

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* Decision C48/2006.



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.



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.

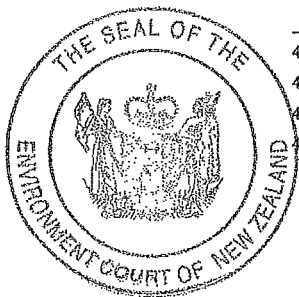
Then the effect of the proposed rules in PC13(N) was that:

- 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].

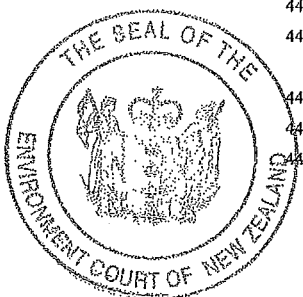
⁴⁴⁴ Some of the usual suspects : Lodgepole, Corsican, Bishops and Scots pines, and Douglas-fir. The text in the Commissioners' Decision [p. 24] states "*Pinus*" but Douglas-fir is neither a pine nor a true fir but in a genus of its own.

⁴⁴⁵ Commissioners' Decision para [206].

⁴⁴⁶ Rule 6.1.8.e [MDP p. 7-49].

⁴⁴⁷ Commissioners' Decision p. 24.

⁴⁴⁸



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.

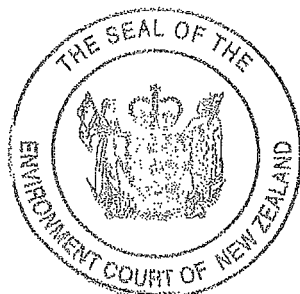
[294] Given the importance of wilding control outside approved forestry areas (to be established) we consider there should be a new rule (7)6.6 about Exotic Wildings in the Mackenzie subzone as follows:

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

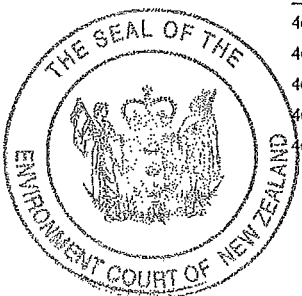
[300] The Hearing Commissioners' decision to introduce a distinction between subdivision for rural purposes and for other purposes, and to add a rule providing for retirement houses is not in our view consistent with the purpose of either PC13 or the RMA itself. A rule in PC13(C) states that⁴⁶⁴:

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.



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.

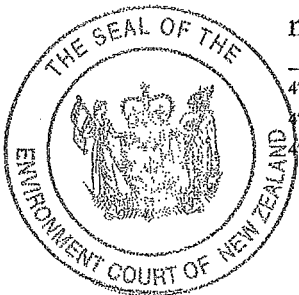
[319] There may be potential for some higher intensity (irrigated) farming activities in the southern half of the property, well away from the DOC reserve⁴⁷⁵.

[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.

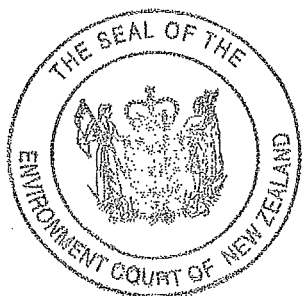
[332] Mr Smales considered it would be prudent to ensure [residential] development is set back a “suitable distance” to take into account medium and long term erosion. No indication of what a “suitable distance” might be was offered. Meridian’s planner, Mr Gimblett, wrote that the reintroduction of the 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

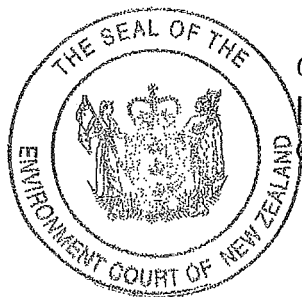
[338] For this property on the Dobson River we confirm the farm base area in the Commissioners' Decision. Given its altitude and proximity to conservation areas there is no obvious opportunity for afforestation or irrigated farming.

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.

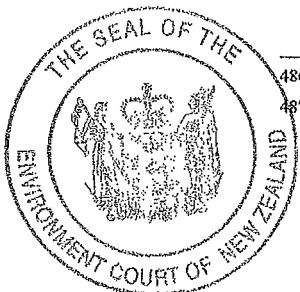
Grays Hills

[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

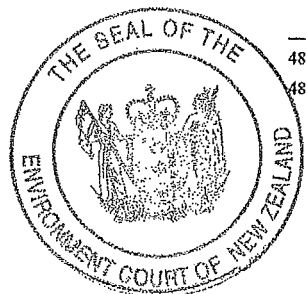
[351] On the eastern side of Lake Benmore/Te Ao Marama, Haldon Station is a well-managed 22,040 hectare property near the end of the no (public) exit Haldon Road. The collection of farm buildings, homestead and schoolhouse have heritage status in the district plan. The owners requested that their farm 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
⁴⁸⁹

Submissions of counsel (Mr Thomas) para 9(b) [Environment Court document 7].
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 para 10b [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.

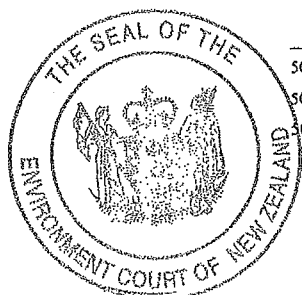
[370] There are important views⁵⁰⁶ east and southeast from State Highway 8 over the Tekapo River Plains. They raise the question whether there should be "Scenic Grasslands" on this property. The answer is particularly difficult because, as another of Mr Densem's maps shows⁵⁰⁷, Maryburn Station's owners 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



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Where Mr Densem's September 2010 map 2 shows it to be [Environment Court document 32].

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

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.

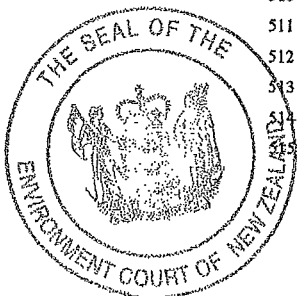
[375] Mr Krüger put considerable reliance on his view⁵⁰⁸ that "... historically – throughout New Zealand – settlement was located along the coast and the margins of lakes and rivers. Consequentially, appropriate and well designed new development containing built form can be located in similar situations 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].
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

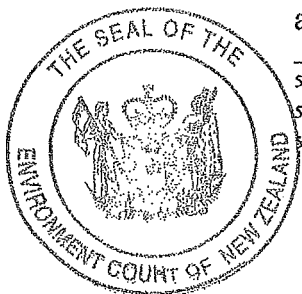
MDC reference RM080031.

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

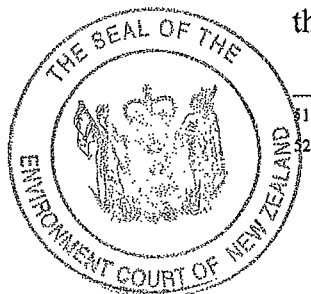
[387] The former Pukaki Downs Station has been freeholded and is now in various ownerships. Three of them are appellants⁵¹⁹ in these proceedings : Fountainblue Limited, Southern Serenity Limited and Pukaki Tourism Holdings Partnership. Since they presented a combined case we will call them collectively “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 Appeal ENV-2009-CHC-190.

⁵²⁰ 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).

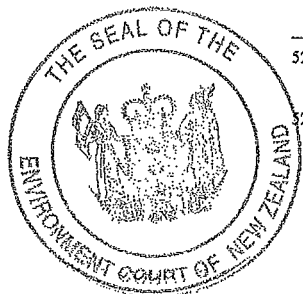
[392] Afforestation by wildings is almost a *fait accompli* on this property. We consider that it should be authorised in a limited area so as to protect the land of neighbours and the qualities of the landscape. So any approved exotic carbon forest must be:

- 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.

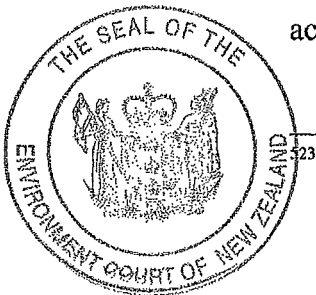
[395] The Commissioners' Decision allotted three farm bases. The first two are shown on the Commissioners' Sawdon No. 1. The larger area is appropriate. The smaller area is isolated and inappropriate and is not confirmed. Sawdon No. 2, on the other hand, is an appropriate farm base.

[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



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.



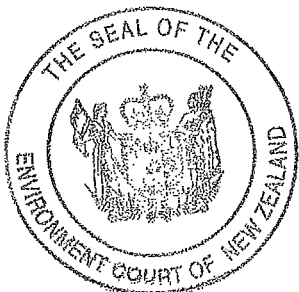
The Wolds

[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.

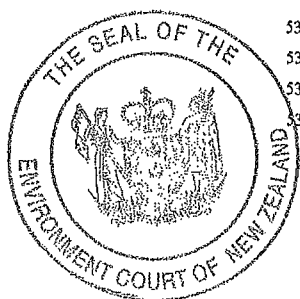
⁵²⁹ The legal description of the Ohau River Block is Lot 3 and 4 75206, Glen Lyon Road, Lake Ohau, Twizel.

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.

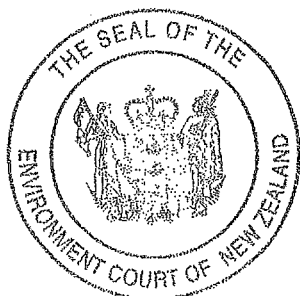
[420] Meridian is a section 274 party to the Mackenzie Property appeal. It opposed the specific relief sought on the notice of appeal, i.e. that the Manuka Terrace Rural Residential zone rules should apply to the ORB. We understand that during the hearing an agreement was reached with Meridian to support 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.

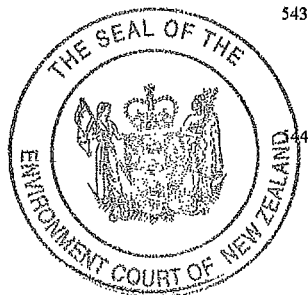
[430] Mr Densem's evidence was that the ORB has more in common with the adjacent Waitaki District landscape than the Manuka Terrace to the north despite the ORB being in the Land Types and Assessment Units S4⁵⁴⁴ together with the Manuka Terraces. He believed that without the modification taking place 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.

⁵⁴⁴ 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?

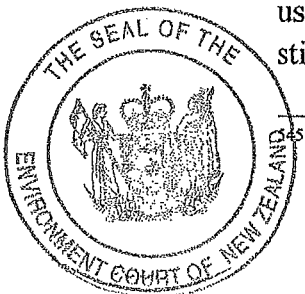
[432] To the north, across the Ohau canal lies the Manuka Terrace development. The effect of a similar subdivision on the Manuka Terrace population would be to reduce the natural quality of their outlook. However, there are three matters which reduce our concern about that. The first and most important 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:

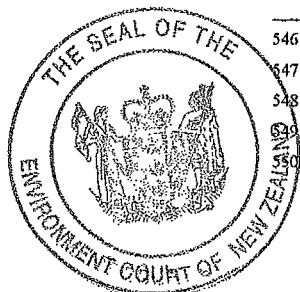
- delineated an area to be excluded from controlled activity building as a response to the concerns expressed by Meridian concerning the overland flow path of a possible breach;
- provided a no-build 100 metre setback around the north, south and west of the site but not on the west boundary with the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

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

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.

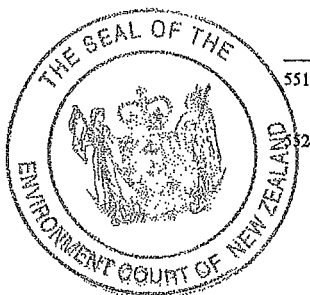
Subdivision yield

[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.

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

⁵⁵²

- (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).

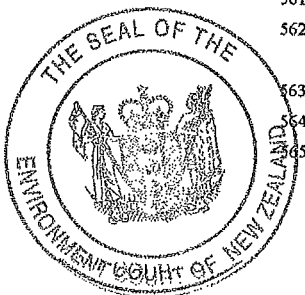
⁵⁶¹ Not to be confused with the better-known Dusky Track in Fiordland.

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

