. However, an opportunity should, and will, be given to the landowners or lessees and other parties to respond to this.

[312] Most of the references to farm base areas in what follows are to those shown on the aerial photographs attached to the Commissioners’ Decision. Any approval of a farm base area will of course be subject to the standards in the district plan and any subdivision and/or building on them will be subject to the Mackenzie Basin subzone rules as amended by this decision. Further, where any farm base area has been ruled out because it is on a flood hazard area we will consider whether leave should be granted to the owners/lessees to apply under section 293 of the RMA for an alternative farm base area(s).

[313] We now consider the stations⁴⁷³ within the Mackenzie Basin subzone in alphabetical order.

Balmoral

[314] This pastoral lease station runs from State Highway 8 south of Fork Stream northwest across the Old Man Range to the Braemar Road and west across Irishman Creek to the eastern side of the Mary Burn. There are shelterbelts on the flats to the north of the Old Man Range, and the Balmoral homestead is at the northeastern corner of that hill. As shown on the map produced by Mr Densem⁴⁷⁴ the freehold rump of Mt John Station is owned and administered by the owners of Balmoral. We treat this land as one. We confirm the farm base area around the Balmoral homestead as shown in the Commissioners’ Decision.

[315] An existing plantation is located on rolling land west of Irishman Creek. That appears to be within the low visual vulnerability area shown on Mr Densem’s Map 7 (our Map 3). An exotic carbon forest could be established here. There appears to be another plantation in the Irishman Creek floodplain. For ecological reasons we are unlikely to approve the area around that as an exotic carbon forest.



⁴⁷¹ G H Densem, letter and draft statement dated 8 September 2010 [Environment Court document 32].

⁴⁷² G H Densem, letter and draft statement dated 8 September 2010 part 4 [Environment Court document 32].

⁴⁷³ As shown on Mr Densem’s Exhibit 28.1 (except for “Cox’s Downs” which he does not refer to).
⁴⁷⁴ Exhibit 28.1.

[316] As for intensified farming activities : this property is at higher altitude than most in the basin. Given the extent of tussock cover we consider (despite the higher quality soils and rainfall) higher intensity farming is inappropriate on this land.

Bendrose

[317] Bendrose is (now) a freehold block of land between the Twizel and Pukaki Rivers immediately east of Twizel township, and south of a large reserve administered by the Department of Conservation on the same floodplain. This property has the misfortune to be both largely in an area of high visual vulnerability and to have its farm base (adjacent to the Twizel River) in the hazard zone from a breach of the Pukaki Canal. It appears it cannot have a farm base opportunity in this area for hazards reasons.

[318] There may be scope for an exotic carbon forest along the Pukaki River boundary of the property if that is also appropriate on Meridian's land. Some co-operation between these landowners would be essential if an emissions trading scheme is to be enabled here.

[319] There may be potential for some higher intensity (irrigated) farming activities in the southern half of the property, well away from the DOC reserve⁴⁷⁵.

[320] It appears from Exhibit 28.1 that Bendrose also owns or has a pastoral lease or occupation licence for a summer grazing block in the vicinity of Flanagan Pass between Lake Ohau and Darts Bush Stream (north of Mount Ruataniwha). This block is unlikely to be suitable for a farm base, exotic forestry (except perhaps in the Darts Bush catchment) or for high intensity irrigated farming because of its steepness, tussock cover, and relative remoteness.

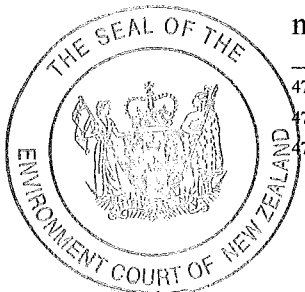
Ben Ohau

[321] This station is north of Twizel township and mostly west of State Highway 8. The exception is the Twizel airfield which is (or was) part of Ben Ohau. The triangle of land in the angle between the Pukaki Canal (to the northwest) and Glen Lyon Road (to the northeast) we will call the "Ben Ohau Homestead Block". The area across Fraser Stream but south of the Pukaki Canal we will call the "Dry Stream Block" and the area north and west of the Pukaki Canal "The Pyramid Block"⁴⁷⁶. It is relevant to the Ben Ohau Homestead Block that by memorandum⁴⁷⁷ dated 17 August 2011 counsel for the Mackenzie District Council advised us of Plan Change 15 to the Mackenzie District Plan which largely deals with the area around Twizel. However, the memorandum also advised us (very belatedly) of a Variation 1 to PC13 which was – we now learn – notified on 25 September 2010. Counsel's memorandum advises us that:

⁴⁷⁵ Shown as a green quadrilateral north of the Bendrose land on Exhibit 28.1.

⁴⁷⁶ After its high point : The Pyramid at 856 masl.

⁴⁷⁷ Entered into the court record as Environment Court document 33.



Variation 1 extends the boundary of the Mackenzie Basin Subzone to include a specific area adjacent to Twizel, east of the Pukaki Canal. This is shown on the outline map attached as Appendix 1. The extension results in the incorporation of an additional Farm Base Area which contains the existing homestead for Ben Ohau Station, as shown on Appendix 2 ...”

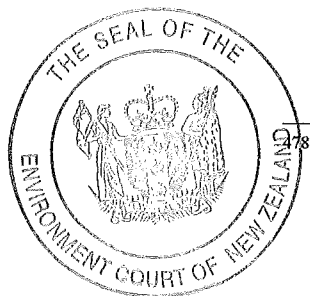
Variation 1 to PC13 also introduced provisions relating to the Ostler Fault to the west of Twizel by demarcating an Ostler Fault Hazard Area.

[322] PC15 attempts to rationalise management of the miscellany of rural-residential and residential developments that have sprung up around the old carefully-planned Twizel. The contrast between the old core and the new development will be a worthy subject for historians in the future. Variation 1 to PC13 re-introduces to the Mackenzie Basin subzone some land which the Hearing Commissioners’ Decision excluded from it. This land is to the south of Glen Lyon Road (and the Twizel River) and includes the Ben Ohau Station. It is zoned Rural. The Farm Base Area defined on an aerial photograph⁴⁷⁸ as Appendix 2 to counsel’s memorandum extends in a dogleg south from Ben Ohau homestead and then east to a curious little Residential 4 enclave (which is, according to the new Planning Map 33, an island of four or five lots surrounded by Rural land). This looks highly irregular to us – why have completely different rules regimes for residential units on adjacent land? – as does the relationship between the Ostler Fault Hazard Area and the Ben Ohau Farm Base Area. This appears at first sight to be very poor sustainable management of resources and hazards. There has been no appeal on Variation 1 to PC13 so we can take it no further. But it further reduces our confidence in the Mackenzie District Council’s capacity to deal completely with the major problems we have identified in this decision.

Black Forest

[323] This has a farm base area by Te Ao Marama/Lake Benmore on which Mr Densem considered development would be appropriate. We therefore confirm the farm base area given by the Commissioners’ Decision.

[324] While the hills behind the homestead are high visual vulnerability we consider some afforestation would be appropriate in the valley of Black Forest Stream – although we note that most of this catchment is outside the Mackenzie Basin subzone. That is especially since this station appears to have little prospect of moving to intensive farming activities because it has little flat land.



This corresponds to the “Ben Ohau Farm Base Area” shown on Exhibit 18.1.

Braemar

[325] This station has a freehold area⁴⁷⁹ close to the road along the eastern shore of Lake Pukaki, and a large pastoral leasehold area on the downs and mountain slopes above. We confirm the farm base area shown in the Commissioners' Decision despite the fact that it appears to be in the lakeside protection area. We consider that the size of Lake Pukaki, the relative lack of recreational use of its waters, and the lack of residential development along its shores means that here (and at Tasman Downs) an exception may be made to the principle of no building in the lakeside protection area. However, there may need to be a restriction on building close to the lake edge so that Meridian's erosion control works are not interfered with.

[326] There appears to be some scope for afforestation in the vicinity of the existing shelterbelts and (at least) one plantation on the pastoral lease, so we tentatively (subject to checking of ecological constraints and to input from the landowner – if they wish) approve a forest block in this area. There appears to be little scope for irrigated farm land on this property given its altitude.

Curraghmore

[327] This station is on Haldon Road. We confirm the farm base area shown in the Commissioners' Decision.

[328] There is scope for an exotic carbon forest immediately adjacent to the farm base area possibly on the lowest slopes of the Grampian Mountains despite their high visual vulnerability, because of the remoteness of this area from tourist roads. Any forest block should be a minimum of one kilometre from any boundary except for the southern boundary if the owners of Streamlands agree.

[329] Irrigated farm land on the plains would not be inappropriate.

Ferintosh

[330] Ferintosh runs along the western shores of Lake Pukaki for some kilometres⁴⁸⁰. It is a pastoral lease of land on both sides of State Highway 80.

[331] Ferintosh has two identified farm base areas. The first is in the vicinity of the existing Ferintosh homestead on the shores of Lake Pukaki. This homestead was established when the lake was raised in the 1970s. Meridian has concerns⁴⁸¹ about any residential and domestic activities in the lakeside protection areas. Mr Smales explained⁴⁸² that the lake shore of Lake Pukaki has been the subject of erosion prior to the two lake raising events in the 1950s and the 1970s. As a result of the lake raisings the lake has had to develop a totally new suite of shoreline landforms, morphologies and

⁴⁷⁹ Shown on Exhibit 28.1 as a white area close to Lake Ohau.

⁴⁸⁰ See Exhibit 28.1.

⁴⁸¹ K G Gimblett, evidence-in-chief para 82 [Environment Court document 14].

⁴⁸² K A Smales, evidence-in-chief paragraphs 83 and 84 [Environment Court document 10].



sediment deposits that are totally unrelated to the wave and current regime. This initiated a new evolution sequence of shoreline development that involves the downgrading of the near shore profile into a new profile, resulting in back shore retreat. According to Mr Smales erosion protection works to slow the rate of shoreline erosion are not a feasible option in all locations due to the size of the cliffs and the lake shore profile.

[332] Mr Smales considered it would be prudent to ensure [residential] development is set back a “suitable distance” to take into account medium and long term erosion. No indication of what a “suitable distance” might be was offered. Meridian’s planner, Mr Gimblett, wrote that the reintroduction of the lakeside protection area on the shores of Lake Pukaki would appropriately address his concerns. We agree with Meridian to the extent that any new residential development should be located at a safe distance from the lake margin. We do not know what this distance should be in this location although it might be sensible to have no new buildings closer to the lake than a line between the existing cottage and homestead. If there is insufficient area available in the vicinity of the identified node to allow the conservative establishment of new residential development then the Council should consult with the owners of Ferintosh to either redraw the boundaries of the farm base area or to reshape the lakeside protection area in this location. If sufficient suitable area cannot be agreed between the two parties then a new location for the farm base area will need to be found.

[333] We note that Dr Steven⁴⁸³ had reservations, from a landscape perspective, about the suitability of the identified Ferintosh farm base area. His evidence is that the site is visible from both the surface of the lake and State Highway 80. However, we consider that a cluster of houses here would, because it is constrained by topography, not be inappropriate despite its visibility. The existing shelterbelts and buildings already create a sense of domesticity.

[334] A second farm base area (“Ferintosh 2”) was given by the Hearing Commissioners in the vicinity of the shearing shed. This area is to the west and uphill from State Highway 80, and largely obscured from view by the topography. When considering the appropriateness of that there is another question in relation to this property – how to recognise and provide for access to and along the western margin of Lake Pukaki? Normally access along Lake Pukaki would be provided by a marginal strip below State Highway 80. However, owing to the steepness of the lake shores in many places, the fluctuating lake levels as it is operated for the Waitaki Power Scheme and the consequent erosion (and erosion control works by – currently – Meridian) that is inappropriate. In the long term we consider that it would be very desirable for there to be a walking (and mountain-biking) track from Twizel to Mt Cook village, so if access cannot readily be provided along the lake edge⁴⁸⁴, we have briefly looked at alternatives.

⁴⁸³ M L Steven, evidence-in-chief 2 July 2010 paragraphs 52 and 53 [Environment Court document 24].

⁴⁸⁴ Noting this is a matter of national importance under section 6(d) of the RMA.



[335] From Twizel walking tracks already lead across or past Te Rua Taniwha/Ben Ohau and Pukaki Downs Station on existing (and in the latter case – proposed) easements through to the Ruataniwha Conservation Area. There is an easy walking route up the Twizel River and Duncan Stream to a low saddle with Boundary Stream (which rushes downhill to State Highway 80 and under it to Lake Pukaki). There is a legal easement (but not formed track) providing public access up the very rocky and steep Boundary Stream. Boundary Stream crosses the southern end of a series of morainic terraces that (occasionally cut by streams) run all the way from the head of the lake parallel with the lake shore. The terraces are mostly on Ferintosh Station (and the northern end the topography on Glentanner Station is slightly more complex). For much of the length of the terraces there are old farm tracks which provide superb outlooks over most of the Mackenzie Basin. To enable a public track we consider that on any subdivision of Ferintosh there should be an access condition for an easement in gross on foot or bike along the highest terrace.

[336] It is likely that such a track could live with (and be out of sight of) two isolated residential/small accommodation units because there is ample room to tuck such development on lower terraces so as to be invisible from State Highway 80. We will reserve leave for Ferintosh's owner to seek two further small farm base areas (in addition to the Hearing Commissioners' two) to enable such limited development. They would need to have access up the face between State Highway 80 and the first terraces.

[337] We confirm the two farm base areas given by the Commissioners subject to the "building line" for Ferintosh 1, and to the access easement for Ferintosh 2 and any other farm base on the station.

Glen Lyon

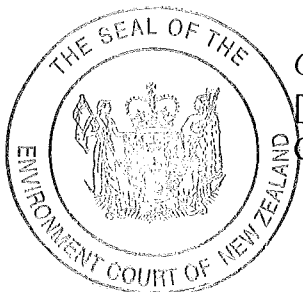
[338] For this property on the Dobson River we confirm the farm base area in the Commissioners' Decision. Given its altitude and proximity to conservation areas there is no obvious opportunity for afforestation or irrigated farming.

Glenrock

[339] The northern boundary of this property runs from Te Kopi o Opihi/Burkes Pass to Dog Kennel Corner, and the western boundary is Haldon Road. We approve the farm base area shown in the Commissioners' Decision. We also tentatively (subject to checking of ecological constraints and to input from the landowner – if they wish to give it) approve afforestation in the low visual vulnerability area in the gullies to the southeast of the homestead.

Glenmore

[340] The homestead for this property is north of Takamoana/Lake Alexandrina on the Godley Peaks Road and comprises a strip of land on the south and western side of the



Cass River from its mouth into Lake Tekapo. Glenmore also surrounds the northern end of the Takamoana/Lake Alexandrina Scenic Reserve. The homestead is set back about one kilometre west of the Godley Peaks Road (and north of Takamoana/Lake Alexandrina). To the west of the homestead at the foot of Mt Joseph (1682 masl) there is a complex area of wetland including the Joseph Stream and the Glenmore Tarns.

[341] The Cass River braids and its delta, and most ponds and tarns in the area, are famous⁴⁸⁵ as places where some of New Zealand's rarer birds are found and breed : in order of rarity : banded dotterel, wrybill and black stilt. The farm base area is appropriate. There may be limited scope for exotic afforestation northeast of the farm base and for more intensive irrigated farming activities on the existing exotic-grassed paddocks. There may be a need for special standards in respect of sediment management and water run-off upon subdivision given the proximity of the farm base area to Takamoana/Lake Alexandrina.

Glentanner

[342] This property is at the head of Lake Pukaki on State Highway 80. We consider there should not be any exotic carbon forest on this property (subject to existing use rights) because of its proximity to Mt Cook National Park and to the Tasman River flats with their high ecological values. Given the proximity of the Glentanner airfield and accommodation on the opposite side of the State Highway 80, we consider that the farm base area for this property should be reduced by cutting off the southern limb opposite the entrance to the airfield so that there is a rural buffer between the farm base and the commercial operations on the southern eastern side of the highway. The southern boundary of the farm base area should be an extension eastwards of the plantation to the south of (but immediately adjacent to) the southernmost station buildings (and north of the isolated stand).

Godley Peaks

[343] This station runs north along the western edge of Lake Tekapo from the Cass River and up into the Godley River. The homestead is on a terrace a little above the Cass River. The farm base area is appropriate. On the terraces between the Cass River and Mistake River there are irrigated paddocks, extensive exotic shelterbelts and some plantations. Increased irrigation on this area may be appropriate (if water is available) subject to restraints as to aquifer and water quality, but those are matters for the Canterbury Regional Council. There is also a strip of pines or other exotic conifers running northwest from the Mistake River and at the base of the Mistake Peak (1921 masl) ridge. There may be scope for some extension of this on the southeast side towards the farm road up the lake. However, this area is limited because the lakeside protection area should not be encroached on, nor should wildings be allowed to climb the hill to the northwest of the plantation. In particular, any exotic carbon forest should not approach the lake as the hillside squeezes toward the water.

⁴⁸⁵ "Notorious" is the rather perverse legal word for a generally accepted fact.



Grampians

[344] The Grampians Station is located along Haldon Road. It has freehold land on flats to the west side of the road – stretching as far as Grays River, and also on the sloping outwash plains across which the Te Manahuna/Mackenzie Pass and Hakataramea Pass Roads run. There is (or was) a pastoral lease running up onto the Grampian Mountains. The farm base is acceptable, and some afforestation is provisionally appropriate on the usual terms. There should be no wildings or exotic trees on either side of Mackenzie Pass Road so as to keep the heritage connection between the pass, Mackenzie’s 1855 campsite (marked with a pyramidal memorial in three languages⁴⁸⁶ and the Tekapo Plain. Any exotic carbon forest should be kept south of the power pylons running through Te Manahuna/Mackenzie Pass. That (interim) decision is made recognising that there are already wildings spreading from the plantation and shelterbelts on the south side of Mackenzie Pass Road.

[345] Subject to any ecological constraints we are not aware of, we see no particular difficulty in landscape terms with further irrigation leading to some more intensive farming activities on the western side of Haldon Road on this station, although some care should be taken with keeping irrigation equipment out of the scenic viewing area on the western side of the road opposite the Mackenzie Pass Road intersection.

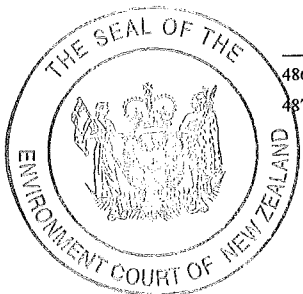
Grays Hills

[346] Half of this very extensive property of about 22,000 hectares is a pastoral lease (Run 73) of the river flats between Tekapo River and Greys River. The other half is freehold land over and south of Grays Hills, including much of the lower Tekapo River flats. The homestead is in fact on the southeast side of Haldon Road south of Grays Hills.

[347] The farm base suggested by the Commissioners’ Decision is confirmed.

[348] There is an irrigated area (pivot irrigator) close to the Tekapo River southwest of Big Pass⁴⁸⁷. This property has extensive areas on the Tekapo-Grays flats which might be appropriate for more intensive farming activities. We imagine the limiting factor is water. We encourage the proposed irrigation (presumably on better soils) closer to Haldon Road to minimise interference with the wildlife and flora of the river corridors.

[349] As for forest blocks: there is an internal basin on this property between the homestead (on Haldon Arm Road) to the southeast, Hogget Hill to the west, Big Pass to the northwest and the (southern) slopes of the Gray Hills to the northeast. All the lower hill slopes to this basin look inwards and are of low visual vulnerability. We tentatively



⁴⁸⁶ Maori, English, and ... Gaelic.

⁴⁸⁷ Visible in the bottom right corner of Mr Fastier’s Attachment “G” : D A Fastier, lodged statement 2 July 2010 [Environment Court document 35].

(subject to checking of ecological constraints and to input from the landowner – if it wishes) approve an exotic carbon forest in this part of the station.

Guide Hill

[350] This is a 3,526 hectare station on the sequence of moraine ridges parallel with the eastern shore of Lake Pukaki. This freehold property's farm base area is confirmed. There is potential for afforestation in the area of low visual vulnerability to the east of the homestead (if we understand the property boundaries correctly) to the east of a visually important moraine ridge.

Haldon

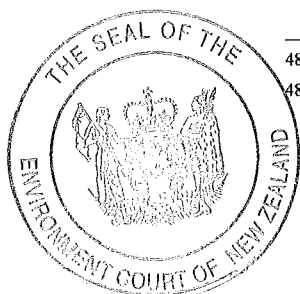
[351] On the eastern side of Lake Benmore/Te Ao Marama, Haldon Station is a well-managed 22,040 hectare property near the end of the no (public) exit Haldon Road. The collection of farm buildings, homestead and schoolhouse have heritage status in the district plan. The owners requested that their farm base includes all the existing buildings and this was confirmed by Mr Densem as being the intended outcome. There is a lakeside protection area on Haldon Station reaching back up to 1.2 kilometres from the edge of Te Ao Marama/Lake Benmore. Haldon Station does not seek to change that⁴⁸⁸.

[352] Three other physical features shape the present farm base: isolated little Mount Maggie (524 masl) rises above the homestead to the northwest and Gallow Hill (457 masl) to the southeast. A water course, Stony River, runs through the farm base.

[353] In its submission and appeal⁴⁸⁹ Haldon Station Limited sought an expansion of the current farm base, again using Stony River as the boundary. It stops short of the lake by virtue of a barrier in the form of a legal but unformed road which skirts Te Ao Marama/Lake Benmore. At the hearing Mr P J Boyd, the farm manager, presented a drawing showing a further area which crossed Stony River to join Haldon Road which he suggested might also be included in an expansion of the farm base. He also described the farm's long history of farming intensification. There are 480 hectares currently irrigated via border-dyke irrigation. Pivot irrigation is carried out on the flats adjacent to the lake. There are at present five irrigation resource applications before the Canterbury Regional Council, three for renewal and two for new consents.

[354] Mr Boyd gave evidence that:

- the owner's preference for a farm base area is to use land that is not used for core farming activities;



⁴⁸⁸ Submissions of counsel (Mr Thomas) para 9(b) [Environment Court document 7].
⁴⁸⁹ The Haldon appeal had requested a number of farm bases elsewhere in the property but at the hearing confined the relief sought to the current one and its expanded boundary.

- there is little tussock left. The drier soils are windblown and most rabbit prone;
- the property has problems with rabbits, *hieracium* and wildings. Management comes at a considerable cost (\$100,000 in 2009)⁴⁹⁰;
- sustainable farm practices including water management are key to farming management of the property⁴⁹¹;
- there is tourist infrastructure already on the farm⁴⁹²;
- the farm has diversified over the years introducing Angus stud cattle and farm tours⁴⁹³;
- Council acknowledged that tourism employs more people than farming in the district⁴⁹⁴ and noted the Hearing Commissioners' support for low impact small scale accommodation and tourist activities for runholders⁴⁹⁵;
- subdivision of selected areas of the lakeside is a long term aim⁴⁹⁶;
- it is unlikely that farming will be able to continue sustainably on the lake edge and this land has no other uses⁴⁹⁷.

We do not understand this last point because even Mr Boyd's diagram of suggested extensions to the farm base area does not extend to the lake edge. Rather it includes the flats on the north side of the Stony River which our site inspection showed have been cultivated and planted in lucerne.

[355] Mr Boyd stated⁴⁹⁸ that Haldon Station had fenced off vulnerable lands and waterways where possible. On our site inspection we saw signs of that, although the good impression was negated by clear signs (stock footprints, cow dung, grazed foliage) that cattle had recently been in the willow infested wetlands upstream of the homestead. He also explained⁴⁹⁹ that much of the land in the lakeside protection area "... is not able to be irrigated due to concerns over run off ...". We are uneasy about substituting houses for current land use because residential uses can also cause eutrophication in lakes (as the Lake Hayes example in the Queenstown-Lakes District has showed).

[356] Mr Densem's landscape study discussed⁵⁰⁰ the possibility of some small-scale linear crib development back somewhat from the Te Ao Marama/Lake Benmore shoreline. He suggested a number of design elements that would help to retain "the Mackenzie character" together with maintaining public access to the lake edge. He did

⁴⁹⁰ P J Boyd, evidence-in-chief para 11 [Environment Court document 8].

⁴⁹¹ P J Boyd, evidence-in-chief para 5 [Environment Court document 8].

⁴⁹² P J Boyd, evidence-in-chief para 26 [Environment Court document 8].

⁴⁹³ P J Boyd, evidence-in-chief para 15 [Environment Court document 8].

⁴⁹⁴ A Thomas, legal submissions para10b [Environment Court document 7].

⁴⁹⁵ A Thomas, legal submissions para 10a [Environment Court document 7].

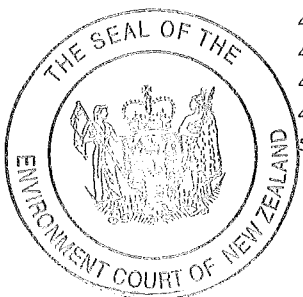
⁴⁹⁶ P J Boyd, evidence-in-chief para 26 [Environment Court document 8].

⁴⁹⁷ P J Boyd, evidence-in-chief para 22 [Environment Court document 8].

⁴⁹⁸ P J Boyd, evidence-in-chief para 14 [Environment Court document 8].

⁴⁹⁹ P J Boyd, evidence-in-chief para 26 [Environment Court document 8].

⁵⁰⁰ G H Densem, evidence-in-chief para 6.24 [Environment Court 3].



not support the expansion of the farm base area into the Landscape Protection Area nor a further additional area put forward by Mr Boyd. Under cross-examination he agreed that some land to the east could appropriately become part of the farm base.

[357] We accept that some of the land in the farm base area contains a swamp and is unsuitable for housing development. We note also that the wetland is in need of more ecological restoration as is Stony River and the lake margins. Mr Densem considered that there is room for some development at the outer edge of the farm base area at the southwestern extremity. We think this should not encroach on the intensively farmed flats or be situated in the lakeside protection area.

[358] To summarise, we confirm the notified farm base area. We will reserve leave for Haldon to apply for farm base areas elsewhere; or there may be room for an allotment or two on the northern slopes of Mount Maggie (again away from Te Ao Marama/Lake Benmore) if the farm base area is extended to cover part of that hill. We have no evidence on the extent of woodlot forestry on this large station, although some shelterbelts are shown on various maps. There is likely to be scope for an exotic carbon forest east or south of Haldon Road (i.e. away from Te Ao Marama/Lake Benmore).

Holbrook

[359] This property straddles State Highway 80 approximately halfway between Te Kopi o Opihi/Burkes Pass village and Tekapo. There is an extensive area of mainly flat land on the south side of the State Highway, and part of the flanks of the Two Thumbs Range to the north.

[360] On the southern flats there are extensive shelterbelts. The homestead is behind a roadside shelterbelt in the angle between State Highway 8 and Sawdon Stream (on the western side of the stream). We approve the Commissioners' farm base area which is well defined by shelterbelts.

[361] There are exotic pastures running southwest from the Sawdon Stream bridge, culminating in a circular irrigated area about one kilometre from the highway.

[362] Mr Densem in his later evidence⁵⁰¹ identified the views north from State Highway 8 over this land between Dog Kennel Corner and Sawdon Stream as "important vistas". We agree that this view is important, although we hesitate to call it a vista, since it is a small valley running out of the Two Thumbs Range. In any event buildings and exotic trees (and shelterbelts) or even exotic grasses or lucerne would have a harmful effect on the landscape values of the basin. So, provisionally, we consider this area should be a Scenic Grassland. That will complement the area to the south of, and on the opposite side of the road, which is already a Scenic Viewing Area because of the expansive views towards Aoraki/Mt Cook.

⁵⁰¹ G H Densem, further evidence September 2010 Map 3 [Environment Court document 32].



[363] As for afforestation, there are only two obvious areas for exotic carbon forest blocks : the first is south of the homestead, and the second is (with Glenrock Station's consent) on the southern slopes of Sterickers Mound (southwest of Dog Kennel Corner).

Irishman Creek

[364] The Commissioners' Decision approved a farm base which we find appropriate, subject to exclusion of Meridian's hazard area, noting that this exclusion reduces the area of the farm base area by about two-thirds⁵⁰². That loss is not quite as drastic as it appears because there are still ten or so hectares in the rump farm base area.

[365] Some of the proposed Scenic Grasslands are on this property on the eastern side of Irishman Creek. The first is the eastern side of the State Highway from the northern boundary of the property to the shelterbelt approximately 2.5 kilometres south. The width of this Scenic Grassland would be to the nearest ridgeline or to the "paper" road⁵⁰³ whichever is the furthest.

[366] We understand from Mr Densem's map⁵⁰⁴ this property's proposed irrigation is located in a Scenic Viewing Area on the Irishman Creek flood plain and adjacent to State Highway 8. In fact, we consider that is not inappropriate on landscape grounds given that in this vicinity the State Highway is raised above the surrounding land in order to cross the Tekapo Canal. That will have the effect that when travelling north the irrigated area will be below vehicles and thus not intrusive in views. From the north the vivid exotic green of an irrigated area will be seen against a backdrop of willows and pines, and again not intrusive.

[367] While part of the Mary Creek catchment as shown on Map 3 is marked as medium vulnerability to development, we consider the tussock cover in this catchment makes an exotic carbon forest inappropriate. Provisionally the only place that appears appropriate to us is immediately west of the homestead so that it appears as an extension of the shelterbelts around the homestead. This is one of the properties which might benefit from an extension of the emissions trading scheme so that the carbon caught up in tussock grasslands qualified for payment.

Lilybank

[368] This remote property on the eastern side of the Godley River was given a farm base area by the Hearing Commissioners which we approve. Given its location and the ecological importance of the adjacent river and riverbed, we doubt if there is any scope for an exotic carbon forest on this property. As for irrigation, that is likely to be

⁵⁰² Estimating this from the map of Irishman Creek which is part of Annexure 2 to the evidence of N A Connell [Environment Court document 12].

⁵⁰³ This unformed legal road runs south from State Highway 8 where it first enters Run 343 from the north.

⁵⁰⁴ G H Densem, evidence September 2010 Map 2 [Environment Court document 32].



appropriate (if ecologically sustainable) in landscape terms only on the existing exotic pasture⁵⁰⁵.

Maryburn

[369] This property is one of three that run from the Tekapo River in the east to Lake Pukaki in the west. The others, successively to the north, are The Wolds and Irishman Creek. Maryburn has a green freehold core in a small basin south of Mt Mary. The remainder is (or was – we are not sure where it is under tenure review) a pastoral lease. We consider the Commissioners’ farm base is inappropriate as it stands for three reasons. First it is split by State Highway 8 so any potential sense of community is damaged; secondly, the northeastern sector – which includes existing farm buildings – is in a flood hazard zone; and thirdly, the whole farm base area is simply too close to the State Highway. We consider any farm base should be at least 500 metres from the State Highway and towards or at the base of the Mary Range.

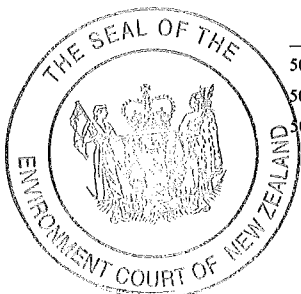
[370] There are important views⁵⁰⁶ east and southeast from State Highway 8 over the Tekapo River Plains. They raise the question whether there should be “Scenic Grasslands” on this property. The answer is particularly difficult because, as another of Mr Densem’s maps shows⁵⁰⁷, Maryburn Station’s owners have applied for irrigation water rights over this part of their land. We consider that a reasonable compromise if such rights are granted is to create the Scenic Grasslands only over the areas within this property and on the eastern side of the State Highway which are in remnant tussock, i.e. have not been converted nearly fully to exotic pasture. However, this is one of the most troubling areas within the landscape of the Mackenzie Basin and we will need further evidence on this.

[371] As for exotic afforestation, we consider there is scope for a block of this so tentatively, and subject to checking for ecological constraints and if necessary provision for them, and to input (if sought by them) from the landowner, we approve a block in the morainic area between Lake Pukaki and the western side of Mt Mary.

Mount Cook

[372] The approved farm base area on this property is a blunt-ended boomerang : it looks very awkward to subdivide. We consider the owners should be consulted as to whether they wish to change the shape. Otherwise we would cancel the farm base area.

[373] Afforestation on this property has a long history by New Zealand standards. There are extensive plantations of conifers already – they presumably make up “pre-1989 forests” under the Climate Change Response Act so an emissions trading scheme cannot be set up for them. We consider further wilding plantations for an emissions



⁵⁰⁵ Where Mr Densem’s September 2010 map 2 shows it to be [Environment Court document 32].
⁵⁰⁶ G H Densem, further evidence September 2010 map 3 [Environment Court document 32].
⁵⁰⁷ G H Densem, further evidence September 2010 map 2 [Environment Court document 32].

trading scheme may be set up to the south of the existing forest, but the conditions will have to be very carefully observed and enforced.

Mt Gerald

[374] The first farm base area, around the homestead, is appropriate. Mt Gerald sought to create a second farm base area (“the Richmond Run farm base area”) – now confined to seven hectares – on a sloping terrace west of the Lilybank Road. We heard quite detailed evidence about this. It is a complex issue because the site is in the lakeside protection area for Lake Tekapo.

[375] Mr Krüger put considerable reliance on his view⁵⁰⁸ that “... historically – throughout New Zealand – settlement was located along the coast and the margins of lakes and rivers. Consequentially, appropriate and well designed new development containing built form can be located in similar situations today”. By implication he considered that the Richmond Run site could be justified on that basis.

[376] Mr Krüger’s general point about patterns of settlement is probably correct. However, Mr Densem said that it was not true of the Mackenzie Basin. In answer Mr Krüger pointed to some historical records⁵⁰⁹ showing that wool from the heads of Lakes Pukaki and Tekapo was carried by boat across and down the lakes respectively. We do not find that very convincing : in cross-examination⁵¹⁰ by Mr Hardie Mr Krüger acknowledged that apart from Richmond Station there are no other farm bases situated at or very close to the edge of Lake Tekapo, and that on the west side of Lake Pukaki, the two farm bases close to the lake edge there were a result of the [Waitaki Power Scheme] development in the 1960s.

[377] We accept that there are some good aspects to the Richmond Run farm base proposal : it meets Mr Densem’s original concept⁵¹¹ of a tight homestead or farm cluster⁵¹²; there are proposed covenants⁵¹³ over the Richmond Run against further subdivision; commercial activities and other buildings (then the maximum of ten proposed) and some useful landscaping conditions⁵¹⁴ proposed by Mr Krüger.

[378] However, there is already potential for domestication of this area. Cross-examined by Mr Hardie, Mr Burtscher of Mt Gerald Station confirmed that north of the Mt Richmond boundary, approximately half of the land between the Lilybank Road and Lake Tekapo has been subdivided⁵¹⁵ and was sold to the “Adagio Trust” in January

⁵⁰⁸ R F W Krüger, evidence-in-chief paragraphs 56-61 [Environment Court document 5].

⁵⁰⁹ R F W Krüger, evidence-in-chief para 58 [Environment Court document 5].

⁵¹⁰ Transcript (18 August 2010) pp 161-162.

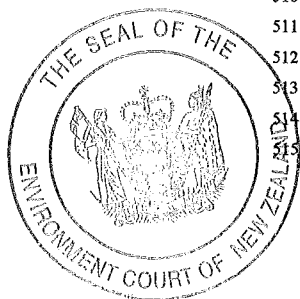
⁵¹¹ R F W Krüger, evidence-in-chief para 51 [Environment Court document 5].

⁵¹² R F W Krüger, evidence-in-chief para 68 [Environment Court document 5].

⁵¹³ R F W Krüger, evidence-in-chief para 23 [Environment Court document 5].

⁵¹⁴ R F W Krüger, evidence-in-chief para 66 [Environment Court document 5].

See Exhibit 27.1.



2010. A resource consent⁵¹⁶ to erect a dwelling has been granted by the Council. Mr Kruger did not assess whether the addition of the Mt Gerald farm base area on “the Richmond Run”⁵¹⁷, together with the Adagio Trust development would lead to specific subdivision and development of the sort frowned on by the landscape policies in PC13. There is an issue as to accumulative effects which he has not considered at all.

[379] In the end we prefer Mr Densem’s evidence and consider this farm base area is inappropriate. It would be highly visible development in a lakeside protection area. It would reinforce a pattern of sporadic development along the eastern shore of Lake Tekapo. We refuse to approve a second farm base for Mt Gerald Station – at least in the lakeside protection area, or in the area of high vulnerability to development.

[380] Despite Mr Krüger’s one-line doubts⁵¹⁸ we consider there might be scope for an alternative farm base area to the east of Lilybank Road and north of the access to the Roundhill Skifield (especially if buffered by suitable native tree planting). We will reserve leave for an application about that.

[381] Some afforestation may be appropriate to the northeast of the homestead, but not south of it. Further conversion to pasture is inappropriate. In any event there is unlikely to be any more water for irrigated pasture.

Mt Hay

[382] This property is the first station to the northeast of Tekapo along the Lilybank Road. We approve the farm base area. Subdivision here would be particularly attractive given its proximity to Lake Tekapo. Because there are conifers on the northeast side of Tekapo, we consider that some afforestation, including an exotic carbon forest, to the south of the hill called Mt Hay is appropriate. There appears to be little scope for intensive farming activities on this land.

Mt John

[383] We understand that the rump of this station, being the land west of the Godley Peaks Road, north of State Highway 8, and east of the Forks River, is now owned by Balmoral Station, and we have treated it as part of that station.

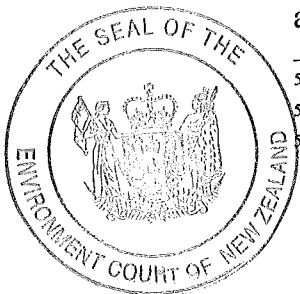
Omahau Downs

[384] This property has two separated parts, as shown on Exhibit 28.1. The first is an area of river plain (“the Twizel block”) between State Highway 8 (south of the Pukaki airfield) and Twizel township. The Twizel block suffers from the same flood hazard problems from a canal break as Bendrose Station. The farm base area is cancelled. Afforestation is inappropriate. However, irrigated pasture would be appropriate on this block.

⁵¹⁶ MDC reference RM080031.

⁵¹⁷ R F W Krüger, evidence-in-chief para 14 [Environment Court document 5].

⁵¹⁸ R F W Krüger, evidence-in-chief para 64 [Environment Court document 5].



[385] The other part of Omahau Downs is the “Omahau Hill” block around the northern end of Te Ruataniwha. The northern boundary of this block is the northern side of Darts Bush Stream. There are some plantations on adjacent land to the north (Ben Ohau Station). *Prima facie* it would be appropriate for an exotic carbon forest to be established on the Twizel side of the Hill Block in the vicinity of that other exotic forest.

[386] It might also be possible to have a farm base area on the Hill Block but we do not know enough about it to say where.

Pukaki Downs

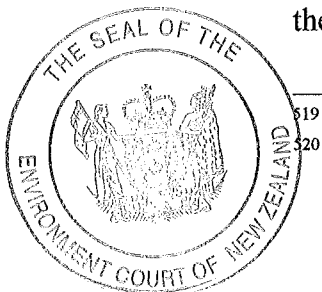
[387] The former Pukaki Downs Station has been freeholded and is now in various ownerships. Three of them are appellants⁵¹⁹ in these proceedings : Fountainblue Limited, Southern Serenity Limited and Pukaki Tourism Holdings Partnership. Since they presented a combined case we will call them collectively “Pukaki Downs”. Pukaki Downs’ appeal raised issues about:

- (1) extension of the farm base area at Pukaki Downs Station;
- (2) the extent of the Lakeside Protection Zone along the western edge of Lake Pukaki;
- (3) recognition of subdivision application RM060010 by creation of a rural residential zone west of the Twizel River;
- (4) the creation of a tourism zone on Pukaki Downs’ higher land with views up Lake Pukaki;
- (5) withdrawal of PC13 as a whole.

Issues (1) and (2) were all resolved by agreement⁵²⁰ and, subject to checking, orders will be made in terms of those agreements. Item (5) was effectively withdrawn from a substantive point of view (and only kept alive for tactical, i.e. jurisdictional, reasons by the appellant).

[388] Of the two remaining issues the first is whether the court has power to and if so should create a rural residential zone on wilding pine-infested land west of the Twizel River. We consider that in the context of rural residential subdivision generally in Part 7 of this decision.

[389] We have already held that we do have jurisdiction to consider visitor accommodation on this (or any land) in the Mackenzie Basin subzone and we consider the merits of that in part 7 of this decision also. Regardless of any decision we make there, because we read evidence in some detail on two specific sites on this property,



⁵¹⁹
⁵²⁰

Appeal ENV-2009-CHC-190.

Agreed memorandum dated 3 August 2010 [Environment Court decision 21A].

and were shown them on the site inspection, we consider we can approve two further farm bases within the “tourism subzone” footprints. That means that any person could apply for resource consents for visitor accommodation, knowing that there is a permitted baseline for buildings in those farm base areas.

Rhoborough Downs

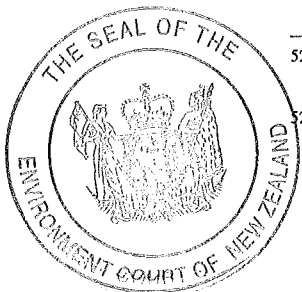
[390] This is a freehold property – it has been through tenure review. This is in the same landscape sub-unit⁵²¹ as Pukaki Downs and it gives some context for discussion of the Pukaki Downs property. Rhoborough Downs is northwest of the Pukaki Canal on the plain of the Twizel River. It is conspicuous from State Highway 80 for the number of wilding conifers spreading south across the property.

[391] The appeal by Rhoborough Downs Limited and the Preston family (ENV-2009-CHC-191) was resolved as between the Council and the appellant by agreement to extend the farm base area – already 23 hectares under PC13(C) – by a further 19 hectares up the Twizel River plain as shown on a map⁵²² produced to the court. We consider the Commissioners’ farm base area is acceptable subject to removing some wildings (see next paragraph) but the extension is not. It is simply too large an extension to retain the qualities of the landscape, especially if Pukaki Downs is to be enabled to have its rural residential subdivision (for which an application was lodged some years ago).

[392] Afforestation by wildings is almost a *fait accompli* on this property. We consider that it should be authorised in a limited area so as to protect the land of neighbours and the qualities of the landscape. So any approved exotic carbon forest must be:

- east of the Twizel River;
- north of the 540 masl contour; or
- in the Lake Wardell block (i.e. the land between State Highway 8 and the Pukaki Canal).

That appears still to be quite a large area so that exception may need to be made to any general rule about the size of exotic carbon forests (if there is to be such a rule).



⁵²¹ Unit 55 “Rhoborough” : G H Densem, evidence-in-chief Attachment 2 [Environment Court document 3].

⁵²² See Annexure “A” to the Consent Memorandum (Environment Court document 29A) and G H Densem, rebuttal evidence para 54 [Environment Court document 3A].

Richmond

[393] We approve the farm base area on this station which is halfway up the eastern side of Lake Tekapo. An exotic carbon forest sourced by wildings from the existing plantations (which are already spreading wildings) would be appropriate.

Sawdon

[394] Despite its name, most of Sawdon Station is not in the Sawdon Stream. The station runs east across the Tekapo River Flats to State Highway 8 and then comprises an area of outwash terraces and plains east of the State Highway in the Edwards Stream and Dead Mans Creek catchments and the intervening ridges. One homestead area ("Sawdon No. 1") is immediately west of the stream on the north side of State Highway 8 (and opposite the entrance to Holbrook). Another enclave of farm buildings ("Sawdon No. 2") is several kilometres northwest on the edge of Edward Stream.

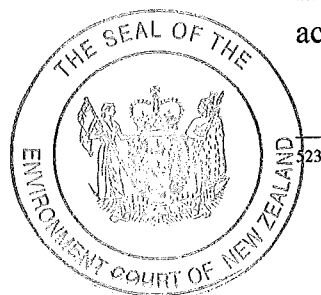
[395] The Commissioners' Decision allotted three farm bases. The first two are shown on the Commissioners' Sawdon No. 1. The larger area is appropriate. The smaller area is isolated and inappropriate and is not confirmed. Sawdon No. 2, on the other hand, is an appropriate farm base.

[396] We see scope for exotic carbon forests for emissions trading scheme purposes in any of three places. We tentatively (subject to checking of ecological constraints and to input – if sought – from the landowner) approve forest blocks:

- (1) either side of State Highway 8 in the vicinity of the plantation one kilometre north of the Edward Stream bridge. There are already extensive wildings around this plantation;
- (2) on point 794 above Whisky Cut on State Highway 8. Again there are already wildings on the south side of this hill;
- (3) (possibly) in the area of medium vulnerability on the eastern side of Edward Stream as shown on Map 3.

Simons Hill Station

[397] Simons Hill is a freehold station totalling 6,282 hectares⁵²³. It commences on the south side of State Highway 8 shortly after it crosses the Mary Burn when travelling south from Tekapo. The eastern boundary of the property follows the Mary Burn south to the confluence with the Tekapo River except for a conservation area now administered by the Department of Conservation on the steep eastern (Tekapo River) slopes of Big Simons Hill (Point 969 masl). The boundary then appears to follow the Meridian road downstream to the Pukaki River and follows the equivalent road up that river to a point southwest of Simons Pass (proper) whence it runs in a straight line across the wide Pukaki River outwash plain to Simons Pass before zigzagging across



⁵²³ D A Fastier, statement 2 July 2010 para 8 [Environment Court document 35].

Point 663 and the western side of House Hill (701 masl) to the State Highway nearly two kilometres southwest of the starting point.

[398] The old homestead and main farm buildings are set off State Highway 8 behind windbreaks on the flats, and a new farmhouse⁵²⁴ has been set discreetly on the flanks of House Hill. Some of the paddocks around the homestead appear to be irrigated. They are certainly sown in exotic grasses and/or fodder crops. There is a pivot irrigated paddock south of House Hill and close to the Mary Burn.

[399] We approve the farm base area set by the Hearing Commissioners.

[400] There appears to be an exotic plantation at Simons Pass which is owned by the Mackenzie District Council itself⁵²⁵. We do not know what species of conifer is planted there, but it seems to be the key to a wilding carbon forest on Simons Hill Station if the latter wants an emissions trading scheme opportunity. Our initial inclination is that an exotic carbon forest block might be established south and east of that plantation. Special care would have to be taken about the extent of such a block because of the proximity of the conservation area to the east. Such a block would be in an area of low vulnerability if our reading of Map 3 is correct.

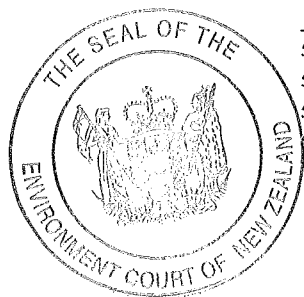
Simons Pass

[401] Simons Pass Station Limited comprises 5,658 hectares of pastoral lease land and 774 hectares of freehold⁵²⁶ land. The homestead is situated immediately west of the unnamed pass where State Highway 8 moves from the Tekapo to the Pukaki catchment. The station's freehold land is mainly around the basin east of the Mary Range. On the latter there is 120 hectares of border dyke irrigation⁵²⁷. The pastoral lease runs from the homestead freehold area west across the Pukaki flats to the Pukaki River. To the south it is bounded by Simons Pass Station land, and the north Lake Pukaki.

[402] The farm base area is approved. Unlike, say Maryburn, it has a sufficient setback from the State Highway.

[403] Some afforestation might be appropriate in the area of medium visual vulnerability on the pastoral lease north of State Highway 8. In fact, given the wildings behind the homestead, we consider that despite the high vulnerability classification there it might be appropriate (with Maryburn Station's mutual approval) to have an exotic carbon forest running west along the southern end of the Mary Range.

[404] A complex issue for this property will be the extent of pastoral intensification, especially on the terminal moraine of Lake Pukaki which is at the northern end of this



⁵²⁴ D A Fastier, statement 2 July 2010 paragraphs 9 and 19 [Environment Court document 35].
⁵²⁵ D A Fastier, statement 2 July 2010 para 59 [Environment Court document 35].
⁵²⁶ D A Fastier, statement 2 July 2010 para 21 [Environment Court document 35].
⁵²⁷ D A Fastier, statement 2 July 2010 para 25 [Environment Court document 35].

property. We are aware from previous cases in the Queenstown Lakes District that many large terminal moraines have been modified by settlement, e.g. Lake Hawea and Wanaka townships. Kingston in Southland District is another example. Within the Mackenzie Basin, Tekapo township is built on the terminal moraine of the former glacier(s) that formed the lake.

[405] The Pukaki moraine is, we suspect, of considerable importance, not only for the visible native vegetation that occurs intermittently on it, but also for its geology and landforms. Some of those elements are contained in the Lake Pukaki Terminal Moraine Area. However, at present the whole sequence of moraines to lower outwash plains is visible at the western side of Simons Pass Station. Bearing in mind the Parliamentary Commissioner for the Environment's concern (which may or may not be well-founded) that tenure review has not created enough reserves with complete altitudinal sequences it occurs to us that this area may be the last main opportunity to protect the aggregation of landscape and ecological qualities present here. Fortunately, it appears that most of the area⁵²⁸ which Simons Pass wishes to irrigate is beyond the Lake Pukaki terminal moraine's limit. It must be desirable that some of the outwash plain, however (within reason) degraded, should not be irrigated so as to keep the natural sequence intact.

Streamlands

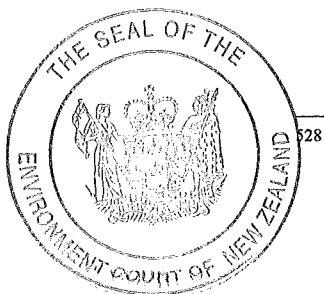
[406] We approve the farm base area in the Commissioners' Decision.

[407] As for an exotic carbon forest block we tentatively (subject to checking of ecological constraints and to input from the landowner – if sought) approve one anywhere west of Moffat Stream provided it is at least one kilometre from any boundary (unless the neighbour affected agrees in writing to allow a wilding forest closer than that).

Tasman Downs

[408] This is a relatively small (500 hectares approximately) freehold property on the eastern side of Lake Pukaki. We approve the farm base area given by the Commissioners' Decision.

[409] An exotic carbon forest appears to be appropriate in the area of low visual vulnerability on Map 3.



The Wolds

[410] This is one of a number of well managed properties in the Mackenzie Basin. However, The Wolds has some unlucky qualities from a farming point of view because it is so important to perceptions of the landscape of the Mackenzie Basin. The main road farm base (“Windy Ridges”) is inappropriate given its proximity to State Highway 80; and we consider the homestead farm base area is inappropriate given the flood hazard. .

[411] However, there are at least two other farm base area candidate sites : one is on the site of the old Mary Hill homestead tucked under the eastern side of Mt Mary. The other is on the moderate visual vulnerability area to the east of the existing homestead – on the terrace above the Tekapo River. Unfortunately, both those sites have some disadvantages – the Mary Hill homestead site is several kilometres from services. In these days of cheaper generators that may not matter, because our site inspection with the owner, Mr Murray, showed that it is a superb site. The Tekapo Terrace site is in the middle of The Wolds irrigated pasture so would be displacing productive land.

[412] There is scope for afforestation on the west side of Mt Mary in the area of low visual vulnerability on Map 3.

[413] There may be another farm base site to the west of State Highway 8 in the lumpy ground beyond a potential Grasslands Scenic Area. There may be some possibility for southwards extension of exotic grasses on the eastern side of State Highway 8 if more water became available. This will need careful examination by Mr Densem (for the Council) and any other landscape experts because there may be remnant tussock grasslands here that are worth retaining as scenic grasslands. Certainly the area is very important visually in terms of avoiding “greening” of this part of the Basin. We need to receive further evidence about scenic grasslands on both sides of State Highway 8. Otherwise it appears there is little scope for further pastoral intensification given that would involve draining wetlands and/or stream margins.



7. Should there be rural residential and other new subzones?

7.1 Manuka Terrace

[414] We are satisfied that the after-the-event rationalisation of the Manuka Terraces is appropriate. The proposed subzone rules in Ms Harte's evidence are approved.

7.2 The Ohau River Block

[415] The Ohau River Block⁵²⁹ ("the ORB") is about 3.5 kilometres long and up to 1.5 kilometres wide. The block is bounded by a terminal moraine (the end of Lake Ohau) at its western end, a thin reserve along the Ohau River on its long southern edge, the Pukaki Canal at its eastern end, and the Ohau Canal road on its northern side. The block comprises a series of river terraces which slope gently west to east and also towards the Ohau River to the south. The vegetation comprises grasses and sweet briar with some pines, wildings, remnant arboretum planting⁵³⁰ and some residual tussocks. The site is experiencing desertification also apparent in other parts of the Mackenzie Basin. Soils appear to be high country free-draining yellow brown earth⁵³¹.

[416] The zoning options open to us are whether the ORB should be:

- part of the Mackenzie Basin subzone as proposed by the Council?
- excluded and remain as part of the general Rural zone? or
- be included as part of a rural residential subzone as sought by the landowner?

Appeal ENV-2009-CHC-183 and the property's history

[417] Mackenzie Properties Limited ("MPL") is the owner of the ORB. It is a successor⁵³² to Ruataniwha Farms Limited which was an original submitter on Plan Change 13. Mr A Hocken, a director of MPL, detailed the history of the family-owned company which also owns other property around Twizel. An application to subdivide the ORB was made in 2001 and declined, and then again in 2004 was declined. The current application was lodged on 10 December 2007, before Plan Change 13 was notified, and it was processed as a controlled activity. Although the 2007 application was originally rejected it was granted in May 2010. The Council granted consent to subdivide the ORB into 50 mostly residential allotments ranging between about 4 and 19 hectares, several service lots, and a large balance lot over an area of 790 hectares on a lower terrace at the eastern end of the ORB. While consent for subdivision has been granted, none of the sections have land use consents or certificates of compliance for buildings⁵³³.

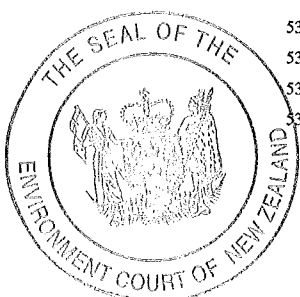
⁵²⁹ The legal description of the Ohau River Block is Lot 3 and 4 75206, Glen Lyon Road, Lake Ohau, Twizel.

⁵³⁰ From the 1960s and 1970s as part of the Waitaki Power Scheme.

⁵³¹ C Vivian, report, Exhibit cv 5, para 16 [Environment Court document 20]

⁵³² Under section 2A of the RMA.

⁵³³ P Harte, evidence-in-chief para 135 [Environment Court document 5].



The parties' positions

[418] MPL accepts that it is appropriate for a lot owner to have to go through a consenting process for the establishment of a dwelling on any lot. What is at issue in these proceedings is the appropriate activity status for such a residential unit. MPL sought that the zone rules applicable to the Manuka Terrace Rural Residential subzone should apply to the ORB, with⁵³⁴:

- (a) controlled activity status for one residential unit on each lot, with the Council to retain control over location of dwellings in the lot, external appearance of buildings, landscaping, provision of services earthworks and natural hazards;
- (b) non-complying activity status for further subdivision and more than one residential dwelling;
- (c) policy recognition for the existing subdivision.

As an alternative form of relief MPL promoted a rule whereby the Ohau River Block remains in the Mackenzie Basin sub-zone but the approved lots may be developed for residential use as a controlled activity on the same basis as above.

[419] The Council sought confirmation of the ORB as part of the Mackenzie Basin subzone. The Council does not accept that MPL should become part of the Manuka Terrace zone which has been zoned in recognition of the large-scale development which has already taken place in that area.

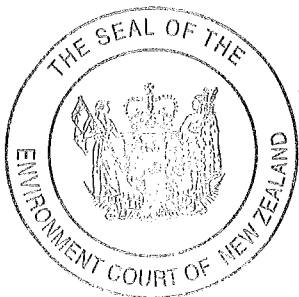
[420] Meridian is a section 274 party to the Mackenzie Property appeal. It opposed the specific relief sought on the notice of appeal, i.e. that the Manuka Terrace Rural Residential zone rules should apply to the ORB. We understand that during the hearing an agreement was reached with Meridian to support the existing residential lots on the Ohau River Block with the proviso that there would be with no further subdivision or development.

The Environs

[421] The site lies within the Ohau Valley which Mr Densem describes as⁵³⁵:

... aesthetically interesting for its intersecting patterns of natural valley, river terrace, meandering watercourse, moraines, lake shore and hill flanks, and for the dramatic constructed canal forms that intersect(ing) these.

[422] The district plan's maps record the following in the near neighbourhood:



⁵³⁴
⁵³⁵

Counsel's submission paragraphs 13-14 [Environment Court document 17].
G H Densem, evidence-in-chief Attachment 28.7.1(4) [Environment Court document 3].

- Sites of Natural Significance⁵³⁶ being:
 - the Ohau Riverbed;
 - Ohau Downs Ponds and Tarns;
 - Halls Block on the southeastern flank of Te Rua Taniwha/Ben Ohau ;
- a geopreservation site⁵³⁷ – the Ostler Fault-Ohau River faulted terraces.

[423] Conservation land administered by the Department of Conservation forms a buffer approximately 50-70 metres wide between Lake Ohau and the west boundary of the ORB. Within this strip there are a distinctive set of terminal moraines part of which lie in a lakeside protection area. Indigenous mixed shrubland and tussock are the dominant vegetation on those moraines. Beyond them is Lake Ohau which is an outstanding natural feature⁵³⁸.

[424] We have described how the Ohau River forms the southern boundary of the property. The river is also the boundary between the Mackenzie District and the rurally zoned landscape of the Waitaki District. To the east, through a narrow neck is the balance lot⁵³⁹ which is bordered by Lake Ruataniwha, the Pukaki Canal and the Ohau River. On the northern boundary is the Ohau Canal which separates the ORB from Manuka Terrace. Rising above the valley is the visually dominant backdrop of the Ben Ohau Range.

[425] Energy production under the Waitaki Power Scheme is a defining element in this part of the landscape with the 20-30 metre canal and embankments dividing what was once a continuous set of terraces. This, together with farming, wilding spread and a growing rural residential presence, provide a human overlay to the geophysical and natural elements.

Preliminary issues

[426] There is one further preliminary legal issue in relation to the ORB. Prefigured at the hearing but, pursuant to leave reserved, lodged later there is an application⁵⁴⁰ by MPL under section 292 to correct an apparent error in the Mackenzie District Plan. The District Plan planning maps identify a site of significance (the Ohau Downs Ponds) within the Ohau River block. This has implications for the subdivision plans that MPL have for the Ohau River block.

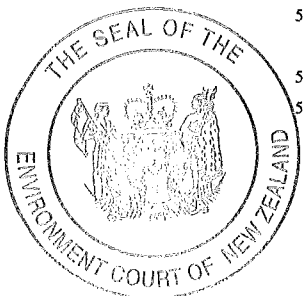
⁵³⁶ SSI 32, 33, 37 and 38.

⁵³⁷ Geopreservation site 38.

⁵³⁸ Under section 6(b) of the RMA – see G H Densem, evidence 8 September 2010 [Environment Court document 32].

⁵³⁹ Lot 50 (356.66 hectares) – see Sheet 8 of Exhibit 18.2.

⁵⁴⁰ Made by counsel, Mr C P Thomsen, by Memorandum dated 10 November 2010 [Environment Court document 31].



[427] Mr Thomsen in a memorandum lodged after the hearing informed⁵⁴¹ us that the Te Manahuna Area manager for DOC, Mr Rob Young, had been to the site and confirmed that the Ohau Ponds are located on the DOC-administered terminal moraine⁵⁴². There is no suggestion that the positioning of the ponds on the planning map is anything other than a drafting mistake. No party to this hearing opposed the application. We are satisfied that this was a drafting error; there would be restrictions on development of the Ohau River Block if this error is not corrected; the Council is not opposed to the application and no other party expressed an interest. Accordingly, we direct rectification to the planning map, correctly identifying the Ohau Ponds.

Is the Ohau River Block within an outstanding natural landscape?

[428] The question arises because the ORB is in Mr Densem's landscape unit S4 (which has significantly reduced qualities) which falls outside the Mackenzie Basin landscape. It is in fact part of the Ohau Basin, most of which comes within the Waitaki District. This unit is bounded on the north by the Mauka Atua/Ben Ohau Range, to the west by the foot of Lake Ohau, to the south by the Ohau River, and to the east by a line along the Ostler Fault (approximately) which is the western edge of the rural residential development around Twizel.

[429] After the hearing Mr Densem supplied, at the request of the court, information regarding any outstanding natural features ("ONF") in the Mackenzie Basin⁵⁴³. In this area, Mr Densem identified:

- the Ben Ohau Range;
- Ohau terminal moraines;
- the Ohau River, between Lakes Ohau and Ruataniwha

as having the qualities to be, in his opinion, outstanding natural features. No party has objected to the court receiving those opinions and we consider they are likely to be correct. The issue for us now is what landscape the ORB and its containing unit are in.

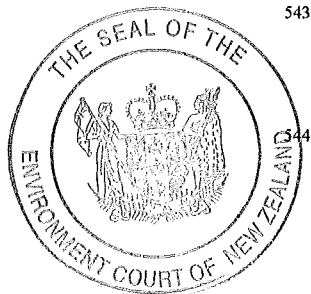
[430] Mr Densem's evidence was that the ORB has more in common with the adjacent Waitaki District landscape than the Manuka Terrace to the north despite the ORB being in the Land Types and Assessment Units S4⁵⁴⁴ together with the Manuka Terraces. He believed that without the modification taking place in the subdivision already consented (Manuka Terrace) and the wilding spread the area would be considered an outstanding natural landscape. In the end Mr Densem and MPL's landscape architect, Mr Espie,

⁵⁴¹ Memorandum dated 10 November 2010 para 9 [Environment Court document 31].

⁵⁴² Memorandum of Counsel for Mackenzie Properties Limited, 19 November 2010, Appendix 1 [Environment Court document 31].

⁵⁴³ G H Densem, Draft 1 notes on requested map attached to his letter dated 8 September 2010 para 1.3 [Environment Court document 32]. This was explained by Mr Densem in his covering letter as being a "draft" because its preparation was interfered with by the first Canterbury earthquake in September 2010.

G H Densem, evidence-in-chief Exhibit 3.1 [Environment Court document 3].



agreed that the river block lots are in a section 7 landscape when analysed at a district level. The ORB is part of an area excluded in the Canterbury Regional Landscape Study from the wider area regarded as an outstanding natural landscape. The study does not express a view as to the appropriate landscape classification⁵⁴⁵. We hold that the ORB is not within the outstanding natural landscape which is the Mackenzie Basin.

Potential adverse effects

[431] What are the likely effects of development on the Ohau River Block on neighbouring land?

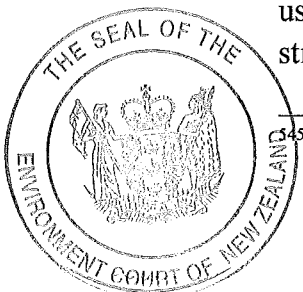
[432] To the north, across the Ohau canal lies the Manuka Terrace development. The effect of a similar subdivision on the Manuka Terrace population would be to reduce the natural quality of their outlook. However, there are three matters which reduce our concern about that. The first and most important is that the reduction is principally in the quality of the outlook, because the Manuka Terrace (which is generally higher) is physically isolated from the MPL land by the Ohau canal. Secondly, the naturalness is very much a perceived quality : in fact the MPL land has been significantly degraded by burning and grazing. Most of the trees scattered on it (which at least some members of the court find very attractive) are either part of the arboretum plantings or wildings. Thirdly, there is an existing subdivision consent so some buildings are inevitable. The issue really is as to how to manage their location and settings so as to enhance other qualities on the land for the benefits of neighbours provided the costs do not exceed the benefits.

[433] There will be views of the ORB from the Glen Lyon Road, a public road which runs along the northern side of the canal. For MPL its landscape architect Mr Espie suggested a 100 metre building setback on the northern boundary. This may accommodate some planting to break up views into the site.

[434] The effect of subdivision on the conservation block of moraine to the west is potentially high because of the introduction of pests which go hand in hand with human habitation.

[435] The balance lot forms a useful buffer between the built-up residential growth areas of Twizel and the subject land. It has been suggested that this is to be reserve.

[436] The effects with which we are most concerned are on recreationalists and users of the Ohau River. There is an unformed legal road along the southeastern boundary of the ORB, as well as an existing right of way with a formed (gravel) track along the top of the terrace which comprises most of the ORB. While the flow in the Ohau River is usually substantially reduced owing to the demands of the Waitaki Power Scheme, it is still a handsome open river with vegetation on its banks, including native shrub species



Mr Thomsen, submissions para 37 [Environment Court document 17].

as well as weeds and exotic conifers. We predict that a row of houses on the riverside lots would substantially reduce the amenities of users of the river and the right of way⁵⁴⁶.

[437] In addition, there are strips of various exotic trees across the eastern end of the ORB within the subdivision area. We consider that they may even have some heritage value. Mr Espie considered they had some aesthetic interest⁵⁴⁷.

[438] Because MPL's director, Mr Hocken, seemed to accept the desirability of a setback⁵⁴⁸ from the Ohau River, the court asked MPL's landscape witness, Mr Espie, to prepare an amended plan. He kindly produced through counsel a further plan⁵⁴⁹ which was the western part of the subdivision plan overlaid on an aerial view of the site. It:

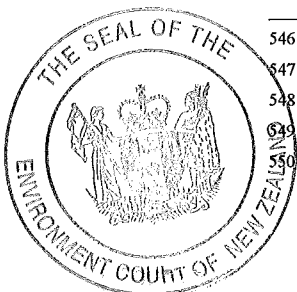
- delineated an area to be excluded from controlled activity building as a response to the concerns expressed by Meridian concerning the overland flow path of a possible breach;
- provided a no-build 100 metre setback around the north, south and west of the site but not on the west boundary with the conservation land
- shows an area to the southeast of a black line to be non-controlled activity for buildings.

We will return to that once we have considered another complication alluded to in the first bullet point: flood hazards.

Hazards

[439] We were supplied with a map⁵⁵⁰ identifying where possible breaches in the Ohau Canal may occur. The ORB has a Class One hazard overlay flow path traversing the property in two sections covering approximately 50% of the land. Most lots are higher than the canal but lots 9 and 10 are lower. The proposed subdivision plan provided for larger sites in the vicinity of this hazard so that building platforms could be created outside the hazard line. Meridian have maintained that no housing should be allowed in the vicinity. MPL responded to this during the course of the hearing and supplied an updated subdivision plan which provided for a different status for this land. This was accepted by Meridian. As we have recorded the applicants also propose a 100 metre "no build" adjacent to the canal.

[440] There is also flooding risk from the Ohau River which affects the lower parts of lots 54, 11 and 12. Lot 54 had been proposed as a local purpose reserve and so flooding is not a concern. Lots 11 and 12 could be at risk in a probable maximum flood. MPL



⁵⁴⁶ See transcript pp 438-439.

⁵⁴⁷ Transcript p. 439.

⁵⁴⁸ Transcript p. 430.

⁵⁴⁹ B Espie, evidence 23 August 2010 [Environment Court document 19A].

⁵⁵⁰ Boffa Miskell Map C 1 September 2010.

accepted in its settlement with Meridian that issues of flooding and flow path inundation will need to be addressed before lots are available to the public. This may require redesign of allotment sizes. An improved subdivision plan must identify them clearly.

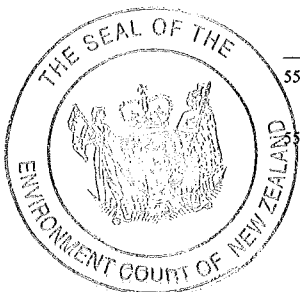
Subdivision yield

[441] For MPL Mr Espie supported the subdivision pattern for which resource consent has been given that allows for a variety of section size with most being eight hectares but some up to 20 hectares, and some as small as 4 hectares. He observed that if the four hectare rule applied across both Manuka Terrace and Ohau River Block then the resulting landscape could become cluttered. He considers the relief sought will not fundamentally change the characteristics and qualities of the landscape.

[442] The Council planner, Ms Harte, theorised that 190 or so lots could be created if the 790 hectares was to become part of the Manuka Terrace zone. She put forward a number of reasons why this would be inappropriate such as : access is across a bridge which is unsuitable to accommodate large amounts of traffic, there have already been infrastructure difficulties within the current Manuka Terrace subdivision, and the dotting of houses, roading and infrastructure across such a large area which have a marked effect on landscape values. The number of houses would be contrary to policies in PC13 and would adversely impact on the viability of Twizel.

[443] MPL's planner, Mr C Vivian, generally agreed with the intent of the Council's subdivision rules. He acknowledged the difficulties arising for both applicant and Council when subdivision and land-use consents are separated, as is currently the case. He opined that these situations were being managed relatively successfully in the Queenstown Lakes District with a rule that allowed subdivision with an identified building platform as discretionary as opposed to non-complying if the building platform is not identified. He suggested some method should be found to provide for the pre-PC13 subdivisions that had been lodged as controlled activities where there was an associated land use anticipated. He suggested buildings should also be provided for as controlled activities rather than requiring a fully discretionary consent. He believed the subdivision assessment matters in the Operative District Plan were adequate except for effects on landscape and visual amenity values. He agreed⁵⁵¹ that the Hearing Commissioners' Decision proposed an additional rule to Section 12 Rule 11.2.u.

[444] We return to Mr Espie's amended plan⁵⁵². We consider that all buildings on the ORB should be placed within the footprint to the north of the black line. Accordingly, we approve a rural-residential Ohau River subzone, generally on the same terms as the Manuka Terrace Rural-Residential subzone but with the rules to provide for subdivision as a limited discretionary activity provided that the following standards are met:



⁵⁵¹

C Vivian, evidence-in-chief para 120 [Environment Court document 20] had merit in providing this linkage.

⁵⁵² B Espie, plan 23 August 2010 [Environment Court document 19A].

- (a) there be a maximum of 50 residential lots;
- (b) all houses are on approved building platforms (shown on any subdivision plan) north of the black line on map 19A;
- (c) there are 100 metre setbacks to building platforms as shown on map 19A;
- (d) there are no internal fences on the river side of the black line on map 19A;
- (e) there are no buildings in the hazard zone;

– with the Council’s discretion limited to:

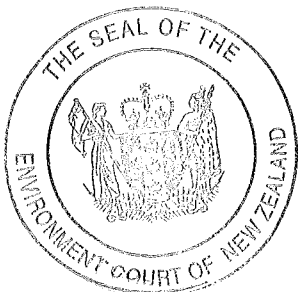
- weed control (contemplating) covenants and/or consent notices to ensure all lot and house owners are jointly and generally responsible for weed management (including removal of weed species) including over the balance lots (since the Council does not want these as reserves);
- management of the arboretum;
- flood hazards.

7.3 Rural residential subdivision west of the Twizel River

[445] The background to Pukaki Downs’ request for a rural residential zoning of its land is that its agents lodged⁵⁵³ an application⁵⁵⁴ for subdivision of 336 hectares west of the Twizel River into 49 lots on 26 January 2006. At that time subdivision was a controlled activity under the operative district plan, and building houses on any resulting lots was permitted⁵⁵⁵. For various reasons we need not go into here the Mackenzie District Council failed to hear Fountainblue’s application promptly: it emerged at the hearing through cross-examination⁵⁵⁶ by counsel for the Council that access to State Highway 80 for the subdivision might be a restricted discretionary activity (since the subdivision would generate more than 100 vehicles per day⁵⁵⁷) for which consent has not been sought.

[446] In any event, to safeguard its position, Pukaki Downs has become first a submitter and then an appellant in these proceedings. It seeks that subdivision and development of 336 hectares west of the Twizel River and north of Rhoborough Downs be a controlled activity in a special rural residential zone. The Council opposes that relief, first on the jurisdictional ground that it is beyond the scope of PC13(N), and secondly on the merits.

[447] The Pukaki Downs proposed rural residential site is on the western side of the upper Twizel River several kilometres west of State Highway 80. The site is on a very wide sloping river terrace, which steepens upwards to the west (away from the river).



⁵⁵³ A E Tibby, evidence 2 July 2010 para 47 [Environment Court document 23].

⁵⁵⁴ Mackenzie District Council reference RM060010.

⁵⁵⁵ It will be recalled that PC13(N) was notified on 19 December 2007.

⁵⁵⁶ Transcript p. 531 *et ff* (23 August 2010).

⁵⁵⁷ Transcript p. 533.

[448] For the Council Mr Densem described⁵⁵⁸ it as “... very open and continuous in its land surface and highly natural in character”. He was concerned about the visibility of the site from State Highway 8 and from the Pukaki Canal road. He also qualified his evidence by saying that he had not visited the site, only looked at it from at least six kilometres away⁵⁵⁹. In fact, as he accepted in cross-examination, any views would be at a distance of six to ten kilometres⁵⁶⁰. He was also concerned, at least in some of his answers to counsel for Pukaki Downs, about the adverse effects of any rural residential development on users of the so-called “Dusky Trail”⁵⁶¹ which DOC has created (and runs from near Twizel into the upper reaches of the Twizel River around the western edge of Pukaki Downs).

[449] We find the landscape evidence to be unsatisfactory. No landscape assessment of this area was called by Pukaki Downs, and Mr Densem, perhaps because he had not been on site, was unaware that it is covered in wilding pines, as we saw on our site inspection. We agree with Mr Tibby that without management this western side of the Twizel River will soon be a pine forest. Then its quality of openness will have gone completely and its naturalness will be reduced.

[450] The basic idea behind Pukaki Downs’ application for resource consent was for a carefully-designed rural residential subdivision⁵⁶². Whereas the Council’s witnesses appear to think that the subdivision area is “an area of open grazing”, we accept Mr Tibby’s evidence that the western side of the Twizel River is “... ravaged by hieracium and wilding pines, both spreading at a mind-boggling rate”⁵⁶³. He hoped that the proposed subdivision would not only stop “... this catastrophic spread but create the resources to rebuild this area into its former glory”⁵⁶⁴. We do not think that Mr Tibby was overstating the problem when he referred to a “catastrophic spread”.

[451] Ms Harte’s main criticisms of the proposed rural-residential zone were jurisdictional. That is a legal issue which we have considered and resolved in part 4 of this decision. On the merits of any rural-residential zoning on this site west of the Twizel River Ms Harte was concerned that if the Manuka Terrace subzone provisions (with their minimum lot size of four hectares) were to be applied to this site (which contains 340 hectares) then up to 85 lots and houses could be established. In response the witnesses for Pukaki Downs confirmed⁵⁶⁵ that only 49 lots (and houses) were sought under the careful subdivision plan lodged with its resource consent application.

⁵⁵⁸ G H Densem, evidence-in-chief para 8.40 [Environment Court document 3].

⁵⁵⁹ From the Pukaki Canal road : see G H Densem Photo 4 [Environment Court document 3].
⁵⁶⁰ Transcript p. 107 (17 August 2010).

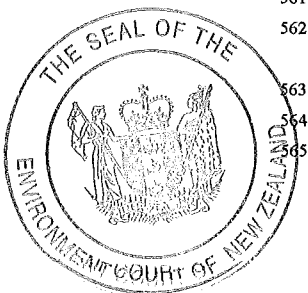
⁵⁶¹ Not to be confused with the better-known Dusky Track in Fiordland.

⁵⁶² A plan is attached as “Exhibit CV2” to C Vivian’s evidence part C : Site Specific Issues [Environment Court document 25A].

⁵⁶³ A E Tibby, evidence-in-chief para 75 [Environment Court document 23].

⁵⁶⁴ A E Tibby, evidence-in-chief para 76 [Environment Court document 23].

⁵⁶⁵ e.g. C Vivian, evidence-in-chief para 35 [Environment Court document 24A].



Further, Mr Tibby accepted⁵⁶⁶ the limitations on non-farming subdivision and development proposed by Ms Harte⁵⁶⁷ if there was to be a rezoning.

[452] We accept that remaining “ecological and reverse sensitivity matters” can be dealt with as part of the resource consent process. We consider that, provided the proposals for management of exotic wildings are written into the district plan, the zoning of this land to rural residential is appropriate. The parties should now consider the best recipe to ensure that the subdivision consent applied for (with its range of allotment sizes from five to nine hectares⁵⁶⁸) is the limit on rural-residential development.

7.4 Other subzonings on Pukaki Downs

[453] In his evidence for Pukaki Downs Dr Steven wrote⁵⁶⁹:

In my opinion there are many areas within Pukaki Downs property that are well screened – totally screened in many locations – from public views whether these be from the SH80 or the lake and its margins. These same areas do not possess any attributes that would be compromised by a modest level of sensitively designed and located development. I have inspected two of these areas in the company of Mr Densem on 16 April, 2010. The areas that were subject to our inspection are illustrated in Figure 8 to my graphic appendices. The areas inspected were:

... An area east of SH80 referred to as ‘The Rocks’. This area is located within a glacial landform of shallow basins and raised moraine deposits. The shallow basins provide opportunities for the location of roads and building sites, while the raised moraines provide shelter and screening from the highway, while affording views to the north up Lake Pukaki towards the Southern Alps and Aoraki Mt Cook. A substantial area of dense wilding pines within the margins of the lake provide separation and screening from adjacent areas of Lake Surface.

This area is shown⁵⁷⁰ in Mr Densem’s photograph 5. We accept Dr Steven’s description as generally accurate.

[454] The other area identified by Dr Steven was⁵⁷¹:

An area west of SH80 area referred to as ‘The Tarns’. This is an elevated site [of] rough glacial moraine featuring a number of glacial tarns. The area has been subject to wilding pine infestation but is currently being cleared. Expansive views across the lake and to the north are possible, but the locality is screened from views from SH80.

We accept that evidence too.

⁵⁶⁶ A E Tibby, evidence-in-chief para 81 [Environment Court document 23].

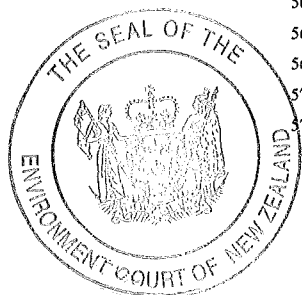
⁵⁶⁷ Ms Harte’s policy 3X discussed above.

⁵⁶⁸ C Vivian, evidence-in-chief para 35 [Environment Court document 24A].

⁵⁶⁹ M L Steven, evidence 2 July 2010 para 60 [Environment Court document 24A].

⁵⁷⁰ G H Densem, evidence Photo 5 [Environment Court document 3].

⁵⁷¹ M L Steven, evidence 2 July 2010 para 60.2 [Environment Court document 24A].



[455] Dr Stevens conceded⁵⁷² that any development would need to be subject to comprehensive site investigations and analysis to identify and protect significant local biophysical attributes of the landscape, and to ensure visual effects are minimised. He recorded⁵⁷³ his understanding that Mr Densem agreed that with sensitive planning and design both areas would be capable of accommodating the modest level of development planned by Pukaki Downs. Mr Densem did not dispute that. Initially Mr Densem pointed out⁵⁷⁴ that the proposed tourism zone was within the lakeside protection area. However, on our understanding the agreed redrawing of the landscape protection area in this area has the result that is no longer the case.

[456] Mr Densem was critical⁵⁷⁵ of the size of the proposed zone and claimed that it would "... be vastly in excess of the level of development that I believe would be appropriate for this Outstanding Natural landscape area". On that we accept the evidence of Mr Vivian and Dr Steven for Pukaki Downs. The latter explained that:

Mr Densem has confused the extent of the zone with the likely extent and density of built development. The manner in which the zone would serve to protect the Pukaki Downs landscape is detailed in the evidence of Mr Vivian. As Mr Vivian's evidence explains, there is no intention to establish built development over the entire area of the zone, but there is an intention to manage the zone for tourism purposes associated with the spirit and intent of future tourism development. The incorporation of all the proposed land within the zone will enable the objectives, policies, rules and conditions of the zone to extend well beyond the areas proposed for built development. This has advantages for the sustainable management of the property generally, particularly with regard to wilding pine control, ecological restoration, and the general enhancement of the landscape and ecological attributes of the property.

[457] Fundamentally Mr Densem seemed to think that some tourism development is appropriate⁵⁷⁶. We conclude that the proposed tourism zone sought by Pukaki Downs is appropriate, and that PC13 should be amended by insertion of the subzone provisions in the planner Mr Vivian's evidence⁵⁷⁷.

⁵⁷² M L Steven, evidence 2 July 2010 para 61 [Environment Court document 24A].

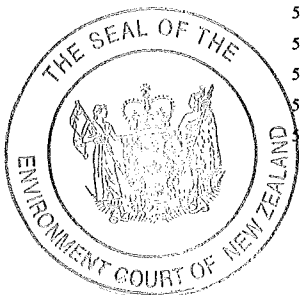
⁵⁷³ M L Steven, evidence 2 July 2010 para 62 [Environment Court document 24A].

⁵⁷⁴ G H Densem, evidence-in-chief para 8.28 [Environment Court document 3].

⁵⁷⁵ G H Densem, evidence-in-chief para 8.32 [Environment Court document 24].

⁵⁷⁶ G H Densem, *Landscape Report (2007)* at para 6.14; attached to Environment Court document 3.

⁵⁷⁷ C Vivian, evidence part C "Exhibit CV1" [Environment Court document 25A].



8. Conclusions and outcome

8.1 Summary

[458] The basic fact underpinning this decision is that the Mackenzie Basin is one huge open tussock-dominated landscape surrounded by mountains including Aoraki which towers at its northern edge. Beyond that the Mackenzie Basin is a symbol of the high country and mountains. The elected representatives of the district notified Plan Change 13 on the foundation that the Mackenzie Basin was an outstanding natural landscape. Applying a high standard of “outstandingness” we have found on the evidence that is correct.

[459] As we have pointed out, the operative district plan and PC13 between them identify a number of issues (the place of buildings, exotic wildings, intensive agriculture) in respect of sustainable management of the Mackenzie Basin subzone and its outstanding natural landscape. However, the district plan and PC13 between them only purport to settle objectives and policies for one of them – buildings in the landscape and zone. The other important issues are left hanging. That is of real concern because not only are there matters of national importance involved, but several of the core elements of sustainable management are also. In particular, section 5 of the RMA requires that the people and communities of the Mackenzie Basin are enabled to provide for their wellbeing (and health and safety) while sustaining the potential of the natural and physical resources which make up the landscape to meet the reasonably foreseeable needs of future generations. If there is one reasonably foreseeable, in fact obvious, need for future generations of New Zealanders it is that they will wish to experience an outstanding natural landscape as the foreground to Aoraki/Mt Cook.

8.2 The problems with PC13

[460] The fact that these proceedings are about an outstanding natural landscape is crucial because recognising and protecting it from inappropriate development is stated by Parliament to be a matter of national importance. Deciding what is appropriate development, use and subdivision has not been easy for several reasons. The first is that most parties have denied that the Mackenzie Basin is one outstanding natural landscape. That has resulted in complications in that most of the parties did not put forward contingency positions in their evidence in the event they were wrong about the landscape categorisation. Second, the principal objective in PC13(C) as settled by the Hearing Commissioners’ Decision and as proposed to be amended by the parties is in our judgment inappropriate. It should be replaced by our more focussed alternative. Third, Meridian has raised important safety issues about the location of some existing homesteads and their proposed extension as farm bases which we consider should be addressed even though the methods Meridian now proposes were raised late in the proceedings. Fourth, the extra paragraph proposed to be added to the statement of issues by PC13(N) refers to the effects of the greening of the landscape but adds no policy in respect of that. And fifth, we are concerned about the potential acceleration of exotic wilding spread in the context of two statutory schemes outside the RMA : tenure review under the Crown Pastoral Land Act 1998 and emissions trading schemes

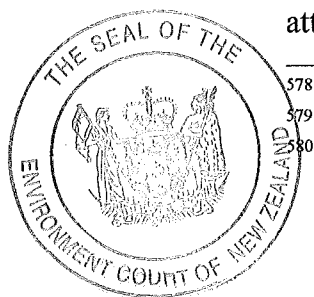


under the Climate Change Response Act. Finally, we have found there are some difficulties in respect of farm buildings and “retirement” subdivision.

[461] It appears to us that all these matters should have been addressed by the Mackenzie District Council because they all relate to or are “on” the subject of PC13 – the landscape of the Mackenzie Basin. However, the amended and/or additional policies and methods we have proposed in the evidence probably go beyond the submissions and do go further than the appeals on the plan change. Consequently those changes cannot be made without giving both the parties and other potentially interested persons an opportunity to be heard. Normally the court would recommend to a local authority that it fill any gaps not covered by a district plan, and then leave it to the Council to do so by plan change. However, that is both a time-consuming and uncertain process. We are concerned that there are particular circumstances applying to the Mackenzie Basin so that the Council has little time to act. Having such a small rating base it may not have the resources either.

8.3 The court’s powers to amend district plans

[462] The Environment Court has powers to amend the subordinate legislation contained in a district plan. The justification for these powers appears to be in one of the very few exceptions to the cornerstone principle that legislation should be enacted by elected representatives⁵⁷⁸. Such exceptions acknowledge the roles of politicians (and their temptation to think short-term) in relation to the capital assets of society. The best known example is in the Reserve Bank of New Zealand Act 1989 in which Parliament has recognised that national politicians cannot trust themselves not to inflate (financial) capital. It dealt with the problem by entrusting the Reserve Bank to deliver “... stability in the general level of prices”. There are some similarities in the RMA processes. In the statute which governs us, Parliament has recognised that, at a lower level, elected local (or regional) politicians can usually but not always be trusted to manage a district’s (or region’s) environmental capital so as to achieve sustainable management of natural and physical resources. For example, short term thinking may be encouraged by the fact that representatives seeking election gain no votes from future generations despite the latter having reasonably foreseeable needs⁵⁷⁹ for natural and physical resources. As a safeguard the legislature has given the court the humbler oversight powers in the First Schedule to the RMA. Parliament has then managed the risk of judicial activism by appointing Environment Commissioners to the court, and by directing the court’s powers to achieving sustainable management under section 5 of the Act, while subjecting it to the cost-benefit and risk assessment of⁵⁸⁰ section 32 of the Act. It is also important to recognise that the Environment Court’s role in ensuring the fundamental purpose of the Act – sustainable management – does not extend as far as planning people’s welfare : the purpose of the Act is merely to enable people and communities to attain their own welfare.



⁵⁷⁸ This is part of the constitutional principle of the separation of powers.
⁵⁷⁹ According to section 5(2)(a) of the RMA.
⁵⁸⁰ To which normal legislation from Parliament is not subject.

[463] The Environment Court’s choices, like those of the local authority before it, while they involve a broad judgment, are not between competing but equally legitimate open-ended values. The court is bound by the values and their relative scale of importance⁵⁸¹ as fixed by Parliament in the principles set out in sections 6 to 8 of the RMA. As Lord Cooke stated for the Privy Council in *McGuire v Hastings District Council*⁵⁸² : “These are strong directions, to be borne in mind at every stage of the planning process”. Briefly what has gone wrong in this case is that, while the Council had correctly identified the issues relating to the outstanding natural landscape of the Mackenzie Basin, it failed to follow the directions given by Parliament.

[464] That background is important when the court makes its decision on appeals about a plan or plan change. For, in addition to the powers to amend provisions requested by the parties, the court has a further jurisdiction.

The section 293 jurisdiction

[465] We refer to the Environment Court’s powers under section 293 of the RMA. That states (relevantly):

- 293 Environment Court may order change to proposed policy statements and plans**
- (1) After hearing an appeal against, or an inquiry into, the provisions of any proposed policy statement or plan that is before the Environment Court, the court may direct the local authority to –
 - (a) prepare changes to the proposed policy statement or plan to address any matters identified by the court;
 - (b) consult the parties and other persons that the court directs about the changes;
 - (c) submit the changes to the court for confirmation.
 - (2) The court –
 - (a) must state its reasons for giving a direction under section (1); and
 - (b) may give directions under section (1) relating to a matter that it directs to be addressed.

...

[466] The section applies to a proposed plan change because of the definition⁵⁸³ of “proposed plan” which includes a plan change. The rationale of an earlier form of section 293 was explained by the High Court in *Canterbury Regional Council v Apple Fields Limited*⁵⁸⁴ (“*Apple Fields*”) as being:

Despite the best efforts of everyone involved in the process of preparing or changing a plan, the reality is that unforeseen issues or proposals beyond the scope of the [appeal] can arise and that

⁵⁸¹ Section 6 states that certain matters must be “... recognise[d] and provide[d] for”; section 7 that “... particular regard” must be had to other matters; and section 8 that the principles of the Treaty of Waitangi/Te Tiriti o Waitangi must be “... take[n] into account”.
⁵⁸² *McGuire v Hastings District Council* [2001] NZRMA 557 at [21]; [2002] 2 NZLR 577 (PC).
⁵⁸³ Section 43AAC of the RMA.
⁵⁸⁴ *Canterbury Regional Council v Apple Fields Limited* [2003] NZRMA 508 at para [37].



in some cases it will be more appropriate for the matter to be resolved at the Environment Court level than by referring it back so that the territorial authority can initiate a variation.

In this case the issues were not unforeseen : they are all expressly identified in the operative district plan or in PC13(N). It is the failure of PC13 to deal with them which has lead to several pressing problems which need resolution.

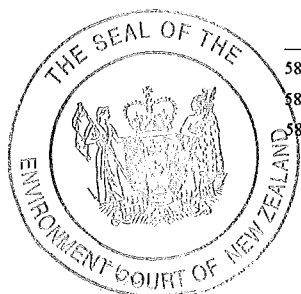
[467] Section 293(1) was amended by the Resource Management Amendment Act 2005 and (in a minor way) by section 133 of the Resource Management (Simplifying and Streamlining) Act 2009. We consider *Apple Fields* is still applicable. Before 2005 section 293 required that “a reasonable case [had] been presented” for changing a provision in a proposed plan. That requirement has now gone, so the application of cases on the pre-2005 version of section 293 should be exercised with caution. However, the fundamental requirement that a Court of Record acts on the best evidence⁵⁸⁵ is still implicit in the section 293 procedure in our view. The difference between the pre- and post-2005 provisions appears to be that now there is no need for a party to present a case for the use of section 293.

[468] Obviously not just “any matters identified by the court” should be the subject of directions under section 293(1). The pre-eminent qualification is that any further matter or issue must be relevant to the subject matter of the proceedings. Thus if a plan change is about one area of land then concerns about another area will not usually be a relevant subject for directions under section 293 : *Hamilton City Council v New Zealand Historic Places Trust*⁵⁸⁶. Similarly, a plan change about heritage provisions (raising section 6(f) matters) is unlikely to justify directions from the court about section 6(c) matters.

[469] Further, just because the court has power to give directions under section 293 does not mean it should : that is obviously a discretionary matter. The power should be used sparingly (*re Vivid Holdings*⁵⁸⁷) partly to save time and money and partly to defer, whenever possible, to local input into the scope of district plans.

[470] The new section 293 is also worryingly unspecific about the procedures to be used if the court does decide to exercise its powers. The former – pre-2005 – section 293 provided for a procedure whereby the court would:

- specify the persons who might make submissions;
- the way in which submissions could be made;
- require the local authority to give public notice of the change and of the opportunities to make submissions and be heard.



⁵⁸⁵

Subject to some relaxation under section 276 of the RMA.

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Hamilton City Council v New Zealand Historic Places Trust [2005] NZRMA 145 (HC).

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re Vivid Holdings (1995) 5 ELRNZ 264; [1999] NZRMA 467.

In contrast, the current form of section 293 merely states that the court “may give directions under [sub]section (1)”. Obviously the obligations on the court to specify who might make submissions have gone. Any directions the court may give must come under its other powers. These include a general power to regulate its proceedings “... in such manner as it thinks fit”⁵⁸⁸ except as “expressly provided” elsewhere in the Act. The fundamental principle is always that the court must act fairly both to parties and, if they are potentially affected, to persons not before the court. To deal with the latter situation, where the court is contemplating action under section 293 to amend a plan or plan change, the court may grant waivers⁵⁸⁹ to persons who wish, belatedly, to be party to the proceedings⁵⁹⁰ in order to be heard on the proposed amendments.

8.4 Can and should we exercise our powers under section 293?

[471] We consider we have jurisdiction to consider the issues raised but not dealt with by PC13(C) – as we have pointed out they all relate to the protection of the outstanding natural landscape which is the Mackenzie Basin from inappropriate subdivision, use and development.

Discretionary factors

[472] Should we exercise our discretion to give directions under section 293(1) of the Act? We have hesitated to do so, because it can be an expensive and time-consuming exercise. However, as we have made our findings and predictions on each issue we have been pushed towards considering that further action is needed now.

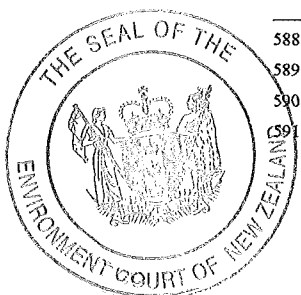
[473] We should consider the exercise of section 293 powers separately and cumulatively in relation to each of the following issues:

- (1) the amended objective 3B and its implementing policies and rules;
- (2) the natural hazards policy and its effect on farm bases;
- (3) intensive farming activities;
- (4) wildings.

[474] Against giving any directions under section 293 is that the Council does not wish us to. It wants finality both in the provisions of PC13 and in expenditure on the plan change⁵⁹¹. We understand Meridian to have a similar view.

Changes to objective 3B and implementing policies

[475] In respect of the proposed amendments to objective 3B and its implementing policies, obviously it is relevant to the potential exercise of our section 293 power that, as here, a matter of national importance is involved. In such a case deferring to the local input – as represented here by PC13 as notified and, to some extent, by the



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Section 269(1) of the RMA.

Under section 281 of the RMA.

Under section 274 of the RMA.

Oral submissions of counsel : Transcript pp 614-616.

Commissioners' Decision – may be inappropriate. That consideration is enhanced where, as here, issues identified in the operative district plan (the threat of wilding conifers) and/or in PC13(N) (the changes caused by irrigated, high intensity farming) are not in our judgment adequately dealt with (if at all) in the proposed policies and methods of implementation.

[476] Other matters to consider are the failure of the Commissioners' Decision to identify the outstanding natural landscape(s) within the Mackenzie Basin; and that it is important that the objectives, policies and rules are settled before any tenure review is completed so that the lessees in particular know where they stand. A factor that strengthens the latter consideration is that the many pastoral lessees in the Basin have fewer property rights than freeholders. It is the obligations under their pastoral leases rather than any rules in the operative district plan and PC13(C) which have kept the pace of change relatively slow in large parts of the Mackenzie Basin. So pastoral lessees should know before completion of tenure reviews that their land may be less valuable on standard financial measures (i.e. not counting environmental capital retained), because of the reduced range of farming options allowed under the Mackenzie Rural subzone restrictions .

[477] Another relevant matter is if objectives and/or policies have been changed by the court, and then the rules are found not to implement them.

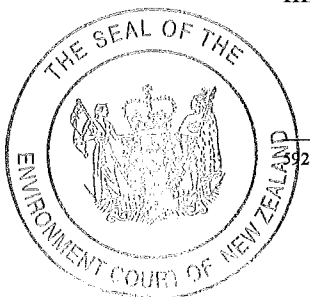
[478] We conclude that there are strong grounds for the court to exercise its jurisdiction in respect of the objectives and policies in respect of the landscape of the Mackenzie Basin.

Hazards

[479] It also encourages the use of section 293 that Meridian has raised hazards issues which we have held are likely to justify changes to the farm base areas. It defies common sense to approve farm bases in areas which are subject to appreciable hazards. But, in fairness, the opportunity should be given to landowners and occupiers to seek alternative farm bases.

Pastoral intensification

[480] We have added some clarifying policies and rules in respect of large buildings and pivot irrigators. We consider more express management of areas suitable for pastoral intensification (and indeed a re-definition of that term) is desirable. While the greening of the basin is expressly raised by PC13 itself as a new issue to be inserted⁵⁹² in the district plan it is not adequately dealt with in the policies or methods of implementation.



[481] We have become aware through unrelated appeals in the Waitaki District and through the media that the “greening” of the landscape has become topical right through the upper Waitaki catchment (i.e. including the Mackenzie, Ohau and Omarama basins) and that a “focus group” has been set up to deal with it. In the circumstances we are reluctant to give directions under section 293 which may cut across any consensus outcome from the local communities. We assume of course that such consensus will be reached under a fair process that commenced with a level playing field (e.g. we doubt that a right of veto should be given to any participant : see *Watercare Services Limited v Minhinnick*⁵⁹³) and it is undertaken with reference on its face to achieving the purpose and principles of the RMA. We trust, given the national importance of the Mackenzie Basin’s landscape that (at least) some wider community involvement and agreement will be obtained. So, unless we are advised that our assumptions are wrong, we will exercise our discretion not to proceed under section 293 in respect of intensification of farming activities other than restrictions on intensification in landscape protection areas, Scenic Viewing Areas and (new) scenic grasslands.

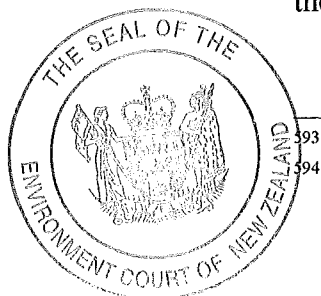
[482] As a separate consideration : if the Council has taken no action in respect of rule (7)12.1.1.g, which should have been renewed⁵⁹⁴ after 24 May 2007 then we should probably give directions under section 293 about that also. Further, our preliminary view is that this rule should apply to pastoral intensification generally and not just to land clearance. That would assist to find appropriate methods of implementation of objective 3B(3)(b) as provisionally determined by this decision.

Wildings

[483] PC13 is also largely silent in respect of policies and implementing methods to deal with the equally if not more pressing issue of wildings. There is a complex set of provisions to consider under the Climate Change Act, the Biodiversity Act, the Crown Pastoral Land Act and the Regional Pest Strategy. So, before we decide whether or not to give any directions under section 293 on the issue of wildings we wish to give the parties in these proceedings opportunity to make submissions on the law. We have attempted to set out our understanding of the law, but we may be wrong. But if we are right then we will be inclined to exercise our discretion in favour of action under section 293.

8.5 Outcome

[484] This decision in final in respect of our finding that the Mackenzie Basin as a whole (excluding Twizel and Tekapo townships, Mr Densem’s landscape unit 54 west of Twizel, and the Dobson River catchment) is an outstanding natural landscape. All other determinations or judgements are interim. That is especially so the further down the chain from objectives to policies to methods of implementation we have gone. Our



⁵⁹³ *Watercare Services Limited v Minhinnick* [1998] NZRMA 289 (CA).
⁵⁹⁴ See the note under the heading to the rule : Mackenzie District Plan p. 7-76.

suggested rules in particular may need changes and certainly need checking by the planners (and counsel).

[485] We are strongly of the inclination to exercise our discretion to make orders under section 293 of the Act to give effect to provisional determinations in the earlier parts of this decision. However, in case there are jurisdictional or discretionary matters we have overlooked we will reserve leave for submissions on these issues.

[486] We cannot emphasise strongly enough that all our suggestions as to appropriate afforestation (and some pastoral intensification – potentially quite extensive on the lower Tekapo and Pukaki plains) are subject to consideration of the ecological constraints. We consider that in many cases ecological issues could be better resolved as matters of ownership in tenure review under the CPLA. That would be achieved by the Crown taking ownership of meaningful reserves⁵⁹⁵ to protect the ecosystems that are hanging on in the lower parts of the Mackenzie Basin, and especially in the margins of wetlands, streams and rivers. However, as we have stated, because there is no certainty as to when (if) tenure review of individual pasture leases will take place, and because some properties are freehold, we will require some evidence that possible wilding afforestation and pastoral intensification will meet the purpose of the Act – especially the matters in section 6(a) and 6(c).

[487] Since the concept of approved exotic carbon forest areas proposed in this decision may impact on ecological values (and possibly for section 6(a) and (c) values) we will request that the Registrar send a copy of this decision to the Commissioner of Crown Lands, the Director-General of Conservation and to the Environmental Defence Society Incorporated (“the EDS”) so that they can read this decision and consider whether they wish to apply to be involved at any later stage⁵⁹⁶. We have suggested the first two because LINZ and the Department of Conservation each “own” and administer land in and around the Mackenzie Basin. As for the EDS : it appears from media reports in 2010 that the EDS has been interested enough in the Mackenzie, Ohau and Omarama Basins to hold a seminar in Twizel on the future development of the area and its landscapes. Much as some residents of the district might like all decisions about the district’s future to be made by locals, Parliament has given the Environment Court a decision-making role – subject to the tight constraints in Part 2 and section 32 of the RMA – and we must carry out our duties according to the law. There are wider communities to consider than those who reside permanently in the Mackenzie Basin, or the Mackenzie District, and the EDS might represent some of those if it chooses to apply to become a party.

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The Parliamentary Commissioner for the Environment’s report “Change in the high country : Environmental stewardship and tenure review” (April 2009) has some very interesting and potentially useful things to say about this. The suggestion of across altitudinal (mountain to plains) reserves is particularly thought-provoking. A superficial inspection of what has taken place south of Lake Ruataniwha (within Waitaki District) suggests that there may have been inadequate protection of both ecological and landscape values there. Probably as belated section 274 parties.



[488] This interim decision, regrettably, proposes an unusual level of interference with the normal rights of (freehold) farmers. It should not be read as a template that is applicable throughout New Zealand. That is primarily because the Mackenzie Basin landscape is unique and deserves, we judge, special protection (while allowing appropriate activities) under section 6(b) of the RMA when balanced or, more accurately, weighed with all other Part 2 considerations. That protection proposes policies and rules which impinge on the rights of landowners including the Crown as lessor of many pastoral leases to a considerable but still reasonable extent. The protection we have suggested may still be inadequate to protect ecological values (we do not know on the current state of evidence) and is likely to be the maximum extent of exotic forest we can approve as appropriate to recognise landscape values.

[489] If something like the proposals we have outlined cannot be made to work (and if anything we believe we may have erred on the side of too much afforestation and pastoral conversion because there was so little ecological evidence) then the onus will come on the tenure review process. That makes it of concern that, if the Parliamentary Commissioner's Report is to be believed (and we repeat that we make no finding either way), that process has been unsatisfactory in the past.

[490] Possibly in respect of ecological values, and certainly in respect of its landscape values, there is a danger that unless the people of the Mackenzie District and the wider community concentrate on applying the RMA properly, some of the outstanding qualities of the Mackenzie Basin will be lost, effectively for ever. We believe that the solutions in this decision are the most appropriate outcome on the evidence and submissions so far.

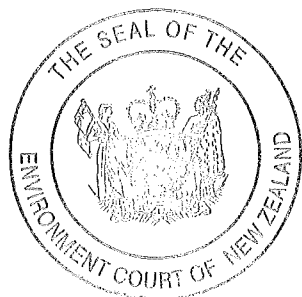
The Waitaki Power Scheme

[491] We have attempted to resolve (provisionally) as many of the issues raised by Meridian as we can. However, the changes to the objectives and policies we contemplate mean that much of the careful and detailed work by Meridian's planner, Mr Gimblett, has been rendered redundant. Special leave will be reserved for Meridian to come back on all the rules it seeks to protect the existing and (subject to the general objective and the wilding exotics policy) future operations of the nationally important Waitaki Power Scheme. We particularly seek Meridian's views on how the proposed wilding/exotic trees' policies and methods of implementation might affect its operations.

Mapping

[492] It will be seen from our discussion of provisional policies that some further mapping will be required, specifically of:

- scenic grasslands;



- areas of low visual vulnerability potentially suitable for development and/or forestry;
- areas of medium visual vulnerability;
- approved farm bases.

We consider this should be carried out by Mr Densem as soon as possible to aid the Council's consultation with the parties and other affected persons.

8.6 Afterwords

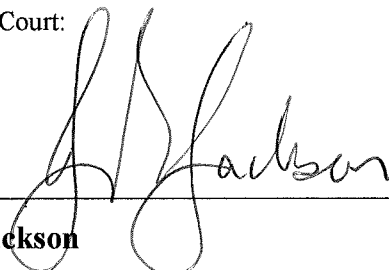
The Pukaki Village subzone

[493] This area to the east of the Pukaki Dam was to be the subject of these proceedings but the relevant appeal was withdrawn. We understand the site can be identified on the ground by a little stone cottage on the uphill side of the road. Its garden has been tactfully planted with native species. However, the Council should reflect on whether this little black spot in the middle of the Mackenzie subzone will necessarily all be developed so sympathetically.

The effects of the Canterbury earthquakes

[494] A principal reason for the extended time it has taken us to issue this decision is the series of earthquakes that have hit Canterbury since September 2010. That has affected this division of the court's work, both directly and indirectly. First, the Environment Court has no one office in Christchurch – like other courts it is working out of several different venues with varying, sometimes very inadequate, facilities. Secondly, an indirect effect of the seismic activity is that the court, as a matter of public policy, gave preference to work on the small contribution it could make to recovery, especially to attempts to hear speedily the appeals on Change 1 to the Canterbury Regional Policy Statement. While we regret the delay in issuing this decision we hope that the people and communities of the Mackenzie Basin will understand the reasons.

For the Court:



J R Jackson
Environment Judge



Schedule A

Provisional changes to Section 7's landscape policies

A : SCHEDULE OF POLICIES 3B1 TO 3B16

Policy 3B1 Recognition of the Mackenzie Basin's distinctive characteristics

To recognise that within the Mackenzie Basin's outstanding natural landscape there are:

- (a) some areas where different types of development and use (such as irrigated pastoral farming or carbon forestry under an Emissions Trading Scheme) and/or subdivision are appropriate, and to identify these areas; and
- (b) many areas where use and development beyond pastoral activities on tussock grasslands is either generally inappropriate or should be avoided

– while encouraging a healthy productive economy, environment, and community within, and maintaining the identity of, the Mackenzie Country.

Policy 3B2 – Adverse Impacts of Buildings and Earthworks

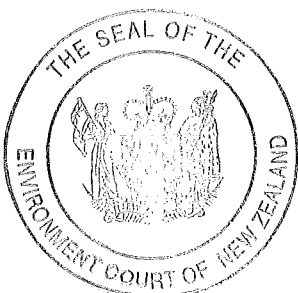
To avoid adverse impacts on the outstanding natural landscape and features of the Mackenzie Basin, in particular from residential buildings, domestication, structures, earthworks, tracks and roads except in particular areas under policies below, and to remedy or mitigate the adverse effects of farm buildings and fences.

Policy 3B3 – Adverse Effects of Sporadic Subdivision and Development

To control buildings and subdivision in the Mackenzie Basin Subzone (outside of approved farm base areas and other than for activities provided for in [the Renewable Energy] Policy 3B9 and subject to lesser controls on buildings and subdivision in areas of lower visual vulnerability) to ensure adverse effects, including cumulative effects, on the environment of sporadic development and subdivision are avoided or mitigated and to sustain existing and likely future productive use of land.

Policy 3B4 – Limits on subdivision and housing

- (1) Subject to (2) below, to enable residential or rural residential subdivision and housing development in the Mackenzie Basin Rural subzone only within identified farm base areas;
- (2) To encourage new residential or rural residential subzones in areas of low or medium vulnerability provided:
 - (a) objectives 1, 2, 4, 7, 8 and 11 of the Rural chapter are achieved; and
 - (b) the new subzones satisfy policy 3B6 below;
- (3) To strongly discourage residential units elsewhere in the Mackenzie Basin.



Policy 3B5 Development in farm base areas

- (1) Subdivision and development of farm base areas which are in areas of high vulnerability to development shall maintain or enhance the significant and outstanding natural landscape and other natural values of the Mackenzie Basin by:
- (a) confining development to areas where it is screened by topography or vegetation or otherwise visually inconspicuous, particularly from public viewpoints and from views of Lakes Tekapo, Pukaki and Benmore provided that there may be exceptions for development of existing farm bases at Braemar, Tasman Downs and for farm bases at the stations along Haldon Road
 - (b) integrating built form and earthworks so that it nestles within the landform and vegetation
 - (c) planting of local native species and/or non-wilding exotic species and management of wilding tree spread
 - (d) maintaining a sense of isolation from other development
 - (e) built development, earthworks and access having a low key rural character in terms of location, layout and development, with particular regard to construction style, materials and detailing
 - (f) mitigating, the adverse effects of light spill on the night sky
 - (g) avoiding adverse effects on the natural character and environmental values of waterbodies, groundwater and sites of natural significance
 - (h) installing sustainable systems for water supply, sewage treatment and disposal, stormwater services and access;
- (2) Subdivision and development in farm base areas which are in areas of low or medium vulnerability to development shall:
- (a) restrict planting to local native species and/or non-wilding exotic species
 - (b) manage exotic wilding tree spread
 - (c) maintain a sense of isolation from other development
 - (d) mitigate, the adverse effects of light spill on the night sky
 - (e) avoid adverse effects on the natural character and environmental values of waterbodies, groundwater and sites of natural significance
 - (f) install sustainable systems for water supply, sewage treatment and disposal, stormwater services and access;

3B6 Potential residential and visitor accommodation activity subzones

- (1) To mitigate the effects of past subdivision on landscape and visual amenity values and to encourage appropriate rural residential activities in the Mackenzie Basin by identifying, where appropriate, alternative specialist zoning options (such as Rural-Residential) in areas of low or medium vulnerability to development where there are demonstrable advantages for the environment;
- (2) where such subzones are located wholly or partly in areas of medium vulnerability then any development within shall maintain or enhance the significant and outstanding natural landscape and other natural values of the Mackenzie Basin by:
- (1) confining development to areas where it is visually inconspicuous, particularly from public viewpoints and from views up Lakes Tekapo and Pukaki provided that there may be exceptions for development of existing farm bases at Braemar, Tasman Downs and for farm bases at the stations along Haldon Arm Road
 - (2) integrating built form and earthworks so that it nestles within the landform and vegetation
 - (3) planting of local native species and/or non-wilding exotic species and management of wilding tree spread
 - (4) maintaining a sense of isolation



- (5) built development, earthworks and access having a low key rural character in terms of location, layout and development, with particular regard to construction style, materials and detailing
- (6) mitigating, the adverse effects of light spill on the night sky
- (7) avoiding adverse effects on the natural character and environmental values of waterbodies, groundwater and sites of natural significance
- (8) installing sustainable systems for water supply, sewage treatment and disposal, stormwater services and access.

Policy 3B7 – Lakeside protection areas

- (a) To recognise the special importance of the Mackenzie Basin's lakes, their margins, and their settings in achieving Objective 3B.
- (b) Subject to (c), to avoid adverse impacts of buildings, structures and uses on the landscape values and character of the Mackenzie Basin lakes and their margins.
- (c) To avoid, remedy or mitigate the adverse impacts of further buildings and structures required for the Waitaki Power Scheme on the landscape values and character of the Basin's lakes and their margins.

(Note : Policy (c) has different objectives to achieve dependent on whether Rural Objective (7)3B or Utilities objective (Section 15)3 is being implemented.)

Policy 3B8 Views from State Highways and Tourist Roads

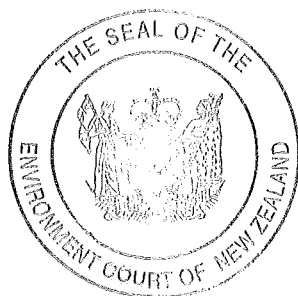
- (a) To avoid all buildings, other structures exotic trees and fences in the scenic grasslands listed in Appendix X and in the scenic viewing areas shown on the planning maps;
- (b) To require buildings to be set back from roads, particularly state highways, and to manage the sensitive location of structures such as large irrigators to avoid or limit screening of views of the outstanding natural landscape of the Mackenzie Basin;
- (c) To avoid clearance, cultivation or oversowing of all tussock grasslands adjacent to and within the foreground of views from State Highways and the tourist roads;
- (d) To minimise the adverse effects of irrigation of pasture adjacent to the state highways or the tourism roads.

Policy 3B9 – Renewable Energy

To recognise and provide for the use and development of renewable energy generation and transmission infrastructure and operations within the footprint of current operations or on land owned by infrastructure operators as at 31 October 2011 while, as far as practicable, avoiding, remedying or mitigating significant adverse effects on the outstanding natural landscape and features of the Mackenzie Basin.

Policy 3B10 – Reverse sensitivity

To avoid, remedy or mitigate adverse reverse sensitivity effects of non-farm development on rural activities and activities such as power generation, transmission infrastructure, state highways and the Tekapo Military Training Area.



Policy 3B11 Hazards

To avoid hazards caused by activities such as power generation; and water transport by canal and aqueduct on non-farm development and activities.

Policy 3B12

Traditional pastoral farming is encouraged so as to maintain tussock grasslands, subject to achievement of the other Rural objectives and to policy 3B8.

Policy 3B13 Farm Buildings

- (1) Farm buildings should be avoided in lakeside areas, scenic viewing areas and scenic grasslands.
- (2) Elsewhere in the Mackenzie Basin subzone farm buildings should be managed in respect of location, density of buildings, design, external appearance and size except in areas of low visual vulnerability where only density and size are relevant.

Policy 3B14 Pastoral intensification

- (1) To ensure areas in the Mackenzie Basin which are proposed for pastoral intensification meet all the other relevant objectives and policies for the Mackenzie Basin subzone (including Rural Objectives 1, 2 and 4 and implementing policies);
- (2) To link management of new areas of pastoral intensification with management of wilding exotic trees and other weeds;
- (3) To avoid pastoral intensification in sites of natural significance, scenic viewing areas and scenic grasslands.

3B15 Wilding trees

To manage wilding tree spread by:

- (a) confining it to areas of low or medium vulnerability as shown on Map [-];
- (b) requiring landowners to remove wildings of identified tree species from their land (outside of areas identified in (a) before they seed.

3B16 Landscape aspects of subdivision

- (1) In order to minimise its adverse effects, subdivision in the Mackenzie Basin Rural Subzone will not be encouraged except:
 - in farm base areas;
 - in areas of low visual and/or ecological vulnerability;
- (2) there should be a minimum lot size of 200 hectares (except in farm bases);
- (3) further subdivision of lakeside protection areas (except for existing farm bases), scenic viewing areas and scenic grasslands will not be allowed;
- (4) all lots in a subdivision shall be linked by mutually enforceable covenants and conditions (also enforceable by the Council) to remove exotic wildings from each other lot unless the trees are in an approved forest area;
- (5) All subdivision should have regard to topographical and ecological restraints.

