ORIGINAL

Decision No. C49/2004

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an appeal pursuant to Clause 14 of the First Schedule of the Act
BETWEEN	NATURALLY BEST NEW ZEALAND LIMITED AND SHOTOVER PARK LIMITED
	(RMA 0735/03 and 0736/03)
AND	SHOTOVER PARK LIMITED
	(RMA 0737/03)
	Appellants
AND	QUEENSTOWN LAKES DISTRICT COUNCIL
	Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson (sitting alone under section 279 of the Act)

Hearing at Queenstown on Tuesday 20 April 2004

Appearances

Mr M E Parker and Mr R A Makgill for Naturally Best New Zealand Limited and Shotover Park Limited

Mr N S Marquet for the Queenstown Lakes District Council

Mr R Bartlett and Mr P J Page for D S and J F Jardine and G B Boock

Mr G M Todd for Henley Downs Limited

Mr J Castiglione for Jacks Point Limited

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

DECISION ON PROCEDURAL ISSUE

Introduction

[1] The appellants, Naturally Best New Zealand Limited and Shotover Park Limited raise a jurisdictional point. Their substantive appeals under the Resource Management Act 1991 ("the RMA" or "the Act") are about Variation 16 to the proposed district plan of the Queenstown Lakes District Council. The variation seeks to create a special resort zone to be called the 'Jacks Point Zone' between the shores of Lake Wakatipu and the slopes of the Remarkables (mountains). The appellants argue that the Court has no jurisdiction to include a certain piece of the land within the proposed new zone.

[2] The background to that allegation is that in 1995 the Council notified its proposed plan under the Act. Under the notified plan almost all of the area between the lake and the Remarkables was zoned as (I think) 'rural downlands'. Part of the land was a farm called the 'Remarkables Station', owned by D S and J F Jardine and G B Boock (together 'the Jardines'). Adjacent was another station called Henley Downs.

[3] After receiving and hearing submissions the Council changed the proposed zoning of the Remarkables Station and Henley Downs to "Rural General" in its 1998 revised plan. Mr and Mrs Jardine lodged a reference with the Court, which is still outstanding, although superceded by the variation described next. The submission and reference sought a zoning which would lead to new residential development.

[4] On 6 October 2001 the Council notified[1] a variation 16 to the proposed plan. The variation was described as follows in the public notices:

> **Creation of Jacks Point Resort Zone**
>
> **Purpose of Variation:** to rezone land from rural General Zone to Jacks Point Resort Zone. Total land area to be zoned is 420 hectares.
>
> **Purpose of Jacks Point Resort Zone:** to enable a high quality destination golf resort covering approximately 420ha of land between the Remarkables and Lake Wakatipu. The zoning anticipates two 18-hold championship golf courses, a luxury lodge, village centre and up to 400 residential units.
>
> **Location:** State Highway 6a, approximately 8 kilometres south of Frankton.

[1] Under Clause 5 of the First Schedule to the RMA.

The proposed zone was part of the Remarkables Station, but subject to an agreement for sale and purchase of the 420 hectares to Jacks Point Limited.

[5] As a response to notification of Variation 16 two submissions were filed by neighbours of the proposed zone seeking that the zone be extended by the addition of part of their land. To the north, Henley Downs Limited sought the addition of another 706 hectares to the zone under a comprehensive development proposal; and to the south, the Jardines sought addition of 127 hectares ("the Jardine land"), again subject to a fairly comprehensive development proposal proposed to tie-in to the core Jacks Point Zone.

[6] The appellants, who had already lodged primary submissions opposing Variation 16, now each lodged further submissions opposing the relief sought in the primary submissions of Henley Downs Limited and the Jardines.

[7] At this point the Council departed from the statutory process by not proceeding to a hearing. Instead it commissioned a report ("the Coneburn Study") from a number of experts on the values and possible development of the whole area between the lake and the Remarkables and made this available to members of the Queenstown community who wished to read it. It then consulted with members of the public. However, no further opportunity was expressly given for the making of further submissions on an extended Jacks Point Zone.

[8] The Council then restarted the First Schedule process. After hearing the submissions the Council approved an extended Jacks Point Zone including the Henley Downs and Jardine land. The appellants then lodged their appeals.

Background

[9] The appellants allege that the Jardine land cannot be included in the Jacks Point Zone for three reasons:

(1) the Jardine submission is not 'on' the variation as notified;

(2) possible submitters on the Jardine extension to the zone would not have been aware that the extension was proposed, and were therefore neither heard by the Council, nor can they know they have an opportunity to be heard by this Court;

(3) there was no section 32 evaluation of the Jardine extension about which submissions could be lodged.

[10] Rather curiously the appellants are not challenging the 706 hectare northern extension (the Henley Downs addition) to the zone, but only the 126 hectare southern extension. If I decide that the Jardine extension is beyond jurisdiction, then the Henley Downs extension to the Jacks Point Zone may be illegal too.

[11] The starting point for Mr Parker's first two submissions for the appellants were the statement by William Young J in *Clearwater Resort Limited v Christchurch City Council*[2] where the High Court stated:

> 1. A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.
> 2. But if the effect of regarding a submission as on a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation.

[12] In adopting those principles Mr Parker submitted, and all counsel agreed, that they were subject to the broad practical approach stated by Panckhurst J in *Royal Forest and Bird Protection Society Incorporated v Southland District Council*[3]:

> [that] it is important that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions, should be approached in a realistic workable fashion rather than from the perspective of legal nicety.

2 High Court Christchurch AP 34/02 and 35/02, William Young J (14 March 2003) at para [66].
3 [1997] NZRMA 408 at 413.

[13] As for the appellants' challenge to the Jardine extension under section 32 of the RMA, Mr Parker submitted that sections 32(b) and 32A of the Act[4] require any section 32 analysis to be carried out before the variation was notified. Clearly that could not happen in respect of the Jardine extension which was only suggested to the Council in the Jardine submission after notification of Variation 16. Therefore the extension of the zone was illegal, especially since the appellants, and possibly other persons, lost their chance to challenge the section 32 analysis (or lack of it).

Is the Jardine submission 'on' variation 16?

[14] Section 2 of the RMA defines a "variation" as meaning an:

> Alteration by a local authority to a proposed ... plan, or change under Clause 16A of the First Schedule.

A "proposed plan" as defined[5] includes a 'variation'. Then when we turn to the process of the First Schedule for the preparation of proposed plans or variations to them, clause 6 of the First Schedule provides:

> Any person, including the local authority in its own area, may, in the prescribed form, make a submission to the relevant local authority **on** a proposed policy statement or plan that is publicly notified ..
> [My emphasis]

Therefore, while any person may make a submission, it must be "on" a variation.

[15] In *Clearwater* the High Court stated that a submission can only be 'on' a plan change if it is addressed to the extent to which the variation changes the 'pre-existing status quo'[6]. With respect, apart from the tautology involved in the last three words, I find that test rather passive and limited. 'Address' means (most relevantly)[7]:

4 As amended by the Resource Management Amendment Act 2003.
5 In section 2 of the RMA.
6 High Court, Christchurch, AP34/02 and 35/02 William Young J 14 March 2003.
7 The Concise Oxford Dictionary (Eighth edition, Clarenden Press 1990).

... 4. Direct one's attention to

5. *Golf* take aim at or prepare to hit ...

Why is it necessary for a submission to direct attention to the extent to which a variation or plan change departs from the provisions of a proposed plan? For example, a variation or plan change may seek to alter a part of a plan completely – with new objectives, policies and rules for a particular area of land. In such a case the variation needs to be considered against the Act, rather than measured for its place in the remainder of the plan. With respect, the High Court seems to be conflating two points. First, it is obviously important for all persons to appreciate the scope of a variation or plan change, and in particular whether it is designed to be separate from much or all of the (proposed) plan, or whether it is designed to fit in. Secondly it is equally important to understand how far a submission seeks more or something different from the variation or plan change.

[16] The limitations of the *Clearwater* test are shown by the form to be used for a submission. That shows a submission must state[8] not only the reasons for making the submission, but also, more actively, the relief the submitter seeks as a decision from the local authority. I suspect this is, from a submitter's point of view, usually the most important part of a submission.

What are the tests for deciding whether a submission is 'on' a plan change or variation?

[17] In *Countdown Properties Limited v Dunedin City Council*[9] the Full Court was concerned with a decision of the (then) Planning Tribunal about a plan change of the Dunedin City Council's transitional plan. The plan change sought to "rezone a central city block from an existing industrial B zone to a new Commercial F zone"[10]. It appears that no person sought by submission to extend the zone, for example by adding another block, or part of a block, to the new Commercial zone. So the case was different to the situation here.

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8 Form 5 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 (SR 2003/153).

9 [1994] NZRMA 145 (Full Court).

10 [1994] NZRMA 145 at 151.

[18] However, one of the issues in *Countdown* was whether the Dunedin City Council, and on appeal, the Tribunal, was correct in making decisions that differed from the submissions. The Full Court stated[11]:

> The local authority or [Environment Court] must consider whether any amendment made[12] to the plan change as notified goes beyond what is reasonably and fairly raised in **submissions** on the plan change ... It will usually be a question of degree to be judged by the terms of the proposed change and of the content of the submissions.
> [My emphasis]

[19] It seems to be implicit in that passage that a submission may seek to go beyond the bounds of the notified plan change or variation. That implication is perhaps expressed a little later in *Countdown* when the Court referred to "unheralded **additions** to the plan"[13] (my emphasis). I therefore hold that a submission may seek fair and reasonable extensions to a notified variation or plan change. The criteria as to fairness and reasonableness include answering such questions as:

(a) what is the scope of the plan change or variation?

(b) what is the extent of the submission in proportion to the plan change or variation?

(c) does the submission relate to the notified variation or plan change?

[20] Clearly no single criterion – beyond the general formula of fairness and reasonableness – is correct. Each case has to be determined on its facts, bearing in mind this is essentially a procedural not a substantive issue. However, it may be worth explaining the criteria briefly:

(a) The scope of the plan change.

The scope of the variation or plan change is relevant because it may limit the scope of submissions on it. If the variation or change is wide, then the relief sought in a submission may be proportionately wide (within reason)

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11 [1994] NZRMA 145 at 166.
12 Should this read "proposed"?
13 [1994] NZRMA 145 at 167.

– *Halswater Holdings Limited and others v Selwyn District Council*[14] – and subject always to the *Forest and Bird* principle.

(b) Extent of submission.

This is important because a broad plan change or variation may enable a wide submission. Conversely a narrow variation is very unlikely to justify a broad submission. Apart from obvious and easy examples as to the size of zones, it is also worth remarking that a proposed variation of a rule to more effectively implement a policy is very unlikely to justify a submission seeking to change that or any other policy in a proposed plan.

(c) Relationship of submission to plan change or variation.

As to the relationship between a submission and the variation or plan change it is made on, I think it comes within the parameters of *Clearwater* as to whether a submission is 'on' a variation (or plan change) if the submission reasonably relates to the whole variation in the context of the remainder of the proposed plan. This test comes close to the 'in connection with' test expressly disapproved (very briefly) in *Clearwater*[15] on the grounds that:

> If so broad an approach were to be adopted it would be difficult for a local authority to introduce a variation to a proposed plan without necessarily opening up for re-litigation aspects of the plan which had previously been passed the point of challenge.

However a 'relationship' test is, in my view, sufficiently restricted to avoid that difficulty. There must be a kinship between the submission and the reference and it must be a reasonably close relationship. How close depends on the circumstances of each case. In this case a submission seeking to rezone land at Fern Hill on the western side of Queenstown to be part of the Jacks Point Zone would have been most unlikely to be valid.

[21] Finally, there is one other aspect of the scheme of the Act which needs to be considered: the effect of section 293 of the RMA. This enables the Court to direct public notification of further possible changes to a proposed variation if they are (for example) found to be otherwise outside the Court's jurisdiction and if certain

14 [1999] 5 ELRNZ 192 at paragraph [45],

15 High Court Christchurch AP 34/02 and 35/02, William Young J 14 March 2003 at para [65].

preconditions[16] are met: *Canterbury Regional Council v Apple Fields Limited and another*[17]. Consequently it appears to me that a fairly robust attitude should be taken to the 'fairness and reasonableness' of any submission seeking to go beyond the terms of a plan change or variation if there is any question of parties not before the Court being disadvantaged because they have lost an opportunity to be heard. That is because if there is a jurisdictional defect for that reason, then that is not necessarily fatal to a submission on a plan change or variation. It may be possible for one of the affected parties to make an application under section 293: re *Vivid Holdings Limited*[18].

Application of the criteria in these proceedings

[22] The public notice and the submission must be read in the context of both the variation, and the remainder of the proposed[19] district plan. In this case the proposed district plan contains a chapter on Special Zones. Chapter 12 follows the same format for each of the Special Resort Zones – the areas and their values are described[20]; the objectives and policies stated[21]; and their purposes[22], followed by the rules[23]. In other words the Special Resort Zones are fairly complete and autonomous resource management regimes for their respective areas.

[23] That format has been followed for the proposed Jacks Point Zone. It is important to realise that a key document in each of the Resort Zones (e.g. Millbrook in actuality, and Jacks Point proposed) is the structure plan which describes, in effect, subzones. In the proposed Jacks Point Zone there are activity areas (subzones) for houses (Homesite Activity Areas), a Lodge, Villages, Golf and other activities, and also for various Landscape Protection Areas --close to the highway, on a Tableland, and on Jacks Point.

[24] The objective and policies of the Jacks Point Zone were stated in the Council's proposed amended Chapter 12 in Variation 16 to be for[24]:

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16 Section 293(2) of the RMA.
17 [2003] NZRMA 508 (HC).
18 (1999) 5 ELRNZ 264 at para [28].
19 Now, indeed, partly operative district plan.
20 Para 12.1.1 [Partly operative district plan p. 12-1].
21 Para 12.1.4 [Partly operative district plan p. 12-6].
22 Para 12.2.1 [Partly operative district plan p. 12-9].
23 Para 12.2.2 [Partly operative district plan p. 12-9].
24 Objective 4 – Appendix 2 to the Queenstown Lakes District Council Decision on Variation 16.

Objective 4 – Jacks Point Resort Zone

To enable development of an integrated resort community, incorporating residential activities, visitor accommodation and outdoor recreation – with appropriate regard for landscape and visual amenity values, servicing and public access issues.

Policies:

4.1 To maintain and protect views into the site when viewed from the lake, and to maintain and protect views across the site to the mountain peaks beyond when viewed from the State Highway.

4.2 To ensure an adequate level of sewage disposal, water supply and refuse disposal services are provided which do not impact on water or other environmental values on or off the site.

4.3 To require the external appearance of buildings to have regard to the landscape values of the site.

4.4 To require development to be located in accordance with a Structure Plan to ensure the compatibility of activities and to mitigate the impact on neighbouring activities, the road network and landscape values.

4.5 To control the take-off and landing of aircraft within the zone.

4.6 To provide public access from the State Highway to the lake foreshore.

In summary the Jacks Point Zone is a very wide-ranging proposal with its own important objectives and policies, and a number of subzones.

[25] As to the relationship between the submission and Variation 16: the Jardines' submission sought to change neither the zone description nor its objective and policies, but only the boundary of the zone and some internal subzones. If the submission was successful the result would clearly be a reasonable relative of the original Jacks Point Zone – a fatter zone perhaps but certainly in the same family.

[26] The ultimate test is whether the Jardine submission is fairly and reasonably within the scope of, or related to the Jacks Point Zone. I hold that it is for these reasons:

(1) Variation 16, whilst it does not initially create a large zone – only 420 hectares – is comprehensive in scope. That is it provides for a full range of resource management measures within the zone. Thus there is an implication that a submission on it may in theory also be proportionately

broad, especially if its objectives and policies are accepted. Whether the application of those objectives and policies to another area is appropriate is a matter of the substantive merits, rather than of jurisdiction;

(2) as to the scale of the submission, I was informed from the bar that although ostensibly 126 hectares of land was being added to the 420 hectares of the Jacks Point Zone as notified in Variation 16, in fact only 2.5% (or 40 houses) was being added to the residential activity areas or subzones. Most of the land is to be managed in ways similar to the existing rural management, or better because of proposed native plant restoration and wetland management;

(3) while the scale of the submission might normally be too large to find that it is fairly and reasonably 'on' Variation 16, the Council's decision[25] shows that the Council undertook further research (the Coneburn Study) and consultation – in the form of 'workshops' – before proceeding to hear the submissions;

(4) the extension to the Jacks Point Zone is on adjacent land which is, according to the Council decision and my knowledge of the area, all part of the same landscape. Therefore the Jardine extension is clearly related to Variation 16.

Have potential submitters been deprived of an opportunity to make a submission?

[27] I record that no person attempted to lodge a late submission with the Council, or lodged a notice with the Registrar under section 274 seeking to be heard by this Court. So to that extent the appellants' contention that potential submitters have been deprived of the opportunity to participate is theoretical. However their point may still be valid, because if people were not given notice of the Jardine submission seeking an extension to the Jacks Point Zone, they would not know to lodge a submission in reply, and their right to submit would have been restricted[26] to being in support of or in opposition to the primary[27] submission.

25 Council decision dated 15 August 2003: para 2.1.
26 Clause 8 of the First Schedule to the RMA.
27 Clause 6 of the First Schedule to the RMA.

[28] For example, Mr Parker said that some persons may have read the public notification of the variation and seen that it related to the place known as Jacks Point, and a "total land area" of 420 hectares to be rezoned. They may have considered they did not need to make a submission as invited by the Council's public notice. Such persons may have been very surprised, in Mr Parker's submission, to find that as a result of a submission by the Jardines, the Jacks Point Zone has been increased by a further 127 hectares, and now runs down to the foreshore of Lake Wakatipu off Homestead Bay, south of Jacks Point.

[29] A local authority should consider whether persons who were not concerned with the variation or plan change might be concerned with the changes or extensions requested in a primary submission[28]. However, that concern is lessened by the fact that the First Schedule procedure requires the existence of a summary[29] of submissions to be notified, and where it and the submissions can be inspected. Further, there is an opportunity to make further submissions[30] although at this point the submissions are limited to being in support of, or opposing the primary submissions, they cannot seek further relief. However, the notification of the summary and the opportunity to make further submissions are clearly Parliament's intended answer to concerns about whether other persons may be disadvantaged by primary submissions extending the scope of a variation or plan change.

[30] I bear in mind the importance of public participation in the RMA: *Murray v Whakatane District Council*[31] – but no evidence has been given of any persons who might plausibly have lodged a further submission if the Jardine extension had been in the original notified variation. In these circumstances there is no need to consider whether to invite an application under section 293 of the Act.

Has there been compliance with section 32?

[31] At law I am not sure that is the question. To see why, one needs to look at the text of sections 32 and 32A of the Act. The former states (relevantly) that:

28 Under clause 6 of the First Schedule to the RMA.
29 Under clause 7 of the First Schedule to the RMA.
30 Under clause 8 of the First Schedule to the RMA.
31 [1997] NZRMA 433 at 438.

32. Consideration of alternatives, benefits, and costs –

(1) In achieving the purpose of this Act, before a proposed plan, … or variation is publicly notified, … an evaluation must be carried out by –

…

(c) the local authority, for a policy statement or a plan …

…

(2) A further evaluation must also be made by –

(a) a local authority before making a decision under clause 10 or clause 29(4) of the Schedule 1: …

(3) An evaluation must examine –

(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and

(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

(4) For the purposes of this examination, an evaluation must take into account –

(a) the benefits and costs of policies, rules, or other methods; and

(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.

(5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.

(6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.

This section has been altered by the Resource Management Amendment Act 2003. The changed substantive requirements of a section 32 evaluation do not need to concern me here.

[32] The procedural requirements of the new section are:

(1) an evaluation must be carried out at two stages of the plan (change) or variation process by a local authority – before notifying[32] and before making decisions[33] on submissions;

(2) in relation to the first evaluation, but not it appears the second, the local authority must:

32 Under clause 5 of the First Schedule to the RMA.

33 Under clause 10 or clause 29(4) of the First Schedule to the RMA.

(a) prepare a report summarising the evaluation and 'giving the reasons for the evaluation'[34];

(b) make the report available for public inspection at the same time as the plan (change) or variation it evaluates[35].

[33] The appellants' complaint here is that while the Jardine submission seeks to enlarge the Jacks Point Zone there has been no section 32 evaluation of the effects of that enlargement which can assist the appellants. Their counsel, Mr Parker, reinforced that submission by referring to the new section 32A(1) of the Act.

[34] Since 1 August 2003 the RMA[36] has contained a provision ostensibly as to the consequences of failure to carry out an evaluation under section 32. It states:

> **32A. Failure to carry out evaluation –**
>
> (1) A challenge to an objective, policy, rule, or other method on the ground that section 32 has not been complied with may be made only in a submission under Schedule 1 or a submission under section 49.
>
> (2) Subsection (1) does not preclude a person who is hearing a submission or an appeal on a proposed plan, ... change, or variation, ... from taking into account the matters stated in section 32.

In fact section 32A appears to do more than merely identify the consequences of failure to comply with section 32: subsection (1) is a privative clause, designed to take away the right of judicial review by the High Court of the obligation of a local authority to comply with section 32. Whether section 32A(1) achieves that aim is not for this Court to decide. As for subsection (2), it seems to identify how a local authority (or on appeal, the Environment Court) must consider the section 32 evaluation. In one of the more resonant wordings of the RMA, section 32A(2) repeats that the cost/benefit analysis and evaluation must be taken into account[37].

34 Section 32(5) RMA.
35 Section 32(6) RMA.
36 As added by the Resource Management Amendment Act 2003.
37 Echoing section 32(4) RMA.

[35] The importance of section 32A for local authorities and for the Environment Court is that it implies that a section 32 evaluation is not to be subjected to legalistic word games or other analysis of the yes/no or binary (0-1) variety as to whether it is adequate. Rather a section 32 evaluation is a tool which the decider should complete as it chooses and then take into account appropriately. The effect of section 32A is that there is to be no procedural challenge to the adequacy of a report except by submission (at the local authority level).

[36] Further, it appears from section 32A(2) when combined with section 32(2) that even if a submission does not raise section 32 matters, it may be that a local authority, and/or the Environment Court have a discretion to take into account the matters identified in section 32(3) and (4). This confirms the approach stated by the Full Court in *Countdown* of the former section 32 when it stated[38]:

> Any defect of substance in the council's decision and s 32 analysis was capable of exploration and resolution by the Tribunal. Even if there had been an error, we believe that it would have been corrected by the detailed, careful and extensive hearing by the Tribunal over a period of 16 days when detailed evidence was given by 19 witnesses and thorough submissions made by experienced counsel. We are conscious of the approach described in *Calvin v Carr* [1980] AC 574, *A J Burr Ltd v Blenheim Borough* [1980] 2 NZLR 1 and *Love v Porirua City Council* [1984] 2 NZLR 308.

[37] Returning to the concerns of the appellants in this case: while they were deprived of the benefits of a section 32 evaluation of the Jardine extension before lodging their further submission it appears that the Act contemplates such an omission. In other words there is no obligation for a primary submitter (or the local authority) to give a section 32 analysis with the submission. There is of course an obligation on the Council under section 32(2) to make a (further) section 32 analysis before giving its decision under clause 10 of the First Schedule to the RMA. The appellants' position is further protected by the fact that the Environment Court may also evaluate the section 32 matters[39]. It is not entitled to more.

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38 [1994] NZRMA 145 at 163.

39 Section 32A(2) of the RMA.

Outcome

[38] I hold that:

(1) the Jardine submission is 'on' Variation 16 because the submission is fairly and reasonably within the scope of Variation 16; and

(2) there is no evidence that any person has been deprived of an opportunity to submit or be heard on the Jardine submission nor that the opportunity given was less than fair and reasonable; and

(3) the absence of a previous section 32 evaluation of the Jardine submission cannot be fatal to this Court's consideration of Variation 16 and the submissions on it.

Accordingly the appellants' application for orders that the Environment Court has no jurisdiction fail.

[39] Costs are reserved. Any application and submissions in support should be made within ten working days of this decision being delivered and any reply within a further ten working days.

[40] The proceedings are set down for mediation next week. That may proceed.

[41] For anyone concerned about whether the Henley Downs extension of the Jacks Point Zone (by a further 706 hectares compared to the original 420) I repeat that I do not decide that here. However Mr Todd advised the Court that if that was put in issue then he would seek to call evidence that:

(a) only a very small part of Henley Downs were to be in Living subzones; and

(b) that after the completion of the Coneburn Study by the Council, its existence and the proposed extended Jacks Point Zone were front page items (with an aerial photograph showing the relevant area) in the local

newspapers. His intention would then be to submit that the extended zone was given very full extra informal notification.

DATED at CHRISTCHURCH 23 April 2004

J R Jackson

Environment Judge

Issued[40]: 23 APR 2004

40 JacksojUud_Rule\D\RMA 735-03.doc.